

A guide to

Incapacity Benefit

Contents

<i>Terminology</i>	5
<i>About this guide</i>	8
This guide and the law	8
<i>Great Britain and the United Kingdom</i>	8
<i>Introduction to Incapacity Benefit</i>	9
<i>If you were getting Invalidity Benefit</i>	9
<i>Incapacity Benefit</i>	10
How to claim Incapacity Benefit	10
<i>Gender Recognition Act 2004</i>	10
Claims for Incapacity Benefit	11
<i>If you are employed</i>	11
<i>If you are self-employed or unemployed</i>	11
<i>If you are a widow or a widower</i>	12
<i>If you are claiming under the youth provisions</i>	12
Medical evidence	12
<i>Open certificates</i>	13
<i>Closed certificates</i>	13
Your National Insurance contributions	14
<i>Entitled to certain benefits in the previous tax year</i>	15
<i>Incapacity Benefit under the youth provisions</i>	16
<i>Entitlement to Incapacity Benefit following a period in work or training</i>	18
<i>If you claim within 8 weeks</i>	18
<i>Entitlement to Incapacity Benefit following a period abroad</i>	19
Widows and widowers	19
<i>Widows, widowers and bereavement benefits</i>	20
<i>New non-linking Incapacity Benefit claims from customers widowed on or after 9 April 2001 (including widowers)</i>	20
<i>Widows, widowers and widow's benefits</i>	21
<i>Payable amounts</i>	24
Incapacity Benefit while pregnant	24
<i>Maternity Allowance</i>	24
<i>Statutory Maternity Pay</i>	25

How your Incapacity Benefit is made up	25
<i>Short-term (lower) Incapacity Benefit</i>	25
<i>Short-term (higher) Incapacity Benefit</i>	26
<i>Long-term Incapacity Benefit</i>	26
<i>Pension income</i>	26
<i>Short-term Incapacity Benefit at State Pension rate</i>	27
Other rules at State Pension age	27
<i>Long-term Incapacity Benefit and additional State Pension</i>	27
<i>Incapacity Age Addition</i>	28
Special rules	28
Who you can claim for	29
<i>Increased benefit for children</i>	29
<i>Increased benefit for adults</i>	29
<i>Increased benefit for your husband or wife (your spouse)</i>	30
<i>Increased benefit for a person looking after children</i>	30
<i>Increased benefit for children</i>	30
<i>The effect of earnings on increased benefit for dependants</i>	31
<i>What counts as earnings</i>	31
<i>The effect of pension income on any increased benefit for dependants</i>	32
<i>The effect of other benefits on any increased benefit for dependants</i>	32
Medical assessments	33
<i>Own Occupation Test</i>	33
<i>Personal Capability Assessment</i>	34
<i>Mental health</i>	36
Changes in your circumstances	36
<i>How changes in your circumstances can affect your entitlement to Incapacity Benefit</i>	36
<i>If your incapacity changes or your condition improves</i>	37
<i>Working while claiming benefit</i>	37
Voluntary work	37
Permitted work	38
Permitted work notification procedures	39
<i>Going into hospital</i>	39
<i>Going abroad</i>	39
<i>Going into prison</i>	40
<i>Reaching State Pension age</i>	40
<i>Other benefits that can affect your Incapacity Benefit</i>	40
<i>Breaks in entitlement to Incapacity Benefit</i>	41

Starting work or going back to work	41
<i>Job grant</i>	41
<i>Housing Benefit and Council Tax Benefit</i>	41
<i>52 week benefit protection</i>	42
<i>Training</i>	42
<i>Job Broker service</i>	42
<i>Working Tax Credit</i>	43
How Incapacity Benefit is paid	43
<i>People who claimed before 13 April 1995</i>	45
<i>Taxation</i>	45
Other benefits and entitlements	46
<i>Income Support</i>	46
<i>Disability Living Allowance</i>	47
<i>Pension Credit</i>	47
<i>Help with health costs</i>	47
<i>Housing Benefit (help with your rent)</i>	48
<i>Council Tax (help with your Council Tax)</i>	48
<i>Child Tax Credit</i>	48
<i>Working Tax Credit</i>	48
<i>Tax Credits information</i>	49
<i>National Insurance (credits while you are sick)</i>	49
<i>If you claimed benefit before 13 April 1995</i>	49
Disputing and appealing against a decision	50
<i>Disputing a decision</i>	50
<i>Appeals</i>	50
How to appeal	51
<i>Further information</i>	52
Work Focused Interviews	52
Work Focused Interviews for Partners	52
Statutory Sick Pay	53
Rates of benefits	56
Guides and leaflets and where to get them	56
Detailed information	57
Leaflets referenced in IB1	58
Useful addresses	58
<i>Index</i>	59

Terminology

Benefit year	A benefit year means the year starting with the first Sunday in January ending with the Saturday before the first Sunday in January of the next year.
Employee's primary threshold	This is the level of earnings where you have to start paying Class 1 National Insurance (NI) contributions if you work for an employer. You have to pay contributions on the amount of earnings above this level.
European Economic Area	<p>The European Economic Area (EEA) is made up of all European Union (EU) countries; Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom (UK), plus Iceland, Liechtenstein and Norway. Switzerland is not a member of the EEA, but the EC rules on social security also apply to Switzerland.</p> <p>UK means England, Scotland, Wales and Northern Ireland, but not the Channel Islands or the Isle of Man.</p> <p>Great Britain (GB) means England, Scotland and Wales.</p>
Income tax year	An income tax year means the year starting on 6 April and ending on 5 April in the next year.
Linking provisions	<p>In certain circumstances, two separate <i>periods of incapacity for work</i> can be linked and treated as one continuous period for Incapacity Benefit purposes.</p> <p>For more information, see <i>Breaks in entitlement to Incapacity Benefit</i> on page 41 and <i>Starting work or going back to work</i> on page 41.</p>
Lower earnings limit	When your earnings from working for an employer reach the lower earnings limit you will be deemed to have paid Class 1 NI contributions. However, you will not actually have to pay NI contributions unless your earnings exceed the employee's primary threshold. This protects the benefit entitlement of lower earners.

Pension income	<p>If you get pension income, the amount of Incapacity Benefit we can pay you may be affected. By pension income we mean:</p> <ul style="list-style-type: none">• an occupational pension• a personal or private pension• a public service pension• or private health insurance arranged by your employer where the contract of service has ended and you have not contributed to the scheme by more than 50%.
Period of Incapacity for Work (PIW)	<p>If you are claiming Incapacity Benefit based on your National Insurance contributions, a period of incapacity for work is formed by a period of 4 or more consecutive days. A day of incapacity is a day on which a person is assessed as incapable of work. It includes days when Incapacity Benefit or Maternity Allowance is claimed and paid. It can also include days where benefit is claimed but not paid. Periods of incapacity for work which are separated by not more than 8 weeks link together and count as one period.</p>
Statutory Sick Pay (SSP)	<p>Most people who work for an employer and are incapable of work for at least 4 or more days in a row can get Statutory Sick Pay (SSP) from their employer. This is paid up to a maximum of 28 weeks.</p>
Transitional protection	<p>If you were getting Invalidity Benefit from before 13 April 1995, you will have been automatically transferred onto Incapacity Benefit. This means your benefit was transitionally protected.</p> <p>Your Incapacity Benefit is also transitionally protected if you were getting it before 6 April 2001. This means that the rules about <i>pension income</i> do not affect you, even if you have a pension income in the future.</p>
Waiting days	<p>If you are claiming Incapacity Benefit based on your National Insurance contributions, you cannot get paid Incapacity Benefit for the first 3 days of your incapacity. This period is called waiting days.</p>
Youth provisions	<p>If you are under 20 (25 if you were in education or training before age 20) and you have been sick or disabled for 28 weeks in a row, you may be able to get Incapacity Benefit even if you have not paid enough National Insurance contributions. We call the rules the <i>youth provisions</i>.</p>

For more information

If you have any problems with or questions about Incapacity Benefit, get in touch with your Jobcentre, Jobcentre Plus office or social security office. You will find the telephone number and address in the business numbers section of the telephone book under **Jobcentre**, **Jobcentre Plus** or **social security**.

About this guide

This guide is intended for professional and voluntary advisers and for members of the public who want to know more about Incapacity Benefit.

There may be terms used in this leaflet that you do not understand. These are explained in more detail in the 'Terminology' section, see pages 5–7.

This guide and the law

This guide is a general guide to Incapacity Benefit. It cannot cover all the rules for Incapacity Benefit, or provide a full interpretation of the rules. It should not be treated as a complete and authoritative statement of the law.

The basis of the law for Incapacity Benefit is the Social Security Contributions and Benefits Act 1992 and the Social Security Administration Act 1992. These Acts provide the framework for the detailed rules contained in regulations made by the Secretary of State and approved by Parliament.

Great Britain and the United Kingdom

The information in this guide is primarily concerned with the law in Great Britain, which means England, Scotland and Wales.

Northern Ireland is covered by the Social Security Administration (Northern Ireland) Act 1992, the Social Security Contributions and Benefits (Northern Ireland) Act 1992, and the Social Security (Incapacity for Work) Act 1994, and the rules are different. Information on Northern Ireland can be obtained from social security offices in the Province.

Introduction to Incapacity Benefit

Incapacity Benefit (IB) gives working age people a replacement income when they become sick or disabled and stop working or looking for work as a result. It can be paid based on the number of National Insurance contributions they have paid or been credited, **or** if they were sick or disabled when they were 16 or over but under 20 (25 if they were in education or training before age 20) may be able to claim under the youth provisions.

People who have reached State Pension age cannot normally get Incapacity Benefit. State Pension age is currently 60 for a woman and 65 for a man. This will be equalised at 65 for both men and women from 6 April 2020. The change from the current State Pension age of 60 for women to 65 will be phased in over a 10-year period from 2010 to 2020. For more information, get leaflet **PM2 State pensions – Your guide** from your social security office.

If you cannot get Incapacity Benefit, you may still be able to get National Insurance credits for each full week you are sick. A full week starts on Sunday and ends on Saturday.

If you do not have enough money to live on, you may be able to get Income Support or Pension Credit. For more information, see leaflet SD1 *Sick or disabled*.

If you were getting Invalidity Benefit

If you were getting Invalidity Benefit when it was replaced by Incapacity Benefit in April 1995 or were getting Incapacity Benefit before 6 April 2001, your claim may be covered by transitional protection. This means that your entitlement to Incapacity Benefit may be based on different rules. Transitional protection is dealt with in more detail on page 49.

Incapacity Benefit

How to claim Incapacity Benefit

To make a claim for Incapacity Benefit, please contact your local Jobcentre Plus office, Jobcentre or social security office. You can find the address and telephone number of your local office by visiting the website **www.jobcentreplus.gov.uk** or by looking in your local telephone directory.

