
STATUTORY INSTRUMENTS

1995 No. 311

The Social Security (Incapacity for Work) (General) Regulations 1995

PART II E+W+S

GENERAL PROVISIONS RELATING TO INCAPACITY FOR WORK

CHAPTER I E+W+S

OWN OCCUPATION TEST

Definition of “remunerative work” E+W+S

4.—(1) For the purposes of section 171B of the Contributions and Benefits Act (the own occupation test) “remunerative work” in relation to the period of 21 weeks referred to in that section means work—

- (a) in one occupation in which a person was engaged for 16 or more hours a week for more than 8 weeks; and
 - (b) for which payment was made or which was done in expectation of payment.
- (2) For the purposes of this regulation and regulation 5—
- (a) one occupation comprises either—
 - (i) all work of the same kind, whether or not it is for the same employer and whether a person is employed or self-employed; or
 - (ii) all work for the same employer; and
 - (b) a person who was normally engaged in one occupation for 16 or more hours a week shall be treated as if he had been engaged in that occupation in relation to any week when he was on paid or unpaid leave from that occupation.

Person with more than one occupation E+W+S

5. Where a person was engaged in more than one occupation which qualified as remunerative work in the period of 21 weeks referred to in regulation 4, his occupation for the purposes of the own occupation test is the last such occupation in which he was engaged during that period; but if, during his last week of remunerative work in that period, he was engaged in more than one such occupation he must satisfy the own occupation test in respect of each.

CHAPTER II **E+W+S**

INFORMATION AND EVIDENCE

Information required for determining capacity for work **E+W+S**

6.—(1) ^{F1}Subject to paragraphs (2) and (3)] the information or evidence required for the purposes of determining whether a person is capable or incapable of work ^{F2}and the information or evidence required which is capable of being used for assisting or encouraging a person to obtain work or to enhance his prospects of obtaining it,] is—

- (a) where the own occupation test ^{F3} ... applies, ^{F4}or where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment,] evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations 1976 ^{M1} (which prescribe the form of doctor's statement or other evidence required in each case);
- ^{F5}(b) ^{F6}where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment], such information—
 - (i) relating to a person's ability to perform the activities referred to in the Schedule, or
 - (ii) capable of being used for assisting or encouraging a person to obtain work or to enhance his prospects of obtaining it,
 as the Secretary of State may request in the form of a questionnaire;]
- (c) such additional information ^{F7}as is capable of being used for the purpose referred to in paragraph (b)(ii), or relating to the own occupation test or the personal capability assessment] as the Secretary of State may request.

(2) Where the Secretary of State is satisfied that he has sufficient information for a determination whether a person is capable or incapable of work without the information specified in ^{F8}paragraph (1)(b)(i)], that information shall not be required for the purposes of that determination.

^{F9}(3) Paragraph (1) shall not apply in relation to a determination—

- (a) whether a person is capable of work for the purposes of a claim for ^{F10}jobseeker's allowance]; or
- (b) whether a person is to be treated as incapable of work under any of ^{F11}regulations 10, 11 to 14].]

^{F12}(4) Information requested for the purpose referred to in paragraph (1)(b)(ii) shall not be used for the purposes of determining whether a person is capable or incapable of work in accordance with Part XIIA of the Contributions and Benefits Act.]

Textual Amendments

- F1** Words in reg. 6(1) substituted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **2(2)(a)**
- F2** Words in reg. 6(1) inserted (13.12.1999) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1999 \(S.I. 1999/3109\)](#), regs. 1(2), **2(2)(a)**
- F3** Words in reg. 6(1)(a) omitted (3.4.2000) by virtue of [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1999 \(S.I. 1999/3109\)](#), regs. 1(1), **2(2)(b)**
- F4** Words in reg. 6(1)(a) inserted (3.4.2000) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1999 \(S.I. 1999/3109\)](#), regs. 1(1), **2(2)(b)**
- F5** Reg. 6(1)(b) substituted (13.12.1999) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1999 \(S.I. 1999/3109\)](#), regs. 1(2), **2(2)(c)**

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- F6** Words in reg. 6(1)(b) substituted (3.4.2000) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1999 \(S.I. 1999/3109\)](#), regs. 1(1), **2(2)(d)**
- F7** Words in reg. 6(1)(c) substituted (3.4.2000) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1999 \(S.I. 1999/3109\)](#), regs. 1(1), **2(2)(e)**
- F8** Words in reg. 6(2) substituted (3.4.2000) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1999 \(S.I. 1999/3109\)](#), regs. 1(1), **2(2)(f)**
- F9** Reg. 6(3) substituted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **2(2)(b)**
- F10** Words in reg. 6(3)(a) substituted (7.10.1996) by [The Social Security and Child Support \(Jobseeker's Allowance\) \(Consequential Amendments\) Regulations 1996 \(S.I. 1996/1345\)](#), regs. 1, **20(2)**
- F11** Words in reg. 6(3)(b) substituted (3.4.2000) by [The Social Security \(Approved Work\) Regulations 2000 \(S.I. 2000/678\)](#), regs. 1, **4(2)**
- F12** Reg. 6(4) inserted (3.4.2000) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1999 \(S.I. 1999/3109\)](#), regs. 1(1), **2(2)(g)**

