

## 1995 No. 311

### SOCIAL SECURITY

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

*Made* - - - - - 10th February 1995  
*Coming into force* - 13th April 1995

### ARRANGEMENT OF REGULATIONS

#### PART I *General*

1. Citation and commencement
2. Interpretation
3. Application.

#### PART II *General provisions relating to incapacity for work*

##### CHAPTER I:

###### *Own occupation test*

4. Definition of “remunerative Work”
5. Person with more than one occupation.

##### CHAPTER II:

###### *Information and evidence*

6. Information required for determining capacity for work
7. Failure to provide information
8. Person may be called for a medical examination
9. Matters to be taken into account in determining good cause.

##### CHAPTER III:

###### *Persons treated as incapable*

10. Certain persons with a severe condition to be treated as incapable of work
- 10A. Certain persons participating in approved work to be treated as incapable of work
11. Person with an infectious or contagious disease
12. Hospital in-patients

SOCIAL SECURITY (INCAPACITY FOR WORK) (GENERAL)  
REGULATIONS 1995

- 13. Person receiving certain regular treatment
- 13A. Welfare to work beneficiary
- 14. Pregnancy
- 15. Person to be treated as incapable of work throughout a day.

## CHAPTER IV;

*Treating as capable, disqualification etc.*

- 16. Person who works to be treated as capable of work
- 16A. Persons to be treated as capable of work at the end of the period covered by medical evidence
- 17. Exempt work
- 17A. Person who claims unemployment benefit to be treated as capable of work
- 18. Disqualification for misconduct etc.

## CHAPTER V;

*Adjudication*

- 19. Effect of a determination as to capacity for work (*revoked*)
- 20. Adjudication officer to determine certain questions (*revoked*)
- 21. Social security appeal tribunal to sit with a medical assessor (*revoked*)
- 22. Appointment of medical assessors (*revoked*).

## PART III

*Personal capability assessment*

- 23. Interpretation of Part III and the Schedule
- 24. The personal capability assessment
- 25. Incapacity under the personal capability assessment
- 26. Calculation of scores
- 27. Exceptional circumstances
- 28. Conditions for treating a person as incapable of work until personal capability assessment is carried out.

## SCHEDULE

*Disabilities which may make a person incapable of work*

- Part I: Physical Disabilities
- Part II: Mental Disabilities

Whereas a draft of this instrument was laid before Parliament in accordance with section 6(3) of the Social Security (Incapacity for Work) Act 1994<sup>(a)</sup> and approved by resolution of each House of Parliament.

Now, therefore, the Secretary of State for Social Security, in exercise of the powers conferred by section 61A of the Social Security Administration Act 1992<sup>(b)</sup> and sections 171A, 171, 171C, 171D, 171E, 171G(2) and 175(2) to (4) of the Social Security

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(a) 1994 c. 18.

(b) 1992 c. 5.

Contributions and Benefits Act 1992(a) and of all other powers enabling him in that behalf, by this instrument which contains only regulations made by virtue of section 5 and 6 of the Social Security (Incapacity for Work) Act 1994 and which is made before the end of the period of 6 months beginning with the coming into force of that Act(b), after consultation with the Council on Tribunals(c), hereby makes the following Regulations;

## PART I GENERAL

### Citation and commencement

1. These Regulations may be cited as the Social Security (Incapacity for Work) (General) Regulations 1995 and shall come into force on 13th April 1995.

### Interpretation

2.—(1) In these Regulations unless the context otherwise requires—

“activity” means an activity specified in column (1) of Parts I and II of the Schedule;

▶<sup>1</sup>◀

“the Administration Act” means the Social Security Administration Act 1992;

▶<sup>2</sup>◀

“benefit” does not include statutory sick pay or industrial injuries benefit; “confinement” has the meaning given to it by section 171(1) of the Contributions and Benefits Act;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;

“close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, ▶<sup>3</sup>or if any of the preceding persons is one member of a couple, the other member of that couple◀

▶<sup>3</sup>“couple” means—

- (a) a man and woman who are married to each other and are members of the same household;
- (b) a man and woman who are not married to each other but are living together as husband and wife;
- (c) two people of the same sex who are civil partners of each other and are members of the same household; or
- (d) two people of the same sex who are not civil partners of each other but are living together as if they were civil partners,

and for the purposes of paragraph (d), two people of the same sex are to be regarded as living together as if they were civil partners if, but only if, they would be regarded as living together as husband and wife were they instead two people of the opposite sex;◀

“descriptor” means, in relation to an activity, the descriptor in column (2) of the Schedule which describes a person’s ability to perform that activity;

▶<sup>4</sup>◀

<sup>1</sup>Defn. of “adjudication officer” omitted by para.1 of Sch.10 to S.I. 1999/2422 as from 6.9.99.

<sup>2</sup>Defn. of “the all work test” omitted by reg. 2(1) of S.I. 1999/3109 as from 3.4.00.

<sup>3</sup>Words substituted in defns. of “close relative” & defn. of “couple” inserted by para. 25(b) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

<sup>4</sup>Defn. of “disability appeal tribunal” omitted by para.1 of Sch.11 to S.I. 1999/2860 as from 18.10.99.

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- (a) 1992 c. 4 Sections 171A, 171B and 171C were inserted by section 5 of the Social Security (Incapacity for Work) Act 1994, sections 171D and 171E were inserted by section 6(1) of that Act and Section 61A was inserted by section 6(2) of that Act. Section 171G(2) is cited for the meaning it gives to “prescribed”.
- (b) See the Social Security Administration Act 1992 (c. 5), section 173(5)(a). This provides that regulations made before the end of six months from the coming into force of the enactment under which they are made are not required to be referred to the Social Security Advisory Committee.
- (c) See section 8 of the Tribunals and Enquiries Act 1992 (c. 53).

**Regs. 2-3**

<sup>1</sup>Defn. of “the Disability Living Allowance Advisory Board” omitted by Pt. 2 to the Sch. of S.I. 2013/252 as from 8.2.13.

<sup>2</sup>Words added to defn. of “doctor” by reg. 2(2)(a) of S.I. 1996/3207 as from 6.1.97.

<sup>3</sup>Defn. of “health care professional” inserted by reg. 3 of S.I. 2007/1626 as from 3.7.07.

<sup>4</sup>Defn. “medical evidence” added by reg. 2(2)(b) of S.I. 1996/3207 as from 6.1.97.