If you have an employer, you may be entitled to Statutory Sick Pay. Your employer will give you a completed SSP1 form before your Statutory Sick Pay is due to end. Statutory Sick Pay can only last for a maximum of 28 weeks, but you can then claim Incapacity Benefit.

If:

you have been getting Statutory Maternity Pay (SMP)

and you do not go back to work for your employer because you are incapable of work

and you are not entitled to Statutory Sick Pay, for example, if you do not satisfy the earnings rules because of your maternity absence

your employer must issue you with an SSP1 exclusion form.

If:

your contract with your employer has ended

you should claim Incapacity Benefit.

Gender Recognition Act 2004

From 4 April 2005, if you get a full Gender Recognition Certificate you can receive state pensions and benefits in your acquired gender. You can get more information on the effect of gender recognition on benefits from the gender recognition website **www.grp.gov.uk**

Claims for Incapacity Benefit

Incapacity Benefit is available to people under State Pension age who are not working because they are sick or disabled. Employed people who are not getting Statutory Sick Pay, self-employed and unemployed people, widows and widowers and those who wish to claim under the youth provisions can claim Incapacity Benefit.

You should complete and return the appropriate claim form as soon as possible after you think you may get Incapacity Benefit. If you do not, you may lose benefit.

Do not delay making your claim for benefit. For information about time limits, contact your Jobcentre, Jobcentre Plus office or social security office.

If you are employed

If you are employed and you become sick, your employer may be liable to pay you Statutory Sick Pay. As soon as you become sick, you should check with your employer to see if they will pay you Statutory Sick Pay. See page 53 for the qualifying conditions for payment.

If your employer cannot pay you, or has to stop paying you Statutory Sick Pay, they will give you form SSP1. This will tell you why you cannot get Statutory Sick Pay.

If your employer does pay you Statutory Sick Pay, they will only be able to do so for a maximum of 28 weeks. If you are still sick after 28 weeks, you should claim Incapacity Benefit. Your employer should complete form SSP1 before the 28 week Statutory Sick Pay period ends and give it to you. This is to make sure that we can find out if you are entitled to Incapacity Benefit before your Statutory Sick Pay ends. You will need to contact your local Jobcentre, Jobcentre Plus office or social security office to obtain form SC1 to claim Incapacity Benefit.

If you are self-employed or unemployed

If you are self-employed or unemployed and become sick, you should claim Incapacity Benefit. See page 10 for information on how to claim Incapacity Benefit. If you are both employed and self-employed, the rules for employed people apply, and you should ask your employer about Statutory Sick Pay.

If you are a widow or a widower

If your spouse died before 9 April 2001 and you have been incapable of work for more than a year, special rules will apply to your claim. For more information, see page 19.

If you are claiming under the youth provisions

If you are claiming under the youth provisions, special rules will apply to your claim. For more information, see page 16.

Medical evidence

Claims for Incapacity Benefit must be supported by medical certificates. If you are making a claim based on your National Insurance contributions, for the first seven days in a period of incapacity, you will only have to provide a statement from yourself to confirm your incapacity. A completed claim form can be accepted as confirmation. However, if you are still sick after seven days, you will have to go to your doctor for a medical certificate. These are also known as sick notes. You must send these to your Jobcentre Plus office or social security office.

If you have had a previous period of sickness within 8 weeks of your new claim, you need to get a sick note from the first day of the new period of incapacity. This must be sent with your completed claim form.

If you are employed and claiming Incapacity Benefit because your Statutory Sick Pay has stopped or you are not entitled to Statutory Sick Pay, your employer may also need to see your sick note. If this is the case, you are responsible for making sure that the sick note is then sent on to your Jobcentre Plus or social security office. If you received Statutory Sick Pay, it is important that you send us a sick note signed by your doctor which starts from the date from which you are claiming benefit.

If you are claiming under the youth provisions you will need medical evidence to show that your incapacity has lasted for 28 weeks or more. This will usually be in the form of a sick note. However, we may need to get in touch with your doctor to find out more.

There are four types of sick notes that your doctor may give you:

Med 3	A white form	on which your doctor will record the diagnosis of your condition and the advice you have been given about your capacity to work.
Med 4	A green form	only issued by your doctor when the Personal Capability Assessment is being considered, see page 34 for details.
Med 5	A pink form	on which your doctor can, in special circumstances, confirm your diagnosis and that you were incapable of work for a past period.
Med 10	A yellow form	issued by a hospital to confirm that you are, or have been, in hospital.

When your doctor completes a sick note for you, it will either be an open or a closed certificate. Doctors have to issue medical certificates of incapacity free of charge to their NHS patients.

Open certificates

Your doctor will give you an open certificate if it is not clear how long you will be unable to work. The sick note will cover the period until you should go back to see your doctor again. This could be a fortnight or four weeks, or another period. You should make sure you keep a record of when you need to go back to see your doctor again, and send us any further sick notes as soon as possible. Do not miss any out, or leave any gaps between them. If you send any certificates in late, it may mean that your payment is delayed.

Closed certificates

A closed certificate will be issued by your doctor when you are ready to return to work, or will be ready to return within the next 14 days. The doctor will confirm the diagnosis and state a specific date when you will be fit to return to work.

It is important that you remember to forward to us any medical certificate issued by your doctor, making sure that you sign the back and fill in your name and National Insurance number. This ensures

that our records are updated quickly, and that we pay you any money you are due on time.

Your National Insurance contributions

Unless you are claiming under the youth provisions, in order to receive Incapacity Benefit, you must have a certain amount of qualifying earnings. Qualifying earnings are earnings on which you pay or are treated as paying National Insurance contributions. If you work for an employer, the level of earnings at which you start to pay National Insurance is known as the employee's primary threshold. If you are self-employed you must pay National Insurance unless you have been given an exception. For more information, contact your HM Revenue and Customs office.

There are four main classes of National Insurance contributions:

Class 1 These are paid by employed people, as a percentage of their total earnings which are at or more than the employee's primary threshold. If you have earnings which at least equal the lower earnings limit but are below the employee's primary threshold, you will be treated as having paid a Class 1 contribution for each week this applies.

Class 2 These are paid by self-employed people at a standard weekly rate.

Class 3 These are voluntary contributions which people can pay to improve their State Pension entitlement. These contributions do not count for Incapacity Benefit purposes.

Class 4 These are paid by self-employed people, and are based on a percentage of their profits over a set level.

Two contribution conditions must be satisfied in order to qualify for Incapacity Benefit:

You must have qualifying earnings relating to

- Class 1 contributions paid or treated as paid, or
- Class 2 contributions paid equal to at least 25 times the lower earnings limit

in one of the last 3 tax years before the benefit year in which the incapacity for work began. If you have paid (or been treated as paying) a mixture of both Class 1 and Class 2 contributions, a mixture can be used to assess the qualifying earnings.

You must also have qualifying earnings relating to

- Class 1 contributions paid or treated as paid, or
- Class 2 contributions paid, or
- Class 1 credits equal to at least 50 times the lower earnings limit in each of the 2 relevant tax years.

A combination of Class 1 contributions paid or treated as paid, Class 2 contributions paid, and Class 1 credits can be used to assess the qualifying earnings. Class 1 credits alone can count for this condition. The 2 tax years used would be the last complete tax year before the benefit year in which the incapacity began and the one immediately before.

Unless you are claiming under the youth provisions or other special provisions apply, if you do not have enough contributions or credits, your claim will be disallowed. You can, however, make a further claim to benefit in a later benefit year. This starts on the first Sunday in January each year and ends on the Saturday before the first Sunday in January of the next year. The first day of your period of incapacity for work determines your benefit year for Incapacity Benefit purposes. If you have enough contributions or credits then, you may qualify for benefit. For further information, you should contact your Jobcentre, Jobcentre Plus office or social security office.

Entitled to certain benefits in the previous tax year

You may be able to get Incapacity Benefit even if you have not paid enough National Insurance contributions if:

you have qualifying earnings relating to

- Class 1 contributions paid or treated as paid or
- Class 2 contributions paid or
- a mixture of these equal to at least 25 times the lower earnings limit in any tax year

and you received Incapacity Benefit in the tax year before the benefit year in which the incapacity began

- or you received Carer's Allowance (previously known as Invalid Care Allowance) (or would have done if the overlapping benefit rules did not apply) in the tax year before the benefit year in which the incapacity began
- or you were working for 16 hours a week or more for more than 2 years and you got Disabled Person's Tax Credit or you qualify for a disability element of Working Tax Credit, whether or not it is paid throughout your employment.

Incapacity Benefit under the youth provisions

If you are under 20 (25 if you were in education or training before age 20) and have been sick or disabled for 28 weeks or more, you may be able to get Incapacity Benefit even if you have not paid enough NI contributions.

To qualify you must be present and resident in Great Britain.

By present and resident we mean you must:

be present in Great Britain when you make your claim

- and you must have been present in Great Britain, Northern Ireland or the Isle of Man for at least 26 weeks in the 12 months before you claim.

You may be treated as being present in Great Britain if you are:

a member of the armed forces, or a husband, wife, son, daughter, parent or parent-in-law of someone who is

- or a mariner or airman
- or working on the UK sector of the continental shelf (for example on an oil rig).

In certain cases you may also qualify if you were working or living in another member state of the European Economic Area (EEA).

In these cases you may be able to count your time spent abroad to satisfy the condition of being in Great Britain for at least 26 weeks in the last 12 months. But you must still be present in Great Britain when you make your claim (unless you are abroad with the Armed Forces).

Other special rules apply if you do not have to pay income tax in the UK. In these cases you can only qualify if you lived in Great Britain for 156 weeks in the 4 years before you stopped having to pay UK income tax.

You cannot get Incapacity Benefit if you have a limitation or condition on your right to reside in Great Britain.

Age 16 to 19

If you are aged 16 or over but under 20 you may be able to get Incapacity Benefit if you have been sick or disabled for 28 weeks or more in a row and you are not in full-time education. We use full-time education to mean a course of education which lasts for 21 hours or more in a week. When we calculate the number of hours we do not count any time spent on education not suitable for people of the same age and sex who do not suffer from a physical or mental disability. If you are 19 we do not treat you as being in full-time education even if you are.

We count days of incapacity before you reached age 16 towards the 28-week qualifying period. So, if you have been sick or disabled for 28 weeks before your 16th birthday you may be able to get Incapacity Benefit straight away.

Age 20 to 24

If you are aged 20 or over but under 25 you may be able to get Incapacity Benefit if you have been sick or disabled for 28 weeks and you have been in full-time training or education. We use training to mean vocational or work-based training. We use full-time education to mean a course of advanced education (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 Scottish Vocational Council, or a teaching qualification; or any other qualification of a standard above ordinary national or BTEC diploma, A level and their Scottish equivalents), or a course of secondary education (below a course of advanced education by attendance at a recognised educational establishment or a place where the Secretary of State is satisfied that the education is equivalent to that given in a recognised establishment). If you cannot attend full time because your disability prevents you from doing so, we will treat that as full time.