Marginal Citations

- M1** [S.I. 1976/615](#); relevant amending instruments are [S.I. 1982/699](#), [S.I. 1989/1686](#), [S.I. 1992/247](#) and [S.I. 1994/2975](#).

Failure to provide information **E+W+S**

7.—(1) Where a person fails without good cause to comply with a request of the Secretary of State to provide the information referred to in regulation 6(1)(b)^{F13}... he shall, subject to paragraph (2), be treated as capable of work.

- (2) A person shall not be treated as capable of work under paragraph (1) unless—
- (a) at least [^{F14} weeks] have elapsed since the Secretary of State sent that person the first request for that information; and
- (b) the Secretary of State has sent that person a further request at least [^{F15}3 weeks] after the first, and at least [^{F16}1 week has] elapsed since that further request was sent.

Textual Amendments

- F13** Words in reg. 7(1) deleted (3.4.2000) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1999 \(S.I. 1999/3109\)](#), regs. 1(1), **2(3)**
- F14** Words in reg. 7(2)(a) substituted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **9(2)(a)** (with reg. 2)
- F15** Words in reg. 7(2)(b) substituted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **9(2)(b)(i)** (with reg. 2)
- F16** Words in reg. 7(2)(b) substituted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **9(2)(b)(ii)** (with reg. 2)

Person may be called for a medical examination **E+W+S**

8.—(1) Where [^{F17}it falls to be determined] whether a person is capable of work, he may be called by or on behalf of a [^{F18}health care professional] approved by the Secretary of State to attend for a medical examination.

(2) Subject to paragraph (3) where a person fails without good cause to attend for or submit himself to such an examination, he shall be treated as capable of work.

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(3) A person shall not be treated as capable of work under paragraph (2) unless written notice of the time and place for the examination was sent to him at least 7 days beforehand, or unless he agreed to accept a shorter period of notice.

Textual Amendments

F17 Words in reg. 8(1) substituted (3.4.2000) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1999 \(S.I. 1999/3109\)](#), regs. 1(1), **2(4)**

F18 Words in reg. 8(1) substituted (3.7.2007) by [Social Security \(Miscellaneous Amendments\) \(No.2\) Regulations 2007 \(S.I. 2007/1626\)](#), regs. 1, **3(3)**

Matters to be taken into account in determining good cause **E+W+S**

9. The matters which are to be taken into account in determining whether a person has good cause under regulation 7 or 8 (failure to provide information or attend a medical examination) shall include—

- (a) whether he was outside Great Britain at the relevant time;
- (b) his state of health at the relevant time; and
- (c) the nature of any disability from which he suffers.

CHAPTER III **E+W+S**

PERSONS TREATED AS INCAPABLE

Certain persons with a severe condition to be treated as incapable of work **E+W+S**

10.—(1) [^{F19}Where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment] a person shall be treated as incapable of work on any [^{F20}day in respect of which] any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are—

- [^{F21}(a) that he receives, in respect of the day in question, a payment of—
 - (i) the highest rate care component of disability living allowance;
 - (ii) an increase of disablement pension by virtue of section 104 of the Contributions and Benefits Act and regulation 19 of the Social Security (General Benefit) Regulations 1982 (increase of disablement pension for constant attendance) at a rate greater than that specified in paragraph 2(a) or at the rate specified in paragraph 2(b) of Part V of Schedule 4 to that Act;
 - (iii) a constant attendance allowance by virtue of article 14(1)(b) of the Naval, Military, and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983;
 - (iv) an increase of constant attendance allowance at a rate payable by virtue of article 14 of, and paragraph 3(a) of Schedule 3 to, the Personal Injuries (Civilians) Scheme 1983;]
- [^{F22}(aa) that he is entitled to—
 - (i) a disablement pension by virtue of section 103 of the Contributions and Benefits Act by reference to a degree of disability of not less than 80 per cent.;
 - (ii) a disablement pension by virtue of Part III of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 or of Part III of the Personal

