



Jersey

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SOCIAL SECURITY (INCAPACITY BENEFITS) (JERSEY) ORDER 2004

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SOCIAL SECURITY (INCAPACITY BENEFITS) (JERSEY) ORDER 2004

*Made**21st July 2004**Coming into force**1st October 2004*

THE EMPLOYMENT AND SOCIAL SECURITY COMMITTEE, in pursuance of Articles 14, 18, 29 and 51 of the Social Security (Jersey) Law 1974,¹ orders as follows –

1 Interpretation

In this Order, unless the context otherwise requires –

“determining authority” means, as the case requires, the determining officer or the Social Security Tribunal;

“Law” means the Social Security (Jersey) Law 1974;²

“medical authority” means a medical appeal tribunal or a medical board, or a medical practitioner nominated by the Committee;

“standard rate of benefit” means the standard rate of benefit at the commencement of a specified period of incapacitation.

2 Days that are not to be treated as days of incapacity for work

- (1) For the purpose of the provisions of the Law relating to short term incapacity allowance, a day shall not be treated in relation to any person as a day of incapacity for work if –
 - (a) it is a day in respect of which the person fails to prove, in such manner as the Committee may require, that he or she is incapable of work;
 - (b) it is a day in respect of which he or she is disqualified for receiving short term incapacity allowance; or
 - (c) it is a day on which he or she does any work, whether or not it is work for which remuneration is payable.
- (2) Paragraph (1) is subject to Articles 3 and 5.

3 Days that are to be treated as days of incapacity for work

- (1) This Article applies to a person who, though not incapable of work, is excluded from work on the certificate of the Medical Officer of Health and is under medical observation –
 - (a) by reason of the person's being a carrier of infectious disease; or
 - (b) by reason of his or her being having been in contact with a case of infectious disease.
- (2) For the purpose of any provision of the Law relating to short term incapacity allowance, a day shall be treated in relation to any person to whom this Article applies as a day of incapacity for work, if he or she does no work for which remuneration is payable or would ordinarily be payable.
- (3) However, the number of days that are to be treated under paragraph (2) as days of incapacity for work shall not exceed 42 or such greater number as the Committee in any particular case may allow.
- (4) A person in relation to whom a day would otherwise be a day of incapacity for work because it is a day described in Article 2(1)(a) may nevertheless be treated as being incapable, by reason of some specific disease or bodily or mental disablement, of work on any day on which this Article applies to the person.

4 Night workers

- (1) This Article applies, in relation to night workers, for the purposes of short term incapacity allowance.
 - (2) Where a period of employment begins on one day and extends past midnight into the following day, and the employment before midnight is of longer duration than that after midnight –
 - (a) the person employed shall, in respect of that period, be treated as having been employed on the first day only; and
 - (b) the first day shall not be treated as a day of incapacity for work.
 - (3) Where a period of employment begins on one day and extends past midnight into the following day, and either the employment after midnight is of longer duration than that before midnight or the employment before and after midnight is of equal duration –
 - (a) the person employed shall, in respect of that period, be treated as having been employed on the second day only; and
 - (b) the second day shall not be treated as a day of incapacity for work.
 - (4) Where –
 - (a) a person is, by virtue of paragraph (2) or paragraph (3), to be treated as having been employed on one only of 2 days; and
 - (b) throughout that part of the other day during which the person is not employed, he or she is incapable of work,the person shall, for the purposes of short term incapacity allowance, be treated as being incapable of work throughout that other day.
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- (5) Where –
- (a) a person is, by virtue of paragraph (3), to be treated as having been employed on the second only of 2 days; and
 - (b) throughout the day immediately preceding the first of those 2 days, he or she is incapable of work,
- the person shall, for the purposes of short term incapacity allowance, be treated as being incapable of work throughout the first of the 2 days to which that paragraph refers.

5 Delay and failure to claim benefit

Notwithstanding Article 2, a person who would have been entitled to an incapacity benefit for any day but for any delay or failure to make or prosecute a claim shall be treated as having been entitled to benefit for that day.

