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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 I**

**OWN OCCUPATION TEST**

**Definition of “remunerative work”**

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**

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**

**INFORMATION AND EVIDENCE**

**Information required for determining capacity for work**

6.—(1) Subject to paragraph (2) the information or evidence required for the purposes of determining whether a person is capable or incapable of work is—

- (a) where the own occupation test or the all work test applies, evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations 1976(1) (which prescribe the form of doctor's statement or other evidence required in each case);
- (b) where the all work test applies, such information as the Secretary of State may request in the form of a questionnaire relating to a person's ability to perform the activities referred to in the Schedule;
- (c) such additional information relating to the relevant test 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 paragraph (1) (b), that information shall not be required for the purposes of that determination.

(3) Where it has been determined that a person is to be treated as incapable of work under regulations 10 to 14 the information referred to in paragraph (1) shall not be required.

#### **Failure to provide information**

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) (all work test questionnaire) 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 6 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 4 weeks after the first, and at least 2 weeks have elapsed since that further request was sent.

#### **Person may be called for a medical examination**

8.—(1) Where a question arises as to whether a person is capable of work, he may be called by or on behalf of a doctor 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.

(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.

#### **Matters to be taken into account in determining good cause**

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  
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(2) (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.

CHAPTER IV  
TREATING AS CAPABLE, DISQUALIFICATION ETC.

**Person who works to be treated as capable of work**

**16.**—(1) Subject to paragraphs (3) and (4) and regulation 13(3) (persons receiving certain regular treatment) a person shall be treated as capable of work on each day of any week commencing on Sunday during which he does work to which this regulation applies (notwithstanding that it has been determined that he is, or is to be treated under regulations 10 to 15 or 26 as, incapable of work or that he meets the conditions set out in regulation 28(2) for treating the all work test as satisfied until assessment) unless that work—

- (a) falls into any of the categories of exempt work set out in regulation 17(1); and
- (b) is done within the limits set out in regulation 17(2).

(2) Work to which this regulation applies is any work which a person does (not being work as a councillor that is to be disregarded under section 171F of the Contributions and Benefits Act), whether or not he undertakes it in expectation of payment, apart from care of a close relative or domestic tasks carried out in his own home.

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

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

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.

(4) A person shall not be treated as capable of work under this regulation by reason only of the fact that, during an emergency, he undertakes any activity to protect another person or to prevent serious damage to property or livestock.

**Exempt work**

**17.**—(1) The categories of exempt work referred to in regulation 16(1)(a) are—

- (a) work undertaken on the advice of a doctor which—
  - (i) helps to improve, or to prevent or delay deterioration in, the disease or bodily or mental disablement which causes that person's incapacity for work; or
  - (ii) is part of a treatment programme and is done under medical supervision while that person is an in-patient or regularly attending as an out-patient of a hospital or similar institution; or
  - (iii) is done while that person is attending an institution which provides sheltered work for people with disabilities;
- (b) work done as a volunteer;
- (c) duties undertaken as a member of a disability appeal tribunal or the Disability Living Allowance Advisory Board.

(2) The weekly limits in relation to exempt work are—

- (a) that earnings from work referred to in paragraph (1)(a) do not exceed £43;
- (b) that, subject to paragraph (3), the combined total of the number of hours spent doing work referred to in paragraph (1)(a)(i) or (b) is less than 16;
- (c) that work referred to in paragraph (1)(c) is not undertaken on more than one day.

(3) A person shall not be treated as capable of work because he has exceeded the limit referred to in paragraph (2)(b) in any week, if he has worked or would be expected to work, as the case may be, an average of less than 16 hours a week—

- (a) in a case where a recognisable cycle in respect of that person's work has been established, in the period of that cycle in which the week in question falls; or
- (b) in any other case, in the period which comprises that week and the 4 weeks preceding it.

**Disqualification for misconduct etc.**

18.—(1) Paragraph (2) applies where a person—

- (a) has become incapable of work through his own misconduct, except that this disqualification shall not apply 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) which could significantly improve his medical condition or any disability arising therefrom or 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.

(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 may be determined under Part II of the Administration Act.

CHAPTER V

ADJUDICATION

**Effect of a determination as to capacity for work**

19. A determination whether a person is, or is to be treated as, capable or incapable of work, which is made for the purposes of determining his entitlement to any benefit, allowance or advantage, shall be treated as conclusive for the purposes of his entitlement to any other benefit, allowance or advantage in respect of any day or any period to which that determination relates.

**Adjudication officer to determine capacity for work**

20. Where a question as to whether a person is, or is to be treated as, capable or incapable of work arises in respect of a claim for any benefit, allowance or advantage, that question shall be determined by an adjudication officer notwithstanding that any other question falls to be determined by another authority.

**Social security appeal tribunal to sit with a medical assessor**

21. Where a matter before a social security appeal tribunal involves a question as to whether a person satisfies the all work test that tribunal shall sit with a medical assessor.

### **Appointment of medical assessors**

**22.**—(1) The President shall constitute for the whole of Great Britain a panel of doctors to act as medical assessors for such areas as he thinks fit.

(2) The President may appoint to the panel any doctor with at least 5 years post-registration experience who is not—

(a) a civil servant in any government department; or

(b) an employee of, or adviser to, an organisation which represents, or promotes the rights of, people with disabilities.

(3) The President may appoint a person to the panel for such term as he thinks fit and may terminate that appointment at any time.