<sup>5</sup>Words inserted in defn. of “medical evidence” by reg. 6(2) of S.I. 2011/674 as from 11.4.11.

<sup>6</sup>In reg. 2, words substituted in defn. of “medical evidence” by reg. 6(2) of S.I. 2010/840 as from 28.6.10.

<sup>7</sup>Defn. of “personal capability assessment” inserted by reg. 2(1) of S.I. 1999/3109 as from 3.4.2000.

<sup>8</sup>Defn. of “the President” omitted by para.1 of Sch.10 to S.I. 1999/2422 as from 6.9.99.

<sup>9</sup>Defn. “relative” added by reg. 2(2)(c) of S.I. 1996/3207 as from 6.1.97.

<sup>10</sup>Words substituted in defn. of “relative”, by para. 25(c) of Sch. 3 to S.I. 2005/2877 as from 5.12.05.

<sup>11</sup>Defn. of “social security appeal tribunal” omitted by para.1 of Sch.10 to S.I.1999/2422 as from 6.9.99.

<sup>12</sup>Defn. “voluntary organisation” deleted by reg. 2(2)(e) of S.I. 1996/3207 as from 6.1.97.

<sup>13</sup>Defn. of “volunteer” substituted by reg. 2(2)(f) of S.I. 1996/3207 as from 6.1.97.

▶<sup>1</sup>◀

“doctor” means a registered medical practitioner;▶<sup>2</sup>, or in the case of a medical practitioner practising outside the United Kingdom of whom the Secretary of State may request a medical opinion, a person registered or recognised as such in the country in which he pursues his medical practice◀

▶<sup>3</sup>“health care professional” means—

- (a) a registered medical practitioner,
- (b) a registered nurse,
- (c) an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 of the Health Care Act 1999, or
- (d) a member of such other profession, regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, prescribed by the Secretary of State in accordance with powers under section 39(1) of the Social Security Act 1998◀.

▶<sup>4</sup>“medical evidence” ▶<sup>5</sup>, except in regulation 16A,◀ means—

- (a) evidence from a ▶<sup>6</sup>health care professional◀ approved by the Secretary of State, and
- (b) evidence (if any) from any other ▶<sup>6</sup>health care professional◀, or a hospital or similar institution,

or such part of such evidence as constitutes the most reliable evidence available in the circumstances;◀

“the own occupation test” means the test defined in section 171B of the Contributions and Benefits Act;

▶<sup>7</sup>“personal capability assessment” means the assessment defined in Part III of these Regulations”◀

▶<sup>8</sup>◀

▶<sup>9</sup>“relative” means a close relative, ▶<sup>10</sup>the other member of a couple◀, grandparent, grandchild, uncle, aunt, nephew or niece;◀

▶<sup>11</sup>◀

“spell of incapacity” has the meaning given to it by section 171B(3) of the Contributions and Benefits Act;

▶<sup>12</sup>◀

▶<sup>13</sup>“volunteer” means a person who is engaged in voluntary work otherwise than for a close relative, where the only payment received by him or due to be paid to him by virtue of being so engaged in respect of any expenses reasonably incurred by him in connection with that work;◀

“week” means any period of 7 days.

(2) In these Regulations unless the context otherwise requires, any reference—

- (a) to a numbered regulation is to the regulation in these Regulations bearing that number;
- (b) to the Schedule is the Schedule to these Regulations.

**Application**

**3.** These Regulations do not apply for the purposes of Part V (benefit for industrial injuries) or Part XI (statutory sick pay) of the Contributions and Benefits Act.

## 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) <sup>1</sup>Subject to paragraphs (2) and (3) <sup>2</sup>the information or evidence required for the purposes of determining whether a person is capable or incapable of work <sup>3</sup>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 <sup>4</sup>is—

- (a) where the own occupation test <sup>3</sup>applies, <sup>3</sup>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 <sup>4</sup>evidence of incapacity for work in accordance with the Social Security (Medical Evidence) Regulations 1976(a) (which prescribe the form of doctor’s statement or other evidence required in each case);
- <sup>4</sup>(b) <sup>3</sup>where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment <sup>4</sup>, such information—

<sup>1</sup>Words in reg. 6(1) substituted by reg. 2(2)(a) of S.I. 1995/987 with effect from 13.4.95.

<sup>2</sup>Words inserted in reg. 6(1) by reg. 2(2)(a) of S.I. 1999/3109 as from 13.12.99.

<sup>3</sup>Words omitted and substituted in reg. 6(1)(a) and (1)(b), by reg. 2(2)(b), (d), (e), (f) of S.I. 1999/3109 as from 3.4.00.

<sup>4</sup>Reg 6(1)(b) substituted by reg. 2(2)(c) of S.I. 1999/3109 as from 13.12.99.

(a) S.I. 1976/615; relevant amending instruments are S.I. 1982/599, S.I. 1989/1686, S.I. 1992/247 and S.I. 1994/2975.

## Regs. 6-9

- (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 ▶<sup>1</sup>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.

<sup>1</sup>Words inserted in reg. 6(1)(c) and (2) by reg. 2(2)(e), (f), (g) of S.I. 1999/3109 as from 3.4.00.

(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 ▶<sup>1</sup>paragraph (1)(b)(i)◀, that information shall not be required for the purposes of that determination.

<sup>2</sup>Reg. 6(3) substituted by reg. 2(2)(b) of S.I. 1995/987 with effect from 13.4.95.

▶<sup>2</sup>(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 ▶<sup>3</sup>jobseeker's allowance◀; or
- (b) whether a person is to be treated as incapable of work under any of ▶<sup>4</sup>regulations 10,11 to 14.◀◀

<sup>3</sup>Words substituted in reg. 6(3)(a) by reg. 20(2) of S.I. 1996/1345 as from 7.10.96.

▶<sup>5</sup>(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 XIAA of the Contributions and Benefits Act.◀

<sup>4</sup>Words substituted in reg. 6(3)(b) by reg. 4(2) of S.I. 2000/678 as from 3.4.00.

#### Failure to provide information

<sup>5</sup>Para. 6(4) added by reg. 2(2)(g) of S.I. 1999/3109 as from 3.4.00.

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) ▶<sup>6</sup>◀ he shall, subject to paragraph (2), be treated as capable of work.

