



Social Security (Incapacity for Work) Act 1994

1994 CHAPTER 18

Test of incapacity for work

5 Test of incapacity for work.

In the ^{M1}Social Security Contributions and Benefits Act 1992 (general provisions), after section 171 insert—

“PART XIII

INCAPACITY FOR WORK

171A Test of incapacity for work.

- (1) For the purposes of this Act, save as otherwise expressly provided, whether a person is capable or incapable of work shall be determined in accordance with the provisions of this Part of this Act.
- (2) Regulations may make provision as to—
 - (a) the information or evidence required for the purpose of determining whether a person is capable or incapable of work, and
 - (b) the manner in which that information or evidence is to be provided, and may provide that if a person without good cause fails to provide that information or evidence, or to do so in the manner required, he shall be treated as capable of work.
- (3) Regulations may provide that in any case where a question arises as to whether a person is capable of work—
 - (a) he may be called to attend for such medical examination as may be required in accordance with regulations, and

Changes to legislation: There are currently no known outstanding effects for the Social Security (Incapacity for Work) Act 1994, Cross Heading: Test of incapacity for work. (See end of Document for details)

- (b) if he fails without good cause to attend for or submit himself to such examination, he shall be treated as capable of work.
- (4) Regulations may prescribe for the purposes of this section—
 - (a) matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission, or
 - (b) circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission.

171B The own occupation test.

- (1) Where a person has been engaged in remunerative work for more than 8 weeks in the 21 weeks immediately preceding the day with respect to which it falls to be determined whether he is or was incapable of work, the test applicable is the own occupation test.
- (2) The own occupation test is whether he is incapable by reason of some specific disease or bodily or mental disablement of doing work which he could reasonably be expected to do in the course of the occupation in which he was so engaged.
- (3) Where for any purpose of this Act it is determined in relation to a person—
 - (a) that the test applicable with respect to any day is the own occupation test, and
 - (b) that he is on that test incapable of work,
 that test remains applicable in his case until the end of the spell of incapacity beginning with that day or, as the case may be, in which that day falls, or until the 197th day of incapacity for work in that spell, whichever is the earlier.

 For this purpose a “spell of incapacity” means a series of 4 or more consecutive days of incapacity for work; and any two such spells not separated by a period of more than 8 weeks shall be treated as one spell of incapacity.
- (4) For the purposes of subsection (3) above a day of incapacity for work means a day—
 - (a) with respect to which it has been determined for any purpose of this Act that the person in question was incapable of work, or
 - (b) in respect of which he was entitled to statutory sick pay, or
 - (c) in the case of a woman, which falls within the maternity allowance period, or
 - (d) which in accordance with regulations is to be treated for those purposes as a day of incapacity for work.
- (5) Any provision of this Act apart from subsection (4) above under or by virtue of which a day is or is not to be treated for any purpose as a day of incapacity for work shall be disregarded for the purposes of this section.
- (6) Provision may be made by regulations defining for the purposes of this section what is meant by “remunerative work”.

The regulations may, in particular, provide—

Changes to legislation: There are currently no known outstanding effects for the Social Security (Incapacity for Work) Act 1994, Cross Heading: Test of incapacity for work. (See end of Document for details)

- (a) for “remunerative work” to be defined by reference to the number of hours worked per week; and
 - (b) for training of any prescribed description to be treated as if it were remunerative work.
- (7) Provision may be made by regulations as to the application of this section in cases where a person engages in more than one occupation or in different kinds of work.
- (8) The Secretary of State may by regulations provide that subsection (3) above shall have effect as if—
- (a) the reference there to 4 consecutive days were to such lesser number of days, whether consecutive or not, within such period of consecutive days as may be prescribed; and
 - (b) for the reference to 8 weeks there were substituted a reference to such larger number of weeks as may be prescribed.

171C The all work test.