You must have registered on a course of training or education which must have started at least 3 months before your 20th birthday.

You must have attended within the first academic term after you registered.

You must also have attended for at least 1 day after the start of the last 2 complete tax years and before the benefit year relating to a claim for Incapacity Benefit. For information about benefit years and tax years see page 5.

Entitlement to Incapacity Benefit following a period in work or training

You may be able to get Incapacity Benefit for young people if:

- you were getting it before
- and the linking provisions do not apply to you and you stopped getting it only because you took up work or training
- and you did not stop getting it because you did not meet the threshold of incapacity – see 'Personal Capability Assessment', page 34
- and you have not paid, or are not treated as having paid, contributions on earnings equal to 25 times the lower earnings limit in any of the 3 tax years before the benefit year in which the incapacity began
- and in the last 2 complete tax years before the benefit year in which the incapacity began you have either paid, are treated as having paid or been credited with contributions on earnings at least 50 times the lower earnings limit and at least one credit has been awarded in respect of Disabled Person's Tax Credit or Working Tax Credit in the last tax year.

If you claim within 8 weeks

You may be able to get Incapacity Benefit for young people if:

- you were getting Incapacity Benefit for young people before
- and the linking provisions do not apply to you and you stopped getting it only because you took up work or training
- and you did not stop getting it because you did not meet the threshold of incapacity – see 'Personal Capability Assessment', page 34
- and you make a claim within 8 weeks of leaving employment or training.

Entitlement to Incapacity Benefit following a period abroad

You may be able to get Incapacity Benefit for young people if:

- you were getting Incapacity Benefit for any period of time in the last tax year before the benefit year in which you went abroad
- and you did not stop getting it because you were assessed as being capable of work
- and the linking provisions do not apply to you
- and you were not entitled to benefit because you went abroad
- and you were incapable of work for 28 weeks in a row from the day you returned to Great Britain
- and you make a claim no later than 28 weeks after you return to Great Britain.

Where these rules apply, you will be entitled to Incapacity Benefit at the short-term (lower) rate for the first 28 weeks even if you got a higher rate previously.

Widows and widowers

If your spouse died before 9 April 2001 and you have not been working for a year because you are sick, you may be able to get Incapacity Benefit, even if you do not qualify on your own National Insurance contributions. If you do qualify as a widow or widower, you will be paid at the long-term Incapacity Benefit rate.

A new system of bereavement benefits for men and women was introduced in April 2001. The new system will not affect women who were already getting benefits under the previous scheme as long as they continued to qualify under the rules. For more information about bereavement benefits, get leaflet GL14 *Widowed?* from your Jobcentre, Jobcentre Plus office or social security office.

Widows, widowers and bereavement benefits

Bereavement benefits replaced widow's benefits for customers widowed on or after 9 April 2001. The entitlement and overlapping benefit rules regarding Incapacity Benefit also changes for those customers widowed and incapable of work from this date.

Existing Incapacity Benefit customers at 9 April 2001 already receiving widow's benefits will remain covered by the rules in place prior to this date.

Customers in receipt of transitionally protected Incapacity Benefit (continuously in payment or linking to an award payable prior to 13 April 1995) have their benefit subjected to several different overlapping rules based on past regulations.

For more information about bereavement benefits, obtain leaflet **GL14 Widowed?** from your local Jobcentre, Jobcentre Plus office or social security office.

New non-linking Incapacity Benefit claims from customers widowed on or after 9 April 2001 (including widowers)

If you are sick and qualify for Incapacity Benefit based on your own National Insurance contributions, you will be entitled to the normal rates of that benefit subject to the overlapping benefit rules associated with an award of a bereavement benefit.

Not having enough National Insurance contributions, however, does not necessarily mean you cannot receive Incapacity Benefit as you may still qualify for an award by means of special credits, the conditions for receipt being outlined below.

If you are sick, and are receiving a bereavement benefit:

- Bereavement Allowance
- or Bereavement Allowance Age Related
- or Widowed Parent's Allowance
- or Widowed Parent's Allowance Personal

(but not including Bereavement Payment on its own)

and the payments cease other than by:

remarriage

or living with a man or woman as their wife or husband

you may be awarded special credits enabling you to qualify for Incapacity Benefit payments.

If entitled, you will receive the normal rates of Incapacity Benefit as you would if you qualified for the benefit on your own contributions.

If it has been established that Incapacity Benefit is payable, it is not affected if a widow or widower subsequently:

remarries

or starts living with a man or woman as their wife or husband.

Please note: A widow or widower could be treated as entitled to bereavement benefits even if not actually payable:

because there was a delay or failure to make a claim

or because of disqualification due to imprisonment or detention in legal custody

or because another overlapping benefit is in payment.

If there is no entitlement to bereavement benefit and a customer does not qualify for Incapacity Benefit on his or her own contributions under special rules (see next heading) or does not qualify for special credits there will be no entitlement to Incapacity Benefit.

Widows, widowers and widow's benefits

If you are sick, and are receiving Widow's Pension or Widowed Mother's Allowance (no new awards having been made since 9 April 2001) and qualify for Incapacity Benefit based on your own National Insurance contributions, you will be entitled to the normal rates of that benefit subject to the overlapping benefit rules associated with an award of widow's benefits.

If, however, you are a widow or widower and your spouse died before 9 April 2001, you may qualify for Incapacity Benefit even if you do not satisfy the National Insurance contribution conditions. If so, you can be paid long-term Incapacity Benefit even if you have not received short-term Incapacity Benefit first.

If you are a widow, you are entitled under these rules if:

- your husband died before 9 April 2001
- and you were not entitled to Widowed Mother's Allowance when your husband died or you are no longer entitled to Widowed Mother's Allowance
- and the date when your husband died or your Widowed Mother's Allowance stopped was after 5 April 1979
- and you are incapable of work and your current period of incapacity for work began either before your husband died or before your Widowed Mother's Allowance stopped, and has lasted for at least 364 days (or 196 days if you are terminally ill)
- and you would have been entitled to Widow's Pension if you had been over 45 when your husband died or when your Widowed Mother's Allowance stopped, or you receive a reduced Widow's Pension because of your age at the relevant time; and
- and you would not otherwise be entitled to any rate of Incapacity Benefit, eg because you have not paid or been credited with sufficient contributions.

In these circumstances, you receive the long-term rate of Incapacity Benefit or, if you are receiving a reduced rate of Widow's Pension, you receive that and the difference between the rate of Widow's Pension you receive and the long-term rate of Incapacity Benefit.

If you are a widower, you are entitled if:

- your wife died after 5 April 1979 but before 9 April 2001
- and you were incapable of work when she died or you became incapable of work within 13 weeks of the day after her death
- and your period of incapacity for work has lasted for at least 364 days (or 196 days if you are terminally ill)
- and you would not otherwise be entitled to any rate of Incapacity Benefit, eg because you have not paid or been credited with sufficient contributions.

In these circumstances you receive the long-term rate of Incapacity Benefit. If you are a widower who has a qualifying child you may also qualify for Widowed Parent's Allowance. However, the overlapping benefit rules mean that you cannot receive both Widowed Parent's Allowance and Incapacity Benefit in full.

Days in receipt of statutory sick pay count towards the 364-day (or 196-day) period of incapacity for work for both widows and widowers. You cannot qualify for long-term Incapacity Benefit under these provisions if you are over State Pension age, but you can qualify for a Category A pension if:

- your period of incapacity for work began as described in the rules above for widows and widowers and you were still incapable of work when you reached State Pension age
- and for a woman, you do not otherwise qualify for a Category A pension
- or for a man, you do not otherwise qualify for a Category A or B pension.

Existing customers receiving Incapacity Benefit under these special rules who end their claim to Incapacity Benefit and later make a new claim that links with the last one will have underlying entitlement to Incapacity Benefit providing conditions for payment are still satisfied.

Payable amounts

A widow or widower may receive Widowed Parent's Allowance or Bereavement Allowance with Incapacity Benefit subject to any adjustment under the overlapping benefit regulations. When both Incapacity Benefit and a bereavement benefit are payable, the overlapping benefit rule that must be applied depends on when Incapacity Benefit was awarded and what the award consists of.

In general, only the basic elements of non-linking Incapacity Benefit claims (excluding Incapacity Age Addition) overlap with the basic elements of bereavement benefits, dependency increases being compared separately. Incapacity Age Addition is an amount based on the age you were when you first became sick and added to the basic rate of long-term Incapacity Benefit. Any pension you receive from your late spouse's employer will reduce this figure. Additional Pension payable with Widowed Parent's Allowance is ignored.

For specific information about overlapping benefits, contact your local Jobcentre, Jobcentre Plus office or social security office.

Incapacity Benefit while pregnant

Maternity Allowance

If you are claiming Incapacity Benefit and become pregnant, you should continue to send in medical certificates if your original incapacity still applies. This will ensure that you keep your entitlement to Incapacity Benefit while you claim Maternity Allowance.

If your rate of Incapacity Benefit is more than the amount of Maternity Allowance you are due, you will continue to receive the higher amount of benefit. If the amount of Maternity Allowance is more than the rate of Incapacity Benefit you are due, and you provide medical evidence, you will be able to continue claiming Incapacity Benefit when your Maternity Allowance ends.

Statutory Maternity Pay

If you are claiming Incapacity Benefit when you become entitled to Statutory Maternity Pay (SMP) you can carry on getting it for as long as you can provide medical evidence. The amount of Incapacity Benefit you get each week will be reduced by the amount of SMP you get each week. If you are still sick or disabled when your SMP ends your Incapacity Benefit will be paid again in full.

If you get SMP from an employer you may be able to get Statutory Sick Pay (SSP) when your SMP ends. You should contact your employer and give them evidence of your incapacity.

If you cannot get SSP your employer must give you exclusion form **SSP1**. If employment has ended, you should claim Incapacity Benefit. See page 10, 'How to claim Incapacity Benefit'.

For more information on maternity benefits see guide **NI17A** *A guide to Maternity Benefits*.

How your Incapacity Benefit is made up

The rates of Incapacity Benefit change in April each year. For current rates see leaflet GL23 *Social security benefit rates*.

There are three rates of Incapacity Benefit:

- short-term (lower) Incapacity Benefit
- short-term (higher) Incapacity Benefit
- long-term Incapacity Benefit.

