
STATUTORY INSTRUMENTS

2012 No. 3096

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

Amendment of Part 5 of the ESA Regulations

- 3.—**(1) Part 5 of the ESA Regulations (Limited Capability for Work) is amended as follows.
- (2) In regulation 19 (determination of limited capability for work)—
- (a) for paragraph (4), substitute—
- “(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—
- (a) 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) for paragraph (5) substitute—
- “(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—
- (a) in respect of any descriptor listed in Part 1 of Schedule 2, from a specific bodily disease or disablement;
- (b) in respect of any descriptor listed in Part 2 of Schedule 2, from a specific mental illness or disablement; or
- (c) in respect of any descriptor or descriptors listed in—
- (i) Part 1 of Schedule 2, as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement;
- (ii) Part 2 of Schedule 2, as a direct result of treatment provided by a registered medical practitioner for a specific mental illness or disablement.”.
- (3) In regulation 20 (certain claimants to be treated as having limited capability for work)(1), for 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; or
- (iii) recovering from such treatment,
- and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work.”.
- (4) For regulation 25 (hospital in-patients) substitute—

(1) Regulation 20 was amended by the Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) (Amendment) Regulations 2011 (S.I. 2011/228), reg. 3(2)(a).

“Hospital patients

25.—(1) A claimant is to be treated as having limited capability for work on any day on which that claimant is undergoing medical or other treatment as a patient in a hospital or similar institution, or on any day which is a day of recovery from that treatment.

(2) The circumstances in which a claimant is to be regarded as undergoing treatment falling within paragraph (1) include where the claimant is attending a residential programme of rehabilitation for the treatment of drug or alcohol addiction.

(3) For the purposes of this regulation, a claimant is to be regarded as undergoing treatment as a patient in a hospital or similar institution only if that claimant has been advised by a health care professional to stay in a hospital or similar institution for a period of 24 hours or longer.

(4) For the purposes of this regulation, “day of recovery” means a day on which a claimant is recovering from treatment as a patient in a hospital or similar institution and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work on that day.”.

(5) In regulation 26(1)(b) (claimants receiving certain regular treatment), after “plasmapheresis” omit “or by way of radiotherapy”.

(6) In regulation 29 (exceptional circumstances)—

(a) in paragraph (2), insert “Subject to paragraph (3)” at the beginning of the paragraph; and

(b) after paragraph (2) insert—

“(3) Paragraph (2)(b) does not apply where the risk could be reduced by a significant amount by—

(a) reasonable adjustments being made in the claimant’s workplace; or

(b) the claimant taking medication to manage the claimant’s condition where such medication has been prescribed for the claimant by a registered medical practitioner treating the claimant.”.