



The Social Security Benefit (Persons Abroad) Amendment Regulations 1994

(S.I. 1994 No. 268)

Report by the Social Security Advisory Committee under
Section 174(1) of the Social Security Administration Act
1992 and the statement by the Secretary of State for Social
Security in accordance with Section 174(2) of that Act.

*Presented to Parliament by the Secretary of State for Social Security
by Command of Her Majesty.
February 1994*

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Statement by the Secretary of State for Social Security in accordance with Section 174(2) of the Social Security Administration Act 1992

Introduction 1. A proposal to amend regulation 2 of Social Security (Persons Abroad) Regulations 1975 was referred to the Social Security Advisory Committee on 3 November 1993 in accordance with section 172(1) of the Social Security Administration Act 1992. The regulation provides for payment of Sickness Benefit, Invalidity Benefit, Severe Disablement Allowance, Maternity Allowance and Unemployability Supplement during a temporary absence from Great Britain. (It does not apply to absence within the EC or in a country with which the UK has a relevant bilateral social security convention.)

2. We have considered the Committee's report carefully and decided, for the reasons given in the following paragraphs, to proceed with the original proposals.

Period of payment outside Great Britain 3. The Committee accepted the need to limit the period during which payment of the above benefits may continue during a temporary absence from Great Britain, but they were unable to support the proposal that the benefits should be payable for up to 26 weeks. The Committee considered that the limit should be kept broadly in line with the long-standing practice, in the absence of any fixed limit, of paying for up to 52 weeks as long as the absence remained temporary.

4. We believe that the practice of paying for up to a year no longer reflects the needs of people who go abroad while incapable of work. It dates from a time when absences were mainly for treatment in sanatoria in Europe, where long term rest was often necessary and there would have been little difficulty in obtaining evidence of the claimant's continuing incapacity and prospects of return to GB. Today, lengthy absences arise more commonly in order to return to a person's country of origin for family reasons, to visit family who have emigrated, or to obtain traditional medical treatment. We believe that 26 weeks offers a sufficient period for such absences and matches the period for which Disability Living Allowance and Attendance Allowance are generally payable abroad.

5. The Committee have commented that there is no evidence of greater difficulty in obtaining *satisfactory* medical evidence that the beneficiary is incapable of work, compared with countries where incapacity benefits are paid indefinitely. The latter countries are those in the EC and those with which the UK has relevant bilateral conventions. In those countries we draw up administrative arrangements, explain our medical criteria for continuing payment of benefit and invariably have access to medical examination of our beneficiaries in the other country. Clearly such arrangements would be much more difficult in all the countries of the world where incapacity benefits can be paid but with which the UK has no social security agreement. And it has to be borne in mind that even where a country has a benefit broadly equivalent to UK incapacity benefits, entitlement conditions are often quite different, which may lead doctors to apply wrong criteria when issuing medical evidence of incapacity for UK benefits.

6. The Committee have said that there would be little in the way of savings to justify the change. However, the principal purpose of the provision is not as a savings measure but rather to ensure that benefits for incapacity for work are payable abroad for an appropriate fixed period, in line with that for which disability benefits are payable.

7. The Committee would like to see research conducted into the reasons why people receiving incapacity benefits spend long periods abroad. At the moment, we only have such information in relation to individual claims. We are looking at whether to undertake research in this area during 1994/95. A final decision will be made when examining the Department's research priorities. We do not believe that the prospect of research can justify a delay in implementing this change, taking into account that the great majority of people who go abroad at present while receiving incapacity benefits do so for less than 26 weeks.

Conclusion 8. We are grateful to the Committee for their consideration of this proposal and for their comments. While we have considered fully the views expressed in the Committee's report, we consider that we should proceed to lay these regulations before Parliament.

Report of the Social Security Advisory Committee made under Section 174 of the Social Security Administration Act 1992 on The Social Security Benefit (Persons Abroad) (Amendment) Regulations 1993

Introduction 1. We give below our report on the draft of these regulations which seek to introduce a fixed period of “temporary absence” abroad for the purposes of the continuing payment of incapacity benefits (sickness benefit, invalidity benefit, severe disablement allowance, maternity allowance and unemployability supplement) being a period not exceeding 26 weeks. The draft regulations provide exceptions to this general rule in respect of members of the families of Her Majesty’s Forces who have been posted abroad and for those people who are also in receipt of attendance allowance or disability living allowance whose absence abroad for a period exceeding 26 weeks is for the purposes of medical treatment. Since the draft regulations were first referred to us, the Department have advised the Committee that they wish to extend the exception for families of members of Her Majesty’s Forces to include steprelatives. The draft regulations were referred to us on 3 November. As the issue was straightforward, we decided not to publish the draft but to use our power under the 1992 Act to report on the draft without public consultation.

