Chapter 13 - Incapacity for work

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Statutes commonly referred to in Chapter 13

|  |  |  |
| --- | --- | --- |
| **Full Title** |  | **Abbreviation** |
| Social Security Contributions and Benefits (Northern Ireland) Act 1992 |  | SS C&B (NI) Act 92 |
| Social Security (Incapacity for Work) (Northern Ireland) Order 1994 |  | SS (IW) (NI) Order 94 |
| Social Security (Northern Ireland) Order 1998 |  | SS (NI) Order 98 |

Statutory Rules commonly referred to in Chapter 13

|  |  |  |
| --- | --- | --- |
| **Full Title** |  | **Abbreviation** |
| Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 No 465 |  | SS (C&P) Regs (NI) |
| Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 No 175 |  | SS (Med Ev) Regs (NI) |
| Social Security (Incapacity Benefit) Regulations (Northern Ireland) 1994 No 461 |  | SS (IB) Regs (NI) |
| Social Security (Incapacity for Work) (General) Regulations (Northern Ireland) 1995 No 41 |  | SS (IW) (Gen) Regs (NI) |
| Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 No 162 |  | SS & CS (D&A) Regs (NI) |
| Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995 No 35 |  | SS (IB) (Trans) Regs (NI) |
| Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1996 No 520 |  | SS Ben (CofE) Regs (NI) |

Chapter 13 - Incapacity for work

General

Benefits affected

13000 The following guidance should be used to determine whether a person is capable or incapable of work1. Unless specified in other legislation the provisions apply to any benefit, allowance or advantage where a condition of entitlement is that they are capable or incapable of work.

1 SS (IW) (NI) Order 94; SS C&B (NI) Act 92, sec 167A(1)

13001 The benefits and allowances include Incapacity Benefit, Severe Disablement Allowance, Income Support and Jobseeker’s Allowance. The advantages include incapacity credits and premiums paid with Housing Benefit. The provisions do not apply to Statutory Sick Pay, Industrial Injuries1 and Employment and Support Allowance2.

1 SS C&B (NI) Act 92, sec 167G(1); 2 Welfare Reform Act (NI) 2007, sec 1(3)

13002 A determination on whether a person is, or is treated as, capable or incapable of work for entitlement to any benefit, allowance or advantage also determines entitlement for any other benefit allowance or advantage for the same period1.

1 SS & CS (D&A) Regs (NI), reg 10

 13003 – 13024

The tests of incapacity

13025 There are two tests of incapacity

**1.** the own occupation test (see DMG 13200) **and**

**2.** the personal capability assessment (see DMG 13300).

 The decision maker must first determine which test applies.

13026 The own occupation test applies if the person has been in remunerative work for more than eight weeks in the 21 weeks immediately before the day for which incapacity for work has to be determined and it continues to apply

**1.** for the first 196 days of the spell of incapacity **or**

**2.** until the spell of incapacity ends if that is earlier.

 Satisfying the test depends upon evidence of incapacity1 confirming that people are unable to work in their own occupation. This is the job or jobs they had for at least 16 hours a week in more than 8 of the 21 weeks before the first day of incapacity2  (see DMG 13218).

1 SS (Med Ev) Regs (NI); 2 SS C&B (NI) Act 92, sec 167B(3); SS (IW) (Gen) Regs (NI), reg 4 & 5

13027 The personal capability assessment applies from the

**1.** 197th day onwards **or**

**2.** beginning of the claim if the own occupational test conditions do not apply.

13028 Satisfying the test depends on the assessment of ability to perform certain functions on the basis of answers to a questionnaire and possible medical examination. Medical statements are not required after the personal capability assessment has been assessed1 (see DMG 13628).

1 SS C&B (NI) Act 92, sec 167C(1); SS (IW) (Gen) Regs (NI), reg 23-28 & Sch

 13029 – 13049

Treated as capable of work

13050 There are rules to treat people as capable of work if they

**1.** cease to provide medical evidence1 (see DMG 13182 - 13184 for cases where contact with the claimant **has not** been lost and DMG 13666 - 13669 for cases where contact with the claimant **has** been lost) **or**

**2.** fail without good cause to return the questionnaire for the personal capability assessment2 (see DMG 13670 - 13673) **or**

**3.** fail without good cause to attend or submit to a medical examination for the own occupation test or the personal capability assessment3 (see DMG 13678 - 13704) **or**

**4.** are working, other than in defined categories4 (see DMG 13846 - 13980) **or**

**5.** claim Jobseeker’s Allowance5 (see DMG 13702 - 13704) **or**

**6.** behave inappropriately6 (see DMG 13730 - 13813).

1 SS (IW) (Gen) Regs (NI), reg 7; 2 reg 7; 3 reg 8; 4 reg 16; 5 reg 17A; 6 reg 18(2)(b)

13051 People who are entitled to Incapacity Benefit or Severe Disablement Allowance are disqualified for breaches of the rules of behaviour (misconduct etc), and can be treated as capable of work for the other benefits, allowances or advantages (DMG 13730)1.

1 SS (IW) (Gen) Regs (NI), reg 18(2)(b)

 13052 – 13074

Treated as incapable of work

13075 Certain people can be treated as incapable of work (see DMG 13550). They are those

**1.** where the personal capability assessment applies, with certain prescribed severe conditions1

**2.** with certified infectious or contagious disease2

**3.** who are hospital in-patients3

**4.** who are receiving certain regular treatments4

**5.** who are Welfare to Work beneficiaries5

**6.** in certain circumstances, who are pregnant6

**7.** who are engaged in approved work on a trial basis7.

1 SS (IW) (Gen) Regs (NI), reg 10; 2 reg 11; 3 reg 12; 4 reg 13; 5 reg 13A(2); 6 reg 14; 7 reg 10A

13076 Provided certain conditions are satisfied, people are treated as incapable of work from the first day it applies until the personal capability assessment is carried out. Medical statements are normally required as evidence of incapacity during this pre-assessment period (DMG 13625)1.

1 SS C&B (NI) Act 92, sec 167C(3), SS (IW) (Gen) Regs (NI), reg 6(3) and 28

13077 Certain people who do not satisfy the personal capability assessment by having enough points must be treated as incapable of work if there are exceptional circumstances in their case1 (see DMG 13643).

 13078 – 13099

Evidence and information

General

13100 Information or evidence is needed to determine whether a person is capable or incapable of work1. But this does not apply2 when considering whether a person

**1.** who has claimed Jobseeker’s Allowance is capable of work **or**

**2.** is to be treated as incapable of work under certain legislation3.

1 SS (IW) (Gen) Regs (NI), reg 6(1); 2 reg 6(3); 3 regs 10-14

 **Note:** The following paragraphs should be read with the guidance on evidence in DMG Chapter 01.

13101 Evidence of incapacity should be provided for the day or days of incapacity for work until the person has been assessed for the personal capability assessment. Evidence may be

 **1.** self-certification1 (DMG 13120) **or**

 **2.** a statement from a doctor (DMG 13140)2 **or**

 **3.** if it is unreasonable to require such a statement, other evidence which is sufficient to show that the person should refrain from work because of some specific disease or bodily or mental disablement3 (DMG 13160).

1 SS (Med Ev) Regs (NI), reg 5; 2 reg 2(1); SS (IW) (Gen) Regs (NI), reg 6(1)(a);
3 SS (Med Ev) Regs (NI), reg 2(1A)

13102 Certain transitionally protected cases are required to provide evidence of incapacity to be exempt from the personal capability assessment. If acceptable evidence of incapacity ends, continuing entitlement will be subject to the personal capability assessment. For Severe Disablement Allowance cases see DMG Chapter 571.

1 SS (IB) (Trans) Regs (NI), reg 31

 13103 – 13119

Evidence

Self-certification

13120 Evidence of incapacity for a spell of less than eight days, or for the first seven days of a longer spell, may be by self-certification1. Self-certification is only appropriate for the first seven days of a spell of incapacity2.

1 SS (Med Ev) Regs (NI), reg 5(1); 2 reg 5(2)

13121 “Spell of incapacity” means1 a series of four or more consecutive days of incapacity for work and any two such spells not separated by a period of more than eight weeks shall be treated as one spell of incapacity.

1 SS (Med Ev) Regs (NI), reg 5(2); SS C&B (NI) Act 92, sec 167B(3)

13122 A self-certificate is a declaration made in writing by the claimant, in a form approved by the Department. It should include the information that they have been unfit for work from a date or for a period. It may also include a statement that they expect to continue to be unfit for work1.

1 SS (Med Ev) Regs (NI), reg 5(2)

 13123 – 13139

Doctor’s statements

13140 A doctor’s statement is a statement given in writing by a doctor. They are made on an approved form1.

1 SS (Med Ev) Regs (NI), reg 2(1) & Sch 1, Pt 2; SS (IW) (Gen) Regs (NI), reg 6(1)(a)

13141 A doctor means a registered medical practitioner and includes a medical practitioner outside the United Kingdom who is asked for a medical opinion by the Department. Doctors must be registered or recognised as such in the country in which they pursue a medical practice. A statement from a general practitioner, hospital dental officer or consultant can be accepted1.

1 SS (IW) (Gen) Regs (NI), reg 2

 13142 – 13159

Other evidence

13160 Evidence other than on an approved form or from a registered medical practitioner can be accepted1 if

**1.** it is unreasonable to require a doctor’s statement **and**

**2.** the evidence shows that the person should not work because of a disease or disablement.

1 SS (Med Ev) Regs (NI), reg 2(1)(d)

13161 The decision maker decides what is reasonable in each case. For example, evidence from alternative therapists such as chiropractors, osteopaths, etc can be accepted if the person is usually treated by them as well as, or instead of, a general practitioner.

13162 Depending on the circumstances1 a declaration that a person is incapable of following a particular occupation and is receiving non-medical treatment such as Christian Science treatment (i.e. treatment through prayer) may be sufficient proof.

1 R(S) 9/51

13163 An employer’s certificate which only confirms absence from work is not sufficient evidence1.

1 R(S) 13/51

 13164 – 13179

Information

13180 The decision maker can ask for any additional information relating to the relevant test to help determine whether a person is capable or incapable of work1.

1 SS (IW) (Gen) Regs (NI), reg 6(1)(c)

13181 Where the personal capability assessment applies, information in the form of a questionnaire relating to the person’s ability to perform certain activities will be requested1 unless there is already sufficient information to determine the question2.

1 SS (IW) (Gen) Regs (NI), reg 6(1)(b); 2 reg 6(2)

Gap in medical evidence

Contact with claimant not lost

13182 If a claimant fails to provide medical evidence for a specific period before incapacity is determined and contact with them has not been lost, payment of benefit may be suspended1 (see DMG Chapter 04 for guidance on suspension of payment of benefit).

1 SS & CS (D&A) Regs (NI), reg 16

13183 In such cases, the decision maker must apply the personal capability assessment. The test may need to be applied on the balance of probabilities using all available evidence, including evidence from a previous claim where appropriate. For example, it might not be possible to refer the claimant for medical examination where it is known that they have returned to work or claimed Jobseeker’s Allowance. Where there is little or no evidence, the decision maker may draw adverse inferences and award no points when scoring the personal capability assessment. Advice should be sought from medical services in cases of doubt. Insufficient evidence does not mean that the personal capability assessment cannot be applied.

13184 Where there is a gap in medical evidence, this does not count as a change of circumstances to justify a decision to supersede the entitlement decision. The decision maker can suspend payment to the claimant because of the failure to provide medical evidence, but cannot conclude they are not entitled to Incapacity Benefit without carrying out the personal capability assessment1. The determination of incapacity for work gives grounds for supersession, not the lack of medical evidence. Once incapacity has been determined, any days not covered by medical evidence will be included in the personal capability assessment determination (see DMG 13622).

1 R(IB) 1/05

Contact with claimant lost

13185 For cases where medical evidence ceases and contact with the claimant is lost see DMG 13666 - 13669.

 13186 – 13199

Own occupation test

The test

13200 The test is whether a person is incapable, because of some specific disease or bodily or mental disablement, of doing work which they could reasonably be expected to do in the occupation in which they were employed1.

1 SS C&B (NI) Act 92, sec 167B(2)

13201 Separate provisions allow any work as a councillor to be disregarded when determining incapacity for work1. If a person’s only qualifying occupation (see DMG 13230) is as a councillor, the personal capability assessment should be applied from the outset.

1 SS C&B (NI) Act 92, sec 167F

13202 Although a person with a severe condition is exempt from the personal capability assessment, incapacity during the own occupation test period must be considered on their capability for their qualifying occupation (see DMG 13230).

13203 Disease may be defined as any abnormality of bodily structure or function, other than those arising directly from physical injury. It is a departure from health identifiable by its signs and symptoms, an abnormality of some sort.

13204 Disablement, which may be bodily or mental, is a state of deprivation or incapacitation of ability measured against the abilities of a normal person. Incapacity can be confirmed by symptoms which are consistent with the presence of some disease. For example, the person may be displaying symptoms such as pain, but the cause may not have been diagnosed.

 13205 – 13215

When it applies

13216 The own occupation test applies when a person has been in remunerative work (DMG 13218) for more than eight out of the 21 weeks immediately before the day for which incapacity for work has to be determined1 (DMG 13249). The person should have worked for at least eight weeks and part of a day to qualify.

