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STATUTORY INSTRUMENTS

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**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) A person shall be treated as incapable of work on any day on which any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are—

- (a) that he is in receipt of the highest rate care component of disability living allowance;
- (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(1) (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) that a doctor approved by the Secretary of State has certified that he is suffering from any of the following conditions—
  - (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 and 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;
- (vii) a severe and progressive immune deficiency state characterised by the occurrence of opportunistic infections or tumour formation;
- (viii) a severe mental illness.

#### **Person with an infectious or contagious disease**

**11.** A person shall be treated as incapable of work on any day in respect of which he is excluded from work on the certificate of a Medical Officer for Environmental Health and is under medical observation by reason of his being a carrier, or having been in contact with a case, of infectious or contagious disease.

#### **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 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.

#### **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 where the all work test applies, 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.

**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.