<sup>6</sup>Words deleted in reg. 7(1) by reg. 2(3) of S.I. 1999/3109 as from 3.4.00.

(2) A person shall not be treated as capable of work under paragraph (1) unless—

<sup>7</sup>Words in reg. 7(2)(a) & (b) substituted by reg. 9(2) of S.I. 2011/2425 as from 31.10.11.

- (a) at least ▶<sup>7</sup>4 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 ▶<sup>7</sup>3 weeks◀ after the first, and at least ▶<sup>7</sup>1 week has◀ elapsed since that further request was sent.

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

<sup>8</sup>Words substituted in reg. 8(1) by reg. 2(4) of S.I. 1999/3109 as from 3.4.00.

8.—(1) Where ▶<sup>8</sup>it falls to be determined◀ whether a person is capable of work, he may be called by or on behalf of a ▶<sup>9</sup>health care professional◀ approved by the Secretary of State to attend for a medical examination.

<sup>9</sup>Words substituted in reg. 8(1) by reg. 3(4) of S.I. 2007/1626 as from 3.7.07.

(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)** <sup>1</sup>Where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment <sup>2</sup>a person shall be treated as incapable of work on any <sup>3</sup>day in respect of which <sup>4</sup>any of the circumstances set out in paragraph (2) apply to him.

<sup>1</sup>Words substituted in reg. 10(1) by reg. 2(5) of S.I. 1999/3109 as from 3.4.2000

<sup>2</sup>Words substituted in reg. 10(1) by reg. 2(3)(a) of S.I. 1999/987 with effect from 13.4.95.

<sup>3</sup>Reg. 10(2)(a) substituted by reg. 2(3)(b)(i) of S.I. 1995/987 with effect from 13.4.95.

(2) the circumstances are—

- <sup>3</sup>(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)(a) 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(b);
  - (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(c);
  - (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(d) <sup>4</sup>
- <sup>4</sup>(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(e) or of Part III of the Personal Injuries (Civilians) Scheme 1983(f) by reference to a degree of disability of not less than 80 per cent.;

<sup>4</sup>Para. 10(2)(aa) & (ab) inserted by reg. (2) of S.I. 1997/1009 as from 1.4.97.

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(a) S.I. 1982/1408.

(b) The rates specified in Schedule 4, Part V, paragraph 2 were increased by article 3 of the Social Security Benefits Up-Rating Order 1995 (S.I. 1995/559).

(c) S.I. 1983/833; relevant amending instrument is 1994/772.

(d) S.I. 1983/686; relevant amending instrument is 1994/715.

(e) S.I. 1983/883; relevant amending instruments are S.I. 1983/1116 and 1521, 1984/1154 and 1687, 1985/1201, 1986/592, 1990/1308, 1991/766, 1992/710 and 3208, 1993/598 and 1994/772.

(f) S.I. 1983/686; relevant amending instruments are S.I. 1983/1540, 1984/1289, and 1675, 1985/1313, 1986/628, 1990/1300, 1991/708, 1992/702 and 3226, 1993/480 and 1164 and 1995/445.

**SI 1995/311**

**SOCIAL SECURITY (INCAPACITY FOR WORK) (GENERAL)  
REGULATIONS 1995**



- (ab) that evidence in accordance with regulation 10 of the Social Security (Severe Disablement Allowance) Regulations 1984<sup>(a)</sup> 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<sup>(b)</sup> (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;
- ▶<sup>1</sup>(e) that he is suffering from any of the following conditions, and there exists medical evidence that he is suffering from any of the—◀
  - (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 ▶<sup>1</sup>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;
- ▶<sup>2</sup>(vii) manifestations of severe and progressive immune deficiency states characterised by the occurrence of severe constitutional disease or opportunistic infections or tumour formation;◀
- ▶<sup>1</sup>(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.◀

<sup>1</sup>Words substituted in reg. 10(2)(e)(ii) & (viii) by reg. 3(a) of S.I. 1996/3207 as from 6.1.97.

<sup>2</sup>Reg. 10(2)(e)(vii) substituted by reg. 2(3)(b)(ii) of S.I. 1995/987 with effect from 13.4.95.

▶<sup>3</sup>**Certain persons participating in approved work to be treated as incapable of work**

<sup>3</sup>Reg. 10A inserted by reg. 4(3) of S.I. 2000/678 as from 3.4.00.

**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.

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(a) S.I. 1984/1303. Regulations was amended by S.I. 1986/1933, 1988/1843 and 1991/2742.  
(b) 1948 c. 29.

<sup>1</sup>Words in defn. of “approved work” substituted by reg. 2(a) of S.I. 2002/491 as from 8.4.02.

<sup>2</sup>Words substituted in defn. of “trial basis” by reg. 2(b) of S.I. 2002/491 as from 8.4.02.

<sup>3</sup>Heading, words in reg. 11(1) & defn. of “relevant infection or contamination” in reg. 11(2) substituted by reg. 9(3) of S.I. 2011/2425 as from 31.10.11.  
<sup>4</sup>Reg. 11 substituted by reg. 12(2) of S.I. 2006/2378 as from 1.10.06.

(4) In this regulation—

“approved work” means, in relation to a person, work arranged in writing <sup>1</sup>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 <sup>2</sup>;

“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 <sup>2</sup>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 approved work. <sup>3</sup>

<sup>3</sup>**Person with a relevant infection or contamination** <sup>4</sup>

<sup>4</sup>**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,

<sup>3</sup>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. <sup>4</sup>

(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

<sup>3</sup>“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(a) in respect of which regulations are made under Part 2A of that Act(b) (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(c) applies or to which regulation 10 (powers in respect of certain persons on ships) of the Public Health (Ships) Regulations 1979(d) applies; and
- (b) in Scotland, any—
  - (i) infectious disease within the meaning of section 1(5) of the Public Health etc (Scotland) Act 2008(e), or exposure to an organism causing that disease, or

(a) 1984 c. 22.

(b) Part 2A was inserted by section 129 of the Health and Social Care Act 2008 (c. 14).

(c) S.I. 1979/1434.

(d) S.I. 1979/1435. Regulation 9 has been amended but not in a way material to these Regulations.

(e) 2008 asp 5.