1 SS C&B (NI) Act 92, sec 167B(1)

13217 A person who is normally engaged in one occupation for at least 16 hours weekly is treated as being engaged in that work for any week in which there is paid or unpaid leave1. For example, periods of Statutory Sick Pay count as paid leave during the 21 weeks before the first day of incapacity claimed. If Statutory Sick Pay is paid for less than 196 days up to the first day of incapacity claimed the own occupation test will apply for the balance of the 196 days.

1 SS (IW) (Gen) Regs (NI), reg 4(2)(b)

Definitions

13218 Remunerative work for any week in the period of 21 weeks means work

**1.** in one occupation (DMG 13221) for at least 16 hours weekly for more than eight weeks **and**

**2.** for which payment was made or expected1.

 **Note:** When calculating the hours worked in a week, only the time spent engaged in actual working activities falls to be counted, e.g. paid or unpaid travelling time or meal/refreshment breaks are excluded from the calculation based on case law.

1 SS (IW) (Gen) Regs (NI), reg 4(1)

13219 A week means any period of seven days1.

1 SS (IW) (Gen) Regs (NI), reg 2

13220 Normally engaged means under contract of service in the case of an employed person.

13221 One occupation means

**1.** all work of the same kind, whether or not it was for the same employer and whether the person was employed or self employed1 **or**

**2.** all work for the same employer2.

1 SS (IW) (Gen) Regs (NI), reg 4(2)(a)(i); 2 reg 4(2)(a)(ii)

13222 Provided all the work is for the same employer or of the same kind1

**1.** separate periods of work (or paid or unpaid leave) in a week can be added to satisfy the “at least 16 hours” condition **and**

**2.** separate periods of work (or paid or unpaid leave) within the 21 weeks can be added to satisfy the “more than eight weeks” condition.

 The “same kind of work” is not defined. It should be taken to mean that the substance of the work remains the same even though the actual tasks differ2.

1 SS (IW) (Gen) Regs (NI), reg 4(2) ; 2 Johnston v Notts Combined Police Authority 1974 1 WLR 358

 **Example 1**

 A school teacher who coaches children in games is performing work of the same kind when taking a class in physics because the substance of the work is teaching.

 **Example 2**

 A secretary who carries out various tasks such as typing, filing and other administrative duties is working primarily as a secretary.

 13223 – 13229

Qualifying occupation

13230 Work which is for a total of at least 16 hours a week, and lasts for a total of more than eight weeks in the relevant 21 weeks is from now on referred to as a “qualifying occupation”.

13231 If there is more than one qualifying occupation, the one tested during the own occupation test period isthe last qualifying occupation. **But** if there is more than one qualifying occupation in the last week of the last qualifying occupation period, the test of incapacity has to be satisfied for each1.

1 SS (IW) (Gen) Regs (NI), reg 5

13232 The table at Annex 1 explains how to decide if the own occupation test applies and which occupation should be tested.

 13233 – 13244

Duration of test

13245 Once the conditions for the own occupation test are satisfied, the test applies1 until the earlier of

**1.** the end of the spell of incapacity **or**

**2.** 196 days.

1 SS C&B (NI) Act 92, sec 167B(3)

13246 A spell of incapacity means1 four or more consecutive days of incapacity for work. Any two spells of incapacity separated by eight weeks or less are treated as one spell of incapacity. The days in between the spells are not days of incapacity2.

1 SS C&B (NI) Act 92, sec 167B(3); 2 CAO v Astle

13247 For people who are incapable on certain days because of specific types of treatment, such as dialysis, the spell of incapacity is defined as two days, which need not be consecutive, in a period of seven consecutive days. DMG 13550 and Annex 5 give more information on the treatment categories1.

1 SS C&B (NI) Act 92, sec 167B(8), SS (IW) (Gen) Regs (NI), reg 13(4)

13248 To calculate the 196 days of the own occupation test period, a day of incapacity means a day

**1.** on which the person is incapable of work **or**

**2.** on which there is entitlement to Statutory Sick Pay **or**

**3.** which falls within the Maternity Allowance Period **or**

**4.** which is treated as a day of incapacity for work1.

1 SS C&B (NI) Act 92, sec 167B(4)

13249 This means that the own occupation test automatically applies to a new claim for the balance of 196 days if

**1.** the own occupation test applied to the last claim for less than 196 days **and**

**2.** the break between the claims was eight weeks or less1.

1 SS C&B (NI) Act 92, sec 167B(3)

13250 The own occupation test conditions should be considered again if

**1.** the personal capability assessment applied to the last claim whether the break between the claims was more or less than eight weeks **or**

**2.** the own occupation test applied to the last claim and the break between claims was more than eight weeks.

 13251 – 13259

Evidence of incapacity

13260 During the own occupation test period a person must provide evidence of incapacity for the day or days of incapacity for work. This must confirm that the person is incapable of following their qualifying occupation because of some specific disease or bodily or mental disablement (see DMG 13101)1.

1 SS (IW) (Gen) Regs (NI), reg 6(1)(a); SS (Med Ev) Regs (NI), reg 2(1)(a) & (d)

 13261 – 13274

Consideration of evidence

13275 The decision maker considers whether incapacity for the qualifying occupation can be accepted if

**1.** the evidence is not provided on the prescribed form (DMG 13160) **or**

**2.** there is no evidence of incapacity for any, or all days claimed (see DMG 13280) **or**

**3.** the diagnosis is doubtful (DMG 13286) **or**

**4.** evidence suggests that the person is capable of work (DMG 13290) **or**

**5.** a referral to Medical Support Services results in an opinion that someone is capable of resuming their own occupation.

 13276 – 13279

No evidence of incapacity

13280 A person must provide evidence of incapacity covering all days within the own occupation test period. If there is a gap in the evidence of incapacity or evidence ceases, the decision maker considers whether it is unreasonable for the person to provide a doctor’s statement (see DMG 13101 **3.**).

 13281 – 13283

Doubtful diagnosis

13284 The decision maker may request immediate advice from the Medical Support Services, who will provide an opinion on a person’s ability to perform the functions required in the qualifying occupation, if

**1.** there is doubt about whether the diagnosis means that person is actually incapable of the qualifying occupation (DMG 13286)

**2.** the diagnosis is one that is not usually accepted as an incapacity without further enquiries (DMG 13287)

**3.** there is no diagnosis (DMG 13289).

13285 If there is doubt about incapacity for work because of diagnosis such as deafness, blindness (see DMG 13201) or loss of limb the decision maker should consider

**1.** whether the person was able to follow the qualifying occupation with these disabilities **and**

**2.** what has changed to cause them to claim.

The incapacity should be accepted if it has been caused by the sudden loss of faculty or an altered condition.

13286 Some diagnoses raise the question of whether the person is actually incapable. Incapacity should be considered on the facts of each case. For example, pregnancy is not a disease or bodily or mental disablement but may indicate the existence of one. Further enquiries are necessary to establish whether there is a disease or disablement associated with, but going beyond the normal incidents of pregnancy.

13287 The doctor may indicate that the cause of sickness is undiagnosed. This may be because the doctor

**1.** has not yet identified the condition causing the symptoms **or**

**2.** may not wish to disclose the true incapacity to protect the person from harmful information.

13288 The decision maker may accept undiagnosed incapacity initially if satisfied by the available evidence that there is incapacity. This may be based on the person’s own account of the symptoms. But if this type of certification continues, the decision maker should establish what action has been taken to allow a diagnosis to be made including what investigations or treatment are being carried out or considered.

 13289

Evidence of capability for work

13290 Doubt may arise if people undertake work or activities which suggest that they are capable of work in the qualifying occupation1.

1 SS C&B (NI) Act 92, sec 167B(2)

13291 For people who are working, the decision maker first decides if they should be treated as capable of work because the work is not in the exempt categories1 (DMG 13890). If the work is in an exempt category, but the activities involved are the same as for the qualifying occupation, the decision maker can refer the person for a Medical Support Service examination.

1 SS (IW) (Gen) Regs (NI), reg 16

13292 A person may undertake activities other than work whilst incapable of work. These could include education and training without a training allowance. Incapacity for work could be in doubt if the task within the activities suggest that the person is actually capable of the functions involved in their qualifying occupation. The decision maker should refer the person for a medical opinion if there is doubt.

13293 If the education and training take the form of work experience or trials, these should be considered as work (DMG 13850 and DMG 13980).

 13294

Fit for own occupation

13295 Medical Support Services will provide an opinion on a person’s ability to perform the functions required in the qualifying occupation. They may also collect the information for the personal capability assessment at the same time. The personal capability assessment report should **not** be used to decide whether it is reasonable to expect the person to resume work in the qualifying occupation or occupations.

13296 The decision maker should consider all available evidence before deciding whether, on the balance of probabilities1, the test is no longer satisfied. Decision makers are not bound to decide on a particular doctor’s certification2.

1 R(S) 4/56; 2 R(S) 1/64

13297 Medical opinions on incapacity are not conclusive and can be challenged by evidence1 that is contrary, direct or circumstantial. A doctor’s statement is poorly equipped to challenge a detailed medical officer’s report, nor does it necessarily indicate a disagreement with the report2. See DMG Chapter 03 for further guidance.

1 R(S) 4/60; 2 R(S) 7/64

 13298 – 13299

Personal capability assessment

The test

13300 The personal capability assessment is an assessment of the extent to which a person is able to carry out a range of everyday activities which are relevant to their ability to work. The test is not assessed in respect of a working situation.

13301 Under the personal capability assessment the extent of a person’s incapacity for work due to

**1.** specific disease **or**

**2.** bodily or mental disablement

 is assessed by their ability to perform defined activities. The level of ability to perform each activity is measured by points awarded against descriptors. The person must score a set total of points to be incapable of work (see DMG 13400 and Annex 2 to this Chapter)1.

1 SS C&B (NI) Act 92, sec 167C(2); SS (IW) (Gen) Regs (NI), regs 24-27

When it applies

13302 Where the own occupation test does not apply or has ceased to apply, the test is the personal capability assessment. The personal capability assessment applies from

**1.** the end of a spell of 196 days of incapacity **or**

**2.** the beginning of the claim if the conditions of the own occupation test are not satisfied (see DMG 13200)1.

1 SS C&B (NI) Act 92, sec 167C

13303 A personal capability assessment carried out before the own occupation test has ceased to apply can be used in determining a person’s capability for work once the personal capability assessment is the relevant test1.

1 SS C&B (NI) Act 92, sec 167C(4)

13304 Where a person has been determined to be incapable of work as a result of a personal capability assessment, the Department can call for a further personal capability assessment1 to determine whether the person is still incapable of work. This applies even if the previous personal capability assessment was called for by the Department.

1 SS C&B (NI) Act 92, sec 167C(5)

Treated as incapable of work

13305 When either the own occupation test or the personal capability assessment is the test of capacity a person is treated as incapable of work if they

**1.** are welfare to work beneficiaries1 (see DMG 13600) **or**

**2.** are incapable of work because of hospitalization, or prescribed conditions2 (see DMG 13550) **or**

**3.** are doing approved work on a trial basis3 (see DMG 13603).

1 SS (IW) (Gen) Regs (NI), reg 13A; 2 regs 11-14; 3 reg 10A

13306 When the personal capability assessment is the test of capacity people are treated as incapable of work if they

**1.** receive certain benefits or have specified medical conditions1 (see DMG 13350) **or**

**2.** do not satisfy the personal capability assessment but there are exceptional circumstances2 (see DMG 13625).

1 SS (IW) (Gen) Regs (NI), reg 10; 2 reg 27

13307 People, other than those who are treated as incapable of work as in DMG 13306 **1.** are treated as incapable of work pending actual assessment, provided certain conditions are satisfied1 (see DMG 13610).

1 SS (IW) (Gen) Regs (NI), reg 28

Gap in medical evidence

13308 If a claimant fails to provide medical evidence in the period before their incapacity for work is determined, payment of benefit may be suspended1. However, the decision maker cannot determine that the claimant is no longer entitled to Incapacity Benefit without carrying out the personal capability assessment (see DMG Chapter 04 for further guidance on suspension of an award of benefit).

1 SS & CS (D&A) Regs (NI), reg 16

13309 In all cases where medical evidence ceases, the decision maker must apply the personal capability assessment to determine incapacity for any day(s) not covered by medical evidence. The test may need to be applied on the balance of probabilities using all available evidence, including evidence from the previous claim where appropriate. Where there is little or no evidence the decision maker may draw adverse inferences and award no points when scoring the personal capability assessment. Advice should be sought from medical services in cases of doubt (see DMG Chapter 04 for guidance on termination of an award of benefit in these circumstances).

Treated as capable of work

13310 As part of the assessment, people may be asked to provide information about their ability to carry out the activities and attend a medical examination. If they fail without good cause to do either, they can be treated as capable of work (see DMG 13663)1.

1 SS (IW) (Gen) Regs (NI), regs 7 & 8

 13311 – 13349

Exemption from the assessment

General

13350 Where

**1.** the personal capability assessment is the relevant test of a claimant’s capacity for work **and**

**2.** the claimant has a specific health condition (see DMG 13353) **or**

**3.** is in receipt of certain benefits

 they shall be treated as incapable of work on any day where they continue to satisfy one of the conditions in **2.** or **3.** above1 (see Annex 4 to this Chapter).

