Changes to legislation: *The Social Security (Incapacity for Work) (Northern Ireland) Order 1994 is up to date with all changes known to be in force on or before 06 May 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

1994 No. 1898 (N.I. 12)

The Social Security (Incapacity for Work) (Northern Ireland) Order 1994

- - - - - - *19th July 1994*

Title and commencement

1.—(1) This Order may be cited as the Social Security (Incapacity for Work) (Northern Ireland) Order 1994.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint[F1].

F1 fully exercised SR 1994/450

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 applies to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

"the Administration Act" means the Social Security Administration (Northern Ireland) Act 1992;

"the confirmatory procedure" means the procedure described in section 172(1) of the Contributions and Benefits Act;

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

"the Department" means the Department of Health and Social Services.

Incapacity benefit: entitlement

3.—(1) In Part II of the Contributions and Benefits Act (contributory benefits), after section 30 insert—

"Incapacity benefit

Incapacity benefit: entitlement.

30A.—(1) Subject to the following provisions of this section, a person who satisfies either of the following conditions is entitled to short-term incapacity benefit in respect of any day of incapacity for work which forms part of a period of incapacity for work.

(2) The conditions are that—

(a) he is under pensionable age on the day in question and satisfies the contribution conditions specified for short-term incapacity benefit in Schedule 3, paragraph 2; or

(b) on that day he is over pensionable age but not more than 5 years over that age, the period of incapacity for work began before he attained pensionable age, and—

(i) he would be entitled to a Category A retirement pension if his entitlement had not been deferred or if he had not made an election under section 54(1) below; or

(ii) he would be entitled to a Category B retirement pension by virtue of the contributions of his deceased spouse, but for any such deferment or election.

(3) A person is not entitled to short-term incapacity benefit for the first 3 days of any period of incapacity for work.

(4) In any period of incapacity for work a person is not entitled to short-term incapacity benefit for more than 364 days.

(5) Where a person ceases by virtue of subsection (4) above to be entitled to short-term incapacity benefit, he is entitled to long-term incapacity benefit in respect of any subsequent day of incapacity for work in the same period of incapacity for work on which he is not over pensionable age.".

(2) In Schedule 3 to the Contributions and Benefits Act (contribution conditions for entitlement to benefit), in the heading before paragraph 2 and in sub-paragraph (1) of that paragraph for "sickness benefit" substitute " short-term incapacity benefit ".

Incapacity benefit: rate

4.—(1) In the Contributions and Benefits Act, after section 30A (inserted by Article 3) insert—

"**Incapacity benefit: rate.**

30B.—(1) The amount payable by way of incapacity benefit in respect of any day is 1/7th of the appropriate weekly rate.

(2) Subject to the following provisions of this section the weekly rate of short-term incapacity benefit is the lower or higher rate specified in Schedule 4, Part I, paragraph 2.
The benefit is payable at the lower rate so specified for the first 196 days of entitlement in any period of incapacity for work and at the higher rate so specified thereafter.

(3) In the case of a person over pensionable age the weekly rate of short-term incapacity benefit is, subject to subsection (4) below, that at which the relevant retirement pension referred to in section 30A(2)(b) above would have been payable.
But in determining that rate any increase of the following descriptions shall be disregarded—

(a) any increase (for married women) under section 53(2) below or (for deferred retirement) under Schedule 5 to this Act;

(b) any increase (for dependants) under section 80, 83 or 85 below; and

(c) any increase (for Category A or Category B pensioners) under section 132 of the Administration Act (annual up-rating of benefits) which corresponds to an increase of the sums mentioned in section 150(1)(e) of the Great Britain Administration Act.

(4) In the case of a person who has been entitled to short-term incapacity benefit for 196 days or more in any period of incapacity for work and—

(a) is terminally ill; or

(b) is entitled to the highest rate of the care component of disability living allowance,

the weekly rate of short-term incapacity benefit payable, if greater than the rate otherwise payable to him under subsection (2) or (3) above, shall be equal to the rate at which long-term incapacity benefit under section 30A above would be payable to him if he were entitled to it.
For the purposes of this subsection a person is terminally ill if he suffers from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months.

(5) References to short-term incapacity benefit at the higher rate shall be construed as including short-term incapacity benefit payable to any person who has been entitled to that benefit for 196 days or more in a period of incapacity for work, notwithstanding that the rate of benefit is determined in accordance with subsection (3) or (4) above.

(6) Subject as follows, the weekly rate of long-term incapacity benefit under section 30A above is that specified in Schedule 4, Part I, paragraph 2A.

(7) Regulations may provide that if a person is, on the qualifying date in relation to a period of incapacity for work, under such age as may be prescribed, the rate of long-term incapacity benefit under section 30A above payable to him in respect of any day in that period shall be increased by such amount as may be prescribed.
For this purpose "the qualifying date" means the first day of the period of incapacity for work or such earlier day as may be prescribed.".

(2) In Part I of Schedule 4 to the Contributions and Benefits Act (rates of benefit, etc.: contributory periodical benefits), for paragraph 2 substitute—

"**2.** Short-term incapacity benefit.	(a)	lower rate £43.45
	(b)	higher rate ..... £52.50.
2A. Long-term incapacity benefit.	£57.60.".	

