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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**The Employment and Support Allowance Regulations 2013**

**PART 4**

**Limited Capability for Work**

**Certain claimants to be treated as not having limited capability for work**

**27.**—(1) A claimant who is or has been a member of Her Majesty's forces is to be treated as not having limited capability for work on any day which is recorded by the Secretary of State as a day of sickness absence from duty.

(2) A claimant is to be treated as not having limited capability for work on any day on which the claimant attends a training course in respect of which the claimant is paid a training allowance or premium pursuant to arrangements made under section 2 of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990.

(3) Paragraph (2) is not to apply—

- (a) for the purposes of any claim to an employment and support allowance for a period commencing after the claimant ceased attending the training course in question; or
- (b) where any training allowance or premium paid to the claimant is paid for the sole purpose of travelling or meal expenses incurred or to be incurred under the arrangements made under section 2 of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990.

(4) A claimant is to be treated as not having limited capability for work where—

- (a) it has previously been determined, within the six months preceding the date of claim for employment and support allowance, on the basis of an assessment under Part 5 of the Universal Credit Regulations 2013, that the claimant does not have limited capability for work; and
- (b) it appears to the Secretary of State that—
  - (i) the determination was not based on ignorance of, or mistake as to, a material fact; and
  - (ii) there has been no relevant change of circumstances in relation to the claimant's physical or mental condition since the determination.