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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**The Employment and Support Allowance Regulations 2013**

**PART 5**

Limited Capability for Work-related Activity

**Determination of limited capability for work-related activity**

**30.**—(1) For the purposes of Part 1 of the Act, where, by reason of a claimant's physical or mental condition, at least one of the descriptors set out in Schedule 3 applies to the claimant, the claimant has limited capability for work-related activity and the limitation must be such that it is not reasonable to require that claimant to undertake such activity.

(2) A descriptor applies to a claimant if that descriptor applies to the claimant for the majority of the time or, as the case may be, on the majority of the occasions on which the claimant undertakes or attempts to undertake the activity described by that descriptor.

(3) In determining whether a descriptor applies to a claimant, the claimant is to be assessed as if—

- (a) the claimant were fitted with or wearing any prosthesis with which the claimant is normally fitted or normally wears; or, as the case may be
- (b) wearing or using any aid or appliance which is normally, or could reasonably be expected to be, worn or used.

(4) Where a determination has been made about whether a claimant—

- (a) has limited capability for work-related activity;
- (b) is to be treated as having limited capability for work-related activity; or
- (c) is to be treated as not having limited capability for work-related activity,

the Secretary of State may, if paragraph (5) applies, determine afresh whether the claimant has or is to be treated as having limited capability for work-related activity.

(5) This paragraph applies where—

- (a) the Secretary of State wishes to determine whether there has been a relevant change of circumstances in relation to the claimant's physical or mental condition;
- (b) the Secretary of State wishes to determine whether the previous determination about limited capability for work-related activity or about treating the claimant as having or as not having limited capability for work-related activity, was made in ignorance of, or was based on a mistake as to, some material fact; or
- (c) at least three months have passed since the date of the previous determination about limited capability for work-related activity or about treating the claimant as having or as not having limited capability for work-related activity.

(6) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 3, it is a condition that the claimant's incapability to perform the activity arises—

- (a) in respect of descriptors 1 to 8, 15(a), 15(b), 16(a) and 16(b)—

- (i) from a specific bodily disease or disablement; or
- (ii) as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement; or
- (b) in respect of descriptors 9 to 14, 15(c), 15(d), 16(c) and 16(d)—
  - (i) from a specific mental illness or disablement; or
  - (ii) as a direct result of treatment provided by a registered medical practitioner for a specific mental illness or disablement.