
STATUTORY INSTRUMENTS

2012 No. 3096

**The Employment and Support Allowance
(Amendment) Regulations 2012**

Amendment of Part 6 of the ESA Regulations

4.—(1) Part 6 of the ESA Regulations (Limited Capability for Work-Related Activity) is amended as follows.

(2) In regulation 34 (determination of limited capability for work-related activity)—

(a) for paragraph (3), substitute—

“(3) In determining whether a descriptor applies to the 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.”; and

(b) after paragraph (3) insert—

“(3A) In determining whether a descriptor applies, it is a condition that the claimant’s incapability arises—

(a) in respect of descriptors 1 to 8, 15(a), 15(b), 16(a) and 16 (b), from a specific bodily disease or disablement;

(b) in respect of descriptors 9 to 14, 15(c), 15(d), 16(c) and 16 (d), from a specific mental illness or disablement; or

(c) in respect of—

(i) descriptors 1 to 8, 15(a), 15(b), 16(a) and 16 (b), as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement;

(ii) descriptors 9 to 14, 15(c), 15(d), 16(c) and 16 (d), as a direct result of treatment provided by a registered medical practitioner for a specific mental illness or disablement.”.

(3) In regulation 35(1) (certain claimants to be treated as having limited capability for work-related activity)(1), for sub-paragraph (b) substitute—

“(b) the claimant is-

(i) receiving treatment for cancer by way of chemotherapy or radiotherapy;

(ii) likely to receive such treatment within six months after the date of the determination of capability for work-related activity; or

(iii) recovering from such treatment,

(1) Regulation 35(1) was amended by [Employment and Support Allowance \(Limited Capability for Work and Limited Capability for Work-Related Activity\) \(Amendment\) Regulations 2011/228](#), reg. 3(4).

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and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work-related activity; or”.