
STATUTORY INSTRUMENTS

1995 No. 311

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

PART II

GENERAL PROVISIONS RELATING TO INCAPACITY FOR WORK

CHAPTER III

PERSONS TREATED AS INCAPABLE

Certain persons with a severe condition to be treated as incapable of work

10.—(1) [^{F1}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 [^{F2}day in respect of which] any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are—

[^{F3}(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;]

[^{F4}(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.;

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- (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^{M1} (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) [^{F5}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 [^{F6}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;
 - [^{F7}(vii) manifestations of severe and progressive immune deficiency states characterised by the occurrence of severe constitutional disease or opportunistic infections or tumour formation;]
 - [^{F8}(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.]

F1 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)

F2 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)**

F3 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)**

F4 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

F5 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)**

F6 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)**

F7 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)**

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F8 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

M1 1948 c. 29 .

[^{F9}Certain persons participating in approved work to be treated as incapable of work

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 [^{F10}“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 [^{F11}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.]]

F9 Reg. 10A inserted (3.4.2000) by [The Social Security \(Approved Work\) Regulations 2000 \(S.I. 2000/678\)](#), regs. 1, **4(3)**

F10 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)**

F11 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)**

[^{F12}Person with a relevant infection or contamination]

[^{F13}11.—(1) A person shall be treated as incapable of work on any day in respect of which he is—

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(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,

[^{F14}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

[^{F15}“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.]]

- F12** 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)**
- F13** Reg. 11 substituted (1.10.2006) by [Social Security \(Miscellaneous Amendments\) \(No.4\) Regulations 2006 \(S.I. 2006/2378\)](#) , regs. 1(2) , **12(2)**
- F14** 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)**
- F15** 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

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

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 [^{F16}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.

F16 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)**

[^{F17}Welfare to work beneficiary

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; [^{F18}and]
- (c) became engaged in remunerative work within [^{F19}one month] of so ceasing to be entitled to that benefit at the end of that immediate past period of incapacity for work; ^{F20} ...

^{F21}(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 [^{F22}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.

[^{F23}(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.]

[
^{F24}(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.]

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(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 [^{F25}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;

[^{F26}“immediate past period of incapacity for work” means [^{F27}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.]

- F17** Reg. 13A inserted (5.10.1998) by [The Social Security \(Welfare to Work\) Regulations 1998 \(S.I. 1998/2231\)](#), regs. 1, **4(2)**
- F18** 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)**
- F19** 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)**
- F20** 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)**
- F21** 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)**
- F22** 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)**
- F23** 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)**
- F24** 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)**
- F25** 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)**
- F26** 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)**
- F27** 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

- 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 [^{F28}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.

<p>F28 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)</p>

Person to be treated as incapable of work throughout a day

- 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.

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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](#)