Scope and Purpose of the Regulations 2. The scope and purpose of the regulations were described for us in a note provided by the Department of Social Security (Annex A). The proposed amendment would apply to people who are in receipt of an incapacity benefit in Great Britain and then go abroad temporarily. If the absence, when it begins, is to be permanent, regulations already provide that payment of incapacity benefit ceases forthwith. “Abroad” in this context means that the person is going to a country other than another EC member state or to a country with which Great Britain has no bilateral convention on social security including incapacity benefits. Under the proposals temporary absence would be defined as not more than 26 weeks. This would bring it into line with the long-standing rules for attendance allowance which now also apply to disability living allowance.

Northern Ireland 3. A separate but identical regulation is proposed for Northern Ireland but, for practical purposes, where Great Britain is used in this report, it also includes Northern Ireland as the two schemes are treated as one under the legislation.

Background 4. The rules for the payment of incapacity benefits abroad have been in existence, largely unchanged, for many years. In respect of sickness benefit, payment for a temporary absence can only be made if the reason for the absence is to seek treatment. Once incapacity has lasted for 26 weeks in Great Britain, payment may be made for a temporary absence abroad with no restriction related to the reason for the absence.

5. The period which can be treated as “temporary absence” has not hitherto been defined for this purpose but has been generally accepted to be a period not exceeding 52 weeks. However, a recent Commissioner’s decision held that “temporary” simply means “not permanent”. Whilst, in terms of ordinary

English usage, this may be regarded as a reasonable proposition, it prompted the Department to seek to introduce a fixed period of temporary absence during which benefit could remain payable. In doing so, they decided to align it with the rule used for attendance allowance (which has been in force since the 1970s) and disability living allowance. That rule provides that payment for temporary absences abroad should be made for 26 weeks unless the absence was specifically for the purpose of seeking treatment abroad.

6. The Committee was entirely sympathetic to the Department's need to limit the rather wide effect of the Commissioner's decision but were concerned that, in an attempt to align the rules, the period for which incapacity benefits would be paid abroad during a temporary absence would be reduced by a half.

Contributory Benefits

7. Since the absence abroad provisions apply mainly to absences which have already lasted for 26 weeks in Great Britain, the most likely benefit to be affected is invalidity benefit. Entitlement to IVB is via National Insurance contributions. Some members of the Committee felt strongly that there should be no limit to the period during which people can receive a contributory benefit abroad, provided they continue to satisfy the primary condition—eg that they remain incapable of work because of sickness. The Committee recognised the clear distinction between retirement pensions, where continuing entitlement depends simply on the person remaining alive and incapacity benefits where continuing acceptable medical evidence is required. Equally, the existing rules on payments during temporary absence have been in existence for many years. Most forms of insurance carry limitations on the payment of benefits in certain circumstances. In principle therefore it would not be unreasonable to formalise the period to one which reflected the current practice. But members did not believe that there were convincing arguments for changing the period from 52 weeks to 26 weeks.

Alignment

8. For a number of years the periods during which payments could continue during a temporary absence for attendance allowance and for the incapacity benefits have been different from each other. The reasons for the difference are not altogether clear. There is an administrative simplicity in aligning rules so that they apply equally to broadly similar benefits but we consider that, if in doing so, the period for incapacity benefits is thereby halved, that is too high a price to be paid for the sake of simplicity.

Medical Evidence

9. It was put to us by the Department that obtaining acceptable medical evidence of continuing incapacity is often extremely difficult when the claimant is "abroad". But we were also told that it can also be difficult in some EC member states and in countries with whom there is a bilateral convention and in neither of these instances would the proposed limitation apply. Whilst we do not doubt that such difficulties do exist, they have not been sufficient to warrant a change in the rules in past years and will continue to be a problem in many countries. We do not therefore regard this as a sufficient reason to justify the change.

