

# Chapter 56 - Incapacity benefit

<b>Introduction</b> .....	56001
<b>Conditions of entitlement</b>	
General.....	56004
Contribution conditions	
What the DM decides.....	56007
Reference to HMRC.....	56008
Meaning of terms .....	56009
The first contribution condition .....	56010
Relaxation of the first contribution condition .....	56012
The second contribution condition .....	56013
The first and second contribution condition .....	56014
Late payment of contributions.....	56016
Linking periods of incapacity.....	56018
Person incapacitated in youth.....	56019
Extension of upper age limit to 25.....	56022
Full-time advanced or secondary education .....	56025
Vocational or work-based training .....	56026
Full-time education condition .....	56027
Over the upper age condition but previously entitled .....	56031
Previous entitlement terminated to take up employment or training.....	56032
Previous entitlement terminated because of absence from Great Britain .....	56033
IB for person incapacitated in youth and overlapping benefits.....	56034
IB for person incapacitated in youth and CHB.....	56035
People over pensionable age.....	56036
Increase for dependants .....	56038
Members of Her Majesty's Forces .....	56039
Entitlement to IVB due to an industrial accident or prescribed disease.....	56041
<b>Rate of benefit</b>	
General.....	56081

IBST.....	56085
Terminally ill or in receipt of highest rate care component of DLA .....	56090
People over pensionable age .....	56093
IBLT.....	56101
Age addition .....	56106
Qualifying date .....	56110
IB claimed during MAP.....	56115
Reduction during the maternity pay period and adoption pay period .....	56119
Reduction for councillors' allowances .....	56121
Councillors' allowances paid other than weekly .....	56126
Attendance allowance.....	56127
Basic allowance or special responsibility allowance paid annually .....	56128
Basic allowance or special responsibility allowance paid quarterly.....	56129
Basic allowance or special responsibility allowance paid monthly .....	56130
Basic allowance or special responsibility allowance paid for more than a week .....	56131
Disqualification .....	56132
 <b>Reduction of incapacity benefit by pension payments and PPF periodic payments</b>	
General.....	56134
Date from which deductions take effect .....	56137
Date from which changes in the rate of pension payment or PPF periodic payment take effect.....	56138
Priority of deductions from IB, adult dependency increase, child dependency increase .....	56139
Calculating the amount of the pension payment or PPF periodic payment.....	56140
Attachment orders, earmarking orders and pension sharing orders .....	56144
Calculating the weekly pension rate .....	56150
Amounts of less than a penny.....	56151
More than one pension or PPF periodic payment .....	56152
Disregarded pension payments and PPF periodic payments.....	56153

Transitional protection.....	56154
Meaning of pension payments.....	56161
Periodical payments and lump sums.....	56162
Occupational pension scheme.....	56163
Public service pension scheme.....	56164
Personal pension scheme.....	56168
Self-invested personal pensions.....	56175
In connection with the coming to an end of employment.....	56180
Pension Scheme.....	56187
Financial Assistance Scheme payments.....	56188
Meaning of PPF periodic payments.....	56189
<b>Calculation of days of incapacity</b>	
General.....	56250
Days which are or are treated as days of incapacity.....	56255
Maternity allowance period.....	56258
Maternity pay period and adoption pay period.....	56259
Disqualifications.....	56262
Night shift workers.....	56263
Mariners and airmen.....	56270
Mismatch of data resulting in an incorrect award of credits.....	56271
Meaning of official error.....	56272
Meaning of service provider.....	56273
Days which are not or are not treated as days of incapacity.....	56277
No claim.....	56278
Late claim.....	56279
Disqualifications.....	56280
SSP.....	56282
Maternity pay period and adoption pay period.....	56283
Her Majesty's Forces.....	56284
Definition of a period of incapacity for work.....	56285
SSP.....	56294
Her Majesty's Forces.....	56297

Training courses.....	56300
Linking periods of incapacity for work through training.....	56303
Linking periods of incapacity for work through DPTC .....	56306
Calculating days to decide the rate of IB	
Days which count.....	56311
Days which do not count.....	56312
SSP .....	56313
Her Majesty's Forces .....	56317
When to apply the personal capability assessment.....	56320
Days to be counted .....	56322
<b>Incapacity benefit for widows</b>	
General.....	56330
Conditions of entitlement.....	56331
Weekly rate .....	56336
Effect of guaranteed minimum pension .....	56338
Widow reaches pensionable age .....	56340
Adjustment between WP and IB .....	56341
Changes of circumstance.....	56342
<b>Incapacity benefit for widowers</b>	
General.....	56350
Conditions of entitlement.....	56351
Weekly rate .....	56355
Effect of guaranteed minimum pension .....	56356
Widower reaches age 65 .....	56357
Changes of circumstance.....	56358
<b>Councillor's allowance - prescribed earnings limit.....</b>	<b>Appendix 1</b>

# Chapter 56 - Incapacity Benefit

## Introduction

56001 IB was introduced on 13.4.95<sup>1</sup>. It replaced SB and IVB and is payable on the basis of IfW to people who are not covered by the SSP scheme. From 31.1.11 no claims for IB can be made<sup>2</sup>, other than a claim made by a claimant who is already entitled to IS on the grounds of disability<sup>3</sup> (see DMG Chapter 45).

*1 SS (IfW) Act 94; 2 ESA (Trans Provs) Regs, reg 2(1); 3 reg 2(2)(e)*

56002 Entitlement to IB depends, at the outset, on satisfying certain contribution conditions. IB is payable at three basic rates according to the length of time the incapacity has lasted. A person who does not satisfy the contribution conditions may still qualify for IB(Y). This is a category of IB and is not a separate benefit (see DMG 56019 et seq).

56003 In addition to the guidance in this Chapter, for guidance on

1. claims and applications, the time limits for claiming and the requirement to provide a NINO - see DMG Chapter 02
2. IfW, the OOT and the PCA together with conditions for treating a person as incapable or capable of work - see DMG Chapter 13
3. dependency increases, the dependants for whom an increase of IB is payable and the conditions of entitlement - see DMG Chapter 16
4. overlapping benefits - see DMG Chapter 17
5. hospital in-patients - see DMG Chapter 18
6. transitional provisions for the introduction of IB, the arrangements for the transition from SB and IVB to IB - see DMG Chapter 55.



# Conditions of entitlement

## General

56004 Entitlement to IB depends on satisfying the appropriate test of incapacity. There are provisions for both IBST and IBLT<sup>1</sup>. Special provisions exist for claimants who are widows or widowers whose husband or wife died before 9.4.01<sup>2</sup> (see DMG 56330 and 56350).

*1 SS CB Act 92, s 30A; 2 s 40 & 41*

56005 Entitlement to IBST depends on satisfying certain contribution conditions. When a claimant is under pensionable age and has received IBST for 364 days, IBLT is payable for any further days in the same PIW without considering the contribution conditions<sup>1</sup>, (see DMG 56285 for definition of PIW). Guidance on which days of incapacity count for deciding the rate of IB is in DMG 56311.

*1 SS CB Act 92, s 30A(4) & (5)*

56006 There is no entitlement to IB for the first three days in a PIW<sup>1</sup>.

*1 SS CB Act 92, s 30A(3)*

## Contribution conditions

### What the DM decides

56007 There are two contribution conditions for IBST for people under pensionable age<sup>1</sup>. The DM decides whether the contribution conditions are satisfied including

1. the earnings factor derived from them
2. which are the relevant income tax years
3. the years in which the contributions must have been paid or credited
4. the commencement of a PIW
5. the start of the relevant benefit year.

**Note:** See DMG Chapter 75 for guidance on pensionable age.

*1 SS CB Act 92, s 30A(1) & Sch 3, Part 1, para 2;*

### Reference to HMRC

56008 Entitlement to IB depends on the contribution conditions being satisfied. In practice the NI contribution record is usually obtained and any decision is based on the assumption that the record is factually correct. However, where there is a dispute about the record, the matter must be referred by the DM to HMRC for a formal decision<sup>1</sup>.

**Note 1:** See DMG Chapters 03, 04 and 06 for guidance on how decisions and appeals are handled after a reference to HMRC.

**Note 2:** See DMG Chapter 01 where the dispute is about whether credits should be awarded.

*1 SS CS (D&A) Regs, reg 11A and 38A*

## Meaning of terms

56009 When deciding whether the contribution conditions are satisfied, the DM should note that

1. “year” means a tax year
2. “benefit year” means a period beginning with the first Sunday in January in any calendar year and ending with the Saturday immediately before the first Sunday in January in the following year<sup>1</sup>
3. “the relevant benefit year” means the benefit year in which the PIW begins<sup>2</sup>.

*1 SS CB Act 92, s 21(6); 2 s 30A(1) & Sch 3, Part 1, para 2(6)(b)*

## The first contribution condition

56010 For periods of IfW commencing on 6.4.01 or later the first contribution is satisfied if<sup>1</sup>

1. the claimant has actually paid contributions of a relevant class in respect of any one of the last three tax years before the beginning of the relevant benefit year **and**
2. those contributions have been paid before the relevant time **and**
3. the earnings factor from those contributions is at least 25 times the LEL for that year.

*1 SS CB Act 92, s 30A(1) & Sch 3, Part 1, para 2(2)*

56011 For periods of IfW which commenced prior to 6.4.01, to satisfy the first contribution condition<sup>1</sup>

1. the claimant must have paid contributions of a relevant class for any one tax year before the day for which IB is claimed **and**
2. the earnings factor from those contributions must be at least 25 times the LEL for that year.

*1 SS CB Act 92, s 30A(1) & Sch 3, Part 1, para 2(2)*

## Relaxation of the first contribution condition

56012 For PIWs starting on 6.4.01 or later the first contribution is taken to be satisfied if<sup>1</sup>

1. class 1 or class 2 NI contributions have been paid before the day for which IB is claimed in respect of any one tax year<sup>2</sup> **and**
2. the earnings factor is derived from
  - 2.1 class 1 NI contributions which are
    - 2.1.a paid or treated as paid **and**



## The first and second contribution condition

56014 Where a person claims IB and

1. does not satisfy the first and second contribution condition **and**
2. makes a further claim in a later benefit year for which the contribution conditions would be satisfied if it did not link with the previous claim

the previous claim should be disregarded and entitlement to IB decided by referring to the relevant income tax years relevant to the latest claim<sup>1</sup>.

**Note:** See DMG 56288 - 56292 for further guidance where a claimant is a WtWB.

*1 SS CB Act 92, Sch 3, Part 1, para 2(7)*

56015 Where

1. class 1 contributions have been paid or treated as paid in any tax year from 1987/88 **and**
2. the amount paid, plus any class 2 or class 3 contributions paid or credited, is not enough to make the year a qualifying year by
  - 2.1 £25.00 or less for the first contribution condition **or**
  - 2.2 £50.00 or less for the second contribution condition

the earnings factor is increased by the amount required to make the year a qualifying year<sup>1</sup>.

*1 Social Security (Earnings Factor) Regulations 1979, Sch 1, para 4*

## Late payment of contributions

56016 The DM determines whether the contribution conditions for IB are satisfied. Contributions paid after the due date are generally treated as paid on the date of payment. However, there are circumstances in which the DM may accept that contributions are treated as having been paid on an earlier date<sup>1</sup>. The DM will need to liaise with HMRC.

*1 SS (Conts) Regs, reg 60 - 65, SS (Crediting etc) Regs, reg 4*

56017 If there is an existing decision, the DM may need to consider revising or superseding it. A change of circumstances will occur on the date it is accepted that late contributions are treated as having been paid<sup>1</sup>. See DMG Chapter 03 for full guidance on revision and DMG Chapter 04 for full guidance on supersession.

*1 SS (Crediting etc) Regs, regs 4-8*

## Linking periods of incapacity

56018 Where a claimant is treated as capable of work, these days are not days of incapacity and do not form part of a PIW (see DMG 56255 and 56285). If the claimant is treated as capable of work for a closed period, and the PIWs do not link (see DMG 56287 - 56293), then the DM should consider whether the contribution conditions are satisfied from the first day of incapacity following the break in the PIW. This is the case even if the award of IB is not superseded, or is superseded from a later date. Where an award of credits is superseded from a later date, the credits remain available for the purposes of the contribution conditions.

