Draft Regulations laid before Parliament under section 176(1)(a) of the Social Security Contributions and Benefits Act 1992, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2000 No.

SOCIAL SECURITY

The Social Security (Incapacity Benefit) Miscellaneous Amendments Regulations 2000

Made - - - -	*2000*
Coming into force - -	*6th April 2001*

Whereas a draft of this instrument was laid before Parliament in accordance with section 176(1)(a) of the Social Security Contributions and Benefits Act 1992(**1**) and approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred by sections 22(5), 30A(2A), (6) and (7), 30C(3), 30DD, 122(1) and 175(2) to (4) of, and paragraph 2(8) of Schedule 3 to, the Social Security Contributions and Benefits Act 1992(**2**), sections 5(1)(i) and (r), 71(7) and (8) and 189(4) to (6) of the Social Security Administration Act 1992(**3**) and section 85(6) of the Welfare Reform and Pensions Act 1999(**4**) and of all other powers enabling him in that behalf, by this instrument which contains only regulations made by virtue of, and consequential upon, sections 62 to 64 of the Welfare Reform and Pensions Act 1999 and which is made before the end of the period of six months beginning with the coming into force of those provisions(**5**), hereby makes the following Regulations:

(**1**) 1992 c. 4. The reference to section 30DD(5)(b) and (c) was inserted into section 176(1)(a) by paragraph 25 of Part II of Schedule 8 to the Welfare Reform and Pensions Act 1999 (c. 30).

(**2**) 1992 c. 4. Section 22(5) was amended by paragraph 22 of Schedule 2 to the Jobseekers Act 1995 (c. 18). Section 30A was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18) ("the Incapacity for Work Act") and amended by section 64 of the Welfare Reform and Pensions Act 1999 (c. 30) ("the Welfare Reform and Pensions Act"). Section 30C was inserted by section 3(1) of the Incapacity for Work Act and amended by paragraphs 1(b) and 2(a) of the Tax Credits Act 1999 (c. 10). Section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act and paragraph 2(8) of Schedule 3 was inserted by section 62(4) of the Welfare Reform and Pensions Act. Section 175 was amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). Section 122(1) is cited because of the meaning assigned to the word "prescribe".

(**3**) 1992 c. 5. Section 5 was amended by paragraph 39 of Schedule 2 to the Jobseekers Act 1995 (c. 18), section 120 of, and paragraph 3(2) of Schedule 13 to, the Housing Act 1996 (c. 52), section 74 of, and paragraph 79 of Schedule 7 to, the Social Security Act 1998 (c. 14) and paragraphs 1 and 3(a) of Schedule 1 to the Tax Credits Act 1999 (c. 10). Section 189(4) to (6) was amended by paragraph 109 of Schedule 7 to that Social Security Act 1998.

(**4**) 1999 c. 30.

(**5**) *See* section 173(5)(b) of the Social Security Administration Act 1992 (c. 5) and section 91(3) of the Welfare Reform and Pensions Act 1999 (c. 30).

Citation and commencement

1. These Regulations may be cited as the Social Security (Incapacity Benefit) Miscellaneous Amendments Regulations 2000 and shall come into force on 6th April 2001.

Amendment of the Social Security (Incapacity Benefit) Regulations 1994

2.—(1) The Social Security (Incapacity Benefit) Regulations 1994(**6**) shall be amended in accordance with the following paragraphs of this regulation.

(2) After regulation 2A of the Social Security (Incapacity Benefit) Regulations 1994(**7**) (disapplication of section 1(1A) of the Administration Act) there shall be inserted the following—

"PART 1A

CONTRIBUTION CONDITIONS : SUPPLEMENTARY PROVISIONS

Relaxation of the first contribution condition in certain cases

2B.—(1) For the purposes of sub-paragraph (2)(a) of paragraph 2 of Schedule 3 to the Contributions and Benefits Act(**8**) (first contribution condition) a person who satisfies any of the conditions in paragraph (2) shall be taken to satisfy the first contribution condition if—

(a) he paid contributions of a relevant class before the relevant time in respect of any one year; and

(b) the earnings factor is derived—

(i) from earnings, on which primary Class 1 contributions have been paid or treated as paid, which are not less than that year's lower earnings limit multiplied by 25, or

(ii) from Class 2 contributions multiplied by 25.