- (1) Where in any case the own occupation test is not applicable, or has ceased to apply, the test applicable is the all work test.
- (2) Provision shall be made by regulations—
- (a) defining the all work test by reference to the extent of a person’s incapacity by reason of some specific disease or bodily or mental disablement to perform such activities as may be prescribed, and
 - (b) as to the manner of assessing whether the all work test is satisfied.
- (3) Regulations may provide that where the all work test applies the test shall, if the prescribed conditions are met, be treated as satisfied until the person has been assessed or he falls to be treated as capable of work in accordance with regulations under section 171A(2) or (3) above or section 171E below.

The prescribed conditions may include the condition that it has not previously been determined, within such period as may be prescribed, that the person in question is or is to be treated as capable of work.”.

Commencement Information

- II** [S. 5](#) wholly in force at 13.4.1995; [s. 5](#) not in force at Royal Assent see [s. 16\(2\)\(3\)](#); [s. 5](#) in force for certain purposes at 18.11.1994 and insofar as not already in force at 13.4.1995 by [S.I. 1994/2926](#), [art. 2\(2\)](#)

Marginal Citations

- M1** [1992 c. 4.](#)

6 Test of incapacity for work: supplementary provisions.

- (1) In the ^{M2}Social Security Contributions and Benefits Act 1992, after the sections inserted by section 5 above, insert—

Changes to legislation: There are currently no known outstanding effects for the Social Security (Incapacity for Work) Act 1994, Cross Heading: Test of incapacity for work. (See end of Document for details)

“171D Incapacity for work: persons to be treated as incapable or capable of work.

- (1) Regulations may provide that a person shall be treated as capable of work, or as incapable of work, in such cases or circumstances as may be prescribed.
- (2) Regulations may, in particular, provide that a person shall be treated as capable of work if he does work of a prescribed description, or more than the prescribed amount of work of a prescribed description.

Accordingly regulations may provide that a person shall not be treated as capable of work by reason only of his doing such work as may be prescribed, or no more than the prescribed amount of work of a prescribed description.

171E Incapacity for work: disqualification, &c.

- (1) Regulations may provide for disqualifying a person for receiving any benefit, allowance or other advantage under any provision for the purposes of which this Part of this Act applies, or, in such cases as may be prescribed, provide that a person shall be treated as capable of work, if—
 - (a) he has become incapable of work through his own misconduct;
 - (b) he fails without good cause to attend for or submit himself to such medical or other treatment as may be required in accordance with the regulations; or
 - (c) he fails without good cause to observe any prescribed rules of behaviour.
- (2) Regulations shall provide that any such disqualification shall be, or as the case may be that the person shall be treated as capable of work, for such period not exceeding 6 weeks as may be determined in accordance with Part II of the Administration Act.
- (3) Regulations may prescribe for the purposes of this section—
 - (a) matters which are or are not to be taken into account in determining whether a person does or does not have good cause for any act or omission, or
 - (b) circumstances in which a person is or is not to be regarded as having or not having good cause for any act or omission.

171F Incapacity for work: work as councillor to be disregarded.

- (1) In determining whether a person is capable or incapable of work, there shall be disregarded any work which that person has undertaken as a councillor.
- (2) For this purpose “councillor” means—
 - (a) in relation to England and Wales, a member of a London borough council, a county council, a district council, a parish or community council, the Common Council of the City of London or the Council of the Isles of Scilly; and
 - (b) in relation to Scotland, a member of a regional, islands or district council.

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- (3) The reference in subsection (1) above to the work which a person undertakes as a councillor shall be taken to include any work which he undertakes as a member of any of the bodies referred to in section 177(1) of the Local Government Act 1972, or section 49(1) or (1A) of the Local Government (Scotland) Act 1973, of which he is a member by virtue of his being a councillor.
- (4) In making any such determination as is mentioned in subsection (1) above a person shall be treated as having been incapable of work on any day which falls in the pre-commencement period and which—
- (a) would have been treated as a day on which he was so incapable, were there disregarded any work which he undertook (or was capable of undertaking) as a councillor; but
 - (b) would not have been so treated apart from this subsection.