- (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.◀

### 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.

### ▶<sup>1</sup>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; ▶<sup>2</sup>and◀
- (c) became engaged in remunerative work within ▶<sup>2</sup>one month◀ of so ceasing to be entitled to that benefit at the end of that immediate past period of incapacity for work; ▶<sup>2</sup>◀

(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(a); and
- (c) in his immediate past period of incapacity for work—

<sup>1</sup>Reg. 13A inserted by reg. 4(2) of S.I. 1998/2231 as from 5.10.98.

<sup>2</sup>Words added and substituted in reg. 13A(1)(b) & (c), “and” and sub-para. (d) omitted by reg. 12(3)(a)-(c) of S.I. 2006/2378 as from 1.10.06.

(a) S.I. 1976/615; regulation 2 was amended by S.I. 1982/699, 1987/409, 1992/247, 1994/2975 and 1995/987.

## Regs. 13A-14

<sup>1</sup>Words substituted in reg. 13A(2)(c)(i) by reg. 2(6)(b) of S.I. 1999/3109 as from 3.4.00.

<sup>2</sup>Reg. 13A (3) substituted, para. (3A) added and words in defn. of “linking term” substituted and added to defn. of “immediate past period of incapacity for work” by reg. 12(3)(d)-(f) of S.I. 2006/2378 as from 1.10.06.

<sup>3</sup>Defn. of “immediate past period of incapacity for work” substituted by reg. 2(b) of S.I. 2006/757 as from 10.4.06.

<sup>4</sup>Words substituted in reg. 14(a)(ii) by reg. 2(7) of S.I. 1999/3109 as from 3.4.00.

- (i) had been assessed and <sup>1</sup>determined to be incapable of work in accordance with the personal capability assessment under Part III<sup>◀</sup>, 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.

<sup>2</sup>(3) A person is not a welfare to work beneficiary under paragraph (1) 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.

(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.<sup>◀</sup>

(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(a), for which entitlement is dependent on incapacity for work;

“linking term” means a period of <sup>2</sup>104 weeks<sup>◀</sup> (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;

<sup>3</sup>“immediate past period of incapacity for work” means <sup>2</sup>the most recent of<sup>◀</sup>—

- (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.<sup>◀</sup>

“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(b) or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990(c).<sup>◀</sup>

### 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 <sup>4</sup>where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment,<sup>◀</sup> she does not refrain from work in any occupation; or

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(a) 1995 c. 18.  
(b) 1973 c. 50.  
(c) 1990 c. 35.

- (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**

▶<sup>1</sup>16.—(1) A person shall be treated as capable of work on each day of any week during which he does work.

<sup>1</sup>Reg. 16 substituted by reg. 3 of S.I. 2006/757 as from 10.4.06.

(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.◀

**▶<sup>2</sup>Persons to be treated as capable of work at the end of the period covered by medical evidence◀**

<sup>2</sup>Heading to 16A inserted by reg. 6(3) of S.I. 2010/840 as from 28.6.10.

16A.▶<sup>3</sup>—(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—

<sup>3</sup>Reg. 16A renumbered 16A(1) and words in 16A(1)(a) omitted by reg. 6(3)(a)-(c) of S.I. 2011/674 as from 11.4.11.

- (a) the person has supplied medical evidence ▶<sup>2</sup>◀;
- (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.◀

<sup>1</sup>Para. (2) inserted & amounts in reg. 17(3) & (4) substituted by reg. 6(3)(b)-(c) of S.I. 2011/674 as from 11.4.11.

▶<sup>1</sup>(2) In this regulation “medical evidence” means evidence provided under regulation 2 or 5 of the Social Security (Medical Evidence) Regulations 1976(a).◀

### Exempt work

<sup>2</sup>Reg. 17 substituted by reg. 4 of S.I. 2006/757 as from 10.4.06.

▶<sup>2</sup>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 ▶<sup>1</sup>16x 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 ▶<sup>3</sup>by a ◀voluntary organisation ▶<sup>3</sup>or community interest company(b)◀ engaged in the provision or procurement of work for persons who have disabilities.

<sup>3</sup>Words inserted in reg. 17(3)(b) & reg. 17(4)(a) substituted by reg. 6(4)(a) & (b) of S.I. 2010/840 as from 28.6.10.

(4) Work which is done for less than 16 hours a week, for which earnings in any week do not exceed ▶<sup>2</sup>16x National Minimum Wage, subject to paragraph (10),◀ and which—

▶<sup>3</sup>(a) is done during a period of specified work, provided that—

- (i) the person has not previously done specified work,
- (ii) since the beginning of the last period of specified work, the person has ceased to be entitled to a relevant benefit for a continuous period exceeding 8 weeks, or
- (iii) not less than 52 weeks have elapsed since the last period of specified work; or◀

(b) is done by a person who is treated as incapable of work under—

- (i) regulation 10 (persons with a severe condition treated as incapable of work), or
- (ii) regulation 31(3) and (5)(c) to (k) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(c) (persons treated as incapable of work).

(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(d) (functions of the Secretary of State) or section 2 of the Enterprise and New Towns (Scotland) Act 1990(e) (functions in relation to training for employment etc).

(a) S.I. 1976/615. Paragraphs (1) & (1A) were inserted into regulation 2 by regulation 2(2) of S.I. 2010/137. Regulation 2 has been amended by other instruments but not in a way material to these Regulations. Regulation 5 was inserted by regulation 2 of S.I. 1982/699 and has been amended but not in a way material to these Regulations.

(b) As established under the Companies (Audit, Investigations and Community Enterprise) Act 2004 c. 27.

(c) S.I. 1995/310. Relevant amending instruments are S.I. 1995/987, 1996/3207, 1998/2231 1999/3109.

(d) 1973 c. 50; section 2 was amended by section 25(1) of the Employment Act 1988 (c. 19); section 29(4) and Schedule 7; Part I of the Employment Act 1989 (c. 38) and section 47(1) of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(e) 1990 c. 35; section 2 was amended by sections 47 and 51 of, and Schedule 10 to, the Trade Union Reform and Reform and Employment Rights Act 1993 and by S.I. 1999/1820.