- Injuries (Civilians) Scheme 1983 by reference to a degree of disability of not less than 80 per cent.;
- (ab) that evidence in accordance with regulation 10 of the Social Security (Severe Disablement Allowance) Regulations 1984 establishes that he suffers from a loss of physical or mental faculty such that the extent of the resulting disablement amounts to not less than 80 per cent.;
- (b) that he is suffering from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months;
- (c) that he is a blind person whose name is on a register compiled and maintained by a local authority under section 29 of the National Assistance Act 1948^{M2} (welfare services) or, in Scotland, has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a regional or islands council;
- (d) that he is suffering from any of the following conditions—
- (i) tetraplegia;
 - (ii) persistent vegetative state;
 - (iii) dementia;
 - (iv) paraplegia or uncontrollable involuntary movements or ataxia which effectively renders the sufferer functionally paraplegic;
- (e) [^{F23}that he is suffering from any of the following conditions, and there exists medical evidence that he is suffering from any of them—]
- (i) a severe learning disability (which, for the purposes of this regulation, means a condition which results from the arrested or incomplete physical development of the brain, or severe damage to the brain, and which involves severe impairment of intelligence and social functioning);
 - (ii) a severe and progressive neurological [^{F24}or muscle] wasting disease;
 - (iii) an active and progressive form of inflammatory polyarthritis;
 - (iv) a progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance;
 - (v) dense paralysis of the upper limb, trunk and lower limb on one side of the body;
 - (vi) multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory and intellectual deficits;
 - [^{F25}(vii) manifestations of severe and progressive immune deficiency states characterised by the occurrence of severe constitutional disease or opportunistic infections or tumour formation;]
 - [^{F26}(viii) a severe mental illness, involving the presence of mental disease, which severely and adversely affects a person's mood or behaviour, and which severely restricts his social functioning, or his awareness of his immediate environment.]

Textual Amendments

- F19** Words in reg. 10(1) substituted (3.4.2000) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1999 (S.I. 1999/3109), regs 1, 2(5)
- F20** Words in reg. 10(1) substituted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **2(3)(a)**
- F21** Reg. 10(2)(a) substituted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **2(3)(b)(i)**

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- F22** Reg. 10(2)(aa)(ab) inserted (1.4.1997) by The Social Security (Incapacity for Work and Severe Disablement Allowance) Amendment Regulations 1997 (S.I. 1997/1009) , regs. 1 , 2
- F23** Words in reg. 10(2)(e) substituted (6.1.1997) by The Social Security (Incapacity for Work and Miscellaneous Amendments) Regulations 1996 (S.I. 1996/3207) , regs. 1(1) , 2(3)(a)
- F24** Words in reg. 10(2)(e)(ii) substituted (6.1.1997) by The Social Security (Incapacity for Work and Miscellaneous Amendments) Regulations 1996 (S.I. 1996/3207) , regs. 1(1) , 2(3)(b)
- F25** Reg. 10(2)(e)(vii) substituted (3.4.1995) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1995 (S.I. 1995/987) , regs. 1(2) , 2(3)(b)(ii)
- F26** Reg. 10(2)(e)(viii) substituted (6.1.1997) by The Social Security (Incapacity for Work and Miscellaneous Amendments) Regulations 1996 (S.I. 1996/3207) , regs. 1(1) , 2(3)(c)

Modifications etc. (not altering text)

- C1** Reg. 10 applied (27.10.2003) by The Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003 (S.I. 2003/2439), regs. 1, 8

Marginal Citations

- M2** 1948 c. 29 .

[^{F27}+S] Certain persons participating in approved work to be treated as incapable of work **E+W**

10A.—(1) A person to whom this regulation applies shall be treated as incapable of work on any day in a period of incapacity for work on which he does any approved work in respect of which no payment in the nature of earnings is expected or made.

(2) Subject to paragraph (3), this regulation applies to a person who is—

- (a) incapable of work or treated as incapable of work;
- (b) receiving a prescribed benefit; and
- (c) engaged in approved work on a trial basis.

(3) Where a person to whom this regulation applies is determined to be capable of work, paragraph (1) shall cease to apply in his case.

(4) In this regulation—

“approved work” means, in relation to a person, work arranged in writing by the [^{F28}“with an employer in respect of him by an officer of, or a person providing services to, the Secretary of State who has been authorised by the Secretary of State for the purpose];

“a prescribed benefit” means any benefit, allowance or advantage under the Contributions and Benefits Act (other than statutory sick pay, statutory maternity pay or industrial injuries benefit) or the Jobseekers Act 1995, and for which entitlement is dependent on incapacity for work;

“trial basis” means such trial period and other related matters as may be agreed [^{F29}between—

- (a) the person;
- (b) an officer of, or a person providing services to, the Secretary of State who has been authorised by the Secretary of State for the purpose; and
- (c) an employer,

in relation to the approved work.]]

