

# Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

## The Law Relating to Social Security

### Volumes 2 and 3 Supplement 86 – March 2009

1. Supplements to The Law Relating to Social Security are issued at regular intervals. This supplement [86] includes amendments to the Contents Volume and Volumes 1, 2, 3, 5, 6, 8, 11, 12 and 13.
2. This package contains Volumes 2 and 3 and incorporates various miscellaneous amendments.
3. This supplement is issued in PDF format only.
4. The amended pages have been reprinted in full. The supplement number is printed at the bottom of each replacement page. This supplement contains an update of the page check list at the back of each volume.
5. Due to space constraints, DMA can only reproduce legislation currently in force. Where users are instructed to remove pages they may like to consider the need to retain such pages for their own use.
6. Remove the sheets in the left-hand column and insert new sheets in the right-hand column (the numbers quoted are those printed at the bottom of the respective pages). When the revised sheets have been inserted, note the record of amendments at the back of the volume.
7. The last 2 supplement packages have amended the following volumes:  
  
Supplement No. 85 [Dec 2008] Contents 1, 2, 3, 4, 5, 6, 8, 11, 12 and 13.  
Supplement No. 84 [Sept 2008] Contents 1, 3, 4, 5, 6, 8, 11 and 13.
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9. Starting in Supplement 76 the triangles ►◄ signifying additions, deletions or amendments to Statutory Instruments will be numbered to aid reference. Numbering will start at 1 on each page however, only those pages being updated will be affected.

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### **Volume 3**

#### **Part 1**

3.4301 – 3.4302 (1 page)

3.4405 – 3.4406 (1 page)

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## **Insert**

### **Volume 2**

2.11 – 2.12 (2.100) (1 page)

2.2967 – 2.2970 (-2.2980) (2 pages)

2.9991 – 2.9992 (1 page)

### **Volume 3**

#### **Part 1**

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# CHRONOLOGICAL LIST OF STATUTES

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SCHEDULE 10

Section 144(3).

PRIORITY BETWEEN PERSONS ENTITLED TO CHILD BENEFIT

*Person with prior award*

1.—(1) Subject to sub-paragraph (2) below, as between a person claiming child benefit in respect of a child [<sup>1</sup>or qualifying young person] for any week and a person to whom child benefit in respect of that child [<sup>1</sup>or qualifying young person] for that week has already been awarded when the claim is made, the latter shall be entitled.

(2) Sub-paragraphs (1) above shall not confer any priority where the week to which the claim relates is later than the third week following that in which the claim is made.

*Person having child [<sup>1</sup>or qualifying young person] living with him*

2. Subject to paragraph 1 above, as between a person entitled for any week by virtue of paragraph (a) of subsection (1) of section 143 above and a person entitled by virtue of paragraph (b) of that subsection the former shall be entitled.

*Husband and wife*

3. Subject to paragraphs 1 and 2 above, as between a husband and wife residing together the wife shall be entitled.

*Parents*

4.—(1) Subject to paragraphs 1 to 3 above, as between a person who is and one who is not a parent of the child [<sup>1</sup>or qualifying young person] the parent shall be entitled.

(2) Subject as aforesaid, as between two persons residing together who are parents of the child [<sup>1</sup>or qualifying young person] but not husband and wife, the mother shall be entitled.

*Other cases*

5. As between persons not falling within paragraphs 1 to 4 above, such one of them shall be entitled as they may jointly elect or, in default of election, as the Secretary of State may in his discretion determine.

*Supplementary*

6.—(1) Any election under this Schedule shall be made in the prescribed manner.

(2) Regulations may provide for exceptions from and modifications of the provisions of paragraphs 1 to 5 above in relation to such cases as may be prescribed.

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<sup>1</sup> Words inserted in paras. 1, 2 & 4 (10.4.05) by the Child Benefit Act 2005 (c. 6), Sch. 1, para. 18.

SCHEDULE 11

CIRCUMSTANCES IN WHICH PERIODS OF ENTITLEMENT TO STATUTORY SICK PAY DO NOT ARISE

1. A period of entitlement does not arise in relation to a particular period of incapacity for work in any of the circumstances set out in paragraph 2 below or in such other circumstances as may be prescribed.

