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STATUTORY INSTRUMENTS

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**2013 No. 376**

**The Universal Credit Regulations 2013**

**PART 5**

**CAPABILITY FOR WORK OR WORK-RELATED ACTIVITY**

**Limited capability for work and work-related activity**

- 40.**—(1) A claimant has limited capability for work and work-related activity if—
- (a) it has been determined that—
    - (i) the claimant has limited capability for work and work-related activity on the basis of an assessment under this Part, or
    - (ii) the claimant has limited capability for work related activity on the basis of an assessment under Part 5 of ESA Regulations; or
  - (b) the claimant is to be treated as having limited capability for work and work-related activity (see paragraph (5)).
- (2) A claimant has limited capability for work and work-related activity on the basis of an assessment under this Part if, by reason of the claimant's physical or mental condition,—
- (a) at least one of the descriptors set out in Schedule 7 applies to the claimant;
  - (b) the claimant's capability for work and work-related activity is limited; and
  - (c) the limitation is such that it is not reasonable to require that claimant to undertake such activity.
- (3) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 7, it is a condition that the claimant's incapability to perform the activity arises—
- (a) in respect of descriptors 1 to 8, 15(a), 15(b), 16(a) and 16(b)—
    - (i) from a specific bodily disease or disablement; or
    - (ii) as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement; or
  - (b) in respect of descriptors 9 to 14, 15(c), 15(d), 16(c) and 16(d)—
    - (i) from a specific mental illness or disablement; or
    - (ii) as a direct result of treatment provided by a registered medical practitioner for a specific mental illness or disablement.
- (4) A descriptor applies to a claimant if that descriptor applies to the claimant for the majority of the time or, as the case may be, on the majority of the occasions on which the claimant undertakes or attempts to undertake the activity described by that descriptor.
- (5) [<sup>F1</sup>Subject to paragraph (6),] a claimant is to be treated as having limited capability for work and work-related activity if any of the circumstances set out in Schedule 9 applies.

[<sup>F2</sup>(6) Where the circumstances set out in paragraph 4 of Schedule 9 apply, a claimant may only be treated as having limited capability for work and work-related activity if the claimant does not have limited capability for work and work-related activity as determined in accordance with an assessment under this Part.]

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**Textual Amendments**

- F1** Words in reg. 40(5) inserted (28.4.2014) by [The Universal Credit and Miscellaneous Amendments Regulations 2014 \(S.I. 2014/597\)](#), regs. 1, **2(5)(a)**
- F2** Reg. 40(6) inserted (28.4.2014) by [The Universal Credit and Miscellaneous Amendments Regulations 2014 \(S.I. 2014/597\)](#), regs. 1, **2(5)(b)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Universal Credit Regulations 2013, Section 40.