1 SS (IW) (Gen) Regs (NI), reg 10

 13351 – 13352

Medical evidence

13353 When medical evidence1 is required to confirm the existence of a specific health condition2, this means

**1.** evidence from a health care professional approved by the Department **or**

**2.** evidence from any other health care professional **or**

**3.** evidence from a hospital or similar institution **or**

**4.** such part of that evidence which is the most reliable in the circumstances.

 See DMG 13411 for the meaning of “health care professional”.

1 SS (IW) (Gen) Regs (NI), reg 2; 2 reg 10

 13354 – 13364

Exemptions decided on evidence available

13365 The decision maker decides whether people are exempt from the personal capability assessment because

**1.** they are receiving the highest rate care component of Disability Living Allowance1 or an increase of Disablement Pension for constant attendance which is greater than the lower rate or at the higher rate2 or Constant Attendance Allowance3 or an increase of Constant Attendance Allowance for civilians4 **or**

**2.** they are 80% disabled and entitled to Industrial Injuries Death Benefit5 or War Disablement Pension6 or disablement pension under the Personal Injuries Civilian Scheme7 **or**

**3.** there is evidence which establishes disability of not less than 80% for Severe Disablement Allowance (see Benefit Specific Guidance)8 **or**

**4.** they are a welfare to work beneficiary9.

1 SS (IW) (Gen) Regs (NI), reg 10(2)(a)(i); 2 reg 10(2)(a)(ii);
SS C&B (NI) Act 92, sec 104 & Sch 4, Part V, para 2(b); SS Ben (Gen) Regs (NI), reg 19;
3 SS (IW) (Gen) Regs (NI), reg 10(2)(iii);
Naval Military & Airforces (Disablement & Death) Service Pensions Order, art 14(1)(b);
4 Personal Injuries (Civilian) Scheme 83, art 14 & Sch 3, para 3(a);
5 SS (IW) (Gen) Regs (NI), reg 10(2)(aa)(i); 6 reg 10(2)(aa)(ii); 7 reg 10(2)(aa)(ii);
8 reg 10(2)(ab); 9 reg 13A

13366 The decision maker decides from the evidence available, and if necessary Medical Support Services advice, that people are exempt from the personal capability assessment because they are

**1.** terminally ill. This means that the person has a progressive disease as a consequence of which death can be reasonably expected within six months.

 **Note:** Medical Support Services will provide information on whether someone is terminally ill after consulting the general practitioner1 **or**

**2.** registered as blind in a register compiled by, or on behalf of, a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 19722 **or**

**3.** diagnosed as tetraplegic, in a persistent vegetative state, having dementia, paraplegic or having uncontrollable involuntary movements or ataxia which effectively renders the person functionally paraplegic3.

1 SS (IW) (Gen) Regs (NI), reg 10(2)(b); 2 reg 10(2)(c); 3 reg 10(2)(d)

13367 A welfare to work beneficiary is exempt from the test for not more than 91 days if certain conditions are satisfied (DMG 13610). At the end of the 91 days they have to satisfy the normal incapacity for work conditions1.

1 SS (IW) (Gen) Regs (NI), reg 28

 13368 – 13379

Exemptions based on medical evidence

13380 The decision maker determines exemption based on medical evidence (DMG 13304) if the person has

**1.** a severe learning disability. This means a condition which results from the arrested or incomplete physical development of the brainor severe damage to the brain **and** which involves severe impairment of intelligence and social functioning1

**2.** a severe and progressive neurological or muscle wasting disease2

**3.** an active and progressive form of inflammatory polyarthritis3

**4.** a progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance4

**5.** dense paralysis of the upper limb, trunk and lower limb on one side of the body5

**6.** multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory, and intellectual deficits6

**7.** manifestations of severe and progressive immune deficiency state characterised by the occurrence of severe constitutional disease, opportunistic infections or tumour formation7

**8.** severe mental illness. This is defined as the presence of mental disease which severely and adversely affects people’s moods or behaviour **and** severely restricts their social functioning or awareness of their immediate environment8.

1 SS (IW) (Gen) Regs (NI), reg 10(e)(i); 2 reg 10(e)(ii); 3 reg 10(e)(iii); 4 reg 10(e)(iv);
5 reg 10(e)(v); 6 reg 10(e)(vi); 7 reg 10(e)(vii); 8 reg 10(e)(viii)

 13381 – 13399

Application of the assessment

Method of assessment

13400 A decision maker uses evidence and information to carry out the personal capability assessment. Generally this is collected by the person completing a questionnaire, which asks for information on their ability to perform specified activities1.

1 SS (IW) (Gen) Regs (NI), reg 6(1)(b)

13401 A person does not need to complete a questionnaire if the decision maker already has sufficient information to carry out the personal capability assessment1 or can treat them as incapable without carrying out the personal capability assessment2. If the person fails to complete a questionnaire when asked to do so, the decision maker can proceed to determine capacity without it3.

1 SS (IW) (Gen) Regs (NI), reg 6(2); 2 reg 10; 3 reg 6(2)

13402 In addition a decision maker may ask for any other information needed to determine whether the person satisfies the personal capability assessment1.

1 SS (IW) (Gen) Regs (NI), reg 6(1)(c)

13403 The Department does not have to ask the person to provide a statement on a Med 41. If one is requested but not supplied, the decision maker can still give a determination2.

1 SS (Med Ev) (Amdt) Regs (NI) 94, reg 2(1); 2 R(IB) 5/98

 13404

13405 In the main, medical reports will be completed electronically. There is no requirement for either to be signed by the examining health care professional1. However the report must identify the status of the health care professional, i.e. whether he/she is a doctor or a registered nurse (see DMG 13411).

1 R(IB) 7/05

13406 The decision maker considers the information contained in the questionnaire and the Medical Support Services report. There may be differences between the answers from the person and Medical Support Services. The decision maker then considers the merit of each answer and any other evidence to determine an overall score (see DMG 13425)1. Decision makers have to decide what weight to give to this evidence.

1 SS (IW) (Gen) Regs (NI), reg 26

13407 The information in the medical report should be read as a whole and any concerns over inconsistent or improbable entries addressed before a determination of incapacity for work is made.

13408 There should be no changes made to the content of the medical report other than of a very minor nature eg a slip of the pen, and these are to be carried out by the same health care professional who completed the original. Any other additions or alterations should be provided in a separate document.

13409 The examination report from Medical Support Services includes an opinion of a health care professional approved by the Department on whether any prescribed exceptional circumstances apply. The decision maker should consider that opinion when deciding whether a person can be treated a incapable of work if they do not satisfy the test from the descriptors (see DMG 13643)1.

1 SS (IW) (Gen) Regs (NI), reg 27

 13410

Health care professional

13411 A health care professional is1

**1.** a registered medical practitioner

**2.** a registered nurse

**3.** a registered occupational therapist or physiotherapist2

**4.** a member of such other regulated profession as prescribed3.

 **Note:** No other professions have been prescribed at present.

1 SS (NI) Order 98, art 39(2); SS (C&P) Regs (NI), reg 2(1); 2 Health Act 99, sec 60;
3 NHS Reform & Health Care Professions Act 02, sec 25(3); SS (NI) Order 98, art 39(2)

Qualifying conditions

13412 The personal capability assessment is an assessment of the extent to which a person who has some specific disease or bodily or mental disablement is capable, or incapable, of performing specified **activities**1. The performance of activities is measured by **descriptors** the points from which have to reach a set total for the person to be incapable of work2. If the required number of points is not reached the person is not incapable of work3.

1 SS C&B (NI) Act 92, sec 167C(2); SS (IW) (Gen) Regs (NI), reg 24; 2 regs 25 & 26;
3 SS C&B (NI) Act 92, sec 167C(3)

13413 When deciding the extent of a person’s incapacity it is a condition that

**1.** physical descriptors arise from a specific bodily disease or disablement1 **and**

**2.** mental descriptors arise from some specific mental illness or disablement.

1 SS (IW) (Gen) Regs (NI), regs 24 & 25(3)

13414 People are assessed for physical descriptors with any prosthesis which has been fitted (such as an artificial limb) or with any aid or appliance normally worn or used (such as a hearing aid)1.

1 SS (IW) (Gen) Regs (NI), reg 25(2)

13415 The information to be provided for the personal capability assessment is in Annex 2 to this Chapter1.

**1.** **Activity** means an activity which is listed in Annex 2 to this Chapter2.

**2. Descriptor** means the descriptor referred to in Annex 2 to this Chapter which describes a person’s ability to perform the activity3.

1 SS (IW) (Gen) Regs (NI), reg 2 & Sch, Column 1, reg 2; 2 reg 2; 3 reg 2, Sch, Column 2

13416 A person satisfies the personal capability assessment when

**1.** one or more of the descriptors in the physical disabilities1 or mental disabilities2 apply **and**

**2.** the total is reached of at least 15 points from the descriptors in the physical disabilities **or** 10 points from the descriptors in the mental disabilities **or** 15 points from the descriptors in both categories3. See DMG 13425 - 13427.

1 SS (IW) (Gen) Regs (NI), Sch, Part 1; 2 Sch, Part II; 3 reg 25

13417 The combined score of 15 points for physical and mental descriptors does not have to be considered if the person first reaches

**1.** 15 points for physical descriptors **or**

**2.** 10 points for mental descriptors.

 13418 – 13424

Calculation of score

13425 The following modifications must be applied when determining a person’s score

**1.** if descriptors from both mental and physical disabilities apply, an aggregate score of between six and nine points from the mental disability descriptors is treated as a score of nine points when added to the points from the physical disability descriptors1 but see DMG 13427 if the score from physical disability descriptors is nil. An aggregate score of less than six points from any of the mental disability descriptors is disregarded2

**2.** if the physical disability descriptors for the activities of walking and walking up and down stairs both apply, only the descriptor which attracts the highest score is counted3

**3.** in arriving at the total score from the physical disability descriptors, only the descriptor which attracts the highest score in each area of activity is counted4

**4.** when calculating the total score for mental disability the score for each descriptor is counted5.

1 SS (IW) (Gen) Regs (NI), Sch, Part II; reg 26(1)(a); 2 reg 26(1)(b);
3 reg 26(2); 4 reg 26(3); 5 reg 26(4)

13426 Other than as in DMG 13425, there is no scoring limitation based on the person’s specific disease or bodily disablement. So, for example, a person who cannot walk up and down a flight of 12 stairs without holding on because of their defective sight can score points both for the activity of vision and that of walking up and down stairs1.

1 R(IB) 3/98

13427 When the combined descriptors apply and the total score from the physical descriptors is nil, any score from the mental descriptors is not modified. This applies because nil is not a score.

 **Example**

 Physical descriptors points 0

 Mental descriptors points 7

 Combined points 7

 13428 – 13449

Determination of the assessment

Considering the evidence

13450 The decision maker determines whether the assessment is satisfied from the available evidence and information. The normal principles apply to considering the evidence. Guidance is in DMG Chapter 01.

13451 The decision maker considers the evidence and chooses the activities and descriptors which apply.

13452 The test of whether a person cannot perform an activity is not whether or not they are physically incapable of performing it. Matters such as pain, discomfort and repeatability are taken into account. A person is not capable of carrying out an activity if they can only do so with excruciating agony or, if having done it once, they are unable to repeat it for hours or days. The extent of a person’s ability to repeat the activity in a single stretch and of the intervals at which the person would be able to repeat the performance should be identified. A decision can then be made on whether the person “cannot” or “sometimes cannot” perform the relevant descriptor.

13453 Apart from those descriptors in which the word “sometimes” appears, there is no specific requirement that a person must be able to perform the activity in question with “reasonable regularity”. Even so regard should be had to some such concept. The real issue is whether, taking an overall view of the person’s capacity to perform the activity in question, they should reasonably be considered to be incapable of performing it. The fact that they might occasionally manage to accomplish it, would be of no consequence if, for most of the time, and in most circumstances, they could not do so1.

1 R(IB) 2/99

13454 Where relevant descriptors are expressed in terms that the person “cannot”, rather than “sometimes cannot”, perform the activity, one should not stray too far from an arithmetical approach that considers what the person’s abilities are most of the time1.

1 R(IB) 2/99

13455 Descriptors which state that there is “no problem” carrying out the activity mean that the person has no problem performing the activity or has less of a problem than would satisfy any of the other descriptors for that activity.

 **Example**

 Activity 1 descriptor (g) is “no walking problem”. Descriptor (f) is “cannot walk more than 800 metres without stopping or severe discomfort”. “No walking problem” means no walking problem or less of a problem than would satisfy descriptor 1(f).

13456 Where a descriptor refers to a person being able to use a tool or implement, the use referred to is the use to which the tool or implement is normally put. The descriptor is not satisfied if the person cannot use the tool or implement to the required level with one hand but can with the other.

 **Example**

 The person could not hold a pen or pencil in his dominant right hand. But although he could hold a pen or pencil in his left hand he could not do so, so as to write legibly1.