Short-term (lower) Incapacity Benefit

If you get Incapacity Benefit based on your National Insurance contributions, short-term (lower) Incapacity Benefit is paid for the first 28 weeks of sickness. You are not paid for the first three days of your sickness, these are known as 'waiting days'. This applies to people who move straight onto Incapacity Benefit. If you have received 28 weeks of SSP, and qualify for benefit, you **may** start your entitlement at the short-term (higher) rate.

If you get Incapacity Benefit under the youth provisions, short-term (lower) Incapacity Benefit is paid for the first 28 weeks after you become entitled.

Short-term (lower) Incapacity Benefit is not taxable.

Short-term (higher) Incapacity Benefit

If you get Incapacity Benefit based on your National Insurance contributions, short-term (higher) Incapacity Benefit is payable from the 29th to the 52nd week of sickness. If you are still sick after you have had Statutory Sick Pay for 28 weeks, you may move onto short-term (higher) Incapacity Benefit immediately. If you received Statutory Sick Pay for a period of less than 28 weeks, those days may count towards your 28 weeks of short-term (lower) Incapacity Benefit entitlement, and you may move onto short-term (higher) Incapacity Benefit more quickly than you would otherwise do.

If you get Incapacity Benefit under the youth provisions, short-term (higher) Incapacity Benefit is paid after you have been getting benefit for 28 weeks. It is payable from the 29th week to the 52nd week of your entitlement.

If you move from short-term (lower) Incapacity Benefit onto short-term (higher) Incapacity Benefit, your benefit will become taxable. For more information, see page 45.

Long-term Incapacity Benefit

Long-term Incapacity Benefit is payable from the 53rd week of your sickness, or after you have been getting benefit for 52 weeks if you are entitled under the youth provisions, and is taxable.

Pension income

If you became entitled to Incapacity Benefit on or after 6 April 2001 and your claim does not link with a previous one, the amount of Incapacity Benefit you can get may be affected if you have a pension income.

We ignore the first £85 of the weekly gross amount of pension income. By gross amount we mean before any deductions are made for things like income tax. After that the amount of Incapacity Benefit we can pay you is reduced by half the pension you get. For example, if you have pension income of £86 a week gross, we ignore the first £85. Your Incapacity Benefit will be reduced by 50 pence a week (half of £1).

Short-term Incapacity Benefit at State Pension rate

You cannot normally get Incapacity Benefit after you have reached State Pension age. However, if you were sick before State Pension age, you may be able to get short-term Incapacity Benefit for up to 52 weeks, based on your entitlement to the State Pension.

Other rules at State Pension age

Long-term Incapacity Benefit and additional State Pension

Long-term Incapacity Benefit is not paid after State Pension age.

From 6 April 1978 to 5 April 2002, the additional State Pension was normally called the State Earnings Related Pension Scheme (SERPS) pension. Under SERPS, you could only build up an additional State Pension if you were an employee.

From 6 April 2002, State Second Pension reformed SERPS to provide a more generous additional State Pension for low and moderate earners, and to extend access to include certain carers and people with a long-term illness or disability.

You may begin to build up additional State Pension, through State Second Pension, for every complete tax year (from 6 April 2002) you get, or are entitled to, long-term Incapacity Benefit, as long as when you reach State Pension age you have paid, been treated as having paid or been credited with Class 1 National Insurance contributions for at least one-tenth of your working life since 1978. This is called the 'Labour Market Attachment Test'.

Any State Second Pension will be paid along with basic State Pension. For more information on State Second Pension, see leaflet PM2 *State pensions – Your guide*.

If you have a carer, they may also be entitled to build up State Second Pension. See leaflet PM9 *State pensions for carers and parents – Your guide*.

Incapacity Age Addition

Incapacity Age Addition is only payable for people who are receiving long-term Incapacity Benefit. To qualify for the addition, you must have been under age 45 at the start of your period of incapacity for work. This includes days for which you may have been getting Statutory Sick Pay.

There are two rates of Incapacity Age Addition. The rate you get depends on how old you were when your period of incapacity for work started, see the 'Terminology' section for explanation of terms. If you were under 35 when your period of incapacity for work started, you will get the higher amount of Incapacity Age Addition. If you were between 35 and 44 inclusive, you will get the lower amount. For more information, see leaflet GL23 *Social security benefit rates*.

If you were getting Incapacity Age Addition 8 weeks and one day before you became entitled to your State Pension, your State Pension will be increased by the amount of Incapacity Age Addition you were getting.

Special rules

Special rules exist to help people who suffer from terminal illnesses. These rules allow people who doctors feel are not expected to live for more than six months to receive a higher rate of benefit. It is, of course, impossible to say exactly how long someone can be expected to live.

If you do suffer from a terminal illness, you should let your Jobcentre, Jobcentre Plus office or social security office know. This information is treated with strict confidentiality, and will not be given to anyone else.

If you do qualify for Incapacity Benefit under the special rules, you will receive the long-term rate of Incapacity Benefit from the date you would have been entitled to the short-term (higher) rate. This is a significant financial increase. You can also claim Disability Living Allowance if you have not already done so.

If you are already receiving the highest rate of the care component of Disability Living Allowance, you can also be paid long-term Incapacity Benefit after you have been sick for 28 weeks, or getting Incapacity Benefit under the youth provisions for 28 weeks. This is not normally payable until your 53rd week of sickness, or you have been getting Incapacity Benefit for 52 weeks under the youth provisions.

Who you can claim for

Incapacity Benefit exists to help people financially when they become sick. Some people may have dependants who rely on them for support. If you become sick, you may be able to get increased benefit for the people you support.

Increased benefit for children

If you have children, you may be able to get Child Tax Credit. To find out more about Child Tax Credit, phone the HM Revenue & Customs Helpline on **0845 300 3900**. If you use a textphone, the number is **0845 300 3909**.

If you are claiming for a period starting before 6 April 2003, you may be able to get more money for your children – to find out more, phone the Benefit Enquiry Line on **0800 88 22 00**.

Increased benefit for adults

You may be able to get increased Incapacity Benefit for your spouse, or for a person who looks after your children. The amount of increased benefit you get depends on the length of time you have been incapable of work. There are different rates of benefit for adult dependants, which depend on whether you receive short-term (lower or higher) Incapacity Benefit or long-term Incapacity Benefit.

You may be asked to show birth and marriage certificates to support your claim. If your spouse works, their earnings could affect any increased benefit you claim. If you claim increased benefit for an adult employed by you to look after your children, but who does not live with you, any other earnings they have will not affect your claim.

There is a rule change from April 2004 that may mean your benefit is reduced if you have a partner who lives with you and they do not take part in a Work Focused Interview with a Personal Adviser. Please see page 52 for further information.

This guide went to press in October 2005. Changes to the law after that date may affect some of the rules explained here. In particular, the Civil Partnership Act 2004 is expected to come into force on 5 December 2005. This will change the way we treat same-sex couples. When that happens, people of the same sex who have

formed a civil partnership will be treated, as far as possible, in the same way as a married couple. Same-sex couples who are living together as if they were civil partners (but who have not formed a civil partnership) will be treated in the same way as unmarried couples.

Increased benefit for your husband or wife (your spouse)

You may get increased benefit for your spouse if:

- they are aged 60 years or over
 - or you or your spouse receive Child Benefit for a child or children.
- If your spouse does not live with you, you may still get increased benefit for them if:

- you are entitled to Child Benefit
- and you have been paying them an amount at least equal to the amount of increased benefit you can get for an adult dependant immediately before you became incapable of work at the time of your claim
- or they became dependent upon you after you became incapable of work.

In either case, you must be paying your spouse as much money as the increased benefit that you get for them.

Increased benefit for a person looking after children

If you do not get increased benefit for a spouse, you may be able to claim for a person looking after your children. To qualify for this increased benefit you must be entitled to Child Benefit, and the person you are claiming for must live with you.

If the person that looks after your children does not live with you, you may still be able to get more money for them if:

- you are entitled to Child Benefit and you are paying them a weekly amount which is at least equal to the amount of increased benefit payable for an adult
- or you employ them at a weekly rate at least equal to the amount of increased benefit payable for an adult.

Increased benefit for children

You may be able to get more money for your children, but only if you are claiming the increase for a period starting before 6 April 2003

and you are entitled to short-term Incapacity Benefit at the higher rate or basic State Pension rate or long-term Incapacity Benefit. From 6 April 2003, the increase will no longer be available to customers who claim for periods starting on or after that date. You can, however, claim Child Tax Credit instead.

To find out more about Child Tax Credit, visit

www.hmrc.gov.uk/taxcredits

You can claim online too.

You can also ring HM Revenue & Customs by calling the Helpline on the following numbers:

England, Scotland and Wales **0845 300 3900**

Northern Ireland only **0845 603 2000**

Textphone for people with hearing or speech difficulties:

England, Scotland and Wales **0845 300 3909**

Northern Ireland only **0845 607 6078**

Lines open: 8am–8pm seven days a week (except Christmas Day, Boxing Day, New Year's Day and Easter Sunday).

If you need help or a form in Welsh, please telephone **0845 302 1489**, 8.30am–5pm Monday to Friday.

The effect of earnings on increased benefit for dependants

If you have a spouse or partner living with you who is working, and earns more than the appropriate weekly earnings limit you may lose the increased benefit. If they earn more than the set limit, we cannot pay any increased benefit for your first (or only) child. Depending on how much they earn over the limit, we may also have to withdraw any increased benefit for other children. See leaflet GL23 *Social security benefit rates* for earning limit rate.

What counts as earnings

Earnings include:

- money paid by an employer as earnings. This includes overtime, bonuses, regular tips and sick pay
- money earned from self-employment. This includes money that your spouse or partner is paid for helping in your business, and any charge that is made against your business for them

- any occupational pension they may get from a former employer
- money paid as a personal pension or self-employed pension.

You can deduct the following items from any gross earnings your spouse or partner may have:

- Income Tax
- certain National Insurance contributions
- half of any sum paid towards an occupational or personal pension
- any relevant child care charges.

The effect of pension income on any increased benefit for dependants

If you have pension income (see *Pension income*, page 26) the amount of any increased benefit we can pay you for a dependant may be affected. If there is enough pension income to take into account, your personal benefit will be reduced first. If this means that we cannot pay you your personal benefit and there is still enough pension income to take into account we will then reduce the amount of increased benefit for dependants, starting with the amount for an adult first and then the amount for any children. Pension income is treated in exactly the same way as for personal benefit.

The effect of other benefits on any increased benefit for dependants

Increased benefit for any dependant may be reduced, or not paid at all, if you or anyone else is getting more money for the same person with another benefit. This includes War Pensions, National Insurance benefits (contributory and non-contributory), industrial injuries benefits or training allowance schemes. This also applies if your dependant is receiving benefit in their own right under any such scheme.

Increased benefit paid for a person who does not live with you, but who is employed by you to look after children for you, is not affected by other benefit payments. Increased benefit paid for a child will be reduced if Child Benefit (Lone Parent) is in payment.