**Note:** See DMG Chapter 04 for guidance on supersession.

### Example

Eleanor was awarded IB and credits from 2004, and has passed the PCA. She started P/T work in a local newsagent for twelve hours a week at the minimum wage on 6.1.05, but did not declare the work. Following an investigation and an interview on 7.2.06, Eleanor was treated as capable for the period 6.1.05 - 6.2.06. The DM by a decision made on 9.2.06 superseded the decision awarding IB to disallow from and including the 42 day of work, 16.2.05. The award of credits cannot be superseded to take account of the period of work because the effective date, 9.2.06, is after the period when the claimant is treated as capable. Although the credits are available, the DM determines that from 7.2.06 the contribution conditions are not satisfied, so that only NI credits are awarded.

## Person incapacitated in youth

56019 The conditions for receiving IB(Y), including the age conditions, are set out in DMG 56020. In some circumstances the upper age condition can be extended (see DMG 56023). In some circumstances a person who does not satisfy the upper age condition can be entitled to IB because of previous entitlement to IB(Y) (see DMG 56031).

**Note:** A person who retains entitlement to SDA (see DMG Chapter 57) has no entitlement to IB(Y).

56020 The conditions of entitlement<sup>1</sup> for this category of IB are that the claimant

1. is aged 16 or over on the relevant day
2. is aged under 20 on a day which forms part of the PIW (or under 25 in the circumstances described in DMG 56022 - 56024)
3. was incapable of work for 196 consecutive days immediately preceding the relevant day (or for 196 consecutive days immediately preceding an earlier day in a linking PIW on which the claimant was aged 16 or over) **and**

4. is not receiving FTE on the relevant day (see DMG 56027) **and**
5. on the relevant day satisfies the conditions of residence and presence in GB and is not a person subject to immigration control<sup>2</sup> (the rules are the same as those for SDA and the guidance in DMG Chapter 07 should be followed).

*1 SS CB Act 92, s 30A(2A); 2 SS (IB) Regs, reg 16*

56021 When considering whether a claimant satisfies the conditions of entitlement at DMG 56020, the DM should note

1. “the relevant day” means any day of IfW which forms part of a PIW<sup>1</sup>
2. the effect of DMG 56020 2. is that a claimant who is entitled to IB in a PIW does not lose entitlement on becoming 20 (or where relevant 25) in the same PIW
3. although SSP days are not part of a PIW (see DMG 56082) a person may satisfy the relevant age conditions on a day in a period of entitlement to SSP immediately preceding the relevant day which means that any days of entitlement to SSP immediately preceding the relevant day are treated as days of incapacity for the purposes of IB(Y)
4. for the purposes of DMG 56020
  - 4.1 consecutive days may be made up of days of incapacity which form part of a PIW and days of incapacity which do not **and**
  - 4.2 linking provisions cannot be used to meet this condition when days of incapacity are not consecutive<sup>2</sup>.

An example of where 4.1 may apply is where days for which a person is not entitled to IB because of a late claim do not form part of a PIW (see DMG 56102) but may count towards the 196 day condition if there is sufficient evidence of incapacity.

*1 SS CB Act 92, s 30A(1), SS (IB) Regs, reg 15(5); 2 reg 4(1)(aa)*

### **Extension of upper age limit to 25**

56022 The upper age condition can be extended to 25<sup>1</sup> if a claimant

1. registered on a course of
  - 1.1 F/T advanced or secondary education (see DMG 56025) **or**
  - 1.2 vocational or work-based training (see DMG 56026)
 at least 3 months before the claimant’s 20th birthday<sup>2</sup> **and**
2. attended one or more such courses in the academic term after registration<sup>3</sup>.

*1 SS (IB) Regs, reg 15(1); 2 reg 15(2)(a); 3 reg 15(2)(b)*

- 56023 For the purposes of DMG 56022 **2.** the attendance must have
1. begun on or before a day at least 3 months before the claimant's 20th birthday<sup>1</sup> **and**
  2. ended no earlier than the beginning of the last two complete tax years before the relevant benefit year which would have applied if the claimant was entitled to IBST because the first and second contribution conditions were satisfied<sup>2</sup>.

*1 SS (IB) Regs, reg 15(3)(a); 2 reg 15(3)(b)*

- 56024 When considering DMG 56022 DMs should note that a claimant is attending a course on any day on which the course is interrupted by an illness or domestic emergency<sup>1</sup>.

*1 SS (IB) Regs, reg 15(4)*

### **Full-time advanced or secondary education**

- 56025 When considering whether DMG 56022 **1.1** is satisfied, the DM should note that<sup>1</sup>
1. **“advanced education”** means FTE for the purposes of
    - 1.1 a course in preparation for a degree, diploma of higher education, a higher national diploma, a higher national diploma of the BTEC or the Scottish Qualifications Authority or a teaching qualification **or**
    - 1.2 any other course which is of a standard above ordinary national diploma, a diploma of the BTEC or a national certificate of the Scottish Vocational Education Council, a general certificate of education (advanced level), a higher grade or a Scottish certificate of Sixth Year studies
  2. **“course of education”** means a course of advanced education or secondary education
  3. **“F/T”** includes P/T where the disability from which a person suffers prevents him from attending a F/T course.
  4. **“secondary education”** means a F/T course of education below a course of advanced education by attendance at
    - 4.1 a recognised educational establishment (university, college or school) **or**
    - 4.2 another establishment where the Secretary of State is satisfied that education is equivalent to that given in a recognised educational establishment.

**Note:** FTE for this purpose is **not** the same as its meaning at DMG 56027. There is no specific requirement as to hours. If there is a doubt as to whether or not a course is F/T evidence should be obtained from the education authorities.

*1 SS (IB) Regs, reg 15(5)*

## Vocational or work-based training

56026 When considering whether DMG 56022 1.2 is satisfied, the DM should note that

1. “**vocational training**” means
  - 1.1 training for work<sup>2</sup> arranged under prescribed legislation<sup>3</sup> **or**
  - 1.2 any training received on a course which a person attends for 16 hours or more a week, the primary purpose of which is the teaching of occupational or vocational skills<sup>4</sup> **or**
  - 1.3 any training, instruction or tuition for the primary purpose of teaching of occupational or vocational skills received on a course for persons suffering mental or physical disability by a person recognised by the Secretary of State.
2. “**work-based training**” means vocational training undertaken on the premises of an employer.
3. “**training**” has the same meaning as vocational or work-based training.

*1 SS (IB) Regs, reg 15(5); 2 SS CB Act 92, s 30C(b); 3 E & T Act 73, s 2(1), Enterprise and New Towns (Scotland) Act 1990, s 2(3); 4 SS (IB) Regs, reg 3*

## Full-time education condition

56027 For the purpose of DMG 56020 4. a person is treated as receiving FTE for any period during which the person

1. is aged 16 or over but under 19 **and**
2. attends a course of education for 21 hours or more a week<sup>1</sup>.

*1 SS (IB) Regs, reg 17(1) & (2)*

56028 In calculating the number of hours a week during which a person attends a course no account is taken of any instruction or tuition which is not suitable for persons of the same age and sex who do not suffer from a physical or mental disability<sup>1</sup>.

*1 SS (IB) Regs, reg 17(3)*

56029 In determining the duration of a period of FTE any temporary interruption of that education may be disregarded<sup>1</sup>.

*1 SS (IB) Regs, reg 17(4)*

56030 A person who is 19 years of age or over is not treated as receiving FTE. This applies whether or not the person is undergoing FTE<sup>1</sup>. Further guidance on the FTE condition is at DMG Chapter 57.

*1 SS (IB) Regs, reg 17(5)*

## Over the upper age condition but previously entitled

- 56031 A person who does not satisfy the upper age condition (see DMG 56020 and 56022) may still be entitled to IB if previous entitlement to IB(Y) terminated solely
1. with a view to that person taking up any employment or training **or**
  2. because of disqualification for absence from GB (see DMG 56033).

## Previous entitlement terminated to take up employment or training

- 56032 For the purpose of DMG 56031 1. the conditions to be met are
1. the person had previous entitlement to IB(Y) which was not ended by a determination that the person was capable of work or was treated as capable of work (apart from a determination under 3. below) **and**
  2. the linking rules do not apply **and**
  3. the previous entitlement to IB was terminated solely with a view to taking up an employment or training **and**
  4. the earnings factor from employment(s) pursued between the termination of the previous entitlement and the beginning of the period of IfW was less than 25 times the lower earnings limit in any of the last complete tax years before the relevant benefit year **and**
  5. either the person had paid or been credited with earnings equivalent to 50 times the LEL in the last two complete tax years before the relevant benefit year **and**
  6. that
    - 6.1 at least one credit, in the last complete tax year before the relevant benefit year, was in respect of disabled person's tax credit **or**
    - 6.2 within a period of 56 days after the day such employment ceased the person makes a claim for IB<sup>1</sup>.

**Note:** "Training" has the same meaning as in DMG 56026.

*1 SS (IB) Regs, reg 18*

## Previous entitlement terminated because of absence from Great Britain

- 56033 For the purpose of DMG 56031 **2.** from 1.1.03 the conditions to be met are that the
1. person was previously entitled to IB(Y) and entitlement was not ended by a determination that the person was capable of work or was treated as capable of work (apart from a determination under **3.** below) **and**
  2. linking rules do not apply **and**
  3. previous entitlement to IB terminated solely because of disqualification for absence from GB **and**
  4. person has been incapable of work for 196 consecutive days from the day absence from GB ceased **and**
  5. person made a claim for benefit not later than three months following the 196th day from when absence from GB ceased<sup>1</sup>.

*1 SS (IB) Regs, reg 18*

## IB for person incapacitated in youth and overlapping benefits

- 56034 For the purpose of overlapping benefits IB is a contributory benefit. This applies even though IB(Y) is not based on contribution conditions. For the purpose of overlapping benefits contributory benefits are those benefits prescribed in legislation<sup>1</sup>.

*1 SS (OB) Regs, reg 2(1); SS CB Act 92, Part 11*

## IB for person incapacitated in youth and CHB

- 56035 A person is not entitled to CHB for any week in which that person is entitled to IB(Y)<sup>1</sup>.

**Note:** See DMG Chapter 09 if an offset is appropriate.

*1 CHB (Gen) Regs, reg 8(2)*

## People over pensionable age

- 56036 Only IBST can be paid to people over pensionable age. This is payable for a maximum of 364 days (see DMG 56085). IBLT ceases on the day before pensionable age is reached<sup>1</sup>. IB normally ends at pensionable age. Where claimants are issued with a full GRC their pensionable age is that of their acquired gender<sup>2</sup>.

**Note:** See DMG Chapter 75 for guidance on pensionable age.

*1 SS A Act 92, s 30A(5); 2 GR Act 04, s 9*

### Example 1

A man on IBLT, whose date of birth is 4.10.50, is issued with a full GRC on 1.7.11. As a woman, whose date of birth is 4.10.50, is over pensionable age when the full GRC is issued she loses entitlement to IBLT.

### Example 2

A woman in receipt of IBLT reaches pensionable age. Her IBLT ceases and she claims and receives RP for ten months. She becomes a man and is issued with a full GRC. His RP ceases as he is no longer over pensionable age and he claims IB again. Contribution conditions are satisfied. This claim does not link with the previous IB claim so IBST is payable.

- 56037 The conditions of entitlement to IBST for people over pensionable age are that
1. the claimant is not more than five years over pensionable age **and**
  2. the day of incapacity is within a PIW beginning before the claimant reached pensionable age **and**
  3. if entitlement had not been deferred, or a decision to cancel entitlement to RP had not been made, the claimant would be entitled to
    - 3.1 Cat A RP **or**
    - 3.2 Cat B RP on the contributions of a deceased spouse, or civil partner.

## Increase for dependants

- 56038 An increase of IB may be payable for an adult or child dependant. For guidance on the dependants for whom an increase can be paid and the conditions of entitlement see DMG Chapter 16.