1 R(IB) 1/98

13457 Some of the descriptors refer to events which occurred in a specified period before “the day in respect to which it falls to be determined”. At first the relevant period precedes the day the questionnaire is completed. Then the period precedes the day of the examination and so on. As far as possible the decision maker should consider the specified period immediately before the day the test is decided.

13458 The personal capability assessment does not have to be satisfied in respect of each day1. A person should satisfy the conditions throughout a period. A person whose condition varies from day to day and who would easily satisfy the personal capability assessment on three days a week and would nearly satisfy it on the other four days might be incapable of work for the whole week.

1 R(IB) 2/99

13459 A person may have long periods of illness separated by periods of remission lasting some weeks, during which he or she suffers no significant disablement; such a person might be incapable of work during the periods of illness but not be incapable of work during the periods of remission. This is so even if the periods of illness are longer than the periods of remission1.

1 R(IB) 2/99

13460 Satisfaction of the test is decided on the total of points from the final selection of individual descriptors subject to the specified modifications of the scoring (see DMG 13425).

13461 The decision maker must record the final scores for each descriptor and the reasons for the decision. Guidance on burden of proof is in the Decision Maker’s Guide Chapter 01.

13462 If the required number of points is not reached, people are not incapable of work1.

1 SS C&B (NI) Act 92, sec 167(a)(i)

13463 The personal capability assessment determination will apply to any previously undetermined days since the first day claimed for. This means that if there are days for which the person was not treated as incapable of work the personal capability assessment determination applies to them.

 13464 – 13474

Evidence of incapacity after determination that person is capable

13475 A person may make a new claim and provide medical statements after the decision maker has determined that they are capable of work. The decision maker

**1.** confirms which test of incapacity applies **and**

**2.** if possible, applies the relevant test of incapacity.

13476 If the relevant test is the personal capability assessment, the decision maker may already have sufficient information with which to carry out a new personal capability assessment. This could include

**1.** medical evidence from the previous medical examination **or**

**2.** medical evidence provided to support the new claim **or**

**3.** any other evidence received by the decision maker relevant to assessment of the personal capability assessment on the new claim.

13477 If the decision maker considers there is sufficient information they should carry out the personal capability assessment (see DMG 13450 - 13463).

13478 If the decision maker considers there is insufficient information to carry out the personal capability assessment they should consider whether the person can be treated as incapable of work until the personal capability assessment is carried out1. (See DMG 13625 - 13637.)

1 SS (IW) (Gen) Regs (NI), reg 28

 13479 – 13549

Treated as incapable of work

General

13550 Unless they are treated as capable of work because of working1, people can be treated as incapable of work when the own occupation test or the personal capability assessment apply if they are

**1.** pregnant and satisfy the prescribed conditions (DMG 13560) **or**

**2.** receiving hospital treatment (DMG 13570) **or**

**3.** receiving regular treatment for certain medical conditions (DMG 13580) **or**

**4.** unable to work because of an infectious or contagious disease (DMG 13590)

**5.** incapable for part of a day (DMG 13600)

**6.** are welfare to work beneficiaries (DMG 13610)

**7.** engaged in approved work on a trial basis (DMG 13619).

1 SS (IW) (Gen) Regs (NI), reg 16(1); reg 13A(2); reg 10A(1)

13551 When the personal capability assessment is the relevant test, a person can be treated as incapable of work1 if they

**1.** are in receipt of certain benefits (DMG 13365)

**2.** have specific medical conditions (DMG 13380).

1 SS (IW) (Gen) Regs (NI), reg 10

13552 People who are not treated as incapable of work as in DMG 13550 and DMG 13551 can be treated as incapable until the personal capability assessment is actually assessed1 (DMG 13625).

1 SS (IW) (Gen) Regs (NI), reg 28

13553 When the personal capability assessment is carried out, if the person is not incapable of work they can nevertheless be treated as incapable if exceptional circumstances apply1 (see DMG 13643).

1 SS (IW) (Gen) Regs (NI), reg 27

 13554 – 13559

Pregnancy

13560 Any day within the maternity allowance period is treated as a day of incapacity for work unless disqualification applies1. Days within the maternity pay period can be treated as days of incapacity in certain circumstances (see Benefit Specific Guide)2.

1 SS C&B (NI) Act 92, sec 30C(2); 2 SS (SMP) Regs (NI), reg 21A

13561 A pregnant woman can be treated as incapable of work

**1.** on any day on which, because of her pregnancy, there is a serious risk to her health or to the health of her unborn child if she does not refrain from work1 **or**

**1.1** if the own occupation test applies, in the qualifying occupation **or**

**1.2** if the personal capability assessment applies in any occupation **or**

**2.** if she is not entitled to Maternity Allowance or Statutory Maternity Pay and the expected date of confinement or actual date of confinement has been certified2 on any day in the period

**2.1** beginning with the first day of the 6th week before the expected week of confinement or the actual date of confinement if that is earlier **and**

**2.2** ending on the 14th day after the actual date of confinement if she would have no entitlement to Maternity Allowance or Statutory Maternity Pay were she to make a claim in respect of that period3.

1 SS (IW) (Gen) Regs (NI), reg 14(a); 2 SS (Med Ev) Regs (NI), reg 2(3);
3 SS (IW) (Gen) Regs (NI), reg 14(b)

13562 “Sickness of pregnancy”, which can also be described as “emesis”, “hyperemesis”, “hyperemesis gravidarum”, or “morning sickness”, come within the definition of a disease. This incapacity usually occurs between the 34th and 29th weeks before the expected date of confinement but can also be accepted outside that period when it may include a complication in the pregnancy.

13563 Unless a woman can be treated as incapable of work because of pregnancy, she should provide other evidence of incapacity, for example

**1.** a complication in the pregnancy **or**

**2.** an incapacity not related to pregnancy.

 13564 – 13569

Hospital

13570 People are treated as incapable of work for any day on which they receive medical or other treatment as in-patients in a hospital or similar institution1.

1 SS C&B (NI) Act 92, sec 167D(1); SS (IW) (Gen) Regs (NI), reg 12

13571 A hospital in-patient can be treated as incapable of work even if admitted only for investigation of symptoms unless the investigation reveals that admission was due to another factor such as a personality disorder1.

1 R(S) 1/58; R(S) 6/59

 13572 – 13579

Receiving regular treatment

13580 People are treated as incapable of work for any day on which they receive

**1.** regular weekly treatment by haemodialysis or peritoneal dialysis for chronic renal failure **or** by total parenteral nutrition for gross impairment of enteric function **or**

**2.** treatment by plasmapheresis **or** radiotherapy **or** parenteral chemotherapy with cytotoxic drugs, anti-tumour agents or immuno-suppressive drugs1.

1 SS C&B (NI) Act 92, sec 167D(1); SS (IW) (Gen) Regs (NI), reg 13

13581 An explanation of the treatments in DMG 13580 is in Annex 51.

1 SS (IW) (Gen) Regs (NI), reg 13(3) & reg 16

13582 A person who maintains that they are incapable of work for the whole week should be assessed under the relevant test for the days on which they are not engaged in receiving treatment. See DMG 13200 if the relevant test is the own occupation test or DMG 13300 if it is the personal capability assessment.

13583 A person who works during a week in which they receive treatment is treated as

**1.** incapable of work on the days of treatment **and**

**2.** capable of work only on the actual days worked1.

 Days of treatment can include any necessary preparation or recuperation if this is specified as part of the treatment.

1 SS (IW) (Gen) Regs (NI), reg 13(3) & reg 16

 13584 – 13589

Contagious or infectious diseases

13590 People are treated as incapable of work on any day on which they are

**1.** excluded or abstain from work because of a written request or notice lawfully given under a statutory provision **or**

**2.** otherwise prevented from working under statutory provisions because they

**2.1** it is known or reasonably suspected that they have been infected or contaminated by **or**

**2.2** have been in contact with a case of

an infectious disease to which certain legislation applies1.

1 SS (IW) (Gen) Regs (NI), reg 11(1); Public Health Act (NI) 1967, sec 15(1);
Public Health (Aircraft) Regs (NI) 1971, regs 8 & 9; Public Health (Ships) Regs (NI) 1971, regs 9 & 10

 13591 – 13599

Incapable for part of a day

13600 A person who is incapable of work at the beginning of a day or becomes incapable during the day is treated as incapable of work for the whole day1. If a person worked on that day they are treated as capable of work unless the work is exempt2.

1 SS (IW) (Gen) Regs (NI), reg 15; 2 reg 16

13601 This provision applies where there is a sudden onset of, or recovery from, an incapacitating condition. It does not provide that a person with a variable condition that incapacitates them for part of each day is incapable throughout the whole of every day1.

1 CIB 399/2003

13602 When decision makers determine that a person is incapable of work they can consider if this provision applies to treat the person as incapable of work for the day at the beginning or end of the period of illness.

13603 Even if a person is treated as incapable of work under this provision any work that they do on that day or on another day in that week may mean that they are to be treated as capable of work. The normal rules on exempt work apply (see DMG 13850).

Welfare to work beneficiaries

13604 A person who is a welfare to work beneficiary (see DMG 13660) is treated as incapable of work for a cumulative period of no more than 91 days beginning within the linking term and ending on a day not later than 13 weeks from the end of that linking term if they

**1.** claim benefit for any day within that linking term

**2.** provide medical evidence

**3.** in their immediate past period of incapacity for work

**3.1** were incapable of work following application of the personal capability assessment **or**

**3.2** were treated as incapable of work because they were excepted from application of the personal capability assessment1.

1 SS (IW) (Gen) Regs (NI), reg 13A(2)

 13605

Linking term

13606 A linking term is a fixed period of 104 weeks starting on the first day immediately after the last day of a period of incapacity for work1. The linking term can be made up of any type of days, for example, days of incapacity for work, work or unemployment. It is simply a fixed period of 104 weeks.

1 SS (IW) (Gen) Regs (NI), reg 13A(4)

 **Example**

 Last day of period of incapacity for work Thursday 12.10.06

 Linking term starts Friday 13.10.06

 Linking term ends Thursday 9.10.08

Immediate past period of incapacity for work

13607 An immediate past period of incapacity for work is a period of incapacity for work1. It is a single or linked period of incapacity for work.

1 SS (IW) (Gen) Regs (NI), reg 13A(4); SS C&B (NI) Act 92, sec 30C(1)

Remunerative work

13608 For the purposes of welfare to work beneficiaries remunerative work1 is

**1.** work for which payment is made, but not exempt work **or**

**2.** work which is done in expectation of payment, but not exempt work **or**

 **3.** attendance on a training course for which a training allowance is received under prescribed legislation arrangements2.

 **Note:** The work does **not** have to be of 16 hours or more each week.

1 SS (IW) (Gen) Regs (NI), reg 13A(4) & reg 17; E&T Act 50 (NI), sec 1

Benefit

13609 Benefit means any benefit, allowance or advantage, but not Statutory Sick Pay, where incapacity for work is a condition of entitlement1. For example, benefit includes credits, Income Support/Jobseeker’s Allowance/Housing Benefit disability-related premiums and housing costs linking rules.

1 SS (IW) (Gen) Regs (NI), reg 13A(4); SS C&B (NI) Act 92 & JS (NI) Order 95

Welfare to work beneficiary

13610 Subject to DMG 13611 a person is a welfare to work beneficiary on any day in a linking term if1

**1.** the immediate past period of incapacity for work includes more than 196 days of incapacity for work **and**

**2.** benefit entitlement stopped at the end of the immediate past period of incapacity for work **and**

**3.** the person actually started remunerative work within one month of benefit entitlement stopping at the end of the immediate past period of incapacity for work.

1 SS (IW) (Gen) Regs (NI), reg 13A(1)

13611 A person is not a welfare to work beneficiary if1 their most recent immediate past period of incapacity for work was ended by a capable, or treated as capable, determination unless that determination was a capable of work determination

**1.** made solely because the person started remunerative work2 **or**

**2.** in respect of the personal capability assessment or own occupation test, which they successfully appealed against3.

 **Note:** Either the claimant, or in the case of Income Support, Jobseeker’s Allowance and Housing Benefit their partner can be a welfare to work beneficiary.

1 SS (IW) (Gen) Regs (NI), reg 13A(3); 2 reg 13A(1), reg 13A(3A)

13612 If a person satisfies the conditions for being a welfare to work beneficiary on a day in a linking term the same immediate past period of incapacity for work and linking term apply to all benefits at the same time1. There cannot be a different linking term and immediate past period of incapacity for work for different benefits. A person can requalify to be a welfare to work beneficiary at the end of a linking term (see DMG 13618).

1 SS & CS (D&A) Regs (NI), reg 10; SS (IW) (Gen) Regs (NI), reg 13A(1), (3) & (4)

13613 The conditions in DMG 13610 and 13611 only apply to the immediate past period of incapacity for work. They do not apply to any subsequent periods of incapacity for work within a linking term. A capable or treated as capable determination which ends in a period of incapacity for work within the linking term does not stop welfare to work beneficiary status. Only the end of the linking term stops welfare to work beneficiary status.

13614 Remunerative work does not have to continue throughout the periods the person is capable of work. Welfare to work beneficiary status continues for the duration of the linking term if the conditions in DMG 13610 are satisfied at the end of the immediate past period of incapacity for work.