Textual Amendments

- F27** Reg. 10A inserted (3.4.2000) by [The Social Security \(Approved Work\) Regulations 2000 \(S.I. 2000/678\)](#), regs. 1, **4(3)**
- F28** Words in reg. 10A(4) substituted (8.4.2002) by [Social Security \(Incapacity\) \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/491\)](#), regs. 1(1)(b), **2(a)**
- F29** Words in reg. 10A(4) substituted (8.4.2002) by [Social Security \(Incapacity\) \(Miscellaneous Amendments\) Regulations 2002 \(S.I. 2002/491\)](#), regs. 1(1)(b), **2(b)**

[^{F30}Person with a relevant infection or contamination] **E+W+S**

[^{F31}**11.**—(1) A person shall be treated as incapable of work on any day in respect of which he is—

- (a) excluded or abstains from work pursuant to a request or notice in writing lawfully made under an enactment; or
- (b) otherwise prevented from working pursuant to an enactment,

[^{F32}by reason of it being known or reasonably suspected that he is infected or contaminated by, or has been in contact with a case of, a relevant infection or contamination].

(2) For the purposes of paragraph (1)—

“enactment” means an enactment comprised in, or in an instrument made under—

- (a) an Act; or
- (b) an Act of the Scottish Parliament; and

[^{F33}“relevant infection or contamination” means—

- (a) in England and Wales—
 - (i) any incidence or spread of infection or contamination, within the meaning of section 45A(3) of the Public Health (Control of Disease) Act 1984 in respect of which regulations are made under Part 2A of that Act (public health protection) for the purpose of preventing, protecting against, controlling or providing a public health response to, such incidence or spread, or
 - (ii) any disease, food poisoning, infection, infectious disease or notifiable disease to which regulation 9 (powers in respect of persons leaving aircraft) of the Public Health (Aircraft) Regulations 1979 applies or to which regulation 10 (powers in respect of certain persons on ships) of the Public Health (Ships) Regulations 1979 applies; and
- (b) in Scotland, any—
 - (i) infectious disease within the meaning of section 1(5) of the Public Health etc (Scotland) Act 2008, or exposure to an organism causing that disease, or
 - (ii) contamination within the meaning of section 1(5) of that Act, or exposure to a contaminant,

to which sections 56 to 58 of that Act (compensation) apply.]]

Textual Amendments

- F30** Reg. 11 heading substituted (31.10.2011) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#), regs. 1(2), **9(3)(a)**
- F31** Reg. 11 substituted (1.10.2006) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(2), **12(2)**

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- F32** Words in reg. 11(1) substituted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#) , regs. 1(2) , **9(3)(b)**
- F33** Words in reg. 11(2) substituted (31.10.2011) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2011 \(S.I. 2011/2425\)](#) , regs. 1(2) , **9(3)(c)**

Hospital in-patients E+W+S

12. A person shall be treated as incapable of work on any day on which he is undergoing medical or other treatment as an in-patient in a hospital or similar institution.

Person receiving certain regular treatment E+W+S

13.—(1) The following provisions of this regulation apply to a person receiving—

- (a) regular weekly treatment by way of haemodialysis for chronic renal failure or peritoneal dialysis for chronic renal failure;
- (b) treatment by way of plasmapheresis, by way of parenteral chemotherapy with cytotoxic drugs, anti-tumour agents or [^{F34}immuno-suppressive] drugs or by way of radiotherapy; or
- (c) regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function.

(2) A person referred to in paragraph (1) shall be treated as incapable of work on any day on which he is engaged in that treatment.

(3) A person who works during any week in which he receives treatment referred to in paragraph (1) shall be treated as capable of work for the purposes of regulation 16 only on the actual day or days on which he works in that week.

(4) Section 171B(3) of the Contributions and Benefits Act (which defines a spell of incapacity) shall have effect in relation to a person referred to in paragraph (1) as if the period of 4 days mentioned in that section were a period of 2 days, whether consecutive or not, in a period of 7 consecutive days.

Textual Amendments

F34 Word in reg. 13(1)(b) substituted (6.1.1997) by [The Social Security \(Incapacity for Work and Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/3207\)](#) , regs. 1(1) , **2(4)**

[^{F35}**Welfare to work beneficiary** E+W+S

13A.—(1) Subject to paragraph (3), a person is a “welfare to work beneficiary” on any day in a linking term, where he—

- (a) was incapable of work for a period of incapacity for work of more than 196 days in his immediate past period of incapacity for work;
- (b) ceased to be entitled to the benefit at the end of that immediate past period of incapacity for work on a day which falls on or after 5th October 1998; [^{F36}and]
- (c) became engaged in remunerative work within [^{F37}one month] of so ceasing to be entitled to that benefit at the end of that immediate past period of incapacity for work; ^{F38} ...