- (6) Work done as a volunteer.
- (7) <sup>1</sup>Duties undertaken on either one full day or two half days a week ◀–
- (a) <sup>2</sup>◀
- ▶<sup>3</sup>(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(a). ◀
- (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;
- ▶<sup>4</sup>“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); ◀
- “relevant benefit” means–
- (a) incapacity benefit, severe disablement allowance, income support, housing benefit or council tax benefit under the Contributions and Benefits Act, or
- (b) credits under regulations under section 22(5) of that Act,
- in connection with the entitlement to which the question of the person’s capacity or incapacity for work arises under that Act;
- “specified work” means–
- (a) work done in accordance with paragraph (4)(a), or
- (b) work done in accordance with regulation 17(1A)(b) as then in force;
- “voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit.”. ◀
- ▶<sup>5</sup>(9) For the purposes of this regulation, a period of specified work begins on the first day on which any specified work is undertaken and continues for a period of 52 weeks, whether or not any further specified work is undertaken during that period. ◀
- ▶<sup>4</sup>(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. ◀

<sup>1</sup>Words substituted in reg. 17(7) by reg.

4(2)(b) of S.I. 2008/2365 as from 1.10.08.

<sup>2</sup>Reg. 17(7)(a) omitted by Pt. 2 to Sch. of S.I. 2013/252 as from 7.2.13.

<sup>3</sup>Reg. 17(7)(b) substituted by art. 66 of S.I. 2008/2683 as from 3.11.08.

<sup>4</sup>Defn. of “National Minimum Wage” inserted in reg. 17(8) & para. (10) added by reg. 6(4)(b) & (c) of S.I. 2001/674 as from 11.4.11.

<sup>5</sup>Reg. 17(9) inserted by reg. 6(4)(c) of S.I. 2010/840 as from 28.6.10.

*Reproduced below is reg. 17 prior to the amendments detailed in S.I. 2002/491. This is for the purposes of the transitional provisions in reg. 6 of that S.I. See page 3.4451.*

#### 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;

(a) S.I. 2008/2692.

(b) Regulation 17(1A) was in force from 8th April 2002 to 9<sup>th</sup> April 2006.

<sup>1</sup>Words deleted and inserted in reg. 17(1)(c) by para. 2 of Sch. 11 to S.I. 1999/2860 as from 18.10.99.

<sup>2</sup>Amount in reg. 17(2)(a) substituted by reg. 4 of S.I. 2001/2979 as from 1.10.01.

<sup>3</sup>Words in reg. 17(2)(b) deleted by reg. 4(3) of S.I. 1998/2231 as from 5.10.98.

<sup>4</sup>Reg. 17A inserted by reg. 2(6) of S.I. 1995/987 with effect from 13.4.95

<sup>5</sup>Words substituted in reg. 17A by reg. 2(9) of S.I. 1999/3109 as from 3.4.00.

<sup>6</sup>Words substituted in reg. 17A by reg. 20(3) of S.I. 1996/1345 as from 7.10.96.

<sup>7</sup>Words substituted in reg. 17A by reg. 4(a)(ii) of S.I. 2000/590 as from 3.4.00.

<sup>8</sup>Words in reg. 18(1)(a) deleted by reg. 2(7) of S.I. 1995/987 with effect from 13.4.95.

<sup>9</sup>Words substituted in reg. 18(1)(b) by reg. 2(6) of S.I. 1996/3207 as from 6.1.97.

- (b) work done as a volunteer;
- (c) duties undertaken as a member of ►<sup>1</sup>◄ the Disability Living Allowance Advisory Board ►<sup>1</sup>◄ or as a panel member with a disability qualification, as defined in regulation 1(3) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999, acting as a member of an appeal tribunal constituted under Chapter 1 of Part I of the Social Security Act 1998◄.

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

- (a) that earnings from work referred to in paragraph (1)(a) do not exceed ►<sup>2</sup>£66.00◄;
- (b) that, subject to paragraph (3), the combined total of the number of hours spent doing work referred to in paragraph (1)(a)(i) ►<sup>3</sup>◄ 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.

#### ►<sup>4</sup>Person who claims unemployment benefit to be treated as capable of work

**17A.** ►<sup>5</sup>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 ►<sup>6</sup>throughout any period in respect of which he claims a jobseeker's allowance◄ notwithstanding that it has been determined that he ►<sup>7</sup>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 ►<sup>6</sup>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.◄

#### Disqualification for misconduct etc.

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

- (a) has become incapable of work through his own misconduct, except ►<sup>8</sup>◄ 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) ►<sup>9</sup>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.



- (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 ►<sup>1</sup>the Secretary of State may determine.◄

19.–22. ►<sup>2</sup>◄

<sup>1</sup>Words substituted in reg. 18(2) by para. 2 of Sch. 10 to S.I. 1999/2422 as from 6.9.99.

<sup>2</sup>Chapter V of Part II revoked by para. 3 of Sch. 10 to S.I. 1999/2422 as from 6.9.99.

## PART III

### ►<sup>3</sup>PERSONAL CAPABILITY ASSESSMENT◄

<sup>3</sup>The heading to Part III and regs. 24 and 25(1) substituted by reg. 3(1), (2) and (3) of S.I. 1999/3109 as from 3.4.2000.

#### Interpretation of Part III and the Schedule

23. In this Part and the Schedule, unless the context otherwise requires, any reference to a numbered part is to the part in the Schedule bearing that number.

#### ►<sup>3</sup>The personal capability assessment

24. For the purposes of section 171C(2)(a) of the Contributions and Benefits Act the personal capability assessment is an assessment of the extent to which a person who has some specific disease or bodily or mental disablement is capable of performing the activities prescribed in the Schedule, or is incapable by reason of such disease or bodily or mental disablement of performing those activities.◄

#### ►<sup>3</sup>Incapacity under the personal capability assessment

25.—(1) For the purposes of section 171C(2)(b) of the Contributions and Benefits Act a person is incapable of work in accordance with the personal capability assessment when one or more of the descriptors in Part I or Part II apply to him if, by adding the points listed in column (3) of the Schedule against the descriptor, he obtains a total score of at least—

- (a) 15 points in respect of descriptors specified in Part I; or
- (b) 10 points in respect of descriptors specified in Part II; or
- (c) 15 points in respect of descriptors specified in Parts I and II◄

(2) In determining the extent of a person's incapacity to perform any activity listed in Part I he shall be assessed as if he were wearing any prosthesis with which he is fitted ►<sup>4</sup>or, as the case may be, any aid or appliance which he normally wears or uses.

(3) In determining the extent of a person's incapacity to perform any activity listed in Part I or Part II, it shall be a condition that the person's incapacity arises—

- (a) in respect of a disability listed in Part I, from a specific bodily disease or disablement; or
- (b) in respect of a disability listed in Part II, from some specific mental illness or disablement.◄

<sup>4</sup>Words added to sub-para (2) and sub-para. (3) added by reg. 2(7) of S.I. 1996/3207 as from 6.1.97.