## Members of Her Majesty's Forces

- 56039 Serving members of HMF are not entitled to IB unless they are<sup>1</sup> members of
1. any prescribed territorial or reserve force<sup>2</sup> not undergoing training or instruction continuously for longer than 72 hours **or**
  2. the Royal Irish Regiment who are **not**
    - 2.1 also serving as members of any regular naval, military or air forces **or**
    - 2.2 on the F/T permanent staff **or**
    - 2.3 serving or undergoing training or instruction continuously for longer than 72 hours.

**Note:** For the meaning of "serving member" of the forces see DMG Chapter 07.

*1 SS (Conts) Regs, Sch 6; 2 Social Security (Benefit) (Members of Forces) Regs 1975, reg 2*

56040 Discharged members of HMF may have up to 196 days of absence due to illness whilst a serving member counted towards the qualification for IBST(H)<sup>1</sup> if

1. they were discharged from HMF after 3.5.03 **and**
2. they were on sickness absence from duty for a period of four or more consecutive days, which were recorded by the Secretary of State for Defence as such a day **and**
3. any two such periods not separated by more than eight weeks shall be treated as one **and**
4. the sickness absence period ends not more than eight weeks before the first day of the period to which IB relates.

*1 SS CB Act 92, s 30D(3A), SS (IB) Regs, reg 7C*

## **Entitlement to IVB due to an industrial accident or prescribed disease**

56041 Where a claimant was<sup>1</sup> entitled to

1. IVB because the incapacity was as a result of an IA or a PD **and**
2. a transitional award of IB

the award **ceases** when incapacity is no longer the result of the relevant IA or PD.

*1 SS (IB) (Trans) Regs, reg 21(1)*

56042 - 56080

# Rate of benefit

## General

- 56081 There are three rates of IB<sup>1</sup>
1. the lower rate of IBST - IBST(L)
  2. the higher rate of IBST - IBST(H) **and**
  3. IBLT which can be increased by an age addition.

The weekly rates of personal and dependants IB are specified in legislation<sup>2</sup>.

*1 SS CB Act 92, s 30B; 2 Sch 4*

- 56082 The rate is determined by calculating the number of days of entitlement to IB within the PIW<sup>1</sup>. These include

1. days for which IB is payable
2. the first three days of a PIW (which are non-payable “waiting days”)
3. days for which MA is payable
4. certain days of entitlement to SSP
5. certain days of sickness absence from duty whilst serving member of HMF.

DMG 56250 - 56316 give further guidance on what are or are not to be treated as days of incapacity and days of entitlement for IB purposes.

*1 SS CB Act 92, s 30D*

- 56083 The daily rate of IB is 1/7 of the weekly rate<sup>1</sup>.

*1 SS CB Act 92, s 30B(1)*

- 56084 DMs decide the rate of benefit payable. Once an award has been made it is the responsibility of the Secretary of State to uprate IB following an uprating order<sup>1</sup>.

*1 SS A Act 92, s 150*

## IBST

- 56085 IBST is payable for the first 364 days of entitlement to IB in a PIW<sup>1</sup>. IBST is payable at two rates, IBST(L) and IBST(H).

*1 SS CB Act 92, s 30A(4)*

- 56086 IBST(L) is payable for the first 196 days of entitlement to IB in a PIW<sup>1</sup>.

*1 SS CB Act 92, s 30B(2)*

- 56087 IBST(H) is payable from the 197th day up to and including the 364th day of entitlement in a PIW<sup>1</sup>.

*1 SS CB Act 92, s 30B(2)*

56088

56089 The last day of entitlement to IBST will be the earliest of

1. the last day of incapacity in the PIW **or**
2. the 364th day of entitlement to IB<sup>1</sup> **or**
3. the day before a claimant is five years over pensionable age<sup>2</sup>.

**Note:** See DMG Chapter 75 for guidance on pensionable age.

*1 SS CB Act 92, s 30A(4); 2 s 30A(2)(b)*

### **Terminally ill or in receipt of highest rate care component of DLA**

56090 Where a person has been entitled to IBST for 196 days or more in a PIW and is terminally ill (see DMG 56091), or entitled to the highest rate care component of DLA, IBST(H) is payable at the higher rate of<sup>1</sup>

1. IBST(H) under the normal rules **or**
2. IBLT including any age addition.

*1 SS CB Act 92, s 30B(4)*

56091 A person is terminally ill if suffering from a progressive disease from which death is reasonably expected within six months<sup>1</sup>.

*1 SS CB Act 92, s 30B(4)*

56092 Although payable at the IBLT rate, for all other purposes the benefit in payment is IBST(H)<sup>1</sup>.

*1 SS CB Act 92, s 30B(5)*

### **People over pensionable age**

56093 The basic weekly rate of IBST payable to people over pensionable age is set every year in legislation<sup>1</sup>. A person who does not fully satisfy the second contribution condition for RP is entitled to a reduced basic rate. This is calculated as a percentage of the set rate<sup>2</sup>. Where the percentage is less than 25, no basic rate is payable, (see DMG 56094 1.).

*1 SS CB Act 92, s 44(4); 2 SS (WB & RP) Regs, reg 6(1)*

56094 In addition to the basic rate a claimant may also be entitled to

1. any other AP payable<sup>1</sup> ( subject to any reduction for GMP)
2. GRB on their contributions or inherited from a deceased spouse or civil partner
3. increases to a basic rate or AP payable to a widow, widower or deceased civil partner<sup>2</sup> ( the maximum increase to a basic rate being limited to the amount by which it falls short of the basic rate specified for IBST)

4. an increase of RP due to incapacity<sup>3</sup> ( subject to any reduction for AP or GMP).

**Note:** AP may be payable even if there is no entitlement to any basic rate.

*1 SS CB Act 92, s 45; 2 s 52(2) & (3); 3 s 47*

56095 The rate of IB should not include<sup>1</sup>

1. increments to the rate of RP earned since pensionable age, including graduated retirement benefit
2. increments inherited on the death of a spouse or civil partner<sup>2</sup>
3. an ADI
4. an increase to a married woman's Cat A RP<sup>3</sup>.

**Note:** From 6.4.10<sup>4</sup> ADIs for RP are abolished<sup>5</sup>. However, some people will continue to have entitlement to an ADI. Therefore **3.** will still apply to people who continue to have entitlement to an ADI from 6.4.10<sup>6</sup>.

*1 SS CB Act 92, s 30B(3); 2 Sch 5; 3 s 53(2); 4 Pensions Act 07, s 4(4); 5 s 4(1) & 4(2); 6 s 4(5)(b) & Sch 1, Part 4, para 12*

56096 - 56100

## **IBLT**

56101 IBLT is payable after 364 days of entitlement to IB for any subsequent day in the same PIW on which the claimant is not over pensionable age.

56102 IBLT will cease on the earliest of the following<sup>1</sup>

1. the last day of incapacity in the PIW
2. the day before a person reaches pensionable age
3. when incapacity is no longer due to the IA or PD where IBLT follows a transitional award of IBST which was dependent on this (see DMG Chapter 55)<sup>2</sup>.

*1 SS CB Act 92, s 30A(5); 2 SS (IB) (Trans) Regs, reg 11(5)*

56103 - 56105

## **Age addition**

56106 IBLT can be increased by an age addition<sup>1</sup>. This is payable where the claimant is under age 45 on the qualifying date<sup>2</sup>.

*1 SS CB Act 92, s 30B(7); 2 SS (IB) Regs, reg 10*

- 56107 The two weekly rates of age addition<sup>1</sup> are
1. the higher amount - payable if the claimant is under age 35 on the qualifying date **or**
  2. the lower amount - payable if the claimant is between 35 and 45 on the qualifying date.

*1 SS (IB) Regs, reg 10(1)*

- 56108 The weekly rate of age addition is reduced or extinguished by the weekly rate of any GMP entitlement<sup>1</sup>.

*1 PS Act 93, s 46(3)*

- 56109 Female pensionable age is changing (see DMG Chapter 75). However, female claimants continue to be entitled to their own GMP at age 60<sup>1</sup>. This means that deductions should be made in respect of both

1. personal GMP **and**
2. any inherited GMP (see DMG 56338)

of a female claimant from age 60, unless they are in respect of an appropriate personal pension scheme or a contracted-out money purchase scheme<sup>2</sup>.

*1 PS Act 93, s 46(1); 2 s 48*

### **Qualifying date**

- 56110 The qualifying date is the first day of the PIW unless an earlier date can be accepted<sup>1</sup>.

*1 SS CB Act 92, s 30B(7)*

- 56111 The qualifying date can be earlier where

1. SSP has been paid<sup>1</sup> **or**
2. the claimant was a member of HMF<sup>2</sup> **or**
3. the claimant has been entitled to WA<sup>3</sup>.

*1 SS (IB) Regs, reg 11; 2 reg 12; 3 reg 13*

- 56112 The first day of the SSP period of entitlement should be accepted as the qualifying date for an age addition where days of entitlement to SSP have been treated as days of entitlement to IB for calculating<sup>1</sup>

1. the rate payable **and**
2. which test of incapacity to apply.

*1 SS (IB) Regs, reg 11*

- 56113 Serving members of HMF are not entitled to IB. If the first day of incapacity in the PIW would have been earlier, but for this fact, that earlier date should be accepted as the qualifying date for age addition<sup>1</sup>. For this purpose "serving members of the forces" has its usual meaning<sup>2</sup>. People who fall within that definition because they

are undergoing training or instruction in a specified establishment or organisation for 72 hours or less are not serving members of HMF for this purpose.

*1 SS (IB) Regs, reg 12; 2 SS (Conts) Regs, reg 1(2) & Sch 6, Part 1*

- 56114 If a woman who was entitled to WA (or WP or WMA for any day before 23.9.72) would have had an earlier first day of incapacity in the PIW had she claimed IB and satisfied the contribution conditions, that earlier day should be accepted as the qualifying date for age addition<sup>1</sup>.

*1 SS (IB) Regs, reg 13*

## **IB claimed during MAP**

- 56115 Women who qualify for MA at a lower rate than IB, and who satisfy the contribution conditions for IB, are entitled to an IB top-up for the full 39 weeks. No separate claim form for IB is required<sup>1</sup> (see DMG Chapter 02).

*1 SS (C&P) Regs, Sch 1*

- 56116 This is due to days of entitlement to MA (i.e. days within the MAP) being treated as days of IfW<sup>1</sup>.

*1 SS CB Act 92, s 30C(2)*

- 56117 The woman can continue to receive IB at the end of the MAP providing medical evidence is submitted immediately following the end of the MAP.

56118

## **Reduction during the maternity pay period and adoption pay period**

- 56119 Days within the MPP<sup>1</sup> and APP<sup>2</sup> can also be days of IfW<sup>1</sup> (see DMG 56260). In these cases where the claimant is entitled to both SMP and IB for any week or part week a reduction in the IB is necessary (see DMG Chapter 03 for guidance on revision and DMG Chapter 04 for guidance on the effective date of supersession).

*1 SS (IB) Regs, reg 7A(4); 2 reg 7B(4)*

- 56120 The amount of IB payable, including age addition and any increase for a dependant, for a week or part week should be reduced by the amount of SMP or SAP payable for that week<sup>1</sup>. The following points should be noted

1. IB is reduced by the amount of SMP or SAP to which the person is entitled for that week, whether or not it has been paid
2. SMP and SAP is paid for whole weeks only. This weekly amount is used to reduce the IB even if IB is due for only part of a week
3. the gross amount of SMP or SAP should be used for reduction of IB.

*1 SS (IB) Regs, reg 7A and reg 7B*

## Reduction for councillors' allowances

56121 Work as a councillor is disregarded when deciding incapacity<sup>1</sup>. Any allowances, under or by virtue of specified legislation<sup>2</sup> (except where DMG 56122 applies), to which a person is entitled for performing the duties of a councillor may however affect the amount of IB payable<sup>3</sup> (see DMG Chapter 03 for guidance on revision and DMG Chapter 04 for guidance on the effective date of supersession). This applies whether or not the allowances are received.

*1 SS CB Act 92, s 171F(1); 2 s 30E(2); Local Government Act 1972, s 173 & 177; Local Government and Housing Act 1989, s 18; Local Government (Scotland) Act 1973, s 49  
3 SS CB Act 92, s 30E(1);*

56122 However, DMs should note that in England and Wales some allowances are **not** councillors' allowances<sup>1</sup>.

