
DRAFT STATUTORY INSTRUMENTS

2013 No.

The Employment and Support Allowance Regulations 2013

PART 4

Limited Capability for Work

Conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made

26.—(1) A claimant is, if the conditions set out in paragraph (2) are met, to be treated as having limited capability for work until such time as it is determined—

- (a) whether or not the claimant has limited capability for work;
- (b) whether or not the claimant is to be treated as having limited capability for work otherwise than in accordance with this regulation; or
- (c) whether the claimant falls to be treated as not having limited capability for work in accordance with regulation 18 (failure to provide information in relation to limited capability for work) or 19 (failure to attend a medical examination to determine limited capability for work).

(2) The conditions are—

- (a) that the claimant provides evidence of limited capability for work in accordance with the Medical Evidence Regulations; and
- (b) that it has not, within the six months preceding the date of claim for employment and support allowance, been determined, in relation to the claimant's entitlement to any benefit, allowance or advantage which is dependent on the claimant having limited capability for work, that the claimant does not have limited capability for work or is to be treated as not having limited capability for work under regulation 18 or 19 unless paragraph (4) applies.

(3) Paragraph (2)(b) does not apply where a claimant has made and is pursuing an appeal against a decision that embodies a determination that the claimant does not have limited capability for work and that appeal has not yet been determined by the First-tier Tribunal.

(4) This paragraph applies where—

- (a) the claimant is suffering from some specific disease or bodily or mental disablement from which the claimant was not suffering at the time of that determination;
- (b) a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened; or
- (c) in the case of a claimant who was treated as not having limited capability for work under regulation 18 (failure to provide information), the claimant has since provided the information requested under that regulation.