Medical assessments

In order to find out if you are still incapable of work, you may be medically assessed. You will be assessed by one of two medical assessments: the Own Occupation Test (for more details, see below) or the Personal Capability Assessment. For more information, see leaflet IB214 *Personal Capability Assessment*.

If an examination is required, it will be carried out by an approved doctor. Approved doctors are appointed by the Secretary of State and work to a consistently high standard throughout the country. They are employed to ensure that people who have applied for Incapacity Benefit get a thorough and comprehensive assessment of how their illness or disability affects their ability to work.

The decision on whether someone has met the threshold of incapacity is made by a decision maker in Jobcentre Plus. The decision maker is not a doctor, but makes a decision about your ability to work based on all the evidence. This will include the form IB50 (see *Personal Capability Assessment* below), the information provided by your own doctor and the evidence of the approved doctor. Incapacity Benefit will usually continue to be paid until the assessment has been completed and as long as medical evidence continues.

Own Occupation Test

Usually, for the first 28 weeks of incapacity, you will be judged on your ability to carry out your own job. This is called the Own Occupation Test. You may also be examined by an approved doctor.

We will only use the Own Occupation Test if you have worked for at least 16 hours a week for more than 8 weeks out of the last 21 weeks before you became incapable of work.

If the decision maker decides that you are capable of doing your own job, we will write to you, giving an explanation, and your benefit will stop. If you disagree with this decision you can ask for a fuller explanation, or you can appeal. For more information, see page 50.

Personal Capability Assessment

Personal Capability Assessment (PCA) is applicable after you have been incapable of work for 28 weeks. The assessment process can commence before this date. The decision will only take effect when you have been incapable for 28 weeks, or from the start of your claim if you had no regular job when you became ill.

You may be asked to complete an IB50 form about your illness or disability and asked to obtain a MED 4 certificate from your own doctor. The MED 4 will be used by your doctor to give us further information about your medical condition. You may also be examined by an approved doctor. This information will give a clear picture of how your illness or disability affects your ability to perform a series of work-related activities. This is called the Personal Capability Assessment. The assessment process can commence after you have been incapable of work for 18 weeks, or from the start of your claim if you had no regular job when you became ill, but the decision on whether you meet the threshold of incapacity will only apply after you have been incapable of work for 28 weeks.

The medical examination by the approved doctor will be carried out in your area. You will be able to claim for the cost of travel to and from the examination. If you are unable to attend the examination, and you let us know in advance, we can arrange another appointment for you. If you are unable or fail to attend your medical examination without good cause, your benefit may be affected. If you do not complete and return the IB50 form, or do not attend the medical examination without letting us know, you could lose your benefit.

If the decision maker assesses that you have met the threshold of incapacity under the Personal Capability Assessment, you will not need to send us any more sick notes. This assessment will be looked at again at a later date.

If the decision maker assesses that you have not met the threshold of incapacity, we will write to you, giving a full explanation, and your benefit will stop. A letter will also be sent to your doctor to let them know that you have not met the threshold of incapacity under the Personal Capability Assessment. If you disagree with this decision, you can ask for an explanation of why the decision was made. If you are still not satisfied with the outcome, you can appeal. For more information on the appeals process, see page 50.

If you have not met the threshold of incapacity under the Personal Capability Assessment, you will not be able to get the Disability Premium with Income Support, Housing Benefit or Council Tax Benefit because of incapacity for work.

If you do not have a job to go back to, you may be able to claim Jobseeker's Allowance (JSA) at your local Jobcentre, Jobcentre Plus office or social security office. For further information, see leaflet *JSA15 Helping you back to work*.

Most cases will require a medical examination. However, some people will be automatically exempt from the Personal Capability Assessment. You will not be assessed if you suffer from one of the following conditions:

- severe mental illness
- tetraplegia
- paraplegia, uncontrollable involuntary movements or ataxia
- persistent vegetative state
- registered blindness
- severe learning disability
- severe and progressive neurological or muscle-wasting diseases
- active and progressive forms of inflammatory polyarthritis
- progressive impairment of the cardio-respiratory function
- dementia
- dense paralysis of the upper limbs, trunk and lower limb on one side of the body
- multiple effects of impairment of the functions of the brain and/or nervous system
- severe and progressive immune deficiency state
- terminal illness
- an 80% disablement assessment.

You will also not be assessed if you receive the highest rate care component of Disability Living Allowance or the highest rates of Constant Attendance Allowance paid with War Pensions or Industrial Injuries Benefit.

We will write to you and tell you if you are not going to be assessed, and whether you will need to send in sick notes.

Mental health

There are special arrangements for people who have a mental illness. In any case where mental health problems have been identified, your own doctor will be contacted. If you suffer from a severe mental illness, you may not have to complete an IB50 form or take the Personal Capability Assessment.

If you suffer from a less severe mental health problem, you will be asked to complete an IB50 form to check if you have any physical disabilities as well. The form also has a space where you can record details of your mental illness. You will usually be asked to attend a medical examination. We will take into account the effects of both mental and physical illness when considering the Personal Capability Assessment.

Changes in your circumstances

How changes in your circumstances can affect your entitlement to Incapacity Benefit

Changes in your circumstances, or those of anyone you claim for, can affect your entitlement to Incapacity Benefit. These include:

- working while claiming benefit
- going into hospital
- going abroad
- going to prison or being detained in police custody
- reaching State Pension age
- a change in how much pension you get
- getting another benefit, pension, supplement or allowance
- an improvement in your medical condition
- dependants joining or leaving the household.

If your incapacity changes or your condition improves

You must tell us straightaway if there is an improvement in your condition and you:

- are able to do more
- or
- gradually start to feel better over a longer period of time.

This could be as a result of:

- surgery
- the use of aids or appliances
- a change in your medication.

You must also tell us straightaway if your incapacity changes.

If this happens we may have to look at your claim again. We may ask you to fill in form IB50 *Incapacity for Work questionnaire* and to attend a medical examination.

Working while claiming benefit

You cannot usually work while claiming benefits, but you may be able to do some work while you are getting Incapacity Benefit. You should tell the office that deals with your benefit before you start any work, and check that the work will not affect your benefit. It is important to contact your Jobcentre, Jobcentre Plus office or social security office before you start any type of work.

Voluntary work

You may be able to get Incapacity Benefit if you do voluntary work. Voluntary work can include a variety of activities, eg working with charities, voluntary organisations and local social services, or for someone other than a member of your family.

The term 'voluntary organisation' means a body that carries out activities other than for profit, eg The National Association of Citizens Advice Bureaux.

Permitted work

More flexible rules were introduced in April 2002 for people getting Incapacity Benefit who want to try some paid work. These new arrangements replace the therapeutic work rules. The work you can do is called *permitted work*.

There are 3 situations where you can get Incapacity Benefit and do some permitted work:

You can work and earn up to £20.00 a week for as long as you are getting Incapacity Benefit.

Or You can work for less than 16 hours a week and earn up to £81.00 a week for up to 26 weeks. This period can be extended for another 26 weeks if an officer of, or a person providing services to, the Department for Work and Pensions agrees that an extension will help you towards work of 16 hours or more a week. This person could be a Job Broker, a Disability Employment Adviser or a Personal Adviser.

After your first attempt at a fixed period of permitted work, if you cannot move into work of 16 hours or more a week, you can try again after a gap of 52 weeks. These subsequent periods of permitted work will last for 52 weeks from the date that work starts, and must be supported from the outset by a Job Broker, Personal Adviser or Disability Employment Adviser. During any gap period you can still work and earn up to £20.00 a week.

Or You can work for an unlimited period and earn up to £81.00 a week if you are doing work which is supervised by someone who is employed by a public or local authority, or a voluntary organisation, and it is their job to arrange work for sick and disabled people. This could be work done in the community or in a sheltered workshop. Similarly, if you are doing work under medical supervision as part of a hospital treatment programme, either as an in-patient or a regular out-patient of a hospital or institution, you will be able to work without a time limit.

If you want to do permitted work you do not need to get a doctor's approval to do the work.

Permitted work notification procedures

You should tell the office that deals with your benefit about the permitted work you want to do before you start it. This should ensure that your benefit records are kept up to date, and that we should not need to ask you extra questions about your change in circumstances.

If, however, you are not able to tell the office that deals with your benefit before you start work, you must write to them about the work within the following time limit:

- If you are doing a fixed period of permitted work you must write to the office within 42 days;
- If you are doing supported permitted work or work for up to £20.00 per week you must write to the office before the work ends.

For more information about Job Broker services see page 42.

Going into hospital

If you, or an adult dependant, go into an NHS hospital, your Incapacity Benefit, or increased benefit for your dependant, may be reduced after 52 weeks in hospital.

Increased benefit for other dependants, including children, may be affected if the dependant goes into hospital.

If you, or a dependant, go into hospital, tell your Jobcentre, Jobcentre Plus office or social security office straightaway. For more information, see leaflet GL12 *Going into hospital*.

Changes to the rules

From April 2006, Incapacity Benefit will no longer be reduced after 52 weeks in hospital. Your entitlement will automatically be restored to full rate.*

* The regulations making this change had not been made at the time this publication went to press.

Going abroad

If you get Incapacity Benefit and you are planning to go abroad, you must tell your Jobcentre, Jobcentre Plus office or social security office immediately to check if your benefit is affected.

If it is still possible for you to get Incapacity Benefit while you are abroad, you can arrange for someone else to get your payment for you while you are away. You can also be paid on your return, and in some circumstances, have it paid abroad.

Going into prison

You cannot usually get Incapacity Benefit if you are in prison, in legal custody or detained by the police.

Reaching State Pension age

State Pension age is currently 60 for a woman and 65 for a man. To find out how the State Pension age for a woman will start to change from 2010, see page 9. You cannot get Incapacity Benefit from the day you reach your 60th or 65th birthday. However, if your claim began before you reached State Pension age, you may be able to get short-term Incapacity Benefit. This is paid at your basic State Pension rate for a maximum of 52 weeks. This means that the amount you get may be less than the amount you would get if you claimed your State Pension. You cannot go on to long-term Incapacity Benefit.

Other benefits that can affect your Incapacity Benefit

You cannot get Incapacity Benefit if you get any of the following benefits:

- another benefit based on your National Insurance contributions such as Jobseeker's Allowance (contribution-based) or State Pension
- an unemployability supplement of any kind. Transitionally protected cases may still receive their Additional Pension. For an explanation of this term, see the 'Terminology' section on page 6
- a training allowance from public funds
- Statutory Sick Pay.

If you get Incapacity Benefit and Income Support, some or all of your Income Support could be reduced or wiped out, because of your entitlement to the other benefit. However, we will pay you the highest amount that the law says you are entitled to.