*1 SS CB Act 92, s 30E(2)(a); Local Government Act 1972, s 173(4)*

56123 If the net amount of councillors' allowances for any week exceeds the prescribed earnings limit<sup>1</sup> the excess is deducted from the IB due for the same week<sup>2</sup>. For this purpose a week is seven days commencing Sunday<sup>3</sup>. From 11.4.11 the limit of councillor's allowance is calculated by

1. multiplying the rate of the NMW<sup>4</sup> by 16<sup>5</sup> **and**
2. rounding the amount calculated in 1. which includes an amount of less than
  - 2.1 50p up to the nearest 50p<sup>6</sup> **or**
  - 2.2 £1 but more than 50p up to the nearest £1<sup>7</sup>.

**Note:** See Appendix 1 to this Chapter for details of the prescribed earnings limit.

*1 SS (IB) Regs, reg 8; 2 SS CB Act 92, s 30E(1); 3 s 122; 4 SS (IB) Regs, reg 8(2); National Minimum Wage Regulations 1999, reg 11; 5 SS (IB) Regs, reg 8(1); 6 reg 8(3)(a); 7 reg 8(3)(b)*

56124 The DM should not average amounts, the calculation of councillor's expenses and the deduction should be made on a week to week basis. There is no requirement that the expenses must be wholly, exclusively or necessarily incurred. However the DM should note that there is a limitation of reasonableness on the expenses that may be taken into account in the deduction from the excess of the councillor's allowance.

56125 The onus is on the claimant to provide the necessary information to enable the DM to decide the amount of expenses and the net amount of councillor's allowance. Although claimants do not have to submit claim forms for expenses, they must have some idea of the amounts incurred. If considered reasonable by the DM the amounts should be deducted from the amount of councillor's allowance. If the claimant is unable to provide details of incurred expenses the DM is entitled to decide that the claimant has no expenses that would reduce the amount of councillor's allowance.

## **Councillors' allowances paid other than weekly**

56126 Where councillors' allowances are paid other than weekly, DMs should calculate<sup>1</sup> the weekly amount in accordance with DMG 56127 - 56131.

*1 SS (IB) Regs, reg 9(1)*

### **Attendance allowance**

56127 For attendance allowance, the weekly amount is the amount paid in respect of attendances undertaken in the week in question<sup>1</sup>.

*1 SS (IB) Regs, reg 9(2)*

### **Basic allowance or special responsibility allowance paid annually**

56128 Where a basic allowance or special responsibility allowance is paid annually the weekly amount is calculated by dividing the amount paid by 52<sup>1</sup>.

*1 SS (IB) Regs, reg 9(3)(a)*

### **Basic allowance or special responsibility allowance paid quarterly**

56129 Where a basic allowance or special responsibility allowance is paid quarterly the weekly amount is calculated by dividing the amount paid by 13<sup>1</sup>.

*1 SS (IB) Regs, reg 9(3)(b)*

### **Basic allowance or special responsibility allowance paid monthly**

56130 Where a basic allowance or special responsibility allowance is paid monthly the weekly amount is calculated by

1. multiplying the amount by 12 **and**
2. dividing by 52<sup>1</sup>.

*1 SS (IB) Regs, reg 9(3)(c)*

#### **Example**

A basic allowance of £100 is made for a period of a month. The DM calculates that the weekly amount is £23.07 (£100 x 12 ÷ 52).

### **Basic allowance or special responsibility allowance paid for more than a week**

56131 Where a basic allowance or special responsibility allowance is paid for more than a week and DMG 56128 - 56130 do not apply the weekly amount is calculated by

1. dividing the amount of the allowance by the number of days in the period **and**
2. multiplying it by 7<sup>1</sup>.

*1 SS (IB) Regs, reg 9(3)(d)*

## Example

A basic of £100 is made for a period of four weeks. The DM calculates that the weekly amount is £25 ( $£100 \div 28 \times 7$ ).

## Disqualification

56132 Unless DMG 56133 applies, DMs should disqualify claimants for receiving IB<sup>1</sup> for a period of up to six weeks as they determine<sup>2</sup> if claimants

1. have become incapable of work through their own misconduct<sup>3</sup> **or**
2. fail without good cause to attend for or submit to medical or other treatment (excluding vaccination, inoculation or major surgery) which
  - 2.1 is recommended by a doctor or a hospital or similar institution **and**
  - 2.2 would be likely to make them capable of work<sup>4</sup> **or**
3. without good cause
  - 3.1 behave in a way calculated to delay recovery **or**
  - 3.2 are absent from the place where they reside without leaving word where they may be found<sup>5</sup>.

**Note:** DMG 13730 et seq gives guidance on misconduct, treatment and the rules of behaviour when considering IfW. That guidance also applies when considering disqualification.

*1 SS (IW) (Gen) Regs, reg 18(2)(a); 2 reg 18(2); 3 reg 18(1)(a); 4 reg 18(1)(b); 5 reg 18(1)(c)*

56133 DMG 56132 1. does not apply where the person's incapacity is due to

1. pregnancy **or**
2. a sexually transmitted disease<sup>1</sup>.

*1 SS (IW) (Gen) Regs, reg 18(1)(a)*

# Reduction of incapacity benefit by pension payments and PPF periodic payments

## General

56134 Where

1. the claimant is entitled to IB for a week or part of a week **and**
2. a
  - 2.1 pension payment **or**
  - 2.2 PPF periodic payment **or**
  - 2.3 combination of pension payments and PPF periodic paymentsis payable to the claimant for that week or part week **and**
3. the payment exceeds £85 a week **and**
4. the payment cannot be disregarded (see DMG 56153) **and**
5. transitional protection does not apply (see DMG 56154)

then, unless DMG 56135 applies, a deduction is made from IB<sup>1</sup> (see DMG Chapter 03 for guidance on revision and DMG Chapter 04 for guidance on the effective date of supersession). For the meaning of pension payments see DMG 56161 and for the meaning of PPF periodic payments see DMG 56189.

*1 SS CB Act 92, s 30DD(1) & (2)*

56135 No deduction from IB should be made if the claimant is entitled to

1. DLA care component at the highest rate **or**
2. the daily living component of PIP at the enhanced rate **or**
3. AFIP<sup>1</sup>.

*1 SS (IB) Regs, reg 26*

56136 The amount of IB payable for a week is reduced by 50 per cent of the excess over £85<sup>1</sup>. A week is a period of seven days commencing on a Sunday<sup>2</sup>. The reduction for pension payments or PPF periodic payments is applied before reductions for overlapping benefits or because the claimant is a hospital in-patient.

*1 SS CB Act 92, s 30DD(1) & (2); 2 s 122*

### Example

John's pension payments total £130 each week. The pension payments exceed the £85 limit by £45. Therefore 50% of the excess is £22.50 which is deducted from the weekly amount of John's IB.

## Date from which deductions take effect

- 56137 Deductions from IB have effect from the Sunday of the week in which the first pension payment or PPF periodic payment is paid to a person providing there is entitlement to IB in that week<sup>1</sup>.

*1 SS (IB) Regs, reg 22*

### Example 1

Joanne is entitled to IB which is paid on a Wednesday. Her first pension payment is to be paid on Friday 6.2.09 and the weekly rate exceeds £85. Her IB is reduced from Sunday 1.2.09. On Wednesday 4.2.09 the amount of IB due to Joanne is three days at the full rate (29.1.09 - 31.1.09) and four days at the reduced rate (1.2.09 - 4.2.09). For the following pay days the normal weekly adjustment applies.

### Example 2

Jason's pension payments start on 18.2.09 and are paid on the same date every month. The weekly rate exceeds £85. His IB entitlement commences on Friday 13.3.09 and is paid on Mondays. Week commencing Sunday 8.3.09 is the first week in which pension is in payment and there is entitlement to IB. Pension deductions have effect from 13.3.09. Jason's payment of IB on Monday 16.3.09 is four days at the weekly rate of IB after the deduction for pension payment (13.3.09 to 16.3.09). For the following pay days the normal weekly adjustment applies.

## Date from which changes in the rate of pension payment or PPF periodic payment take effect

- 56138 The rate of a claimant's pension payment or PPF periodic payment may change. The new rate of deduction has effect from the Sunday of the week in which the new amount of pension payment or PPF periodic payment is paid<sup>1</sup>. Arrears of any pension payment or PPF periodic payment income are not taken into account.

*1 SS (IB) Regs, reg 23*

### Example

IB is in payment to Andrea at a reduced rate because of pension payments of £500 per calendar month. However, Andrea's pension payments increase to £560 per calendar month from 1.4.09. On 30.6.09 a payment of £680 is made which includes £180 arrears. The increased payment of £560 per month is converted to a weekly amount (£129.23). The further reduction in Andrea's IB takes effect from Sunday 28.6.09. There is no further reduction for the period before 28.6.09.

## Priority of deductions from IB, adult dependency increase, child dependency increase

56139 Deduction from IB applies firstly to personal benefit. If the excess pension payment or PPF periodic payment is more than the personal benefit the ADI is also reduced. If the excess is greater than the total of personal rate and ADI the CDI is reduced<sup>1</sup>.

*1 SS (IB) Regs, reg 25*

## Calculating the amount of the pension

56140 Except where DMG 56142 applies, the amount of the pension payment is the gross amount payable. Where income tax is deducted at source, the amount to be taken into account is the amount before tax is deducted<sup>1</sup>.

*1 R(U) 8/83; R(IB) 3/05*

56141 Some claimants have to make or choose to make certain payments from their pensions. The payments may be to the employer or a third party. If the payments are deducted before the pension is paid, the amount of pension to be taken into account is the amount before deductions are made. The claimant's liability to make the payments is separate from the liability to pay the pension. Examples of these payments include

1. repaying a debt to a former employer
2. payments to someone because of a court order
3. subscriptions to a trade union or other association
4. payments into a further pension scheme.

56142 Where the rules of the claimant's pension scheme provide for **compulsory** deductions, the amount deducted should be **disregarded** in calculating the amount of pension. This is because the word "payments" refers to the amount the claimant is actually entitled to receive. So a payment made under a binding obligation, for example to acquire additional pension rights, should be disregarded in calculating the amount of the pension<sup>1</sup>.

*1 R(U) 4/83*

### Example

A man is employed by an electricity company for 29 years and two months. He retires voluntarily. For superannuation purposes he is treated as having completed 30 years service. Under the rules of the superannuation scheme, a monthly deduction of £64.23 is made from his gross occupational pension of £574.83 for the purchase of the ten additional months. He cannot avoid the reduction to his pension payments. He must buy additional pension rights under the rules of the scheme. The DM takes into account a pension payment of £510.60 a month.

- 56143 Sometimes pension payments are received by the claimant in a currency other than sterling. To work out the sterling equivalent, DMs should follow the guidance at DMG Chapter 09.

### **Attachment orders, earmarking orders and pension sharing orders**

- 56144 An attachment order<sup>1</sup> or an earmarking order<sup>2</sup> is where a court orders the trustees or managers of a pension scheme to make payments of pension (including lump sum payments) when they become payable direct to the former spouse or former civil partner of a member of the scheme as part of the financial settlement on divorce/nullity or dissolution of a civil partnership<sup>3</sup>.

*1 Mat Causes Act 73, s 25B; 2 The Family Law (Scotland) Act 1985; 3 CP Act 04, Sch 5*

- 56145 A pension sharing order<sup>1</sup> is where a court orders that a percentage of the value of a member's shareable rights in a pension scheme (that is the cash equivalent transfer value) can be shared between the spouses or civil partners at the time of divorce/nullity or dissolution of civil partnership<sup>2</sup>.