(2) The conditions referred to in paragraph (1) are that—

(a) he was a person who, in the relevant tax year before the first day of incapacity for work, was entitled to invalid care allowance under section 70 of the Contributions and Benefits Act(**9**) or would have been in receipt of the invalid care allowance but for the provision of regulation 4 of the Social Security (Overlapping Benefits) Regulations 1979(**10**);

(b) immediately before the first day of incapacity for work, he was a person—

(i) who had been engaged in remunerative employment for a period of more than 2 years, and

(ii) who was entitled to disability working allowance or disabled person's tax credit, as the case may be, under section 129 of the Contributions and Benefits Act(**11**) throughout that period; or

(**6**) S.I. 1994/2946.
(**7**) Regulation 2A was inserted by S.I. 1997/2676.
(**8**) 1992 c. 4. Sub-paragraph (2)(a) of paragraph 2 of Schedule 3 was inserted by section 62(2) of the Welfare Reform and Pensions Act 1999 (c. 30).
(**9**) Section 70 was amended by S.I. 1994/2556.
(**10**) S.I. 1979/597. Regulation 4 was amended by S.I. 1984/1303, 1992/3194, 1995/829 and 1996/1345 and 3209. See paragraph 11 of Schedule 3 to the Social Security (Consequential Provisions) Act 1992 (c. 6) in relation to the repeal of section 18 of the Social Security Act 1986 (c. 50) which amended regulation 4.
(**11**) Section 129 was amended by sections 1 and 14 of the Tax Credits Act 1999 (c. 10).

(c) he is, on the first day of his incapacity for work, a person who had received incapacity benefit in the last complete tax year immediately preceding the relevant benefit year he again becomes entitled to it.".

(3) After paragraph (a) of regulation 4(1) of the Social Security (Incapacity Benefit) Regulations 1994(**12**) (days not to be treated as days of incapacity for work) there shall be inserted—

"(aa) a day which is, for the purposes of section 30A(2A)(c) of the Contributions and Benefits Act(**13**) (period of 196 consecutive days preceding the relevant day), not part of any consecutive days of incapacity;".

(4) After regulation 4 of the Social Security (Incapacity Benefit) Regulations 1994 (days not to be treated as days of incapacity for work) there shall be inserted—

"**Days to be treated as days of incapacity for work**

4A. For the purposes of incapacity benefit for persons incapacitated in youth under section 30A(2A) of the Contributions and Benefits Act, any day in respect of which a person is entitled to statutory sick pay immediately before the relevant day shall be treated as a day of incapacity for work.".

(5) After Part III of the Social Security (Incapacity Benefit) Regulations 1994(**14**) (rate of incapacity benefit) there shall be inserted—

"PART IV

ADDITIONAL CONDITIONS FOR PERSONS INCAPACITATED IN YOUTH

General

14. This Part of these Regulations applies to persons incapacitated in youth in accordance with section 30A(1)(b) and (2A) of the Contributions and Benefits Act(**15**).

Age Exception—Persons aged 20 and under 25

15.—(1) For the purposes of subsection (2A)(b) of section 30A of the Contributions and Benefits Act (prescribed cases in relation to persons aged under 25 and above the age 20 limit), a person falls within a prescribed case if he satisfies the conditions specified in the following paragraphs.

(2) The conditions referred to in paragraph (1) are that, he is a person who—

(a) registered on a course of—

(i) full-time advanced or secondary education, or

(ii) vocational or work-based training,

at least 3 months before he attained the age of 20 years; and

(b) not more than one academic term immediately after registration under sub-paragraph (a), attended one or more such courses of education or training as are mentioned in that sub-paragraph in a period referred to in paragraph (3).

(3) The period mentioned in paragraph (2)(b) is a period which—

(**12**) S.I. 1994/2946. Regulation 4 was amended by S.I. 1999/2226 and 2000/678.
(**13**) 1992 c. 4. Section 30A(1)(b) and (2A) were inserted by section 64 of the Welfare Reform and Pensions Act 1999 (c. 30).
(**14**) S.I. 1994/2946.
(**15**) 1992 c. 4. Section 30A(1) was amended by section 64(1) of the Welfare Reform and Pensions Act 1999 (c. 30) and section 30A(2A) was inserted by section 64(3) of that Welfare Reform and Pensions Act.

(a) began on or before a day at least 3 months before the day he attained the age of 20 years, and

(b) ended on a day—

(i) immediately before the relevant day, or

(ii) falling within one of the last two complete tax years before the benefit year which would have governed a claim for incapacity benefit under section 30A(1)(a) of the Contributions and Benefits Act had he been eligible for it,

whichever is the later.