13615 A person is not a welfare to work beneficiary if the immediate past period of incapacity for work ended because of a treated as capable of work determination made because the person failed

 **1.** to provide information1 **or**

 **2.** without good cause to attend for or submit to an examination2.

1 SS (IW) (Gen) Regs (NI), reg 7; 2 reg 8

13616 The person does not have to start work within one month of the capable of work determination made by the decision maker. The important date is the date entitlement to benefit ends1.

1 SS (IW) (Gen) Regs (NI), reg 13A(1)(c)

 **Example**

 The claimant does not satisfy the personal capability assessment and the decision maker makes a capable of work determination from 12.8.05, they claim Jobseeker’s Allowance and appeal the benefit decision. The claimant starts work on 13.2.06. The tribunal determine the claimant was incapable of work from 12.8.05. The decision maker determines the claimant is capable of work from 13.2.06. The claimant started work within 7 days of entitlement ending. If the resulting immediate past period of incapacity for work is more than 196 days the claimant is welfare to work beneficiary.

 13617 – 13618

Approved work on a trial basis

13619 People who are

**1.** incapable of work or treated as incapable of work **and**

**2.** receiving a prescribed benefit **and**

**3.** engaged in approved work on a trial basis

 are treated as incapable of work on any day in a period of incapacity for work on which they do any approved work as long as they do not receive or expect to receive any payment of earnings for it1.

1 SS (IW) (Gen) Regs (NI), reg 10A(1) and (2)

13620 “Approved work”1 means work arranged in writing for the person with an employer by an officer of the Department or a person providing services to the Department and who has been authorised by the Department for that purpose.

1 SS (IW) (Gen) Regs (NI), reg 10A(4)

13621 “A prescribed benefit”1 means any benefit, allowance or advantage under prescribed legislation2 for which entitlement is dependent on incapacity for work but not Statutory Sick Pay, Statutory Maternity Pay and Industrial Injuries benefits.

1 SS (IW) (Gen) Regs (NI), reg 10A(4); 2 SS C&B (NI) Act 92; JS (NI) Order 95

13622 “Trial basis”1 means the trial period and other related matters arranged between the person, an officer of the Department or a person providing services to the Department and who has been authorised by the Department for that purpose and an employer in relation to the approved work.

1 SS (IW) (Gen) Regs (NI), reg 10A(4)

13623 People who are treated as incapable of work because they are in approved work on a trial basis must still provide information or evidence to show whether they are capable or incapable of work1. They are not exempt from own occupation test or personal capability assessment.

1 SS (IW) (Gen) Regs (NI), reg 6

13624 A person who is found to be capable of work whilst in approved work on a trial basis can no longer be treated as incapable of work1 under DMG 13619.

1 SS (IW) (Gen) Regs (NI), reg 10A(3)

Period before personal capability assessment is determined

General

13625 When a person claims a benefit, credit or advantage on the basis of incapacity for work and the personal capability assessment is the relevant test it is possible to treat the person as incapable of work if certain conditions are met but only if the personal capability assessment has not been carried out. See DMG 13634 if the conditions are satisfied and DMG 13636 if they are not.

13626 The decision maker first has to ensure that the

**1.** personal capability assessment applies but has not been carried out

**2.** person is not in an exempt category

**3.** person cannot be treated as incapable for another reason (see DMG 13550).

13627 The person can be treated as incapable of work for as long as

**1.** they provide evidenceof incapacity1 (see DMG 13100 - 13181) **and**

**2.** certain other conditions are satisfied (see DMG 13628).

1 SS C&B (NI) Act 92, sec 167C(3); SS (IW) (Gen) Regs (NI), reg 28;
SS (Med Ev) Regs (NI), regs 2 & 5

Conditions

13628 Evidence of incapacity must be provided for every day until the personal capability assessment is actually carried out1. This must be in the form stipulated in the legislation2. See DMG 13101.

1 SS (IW) (Gen) Regs (NI), reg 28; 2 SS (Med Ev) Regs (NI), reg 2 & 5

13629 A person cannot be treated as incapable of work if1

**1.** in the preceding six months it has been determined that they were

**1.1** capable of work **or**

**1.2** treated as capable of work because of a failure to

**1.2.a** return a questionnaire **or**

**1.2.b** attend for medical examination **and**

**2.** the incapacity at the time of the previous determination is not different or significantly worse.

1 SS (IW) (Gen) Regs (NI), reg 28(2)(b)

Last determination

13630 For the purposes of DMG 13629 the last determination includes

**1.** capable of work determinations under the own occupation test or personal capability assessment for any benefit, allowance or advantage **or**

**2.** treated as capable of work determinations for any benefit, allowance or advantage because of failure to attend or submit to a medical examination for the own occupation test or personal capability assessment (see DMG 13677)1, or failure to return the questionnaire for the personal capability assessment (see DMG 13668)2, unless it now has been returned.

1 SS (IW) (Gen) Regs (NI), reg 8; 2 reg 7

13631 A determination under DMG 13630 must be in relation to entitlement for a benefit, allowance or advantage which depends on a person being incapable of work. A decision in connection with a claim for Jobseeker’s Allowance which is not preceded by a determination that a person is capable of work does not count.

Previous six months

13632 For the purposes of DMG 13629 the preceding six months is calculated by looking back from each day under consideration. The person cannot be treated as incapable of work for the day under consideration if a determination that they were capable of work or treated as capable of work was given within the previous period of six calendar months1.

1 R(IB) 8/04

 **Example**

 Date under consideration 16.6.05

 Six-month period is 17.12.04 - 16.6.05

13633 When considering whether the last determination falls within six months of the current determination, the date of the previous determination is the date the personal capability assessment was carried out or the person was treated as capable as in DMG 13625.

1 SS (IW) (Gen) Regs (NI), reg 28(2)(b); R(IB) 8/04

Conditions satisfied

13634 If all conditions are satisfied the person is treated as incapable of work until1

**1.** medical evidence ceases **or**

**2.** the personal capability assessment has been carried out **or**

**3.** they are treated as capable of work because they fail without good cause to

**3.1** provide the information in the personal capability assessment questionnaire **or**

**3.2** attend for or submit to a medical examination.

1 SS (IW) (Gen) Regs (NI), reg 28(2)(a)

13635 If the person has been treated as incapable initially but evidence of incapacity ceases, they can no longer be treated as incapable of work. Any award must be suspended and the personal capability assessment determination, when it is made, will apply to any undetermined days.

Conditions not satisfied

13636 If the person cannot be treated as incapable, the claim cannot be decided. The person has to wait for a decision on their claim until, whichever is the sooner of, the

**1.** personal capability assessment actually being carried out **or**

**2.** expiry of the six-month period.

Personal capability assessment carried out

13637 When the personal capability assessment is carried out the determination applies to all days before the personal capability assessment determination which have not already been determined. This means that if the person had not been treated as incapable of work for periods because they had not provided medical evidence those periods will be covered by the personal capability assessment determination (see DMG 13182 - 13184).

End of six-month period

13638 If the personal capability assessment has not been carried out by the time the six-month period ends, the person can be treated as incapable of work as long as they satisfy the conditions in DMG 13628 - 13629.

 The table at Annex 3 to this Chapter shows the conditions in DMG 13625 - 13631.

13639 When considering whether the last decision falls within six months of the current determination, the date of the previous determination is the date the personal capability assessment was carried out or the person was treated as capable as in DMG 13629.

13640 If the person subsequently passes the personal capability assessment, and is found to be actually incapable of work, the personal capability assessment determination applies to all periods not covered by a determination treating them as incapable of work.

Evidence of incapacity ceases

13641 If the person has been treated as incapable initially but evidence of incapacity subsequently ends the person cannot continue to be treated as incapable pending assessment. The personal capability assessment determination, when it is made, will apply to any undetermined days.

13642 Certain transitionally protected cases are required to provide evidence of incapacity to be exempt from the personal capability assessment. If acceptable evidence of incapacity ends, continuing entitlement will be subject to the personal capability assessment. For Severe Disablement Allowance cases see the Benefit Specific Guide1.

 The table at Annex 3 shows the conditions in DMG 13628 - 13641.

1 SS (IB) (Trans) Regs (NI), reg 31

Exceptional circumstances

13643 People who do not satisfy the personal capability assessment by having enough points must be treated as incapable of work if any of the following applies1.

 They

**1.** have a previously undiagnosed potentially life-threatening condition discovered during the personal capability assessment **or**

**2.** have some specific disease or mental disablement and because of this there would be a substantial risk to the mental or physical health of any person if they were found capable of work **or**

**3.** a severe life threatening disease and there is medical evidence that it is uncontrolled or uncontrollable by a recognised therapeutic procedure **or**

**4.** medical evidence that they need a major surgical operation or other major therapeutic procedure which will be carried out within three months of the date on which they were examined by the approved health care professional.

1 SS (IW) (Gen) Regs (NI), reg 27

 **Note:** See DMG 13353 for the definition of medical evidence.

Substantial risk

13644 'Substantial' is not defined and should be given its ordinary meaning. What amounts to 'substantial' is a question which must be determined using all the available evidence and taking account of all the circumstances.

13645 The substantial risk can be to the claimant or to any other person. For example, the person's mental health may be such that they may self-harm or self-neglect or may be violent to others.

13646 A person's anxiety or concern about their ability to cope with the demands of work or a return to work, alone does not constitute a substantial risk.

13647 A court of Appeal judgement1 has said that substantial risk must be determined, not only in the context of work undertaken or in the workplace itself, but also the journey to and from work.

1 Charlton v Secretary of State for Work and Pensions [2009] EWCA Civ 42; R(IB) 2/09

Risk at work

13648 The judgment states that the decision maker must consider whether a substantial risk arises in the light of the work which the person might be expected to perform in the workplace he might find himself in. In making this assessment, the decision maker need only identify a broad range of duties that the person could be capable of, taking into account any training given, the person’s aptitude and their disease or disablement.

 **Example 1**

 Peter is 27 years old and suffers from alcohol dependency syndrome. He has never worked and says that his condition prevents him from undertaking any kind of work. The decision maker identifies that Peter could undertake straightforward and unstructured, unskilled work without substantial risk to himself or any person. The decision maker need not identify a particular type of work that Peter could be capable of.

 **Example 2**

 Phillip is 22 years old and has recently been diagnosed as suffering from epilepsy. Since the age of 18 he has worked as a roofer and scaffolding erector. Phillip says that if he were to return to this work, his health would be at substantial risk as he was often expected to work at great height. The decision maker determines that Phillip could now undertake closely supervised, indoor or outdoor work, at ground level without risk to himself or any person. The decision maker need not identify a particular type of work that Phillip could be capable of.

Risk associated with travelling to and from work

13649 In assessing risk associated with journeys to and from work, the decision maker may find it useful to examine evidence of the person’s daily life to identify if travel is undertaken. For example when

**1.** going shopping **or**

**2.** visiting friends **or**

**3.** attending appointments e.g. at a hospital.

 **Example**

 Kim suffers from contact dermatitis and says that any contact with certain metals causes her condition to flare up uncontrollably. She says that there would be a substantial risk to her health if exposed to these metals when travelling to and from work. Evidence of Kim’s daily life shows that she drives to and from the shops, takes her children to school in the car and that she used the bus to travel to the medical examination centre. The decision maker determines that there would be no substantial risk in travelling to and from work.

Allergic health conditions

13650 Claimants suffering from an allergic health condition may contend that there would be a substantial risk to their health if they were found capable of work. In such cases, the decision maker may need to refer to the health care professional’s medical report or obtain further evidence from the claimant to determine whether or not a substantial risk exists. The following are examples of further evidence which may inform the decision making process

**1.** What are the precise details of the substances or materials that the claimant is allergic to.

**2.** What, if any, further investigations have been undertaken to establish the cause of the claimant’s allergy.

**3.** What has been the result of those investigations.

**4.** Has the claimant been prescribed any emergency medicine to deal with the effects of an allergic reaction, i.e. a self-administered adrenaline syringe, commonly known as an Epipen.

**5.** Is the claimant able to self-administer emergency medication successfully.

**6.** Has the claimant ever suffered an anaphylactic reaction.

**7.** If so, what are the details, i.e. when did it occur, what were its after effects and was the claimant hospitalised as a result.

**8.** What type(s) of work, if any, has the claimant previously undertaken when suffering from their stated allergic condition.

**9.** How were the effects of the claimant’s allergic condition accommodated when undertaking that work, i.e. were any reasonable adjustments made in the workplace.

**10.** What precautions does the claimant take in their daily life to avoid contact with the substances or materials in question.

**11.** Why would it not be possible to take such precautions in the workplace.

Other health conditions

13651 Claimants suffering from other health conditions may contend that there would be a substantial risk to their health if they were found capable of work. In such cases, the decision maker may need to refer to the health care professional’s medical report or obtain further evidence from the claimant to determine whether or not a substantial risk exists. The following are examples of further evidence which may inform the decision making process

**1.** What are the precise details of the claimant’s health condition.

**2.** What, if any, investigations have been undertaken into the claimant’s health condition.

**3.** What has been the result of those investigations.

**4.** Has the claimant been prescribed any medication to deal with their health condition, i.e. an angina sufferer who has been prescribed a GTN spray to relieve their symptoms.