6 Obligations of claimants and beneficiaries

- (1) A person who is a claimant for an incapacity benefit, or is a beneficiary in receipt of such a benefit, shall comply with every direction in writing that is given to the person by the Committee and requires him or her to submit for any purpose specified in paragraph (2) to –
 - (a) a medical examination by a medical authority; or
 - (b) any other appropriate examination.
 - (2) The purposes to which this paragraph refers are –
 - (a) the determining of the effect of the illness or accident in respect of which that benefit is claimed; or
 - (b) the determining of the treatment that is appropriate to any relevant disease or injury or any relevant loss of faculty.
 - (3) A direction under paragraph (1) may require that the examination be undertaken at any place specified in the direction (including the claimant's place of residence).
 - (4) A person who is a claimant for an incapacity benefit, or is a beneficiary in receipt of such a benefit, shall comply with every direction in writing that is given to the person by the Committee and requires him or her to submit to such medical treatment as –
 - (a) the medical practitioner in charge of the case; or
 - (b) any medical authority to whose examination the person has submitted in accordance with paragraph (1),considers appropriate in his or her case.
 - (5) A direction under this Article shall not ordinarily require a person to submit to examination by a medical board before the expiration of the period of 7 days beginning with the date on which the direction is given, but it may require the person to do so within a shorter period or immediately if in either case that is reasonable in the particular circumstances.
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- (6) A direction under this Article in any other case may require a person to be examined at a time and place to be specified subsequently on 2 clear days' written notice to the person, but shall not otherwise require him or her to submit to examination before the expiration of 3 days beginning with the date on which the direction is given.
- (7) Every claimant or beneficiary who in accordance with this Article is required to submit to an examination or to treatment shall do so at every such place and time as may be required.

7 Disqualification for short term incapacity benefit

- (1) A person shall be disqualified for receiving a short term incapacity allowance for a day of incapacity for work, a long term incapacity allowance or an incapacity pension, if the relevant disease or injury is attributable to his or her own wilful act.
- (2) A person may be disqualified for receiving a short term incapacity allowance for a day of incapacity for work, a long term incapacity allowance or an incapacity pension if –
 - (a) the person behaves in a manner calculated to retard his or her recovery from the relevant disease or injury;
 - (b) the person fails without good cause to furnish to the Committee any information required for the determination of his or her claim or of any question arising in connection with the matter;
 - (c) the person fails without good cause to comply with a direction given to him or her in accordance with Article 6, or with any requirement under paragraph (5) of that Article, in respect of the relevant disease, injury or loss of faculty; or
 - (d) the person wilfully obstructs or is guilty of any other misconduct in connection with any examination or treatment to which he or she is directed under Article 6 to submit.
- (3) However, no person shall be disqualified under this Article –
 - (a) for a period exceeding 13 weeks; or
 - (b) for refusing to undergo a surgical operation that is not of a minor character.
- (4) A person who would be entitled to incapacity benefit but for any other provision of this Article shall nevertheless be treated as if he or she were entitled to that benefit for the purposes specified in paragraph (5).
- (5) The purposes to which this paragraph refers are those of any rights or obligations under the Law that for their part depend on his or her being entitled to the incapacity benefit (other than the right to payment of that benefit itself).
- (6) It is immaterial whether the other rights and allowances are those of that person or of another person.

8 Entitlement to lump sum

- (1) A person –
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- (a) who is entitled to long term incapacity allowance or an incapacity pension; and
 - (b) whose specified degree of incapacitation resulting from his or her loss of faculty is not less than 5 per cent and not more than 15 per cent,

shall be entitled to a lump sum payment calculated in accordance with this Article.