If you get Pension Credit, your entitlement may be affected by the amount of Incapacity Benefit you are due.

However, the amount of Incapacity Benefit you can get may be affected by any pension income you get from your employer (see *Pension income*, page 26).

There are some benefits or allowances that you can receive as well as your Incapacity Benefit. This means that you will be entitled to the full amount of both benefits. They include:

- Attendance Allowance
- Disability Living Allowance
- Basic War or Industrial Injuries Disablement Pension or gratuity.

You can still get Incapacity Benefit if you get any payments (other than Statutory Sick Pay) from your employer. This includes any wages or company sick pay or any benefit a Friendly Society or Trade Union may give while you are sick.

Breaks in entitlement to Incapacity Benefit

There are a number of rules which mean that the amount of Incapacity Benefit you get is not affected by breaks in entitlement to it. Some of these are explained below in starting or going back to work. Normally however, if you have a break in entitlement to Incapacity Benefit of 8 weeks or less the two periods “link”. This means that you will return to benefit at the same rate as when you last got it and the total amount of time you got Incapacity Benefit counts towards your entitlement to the higher rates.

Starting work or going back to work

There are several schemes and benefits available to help you get back to work which may be able to protect your entitlement to higher levels of Incapacity Benefit.

Job grant

This is a tax-free payment which you may be able to get if you are going into full-time work of at least 16 hours per week. For more information see leaflet **IB203** or contact your local Jobcentre, Jobcentre Plus or social security office.

Housing Benefit and Council Tax Benefit

You might be eligible for help with your rent or council tax if you were getting Housing Benefit or Council Tax Benefit before you started work.

If you have been receiving Incapacity Benefit continuously for 26 weeks, and your benefit ceases as a result of taking up employment either as an employee or as a self-employed person, or you increase your hours or wages, then you may be eligible for a further 4 weeks of help towards your rent or council tax. You should contact your local authority within 4 weeks of starting work. You could also be entitled to further help from Housing Benefit and Council Tax Benefit while in work. Ask your local authority about Extended Payments of Housing Benefit and Council Tax Benefit and about claiming these benefits while in work.

52 week benefit protection

If you start work or a training course you may be able to protect your entitlement to higher levels of Incapacity Benefit for up to 52 weeks if:

- you have been sick for 28 weeks or more
- and you start work or a training course within seven days after your Incapacity Benefit ends and you tell your Jobcentre Plus office or social security office within one month after the end of your benefit that you have started work or training
- and your last claim did **not** end because you did not meet the threshold of incapacity – see 'Personal Capability Assessment', page 34.

Training

Training opportunities may be available in some areas. If you want help with training, you should speak to a Jobcentre Plus adviser about what is available.

If you were getting short-term (higher) or long-term Incapacity Benefit for at least one of the 56 days immediately before you started a training course, you may be able to go back on to the same rate of Incapacity Benefit if you become sick again. To do this you must be incapable of work on the first day after the training course ended, and this must be within two years of you receiving Incapacity Benefit.

Job Broker service

If you are thinking about trying some work you can get help from a specially approved Job Broker. They will advise on the best job options

for you. They can also help you prepare for interviews and support you when you start work. For more information about Job Brokers service in England, Scotland and Wales, contact New Deal for Disabled People on **0800 137 177**. Lines are open from 7.00am to 11.00pm. People with speech or hearing problems using a textphone can dial **0800 435 550**. Or you can get more information from the New Deal website: **www.newdeal.gov.uk**

Working Tax Credit

If you give up Incapacity Benefit to return to work, you may be able to apply for Working Tax Credit. This is a tax credit to top up the earnings of working people, administered by HM Revenue and Customs.

If you qualified for a disability element of Working Tax Credit, because you were getting the higher rate short-term or long-term Incapacity Benefit, you can go back onto the same rate of Incapacity Benefit if:

- your first day of incapacity immediately follows your last day of work
- and this falls within two years of when you last received Incapacity Benefit.

You can get further information on Working Tax Credit from your local Tax Enquiry Centre, Jobcentre Plus office or social security office or by calling the Working Tax Credit Helpline on **0845 300 3900**.

How Incapacity Benefit is paid

Our policy is to pay all benefits directly into an account. This is the safest way to pay you and lets you choose how and when you get your money. You can use a bank or building society. You may be able to use a cash machine, which will usually mean you can get your money at any time of the day or night. Most of these machines can be used for free, but some of them will charge you to take your money out. If so, you will be warned by a message on the screen. This will give you the opportunity to cancel your transaction without being charged. There are arrangements with banks and building societies so that you can collect cash from some of their accounts at your Post Office® branch. The Post Office® also provides a bank account that we can pay benefits into. With this account you can only collect your money in cash from Post Office® branches.

The other advantages of having your money paid into an account are:

- You can get your money from many different places.
- From some accounts you could have regular bills paid. This could save you money but you will need to make sure that there is enough money in your account to pay the bills. If not, you may be charged a fee.
- Using an account may help you save.

You can be paid every two, four or 13 weeks.

If you choose to be paid every two weeks:

The money will be paid into an account for you on the last bank working day in each two-week period.

If you choose to be paid every four weeks:

The money will be paid into an account for you on the last bank working day in each four-week period. Your first payment might cover a period of two to five weeks, but after this all payments will cover a four-week period.

If you choose to be paid every 13 weeks:

The money will be paid into an account for you on the last bank working day in each 13-week period. Your first payment might cover a period of 2 to 14 weeks, but after this all payments will cover a 13-week period.

If you want someone else to collect your benefit for you regularly, you may be able to make arrangements with your bank, building society or, if you have a Post Office® card account, the Post Office®. Please ask them for help with this.

There are special rules that apply when someone is unable to manage their own affairs. Where no one has been appointed as receiver by the Court of Protection or, in Scotland, the person's estate is not being administered by a tutor, curator or other guardian appointed under Scottish law, then Jobcentre Plus may appoint someone to act for them. For more information, contact your Jobcentre, Jobcentre Plus office or social security office.

Before you can have an appointee you will usually have to fill in a short form. For more information on appointees, see leaflet

GL21 *A helping hand for benefits.*

If your circumstances make it difficult for you to wait a fortnight for your benefit, you should let your local Jobcentre, Jobcentre Plus office or social security office know as soon as possible.

People who claimed before 13 April 1995

If you are receiving transitional protected Incapacity Benefit, and would like your benefit paid into a bank account, we can pay your benefit into your bank account on a 4-weekly or 13-weekly basis. There is also the option of weekly payment by Direct Credit.

Taxation

You may have to pay tax on your benefit if you get:

- short-term (higher) Incapacity Benefit rate
- or long-term Incapacity Benefit.

If you claim increased Incapacity Benefit for your spouse, with these rates of benefit the increased benefit will also be taxable. However, the increased benefit you get for a child or children is not taxable.

You will have to pay tax if your total taxable income, including your Incapacity Benefit, comes to more than your tax allowance.

Tax will be collected in one of two ways, depending on your circumstances.

Your existing Pay As You Earn (PAYE) code will be adjusted to take into account the amount of taxable benefit you receive if you are:

- still being paid by your employer
- or you have an occupational pension
- or you are self-employed and your business is continuing to trade.

This means that your benefit will be paid in full, but any other taxable earnings you receive may be taxed at a higher rate, taking the amount of your taxable benefit into account.

If your Incapacity Benefit is the only taxable income you receive, and the amount of benefit is more than your freepay, your Jobcentre Plus office or social security office will deduct tax from your benefit before it is paid to you. Freepay is the amount of money you can have before tax is deducted.

If you have been paid taxable Incapacity Benefit, your Jobcentre Plus office or social security office will send you a P45 at the end of your claim, showing the amount of taxable benefit you have had, and any tax that has been deducted.

If you would like more information, or you need help, you can contact any Tax Office or Tax Enquiry Centre. You can find the address and telephone number listed in the business section of the phone book under **HM Revenue & Customs**. It may be easier for you to get in touch with your own Tax Office if you:

- already pay tax under Pay As You Earn (PAYE) on a pension
- or you are still getting paid by your employer
- or you are self-employed and your business is not continuing to trade.

If Incapacity Benefit is your only income or your main income, you can get further information from HM Inspectors of Taxes, the address is on page 58.

Other benefits and entitlements

There are a number of other benefits that you may be entitled to:

- Income Support
- Disability Living Allowance
- Pension Credit
- Help with health costs
- Housing Benefit
- Council Tax Benefit
- Tax Credits.

Income Support

If you do not have enough money to live on, and you are 16 or over but under 60, you may be able to get Income Support. The amount you get will depend on your circumstances. You may qualify for Income Support as well as Incapacity Benefit. To get more information and details of how to claim, get in touch with your Jobcentre Plus office or social security office. Look for Jobcentre Plus or social security in the business numbers section of the phone book.

Disability Living Allowance

If you are aged under 65 and need help looking after yourself or getting around because of severe physical or mental disability, you may be entitled to Disability Living Allowance. For more information, contact your Jobcentre Plus office or social security office, phone the Benefit Enquiry Line on 0800 88 22 00, visit the DWP website at **www.dwp.gov.uk**, or see leaflets **SD1** *Sick or disabled* or **DS704** *Disability Living Allowance*.

Pension Credit

You may be entitled to Pension Credit if you or your partner are aged 60 or over. You can apply for Pension Credit by contacting The Pension Service on 0800 99 1234, or textphone for people with hearing difficulties on 0800 16 90 133, or for further information and details on how to apply see **PC1L** *Pension Credit*.

Help with health costs

Health benefits are:

- free NHS prescriptions
- free NHS dental treatment
- free NHS sight test
- vouchers towards the cost of glasses or contact lenses
- free NHS wigs and fabric supports
- refunds of necessary travel to receive NHS treatment under the care of a consultant.

You may be entitled to some or all of these things because of age, medical condition or because you or your partner get:

- Income Support
- or Income-based Jobseeker's Allowance
- or Pension Credit which includes the guarantee credit
- or you are a person named on or a person entitled to an NHS Tax Credit Exemption Certificate.

If you are on a low income, you may be able to get some of the health benefits free or at a reduced cost. If you would like to find out if the scheme can help you, pick up an HC1 form (claim form for help with health costs) from a Jobcentre Plus office or NHS hospital. Your dentist, GP surgery or optician may have copies too, or ring

08701 555 455 for one. If you have speech or hearing difficulties, a textphone service is available on **0800 102 870** from 8.00am to 6.00pm.

Housing Benefit (help with your rent)

Whether you are working or not, you can apply for Housing Benefit. If you are on Income Support or the guarantee element of Pension Credit and you qualify for Housing Benefit, you will automatically qualify for the maximum amount of Housing Benefit. If you do not get Income Support, the amount you get will depend on how much money you get each week, how much rent you pay, and the size of your family. For more details, see leaflet *GL16 Housing Benefit – Help with your rent* or contact your local council (the address can be found in the phone book).