*1 Mat Causes Act 73, s 24BB & 25B; 2 CP Act 04, Sch 5*

- 56146 Where there is an attachment order<sup>1</sup> or an earmarking order<sup>2</sup> and a court directs the claimant's pension provider to pay an amount to a former spouse or former civil partner<sup>3</sup>, when the claimant's pension becomes payable, the claimant continues to have underlying beneficial entitlement to the whole of the pension. However, the amount paid directly to the former spouse or former civil partner by the pension provider is not "a pension payment payable to him" within the meaning of the legislation<sup>4</sup>. This is because he does not receive, and is not entitled to receive the amount directed to be paid to the former spouse or former civil partner. In these cases, the amount paid by way of the court order should not be included when determining the weekly rate of pension payable to the claimant. Copies of the financial order and the attachment order made by the court at the time of the divorce or dissolution of a civil partnership will need to be obtained from the claimant in order to determine whether the attachment order or earmarking order was made under the relevant legislation.

**Note:** Attachment orders and earmarking orders may only be made against private pension schemes but not against the state second pension or RP.

*1 Mat Causes Act 73, s 25B; 2 The Family Law (Scotland) Act 1985; 3 CP Act 04 Sch 5;*

*4 SS CB Act 92, s 30DD(1)*

- 56147 Where the claimant is a former spouse or civil partner who receives a payment under an attachment order<sup>1</sup> or an earmarking order<sup>2</sup>, that payment is **not** a pension payment if it derives from

1. an occupational pension scheme **or**
2. a public service pension scheme.

This is because it is not a payment in connection with the ending of the claimant's employment<sup>3</sup>. Cases where a claimant receives a payment under an attachment order or an earmarking order which derives from a personal pension scheme should be sent to DMA Leeds for advice.

*1 Mat Causes Act 73, s 25B; 2 The Family Law (Scotland) Act 1985; 3 SS CB Act 92, s 30DD(5)(a)*

56148 - 56149

### **Calculating the weekly rate of pension payment or PPF periodical payment**

56150 If pension payments or PPF periodical payments are not paid weekly, they should be converted into a weekly amount. To do this

1. annual payments should be divided by 52<sup>1</sup>
2. quarterly payments (three monthly) should be divided by 13<sup>2</sup>
3. monthly payments should be multiplied by twelve and the result divided by 52<sup>3</sup>
4. payments of two or more calendar months (other than **1.** or **2.**) should be divided by the number of months the payment covers and the result multiplied by twelve and then divided by 52<sup>4</sup>
5. payments for any other period should be divided by the number of days covered by the payment and the result multiplied by seven<sup>5</sup>.

**Note:** A month means a calendar month<sup>6</sup>.

*1 SS (IB) Regs, reg 24(1)(a); 2 reg 24(1)(b); 3 reg 24(1)(c); 4 reg 24(1)(d); 5 reg 24(1)(e); 6 Inte Act 78*

### **Amounts of less than a penny**

56151 Amounts of less than half a penny are disregarded. Amounts of less than a penny but more than half a penny are rounded up to one penny<sup>1</sup>.

*1 SS (IB) Regs, reg 24(2)*

### **More than one pension or PPF periodic payment**

56152 Where a claimant is receiving more than one pension or PPF periodic payment the DM should

1. calculate the weekly rate of each pension separately then
2. add the weekly rates together

before working out the excess over the threshold<sup>1</sup>.

*1 SS (IB) Regs, reg 24(3)*

## Disregarded pension payments and PPF periodic payments

56153 Certain payments may be received but are disregarded and are not deducted from IB. These payments are

1. any pension payment made to a person as a beneficiary on the death of a member of any pension scheme<sup>1</sup>
2. any PPF periodic payment made to a person as a beneficiary on the death of a person entitled to this type of payment<sup>2</sup>
3. the extent of any shortfall in the full pension payment because a pension scheme is in deficit or has insufficient resources<sup>3</sup>
4. any permanent health insurance payment to which the employee has contributed more than 50 per cent of the premium<sup>4</sup>
5. any payment made under the Armed Forces Compensation scheme<sup>5</sup>
6. any pension payment under a pensions scheme in respect of death due to military or war service<sup>6</sup>

**Note:** Payments as in 1. are known as survivors' benefits and should be disregarded in full. Such payments may be made under a personal pension scheme, an occupational pension scheme or a public service pension scheme.

*1 SS (IB) Regs, reg 21(a); 2 reg 21(aa); 3 reg 21(b); 4 reg 21(c)  
5 reg 21(d), Armed Forces and Reserved Forces (Compensation Scheme) Order 2005, art 14(1)(b) & 21(1)(a);  
6 SS (IB) Regs, reg 21(e), Income Tax (Earnings and Pensions) Act 2003, s 639(2)*

## Transitional protection

56154 There is no deduction from IB on account of pension payments and PPF periodic payments if the person qualifies for IB(Y) because of previous entitlement to SDA<sup>1</sup>.

*1 SS (IB) Regs, reg 19*

56155 Pension payments do not reduce benefit where a person is entitled to IB before 6.4.01 on any day of IfW in a PIW which began before and continues after that date<sup>1</sup>. This includes PIWs which continue on or after 6.4.01 because

1. the PIW started within eight weeks of a previous PIW (see DMG 56290)
2. the PIW links with a previous PIW because of training for work (see DMG 56303)
3. the PIW links with a previous PIW because of DPTC (see DMG 56306)
4. the provision for any two PIWs not separated by more than 104 weeks to be treated as one PIW where the claimant is a WtWB (see DMG 56291)<sup>2</sup>.

*1 WRP Act 99 (Commencement No. 9, and Transitional and Savings Provisions) Order 2000, Art 3;  
2 SS (IB) Regs, reg 5A*

56156 - 56160

## Meaning of pension payments

56161 Pension payments are

1. periodical payments made to or for a person
  - 1.1 under a personal pension scheme (see DMG 56168) **or**
  - 1.2 in connection with the ending of the person's employment (see DMG 56180) under
    - 1.2.a an occupational pension scheme (see DMG 56163 ) **or**
    - 1.2.b a public service pension scheme (see DMG 56164)<sup>1</sup> **or**
2. periodical payments of permanent health insurance under a policy providing benefits in connection with
  - 2.1 physical or mental illness **or**
  - 2.2 disability **or**
  - 2.3 infirmity **or**
  - 2.4 defectin relation to a former employee on the termination of employment<sup>2</sup> **or**
3. FAS payments (see DMG 56188) where a person **first** becomes entitled to those payments on or after 27.3.09<sup>3</sup>.

**Note:** An insurance policy is a contract of insurance between an insurer and an insured under which the insured pays premiums in consideration of the insurer's undertaking to grant specified benefits on the insured on the occurrence of a specified event.

*1 SS CB Act 92, s 30DD(5)(a); 2 SS (IB) Regs, reg 20; 3 reg 20A*

## Periodical payments and lump sums

56162 Periodical payments are those that are paid at regular intervals. A lump sum payment is not a periodical payment. This applies even where the claimant has chosen to receive a lump sum instead of a periodical payment<sup>1</sup>. But where

1. a person is entitled to a lump sum payment **and**
2. the rules of the scheme allow the lump sum to be paid in instalments **and**
3. the person chooses to receive it in this way

the instalments are periodical payments.

*1 R(U) 5/85*

## Occupational pension scheme

56163 An occupational pension scheme<sup>1</sup> means a pension scheme that

1. provides benefits for people who are employed or self-employed as described in the scheme rules and which may provide benefits to members who are not in that kind of employment or self-employment **and**
2. has its main administration in the UK or outside the EU.

For a scheme to be an occupational pension scheme, at least one of the people establishing it must be an employer, employee or self employed person or a representative of employers, employees or S/E people. A pension scheme established for paid office-holders by the person who pays them can be an occupational pension scheme. An occupational pension scheme may cater for more than one kind of employment (or self-employment).

*1 SS CB Act 92, s 30DD(6); PS Act 93, s 1(1)-(4)*

## Public service pension scheme

56164 A public service pension scheme<sup>1</sup> is an occupational pension scheme that is

1. established under legislation by royal prerogative or under a royal charter **and**
  - 1.1 all its particulars are set out in the legislation, royal warrant or charter **or**
  - 1.2 it cannot come into force or be amended without the government's approval **or**
2. established with the government's approval **or**
3. prescribed by legislation<sup>2</sup>.

*1 SS CB Act 92, s 30DD(6); PS Act 93, s 1; 2 Occupational Pension Schemes (Public Service Pension Schemes) Regs 1978*

56165 Public service pension schemes include schemes for

1. civil servants **or**
2. local government employees **or**
3. teachers **or**
4. the Armed Forces **or**
5. police officers.

56166 If DMs have difficulty in determining whether a pension scheme is a public service pension scheme they should arrange to get

1. the claimant's consent to contact the manager of the scheme **and**

2. a statement from the manager of the scheme as to whether the pension scheme is a public service pension scheme within the meaning of relevant legislation<sup>1</sup>.

If a pension scheme is not a public service pension scheme it may still fall within the definition of an occupational pension scheme (see DMG 56163).

*1 PS Act 93, s 1(1)*

56167 Most public service schemes include provision for injury or contracting a disease (for example Police and Fire Service schemes). Such pensions may be paid on a minimum income guarantee basis. This means that the pension tops up existing income to a certain level. The pension rate may therefore be affected by the amount of IB entitlement. In such cases the DM should take into account the gross amount of pension i.e. before any adjustment has been made for IB. This ensures that the gross amount of the pension is offset against any IB, and the pension provider takes the subsequent balance of any IB payable into account. There is no disadvantage to the claimant, and means that in cases where the amount of pension paid to the claimant is equal to the level of guarantee, the claimant's total income remains unchanged. The pension provider needs to be informed of the correct amount of IB payable.

#### **Example 1**

The amount of pension is £120 per week, and the amount of guarantee is £120 per week. IB entitlement is £78.50 which is reduced by £17.50 (half the excess over £85) to £61. The pension is then paid at £59 to bring the guaranteed income back to £120.

#### **Example 2**

The amount of pension is £120 per week, and the amount of guarantee is £100 per week. IB entitlement is £78.50 which is reduced by £17.50 (half the excess over £85) to £61. The pension is then paid at £59 and the combined amount is not lower than the guaranteed income

### **Personal pension scheme**

56168 Personal pension scheme means a pension scheme<sup>1</sup> that

1. is not an occupational pension scheme **and**
2. is established by persons by whom registered pension schemes may be established (for example insurance companies, unit trust schemes, banks and building societies)<sup>2</sup>.

**Note:** This includes self-invested person pensions (see DMG 56175).

*1 PS Act 93 s 1(1) &(6); 2 Finance Act 2004, s 154*

- 56169 A personal pension scheme<sup>1</sup> for employed earners is any scheme or arrangement
1. where the employed earner has arranged with the scheme's trustees or managers to become a member of the scheme **and**
  2. that provides or is capable of providing benefits in the form of pensions or otherwise **and**
  3. where benefits are payable on death or retirement to or for employed earners.

*1 SS CB Act 92, s 30DD(6); PS Act 93, s 1(1)*

- 56170 Personal pension schemes under contracts or trust schemes were schemes established before 4.1.88 which provide for a life annuity later in life<sup>1</sup>.
- 1 Income and Corporation Taxes Act 1988, Part XIV, chapter III*

- 56171 Personal pension schemes<sup>1</sup> for S/E earners are pensions that
1. are payable by an authorized insurance company **and**
  2. provide for the payment of an annuity starting on or after the 50th birthday **or**
  3. provide that payment may start before the members reach age 50 if they become incapable through infirmity of carrying on their own, or a similar occupation or people in the member's occupation normally retire before the age of 50.

*1 Income and Corporation Taxes Act 1988, Part XIV chapter IV*

- 56172 If the member of the scheme used the personal pension to contract-out of the state earnings related pension scheme, the part of the pension that
1. comes from DWP rebates **and**
  2. is used to replace the state earnings related pension scheme
- can only be drawn from age 60.

- 56173 An authorized insurance company is
1. a person authorized under relevant legislation to carry on long-term business as an insurance company and acting through a branch or office in the UK<sup>1</sup> **or**
  2. a society registered as a friendly society under relevant legislation<sup>2</sup>.

*1 Income & Corporation Taxes Act 1988, s 630; Insurance Companies Act 1982, s 3 or 4;  
2 Friendly Societies Act 1974 or Friendly Societies Act (Northern Ireland) 1970*

- 56174 If DMs have difficulty in deciding whether the pension is payable by an authorised insurance company they should arrange to get
1. the claimant's consent to contact the insurance company **and**
  2. a statement from the insurance company as to whether they fall under DMG 56173.