#### Calculation of scores

26.—(1) In determining a person's score for the purposes of regulation 25(1)(c)—

- (a) ►<sup>5</sup>an aggregate score◄ of between 6 and 9 points in respect of those descriptors specified in Part II shall be treated as a score of 9 points when added to the score in respect of descriptors specified in Part I:
- (b) ►<sup>5</sup>an aggregate score◄ of less than 6 points in respect of ►<sup>5</sup>the descriptors◄ specified in Part II shall be disregarded.

<sup>5</sup>Words substituted in sub-para. (a) and (b) by reg. 2(8) of S.I. 1996/3207 as from 6.1.97.

(2) In determining a person's score where descriptors specified for the activities 1 and 2 in Part I apply to him, only one descriptor shall be counted and that shall be the descriptor with the highest score in respect of either activity which applies to him.

(3) In determining a person's score in respect of descriptors specified in Part I where

more than one descriptor specified for any activity applies to him, only one descriptor shall be counted and that shall be the descriptor with the highest score in respect of each activity which applies to him.

(4) In determining a person's score in respect of descriptors specified in Part II the score in respect of each descriptor which applies to him shall be counted.

### Exceptional circumstances

►<sup>1</sup>27.—(1) A person who ►<sup>2</sup>is not incapable of work in accordance with the personal capability assessment◄ shall be treated as incapable of work if any of the circumstances set out in paragraph (2) apply to him.

<sup>1</sup>Reg. 27 substituted by reg. 2(9) of S.I. 1996/3207 as from 6.1.97.

<sup>2</sup>Words substituted in reg. 27 by reg. 3(4) of S.I. 1999/3109 as from 3.4.2000.

(2) The circumstances are that—

- (a) he is suffering from a severe life threatening disease in relation to which—
  - (i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and
  - (ii) in the case of a disease which is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure;
- (b) he suffers from a previously undiagnosed potentially life threatening condition; which has been discovered during the course of a medical examination carried out for the purposes of the ►<sup>3</sup>personal capability assessment◄ by a ►<sup>4</sup>health care professional◄ approved by the Secretary of State;
- (c) there exists medical evidence that he requires a major surgical operation or other major therapeutic procedure and it is likely that that operation or procedure will be carried out within three months of the date of a medical examination carried out for the purposes of the ►<sup>3</sup>personal capability assessment◄◄.

<sup>3</sup>Words substituted in reg. 27(2)(b) and (c) by reg. 4(b) of S.I. 2000/590 as from 3.4.00.

<sup>4</sup>Words substituted in reg. 27(2)(b) by reg. 3 of S.I. 2007/1626 as from 3.7.07.

<sup>5</sup>Reg 28(1) substituted by reg. 3(5) of S.I. 1999/3109 as from 3.4.2000.

### ►<sup>5</sup>Conditions for treating a person as incapable of work until personal capability assessment is carried out

28.—(1) Where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment that person shall, if the conditions set out in paragraph (2) are met, be treated as incapable of work in accordance with the personal capability assessment until such time as he has been assessed or he falls to be treated as capable of work in accordance with regulation 7 or 8.◄

(2) The conditions are—

- (a) that the person provides evidence of his incapacity for work in accordance with the Social Security (Medical Evidence) Regulations 1976 (which prescribe the form of doctor's statement or other evidence required in each case); and
- (b) that it has not within the preceding 6 months been determined, in relation to his entitlement to any benefit, allowance or advantage ►<sup>6</sup>which is dependent on him being incapable of work◄, that the person is capable of work, or is to be treated as capable of work under regulation 7 or 8, unless—
  - (i) he is suffering from some specific disease or bodily or mental disablement which he was not suffering from at the time of that determination; or
  - (ii) a disease or bodily or mental disablement which he was suffering from at the time of that determination has significantly worsened; or
  - (iii) in the case of a person who was treated as capable of work under regulation 7 (failure to provide information), he has since ►<sup>7</sup>provided the information requested by the Secretary of State◄ under that regulation.

<sup>6</sup>Words inserted into reg. 28(2)(b) by reg. 2(10) of S.I. 1996/3207 with effect from 6.1.97.

<sup>7</sup>Words substituted in reg. 28(2)(b)(iii) by reg. 2(10) of S.I. 1995/987 with effect from 13.4.95.

Signed by authority of the Secretary of State for Social Security.

10th February 1995

*William Hague*  
Minister of State,  
Department of Social Security

SI 1995/311

SOCIAL SECURITY (**INCAPACITY FOR WORK**) (GENERAL) REGULATIONS  
1995

SCHEDULE

Regulations 6(1)(b), 24.

DISABILITIES WHICH MAY MAKE A PERSON INCAPABLE OF WORK

PART I

PHYSICAL DISABILITIES

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptor</i>	<i>(3)</i> <i>Points</i>
1. Walking on level ground with a walking stick or other aid if such aid is normally used.	1(a) Cannot walk at all.	15
	(b) Cannot walk more than a few steps without stopping or severe discomfort.	15
	(c) Cannot walk more than 50 metres without stopping or severe discomfort.	15
	(d) Cannot walk more than 200 metres without stopping or severe discomfort.	7
	(e) Cannot walk more than 400 metres without stopping or severe discomfort.	3
	(f) Cannot walk more than 800 metres without stopping or severe discomfort.	0
	(g) No walking problem.	0
2. Walking up and down stairs.	2(a) Cannot walk up and down one stair.	15
	(b) Cannot walk up and down a flight of 12 stairs.	15
	(c) Cannot walk up and down a flight of stairs without holding on and taking a rest.	7
	(d) Cannot walk up and down a flight of 12 stairs without holding on.	3
	(e) Can only walk up and down a flight of 12 stairs if he goes sideways or one step at a time.	3
	(f) No problem in walking up and down stairs.	0
3. Sitting in an upright chair with a back, but no arms.	3(a) Cannot sit comfortably.	15
	(b) Cannot sit comfortably for more than 10 minutes without having to move from the chair ►because the degree of discomfort makes it impossible to continue sitting◄.	15
	(c) Cannot sit comfortably for more than 30 minutes without having to move from the chair ►because the degree of discomfort makes it impossible to continue sitting◄.	7
	(d) Cannot sit comfortably for more than 1 hour without having to move from the chair ►because the degree of discomfort makes it impossible to continue sitting◄.	3
	(e) Cannot sit comfortably for more than 2 hours without having to move from the chair ►because the degree of discomfort makes it impossible to continue sitting◄.	0
	(f) No problem with sitting.	0

Words inserted into column (2) item 3(b)-(e) by reg. 2(11)(b)(i) of S.I. 1996/3207 with effect from 6.1.97.