**5.** Is the claimant able to self-administer their medication successfully.

**6.** Has the claimant ever suffered an emergency in connection with their stated health condition.

**7.** If so, what are the details, i.e. when did it occur, what were its after effects and was the claimant hospitalised as a result.

**8.** What type(s) of work, if any, has the claimant previously undertaken when suffering from their stated health condition.

**9.** How was the claimant’s health condition accommodated when undertaking that work, i.e. were any reasonable adjustments made in the workplace.

**10.** What precautions does the claimant take in their daily life to accommodate their health condition.

**11.** Why would it not be possible to take such precautions within the workplace.

Severe uncontrolled or uncontrollable disease

13652 There should be medical evidence that the disease is either uncontrolled or uncontrollable by a recognised therapeutic procedure and, if it is uncontrolled, that there is a reasonable cause for it not being controlled by medication or other recognized therapeutic procedure.

Major surgical operation or other major therapeutic procedure

13653 ‘Major’ is not defined and should be given its ordinary meaning. What amounts to ‘major’ is a question of fact which must be determined using all the available evidence and taking account of all the circumstances.

13654 The decision maker must be satisfied that medical evidence exists which confirms that the person needs such an operation or procedure and that it will be carried out in the period of three months immediately following the date of the medical examination. The opinion of an appropriate medical practitioner that the operation is required is sufficient to meet the test even if the health care professional and the decision maker do not agree.

13655 The question of whether the operation or therapeutic procedure is likely to occur within the necessary time frame is a matter to be decided on informed opinion based on the situation at the time of the medical examination. The issue is to be decided without benefit of hindsight. The fact that an operation or therapeutic procedure is cancelled or delayed or that a specific date is not yet fixed at the time of the examination for the personal capability assessment does not prevent the test from being satisfied even where the actual operation or therapeutic procedure takes place more than three months after the examination.

13656 In making this determination decision makers should adopt a practical approach taking account of the nature of the

**1.** disease or disability

**2.** operation or therapeutic procedure

**3.** National Health Service waiting list practices in the relevant area.

13657 Other relevant issues may be whether

**1.** the claimant has been referred to the relevant specialist

**2.** the claimant has been seen by the relevant specialist

**3.** any arrangements have been made for the operation or therapeutic procedure and what these are

**4.** there are relevant National Health Service targets.

Welfare to work beneficiaries

General

13658 The intention under the Welfare to Work initiative is to assist people to move into full time work. It is recognised that they may be reluctant to try work or training particularly if they have been incapable of work for some time. It was decided to identify people whose benefit position would not be compromised if they tried work or training but had to reclaim benefit within a certain period of time.

13659 A person who is identified as satisfying the conditions is a welfare to work beneficiary. This means that in a fixed period of time after they have left benefit and have started work or training they can reclaim and benefit from special provisions applicable to a welfare to work beneficiary. A determination that they are a welfare to work beneficiary is relevant to Incapacity Benefit, Statutory Sick Pay, Severe Disablement Allowance, Retirement Pension, Income Support and Jobseeker’s Allowance. Being a welfare to work beneficiary has different effects for each benefit. Once a person has been identified as a welfare to work beneficiary the decision maker should consider

**1.** the benefit specific guidance in the Decision Makers Guide **and**

**2.** treating the person as incapable of work as in DMG 13604.

Identification

13660 A person is a welfare to work beneficiary on any day in a linking term1 if

**1.** the most recent immediate past period of incapacity for work includes more than 196 days of incapacity for work **and**

**2.** benefit entitlement stopped at the end of that immediate past period of incapacity for work - but see DMG 13661 **and**

**3.** they actually started remunerative work within one month of benefit stopping at the end of that immediate past period of incapacity for work.

1 SS (IW) (Gen) Regs (NI), reg 13A(1)

13661 The reason benefit entitlement stopped must be that the person has been treated as capable of work because

**1.** they have started remunerative work1 **or**

**2.** if the determination was in respect of the personal capability assessment or own occupation test, they successfully appealed against the outcome decision incorporating that determination2.

1 SS (IW) (Gen) Regs (NI), reg 13A(3); 2 reg 13A(3A)

Definitions

13662 In the context of welfare to work beneficiary1

 “Benefit”means any benefit, allowance or advantage but not Statutory Sick Pay, and where incapacity for work is a condition of entitlement. For example, benefit includes credits, Income Support, Jobseeker’s Allowance, Housing Benefit, disability related premiums and housing costs linking rules.

 “Immediate past period of incapacity for work” means the most recent period of incapacity for work. It can be a single or linked period of incapacity for work and can include periods of Statutory Sick Pay.

 “Linking terms” means a fixed period of 104 weeks starting on the first day immediately after the last day of a period of incapacity for work. It can be made up of any type of days, for example, days of incapacity for work, work or unemployment.

 “Remunerative work” means either

**1.** work for which payment is made, but not exempt work

**2.** work which is done in expectation of payment, but not exempt work

**3.** attendance on a training course for which a training allowance is received under arrangements made under prescribed legislation.

1 SS (IW) (Gen) Regs (NI), reg 13A(4)

 **Example**

 A claim to Incapacity Benefit is made from 22.3.07. The decision maker looks at the immediate past period of incapacity for work. This started on 5.5.03 and the last day was 6.6.05. Remunerative work started on 7.6.05.

 As the person can only be a welfare to work beneficiary in a linking term, the decision maker considers this first. The linking term in this case would be 7.6.05 - 4.6.07. The new period of incapacity for work starts within the linking term so the decision maker considers the conditions in DMG 13636 and determines that they are satisfied. This person is a welfare to work beneficiary.

Treated as capable of work

General

13663 A person may be treated as capable of work if they

**1.** cease to provide medical evidence1 (see DMG 13182 - 13184 for cases where contact with the claimant has **not** been lost and DMG 13666 - 13669 for cases where contact with the claimant **has** been lost) **or**

**2.** fail without good cause to return the questionnaire for the personal capability assessment2 (see DMG 13670 - 13673) **or**

**3.** fail without good cause to attend or submit to a medical examination for the own occupation test or personal capability assessment3 (see DMG 13678 - 13704) **or**

**4.** are working, other than in defined categories4 (see DMG 13850 - 13890) **or**

**5.** claim Jobseeker’s Allowance5 (see DMG 13702) **or**

**6.** behave inappropriately6 (see DMG 13730).

1 SS (IW) (Gen) Regs (NI), reg 16A; 2 reg 7; 3 reg 8; 4 reg 16; 5 reg 17A; 6 reg 18(2)(b)

13664 Decision makers must be able to show that the conditions placed on the Department by the legislation have been met if a person is to be treated as capable of work.

13665 A person can be treated as capable of work if they have became incapable of work through their own misconduct1 (DMG 13730).

1 SS (IW) (Gen) Regs (NI), reg 18

Medical evidence ceases

Contact with claimant lost

13666 A person may be treated as capable of work1 if

**1.** they have supplied medical evidence in accordance with legislation2 **and**

**2.** the period covered by that medical evidence has ended **and**

**3.** the Department has requested further medical evidence **and**

**4.** they have not, within six weeks

**4.1** supplied further medical evidence **or**

**4.2** otherwise made contact with the Department to indicate that they wish to have the question of their incapacity for work determined.

1 SS (IW) (Gen) Regs (NI), reg 16A; 2 reg 28(2)(a)

 **Note:** The definition of medical evidence at DMG 13353 does not apply here.

13667 The six week period begins on

**1.** the date of the Department’s initial request for further medical evidence **or**

**2.** the day after the date on which the period covered by the medical evidence has ended

whichever is the later1.

1 SS (IW) (Gen) Regs (NI), reg 16A(d)

13668 If at the end of the six weeks no further medical evidence is received, or the claimant does not contact the Department, the decision maker should treat the claimant as capable of work from the day after the medical evidence expired. The decision is effective from the date of the change1, which is the date from which the claimant is treated as capable of work.

1 SS & CS (D&A) Regs (NI), reg 7(2)(c)(v)

 **Example**

 Sophia’s current doctor’s statement provides her with evidence of incapacity up to and including 19.5.10. A reminder that further medical evidence will be required is issued on 12.5.10. The six weeks period ends on 30.6.10 but Sophia does not contact the Department by then. She is treated as capable of work from 20.5.10, the day after medical evidence ends.

13669 Where the person

**1.** fails to provide further medical evidence **and**

**2.** asks for their incapacity for work to be determined

the decision maker should conduct the personal capability assessment as normal.

 **Example**

 William is covered by a doctor’s statement up until 5.7.10. On 13.7.10 the local office receives a letter from him stating that he became fit enough to start work on 12.7.10. The decision maker may accept this as a request from William for his incapacity for work to be determined for the period 6.7.10 to 11.7.10.

Failure to return the questionnaire for the personal capability assessment

13670 A person who is subject to the personal capability assessment can be asked to provide information1 in the form of a questionnaire

**1.** relating to their ability to perform the activities referred to in the Schedule **or**

**2.** that can be used to help them prepare for and find work2.

1 SS (IW) (Gen) Regs (NI), reg 6(1)(b)(i); 2 reg 6(1)(b)(ii)

13671 The questionnaire is not required if

**1.** the person isin an exempt category1 (see DMG 13350)

**2.** the person can be treated as incapable of work2 (see DMG 13550 **1.** - **4.** and **6.** - **7.**)

**3.** the Department is satisfied that there is sufficient information to decide whether a person is capable or incapable of work without it3

**4.** the question of capacity relates to a claim for Jobseeker’s Allowance4.

1 SS (IW) (Gen) Regs (NI), reg 6(3)(b) & 10; 2 reg 6(3)(b) & regs 11 - 14; 3 reg 6(2); 4 reg 6(3)(a)

13672 If they do not return the questionnaire and do not show good cause for that failure they can be treated as capable of work1 as long as the Department has not exercised the discretion to proceed without it2.

1 SS (IW) (Gen) Regs (NI), reg 7; 2 reg 6(2)

13673 A person is treated as capable of work for failure to return the questionnaire without good cause if the Department can show that

**1.** the questionnaire was sent **and**

**2.** there is no response after four weeks to the first request for the information from the day following the date of issue **and**

**3.** the Department has sent a further request at least three weeks after the first letter and at least one week has passed since then **and**

**4.** good cause has not been accepted for the delay beyond the period stated in the two points above1.

1 SS (IW) (Gen) Regs (NI), reg 7(2)

The Department’s duty

13674 The decision maker needs to make sure that the Department has complied with the duty set out in the legislation1 to send the questionnaire and the reminder to the person. The decision maker can accept that it has been sent if there is a record of its issue and no indication that it was not properly addressed, stamped and posted2.

1 SS (IW) (Gen) Regs (NI), reg 7(2); 2 Interpretation Act (NI) 1954, sec 24

Has the questionnaire been sent

13675 Because the legislation sets time limits which have to be complied with, care must be taken to identify the date the questionnaire was sent. The date of its issue is only an indication of the date on which it was posted. The decision maker should consider whether the questionnaire actually left the issuing office and was put into the external mail on the date recorded1.

1 R(IB) 1/00

Has the correct period of time passed

13676 The correct period of time must have passed since the first questionnaire was sent. The period of time starts on the day after the questionnaire is sent and ends at midnight on the last day provided for. If the questionnaire is posted to the person’s last known address, the date on which it is sent is the date it was posted1.

1 SS & CS (D&A) Regs (NI), reg 2(b)

 **Example**

 A questionnaire was sent to John on 7 November. A reminder is due and sent on 29 November. If he still does not return the questionnaire, the first day on which the decision maker can consider whether he should be treated as capable of work is 7 December.

Good cause

13677 If the decision maker concludes that the Department has complied with the duty set out in the legislation, they may then go on to consider whether the person had good cause for their failure to return the questionnaire (see DMG 13688).

Questionnaire returned before good cause considered

13678 As in DMG 13674 the law imposes time limits on the Department in relation to the sending of the questionnaire and the reminder. However, there is no law imposing a time limit on the claimant for the return of the questionnaire. Sometimes the questionnaire is returned **after** the time limit imposed on the Department has expired but **before** the decision maker has considered whether there was good cause for the earlier failure to return the questionnaire. In these circumstances, the determination cannot be made because it cannot be held that the claimant has failed to return the questionnaire. Instead, normal personal capability assessment action should resume.

 **Example**

 A questionnaire was sent to John on 1 August. This was not returned so a reminder was sent to him on 30 August. If the questionnaire is not returned, the first day on which the decision maker could consider making a determination treating John as capable of work is 7 September. The decision maker obtains the case on 24 September to make the determination, but notes that the questionnaire had been received in the office on 21 September. The decision maker cannot make the determination treating John as capable of work because he has not failed to return the questionnaire. Instead, normal personal capability assessment action resumes.

Failure to attend or submit to a medical examination

13679 People may be called to attend a medical examination by a health care professional approved by the Department where it has to be determined whether they are capable of work1 under either the own occupation test or the personal capability assessment.

