
STATUTORY INSTRUMENTS

2013 No. 379

The Employment and Support Allowance Regulations 2013

PART 4

Limited Capability for Work

Certain claimants to be treated as having limited capability for work

- 16.**—(1) A claimant is to be treated as having limited capability for work if—
- (a) the claimant is terminally ill;
 - (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;
 - (c) the claimant is—
 - (i) excluded or abstains from work pursuant to a request or notice in writing lawfully made or given under an enactment; or
 - (ii) otherwise prevented from working pursuant to an enactment,by reason of it being known or reasonably suspected that the claimant is infected or contaminated by, or has been in contact with a case of, a relevant infection or contamination;
 - (d) in the case of a pregnant woman, there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work;
 - (e) in the case of a pregnant woman, she—
 - (i) is within the maternity allowance period (which has the meaning it has in ^{F1}... the Contributions and Benefits Act); and
 - (ii) is entitled to a maternity allowance under section 35(1) [^{F2}or 35B(1)] of the Contributions and Benefits Act^{M1};
 - (f) in the case of a pregnant woman whose expected or actual date of confinement has been certified in accordance with the Medical Evidence Regulations, on any day in the period—
 - (i) beginning with the first date of the 6th week before the expected week of her confinement or the actual date of her confinement, whichever is earlier; and
 - (ii) ending on the 14th day after the actual date of her confinement,if she would have no entitlement to a maternity allowance or statutory maternity pay were she to make a claim in respect of that period;

Status: Point in time view as at 18/05/2014.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2013, Section 16. (See end of Document for details)

- (g) the claimant meets any of the descriptors at paragraph 15 or 16 of Schedule 3 in accordance with regulation 30(2), (3) and (6) where applicable; or
- (h) the claimant is entitled to universal credit and it has previously been determined that the claimant has limited capability for work on the basis of an assessment under Part 5 of the Universal Credit Regulations 2013 ^{M2}.
- (2) In this regulation, “relevant infection or contamination” means—
- (a) in England and Wales—
- (i) any incidence or spread of infection or contamination, within the meaning of section 45A(3) of the Public Health (Control of Disease) Act 1984 ^{M3} in respect of which regulations are made under Part 2A of that Act (public health protection) for the purpose of preventing, protecting against, controlling or providing a public health response to, such incidence or spread; or
- (ii) tuberculosis or any infectious disease to which regulation 9 of the Public Health (Aircraft) Regulations 1979 (powers in respect of persons leaving aircraft) ^{M4} applies or to which regulation 10 of the Public Health (Ships) Regulations 1979 (powers in respect of certain persons on ships) ^{M5} applies; and
- (b) in Scotland, any—
- (i) infectious disease within the meaning of section 1(5) of the Public Health etc (Scotland) Act 2008 ^{M6}, or exposure to an organism causing that disease; or
- (ii) contamination within the meaning of section 1(5) of that Act, or exposure to a contaminant,
- to which sections 56 to 58 of that Act (compensation) apply.

Textual Amendments

- F1** Words in reg. 16(1)(e)(i) omitted (18.5.2014) by virtue of [The Social Security \(Maternity Allowance\) \(Miscellaneous Amendments\) Regulations 2014 \(S.I. 2014/884\)](#), regs. 1, **6(3)(a)**
- F2** Words in reg. 16(1)(e)(ii) inserted (18.5.2014) by [The Social Security \(Maternity Allowance\) \(Miscellaneous Amendments\) Regulations 2014 \(S.I. 2014/884\)](#), regs. 1, **6(3)(b)**

Marginal Citations

- M1** Section 35(1) was substituted by section 53 of the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) and amended by paragraph 4 of Schedule 7 to the [Employment Act 2002 \(c.22\)](#) and section 63 of the Welfare Reform Act 2012.
- M2** [S.I. 2013/376](#)
- M3** [1984 c.22](#). Section 45A and Part 2A were inserted by section 129 of the [Health Act 2008 \(c.14\)](#).
- M4** [S.I. 1979/1434](#).
- M5** [S.I. 1979/1435](#). Regulation 10 was amended by S.I.s 2007/1446 and 1901.
- M6** [2008 asp 5](#).

Status:

Point in time view as at 18/05/2014.

Changes to legislation:

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