<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptor</i>	<i>(3)</i> <i>Points</i>
4. Standing without the support of another person or the use of an aid except a walking stick.	4(a) Cannot stand unassisted.	15
	(b) Cannot stand for more than a minute before needing to sit down.	15
	(c) Cannot stand for more than 10 minutes before needing to sit down.	15
	(d) Cannot stand for more than 30 minutes before needing to sit down.	7
	(e) Cannot stand for more than 10 minutes before needing to move around.	7
	(f) Cannot stand for more than 30 minutes before needing to move around.	3
	(g) No problem standing.	0
5. Rising from sitting in an upright chair with a back but no arms without the help of another person.	5(a) Cannot rise from sitting to standing.	15
	(b) Cannot rise from sitting to standing without holding on to something.	7
	(c) Sometimes cannot rise from sitting to standing without holding on to something	3
	(d) No problem with rising from sitting to standing.	0
6. Bending and Kneeling.	6(a) Cannot bend to touch his knees and straighten up again.	15
	(b) Cannot ►either, bend or kneel, or bend and kneel◄ as if to pick up a piece of paper from the floor and straighten up again.	15
	(c) Sometimes cannot ►either, bend or kneel, or bend and kneel◄ as if to pick up a piece of paper from the floor and straighten up again.	3
	(d) No problem with bending or kneeling.	0
7. Manual dexterity.	7(a) Cannot turn the pages of a book with either hand.	15
	(b) ►Cannot turn a sink tap or the control knobs on a cooker with either hand.◄	15
	(c) Cannot pick up a coin which is 2.5 centimetres or less in diameter with either hand.	15
	(d) Cannot use a pen or pencil.	15
	(e) Cannot tie a bow in laces or string.	10
	(f) ►Cannot turn a sink tap or the control knobs on a cooker with one hand, but can with the other◄	6
	(g) Cannot pick up a coin which is 2.5 centimetres or less in diameter with one hand ►but can with the other◄.	6
8. Lifting and carrying ►by the use of upper body and arms (excluding all other activities specified in Part I of this Schedule).◄	8(a) Cannot pick up a paper-back book with either hand.	15
	(b) Cannot pick up and carry a 0.5 litre carton of milk with either hand.	15
	(b) Cannot pick up and carry a 0.5 litre carton of milk with either hand.	15
	(c) Cannot pick up and pour from a full saucepan or kettle of 1.7 litre capacity with either hand.	15

Words substituted into column 2, items 6(b) & (c) by reg. 2(11)(b)(ii) of S.I. 1996/3207 a with effect from 6.1.97.

Words added to column 2, items 7(b)(f) & (g) by reg. 2(11)(b)(iii) of S.I. 1996/3207 with effect from 6.1.97.

Words inserted into column (1), item 8 by reg. 2(11)(a)(i) of S.I. 1996/3207 with effect from 6.1.97.

<i>(1)</i> Activity	<i>(2)</i> Descriptor	<i>(3)</i> Points	
	(d) Cannot pick up and carry a 2.5 kilogramme bag of potatoes with either hand.	8	
	(e) Cannot pick up and carry a 0.5 litre carton of milk with one hand ►but can with the other◄.	6	
	(f) Cannot pick up and carry a 2.5 kilogramme bag of potatoes with one hand ►but can with the other◄.	0	Words inserted into column 2 items 8(e) & (f) by reg. 2(11)(b)(iv) of S.I. 1997/3207 with effect from 6.1.97.
	(g) No problem with lifting and carrying.	0	
9. Reaching.	9(a) Cannot raise either arm ►as if◄ to put something in the top pocket of a coat or jacket.	15	Words inserted in column 2, items 9(a) to (f) by reg. 2, (11)(b)(v) of S.I. 1996/3207 with effect from 6.1.97.
	(b) Cannot raise either arm to his head ►as if◄ to put on a hat.	15	
	(c) Cannot put either arm behind back ►as if◄ to put on a coat or jacket.	15	
	(d) Cannot raise either arm above his head ►as if◄ to reach for something.	15	
	(e) Cannot raise one arm to his head ►as if◄ to put on a hat ►but can with the other◄.	6	
	(f) Cannot raise one arm above his head ►as if◄ to reach for something ►but can with the other◄.	0	
	(g) No problem with reaching.	0	
10. Speech.	10(a) Cannot speak.	15	
	(b) Speech cannot be understood by family or friends.	15	
	(c) Speech cannot be understood by strangers.	15	
	(d) Strangers have great difficulty understanding speech.	10	
	(e) Strangers have some difficulty understanding speech.	8	
	(f) No problems with speech.	0	
11. Hearing with a hearing aid or other aid if normally worn.	11(a) Cannot hear sounds at all.	15	
	(b) Cannot hear well enough to follow a television programme with the volume turned up.	15	
	(c) Cannot hear well enough to understand someone talking in a loud voice in a quiet room.	15	
	(d) Cannot hear well enough to understand someone talking in a normal voice in a quiet room.	10	
	(e) Cannot hear well enough to understand someone talking in a normal voice on a busy street.	8	
	(f) No problem with hearing.	0	
12. Vision in normal daylight or bright electric light with glasses or other aid to vision if such aid is normally worn.	12(a) Cannot tell light from dark.	15	
	(b) Cannot see the shape of furniture in the room.	15	
	(c) Cannot see well enough to read 16 point print at a distance greater than 20 centimetres.	15	
	(d) Cannot see well enough to recognise a friend across the room ►at a distance of at least 5 metres◄.	12	
	(e) Cannot see well enough to recognise a friend across the road ►at a distance of at least 15 metres◄.	8	Words inserted in column (2) items 12(d) & (e) by reg. 2(11)(b)(vi) of S.I. 1996/3207 with effect from 6.1.97.