## Self-invested person pensions

56175 Self-invested personal pensions are subject to the normal rules for registered pension schemes<sup>1</sup>. With self-invested personal pensions people can purchase an annuity or can receive an income by drawdown or an unsecured pension. Payments from self-invested personal pensions are payments under a personal pension scheme<sup>2</sup>.

*1 Finance Act 2004, s 154(1); 2 SS CB Act 92, s 30DD(6), PS Act 93, s 1*

56176 - 56179

## In connection with the coming to an end of employment

56180 A pension must be paid in connection with the end of employment of the person who it is paid for, to fall within DMG 56161 3. This excludes occupational or public service pensions paid where the employment has not ended.

### Example

The claimant receives a war pension paid because of disablement and regardless of whether the employment is continuing. The war pension is not a pension paid in connection with the end of employment.

56181 Employment includes any trade, business, profession, office or vocation<sup>1</sup>. Employment in the Armed Services falls within this definition.

*1 SS CB Act 92, s 122*

56182 Retired officers who are entitled to a war pension receive it as a disablement addition to their service pension. This disablement addition is

1. awarded by the Veterans Agency **and**
2. paid by the Paymaster General in the same cheque as the person's service pension.

56183 If the claimant is a retired officer with a service pension, the DM should

1. find out the amount of any disablement addition **and**
2. deduct it from the total payment received.

**Note:** Other ranks have their war pension paid direct by the Veterans Agency so there is no difficulty in separating their war pension from their service pension.

56184 Gallantry awards are sometimes paid to former members of the Forces in addition to their service pensions. Payment is

1. made from the date of the award **and**
2. a reward for conduct rather than a period of service

These awards are not paid in connection with the coming to an end of an employment and are **not** pension payments.

56185 The amount of a service pension may be increased if the claimant has been invalidated out of the Forces. The full amount should be taken into account.

56186 Police officers who retire because of permanent disability may be entitled to an ill health award<sup>1</sup> in addition to a pension under a public service pension scheme. If they are permanently disabled through an injury received while carrying out their duties, they are also entitled to an injury pension. It is a condition for the receipt of both payments that the officer ceases to be a member of a police force. The payments are therefore made in connection with the coming to an end of a police officer's employment.

*1 Police Pensions Regulations 1987*

### **Pension Scheme**

56187 Except where DMG 56163, 56164 and 56168 apply, pension scheme<sup>1</sup> means arrangements, that have or are capable of having effect so as to provide benefits to or in respect of people on

1. retirement
2. having reached a particular age **or**
3. on termination of service in employment.

*1 PS Act 93, s 1(5)*

### **Financial Assistance Scheme payments**

56188 The FAS helps people who have suffered significant losses to their accrued pension rights. Payments from the FAS can be made to

1. members **or**
2. former members **or**
3. widows, widowers or surviving civil partners of members or former members

of certain occupational pension schemes where the liabilities of the scheme to those people are unlikely or unable to be met in full.

### **Meaning of PPF periodic payments**

56189 PPF periodic payments are<sup>1</sup>

1. any periodic compensation payments made in relation to a person, payable under the pension compensation provisions set out in specified legislation<sup>2</sup>

2. any periodic payments made in relation to a person, payable under specific legislation<sup>3</sup>.

*1 SS CB Act 92, s 122(1); 2 Pensions Act 04, s 162(2); Pensions (Northern Ireland Order) 05, art 146(2);*

*3 Pensions Act 04, s 166; Pensions (Northern Ireland) Order 05, art 150*

56190 - 56249



# Calculation of days of incapacity

## General

56250 In deciding the days for which IB can be paid, the DM should establish the days of incapacity and if they form a PIW. A PIW is not the same as a spell of IfW (spell of incapacity) which is used to determine which test of incapacity is to be applied. A PIW(IB) is not the same as a PIW(SSP).

56251 Before there can be entitlement to IB for any day that day must

1. be a day of IfW **and**
2. form part of a PIW **and**
3. not be a waiting day.

56252 A person is not entitled to IB for the first three days of any PIW unless there is a link with a SSP period of entitlement or with a sickness absence period whilst a member of HMF<sup>1</sup>. These days are known as waiting days<sup>2</sup>.

*1 SS CB Act 92, s 30D(3A); 2 s 30A(3)*

56253 - 56254

## Days which are or are treated as days of incapacity

56255 A day cannot be a day of IfW unless the person is incapable of work on that day. IfW is determined by applying the appropriate test of incapacity to each day<sup>1</sup>.

*1 SS CB Act 92, s 30C(1)(a)*

56256 If a person is

1. incapable of work at the start of a day but becomes capable later that day **or**
2. capable of work at the start of the day but becomes incapable during the day

the whole day is treated as a day of incapacity if no work either employed or S/E is done on that day<sup>1</sup>.

*1 SS (IW) (Gen) Regs, reg 15*

56257 Days on which people are, or are treated as, incapable of work for IB include

1. days of entitlement to IB
2. days on which they are treated as incapable of work because they are exempt from the PCA
3. days on which they are treated as satisfying the PCA until it is applied
4. days worked in an exempt category of work (the claimant must be incapable of work, they are not treated as such)

5. days of entitlement to MA
6. certain days within the MPP and SAP<sup>1</sup>
7. days of disqualification where this was for six weeks or less
8. certain days of night shift work
9. days of attendance on training/rehabilitation courses where no training allowance, other than for meals or travelling expenses, is paid
10. certain days of entitlement to DPTC
11. some transitionally protected cases (see DMG Chapter 55)
12. there has been a mismatch of data resulting in an incorrect award of credits (see DMG 56271 et seq).

*1 SS (IB) Regs, reg 7B*

### **Maternity allowance period**

56258 Apart from certain days on which she is disqualified for receiving MA a woman is treated as incapable of work for any day which falls within the MAP<sup>1</sup>. For guidance on the MAP see DMG Chapter 62.

*1 SS CB Act 92, s 30C(2)*

### **Maternity pay period and adoption pay period**

56259 A day which falls within the MPP or APP is not treated as a day of IfW<sup>1</sup> unless certain conditions are satisfied.

*1 SS CB Act 92, Sch 13, para 1*

56260 A day which falls within the MPP or APP is treated as a day of IfW for IBST(H) or IBLT if<sup>1</sup>

1. on that day the person is, or is treated as, incapable of work **and**
2. that day is not a day which cannot be treated as a day of IfW **and**
3. the day falling immediately before the MPP or SAP (in practice the Saturday before) forms part of a PIW for IB or a period of entitlement to SSP or APP **and**
4. the person satisfied the contribution conditions for IB on the first day of incapacity in the PIW or would have satisfied the contribution conditions for IB had they claimed it on the first or any later day in the period of entitlement to SSP.

*1 SS (IB) Regs, regs 7A & 7B*

56261 If the conditions in DMG 56260 are satisfied the person is also treated as having been entitled to IBST(L) for days of incapacity in the MPP or APP<sup>1</sup>. This, however, does not give a person entitlement to IBST(L) during the MPP.

*1 SS (B) Regs, regs 7A & 7B*

## Disqualifications

56262 Days of disqualification where disqualification is for six weeks or less are days of IfW<sup>1</sup> (see DMG 56280 3.). This applies to disqualifications for

1. absence abroad **and**
2. imprisonment.

*1 SS (IB) Regs, reg 4(1)(b)*

## Night shift workers

56263 Night shift workers are people who work for a period of employment which begins on one day and extends over midnight into the next day. It is necessary to establish how many hours are worked before and after midnight. The hours of work on any other occasion are not relevant<sup>1</sup>.

*1 R(I) 31/55*

56264 The provisions do not apply to people whose employment lasts for more than 24 hours on either side of midnight<sup>1</sup>. For example, it would not apply to continuous employment from 6 pm on Monday to 2 am on Wednesday. In this example the Wednesday cannot be treated as a day of incapacity.

*1 R(U) 18/56*

56265 The day on which the lesser hours are worked is treated as a day of incapacity if<sup>1</sup>

1. a person works on a night shift for a continuous period over midnight **and**
2. the person was incapable of work for the rest of that day.

*1 SS (IB) Regs, reg 5(1)*

56266 The second day of a night shift is treated as a day of IfW if<sup>1</sup>

1. the hours before and after midnight are equal **and**
2. the night shift is at the beginning of the PIW.

*1 SS (IB) Regs, reg 5(2)(a)*

56267 The first day of the shift is treated as a day of IfW if<sup>1</sup>

1. the hours before and after midnight are equal **and**
2. the night shift is at the end of a PIW.

*1 SS (IB) Regs, reg 5(2)(b)*

56268 A night worker paid by the shift is normally paid for a meal break and this should be included in the calculation of the total time worked.

56269 A night worker paid by the hour is not normally paid for a meal interval. This should be deducted from the shift hours to arrive at the actual hours worked. The shift is still regarded as one continuous period of employment because the meal break is a normal break.

### **Mariners and airmen**

56270 There are special rules for mariners<sup>1</sup> and airmen<sup>2</sup>. Days on which the claimant is not disqualified for receiving IB or SDA are treated as days of IfW. See DMG Chapter 07 for further guidance.

*1 SS (Mariners' Ben) Regs, reg 4 & 6(2), 2 SS (Airmen's Ben) Regs, reg 2(1) & 6(1)*

### **Mismatch of data resulting in an incorrect award of credits**

56271 There has been a mismatch of data resulting in some people having an incorrect award of credits. From 1.10.07 days which were incorrectly considered days of IfW as a result of the incorrect awards of credits because of official error will also be treated as days of IfW for the purposes of later linked claims for IB<sup>1</sup>.

**Note:** See DMG 56288 et seq for guidance on linked claims.

*1 SS (IB) Regs, reg 4A(2)*

### **Meaning of official error**

56272 For the purposes of DMG 56271, "official error" means<sup>1</sup> an error made by

1. an officer of DWP or HMRC acting as such which nobody outside DWP or HMRC caused or materially contributed **or**
2. a person employed by a service provider and to which nobody who was not so employed materially contributed.

However, this does not include any error of law shown to have been an error by a later decision of the UT or court.

*1 SS (IB) Regs, reg 4A(3)*

### **Meaning of service provider**

56273 For the purposes of DMG 56272 2., "service provider" means a person providing services to DWP or HMRC<sup>1</sup>.

*1 SS (IB) Regs, reg 4A(3)*

56274 - 56276

## Days which are not or are not treated as days of incapacity

- 56277 Days which are not to be treated as days of incapacity for IB include days<sup>1</sup>
1. for which no claim has been made
  2. of disallowance for late claim
  3. of disqualification where disqualification was for more than six weeks
  4. of SSP
  5. within the MPP or APP
  6. of sick absence from duty whilst a serving member of HMF
  7. on which a person attends a training course in respect of which he is paid a training allowance (see DMG 56300).

*1 SS (IB) Regs, reg 4*

### No claim

- 56278 A day for which a person has made no claim for IB is treated as not being a day of IfW<sup>1</sup>. Guidance on claims is given in DMG Chapter 02.

*1 SS (IB) Regs, reg 4(1)(a)(i)*

### Late claim

- 56279 Days for which a person is not entitled to IB because of a late claim (including days which are more than three months before the date of claim or which have been backdated for a further period of up to a year in total<sup>1</sup>) are not treated as days of IfW<sup>2</sup>. Guidance on late claims is given in DMG Chapter 02.

*1 SS (C&P) Regs, Sch 4; 2 reg 4(1)(a)(ii) & (iii)*

### Disqualifications

- 56280 Claimants are disqualified for receiving IB when they are
1. absent from GB **or**
  2. imprisoned or detained in legal custody<sup>1</sup>.

If the disqualification is for more than six weeks the days of disqualification are not days of IfW<sup>2</sup>. As claimants are only entitled to IB for any day which is a day of IfW which forms part of a PIW, entitlement ceases from the first day of disqualification<sup>3</sup>. Unless the DM decides that a supersession for a fixed period is appropriate (see DMG 04117), claimants will need to reclaim on their return to GB or their release from imprisonment or detention in legal custody if their award of IB has been terminated.