[<sup>1</sup>1A. Regulations under paragraph 1 above must be made with the concurrence of the Treasury.]

2. The circumstances are that—

(a) ~~▶<sup>2</sup>◀~~

(b) the employee's contract of service was entered into for a specified period of not more than three months;

(c) at the relevant date the employee's normal weekly earnings are less than the lower earnings limit then in force under section 5(1)(a) above;

[<sup>3</sup>(d) in the period of 57 days ending immediately before the relevant date the employee had at least one day on which—

(i) he was entitled to incapacity benefit (or would have been so entitled had he satisfied the contribution conditions mentioned in section 30A(2)(a) above), or

(ii) she was entitled to a maternity allowance,

(iii) [...<sup>4</sup>]]

[<sup>5</sup>(dd) in the period of 85 days ending immediately before the relevant date the employee had at least one day on which he was entitled to an employment and support allowance (or would have been so entitled had he satisfied the requirements in section 1(2) of the Welfare Reform Act 2007);

*(There is no longer a sub-paragraph (e).)*

(f) the employee has done no work for his employer under his contract of service;

(g) on the relevant date there is, [...<sup>6</sup>] a stoppage of work due to a trade dispute at the employee's place of employment;

(h) the employee is, or has been pregnant and the relevant date falls within the disqualifying period (within the meaning of section 153(12) above).

3. In this Schedule "relevant date" means the date on which a period of entitlement would begin in accordance with section 153 above if this Schedule did not prevent it arising.

4.—(1) Paragraph 2(b) above does not apply in any case where—

(a) at the relevant date the contract of service has become a contract for a period exceeding three months; or

(b) the contract of service (the "current contract") was preceded by a contract of service entered into by the employee with the same employer (the "previous contract") and—

(i) the interval between the date on which the previous contract ceased to have effect and that on which the current contract came into force was not more than 8 weeks; and

<sup>1</sup> Para. 1A inserted (1.4.99) by Transfer of Functions Act 1999 (c. 11) Sch 1, para. 20.

<sup>2</sup> Para. 2(a) omitted (1.10.06) by reg. 13(1) of S.I. 2006/1031.

<sup>3</sup> Para. 2(d) substituted (13.4.95) for para. 2(d) and (e) by para. 43(2) of Sch. 1 to S.S. (Incapacity for Work) Act 1994 (c. 18).

<sup>4</sup> Para. 2(d)(iii) repealed (3.11.00 for reg. making purposes, 6.4.01 for all other purposes) by s. 88 of the Welfare Reform and Pensions Act 1999 (c. 30).

<sup>5</sup> Para. (dd) inserted (27.10.08) by reg. 44 of S.I. 2008/1554.

<sup>6</sup> Words "within the meaning of section 27 above" in para. 2(g) repealed (7.10.96) by Sch. 3 to Jobseekers Act 1995 (c. 18).

- (ii) the aggregate of the period for which the previous contract had effect and the period specified in the current contract (or, where that period has been extended, the specified period as so extended) exceeds 13 weeks.

(2) For the purposes of sub-paragraph (1)(b)(ii) above, in any case where the employee entered into more than one contract of service with the same employer before the current contract, any of those contracts which came into effect no more than 8 weeks after the date on which an earlier one of them ceased to have effect shall be treated as one with the earlier contract.

5. . . . . repealed by 1994 c.18, see Annex 1, page 2.3101.

►<sup>1</sup>5A.—(1) Paragraph 2(d)(i) above does not apply if, at the relevant date, the employee is over pensionable age and is not entitled to incapacity benefit.

(2) Paragraph 2(d)(i) above ceases to apply if, at any time after the relevant date, the employee is over pensionable age and is not entitled to incapacity benefit.

(3) In this paragraph “pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995.◀

6. For the purposes of paragraph 2(f) above, if an employee enters into a contract of service which is to take effect not more than 8 weeks after the date on which a previous contract of service entered into by him with the same employer ceased to have effect, the two contracts shall be treated as one.

7. Paragraph 2(g) above does not apply in the case of an employee who proves that at no time on or before the relevant date did he have a direct interest in the trade dispute in question.

