
STATUTORY INSTRUMENTS

1995 No. 311

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

PART II

GENERAL PROVISIONS RELATING TO INCAPACITY FOR WORK

CHAPTER III

PERSONS TREATED AS INCAPABLE

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

10.—(1) [^{F1}Where the question of whether a person is capable or incapable of work falls to be determined in accordance with the personal capability assessment] a person shall be treated as incapable of work on any [^{F2}day in respect of which] any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are—

[^{F3}(a) that he receives, in respect of the day in question, a payment of—

- (i) the highest rate care component of disability living allowance;
- (ii) an increase of disablement pension by virtue of section 104 of the Contributions and Benefits Act and regulation 19 of the Social Security (General Benefit) Regulations 1982 (increase of disablement pension for constant attendance) at a rate greater than that specified in paragraph 2(a) or at the rate specified in paragraph 2(b) of Part V of Schedule 4 to that Act;
- (iii) a constant attendance allowance by virtue of article 14(1)(b) of the Naval, Military, and Air Forces Etc. (Disablement and Death) Service Pensions Order 1983;
- (iv) an increase of constant attendance allowance at a rate payable by virtue of article 14 of, and paragraph 3(a) of Schedule 3 to, the Personal Injuries (Civilians) Scheme 1983;]

[^{F4}(aa) that he is entitled to—

- (i) a disablement pension by virtue of section 103 of the Contributions and Benefits Act by reference to a degree of disability of not less than 80 per cent.;
 - (ii) a disablement pension by virtue of Part III of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 or of Part III of the Personal Injuries (Civilians) Scheme 1983 by reference to a degree of disability of not less than 80 per cent.;
- (ab) that evidence in accordance with regulation 10 of the Social Security (Severe Disablement Allowance) Regulations 1984 establishes that he suffers from a loss of physical or mental faculty such that the extent of the resulting disablement amounts to not less than 80 per cent.;]

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- (b) that he is suffering from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months;
- (c) that he is a blind person whose name is on a register compiled and maintained by a local authority under section 29 of the National Assistance Act 1948^{M1} (welfare services) or, in Scotland, has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a regional or islands council;
- (d) that he is suffering from any of the following conditions—
 - (i) tetraplegia;
 - (ii) persistent vegetative state;
 - (iii) dementia;
 - (iv) paraplegia or uncontrollable involuntary movements or ataxia which effectively renders the sufferer functionally paraplegic;
- (e) [^{F5}that he is suffering from any of the following conditions, and there exists medical evidence that he is suffering from any of them—]
 - (i) a severe learning disability (which, for the purposes of this regulation, means a condition which results from the arrested or incomplete physical development of the brain, or severe damage to the brain, and which involves severe impairment of intelligence and social functioning);
 - (ii) a severe and progressive neurological [^{F6}or muscle] wasting disease;
 - (iii) an active and progressive form of inflammatory polyarthritis;
 - (iv) a progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance;
 - (v) dense paralysis of the upper limb, trunk and lower limb on one side of the body;
 - (vi) multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory and intellectual deficits;
 - [^{F7}(vii) manifestations of severe and progressive immune deficiency states characterised by the occurrence of severe constitutional disease or opportunistic infections or tumour formation;]
 - [^{F8}(viii) a severe mental illness, involving the presence of mental disease, which severely and adversely affects a person's mood or behaviour, and which severely restricts his social functioning, or his awareness of his immediate environment.]

Textual Amendments

- F1** Words in reg. 10(1) substituted (3.4.2000) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1999 (S.I. 1999/3109), regs 1, 2(5)
- F2** Words in reg. 10(1) substituted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **2(3)(a)**
- F3** Reg. 10(2)(a) substituted (3.4.1995) by [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#), regs. 1(2), **2(3)(b)(i)**
- F4** Reg. 10(2)(aa)(ab) inserted (1.4.1997) by [The Social Security \(Incapacity for Work and Severe Disablement Allowance\) Amendment Regulations 1997 \(S.I. 1997/1009\)](#), regs. 1, 2
- F5** Words in reg. 10(2)(e) substituted (6.1.1997) by [The Social Security \(Incapacity for Work and Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/3207\)](#), regs. 1(1), **2(3)(a)**
- F6** Words in reg. 10(2)(e)(ii) substituted (6.1.1997) by [The Social Security \(Incapacity for Work and Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/3207\)](#), regs. 1(1), **2(3)(b)**

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F7 Reg. 10(2)(e)(vii) substituted (3.4.1995) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1995 (S.I. 1995/987) , regs. 1(2) , **2(3)(b)(ii)**

F8 Reg. 10(2)(e)(viii) substituted (6.1.1997) by The Social Security (Incapacity for Work and Miscellaneous Amendments) Regulations 1996 (S.I. 1996/3207) , regs. 1(1) , **2(3)(c)**

Modifications etc. (not altering text)

C1 Reg. 10 applied (27.10.2003) by The Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003 (S.I. 2003/2439), regs. 1, **8**

Marginal Citations

M1 1948 c. 29 .

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

- Act modified by [S.I. 1999/1088 regs.3.4-67](#)