*1 SS CB Act 92, s 113(1); 2 SS (IB) Regs, reg 4(1)(b); 3 SS CB Act 92, s 30A(1)*

56281 Days for which a woman is disqualified for receiving MA are not days of IfW<sup>1</sup>. This applies to disqualifications for<sup>2</sup>

1. work done during the MAP **or**
2. failure, without good cause, to observe the prescribed rules of behaviour **or**
3. failure, without good cause, to attend for or submit to medical examination.

*1 SS CB Act 92, s 30C(2); 2 SS (MA) Regs, reg 2*

## **SSP**

56282 A day of IfW in relation to a contract of service which falls within a period of entitlement to SSP is not a day of incapacity for IB<sup>1</sup> although it may be treated as a day of entitlement to IB (see DMG 56294).

*1 SS CB Act 92, Sch 12, para 1*

## **Maternity pay period and adoption pay period**

56283 Days within the MPP or APP are not days of incapacity<sup>1</sup> unless special conditions are satisfied (see DMG 56260).

*1 SS CB Act 92, Sch 13, para 1*

## **Her Majesty's Forces**

56284 A period of four or more consecutive days of sick absence from duty whilst a serving member of HMF is not a day of incapacity for IB although it may be treated as a day of entitlement to IB (see DMG 56297).

## **Definition of a period of incapacity for work**

56285 A PIW(IB) is normally made up of four or more consecutive days of IfW<sup>1</sup>.

*1 SS CB Act 92, s 30C(1)(b)*

56286 A PIW may be made up of any two days of incapacity within a period of seven consecutive days if the incapacity results from certain types of regular treatment<sup>1</sup>. The specified types of treatment are listed in DMG Chapter 13, Annex 1. Days of incapacity which result from the treatment as well as days on which a person actually has treatment are included.

*1 SS (IB) Regs, reg 6*

56287 Any two PIWs not separated by a period of more than eight weeks are treated as one<sup>1</sup>. This includes PIWs made up of four days or two days. A week for this purpose means any period of seven days<sup>2</sup>.

*1 SS CB Act 92, s 30C(1)(c); 2 s 30C(7)*

56288 Where a claimant is a WtWB in a LT different provisions apply (see DMG Chapter 13). Any two PIWs not separated by a period of more than 104 weeks are treated as one<sup>1</sup>. The normal rules apply to the rate of IB for linked PIWs (see DMG 56311 and 56312).

*1 SS (IB) Regs, reg 5A*

56289 A claimant is not entitled to IB for the first three days of any PIW<sup>1</sup>. If a claimant is a WtWB and DMG 56288 applies, these days will already have been served even if the contribution conditions were not satisfied at that time.

*1 SS CB Act 92, s 30A(3)*

56290 The first day of a PIW would normally identify which are the relevant contribution years governing entitlement to IB<sup>1</sup>. There is an easement to the normal rule which may be helpful to a WtWB<sup>2</sup>.

*1 SS CB Act 92, Sch 3; 2 Sch 3, para 2(7)*

56291 Where a claim for IB is made and by applying “104 week linking”, the person does not satisfy the contribution conditions but would satisfy these conditions in a later benefit year had the previous claim not been made, for the purposes of identifying the relevant contribution years only, the previous claim can be disregarded.

56292 This means that the first day of the PIW is that identified as in DMG 56288 but the relevant contribution years are those identified by the current claim.

### **Example 1**

Sheila claims IB from 22.3.07. The DM determines that she is a WtWB. The first day of her PIW is 5.5.03 which was the first day of her previous period of incapacity for work. She did not satisfy the second contribution condition in this previous period; the relevant years being 2000-01 and 2001-02. In the years 2004-05 and 2005-06 she does satisfy the contribution conditions. The first day of her PIW remains 5.5.03 but benefit entitlement is based on the contributions paid in the later years. She does not have to serve waiting days.

### **Example 2**

Graham claims IB from 15.9.08. The DM determines that he is a WtWB. The first day of his PIW is 17.4.00 which was the first day of his previous period of incapacity for work. Graham did not satisfy the contribution conditions for this period but received SDA. The first day of his PIW remains 17.4.00. However, for the claim made from 15.9.08 he does satisfy the contribution conditions and has entitlement to IB. His SDA entitlement also remains because of linking rules. Graham is awarded IB and SDA is not payable because of the overlapping benefit rules (see DMG Chapter 17).

56293 Special rules apply for linking PIWs where a person has been receiving DPTC or attending certain training courses (see DMG 56306 - 56307).

## SSP

- 56294 Days of incapacity falling within a period of entitlement to SSP do not form a PIW(IB)<sup>1</sup> but can be counted for the purposes of determining the rate of IB payable and when to apply the PCA<sup>2</sup>. Special provisions allow days of SSP to form a PIW for widows, widowers and surviving civil partners (See DMG 56335 and 56354).

*1 SS CB Act 92, Sch 12, para 1; 2 SS (IB) Regs, reg 7*

- 56295 The requirement that a PIW(IB) consists of four or more consecutive days of IfW does not apply where IB is claimed for one, two or three days immediately following the end of a period of entitlement to SSP<sup>1</sup>. These days can form a PIW for IB even though there are less than four consecutive days.

*1 SS CB Act 92, Sch 12, para 2*

- 56296 No waiting days should be imposed if the first day of the PIW(IB) is within 57 days after the last day of a period of entitlement to SSP<sup>1</sup>.

*1 SS CB Act 92, Sch 12, para 4*

### Example

Gail received SSP from 10.3.07 to 25.10.07. She claimed IB from 26.10.07 but did not satisfy the second contribution condition; the relevant years being 2004-05 and 2005-06. She made another claim from 5.1.08 and she satisfied the second contribution condition; the relevant years being 2005-06 and 2006-07. Gail has to serve waiting days because the claim from 5.1.08 is not within 57 days after the last day of her entitlement to SSP.

### Her Majesty's Forces

- 56297 Days of sickness absence from duty whilst a serving member of HMF do not form a PIW(IB), but can be counted for the purposes of determining the rate of IB payable<sup>1</sup> and when to apply the personal capability assessment.

*1 SS CB Act 92, s 30D(3A), SS (IB) Regs, reg 7C*

- 56298 No waiting days should be imposed if the first day of the PIW (IB) is within 57 days after the last day of a period of four or more days of sickness absence from duty<sup>1</sup>.

*1 SS CB Act 92, s 30D(3A); SS (IB) Regs, reg 7C*

56299

### Training courses

- 56300 A day is not treated as a day of IfW for IB purposes if on that day a person<sup>1</sup>

1. attends a training or rehabilitation course **and**
2. is paid a training allowance under certain provisions<sup>2</sup>.

*1 SS (IB) Regs, reg 4(1)(c); 2 E & T Act 73, s 2(1); Enterprise & New Towns (Scotland) Act 1990, s 2(3)*

56301 A day on which a person attends a course for which no training allowance, other than for travelling and meal expenses, is paid can be a day of IfW<sup>1</sup>.

*1 SS (IB) Regs, reg 4(1)(c) and (2).*

56302 The Prince's Trust Volunteer Scheme is a training course consisting of a structured programme of group activities, monitored work placements and community projects. In some circumstances, a training allowance (see DMG 56300 2.) is paid.

### **Linking periods of incapacity for work through training**

56303 Days on which a person has been on a training course are treated as days of IfW for any claim for IB after training for work ceases if the following conditions are met<sup>1</sup>

1. the first day after the person ceases training for work is a day of IfW **and**
2. the first day after the person ceases training for work is two years or less since the last day of entitlement to IBST(H) or IBLT **and**
3. the person was entitled to IBST(H) or IBLT for at least one day in the 56 days before the course started.

*1 SS CB Act 92, s 30C(6)*

56304 Training for work means

1. training schemes under specified employment legislation<sup>1</sup> **or**
2. any training received on a course attended **for** 16 hours or more a week which primarily teaches occupational or vocational skills<sup>2</sup>.

*1 E & T Act 73, s 2; Enterprise & New Towns (Scotland) Act 1990, s 2;  
2 SS (IB) Regs, reg 3*

56305 Although treated as days of incapacity, days of attendance on a training course do not count for deciding the rate of IB payable or when to apply the PCA.

### **Linking periods of incapacity for work through DPTC**

56306 For the purposes of a claim to IB after either work has ended or where work is continuing but the claimant has fallen sick, days of entitlement to DPTC are treated as days of IfW if the following conditions are satisfied<sup>1</sup>

1. the work in which a person is normally engaged has ceased **and**
2. there was entitlement to DPTC in the week which included the day work ceased **and**
3. on the first day after work ended a person is incapable of work and this day is two years or less since the last day of entitlement to IBST(H) or IBLT **and**
4. the person qualified for DPTC because of payment of IBST(H) or IBLT.

Work can be either employed or self employed.

*1 SS CB Act 92, s 30C(5)*

56307 Although treated as days of incapacity the days of DPTC do not count for determining the rate of IB payable or when to apply the PCA.

56308 - 56310

## **Calculating days to decide the rate of IB**

### **Days which count**

56311 Days which should be included in calculating 196/364 days for IBST(H) and IBLT<sup>1</sup> are

1. days for which IB is payable
2. days for which IB is not payable because of the overlapping benefits regulations (see DMG Chapter 17) or because payment has been extinguished (see DMG Chapter 08)
3. any of the first three days of a PIW
4. days of entitlement to MA
5. SSP days if the person can be treated as entitled to IB
6. for discharged members of HMF, a sickness absence period of four or more consecutive days which are recorded by the Secretary of State for Defence as sickness absence, including any two or more such periods not separated by more than eight weeks, where the sick absence period ends not more than eight weeks before the first day of the PIW IB<sup>2</sup>.

*1 SS CB Act 92, s 30D; 2 SS (IB) Regs, reg 7C*

### **Days which do not count**

56312 Days which should be excluded in calculating 196/364 days for IBST(H) and IBLT are

1. days on which IB is disallowed (unless underlying entitlement remains -see DMG 56311 2.)
2. days which are not days of incapacity or cannot be treated as days of incapacity
3. days for which a person is disqualified, for any reason, for receiving IB<sup>1</sup>. For the purpose of calculating the rate of IB it makes no difference that the period of disqualification may be six weeks or less
4. days of training or DPTC which are treated as days of incapacity.

*1 SS CB Act 92, s 30D(4)*

## SSP

56313 Days in a period of entitlement to SSP are counted as days of entitlement to IBST if<sup>1</sup>

1. the period of entitlement to SSP has ended **and**
2. the employee has a day of IfW which is part of a PIW **and**
3. the first day of the PIW is within the 57 days after the last day of SSP in the period of entitlement **and**
4. the contribution conditions for IB are satisfied on the first or any later day of the period of entitlement to SSP.

*1 SS (IB) Regs, reg 7(1)*

56314 In some cases the contribution conditions may be satisfied from a day after the start of the period of entitlement to SSP. In this situation the days in the period of entitlement are included as days of entitlement to IBST from the day on which the contribution conditions are satisfied<sup>1</sup>.

*1 SS (IB) Regs, reg 7(1)(b)*

56315 Each week for which an employer paid the full weekly amount of SSP is treated as seven days of entitlement to IBST<sup>1</sup>.

*1 SS (IB) Regs, reg 7(2)(a)*

56316 Where an employee receives less than a week of SSP, odd days are divided by the number of qualifying days in the final week and multiplied by seven (the number of days in a week for IB). Fractions are then included in the calculation for the following week. Any fraction of a day left over at the end of the period of entitlement counts as one day<sup>1</sup>.

*1 SS CB Act 92, reg 7(2)(b)*

### Example

4 odd days =  $0.8 \times 7 = 5.6$  days

5 qualifying days

If these days are at the end of the period of entitlement the fraction counts as one day. In this example the odd days will count as six days of IBST.

## Her Majesty's Forces

56317 Days for which a member of HMF has been incapable of work are counted as days of entitlement to IBST if<sup>1</sup>

1. the serving member has been formally discharged **and**
2. there is a period of four or more consecutive days of sickness absence from duty, which are recorded by the Secretary of State for Defence as a day on which the person was on sickness absence from duty **and**

3. any two such periods not separated by more than eight weeks shall be treated as one period **and**
4. the sickness absence period ends not more than eight weeks before the first day of the period to which IB relates.