^{F39}(d)

(2) A welfare to work beneficiary shall be treated as incapable of work on any day in a period, consisting of a cumulative number of days of incapacity for work not exceeding 91 days in total,

beginning within the linking term and ending on a day not later than 13 weeks from the end of that linking term, where he—

- (a) claims benefit for any day falling within that linking term;
- (b) submits evidence in accordance with regulation 2 of the Social Security (Medical Evidence) Regulations 1976; and
- (c) in his immediate past period of incapacity for work—
 - (i) had been assessed and [^{F40}determined to be incapable of work in accordance with the personal capability assessment under Part III], or
 - (ii) had been treated under regulation 10 (certain persons with a severe condition to be treated as incapable of work) as incapable of work.

[^{F41}(3) A person is not a welfare to work beneficiary under paragraph (1) if his immediate past period of incapacity for work was ended by a determination, other than a determination in the circumstances set out in paragraph (1) or (3A), that he was, or was treated as, capable of work.]

[^{F42}(3A) The circumstances are that the person had successfully appealed against a determination made in respect of the personal capability assessment or the own occupation test in relation to his immediate past period of incapacity for work.]

(4) For the purposes of this regulation—

“benefit” means any benefit, allowance or advantage under the Contributions and Benefits Act (other than statutory sick pay), or under the Jobseekers Act 1995, for which entitlement is dependent on incapacity for work;

“linking term” means a period of [^{F43}104 weeks] (whether or not broken by days of incapacity for work) fixed on the first day immediately following the last day of incapacity in a period of incapacity for work;

[^{F44}“immediate past period of incapacity for work” means [^{F45}the most recent of] —

- (i) a period of incapacity for work under section 30C(1) of the Contributions and Benefits Act,
- (ii) a period of incapacity for work under section 152 of the Contributions and Benefits Act, or
- (iii) a term composed of a period of incapacity for work under section 30C(1) and a period of incapacity for work under section 152 and includes any two such periods of incapacity for work which are separated by a period of not more than 8 weeks.]

“remunerative work” means—

- (a) work (other than exempt work under regulation 17) for which payment is made or which is done in expectation of payment, or
- (b) attendance on a training course in respect of which the person receives a training allowance in pursuance of arrangements made under section 2(1) of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990.]

Textual Amendments

F35 Reg. 13A inserted (5.10.1998) by [The Social Security \(Welfare to Work\) Regulations 1998 \(S.I. 1998/2231\)](#), regs. 1, **4(2)**

F36 Word in reg. 13A(1)(b) inserted (9.10.2006) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#), regs. 1(7), **12(3)(a)**

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- F37** Word in reg. 13A(1)(c) substituted (9.10.2006) by Social Security (Miscellaneous Amendments) (No.4) Regulations 2006 (S.I. 2006/2378), regs. 1(7), **12(3)(b)**
- F38** Word in reg. 13A(1) omitted (9.10.2006) by virtue of Social Security (Miscellaneous Amendments) (No.4) Regulations 2006 (S.I. 2006/2378), regs. 1(7), **12(3)(c)**
- F39** Reg. 13A(1)(d) omitted (9.10.2006) by virtue of Social Security (Miscellaneous Amendments) (No.4) Regulations 2006 (S.I. 2006/2378), regs. 1(7), **12(3)(c)**
- F40** Words in reg. 13A(2)(c)(i) substituted (3.4.2000) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1999 (S.I. 1999/3109), regs. 1(1), **2(6)(b)**
- F41** Reg. 13A(3) substituted (9.10.2006) by Social Security (Miscellaneous Amendments) (No.4) Regulations 2006 (S.I. 2006/2378), regs. 1(7), **12(3)(d)**
- F42** Reg. 13A(3A) inserted (9.10.2006) by Social Security (Miscellaneous Amendments) (No.4) Regulations 2006 (S.I. 2006/2378), regs. 1(7), **12(3)(e)**
- F43** Words in reg. 13A(4) substituted (9.10.2006) by Social Security (Miscellaneous Amendments) (No.4) Regulations 2006 (S.I. 2006/2378), regs. 1(7), **12(3)(f)(i)**
- F44** Words in reg. 13A(4) substituted (10.4.2006) by Social Security (Incapacity for Work) Amendment Regulations 2006 (S.I. 2006/757), regs. 1(1), **2(b)**
- F45** Words in reg. 13A(4) inserted (9.10.2006) by Social Security (Miscellaneous Amendments) (No.4) Regulations 2006 (S.I. 2006/2378), regs. 1(7), **12(3)(f)(ii)**

Modifications etc. (not altering text)

- C2** Reg. 13A modified (9.10.2006) by Social Security (Miscellaneous Amendments) (No.4) Regulations 2006 (S.I. 2006/2378), regs. 1(7), **12(5)**