- (2) Where the period of incapacitation specified in an assessment of a person to whom paragraph (1) applies is 7 or more years, he or she shall be entitled to a lump sum equal to the same percentage of the standard rate of benefit as the percentage of his or her degree of incapacitation, multiplied by 364.
- (3) Where the period of incapacitation specified in an assessment of a person to whom paragraph (1) applies is less than 7 years, he or she shall be entitled to a lump sum equal to the same percentage of the standard rate of benefit as the percentage of his or her degree of incapacitation, multiplied by the number of weeks in the specified period of incapacitation.
- (4) Where the period of incapacitation specified in an assessment of a person to whom paragraph (1) applies is that person's life, he or she shall be entitled to a lump sum equal to the same percentage of the standard rate of benefit as the percentage of his or her degree of incapacitation, multiplied by –
 - (a) 416, if he or she has attained the age of 55 but is not yet 65;
 - (b) 468, if he or she has attained the age of 45 but is not yet 55;
 - (c) 520, if he or she has attained the age of 35 but is not yet 45;
 - (d) 572, if he or she has attained the age of 25 but is not yet 35; or
 - (e) 624, if he or she has not yet attained the age of 25.

9 Partial satisfaction of contribution conditions

- (1) This Article applies where a person would be entitled to an incapacity benefit but for the fact that the relevant contribution conditions set out in paragraph 1(1)(b), paragraph 2(1)(b) or paragraph 3(1)(b) respectively of the Second Schedule to the Law³ are not satisfied.
- (2) The person shall nevertheless be entitled to that benefit at a reduced rate ascertained in accordance with paragraph (3) or paragraph (4), as the case requires, if the contribution factor derived from contributions paid by or credited to that person in respect of the relevant quarter is not less than 0.33.
- (3) The weekly rate of short term incapacity allowance or incapacity pension payable in respect of a person by virtue of paragraph (2) shall be the same proportion of the appropriate weekly rate of benefit set out –
 - (a) in the second column of Part I of the First Schedule to the Law;⁴and

- (b) where applicable, in Part III of the First Schedule to the Law,⁵ as the contribution factor derived from contributions paid by or credited to that person in respect of the relevant quarter is of a contribution factor of 1.00.
- (4) The weekly rate of long term incapacity allowance payable in respect of a person by virtue of paragraph (2) shall be the same proportion of the percentage of his or her degree of incapacitation as the contribution factor derived from contributions paid by or credited to that person in respect of the relevant quarter is of a contribution factor of 1.00.

10 Revocations

The following Orders shall be revoked –

- (a) the Social Security (Incapacity Benefit) (Jersey) Order 1974;⁶
- (b) the Social Security (Accident Benefit) (Jersey) Order 1974;⁷
- (c) the Social Security (Incapacity Benefit) (Amendment) (Jersey) Order 1982;⁸
- (d) the Social Security (Incapacity Benefit) (Amendment No. 2) (Jersey) Order 1983;⁹
- (e) the Social Security (Payment for Sundays) (Jersey) Order 1986;¹⁰
- (f) the Social Security (Incapacity Benefit) (Amendment No. 3) (Jersey) Order 1989.¹¹

11 Citation and commencement

This Order may be cited as the Social Security (Incapacity Benefits) (Jersey) Order 2004 and shall come into force on 1st October 2004.

M.N. DE LA HAYE

Greffier of the States.

¹ *Recueil des Lois, Volume 1973-1974, pages 329, 331, 340 and 356 and Volume 2000, pages 877 and 886.*

² *Recueil des Lois, Volume 1973-1974, page 319, Volume 1982-1983, pages 51, 53 and 239, Volume 1986-1987, pages 149 and 151, Volume 1990-1991, pages 467 and 1117, Volume 1992-1993, pages 433 and 437, Volume 1994-1995, page 423, Volume 1996-1997, pages 7 and 1063, Volume 1998, page 722, Volume 1999, pages 419 and 515, Volume 2000, page 873, Volume 2002, pages 639 and 643 and Nos. 7640, 7666, 8602 and 9112.*

³ *Recueil des Lois, Volume 1973-1974, page 362, Volume 2000, pages 893 and 894 and Volume 2002, page 643.*

⁴ *Recueil des Lois, Volume 1973-1974, page 360, Volume 1986-1987, page 229, Volume 2000, page 892 and No. 7640.*

⁵ *Recueil des Lois, Volume 1973-1974, page 361 and Volume 2000, page 893.*

⁶ *No. 6079.*

⁷ *No. 6100.*

⁸ *No. 7110.*

⁹ *No. 7184.*

¹⁰ *No. 7556.*

¹¹ *No. 7933.*