*1 SS CB Act 92, s 30D(3A), SS (IB) Regs, reg 7c*

56318 The “relevant benefit year” is the benefit year which starts at the beginning of the period to which the claim for IB relates. The contribution conditions are only applied to the claim for IB, not for the period of sick absence from duty.

56319

### **When to apply the personal capability assessment**

56320 If IB is awarded because the claimant satisfies the OOT the 196th day in the spell of incapacity must be calculated. This is to determine when to apply the PCA.

56321 The PCA applies after 196 days of incapacity in a spell of incapacity. A spell of incapacity is a period of<sup>1</sup>

1. four or more consecutive days of IfW **or**
2. any two days within a period of seven consecutive days on which the claimant was engaged in specified regular treatment<sup>2</sup> (see DMG Chapter 13, Annex 1) **and**
3. any two such spells not separated by more than eight weeks.

*1 SS CB Act 92, s 171B(3); 2 SS (IW) (Gen) Regs, reg 13*

### **Days to be counted**

56322 When calculating the number of days in the spell of incapacity the following are included<sup>1</sup>

1. days which are, or are treated as, days of IfW
2. all days within a period of entitlement to SSP<sup>2</sup>
3. days within the MAP, whether or not they are treated as days of incapacity (see DMG 56258).

*1 SS CB Act 92, s 171B(4); 2 s 153*

56323 Days of IfW which are not treated as days of incapacity for the purposes of<sup>1</sup>

1. determining PIWs **or**
2. the rate of IB payable

**are** days of incapacity for determining when the PCA applies.

*1 SS CB Act 92, s 171B(5)*

56324 - 56329

# Incapacity benefit for widows

## General

56330 A widow who satisfies the normal conditions of entitlement to IB<sup>1</sup> will be entitled to IB. The rate payable may be reduced by her WB. Special provisions exist for widows whose husband died before 9.4.01, and who do not qualify for IB under the normal entitlement conditions<sup>2</sup>. From 4.4.05 such a claimant is not entitled to IBLT under those special provisions if she<sup>3</sup>

1. is issued with a full GRC **and**
2. was entitled to IBLT under those special provisions immediately before the full GRC was issued.

*1 SS CB Act 92, s 30A; 2 s 40; 3 GR Act 04, Sch 5 paras 1 & 6(a)*

## Conditions of entitlement

56331 The special provisions apply where<sup>1</sup>

1. her husband died after 5.4.79 but before 9.4.01 **or**
2. her WMA ceased after 5.4.79 (whenever her husband died).

*1 SS CB Act 92, s 40(2)*

56332 The special provisions can be applied where the widow is<sup>1</sup>

1. not entitled to WMA on her late husband's death or subsequently ceases to be entitled **and**
2. incapable of work at the time when he dies or when she ceased to be entitled to WMA **and**
3. would have been entitled to WP if she had been over age 45 when her husband died or when she ceased to be entitled to WMA or is entitled to WP but at a reduced rate because she was under 55 **and**
4. not entitled to IB under normal provisions.

*1 SS CB Act 92, s 40(1)*

56333 Where DMG 56331 and DMG 56332 are satisfied the woman is entitled to IB for any day of IfW which<sup>1</sup>

1. falls within a PIW that began before the time when her late husband died or her WMA ceased if this is later **and**
2. is after that time **and**

3. is after the first 364 days of incapacity in the PIW or after 196 days where she is terminally ill **and**
4. on which she is under pensionable age.

*1 GR Act 04, s 40(3), (4) & (6)*

56334 For entitlement to IB after 196 days of incapacity a woman is terminally ill if she suffers from a progressive disease from which her death can reasonably be expected within six months<sup>1</sup> (see DMG Chapter 13).

*1 SS CB Act 92, s 40(4)*

56335 When deciding whether the widow has a PIW beginning before the appropriate time, days of incapacity within a period of entitlement for SSP are to be included as part of the PIW<sup>1</sup>.

*1 SS CB Act 92, Sch 12, para 5*

## **Weekly rate**

56336 Where the conditions in DMG 56331 - 56332 are satisfied there is entitlement to IB at the weekly rate of<sup>1</sup> the

1. rate of IBLT (including any age addition) where the widow has no entitlement to WP **or**
2. difference between the WP in payment and the rate of IBLT (including any age addition) where the widow has entitlement to reduced WP.

*1 SS CB Act 92, s 40(5)*

56337 Where the widow is entitled to IB after 196 days of incapacity the award of benefit is IBST(H) for all purposes<sup>1</sup> but it is payable at the rate applicable to IBLT (including any age addition) if the widow is terminally ill.

*1 SS CB Act 92, s 40(4) & (8)*

## **Effect of guaranteed minimum pension**

56338 Any inherited GMP payable to the widow reduces or extinguishes any age addition payable as part of IB<sup>1</sup>.

*1 PS Act 93, s 46(3)*

56339 Female pensionable age is changing (see DMG Chapter 75). However, female claimants continue to be entitled to their own GMP at age 60<sup>1</sup>. This means that deductions should be made in respect of both

1. personal GMP **and**
2. any inherited GMP

of a widow from age 60, unless they are in respect of an appropriate personal pension scheme or a contracted-out money purchase scheme<sup>2</sup>.

*1 PS Act 93, s 46(1); 2 s 48*

## Widow reaches pensionable age

56340 IB under the special rules for widows is not payable after pensionable age<sup>1</sup>. If a widow is entitled to IBST(H) this can continue beyond pensionable age until the 364th day of entitlement is reached<sup>2</sup>. The rate of IB payable in these cases is the higher of

1. IBST(H) calculated by reference to the widow's RP entitlement<sup>3</sup> **or**
2. IBLT payable because she is terminally ill<sup>4</sup>.

*1 SS CB Act 92, s 40(6); 2 s 40(7) & (8); 3 s 30A(2)(b) & 30B(3); 4 s 30B(4)*

## Adjustment between WP and IB

56341 A widow who is entitled to WP and IB under the normal rules<sup>1</sup> may choose to receive her IB in full with a balance (if any) of WP<sup>2</sup>. As IBST(H) and IBLT are now taxable in the same way as WP there is no advantage to the widow in requesting this unless she is entitled to IBST(L). A widow who is entitled to IB under the special provisions in DMG 56331 et seq does not have this option as she is either not entitled to WP, or where WP is payable at a reduced rate entitled only to the balance of IB<sup>3</sup> (see DMG 56336 2.).

*1 SS CB Act 92, s 30A; 2 SS (OB) Regs, reg 4(5)(b); 3 SS CB Act 92, s 40(5)(b)*

## Changes of circumstances

56342 Entitlement to WP ceases when a widow remarries. When a widow is living with someone as man and wife only the payability of WP is affected. The effect of this on IB depends on whether the widow has title to IB under normal rules or the special rules.

56343 If IB is payable under normal rules and WB entitlement or payability is lost for any reason, IB will no longer be reduced for the overlapping benefit (see DMG Chapter 17).

56344 If IB is payable under the special rules (see DMG 56343) and the widow remarries, entitlement to IB will cease from the date of remarriage<sup>1</sup>.

*1 SS CB Act 92, s 40(1)(c)*

56345 If a widow starts to live with a man as his wife her entitlement to IB will not change. If IB is payable at the difference between the age related WP payable to a widow aged between 45 and 55 at the relevant time and IBLT, it remains at this rate even though age related WP payable to a widow aged between 45 and 55 at the relevant time is no longer payable<sup>1</sup>. This is because there is still title to age related WP payable to a widow aged between 45 and 55 at the relevant time.

*1 SS CB Act 92, s 40(5)(b)*

56346 Before 1.10.89 entitlement to WP was not lost when a woman remarried. Only the payability of WP was affected. This means that widows who have

1. a PIW beginning before 1.10.89 (see DMG Chapter 55 and DMG 56289 - 56292) **and**
2. title to IB as a transitional case (see DMG Chapter 55) **and**
3. had title to IVB under special provisions<sup>1</sup> before 1.10.89

do not lose title to IB on their remarriage even where this occurs after 1.10.89. This is because the widow had acquired the right to IVB which is not affected by the repeal of the entitling provisions<sup>2</sup>.

*1 SS CB Act 92, s 40; 2 Inte Act 78, s 16(1)(c)*

56347 - 56349

# Incapacity benefit for widowers

## General

56350 Widowers whose wife died before 9.4.01 and who do not qualify for IB under normal rules<sup>1</sup> may qualify for IB under special provisions<sup>2</sup>. From 4.4.05 there is no entitlement to IBLT under those special provisions<sup>3</sup> if

1. a full GRC is issued **and**
2. there was entitlement to IBLT under those special provisions immediately before the full GRC was issued.

*1 SS CB Act 92, s 30A; 2 s 41; 3 GR Act 04, Sch 5 paras 1 & 6(b)*

## Conditions of entitlement

56351 The special provisions apply to a widower where<sup>1</sup>

1. his wife died on or after 6.4.79 but before 9.4.01 **and**
2. he was incapable of work at the time when she died or within 13 weeks beginning with the day following the day on which his wife died<sup>2</sup>.

**Note:** "Week" for this purpose means a period of seven days.

*1 SS CB Act 92, s 41(1); 2 SS (W & WIVP) Regs, reg 4*

56352 If a widower satisfies the conditions in DMG 56351 he is entitled to IB for any day of IfW<sup>1</sup>

1. which falls within a PIW that began before the time when his wife died or within 13 weeks of that time beginning with the day following the day on which his wife died **and**
2. which is after that time and after the first 364 days of IfW or after 196 days of incapacity where the widower is terminally ill **and**
3. on which he is under pensionable age.

*1 SS CB Act 92, s 41(2), (3) & (5)*

56353 For entitlement to IB after 196 days of incapacity a man is terminally ill if he suffers from a progressive disease from which he can reasonably be expected to die within six months (see DMG Chapter 13)<sup>1</sup>.

*1 SS CB Act 92, s 41(3)*

56354 When deciding whether the widower has a PIW beginning before the appropriate time, days of incapacity within a period of entitlement for SSP are to be included as part of the PIW<sup>1</sup>.

*1 SS CB Act 92, Sch 12, para 5*

## Weekly rate

56355 Where a widower satisfies all the conditions in DMG 56181 and 56182 he is entitled to IBLT (including any age addition). Where IB is payable after 196 days of incapacity the award of benefit for all purposes will be IBST(H), but it will be payable at IBLT rates (including any age addition)<sup>1</sup>.

*1 SS CB Act 92, s 41(3), (4) & (7)*

## Effect of guaranteed minimum pension

56356 The weekly rate of any age addition is reduced or extinguished by any GMP entitlement<sup>1</sup>.

*1 PS Act 93 s 46(3)*

## Widower reaches age 65

56357 IB under the special rules for widowers is not payable over age 65<sup>1</sup>. If a widower is entitled to IBST(H) this can continue under normal rules beyond age 65 until the 364th day of entitlement is reached<sup>2</sup>. The rate of IB in these cases is the higher of

1. IBST(H) calculated by reference to the widower's RP entitlement<sup>3</sup> **or**
2. IBLT payable because he is terminally ill<sup>4</sup>.

*1 SS CB Act 92, s 40(6); 2 s 40(7) & (8); 3 s 30A(2)(b) & 30B(3); 4 s 30B(4)*

## Changes of circumstance

56358 A widower's entitlement to IB under the special rules is not affected by his remarriage.

56359 - 56999

## Appendix 1

### Councillor's allowances - prescribed earnings limit

From	£
13.4.95	44.00
8.4.96	45.50
7.4.97	46.50
6.4.98	48.00
12.4.99	49.50
10.4.00	58.50
2.10.00	59.50
9.4.01	60.50
1.10.01	66.00
1.10.02	67.50
1.10.03	72.00
1.10.04	78.00
1.10.05	81.00
1.10.06	86.00
1.10.07	88.50
1.10.08	92.00
1.10.09	93.00
1.10.10	95.00
1.10.11	97.50
1.10.12	99.50
1.10.13	101.00
1.10.14	104.00

***The content of the examples in this document (including use of imagery) is for illustrative purposes only***