Pregnancy **E+W+S**

14. A pregnant woman shall be treated as incapable of work—
- (a) on any day on which, because of her pregnancy, there is a serious risk of damage to her health or to the health of her unborn child if—
- (i) in a case where the own occupation test applies, she does not refrain from work in the occupation which is relevant for the purposes of that test; or
- (ii) in a case [^{F46}where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment,] she does not refrain from work in any occupation; or
- (b) in the case of a woman whose expected or actual date of confinement has been certified in accordance with the Social Security (Medical Evidence) Regulations 1976, on any day in the period—
- (i) beginning with the first day of the 6th week before the expected week of her confinement or the actual date of her confinement, whichever is earlier; and
- (ii) ending on the 14th day after the actual date of her confinement,
- if she would have no entitlement to a maternity allowance or statutory maternity pay were she to make a claim in respect of that period.

Textual Amendments

- F46** Words in reg. 14(a)(ii) substituted (3.4.2000) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1999 (S.I. 1999/3109), regs. 1(1), **2(7)**

Person to be treated as incapable of work throughout a day **E+W+S**

15. A person who at the commencement of any day is, or thereafter becomes, incapable of work by reason of some specific disease or bodily or mental disablement shall be treated as incapable of work throughout that day.

CHAPTER IV **E+W+S**

TREATING AS CAPABLE, DISQUALIFICATION ETC.

Person who works to be treated as capable of work **E+W+S**

[^{F47}16.—(1) A person shall be treated as capable of work on each day of any week during which he does work.

(2) Paragraph (1) applies even if—

- (a) it has been determined that he is, or is to be treated under any of regulations 10 to 15 or regulation 27 as, incapable of work, or
- (b) he meets the conditions set out in regulation 28(2) for treating a person as incapable of work in accordance with the personal capability assessment until a determination has been made in accordance with that assessment.

(3) Paragraph (1) does not apply to—

- (a) work as a councillor disregarded under section 171F of the Contributions and Benefits Act,
- (b) approved work under regulation 10A,
- (c) care of a relative or domestic tasks carried out in his own home,
- (d) any activity he undertakes during an emergency solely to protect another person or to prevent serious damage to property or livestock, or
- (e) any of the categories of work set out in regulation 17 (exempt work).

(4) This regulation is subject to regulation 13(3) (person receiving certain regular treatment).

(5) A person who does work to which this regulation applies in a week which is—

- (a) the week in which he first becomes entitled to a benefit, allowance or advantage on account of his incapacity for work in any period, or
- (b) the last week in any period in which he is incapable of work,

shall be treated as capable of work by virtue of paragraph (1) only on the actual day or days in that week on which he does that work.

(6) In this regulation—

“week” means a period of 7 days beginning with Sunday,

“work” means any work which a person does, whether or not he undertakes it in expectation of payment.]

Textual Amendments

F47 Reg. 16 substituted (10.4.2006) by [Social Security \(Incapacity for Work\) Amendment Regulations 2006 \(S.I. 2006/757\)](#), regs. 1(1), 3

[^{F48}**Persons to be treated as capable of work at the end of the period covered by medical evidence** **E+W+S**

16A.—[

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^{F49}(1) Where the Secretary of State is satisfied that it is appropriate in the circumstances of the case then a person may be treated as being capable of work if—

- (a) the person has supplied medical evidence ^{F50} ...;
- (b) the period for which medical evidence was supplied has ended;
- (c) the Secretary of State has requested further medical evidence; and
- (d) the person has not, before whichever is the later of either the end of the period of six weeks beginning with the date of the Secretary of State’s request or the end of six weeks beginning with the day after the end of the period for which medical evidence was supplied—
 - (i) supplied further medical evidence, or
 - (ii) otherwise made contact with the Secretary of State to indicate a wish to have the question of incapacity for work determined.]

^{F51}(2) In this regulation “medical evidence” means evidence provided under regulation 2 or 5 of the Social Security (Medical Evidence) Regulations 1976.]

Textual Amendments

- F48** Reg. 16A inserted (28.6.2010) by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2010 \(S.I. 2010/840\)](#), regs. 1, **6(3)**
- F49** Reg. 16A(1): reg. 16A renumbered as reg. 16A(1) (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **6(3)(a)**
- F50** Words in reg. 16A(1)(a) omitted (11.4.2011) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **6(3)(b)**
- F51** Reg. 16A(2) added (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **6(3)(c)**

Exempt work **E+W+S**

^{F52}17.—(1) The categories of work referred to in regulation 16(3)(e) are set out in the following paragraphs.

(2) Work for which the earnings in any week do not exceed £20.00.