Para. (3) rep. by 2002 c. 21

(4) After section 86 of the Contributions and Benefits Act insert—

"**Incapacity benefit: increase for adult dependants.**

86A.—(1) The weekly rates of short-term and long-term incapacity benefit shall, in such circumstances as may be prescribed, be increased for adult dependants by the appropriate amount specified in relation to benefit of that description in Schedule 4, Part IV, column (3).

(2) Regulations may provide that where the person in respect of whom an increase of benefit is claimed has earnings in excess of such amount as may be prescribed there shall be no increase of benefit under this section.".

(5) In Part IV of Schedule 4 to the Contributions and Benefits Act (rates of benefit etc.: increases for dependants), after paragraph 1 insert—

"**1A.** Short-term incapacity benefit—		
(a) where the beneficiary is under pensionable age	11.00	26.90
(b) where the beneficiary is over pensionable age	11.00	33.10"

and for paragraph 2 substitute—

"**2.** Long-term incapacity benefit	11.00	34.50"

(6) Any order under section 132 of the Administration Act (annual up-rating of benefits) made by the Department before the commencement of this Article shall include provision—

(a) making such increase (if any) in the sum specified in the provision inserted by paragraph (2) as the amount of short-term incapacity benefit at the higher rate as is necessary to make that sum equal to the higher rate or, if there is only one such rate, to the rate of statutory sick pay payable after the order comes into operation; and

(b) making such increases in the other sums specified in the provisions inserted by paragraphs (2) and (5) in Schedule 4 to the Contributions and Benefits Act as would have been required if the provisions in question had been in operation at all material times.

Incapacity benefit: supplementary provisions

5.—(1) After section 30B of the Contributions and Benefits Act (inserted by Article 4) insert—

"**Incapacity benefit: days and periods of incapacity for work.**

30C.—(1) For the purposes of any provisions of this Act relating to incapacity benefit, subject to the following provisions and save as otherwise expressly provided—

(a) a day of incapacity for work means a day on which a person is incapable of work;

(b) a period of incapacity for work means a period of 4 or more consecutive days, each of which is a day of incapacity for work; and

(c) any two such periods not separated by a period of more than 8 weeks shall be treated as one period of incapacity for work.

(2) Any day which falls within the maternity allowance period (as defined in section 35(2) below) shall be treated for the purposes of any provision of this Act relating to incapacity benefit as a day of incapacity for work unless the woman is disqualified for receiving a maternity allowance for that day by virtue of regulations under section 35(3)(a) below.

(3) Regulations may make provision (subject to the preceding provisions of this section) as to the days which are or are not to be treated as days of incapacity for work for the purposes of any provision of this Act relating to incapacity benefit.

(4) Regulations may provide—

(a) that paragraph (b) of subsection (1) above shall have effect as if the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days as may be specified in the regulations; and

(b) that paragraph (c) of that subsection shall have effect as if for the reference to 8 weeks there were substituted a reference to such larger number of weeks as may be specified in the regulations.

(5) Where—

(a) a person who is engaged and normally engaged in remunerative work ceases to be so engaged; and

(b) he is entitled to a disability working allowance for the week in which there falls the last day on which he is so engaged; and

(c) he qualified for a disability working allowance for that week by virtue of the higher rate of short-term incapacity benefit, or long-term incapacity benefit under section 30A above, having been payable to him; and

(d) the first day after he ceases to be engaged as mentioned in paragraph (a) above is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such benefit,

any day since that day which fell within a week for which he was entitled to a disability working allowance shall be treated for the purposes of any claim for such benefit for a period commencing after he ceases to be engaged as mentioned in paragraph (a) above as having been a day of incapacity for work.

(6) Where—

(a) a person becomes engaged in training for work; and

(b) he was entitled to the higher rate of short-term incapacity benefit, or to long-term incapacity benefit under section 30A above, for one or more of the 56 days immediately before he became so engaged; and

(c) the first day after he ceases to be so engaged is for him a day of incapacity for work and falls not later than the end of the period of two years beginning with the last day for which he was entitled to such benefit,

any day since that day in which he was engaged in training for work shall be treated for the purposes of any claim for such benefit for a period commencing after he ceases to be so engaged as having been a day of incapacity for work.

In this subsection "training for work" means training for work in pursuance of arrangements made under section 1(1) of the Employment and Training Act (Northern Ireland) 1950 or training of such other description as may be prescribed.

(7) For the purposes of this section "week" means any period of 7 days.

Incapacity benefit: construction of references to days of entitlement.

30D.—(1) The following provisions have effect in calculating for the purposes of—

(a) section 30A(4) above (length of entitlement to short-term incapacity benefit);

(b) section 30B(2) above (period after which short-term incapacity benefit is payable at higher rate);

(c) section 30B(4) above (period after which incapacity benefit is payable at long-term rate in case of terminal illness); and

(d) section 30B(5) above (construction of references to short-term incapacity benefit at the higher rate),

the number of days for which a person has been entitled to short-term incapacity benefit.

(2) There shall be included—

(a) the first 3 days of the period of incapacity for work; and