
STATUTORY INSTRUMENTS

1995 No. 311

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

PART II

GENERAL PROVISIONS RELATING TO INCAPACITY FOR WORK

CHAPTER IV

TREATING AS CAPABLE, DISQUALIFICATION ETC.

Person who works to be treated as capable of work

[^{F1}16.—(1) A person shall be treated as capable of work on each day of any week during which he does work.

(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.]

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Textual Amendments

F1 Reg. 16 substituted (10.4.2006) by [Social Security \(Incapacity for Work\) Amendment Regulations 2006 \(S.I. 2006/757\)](#), regs. 1(1), 3

[^{F2}Persons to be treated as capable of work at the end of the period covered by medical evidence

16A.—[

[^{F3}(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—

- (a) the person has supplied medical evidence ^{F4} ...;
- (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.]

[^{F5}(2) In this regulation “medical evidence” means evidence provided under regulation 2 or 5 of the Social Security (Medical Evidence) Regulations 1976.]

Textual Amendments

F2 Reg. 16A inserted (28.6.2010) by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2010 \(S.I. 2010/840\)](#), regs. 1, **6(3)**

F3 Reg. 16A(1): reg. 16A renumbered as reg. 16A(1) (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **6(3)(a)**

F4 Words in reg. 16A(1)(a) omitted (11.4.2011) by virtue of [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **6(3)(b)**

F5 Reg. 16A(2) added (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), **6(3)(c)**

Exempt work

[^{F6}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 [^{F7}16 x 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 ^{F8}by a] voluntary organisation ^{F8}or community interest company] engaged in the provision or procurement of work for persons who have disabilities.

(4) Work which is done for less than 16 hours a week, for which earnings in any week do not exceed ^{F9}16 x National Minimum Wage, subject to paragraph (10),^{F10}...

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

(6) Work done as a volunteer.

(7) ^{F11}Duties undertaken on either one full day or two half days a week] as—

^{F12}(a)

^{F13}(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.]

(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;

^{F14}“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);]

^{F15} ...

“voluntary organisation” means a body, other than a public or local authority, the activities of which are carried on otherwise than for profit.]

^{F16}(9)

^{F17}(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.]

Textual Amendments

- F6** Reg. 17 substituted (10.4.2006) by [Social Security \(Incapacity for Work\) Amendment Regulations 2006 \(S.I. 2006/757\)](#), regs. 1(1), 4 (with reg. 5)
- F7** Words in reg. 17(3) substituted (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), 6(4)(a)
- F8** Words in reg. 17(3)(b) inserted (28.6.2010) by [Social Security \(Miscellaneous Amendments\) \(No.3\) Regulations 2010 \(S.I. 2010/840\)](#), regs. 1, 6(4)(a)
- F9** Words in reg. 17(4) substituted (11.4.2011) by [The Social Security \(Miscellaneous Amendments\) Regulations 2011 \(S.I. 2011/674\)](#), regs. 1(4), 6(4)(a)

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- F10** Words in reg. 17(4) omitted (3.4.2017) by virtue of The Employment and Support Allowance (Exempt Work Hardship Amounts) (Amendment) Regulations 2017 (S.I. 2017/205), regs. 1, **2(a)**
- F11** Words in reg. 17(7) substituted (1.10.2008) by Social Security (Miscellaneous Amendments) (No.3) Regulations 2008 (S.I. 2008/2365), regs. 1, **4(2)(b)**
- F12** Reg. 17(7)(a) omitted (7.2.2013) by virtue of The Public Bodies (Abolition of the Disability Living Allowance Advisory Board) Order 2013 (S.I. 2013/252), art. 1(2), **Sch. Pt. 2**
- F13** Reg. 17(7)(b) substituted (3.11.2008) by Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 (S.I. 2008/2683), art. 1, **Sch. 1 para. 66**
- F14** Words in reg. 17(8) inserted (11.4.2011) by The Social Security (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/674), regs. 1(4), **6(4)(b)**
- F15** Words in reg. 17(8) omitted (3.4.2017) by virtue of The Employment and Support Allowance (Exempt Work Hardship Amounts) (Amendment) Regulations 2017 (S.I. 2017/205), regs. 1, **2(b)**
- F16** Reg. 17(9) omitted (3.4.2017) by virtue of The Employment and Support Allowance (Exempt Work Hardship Amounts) (Amendment) Regulations 2017 (S.I. 2017/205), regs. 1, **2(c)**
- F17** Reg. 17(10) added (11.4.2011) by The Social Security (Miscellaneous Amendments) Regulations 2011 (S.I. 2011/674), regs. 1(4), **6(4)(c)**

[F18] Person who claims unemployment benefit to be treated as capable of work

17A. [F19]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 [F20]throughout any period in respect of which he claims a jobseeker’s allowance], notwithstanding that it has been determined that he [F21]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 [F22]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.]

Textual Amendments

- F18** Reg. 17A inserted (3.4.1995) by The Social Security (Incapacity for Work) Miscellaneous Amendments Regulations 1995 (S.I. 1995/987), regs. 1(2), **2(6)**
- F19** Words in reg. 17A substituted (3.4.2000) by The Social Security (Incapacity) Miscellaneous Amendments Regulations 2000 (S.I. 2000/590), regs. 1(b), **4(a)(i)**
- F20** Words in reg. 17A substituted (7.10.1996) by The Social Security and Child Support (Jobseeker’s Allowance) (Consequential Amendments) Regulations 1996 (S.I. 1996/1345), regs. 1, **20(3)**
- F21** Words in reg. 17A substituted (3.4.2000) by The Social Security (Incapacity) Miscellaneous Amendments Regulations 2000 (S.I. 2000/590), regs. 1(b), **4(a)(ii)**
- F22** Words in reg. 17A substituted (7.10.1996) by The Social Security and Child Support (Jobseeker’s Allowance) (Consequential Amendments) Regulations 1996 (S.I. 1996/1345), regs. 1, **20(3)**

Disqualification for misconduct etc.

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

- (a) has become incapable of work through his own misconduct, except ^{F23} ... 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) [^{F24}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 [^{F25}the Secretary of State may determine].

Textual Amendments

- F23** Words in reg. 18(1)(a) omitted (3.4.1995) by virtue of [The Social Security \(Incapacity for Work\) Miscellaneous Amendments Regulations 1995 \(S.I. 1995/987\)](#) , regs. 1(2) , **2(7)**
- F24** Words in reg. 18(1)(b) substituted (6.1.1997) by [The Social Security \(Incapacity for Work and Miscellaneous Amendments\) Regulations 1996 \(S.I. 1996/3207\)](#) , regs. 1(1) , **2(6)**
- F25** Words in reg. 18(2) substituted (6.9.1999) by [The Social Security Act 1998 \(Commencement No. 9, and Savings and Consequential and Transitional Provisions\) Order 1999 \(S.I. 1999/2422\)](#) , reg. 1 , **Sch. 10 para. 2**

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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](#)