
STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 5

LIMITED CAPABILITY FOR WORK

Determination of limited capability for work

19.—(1) For the purposes of Part 1 of the Act, whether a claimant's capability for work is limited by the claimant's physical or mental condition and, if it is, whether the limitation is such that it is not reasonable to require the claimant to work is to be determined on the basis of a limited capability for work assessment of the claimant in accordance with this Part.

(2) The limited capability for work assessment is an assessment of the extent to which a claimant who has some specific disease or bodily or mental disablement is capable of performing the activities prescribed in Schedule 2 or is incapable by reason of such disease or bodily or mental disablement of performing those activities.

(3) Subject to paragraph (6), for the purposes of Part 1 of the Act a claimant has limited capability for work if, by adding the points listed in column (3) of Schedule 2 against any descriptor listed in that Schedule, the claimant obtains a total score of at least—

- (a) 15 points whether singly or by a combination of descriptors specified in Part 1 of that Schedule;
- (b) 15 points whether singly or by a combination of descriptors specified in Part 2 of that Schedule; or
- (c) 15 points by a combination of descriptors specified in Parts 1 and 2 of that Schedule.

(4) In assessing the extent of a claimant's capability to perform any activity listed in Part 1 of Schedule 2, the claimant is to be assessed as if wearing any prosthesis with which the claimant is fitted or, as the case may be, wearing or using any aid or appliance which is normally worn or used.

(5) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 2, it is a condition that the claimant's incapability to perform the activity arises from—

- (a) a specific bodily disease or disablement;
- (b) a specific mental illness or disablement; or
- (c) as a direct result of treatment provided by a registered medical practitioner, for such a disease, illness or disablement.

(6) Where more than one descriptor specified for an activity apply to a claimant, only the descriptor with the highest score in respect of each activity which applies is to be counted.

(7) Where a claimant—

- (a) has been determined to have limited capability for work; or
- (b) is to be treated as having limited capability for work under regulations 20, 25, 26, 29 or 33(2),

Status: Point in time view as at 27/10/2008. This version of this provision has been superseded.
Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 19. (See end of Document for details)

the Secretary of State may, if paragraph (8) applies, determine afresh whether the claimant has or is to be treated as having limited capability for work.

- (8) 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 of limited capability for work or that the claimant is to be treated as having limited capability for work, was made in ignorance of , or was based on a mistake as to, some material fact; or
 - (c) at least 3 months have passed since the date on which the claimant was determined to have limited capability for work or to be treated as having limited capability for work.

Status:

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Changes to legislation:

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