8. Paragraph 2(h) above does not apply in relation to an employee who has been pregnant if her pregnancy terminated, before the beginning of the disqualifying period, otherwise than by confinement (as defined for the purposes of statutory maternity pay in section 17(1) above).

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<sup>1</sup> Para. 5A inserted (6.4.07) by reg. 2(2) of S.I. 2007/825.

SCHEDULE 12

RELATIONSHIP OF STATUTORY SICK PAY WITH BENEFITS AND OTHER PAYMENTS, ETC

*The general principle*

1. Any day which—
  - (a) is a day of incapacity for work in relation to any contract of service; and
  - (b) falls within a period of entitlement (whether or not it is also a qualifying day).

shall not be treated for the purpose of this Act as a day of incapacity for work for the purposes of determining whether a period is [...] [<sup>2</sup>a period of incapacity for work for the purpose of incapacity benefit].

*Contractual remuneration*

2.—(1) Subject to sub-paragraphs (2) and (3) below, any entitlement to statutory sick pay shall not affect any right of an employee in relation to remuneration under any contract of service (“contractual remuneration”).

- (2) Subject to sub-paragraph (3) below—
  - (a) any contractual remuneration paid to an employee by an employer of his in respect of a day of incapacity for work shall go towards discharging any liability of that employer to pay statutory sick pay to that employee in respect of that day; and
  - (b) any statutory sick pay paid by an employer to an employee of his in respect of a day of incapacity for work shall go towards discharging any liability of that employer to pay contractual remuneration to that employee in respect of that day.

(3) Regulations may make provision as to payments which are, and those which are not, to be treated as contractual remuneration for the purposes of sub-paragraph (1) or (2) above.

*[<sup>3</sup>Incapacity benefit*

3.—(1) This paragraph and paragraph 4 below have effect to exclude, where a period of entitlement as between an employee and an employer of his comes to an end, the provisions by virtue of which short-term incapacity benefit is not paid for the first three days.

(2) If the first day immediately following the day on which the period of entitlement came to an end—

- (a) is a day of incapacity for work in relation to that employee, and
- (b) is not a day in relation to which paragraph 1 above applies by reason of any entitlement as between the employee and another employer,

that day shall, except in prescribed cases, be or form part of a period of incapacity for work notwithstanding section 30C(1)(b) above (by virtue of which a period of incapacity for work must be at least 4 days long).

(3) Where each of the first two consecutive days, or the first three consecutive days, following the day on which the period of entitlement came to an end is a day to which paragraphs (a) and (b) of sub-paragraph (2) above apply, that sub-paragraph has effect in relation to the second day or, as the case may be, in relation to the second and third days, as it has effect in relation to the first.

<sup>1</sup> Words “a period of interruption of employment for the purposes of unemployment benefit or” repealed (7.10.96) from para. 1 by Sch. 3 to Jobseekers Act 1995 (c. 18).

<sup>2</sup> Words inserted (13.4.95) into para. 1 of Sch. 12 by para. 44(2) of Sch. 1 to S.S. (Incapacity for Work) Act 1994 (c. 18). (The words so inserted originally included, at the beginning, the words “for the purposes of unemployment benefit or”, but those words were later included among the words which were repealed as indicated in the preceding footnote.)

<sup>3</sup> Paras. 3 and 4 substituted (13.4.95) by para. 44(3) of Sch. 1 to S.S. (Incapacity for Work) Act 1994 (c. 18).

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[This S.I. has been revoked by reg. 12 of S.I. 2008/2928 but continues to have effect in certain circumstances. See page 3.4325.]

**2003 No. 2439**

**SOCIAL SECURITY**

**The Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003**

*Made* - - - - 20th September 2003  
*Laid before Parliament* 26th September 2003  
*Coming into force* - 27th October 2003

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 123(1)(a), (d) and (e), 136(3) and (5)(b), 137(1) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(a), sections 2A(1), (3) to (6) and (8), 2B(6) and (7), 189(4) to (6) and (7A) and 191 of the Social Security Administration Act 1992(b) and sections 12(1) and (4)(b), 35(1) and 36(2) and (4) of the Jobseekers Act 1995(c) and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 8(1) of the Tribunals and Inquiries Act 1992(d) and in respect of provisions in these Regulations relating to housing benefit and council tax benefit with organisations appearing to him to be representative of the authorities concerned(e) and after reference to the Social Security Advisory Committee(f), hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003 and shall come into force on 27th October 2003.

