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STATUTORY INSTRUMENTS

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**2008 No. 794**

**The Employment and Support Allowance Regulations 2008**

**PART 7 E+W+S**

**EFFECT OF WORK ON ENTITLEMENT TO AN  
EMPLOYMENT AND SUPPORT ALLOWANCE**

**Claimants who are treated as not entitled to any allowance at all by reason of  
regulation 40(1) are to be treated as not having limited capability for work E+W+S**

**44.**—(1) Where a claimant is treated as not entitled to an employment and support allowance by reason of regulation 40(1), subject to paragraph (2), the claimant is to be treated as not having limited capability for work.

(2) Paragraph (1) does not apply where the claimant remains entitled to a contributory allowance, but is not entitled to an income-related allowance by reason of regulation 40(1).

(3) Paragraph (1) applies even if—

- (a) it has been determined that the claimant has or is to be treated as having, under any of regulations 20 (certain claimants to be treated as having limited capability for work), 25 (hospital in-patients), 26 (claimants undergoing certain regular treatment) or 29 (exceptional circumstances), limited capability for work; or
- (b) the claimant meets the conditions set out in regulation 30(2) for being treated as having limited capability for work until a determination is made in accordance with the limited capability for work assessment.

**Status:**

Point in time view as at 27/10/2014.

**Changes to legislation:**

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, Section 44.