
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 5

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

30.—(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 22 (failure to provide information in relation to limited capability for work) or 23 (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

[^{F1}(b) in relation to the claimant's entitlement to any benefit, allowance or advantage which is dependent on the claimant having limited capability for work, it has not been determined—

- (i) in the last determination preceding the date of claim for an employment and support allowance, that the claimant does not have limited capability for work; or
- (ii) within the 6 months preceding the date of claim for an employment and support allowance, that the claimant is to be treated as not having limited capability for work under regulation 22 or 23,

unless paragraph (4) applies;]

^{F2}(c)

[^{F3}(3) Paragraph 2(b) does not apply where a claimant has made and is pursuing an appeal against a relevant decision of the Secretary of State, and that appeal has not yet been determined by the First-tier Tribunal.]

[^{F4}(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 22 (failure to provide information), the claimant has since provided the information requested under that regulation.]

[^{F5}(5) In this regulation a “relevant decision” means—

- (a) a decision that embodies the first determination by the Secretary of State that the claimant does not have limited capability for work; or
- (b) a decision that embodies the first determination by the Secretary of State that the claimant does not have limited capability for work since a previous determination by the Secretary of State or appellate authority that the claimant does have limited capability for work.

(6) In this regulation, “appellate authority” means the First-tier Tribunal, the Upper Tribunal, the Court of Appeal, the Court of Session, or the Supreme Court.]

Textual Amendments

- F1** Reg. 30(2)(b) substituted (with application in accordance with reg. 2 of the amending S.I.) by [The Employment and Support Allowance \(Repeat Assessments and Pending Appeal Awards\) \(Amendment\) Regulations 2015 \(S.I. 2015/437\)](#), regs. 1, **3(2)(a)**
- F2** Reg. 30(2)(c) omitted (29.10.2013) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2013 \(S.I. 2013/2536\)](#), regs. 1(1), **13(14)(b)**
- F3** Reg. 30(3) substituted (with application in accordance with reg. 2 of the amending S.I.) by [The Employment and Support Allowance \(Repeat Assessments and Pending Appeal Awards\) \(Amendment\) Regulations 2015 \(S.I. 2015/437\)](#), regs. 1, **3(2)(b)**
- F4** Reg. 30(4) inserted (29.10.2013) by [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2013 \(S.I. 2013/2536\)](#), regs. 1(1), **13(14)(c)**
- F5** Reg. 30(5)(6) inserted (with application in accordance with reg. 2 of the amending S.I.) by [The Employment and Support Allowance \(Repeat Assessments and Pending Appeal Awards\) \(Amendment\) Regulations 2015 \(S.I. 2015/437\)](#), regs. 1, **3(2)(c)**

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 30.