**Interpretation**

2. In these Regulations—

“benefit week” means any period of seven days corresponding to the week in respect of which the relevant specified benefit is due to be paid;

“interview” means a work-focused interview with a relevant person who has claimed a specified benefit and which is conducted for any or all of the following purposes—

- 
- (a) 1992 c. 4. Section 123(1)(e) was substituted by paragraph 1(1) of Schedule 9 to the Local Government Finance Act 1992 (c. 14). Section 137(1) is an interpretation provision and is cited because of the meaning there given to the word “prescribed”. Section 175(4) was amended by section 2 of, and paragraph 29 of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).
  - (b) 1992 c. 5. Sections 2A and 2B were inserted by section 57 of the Welfare Reform and Pensions Act 1999 (c. 30). Section 189(4) to (6) was amended by section 86 of, and paragraph 109 of Schedule 7 to, the Social Security Act 1998 (c. 14). Section 189(7A) was inserted by paragraph 82 of Schedule 12 to the Welfare Reform and Pensions Act 1999. Section 191 is cited because of the meaning there given to the word “prescribe”.
  - (c) 1995 c. 18. Section 35(1) is an interpretation provision and is cited because of the meaning there given to the words “prescribed” and “regulations”. Sections 35(1) and 36(4) were amended by section 2 of, and paragraphs 62 and 63 respectively of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999.
  - (d) 1992 c. 53.
  - (e) See section 176(1) of the Social Security Administration Act 1992 as amended by section 103 of, and paragraph 23 of Schedule 9 to, the Local Government Finance Act 1992 (c. 14).
  - (f) See sections 172(1) of the Social Security Administration Act 1992; paragraph 67 of Schedule 2 to the Jobseekers Act 1995 added that Act to the list of “relevant enactments” in respect of which regulations must normally be referred to the Committee.

- (a) assessing that relevant person's prospects for existing or future employment (whether paid or voluntary);
- (b) assisting or encouraging that relevant person to enhance his prospects of such employment;
- (c) identifying activities which that relevant person may undertake to strengthen his existing or future prospects of employment;
- (d) identifying current or future employment, training or rehabilitation opportunities suitable to that relevant person's needs;
- (e) identifying educational opportunities connected with the existing or future employment prospects or needs of that relevant person;

“officer” means a person who is an officer of, or who is providing services to or exercising functions of, the Secretary of State;

“personal capability assessment” means the assessment defined in Part III of the Social Security (Incapacity for Work) (General) Regulations 1995<sup>(a)</sup> (personal capability assessment);

“relevant decision” has the meaning given by section 2B(2) of the Social Security Administration Act 1992 (supplementary provisions relating to work-focused interviews);

►<sup>1</sup>“relevant person” means—

(a) a person to whom paragraph (b) does not apply and who—

(i) resides in an area identified in—

(aa) Part 1 of the Schedule to these Regulations and who makes a claim for a specified benefit on or after 27th October 2003,

(bb) Part 2 ►<sup>2</sup>or Part 6 ◀ of that Schedule and who makes such a claim on or after 5th April 2004,

(cc) Part 3 of that Schedule and who makes such a claim on or after 31st October 2005,

(dd) Part 4 of that Schedule and who makes such a claim on or after 24th April 2006,

(ee) Part 5 of that Schedule to these Regulations and who makes such a claim on or after 30th October 2006; or

►<sup>3</sup>(ff) Part 7 of that Schedule and who makes such a claim on or after 29th December 2006 at an office of the Department for Work and Pensions which is designated by the Secretary of State as a Pathways to Work office<sup>(b)</sup>; or ◀

(ii) resides in an area identified in—

(aa) Part 1 of the Schedule to these Regulations and who makes a claim for a specified benefit on or after 27th October ►<sup>2</sup>1997 ◀ but before 27th October 2003, or