1 SS (IW) (Gen) Regs (NI), reg 8(1)

13680 There is a rule to treat people as capable of work if they

**1.** fail without good cause to attend or submit to a medical examination1 **and**

**2.** had at least seven days written notice of the examination or agreed to accept a shorter period of notice2.

1 SS (IW) (Gen) Regs (NI), reg 8(2); 2 reg 8(3)

13681 When considering whether a claimant should be treated as capable of work, the decision maker has to be satisfied that1

**1.** a written notice was sent in all cases **and**

**2.** the notice included the time and place of the examination **and**

**3.** the notice was sent at least seven days before the date of the examination unless the claimant had agreed to accept a shorter period of notice **and**

**4.** if the claimant had agreed to accept a shorter period of notice, it was posted so as to be received no later than the morning of the day of the examination **and**

**5.** the examination had not been cancelled.

1 SS (IW) (Gen) Regs (NI), reg 8(3)

13682 If, after calculating the period of time which passed between the date the written notice was sent and the time of the examination, the decision maker decides that seven days had not elapsed1, they should consider whether the claimant has agreed to accept a shorter period of notice. If there is no evidence that the claimant had agreed to accept a shorter period of notice the claimant cannot be treated as capable of work.

1 SS (IW) (Gen) Regs (NI), reg 8(3)

13683 If the decision maker cannot confirm that the provisions in DMG 13681 above were met, the claimant cannot be treated as capable of work.

Has notice been sent?

13684 The decision maker needs to be sure that the claimant has been sent notice. The decision maker can accept that it has been sent if there is a record of its issue and no indication that it was not properly addressed, stamped and posted1. In addition the decision maker should make sure that the notice was in writing and included the time and place of the medical examination.

1 Interpretation Act (NI) 1954, sec 24

Have seven days passed?

13685 The decision maker needs to be sure that the correct period of notice has been given. The decision maker has to decide when the notice was sent. The day after is Day one. Seven clear days of notice have to pass before the date of the examination1.

1 R(IB) 1/00

 **Example 1**

 A letter giving the time and place of a medical examination is prepared and placed in the post tray at 3pm on Friday 1st. Because of the timing of the internal post collection it does not reach the post room until Monday lunchtime and leaves the office into the external mail on Monday at 5pm. The appointment is timed for Monday 11th. The recipient does not attend. They cannot be treated as capable of work because if Tuesday 5th is Day one, Monday 11th is Day seven and they have not received seven days clear notice.

 **Example 2**

 A letter giving the time and place of a medical examination leaves the office on Wednesday 6th. The appointment is timed for Thursday 14th. The recipient does not attend. They can be treated as capable of work because Thursday 7th is Day one, Thursday 14th is Day eight and they have received at least seven days clear notice.

Has the appointment been cancelled?

13686 People cannot fail to attend the medical examination if the appointment had already been cancelled by Medical Services. The decision maker should investigate any indications that the claimant had made contact with the issuing office before the time of the examination. This is so that they can satisfy themselves that the appointment had been left open for the claimant.

Good cause

13687 If the decision maker concludes that the Department has complied with the duty set out in DMG 13674, they may go on to consider whether the person had good cause for their failure to attend or submit to medical examination (see DMG 13688).

Consideration of good cause

13688 When a person fails to return the questionnaire for the personal capability assessment or fails to attend or submit to medical examination, the decision maker has to consider whether the person has good cause for their failure. The decision maker’s consideration must include

**1.** whether the person was outside Northern Ireland at the relevant time **and**

**2.** the person’s state of health **and**

**3.** the nature of the disability1.

1 SS (IW) (Gen) Regs (NI), reg 9

13689 The onus of proving good cause lies with the person. The test of good cause is whether the decision maker judges the reason for non-return or non-attendance to be reasonable and likely on the balance of probabilities. See DMG Chapter 01 for guidance.

13690 The person will have been asked to give the reasons for not complying with the Department’s request for information or to attend for or submit to medical examination. The decision maker should bear in mind the guidance about considering evidence in DMG Chapter 01.

13691 The decision maker may determine that a claimant is treated as capable of work if

**1.** they have failed to return the questionnaire **or**

**2.** they have failed to attend or submit to an examination **and**

**3.** have not replied to enquiries **or**

**4.** the reasons given do not amount to good cause.

Good cause - some scenarios

13692 Any reasons given for the failure to return the questionnaire should be judged on the balance of probabilities. Whether the reasons for delayed return amount to good cause depends upon whether the decision maker considers, for example

**1.** it was reasonable not to return the questionnaire on this occasion **or**

**2.** non receipt by the office or person was more probable than not.

13693 If the person contends that they did not receive the questionnaire or the notice of the appointment, decision makers should satisfy themselves that it was sent. If it was sent it can be assumed it was delivered unless there is evidence to the contrary.

13694 Where the person says the postal difficulties are specific to them or their address, all of their circumstances are to be given fair consideration. They will have to show that they have done enough to ensure as far as is reasonably possible that they receive their mail, special care may be expected in the cases of accommodation addresses and premises in multiple occupation.

13695 If a person says that they were too ill to attend because of the nature of their disability, the decision maker should ask for evidence to support this. If they are usually able to get out, for example to the doctor or hospital, good cause should only be accepted if it is unreasonable to expect the person to have attended on that occasion. Exceptionally, a person may be examined at home if they are unable to travel.

13696 A person may say they were too ill to attend because of a condition unrelated to their disability, for example they may say that they had flu at the time of the appointment. If the decision maker accepts the evidence, the person has shown good cause for their non-attendance.

13697 Good cause was not accepted in a case where a person had tried to avoid attending several examinations by submitting final certificates. In the particular circumstances the final certificate was irrelevant because it was replaced by an open statement which included the day of the examination1.

1 R(S) 12/59

13698 If a person attends but refuses to have a physical examination, for example because of religious beliefs, the refusal must be based on reasonable grounds. The decision maker should normally accept good cause unless it is evident that the refusal is based on a prejudice against or distaste for the examination rather than because of a particular belief1.

1 R(S) 9/51

13699 It is possible for the decision maker to consider that a person did not have good cause for failure to submit to an examination because of drunkenness, drug abuse or other problem behaviour. However if the behaviour is a symptom of the stated incapacity such as alcoholism rather than an isolated occurrence, the person may have good cause.

13700 In a case where a person did not attend for medical examination because a consultant advised that attendance was not necessary, it was held that, irrespective of a medical advisor's opinion as to capacity for work, a person is obliged to abide by the rules for claiming benefit. None of the matters that have to be taken into account when considering good cause applied1 and the claimant had not shown good cause for failing to attend for medical examination.

1 SS (IW) (Gen) Regs (NI), reg 9

13701 A failure to comply with a notice to attend a medical examination will be deliberate, except in cases where the claimant is unable to make a choice between attendance and non-attendance. The question is whether there is good cause for the deliberate failure to comply with the notice.

Claims for Jobseeker’s Allowance

13702 People who are incapable of work, or are treated as incapable of work because they

**1.** pass the personal capability assessment **or**

**2.** are in an exempt category **or**

**3.** have exceptional circumstances

 can be treated as capable of work for any period during which they claim Jobseeker’s Allowance1 if certain conditions are satisfied.

1 SS (IW) (Gen) Regs (NI), reg 17A

13703 Those conditions are that they

**1.** have worked or undertaken work preparation activity whilst having the same disease or disablement and since then this disease or disablement has not worsened and they have no further disease or disablement which may affect their capacity for work **or**

**2.** can show that they have reasonable prospects of obtaining employment.

13704 Work preparation activities include education or training courses or other activities designed to prepare people for work.

 13705 – 13729

Inappropriate behaviour and incapacity for work

13730 People entitled to any benefit, allowance or advantage other than Industrial Injuries Disablement Benefit, Statutory Sick Pay, Incapacity Benefit or Severe Disablement Allowance are treated as capable of work for a maximum of six weeks if they

**1.** have become incapable of work through their own misconduct **or**

**2.** fail without good cause to attend for or submit to medical or other treatment (excluding vaccination, inoculation or major surgery) which would be likely to make them capable of work (DMG 13760) **or**

**3.** fail without good cause to observe the rules of behaviour to refrain from behaviour calculated to delay recovery **or**

**4.** not to be absent from place of residence without leaving word where they may be found1 (DMG 13790).

 **Note:** See DMG Chapter 56 (for Incapacity Benefit) and DMG Chapter 57 (for Severe Disablement Allowance) for guidance on when disqualification is appropriate in these cases.

1 SS C&B (NI) Act 92, sec 167E; SS (IW) (Gen) Regs (NI), reg 18(1), (2)(a) & 18(2)(b)

13731 DMG 13730 **1.** does not apply where a person’s incapacity is due to

**1.** pregnancy **or**

**2.** a sexually transmitted disease1.

1 SS (IW) (Gen) Regs (NI), reg 18(1)(a)

13732 A person who becomes incapable of work through misconduct is treated as capable of work for a period not exceeding six weeks1.

1 SS (IW) (Gen) Regs (NI), reg 18(1)(a); reg 18(2)(b)

13733 Guidance on misconduct may be relevant if the type of misconduct being considered would have resulted in

**1.** dismissal from employment **and**

**2.** a Jobseeker’s Allowance sanction.

13734 Conduct which is blameworthy, reprehensible, wrong or wilful should be distinguished from involuntary behaviour due to other factors1.

1 R(S) 2/64

13735 A determination to treat as capable of work can apply to misconduct outside a person’s employment.

13736 Alcoholism is one example of behaviour which may be misconduct if a person becomes incapable of work as a result of excessive drinking on one occasion. But the mental and physical effects of alcoholism can be an incapacity requiring long spells of treatment, including psychiatric help. Treating as capable of work should not normally be considered in these instances.

13737 If a person becomes incapable of work as a result of an accident which occurred while intoxicated but which could have happened if the person was sober, incapacity would not be due to misconduct.

13738 Drug addiction is similar to alcoholism in that the uncontrolled use of addictive drugs leads to a progressive deterioration in physical or mental condition which can be incapacitating.

13739 Treating as capable of work should be applied to the exceptional case where there is clear evidence that the temporary incapacity or the addiction resulted from deliberate decision by a healthy person to experiment with drug taking.

13740 When deciding whether to treat as capable of work the decision maker should judge how far the person’s actions have been deliberate and unreasonable rather than thoughtless.

13741 Someone who is injured or contracts a disease while committing an illegal act for which they are convicted by a court of law, is subject to being treated as capable of work.

 13742 – 13759

Treatment

13760 People can be treated as capable of work for a period of six weeks or less if they fail without good cause to attend for, or agree to, medical or other treatment (apart from vaccination, inoculation or major surgery) which

**1.** has been recommended by the doctor, hospital or similar institution providing the treatment **and**

**2.** would be likely to make them capable of work1.

1 SS (IW) (Gen) Regs (NI), reg 18(1)(b)

13761 Medical treatment means medical, surgical or rehabilitative treatment (including any course of diet or other regime)1. The treatment has to be for the stated cause of incapacity2.

1 SS C&B (NI) Act 92, sec 121(1); 2 R(S) 3/57

13762 The claimant has to prove

**1.** good cause **and**

**2.** that a refusal of treatment was reasonable in the circumstances.

13763 If the objection to treatment is on religious grounds, evidence of a firm personal belief is needed to support good cause1.

1 R(S) 9/51

 13764 – 13789

Rules of behaviour

13790 A person is treated as capable of work for six weeks or less for failure without good cause to observe the following rules

**1.** to refrain from behaviour calculated to delay recovery **and**

**2.** not to be absent from place of residence without leaving word where the person may be found1.

1 SS (IW) (Gen) Regs (NI), reg 18(1)(c)

13791 One example of behaviour considered under both these rules was a person with influenzal bronchitis, who drove 60 miles from home to business and was not well enough to return for several days. It was decided that the person

**1.** had undertaken a journey calculated to delay recovery **and**

**2.** had also been absent from home without leaving word.

 In view of certain circumstances the period of treating as capable of work was limited to two weeks1.

1 R(S) 21/52

13792 The word “calculated” does not mean that the claimant deliberately intends to delay recovery. The question is whether delayed recovery is likely to result from the behaviour1.

1 R(I) 26/51

13793 Good cause for the behaviour was not proved by a person who had dermatitis of the hands and was whitewashing the kitchen, because the doctor had advised against getting wet1. Ignorance of the rules of behaviour is not good cause2.

1 R(I) 26/51; 2 R(S) 21/72

13794 The second rule about being absent without leaving word does not apply unless the person has somewhere to live. Once the relevant facts are established the person has to prove good cause such as a genuine difficulty in leaving a message1.

1 R(S) 7/83, R(S) 6/55

 13795 – 13809

Period of treating as capable of work

13810 The length of the period of treating as capable of work, which can be from one day to six weeks depends on the individual circumstances of the case. The decision maker has to

**1.** show that a determination to treat as capable of work applies1 **and**

**2.** give reasons for the choice of period2.

1 R(S) 7/83; 2 R(U) 8/74, R(S) 1/87; R(U) 4/87

13811 For misconduct the period of treating as capable of work can begin on

**1.** the day following the date of the act of misconduct **or**

**2.** from the date of the decision if benefit has continued in payment1.

 If the misconduct is repeated, a fresh period of treating as capable of work may be imposed.