Council Tax (help with your Council Tax)

If you are on a low income, you may be able to get help with paying your Council Tax. This help is called Council Tax Benefit. You can claim it whether you are working or not.

If you are on Income Support or the guarantee element of Pension Credit, you may qualify for the maximum amount of Council Tax Benefit. This is the full amount of Council Tax that your council asks you to pay. If you are not on Income Support, what you get will depend on how much money you have coming in every week, the size of your family, how much savings you have and the level of Council Tax in your area. For more details, see leaflet **GL17** *Help with your Council Tax* or contact your local council (the address can be found in the phone book).

Child Tax Credit

This is a payment to support families with children and is payable regardless of whether the adult(s) in the family are in work.

Working Tax Credit

This is a tax credit to top up the earnings of working people. It will extend support to some adults without children or a disability and it will continue to include help with the costs of childcare. Both of these new tax credits are administered by and claimed from HM Revenue & Customs.

Tax Credits information

To find out more about Child Tax Credit and Working Tax Credit visit: www.hmrc.gov.uk/taxcredits You can claim online too.

If you would rather ring HM Revenue & Customs, call their Helpline on the following numbers:

England, Scotland and Wales **0845 300 3900**

Northern Ireland only **0845 603 2000**

If you need help or a form in Welsh, please phone **0845 302 1489**

Textphone for people with hearing or speech difficulties:

England, Scotland and Wales **0845 300 3909**

Northern Ireland only **0845 607 6078**

Lines open: 8am–8pm seven days a week.

National Insurance (credits while you are sick)

You will usually get a National Insurance credit for each full week while you are incapable of work. A full week is Sunday to Saturday.

You will not get a credit if:

- you are incapable of work for part of a week unless you are claiming Jobseeker's Allowance (JSA) for the rest of the week
- or
- you are a married woman with reduced contribution liability
- or
- for any weeks in, or after, the tax year in which you reach State Pension age.

Credits may help you qualify for all future contributory benefit claims including basic State Pension. In some circumstances, however, you will need to have paid some contributions to get the benefit as you cannot get the benefit based on credits alone.

If you claimed benefit before 13 April 1995

If you were getting Invalidity Benefit on 12 April 1995, you were automatically transferred onto Incapacity Benefit. These claims are known as 'transitionally protected'.

If you were receiving Invalidity Benefit on 12 April 1995, the following provisions apply:

- Invalidity Benefit became long-term Incapacity Benefit
- benefit is not taxable

- all components payable prior to 13 April 1995 remain payable
- people under State Pension age receiving Additional Pension will continue to receive Additional Pension, but it is frozen at 1994 rates.

Transitional protection will not apply to any further claim if your entitlement to Incapacity Benefit stops for more than 8 weeks, unless there is a link to Disabled Person's Tax Credit, or a training course, or you are entitled to a 52 week link to Incapacity Benefit.

If an adult dependant increase stops for a continuous period of more than 8 weeks starting on or after 16 February 1995, transitional protection for adult dependant increase will cease to apply.

For more information about transitional protection, contact your local Jobcentre, Jobcentre Plus office or social security office. For an explanation, see page 40.

Disputing and appealing against a decision

Disputing a decision

You have the right to dispute any decision made by a decision maker. If you are not satisfied with a decision, you can ask for an explanation of why the decision was made. If you are still not satisfied with the outcome, the decision maker will look again at the decision. The decision maker will also consider any further evidence you submit in support of your request.

Appeals

You have the right to appeal to an independent appeal tribunal against most decisions made by a decision maker.

You can appeal to an independent appeals tribunal if you disagree with the decision made about your ability to work.

Once your case has been looked at again, if you are not satisfied with the outcome, you can appeal to an independent appeal tribunal if you disagree with the decision.

An appeal tribunal is a panel of two people who are not from the Department for Work and Pensions. They will look again at the decision about your claim. The panel comprises of a legally qualified person and a medically qualified person. Both people will be involved in deciding whether you are capable of work.

If your appeal is allowed and the decision is not challenged by the Secretary of State, you will get Incapacity Benefit again, together with the money you would have received during the time you were waiting for your appeal to be heard.

For a detailed explanation about disputes and appeals see **NI260DMA** *A guide to disputes, supersession and appeal*. You can get this from your local Jobcentre, Jobcentre Plus office or social security office.

How to appeal

If you want to appeal, you should fill in the form in leaflet GL24 *If you think our decision is wrong*. You can get this leaflet from any Jobcentre, Jobcentre Plus office or social security office. Please send it to your Jobcentre, Jobcentre Plus office or social security office within one month of the date of the letter telling you if you are entitled to benefit or not.

Further information

Work Focused Interviews

Depending on where you live, you may be required to take part in a Work Focused Interview with a Personal Adviser. Taking part in a Work Focused Interview is a condition of continuing to receive the full amount of Incapacity Benefit and certain other benefits, for example Income Support, if you are incapable of work.

Work Focused Interviews for Partners

Where you get an increase of benefit for your partner (other than a partner aged 60 or over), your partner may be required to take part in a Work Focused Interview with a Personal Adviser.

The Work Focused Interview will take place only after you have been claiming Incapacity Benefit for 26 weeks or longer. If your partner is required to take part they will be notified.

At the Work Focused Interview

A Personal Adviser will discuss a range of topics with your partner, which may include:

- your partner's current or future job prospects
- training to help bring your partner's work skills up to date
- help and advice if your partner is considering moving into work, increasing the number of hours that they already work or changing jobs.

Any of the options your partner discusses with their Personal Adviser at the Work Focused Interview are voluntary. Your benefit may be reduced if, without good reason, your partner does not take part in their Work Focused Interview. If your partner takes part in a Work Focused Interview at a later date, your benefit will be fully reinstated with effect from that date.

Statutory Sick Pay

Introduction

Statutory Sick Pay (SSP) is paid by employers to employees. It is payable up to a maximum of 28 weeks and employees must be aged 16 or over and under 65 on the first day of incapacity.

To get SSP you must be incapable of work under your contract of employment for 4 or more days in a row. This is known as a Period of Incapacity for Work (PIW). You must also satisfy the conditions for payment.

SSP is only paid for qualifying days (QDs). These are usually the days that you would normally work. You must have at least one QD in each week. SSP is not paid for the first three QDs in any period of sickness unless it falls within a linking period. These are known as Waiting Days (WDs).

If you have been sick for two spells or more of at least 4 days in a row with 8 weeks or less between them, they will be counted as one PIW. This means that waiting days will not be served for the second period of sickness.

Special rules apply if you were getting Incapacity Benefit or Severe Disablement Allowance before your return to work. See page 41 (Breaks in entitlement to Incapacity Benefit) and page 42 (52 week benefit protection).

Eligibility

To qualify for SSP, you must:

- have been employed by your employer under a contract of service. Even if it is your first day of work with a new employer and you become sick part-way through the day, you may still be entitled to SSP; and
- earn enough, on average, to be relevant for National Insurance (NI) purposes.

If you satisfy both these rules, you are usually entitled to SSP from your employer. You will find the current rate in leaflet GL23 *Social security benefit rates*.

Your earnings are averaged over an 8-week period before your sickness began. This period may vary slightly depending on whether you are paid weekly or monthly, or at other intervals. If you have just started your job, the calculation may be different. Contact your employer for more information.

Who is your employer?

Your employer is someone who is liable to pay the employer's share of your Class 1 NI contributions (or would do if you earned enough). You do not have to have a written contract of service. And your employer does not actually have to have paid any NI contributions for you.

If you have more than one employer (or more than one contract with the same employer), you may be entitled to more than one lot of SSP.

Employers can choose not to operate the rules and record-keeping provisions of the SSP scheme if they pay wages or occupational sick pay at or above the SSP rate for days of sickness. If employers pay occupational sick pay (OSP) under a private scheme in addition to, or instead of, SSP, they are entitled to set their own rules and conditions of entitlement for OSP purposes.

How do I claim?

Telling your employer you are sick

You should tell your employer that you are sick as soon as possible. Your employer may have their own rules for when and how you tell them you are sick (please check with them).

However, they cannot insist that you tell them:

- in person;
- earlier than the first qualifying day or by a set time on that day;
- on a special form;
- on a medical certificate; or
- more than once a week during your sickness.

Your employer may not pay you SSP if you tell them you are sick more than 7 days after you are first sick, unless you have a good reason.

Evidence that you are sick

Your employer cannot ask you to give them a sick note from your doctor for the first 7 days that you are sick. They may ask you to fill in a self-certificate of their own or form SC2, which you can get from your GP's surgery, your nearest Revenue office or the HM Revenue & Customs website: www.hmrc.gov.uk/forms/sc2.pdf

Your employer will tell you what evidence you should give them after 7 days; this is usually a sick note from your GP.

Ineligibility for SSP

- You are under age 16.
- You are a foreign-going mariner.
- You are over age 65 on the first day of incapacity.
- You have had, with the same employer, a series of linked spells of sickness over a period of 3 years, which finished less than 8 weeks ago.
- Your contract of service ends.
- You are a serving member of the Armed Forces.
- Your employer has no place of business in Great Britain or Northern Ireland – you can claim Incapacity Benefit instead from a Jobcentre Plus office or social security office.
- You have had 28 weeks' SSP already.
- You have not yet done any work for your new employer.
- You have been receiving Incapacity Benefit or Severe Disablement Allowance within 8 weeks of being sick or within 52 weeks.
- You are away from work because of a trade dispute.
- You are in legal custody. Legal custody means being kept in custody by the police or being in prison. It does not include helping the police voluntarily with their enquiries or if you are on bail.
- You are entitled to Statutory Maternity Pay (SMP) or Maternity Allowance (MA) for 26 weeks. If you are not entitled to SMP or MA, you cannot get SSP for 18 weeks starting from:
 - the Sunday of the week your baby is born; or

- the Sunday of the week you are sick from work for a pregnancy-related illness.

SSP amount

The current rate for SSP is £68.20. It is paid at the same time and in the same way as your normal earnings.

Further information

For more information, see the HM Revenue & Customs website at **www.hmrc.gov.uk**.

If you are an employer, see the HM Revenue & Customs website (**www.hmrc.gov.uk/helpsheets/e14.pdf**) or get in touch with your local Revenue office for more information. Alternatively, phone the Employers Helpline on **0845 7 143 143**.

This guide went to press in October 2005. Changes to the law after that date may affect some of the rules explained here. In particular, the Civil Partnership Act 2004 is expected to come into force on 5 December 2005. This will change the way we treat same-sex couples. When that happens, people of the same sex who have formed a civil partnership will be treated, as far as possible, in the same way as a married couple. Same-sex couples who are living together as if they were civil partners (but who have not formed a civil partnership) will be treated in the same way as unmarried couples.