	<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptor</i>	<i>(3)</i> <i>Points</i>
Words inserted into column (1), item 13 by reg. 2(11)(a)(ii) of S.I. 1996/3207 with effect from 6.1.97.	13. Contenance ►other than enuresis (bed wetting)◄.	(f) No problem with vision.	0
		13(a) No voluntary control over bowels	15
		(b) No voluntary control over bladder.	15
		(c) Loses control of bowels at least once a week.	15
		(d) Loses control of bowels at least once a month.	15
		(e) Loses control of bowels occasionally.	9
		(f) Loses control of bladder at least once a month.	3
		(g) Loses control of bladder occasionally.	0
		(h) No problem with continence	0
		14(a) Has an involuntary episode of lost or altered consciousness at least once a day.	15
Words inserted into column (1) item 14 by reg. 2(11)(a)(ii) of S.I. 1996/3207 with effect from 6.1.97.	14. Remaining conscious ►without having epileptic or similar seizures during waking moments.◄	(b) Has an involuntary episode of lost or altered consciousness at least once a week.	15
		(c) Has an involuntary episode of lost or altered consciousness at least once a month	15
		(d) Has had an involuntary episode of lost or altered consciousness at least twice in the 6 months before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	12
		(e) Has had an involuntary episode of lost or altered consciousness once in the 6 months before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	8
		(f) Has had an involuntary episode of lost or altered consciousness once in the 3 years before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	0
		(g) Has no problems with consciousness.	0

PART II

MENTAL DISABILITIES



<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptor</i>	<i>(3)</i> <i>Points</i>	
15. Completion of tasks.	15(a) Cannot answer the telephone and reliably take a message.	2	
	(b) Often sits for hours doing nothing.	2	
	(c) Cannot concentrate to read a magazine article or follow a radio ► <sup>1</sup> or television◀ programme.	1	
	(d) Cannot use a telephone book or other directory to find a number.	1	
	(e) Mental condition prevents him from undertaking leisure activities previously enjoyed.	1	
	(f) Overlooks or forgets the risk posed by domestic appliances or other common hazards due to poor concentration.	1	<sup>1</sup> Words inserted into column (2) item 15(c) by reg. 2(II)(c)(i) of S.I. 1996/3207 with effect from 6.1.97.
	(g) Agitation, confusion or forgetfulness has resulted in ► <sup>2</sup> potentially dangerous◀ accidents in the 3 months before the day in respect to which it falls to be determined whether he is in incapable of work for the purposes of entitlement to any benefit, allowance or advantage.	1	
	16. Daily living.	(h) Concentration can only be sustained by prompting	1
16(a) Needs encouragement to get up and dress.		2	
(b) Needs alcohol before midday.		2	
(c) Is frequently distressed at some time of the day due to fluctuation of mood.		1	
(d) Does not care about his appearance and living conditions.		1	
(e) Sleep problems interfere with his daytime activities.		1	
17. Coping with pressure.	17(a) Mental stress was a factor in making him stop work.	2	
	(b) Frequently feels scared or panicky for no obvious reason.	2	
	(c) Avoids carrying out routine activities because he is convinced they will prove too tiring or stressful.	1	
	(d) Is unable to cope with changes in daily routine.	1	
	(e) Frequently finds there are so many things to do that he gives up because of fatigue, apathy or disinterest.	1	
	(f) Is scared or anxious that work would bring back or worsen his illness.	1	
18. Interaction with other people.	18(a) Cannot look after himself without help from others.	2	
<i>(1)</i> <i>Activity</i>	<i>(2)</i> <i>Descriptor</i>	<i>(3)</i> <i>Points</i>	

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|--|---|
| (b) Gets upset by ordinary events and it results in disruptive behavioural problems. | 2 |
| (c) Mental problems impair ability to communicate with other people.                 | 2 |
| (d) Gets irritated by things that would not have bothered him before he became ill.  | 1 |
| (e) Prefers to be left alone for 6 hours or more each day.                           | 1 |
| (f) Is too frightened to go out alone.   | 1 |
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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations contain provisions affecting determinations as to capacity for work for the purposes of the Social Security Contributions and Benefits Act 1992 (“the Act”).

Part I contains general provisions, including commencement, definitions and application. These Regulations do not apply for the purposes of industrial injuries benefit and statutory sick pay.

Part II contains general provisions relating to incapacity for work, including provisions which are supplementary to Part XIIA of the Act and provisions relating to adjudication;

Regulation 4 (defines “remunerative work” for the purposes of the own occupation test (which is set out in section 171B of the Act) and regulation 5 provides for the application of that test to persons with more than one occupation.

Regulations 6 to 9 provide for the evidence or information required for the purposes of determining capacity for work and the consequences of failing to provide it. In particular a person may be called for a medical examination and may be treated as capable for work if he fails to attend.

Regulations 10 to 15 provide for the circumstances in which a person is to be treated as incapable for work.

Regulations 16 to 18 provide for the circumstances in which a person is to be treated as capable of work or disqualified for receiving certain benefits. Subject to certain exceptions, persons are to be treated as capable of work for the whole of any week in which they do work which is not in an exempt category and within defined limits. Persons may also be treated as capable of work or disqualified for receiving benefit on the grounds of misconduct or failure to observe certain rules of behaviour.

Regulations 19 to 22 affect adjudication on questions relating to incapacity for work. In particular they provide for a determination in relation to one benefit to be conclusive for other benefits. They also provide for social security appeal tribunals to sit with a medical assessor in certain cases and for the constitution of panels of such assessors.

Part III relates to the all work test, which is defined in these Regulations in accordance with section 30C(1) of the Act;

Regulation 23 provides for interpretation of Part III and the Schedule.

Regulations 24 to 26 set out the all work test and establish how it is to be satisfied.

Regulation 27 states when a doctor approved by the Secretary of State may determine that a person who does not satisfy the all work test may nonetheless be treated as incapable of work.

Regulation 28 sets out conditions whereby the all work test shall be treated as satisfied until a person has been assessed or until he is treated as capable of work as the case may be.

The Schedule sets out the disabilities which may make a person incapable of work. Part I of the Schedule deals with physical disabilities and Part II with mental disabilities.

These Regulations are made before the expiry of 6 months from the commencement of the provisions under which they are made and are accordingly exempt by section 173(5)(a) of the Social Security Administration Act 1992 from reference to the Social Security Advisory Committee and have not been so referred.

These Regulations do not impose any costs on business.