(3) Work for which the earnings in any week do not exceed [^{F53}16 x National Minimum Wage, subject to paragraph (10),] and which—

- (a) is part of a treatment programme and is done under medical supervision while the person doing it is an in-patient, or is regularly attending as an out-patient, of a hospital or similar institution, or
- (b) is supervised by a person employed by a public or local authority or [^{F54}by a] voluntary organisation [^{F54}or community interest company] engaged in the provision or procurement of work for persons who have disabilities.

(4) Work which is done for less than 16 hours a week, for which earnings in any week do not exceed [^{F55}16 x National Minimum Wage, subject to paragraph (10),]^{F56} ...

(5) Work done in the course of receiving assistance in pursuing self-employed earner’s employment whilst participating in a programme provided or other arrangements made under section 2 of the Employment and Training Act 1973 (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990 (functions in relation to training for employment etc).

(6) Work done as a volunteer.

- (7) [^{F57}Duties undertaken on either one full day or two half days a week] as—
- ^{F58}(a)
- [^{F59}(b) a member of the First-tier Tribunal where the member is eligible for appointment to be such a member in accordance with article 2(3) of the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008.]
- (8) In this regulation—
- “less than 16 hours a week” means—
- (a) subject to paragraph (b) or (c), a combined total of less than 16 hours a week,
- (b) subject to paragraph (c), an average of less than 16 hours a week in the period which comprises that week and the 4 weeks preceding it, or
- (c) an average of less than 16 hours a week in the period of the cycle in which that week falls, where it is established that the work falls into a recognised cycle;
- [^{F60}“National Minimum Wage” means the rate of the national minimum wage specified in regulation 11 of the National Minimum Wage Regulations 1999 (rate of the national minimum wage);]
- ^{F61} ...
- “voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit.]
- ^{F62}(9)
- [^{F63}(10) Where the amount determined by the calculation in paragraphs (3) and (4) would, but for this paragraph, include an amount of—
- (a) less than 50p, that amount shall be rounded up to the nearest 50p; or
- (b) less than £1 but more than 50p, that amount shall be rounded up to the nearest £1.]

Textual Amendments

- F52** Reg. 17 substituted (10.4.2006) by [Social Security \(Incapacity for Work\) Amendment Regulations 2006 \(S.I. 2006/757\)](#), regs. 1(1), 4 (with reg. 5)
- F53** Words in reg. 17(3) substituted (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), 6(4)(a)
- F54** Words in reg. 17(3)(b) inserted (28.6.2010) by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2010 \(S.I. 2010/840\)](#), regs. 1, 6(4)(a)
- F55** Words in reg. 17(4) substituted (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), 6(4)(a)
- F56** Words in reg. 17(4) omitted (3.4.2017) by virtue of [The Employment and Support Allowance \(Exempt Work Hardship Amounts\) \(Amendment\) Regulations 2017 \(S.I. 2017/205\)](#), regs. 1, 2(a)
- F57** Words in reg. 17(7) substituted (1.10.2008) by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2008 \(S.I. 2008/2365\)](#), regs. 1, 4(2)(b)
- F58** Reg. 17(7)(a) omitted (7.2.2013) by virtue of [The Public Bodies \(Abolition of the Disability Living Allowance Advisory Board\) Order 2013 \(S.I. 2013/252\)](#), art. 1(2), **Sch. Pt. 2**
- F59** Reg. 17(7)(b) substituted (3.11.2008) by [Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), art. 1, **Sch. 1 para. 66**
- F60** Words in reg. 17(8) inserted (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), 6(4)(b)
- F61** Words in reg. 17(8) omitted (3.4.2017) by virtue of [The Employment and Support Allowance \(Exempt Work Hardship Amounts\) \(Amendment\) Regulations 2017 \(S.I. 2017/205\)](#), regs. 1, 2(b)

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- F62** Reg. 17(9) omitted (3.4.2017) by virtue of [The Employment and Support Allowance \(Exempt Work Hardship Amounts\) \(Amendment\) Regulations 2017 \(S.I. 2017/205\)](#), regs. 1, **2(c)**
- F63** Reg. 17(10) added (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **6(4)(c)**

[^{F64}Person who claims unemployment benefit to be treated as capable of work E+W+S

17A. [^{F65}Where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment], a person shall be treated as capable of work [^{F66}throughout any period in respect of which he claims a jobseeker's allowance], notwithstanding that it has been determined that he [^{F67}incapable of work in accordance with that assessment] or that he is, or is to be treated as, incapable of work under regulation 10 or 27, if [^{F68}throughout that period]—

- (a) the following conditions are satisfied, namely—
- (i) that he has done some work or undertaken a course of education or training or similar activity in preparation for work while suffering from the specific disease or bodily or mental disablement which led to that determination; and
 - (ii) that since he did so, that disease or disablement has not worsened, nor is he suffering from any further disease or bodily or mental disablement which might affect his capacity for work; or
- (b) he is able to show that he has a reasonable prospect of obtaining employment.]