The “pre-commencement period” means the period beginning with 11th May 1987 and ending immediately before 9th October 1989 (the coming into force of paragraph 2 of Schedule 8 to the Social Security Act 1989 which made provision corresponding to the provision made by this section).

171G Incapacity for work: supplementary provisions.

- (1) The provisions of this Part of this Act do not apply—
- (a) for the purposes of Part V of this Act (benefit for industrial injuries: see section 94(6) above);
 - (b) for the purposes of Part XI of this Act (statutory sick pay: see section 151(4) above); or
 - (c) for such other purposes as may be prescribed.
- (2) In this Part of this Act—
- “prescribed” means specified in or determined in accordance with regulations; and
 - “week” means any period of 7 days.”.

^{F1}(2)

- (3) For the period of four years from Royal Assent a statutory instrument which contains (whether alone or with other provisions) any regulations made under any of the following provisions shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House—
- (a) in the ^{M3}Social Security Contributions and Benefits Act 1992—
 - section 171A(2), (3), or (4),
 - section 171B(4)(d), (6), (7) or (8),
 - section 171C(2) or (3),
 - section 171D,
 - section 171E(1), (2) or (3), or
 - section 171G(1)(c);
 - (b) in the ^{M4}Social Security Administration Act 1992, section 61A(2), (3) or (4).

Changes to legislation: There are currently no known outstanding effects for the Social Security (Incapacity for Work) Act 1994, Cross Heading: Test of incapacity for work. (See end of Document for details)

Textual Amendments

- F1** [S. 6\(2\)](#) repealed (29.11.1999) by [1998 c. 14, s. 86\(2\)](#), [Sch. 8](#); [S.I. 1999/3178, art. 2\(1\)](#), [Sch.](#) (subject to transitional provisions in [Schs. 21-23](#))

Commencement Information

- I2** [S. 6](#) wholly in force at 13.4.1995; [s. 6](#) not in force at Royal Assent see [s. 16\(2\)\(3\)](#); [s. 6](#) in force for certain purposes at 18.11.1994 and insofar as not already in force at 13.4.1995 by [S.I. 1994/2926, art. 2\(2\)](#)

Marginal Citations

- M2** [1992 c. 4.](#)
M3 [1992 c. 4.](#)
M4 [1992 c. 5.](#)

7 Power to provide for the transition to the new test of incapacity for work.

- (1) The Secretary of State may by regulations make such provision as appears to him to be necessary or expedient for the purposes of, or in connection with, the transition to the test of incapacity for work provided for by sections 5 and 6 above.

Nothing in the following provisions of this section shall be construed as restricting the generality of that power.

- (2) In this section—

“commencement” means the commencement of those sections; and
“prescribed” means prescribed by regulations under this section.

- (3) Regulations under this section may provide—

- (a) that days of incapacity for work before commencement, and such other days as may be prescribed, shall be taken into account for the purposes of section 171B(3) of the ^{M5}Social Security Contributions and Benefits Act 1992 (period after which the all work test applies);
- (b) that a person’s continued enjoyment after commencement of any allowance or other advantage under any provision for the purposes of which Part XIIA of the Social Security Contributions and Benefits Act 1992 applies shall, except as may be prescribed, be subject to satisfying the test of incapacity for work under that Part; and
- (c) for the determination in accordance with that Part of the question whether the person is incapable of work.

- (4) Section 175(2) to (4) of the Social Security Contributions and Benefits Act 1992 (general provisions as to regulations and orders) apply in relation to the power conferred by subsection (1) above as they apply in relation to a power conferred by that Act to make regulations.

- (5) For the period of four years from Royal Assent a statutory instrument which contains (whether alone or with other provisions) any regulations under this section shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House.

- (6) A statutory instrument—

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- (a) which contains (whether alone or with other provisions) any regulations made under this section, and
 - (b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,
- shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Marginal Citations

M5 1992 c. 4.

Changes to legislation:

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