(bb) Part 2 of that Schedule and who makes a claim on or after 5th April ►<sup>2</sup>1998 ◀ but before 5th April 2004, ►<sup>2</sup>or

(cc) Part 6 of the Schedule and who made such a claim before 5th April 2004, ◀

and who is entitled to a specified benefit under that claim;

(b) a person who would fall within both heads (i) and (ii) of paragraph (a) and who—

(i) does not make a claim for a specified benefit on or after 7th February 2005, or

(ii) makes a claim for a specified benefit on or after 7th February 2005; ◀

“specified benefit” means—

(a) incapacity benefit;

<sup>1</sup>Defn. of “relevant person” substituted by reg. 2(a) of S.I. 2005/2604 as from 31.10.05.

<sup>2</sup>Words inserted and substituted in reg. 2(a)(i)(bb), (ii)(aa) & (bb) and head (cc) inserted by reg. 2(2)(a) & (b) of S.I. 2006/536 as from 3.4.06.

<sup>3</sup>Reg. 2(a)(i)(ff) inserted by reg. 2(2) of S.I. 2006/3088 as from 29.12.06.

(a) S.I. 1995/311. Part III was amended by S.I. 1995/987, 1996/3207, 1999/3109 and 2000/590.

(b) Offices designated as a Pathways to Work office and the date they are so designated are identified in a list entitled “Pathways to Work Offices”. That list is available from the Department for Work and Pensions, Pathways to Work, Room 4S25, Quarry House, Quarry Hill, Leeds, LS2 7UA and at the website [www.jobcentreplus.gov.uk](http://www.jobcentreplus.gov.uk).

PART II

MENTAL DISABILITIES

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptor</i>	<i>(3)</i> <i>Points</i>		
15. Completion of tasks.	15(a) Cannot answer the telephone and reliably take a message.	2		
	(b) Often sits for hours doing nothing.	2		
	(c) Cannot concentrate to read a magazine article or follow a radio ► <sup>1</sup> or television◀ programme.	1	<sup>1</sup> Words inserted into column (2) item 15(c) by reg. 2(II)(c)(i) of S.I. 1996/3207 with effect from 6.1.97.	
	(d) Cannot use a telephone book or other directory to find a number.	1		
	(e) Mental condition prevents him from undertaking leisure activities previously enjoyed.	1		
	(f) Overlooks or forgets the risk posed by domestic appliances or other common hazards due to poor concentration.	1		
	(g) Agitation, confusion or forgetfulness has resulted in ► <sup>2</sup> potentially dangerous◀ accidents in the 3 months before the day in respect to which it falls to be determined whether he is in incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	1		<sup>2</sup> Words inserted into column (2), item 15(g) by reg. 2(11)(c)(ii) of S.I. 1996/3207 with effect from 6.1.97.
	(h) Concentration can only be sustained by prompting	1		
	16. Daily living.			
16(a)	Needs encouragement to get up and dress.	2		
	(b) Needs alcohol before midday.	2		
	(c) Is frequently distressed at some time of the day due to fluctuation of mood.	1		
	(d) Does not care about his appearance and living conditions.	1		
	(e) Sleep problems interfere with his daytime activities.	1		
17. Coping with pressure.	17(a) Mental stress was a factor in making him stop work.	2		
	(b) Frequently feels scared or panicky for no obvious reason.	2		
	(c) Avoids carrying out routine activities because he is convinced they will prove too tiring or stressful.	1		
	(d) Is unable to cope with changes in daily routine.	1		
	(e) Frequently finds there are so many things to do that he gives up because of fatigue, apathy or disinterest.	1		
	(f) Is scared or anxious that work would bring back or worsen his illness.	1		
18. Interaction with other people.	18(a) Cannot look after himself without help from others.	2		

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<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptor</i>	<i>(3)</i> <i>Points</i>
	(b) Gets upset by ordinary events and it results in disruptive behavioural problems.	2
	(c) Mental problems impair ability to communicate with other people.	2
	(d) Gets irritated by things that would not have bothered him before he became ill.	1
	(e) Prefers to be left alone for 6 hours or more each day.	1
	(f) Is too frightened to go out alone.	1

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