Rates of benefits

Rates of benefits are published each year in Social Security Up-rating Regulations which are approved by Parliament – usually in October or November each year. Benefits are usually up-rated in April, at the beginning of each financial year.

Details are in leaflet GL23 *Social security benefit rates*. You can get this from your social security office.

Guides and leaflets and where to get them

All the guides and leaflets mentioned in this guide are free of charge. Social security guides and leaflets, and some others, are available from The Pension Service, your Jobcentre Plus office or social security office.

Some detailed information guides are on our website, rather than in printed form. For your nearest office look for the advert under **Jobcentre Plus, Jobcentre** or **social security** in the business numbers section of the phone book.

Many of the guides and leaflets mentioned in this guide are also available online. You can get more information from our websites: **www.jobcentreplus.gov.uk** and **www.dwp.gov.uk**. To contact us by email, see the Contact Us section of the websites.

Some guides and leaflets are also in Post Office® branches, Jobcentre Plus offices or Jobcentres. Guides and leaflets on Housing Benefit and Council Tax Benefit are also available from your local council.

Community advisers who belong to an organisation that gives benefits information to the public can join the Department for Work and Pensions Publicity Register (DWPPR). The DWPPR gives advisers access to information from the DWP and its Agencies. To join, call **0845 602 4444** or fax **0870 241 2634** (9am–6pm, Monday to Friday). Calls are charged at local call rates based on current tariffs from BT landlines. Calls from mobile phones and other networks may differ.

Detailed information

Other guides, such as this one, and leaflets give detailed information on particular benefits or benefit areas. They are intended for professional and voluntary advisers and for members of the public who want to know more about social security benefits.

- DB1 *A guide to Industrial Injuries Scheme benefits*
- HB5 *A guide to Non-Contributory Benefits for Disabled People and their Carers*
- IS20 *A guide to Income Support*
- NI17A *A guide to maternity benefits*
- NI260DMA *A guide to dispute, supersession and appeal*
- NP45 *A guide to Widow's Benefits*
- SB16 *A guide to the Social Fund*

Leaflets referenced in IB1

The following leaflets are referenced in this guide:

- GL17 *Help with your Council Tax*
- PM2 *State pensions – Your guide*
- PM9 *State pensions for carers and parents – Your guide*
- PC1L *Pension Credit*
- GL12 *Going into hospital*
- GL14 *Widowed?*
- GL21 *A helping hand for benefits*
- GL23 *Social security benefit rates*
- GL24 *If you think our decision is wrong*
- HC11 *Are you entitled to help with health costs?*
- IB214 *The Personal Capability Assessment*
- JSAL5 *Helping you back to work*
- GL16 *Housing Benefit – Help with your rent*
- SD1 *Sick or disabled*
- DS704 *Disability Living Allowance*

Useful addresses

HM Revenue & Customs

Leicester and Northants IBTO
Attenborough House
109–119 Charles Street
Leicester LE1 1FZ

Telephone: 0116 242 7200
Textphone: 0116 251 3764

Index

Abroad, going	36, 39
Additional pension	40, 50
Adult dependants	29
Agents	44
Appealing against a decision	50
Appointees	44
Approved doctors	33, 34
Ataxia	35
Attendance Allowance	41
Benefit protection	42
Benefit year	5
Benefits	
<i>based on National Insurance contributions</i>	40
<i>breaks in entitlement to Incapacity Benefit</i>	41
<i>effects of, on increased benefit for dependants</i>	32
<i>other benefits</i>	46
<i>rates of</i>	56
Bereavement benefits	20, 21, 24
Blind	35
Bonuses	31
Brain damage	35
Cardio-respiratory function impairment	35
Certificates	12, 13, 24
<i>Med 3</i>	13
<i>Med 4</i>	13, 34
<i>Med 5</i>	13
<i>Med 10</i>	13
Changes to your circumstances	36–41
Child Benefit	27, 30, 32
Child care charges	32
Child Tax Credit	48
Children, extra benefit for	29
Circumstances, changes to	36–41
Claim forms and packs	
<i>SC1</i>	10, 11, 12
<i>SSP1</i>	10, 11
Claiming	10, 11, 29
Claims before 13 April 1995	45, 49

Classes of National Insurance contributions	14
Closed certificates	13
Collecting payment, difficulties	44
Condition improving	36
Constant Attendance Allowance Rate	35
Contribution-based Jobseeker's Allowance	40
Council Tax	35, 46, 48
Custody	36, 40
Decisions, disputing	50
Dementia	35
Dependants	29
<i>adults</i>	29, 30
<i>effect of benefits on extra benefit for</i>	32
<i>in hospital</i>	39
<i>joining or leaving household</i>	36
Detained by the police	36, 40
Disability Living Allowance	28, 41, 47
Disability Premium	35
Disputing a decision	50
Doctors, approved	33, 34
Earnings	
<i>effect of on extra benefit for dependants</i>	31
<i>qualifying</i>	14, 15
<i>what counts as</i>	31
Effect of other benefits on Incapacity Benefit	40
Employed people	11
Employee's primary threshold.....	5, 14
Employment rehabilitation	42
Entitlement	9, 11
<i>effect of changes to your circumstances on</i>	36
<i>entitlement following a period abroad</i>	19
<i>entitlement following a period in work or training</i>	18
<i>while pregnant</i>	24
<i>widows</i>	19–24
Examinations, medical	30, 32, 33–36
Exclusion forms SSPI	10
Extra State Pension	27
First seven days of incapacity	12
Forms	
<i>exclusion forms SSPI</i>	10
<i>IB50</i>	33–34

Freepay	45
Friendly Societies	41
Going back to work	41
Government training schemes	42
Green sick notes	13
Guides	56
Help with health costs	47
Higher Incapacity Benefit	25, 26
Hospitals	36, 39
Housing Benefit	35, 43, 46, 48
IB50 form	33, 34
Illnesses	
<i>Mental</i>	35
<i>Terminal</i>	28, 35
Immune deficiency state	35
Impairments	
<i>of cardio-respiratory function</i>	35
<i>of function of the brain</i>	35
<i>of function of the nervous system</i>	35
Improvements to your condition	36
Incapacity Age Addition	28
Income Support	9, 46
<i>and Council Tax Benefit</i>	46, 48
<i>and Disability Premium</i>	35
<i>with Incapacity Benefit</i>	40
Income Tax	32
Increased benefit	29–31
Independent appeals tribunals	50
Industrial Injuries Benefit	32, 35
Industrial Injuries Disablement Pension	41
Inflammatory polyarthritis	35
Invalidity Benefit	6, 9, 49
Involuntary movements	35
Jobseeker's Allowance	35, 40, 49
Job Broker service	38, 42
Job grant.....	41
Law	8
Leaflets	56
Legal custody	40

Long-term Incapacity Benefit	25, 26, 27
<i>Age Addition</i>	28
<i>Tax</i>	45–46
<i>Training</i>	42
Lower Incapacity Benefit	25
Managing own affairs, difficulties	44
Maternity Allowance	6, 24
Medical certificates	10, 12, 24
Medical condition, improving	36
Medical evidence	12–13
Medical examinations	30, 32, 33–36
Mental illnesses	36
Methods of payment	40, 43–44
Muscle wasting diseases	35
National Insurance (credits while you are sick)	49
National Insurance contributions	14–15, 32
<i>benefits based on</i>	40
<i>people who have not paid enough</i>	9, 20
Nervous system, damage to	35
Neurological diseases	35
Northern Ireland	8
Occupational pensions	32
Occupational Sick Pay	41
Open certificates	13
Open sick notes	13
Other benefits	40–41
Overtime	31
Own Occupation Test	33
Paralysis	35
Paraplegia	35
Payment	43–44
Pension age	40
Pension Credit	9, 40, 46, 47
Pension income.....	26
<i>The effect of pension income on any extra benefit</i> <i>for dependants</i>	32
Pensions	
<i>Occupational</i>	32
<i>Personal</i>	32
<i>State</i>	14, 27
<i>War</i>	32, 35, 41

People who are both self-employed and employed	11
Period of incapacity for work	6
Permitted work.....	38, 39
<i>Notification procedures</i>	39
Persistent vegetative state	35
Personal Capability Assessment	13, 33–36
Personal pensions	32
Pink sick notes	13
Police custody	36, 40
Polyarthritis	35
Pregnancy	24
Prison	36, 40
Progressive neurological diseases	35
Qualifying earnings	14–15
Qualifying for Incapacity Benefit	14
Rates of benefits	56
Rates of Incapacity Benefit	25–26
Reaching State Pension age	40
Registered blind	35
Regular tips	31
Rent, help with	48
SCI claim forms and packs	10–12
Self-employed pensions	32
Self-employed people	11, 14
Short-term (higher) Incapacity Benefit	26, 28, 29, 42, 45
Short-term (lower) Incapacity Benefit	25, 29
Sick, for more than 28 weeks	10
Sick notes	
<i>Closed</i>	13
<i>Med 3</i>	13
<i>Med 4</i>	13
<i>Med 5</i>	13
<i>Med 10</i>	13
<i>Open</i>	13
Sick Pay see Statutory Sick Pay and Occupational Sick Pay	
Sickness Benefit, on 12 April 1995	49
Social Security Up-rating Regulations	56
Special rules	28
Spouse, extra benefit for	29, 30
SSPI claim form and pack	10–11
Starting work	41–43

State pensions	14, 25, 27, 28
State Pension age	9, 11, 27, 36, 40, 49
State Pension rate	27, 40
State Second Pension	27
Statutory Maternity Pay	10, 25
Statutory Sick Pay	10–11, 40
<i>definition</i>	6
<i>for 28 weeks</i>	11
<i>Incapacity Age Addition</i>	28
Tax	45, 46
Tax Credits	46, 49
Terminal illnesses	28, 35
Tetraplegia	35
Trade Unions	41
Training	42
Transitional protection	6, 9, 40, 44, 49
Travel expenses	34
Unemployability Supplement	40
Unemployed people	11
Vegetative state	35
Voluntary National Insurance contributions	14
Voluntary work	37
Waiting days	6, 25
War Pensions	32, 35, 41
White sick notes	13
Widow's Pension	21
Widowed Mother's Allowance	20, 24
Widowers	12, 21
Widows	12, 20–24
Work Based Training For Adults	42
Work	
<i>going back to</i>	41
<i>permitted</i>	38, 39
<i>starting</i>	41–43
<i>voluntary</i>	37
<i>while claiming benefit</i>	36–37
Working Tax Credit	48
Yellow sick note	13
Youth provisions	12, 16–19, 25, 26

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IB1 from October 2005
Replaces edition of April 2005
Issued by DWP Communications (Leeds)