Textual Amendments

- F64** Reg. 17A inserted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **2(6)**
- F65** Words in reg. 17A substituted (3.4.2000) by [The Social Security \(Incapacity\) Miscellaneous Amendments Regulations 2000 \(S.I. 2000/590\)](#), regs. 1(b), **4(a)(i)**
- F66** Words in reg. 17A substituted (7.10.1996) by [The Social Security and Child Support \(Jobseeker's Allowance\) \(Consequential Amendments\) Regulations 1996 \(S.I. 1996/1345\)](#), regs. 1, **20(3)**
- F67** Words in reg. 17A substituted (3.4.2000) by [The Social Security \(Incapacity\) Miscellaneous Amendments Regulations 2000 \(S.I. 2000/590\)](#), regs. 1(b), **4(a)(ii)**
- F68** Words in reg. 17A substituted (7.10.1996) by [The Social Security and Child Support \(Jobseeker's Allowance\) \(Consequential Amendments\) Regulations 1996 \(S.I. 1996/1345\)](#), regs. 1, **20(3)**

Disqualification for misconduct etc. E+W+S

- 18.**—(1) Paragraph (2) applies where a person—
- (a) has become incapable of work through his own misconduct, except ^{F69} ... in a case where the incapacity is due to pregnancy or a sexually transmitted disease; or
 - (b) fails without good cause to attend for or submit himself to medical or other treatment (excluding vaccination, inoculation or major surgery) [^{F70}recommended by a doctor with whom, or a hospital or similar institution with which, he is undergoing medical treatment and,] which would be likely to render him capable of work; or
 - (c) fails without good cause to observe any of the following rules of behaviour, namely—
 - (i) to refrain from behaviour calculated to retard his recovery; or
 - (ii) not to be absent from his place of residence without leaving word where he may be found.

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- (2) A person referred to in paragraph (1) shall—
- (a) if he is entitled to incapacity benefit or severe disablement allowance, be disqualified for receiving that benefit or allowance; or
 - (b) in the case of any other benefit, allowance or advantage, be treated as capable of work, for such period not exceeding 6 weeks as [^{F71}the Secretary of State may determine].

Textual Amendments

- F69** Words in reg. 18(1)(a) omitted (3.4.1995) by virtue of [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#) , regs. 1(2) , **2(7)**
- F70** Words in reg. 18(1)(b) substituted (6.1.1997) by [The Social Security \(Incapacity for Work and Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/3207\)](#) , regs. 1(1) , **2(6)**
- F71** Words in reg. 18(2) substituted (6.9.1999) by [The Social Security Act 1998 \(Commencement No. 9, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/2422\)](#) , reg. 1 , **Sch. 10 para. 2**

CHAPTER V **E+W+S**

ADJUDICATION

^{F72} ... **E+W+S**

^{F73} **19.**

Textual Amendments

- F72** Pt. 11 Ch. 5 revoked (6.9.1999) by [The Social Security Act 1998 \(Commencement No. 9, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/2422\)](#) , reg. 1 , **Sch. 10 para. 3**
- F73** Reg. 19 revoked (5.7.1999 for specified purposes, 6.9.1999 for specified purposes, 5.10.1999 for specified purposes, 18.10.1999 for specified purposes, 29.11.1999 in so far as not already in force) by [The Social Security and Child Support \(Decisions and Appeals\) Regulations 1999 \(S.I. 1999/991\)](#) , reg. 59(1), **Sch. 4** (with reg. 59(2)(3))

^{F72} ... **E+W+S**

^{F74} **20.**

Textual Amendments

- F72** Pt. 11 Ch. 5 revoked (6.9.1999) by [The Social Security Act 1998 \(Commencement No. 9, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/2422\)](#) , reg. 1 , **Sch. 10 para. 3**
- F74** Regs. 20-22 revoked (5.7.1999 for specified purposes, 6.9.1999 for specified purposes, 5.10.1999 for specified purposes, 18.10.1999 for specified purposes, 29.11.1999 in so far as not already in force) by [The Social Security and Child Support \(Decisions and Appeals\) Regulations 1999 \(S.I. 1999/991\)](#) , reg. 59(1), **Sch. 4** (with reg. 59(2)(3))

^{F72} ... **E+W+S**

^{F74} **21.**

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F72 ... **E+W+S**

F74 **22.**

Textual Amendments

- F72** Pt. 11 Ch. 5 revoked (6.9.1999) by [The Social Security Act 1998 \(Commencement No. 9, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/2422\)](#) , reg. 1 , **Sch. 10 para. 3**
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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Act modified by [S.I. 1999/1088 regs.3.4-67](#)