(4) For the purposes of this regulation a person is attending a course of education or training on any day on which the course or training is interrupted by an illness or domestic emergency.

(5) For the purposes of this regulation—

"advanced education" means full-time education for the purposes of—

(a) a course in preparation for a degree, a diploma of higher education, a higher national diploma, a higher national diploma of the Business and Technician Education Council or the Scottish Vocational Education Council, or a teaching qualification; or

(b) any other course which is of a standard above ordinary national diploma, a diploma of the Business and Technician Education Council or a national certificate of the Scottish Vocational Education Council, a general certificate of education (advanced level), a Scottish certificate of education (higher grade) or a Scottish certificate of Sixth Year Studies;

"course of education" means a course of advanced education or secondary education;

"full-time" includes part-time where the disability from which a person suffers prevents him from attending a full-time course;

"relevant day" has the same meaning as in section 30A(1) of the Contributions and Benefits Act, that is to say, the day—

(a) in respect of which a person is entitled to claim incapacity benefit;

(b) which falls on any day immediately after a period of 196 consecutive days of incapacity for work; and

(c) which forms part of a period of incapacity for work;

"secondary education" means a full-time course of education below a course of advanced education—

(a) by attendance at a recognised educational establishment within the meaning of section 147(1) of the Contributions and Benefits Act, or

(b) elsewhere than at a recognised educational establishment, where the Secretary of State is satisfied that the education is equivalent to that given in a recognised educational establishment;

"training" has the same meaning as vocational training or work-based training;

"vocational training" means training for work as defined for the purposes of section 30C(6) of the Contributions and Benefits Act and in regulation 3, and includes any training, instruction or tuition (of which the primary purpose is the teaching of occupational or vocational skills) received on a course provided, for persons suffering mental or physical disability, by a person recognised by the Secretary of State; and

"work-based training" means vocational training undertaken on the premises of an employer.

Conditions relating to residence or presence

16.—(1) The prescribed conditions for the purposes of section 30A(2A)(d) of the Contributions and Benefits Act as to residence or presence in Great Britain in relation to any person on the relevant day shall be that on that day—

(a) he is ordinarily resident in Great Britain;

(b) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999(**16**) or he is a person to whom paragraph (5) applies;

(c) he is present in Great Britain; and

(d) he has been present in Great Britain for a period of, or for periods amounting in aggregate to, not less than 26 weeks in the 52 weeks immediately preceding that day.

(2) Where the relevant day falls within a period in which a person—

(a) receives tax-free emoluments; or

(b) is the spouse of a person who receives tax-free emoluments;

that person shall not be regarded as present in Great Britain unless that period is immediately preceded by a period of 4 years during which he was present in Great Britain for a period of not less than 156 weeks in aggregate.

(3) For the purposes of paragraph (2), "tax free emoluments" means emoluments which are exempt from tax under any of the provisions listed in paragraph (1) of regulation 9 of the Child Benefit (General) Regulations 1976(**17**).

(4) In determining whether a person satisfies paragraph (1), where a person is absent from Great Britain by reason only of the fact that—

(a) he is abroad in his capacity as a serving member of the forces, or he is the spouse, son, daughter, father, father-in-law, mother or mother-in-law of, and living with, a serving member of the forces abroad;

(b) he is in employment prescribed for the purposes of section 120 of the Contributions and Benefits Act(**18**) in connection with continental shelf operations(**19**); or

(c) he is abroad in his capacity as an airman within the meaning of regulation 81, or mariner within the meaning of regulation 86, of the Social Security (Contributions) Regulations 1979(**20**);

any day or period of absence shall be treated as a day on which, or period during which, the person is present or resident, as the case may be, in Great Britain; and for the purposes of this paragraph "serving member of the forces" has the same meaning as in regulation 1(2) of the Social Security (Contributions) Regulations 1979.

(5) This paragraph applies where a person is—

(a) a member of a family of a national of a State contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(**21**);

(**16**) 1999 c. 33.
(**17**) S.I. 1976/965. Regulation 9 was amended by S.I. 1984/337 and 1996/1803.
(**18**) Section 120 was amended by Schedule 7 to the Social Security Act 1998 (c. 14) and Schedules 3 and 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).
(**19**) *See* regulation 85 of the Social Security (Contributions) Regulations 1979 (S.I. 1979/591 as amended by S.I. 1982/1738).
(**20**) S.I. 1979/591.
(**21**) OJNo. LI.3.1.1994, p. 3.