Numbers of People Affected

10. The Department's note indicates, at paragraph 8, that each year about 1500 people in receipt of an incapacity benefit have temporary absences abroad for 26 weeks or more of whom only 2–300 remain abroad for over a year. Little is known about why people spend periods abroad in excess of six months on a temporary basis when they are long term sick and what conditions their return to Great Britain. It is possible that, in the majority of cases, they stay abroad for as long as their incapacity benefit is paid and return when it stops.

11. If one speculates that a change in the rules would mean a change in behaviour so that the majority would return after 26 weeks, then there would be little in the way of benefit savings to justify the change. We also note the absence of linking rules which means that, in theory at least, a person could return to Great Britain at the end of 26 weeks and leave again the following day to receive the incapacity benefit for a further 26 weeks and so on indefinitely. In practice, however, we understand that the adjudication authorities may conclude that such a pattern of absence was not temporary but effectively permanent.

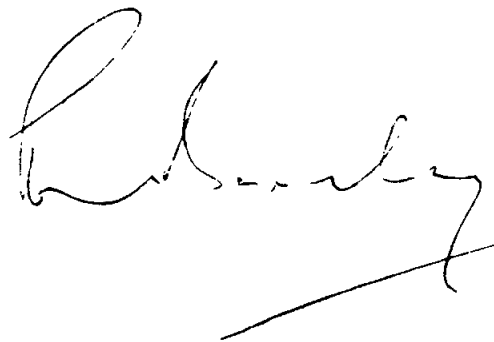
Flexibility 12. Even if the period is fixed by regulation at 52 weeks, this would remove a discretion which the adjudication officer has currently to allow benefit to continue for a brief period longer where it is clear that the person will be returning to Great Britain shortly. This is a useful flexibility which would disappear with a fixed period definition. But, if the rule were to be fixed by regulation at 52 weeks, we would regard the loss of flexibility as a minor matter, bearing in mind that wherever the line is drawn someone will fall just outside it. It seems likely that a period of absence abroad can be arranged so as not to lose benefit entitlement and, even if payment stops, entitlement would not be lost provided a return to Great Britain was made within the eight week linking period.

Conclusion and Recommendation

13. We accept the need to provide a finite period during which payment may continue during a temporary absence abroad following the Commissioner's decision that temporary is any period which is not permanent. But we can find no overwhelming reason why the period for incapacity benefits should be changed from the 52 weeks which has customarily applied for many years, to 26 weeks to align with attendance allowance and disability living allowance. There is no evidence that the problems of obtaining acceptable medical evidence are any greater than in other countries where the proposed change would not apply. Depending on behavioural changes affecting the point at which people would return from abroad, which can only be speculated on, it seems unlikely to us that large numbers of people will remain abroad for longer than six months without their incapacity benefit and with the loss of entitlement to IVB once the eight week linking rule is broken. Therefore any savings are likely to be small.

14. We understand from the Department that they are considering conducting research into the reasons why people spend prolonged periods outside Great Britain when they are in receipt of an incapacity benefit. It appears that the original intention was to allow people the opportunity to seek treatment in a sanatorium or similar institution. Over the years the purpose has clearly changed and we welcome the idea of research. However, we do not consider that any radical changes should be made to the rules until research makes the possible effects clearer. We therefore **recommend** that the amending regulations should be proceeded with **but that the period of temporary absence abroad during which incapacity benefits can remain in payment is defined as a period not exceeding 52 weeks, rather than the 26 weeks proposed in the draft which was referred to us.** Whilst this would remove some flexibility from the present arrangements, it would broadly continue the present rules whilst solving the immediate problem created by the Commissioners decision.

15. We are grateful to officials of the Department for their help in the preparation of this report.

A handwritten signature in black ink, appearing to read 'P M Barclay', with a long horizontal stroke extending to the right.

P M Barclay

Annex A

Note for the Social Security Advisory Committee from the Department of Social Security

AMENDMENT TO REGULATION 2 OF THE SOCIAL SECURITY (PERSONS ABROAD) REGULATIONS 1975

Current Position *Incapacity Benefits**

1. The Social Security Act imposes a disqualification for payment of benefit abroad, except where regulations provide otherwise. Regulation 2 of the Persons Abroad Regulations lifts the disqualification for payment of incapacity benefits where, among other conditions, the absence is temporary. Temporary is not defined in legislation but the effect of case law has been that payment is generally allowed for up to 12 months.

