



Jersey

# **SOCIAL SECURITY (INCAPACITY BENEFITS) (JERSEY) ORDER 2004**

## **Official Consolidated Version**

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Jersey

## SOCIAL SECURITY (INCAPACITY BENEFITS) (JERSEY) ORDER 2004

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Jersey

## **SOCIAL SECURITY (INCAPACITY BENEFITS) (JERSEY) ORDER 2004<sup>1</sup>**

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

Commencement [[see endnotes](#)]

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### **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](#);

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

“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 Minister 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, 3A and 5.<sup>2</sup>

**3 Days that are to be treated as days of incapacity for work: infectious disease<sup>3</sup>**

- (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 Minister 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.

**3A Days that are to be treated as days of incapacity for work: phased return to work<sup>4</sup>**

- (1) This Article applies to a person who undertakes activity during a week, including work, that has been agreed with a determining officer as part of a plan to assist the person's return to work (a "return to work plan").
- (2) Where this Article applies, the person is treated as incapable of work for any day in that week on which the person undertakes activity permitted by the return to work plan.
- (3) The return to work plan –
  - (a) may include any activity that the determining officer considers would assist the person in returning to work, including work (whether paid or unpaid) and training; and
  - (b) must not exceed a total of 8 weeks (whether or not consecutive) in a period of incapacity except in cases where the determining officer considers that further activity is appropriate to assist the person's return to work.
- (4) This Article does not apply to any day on which a person undertakes activity that exceeds the activity permitted by the return to work plan for that week, and that day is not treated as a day of incapacity for work.

**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.
- (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 Minister 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 Minister 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.
- (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 Minister 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 –
  - (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 of pensionable age;
  - (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.<sup>5</sup>

## **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 Schedule 2 to the Law 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 1 of Schedule 1 to the Law; and
  - (b) where applicable, in Part 3 of Schedule 1 to the Law,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 Citation

This Order may be cited as the Social Security (Incapacity Benefits) (Jersey) Order 2004.



## ENDNOTES

### Table of Legislation History

| Legislation   | Year and No                      | Commencement      |
|---|----------------------------------|-------------------|
| Social Security (Incapacity Benefits) (Jersey) Order 2004                                     | <a href="#">R&amp;O.87/2004</a>  | 1 October 2004    |
| States of Jersey (Amendments and Construction Provisions No. 8) (Jersey) Regulations 2005     | <a href="#">R&amp;O.48/2005</a>  | 9 December 2005   |
| Social Security (Miscellaneous Provisions No. 3) (Jersey) Order 2014                          | <a href="#">R&amp;O.119/2014</a> | 1 August 2014     |
| Social Security (Incapacity Benefits – Phased Return to Work) (Amendment) (Jersey) Order 2023 | <a href="#">R&amp;O.77/2023</a>  | 26 September 2023 |

### Table of Renumbered Provisions

| Original | Current                                  |
|----------|--|
| 10       | spent, omitted from this revised edition |
| 11       | 10                                       |

### Table of Endnote References

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- <sup>1</sup> *This Order has been amended by the States of Jersey (Amendments and Construction Provisions No. 8) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government*
- <sup>2</sup> *Article 2(2) amended by R&O.77/2023*
- <sup>3</sup> *Article 3 heading amended by R&O.77/2023*
- <sup>4</sup> *Article 3A inserted by R&O.77/2023*
- <sup>5</sup> *Article 8(4) amended by R&O.119/2014*