Disability Benefits

2. This contrasts with Disability Living Allowance (DLA) and Attendance Allowance (AA) which are payable for up to 26 weeks of a temporary absence from Great Britain. They may be paid for longer in the following circumstances:—

- (a) For as long as medical treatment is the reason for the absence
- (b) Where a person is an immediate member of the family of a serving member of the forces, for as long as they are absent only because they are accompanying that member.

Proposed Change

3. The proposed amendment would permit payment of incapacity benefits for up to 26 weeks of a temporary absence from Great Britain (unless EC regulations or a bilateral social security convention apply and allow payment for a longer period).

4. There would be two exceptions. A person who was also receiving DLA or AA because their absence was for medical treatment (paragraph 2(a) above) could also receive an incapacity benefit for more than 26 weeks. And a member of a forces family could continue to receive an incapacity benefit in the circumstances described in paragraph 2(b).

Detail *The purpose and effect of the proposed regulation*

5. It is intended that incapacity benefits should be payable during a reasonable absence from Great Britain, but not, generally, throughout a prolonged period abroad. As the regulation stands, changes to the interpretation of “temporary” could result in benefit being paid indefinitely. A maximum period for which incapacity benefits can generally be paid abroad would more effectively achieve the intention of paying temporarily.

6. The benefits most closely related to those for incapacity are DLA and AA, which are payable abroad as described in paragraph 2. We consider that the incapacity benefits should also be generally payable for up to 26 weeks of a temporary absence. This would allow a reasonable period for the purposes for which people would generally wish to travel abroad and would bring an element of commonality to the benefit rules.

7. The great majority of incapacity benefit claimants who go abroad do so for less than 26 weeks and would be unaffected by the change. However, they would know from the outset the maximum period for which their benefit could remain in payment.

*Sickness Benefit, Invalidity Benefit, Severe Disablement Allowance, Unemployability Supplement and Maternity Allowance.

8. At present, about 1500 beneficiaries each year go abroad for longer than 26 weeks and in about 300 cases the absences become prolonged, lasting for over a year. We do not know to what extent the length of absence is influenced by the period for which benefit remains in payment.

Background 9. When a person receiving an incapacity benefit leaves Great Britain, the Adjudication Officer (AO) decides whether the absence is temporary, taking into account case law derived from relevant decisions of the Social Security Commissioners.

10. At the end of 1992, a Commissioner held that the adjudication authorities were bound by the view of the judge in a Divisional Court case that “temporarily” should be given the meaning “not permanently”. The judge’s view departs from the longstanding case law on the meaning of temporary, derived from earlier decisions of Commissioners. Broadly, these held that an indefinite absence is not temporary, and that, except in special circumstances, where an absence has lasted for more than 12 months and there is no reasonable prospect of it ending, it is not temporary. Very few absences lasting 12 months are found to be in special circumstances, such as those described at paragraph 2 above. Before the Commissioner’s decision, most beneficiaries who had been abroad for a year were disqualified for payment at that stage.

11. The Chief Adjudication Officer and the Secretary of State are appealing to the Court of Appeal on the ground that the Commissioner erred in law in holding that the judge’s view about the meaning of “temporarily” was binding. However, regardless of the outcome of the appeal, we consider that regulation 2 of the Persons Abroad regulations should be amended to allow incapacity benefits to be paid for a specified period of time. This would bring them more into line with other benefits payable during a temporary absence from Great Britain. A list of these benefits is attached.

PERIOD FOR WHICH BENEFITS MAY BE PAID DURING A TEMPORARY ABSENCE FROM GREAT BRITAIN
(unless EC Regulations or a bilateral convention apply)

BENEFIT	GENERAL	EXCEPTIONS
Income Support —	4 weeks	(may be paid for up to 8 weeks if the claimant is accompanying a child who is abroad for medical treatment).
Invalid Care Allowance —	4 weeks	(without limit if the absence is temporary and for the purpose of caring for a person who is receiving Disability Living Allowance or Attendance Allowance, or if the absence is only because the claimant is, or is accompanying, a serving member of the forces; or is a mariner, an airman or is employed on the continental shelf).
Child Benefit —	8 weeks	(at the Secretary of State's discretion if the child is abroad for medical treatment; up to 3 years if the child is being educated abroad; for as long as the claimant or spouse is liable to UK tax while temporarily working abroad).
Disability Living Allowance and Attendance Allowance —	26 weeks	(at the Secretary of State's discretion if the absence is for medical treatment; for as long as the absence is only because the claimant is, or is accompanying, a serving member of the forces; or is a mariner, an airman or employed on the continental shelf).



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