1 R(U) 12/59, R(S) 4/61

13812 The period of treating as capable of work for failure to observe the rules of behaviour depends upon the number of times, and the period over which the failure has occurred. Any extenuating circumstances can be taken into account even though good cause has not been proved1.

1 R(S) 21/52

13813 If, during the period of treating as capable of work, a person

**1.** submits a closed doctor’s statement **and**

**2.** then makes a further claim

 the determination to treat as capable of work continues for the outstanding part of the original period, unless the determination has been set aside on supersession or appeal.

 13814 – 13849

Incapacity for work and working

General

13850 The general rule is that a person is treated as capable of work for any week in which they work1. The exceptions to this are people receiving certain regular treatment2 and at the beginning and end of a period of work3 (see DMG 13880).

1 SS (IW) (Gen) Regs (NI), reg 16(1); 2 reg 16(4) & reg 13(3); 3 reg 16(5)

13851 This applies1 to any person who works who is

 **1.** incapable of work under the own occupation test or the personal capability assessment **or**

**2.** treated as incapable of work because they

**2.1** are exempt from the personal capability assessment2 **or**

**2.2** qualify under the special provisions for

 **2.2.a** infectious or contagious diseases3 **or**

 **2.2.b** hospital in-patients4 **or**

 **2.2.c** persons receiving certain regular treatment5 **or**

 **2.2.d** pregnancy6 **or**

**2.3** are a welfare to work beneficiary7 **or**

**2.4** were incapable for part of a day8 **or**

**2.5** do not satisfy the personal capability assessment but the exceptional circumstances apply9 **or**

**2.6** have not as yet been assessed under the personal capability assessment10.

1 SS (IW) (Gen) Regs (NI), reg 16(2); 2 reg 10; 3 reg 11; 4 reg 12;
5 reg 13; 6 reg 14; 7 reg 13A; 8 reg 15; 9 reg 27; 10 reg 28(2)

13852 This does not apply1 to

**1.** work as a councillor which is disregarded2 (see DMG 13950) **or**

**2.** approved work3 **or**

**3.** care of a relative4 **or**

 **4.** domestic tasks carried out in the person’s own home5 **or**

 **5.** any activity done during an emergency solely to protect another person or to prevent serious damage to property or livestock6 **or**

 **6.** any of the categories of exempt work7.

1 SS (IW) (Gen) Regs (NI), reg 16(3); 2 reg 16(3)(a); 3 reg 16(3)(b) & reg 10A
4 reg 16(3)(c); 5 reg 16(3)(c); 6 reg 16(3)(d); 7 reg 16(3)(e) & reg 17

 **Definitions**

13853 “Week” means a period of seven days beginning with Sunday1.

 “Work” means any work which a person does, whether or not it is undertaken in expectation of payment2.

 “Relative” means a close relative, the other member of a couple, a grandparent, grandchild, uncle, aunt, nephew or niece3.

 “Close relative” means a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister or if any of the preceding persons is one member of a couple, the other member of that couple4. References to step relationships and in-laws includes relationships arising through civil partnerships.

 “Couple” means5

 **1.** a man and a woman who are married to each other and are members of the same household

 **2.** a man and a woman who are not married to each other but are living together as husband and wife

 **3.** two persons of the same sex who are civil partners of each other and are members of the same household **or**

 **4.** two people of the same sex who are not civil partners of each other but are living together as civil partners.

 **Note:** Two people of the same sex are to be regarded as living together as civil partners where they would be regarded as living together as husband and wife if they were two people of the opposite sex. See DMG Chapter 11 for further guidance on living together as husband and wife and living together as civil partners.

1 SS (IW) (Gen) Regs (NI), reg 16(6); 2 reg 16(6); 3 reg 2; 4 reg 2; 5 reg 2

Work

13854 The meaning of work is defined (see DMG 13853). It is not employment and there does not have to be a legal contractual relationship.

 **Example**

A publican hires James to conduct two quiz nights per week and expects to pay him for doing this. There is no written contract and James does not usually accept payment when it is offered by the publican. This is work not a hobby because it is done for the commercial enterprise of the publican and James feels morally obliged to the publican to fulfil his agreement with him.

13855 Negligible work is considered under a general principle that the law is not concerned with trivialities. This principle is called “de minimis”. Negligible amounts of work can be disregarded before the specific rules are applied so that the claimant is not regarded as working on the day or days in question.

13856 Whether work on part of a day is negligible depends on its proportion to the normal working hours1, the type of work and the effort required in relation to full normal duties2. When deciding if work is “de minimis”, the decision maker should consider the relevant caselaw.3

1 CI 265/49; CS 499/50; 2 R(S) 2/61; 3 CIB 6777/1999

13857 The question of negligible work can arise in self-employment when a sick person can still attend to some aspects of a business. Work cannot be considered negligible if it contributes materially to the running of the business or involves a significant amount of supervisory or administrative work. For example if the person occasionally does small jobs such as signing cheques, the contribution to the business can be disregarded as negligible1.

1 R(S) 5/51; R(S) 13/52; R(S) 24/52; R(S) 34/52; R(S) 37/52; R(S) 8/55;
R(S) 2/62; R(S) 2/74; R(S) 10/79

 13858 – 13879

Date of determination

13880 The determination to treat someone as capable of work applies to the whole week (beginning on a Sunday) during which the work is done, except that a person is only treated as capable of work on the days on which they actually work in the week in whey they

**1.** became incapable **or**

**2.** start or return to work1 **or**

**3.** receive certain regular treatment2.

1 SS (IW) (Gen) Regs (NI), reg 16(5); 2 reg 13(3)

Work done before and after incapacity

13881 This applies both when they work

**1.** before and after the period of incapacity **or**

**2.** during a period of incapacity.

 For the purposes of the following examples

 I = incapable; x = working - treated as capable; c = treated as capable

 **Example**

 Colin normally works Monday to Friday each week. He works on Monday and Tuesday but is incapable of work from Wednesday. He is not treated as capable of work for Wednesday to Saturday in that week.

 He returns to work on Wednesday two weeks later. He is not treated as capable of work for Sunday to Tuesday of that week.

 Su M Tu W Th F Sa

 Week 1 x x i i i i

 Week 2 i i i i i i i

 Week 3 i i i x x x

Work done during incapacity

13882 **Example 1**

 Sheila starts work on Wednesday during a period of incapacity. She will be working Wednesday and Thursday for week one and the same for the following two weeks. The work is not exempt. The decision maker treats her as capable of work from the Sunday after she first works to the Saturday before she last works.

 Su M Tu W Th F Sa

 Week 1 i i i x x i i

 Week 2 c c c x x c c

 Week 3 i i i x x i i

 **Example 2**

 Barbara starts work during a period of incapacity on a Monday. She will be working every Monday, Wednesday and Friday indefinitely. The work is not exempt. The decision maker treats her as capable of work from the Sunday after her first day of work.

 Su M Tu W Th F Sa

 Week 1 i x i x i x i

 Week 2 c c c c c c c

 **Example 3**

 Darren has been working on a full or part-time basis for a past period of incapacity. He did not declare this work, which has now ended and was not exempt. The decision maker confirms the days that Darren actually worked and that he worked at least one day in every week. In the week Darren starts work he is treated as capable only on the days he worked. He is then treated as capable for each week from the Sunday after he started work until the Saturday before his last day of work. In the week in which he finished work he is treated as capable only on the days he worked.

 **Example 4**

 The circumstances are the same as in example 3 above except that Darren had not worked in every week. Each block of weeks of work is treated separately.

 Su M Tu W Th F Sa

 Week 1 i i i x x x x

 Week 2 c x x c x x x

 Week 3 i x x i i i i

 Week 4 i i i i i i i

 Week 5 i i i i x x x

 Week 6 c x x c x x x

Effect on benefit, allowance or advantage

13883 When deciding whether people have entitlement to any benefit, allowance or advantage the effect of treating them as capable of work has to be decided using the guidance in this memo in conjunction with benefit-specific guidance. In the examples at DMG 13881 and 13882 there may be individual days of incapacity for which there is no entitlement to benefit because they do not form a period of incapacity for work. The normal rules on period of incapacity for work apply (see DMG Chapter 56).

13884 Consideration should also be given to any other linking rules relevant to the benefit, allowance or advantage claimed.

 13885 – 13889

Categories of exempt work

Summary

13890 The categories of exempt work are

**1.** permitted work1 (see DMG 13891)

**2.** work done whilst test trading as a self-employed earner2 (see DMG 13934)

**3.** work as a volunteer (DMG 13931)3

**4.** duties undertaken on either one full day or two half days a week4 as

**4.1** a panel member with a disability qualification of an appeal tribunal **or**

**4.2** a member of the Disability Living Allowance Advisory board (see DMG 13933).

1 SS (IW) (Gen) Regs (NI), reg 17(1)-(4); 2 reg 17(5); 3 reg 17(6); 4 reg 17(7)

Permitted work

General

13891 There are four types of permitted work each with its own conditions. People can only be in one type of permitted work at any one time. They do not need prior medical approval to do permitted work. If they have two or more jobs the hours and earnings are added together to determine if the work is exempt.

13892 The four types of permitted work are

**1.** supported permitted work (see DMG 13896)1 **and**

**2.** permitted work lower limit2 (see DMG 13905) **and**

**3.** permitted work higher limit (see DMG 13910)3

**4.** permitted work (personal capability assessment exempt) (see DMG 13911)4.

1 SS (IW) (Gen) Regs (NI), reg 17(3); 2 reg 17(2); 3 reg 17(4)(a); 4 reg 17(4)(b)

Earnings limit

13893 Weekly earnings limits apply in permitted work1 (see Annex 7 to this Chapter). There is no definition of ‘earnings’ specific to incapacity for work but provision for calculating weekly earnings can be found in other legislation. Guidance is in DMG Volume 3 Chapter 15.

1 SS (IW) (Gen) Regs (NI), reg 17(1)-(4); 2 SS Ben (CofE) Regs (NI)

13894 When a weekly earnings figure has been identified the decision maker should apply this figure to any week in which the person has worked1. This figure will apply for as long as the circumstances current within the period used to calculate it remain the same.

1 SS (IW) (Gen) Regs (NI), reg 16

13895 If a person earns above the weekly earnings limit that figure is used on a week-by-week basis to determine on which days/weeks the person is treated as capable of work1. The person is not treated as capable of work for an indefinite period from the point when the work activity starts. The person continues to be incapable of work during weeks in which they do no work to which the regulation applies.

1 SS (IW) (Gen) Regs (NI), reg 16(1)

13896 Where the weekly earnings limit is 16 x national minimum wage, this means the rate of national minimum wage specified in legislation1 (see Annex 6). Where 16 x national minimum wage includes an amount less than

**1.** 50p, the amount is rounded up to the nearest 50p **or**

**2.** £1, but more than 50p, the amount is rounded up to the nearest £12.

1 The National Minimum Wage Regulations 1999, reg 11; 2 SS (IW) (Gen) Regs (NI), reg 17(10)

 **Example**

 Meryl starts work on 9.5.11 for 15 hours weekly. The national minimum wage is 16 x £5.93 = £94.88. As this includes an amount which is more than 50p and less than £1, it is rounded up to £95.00. The decision maker uses this amount to consider whether Meryl’s work is exempt work.

Supported permitted work

13897 Supported permitted work is work that is

**1.** part of a treatment programme done under medical supervision while the person doing it is an in-patient, or is regularly attending as an out-patient of a hospital or similar institution1 (see DMG Chapter 18 for guidance on ‘hospital or similar institution’ and DMG 13898 **Example**) **or**

**2.** supervised by a person employed by a public or local authority or by a voluntary organisation or community interest company which provides or finds work for persons with disabilities2 (see DMG 13902 **Examples 1** and **2**).

1 SS (IW) (Gen) Regs (NI), reg 17(3)(a); 2 reg 17(3)(b)

13898 Supported permitted work is work that is appropriate for people whose disability has stable and established effects with a significant impact on their ability to learn or sustain a traditional job which will always, or for a number of years, prevent them from working more than a few hours each week. However, earnings from supported permitted work must be no more than 16 x national minimum wage1. There is no limit to the period during which supported permitted work can be done.

1 SS (IW) (Gen) Regs (NI), reg 17(3)

 **Example**

 Jennifer is receiving treatment for cancer as an out-patient at the local hospital. Her oncologist is overseeing a treatment programme which aims to discover the beneficial effects of cancer patients attending painting classes. Jennifer enjoys painting as a hobby and agrees to teach the class for 4 hours a week, earning £50.00 a week. The decision maker accepts that Jennifer is doing supported permitted work.

Voluntary organisation

13899 A voluntary organisation1 is one that carries out activities otherwise than for profit. It does not include public or local authorities.

1 SS (IW) (Gen) Regs (NI), reg 17(8)

Community Interest Companies

13900 A Community Interest Company, as established under relevant legislation1, is a profit making organisation. However, it is restricted to using its assets and profits for the benefit of the community rather than for the benefit of the owners of the company. Decision makers should view the official Community Interest Companies website for a current list of such companies ([www.cicregulator.gov.uk](http://www.cicregulator.gov.uk)).

1 The Companies (Audit, Investigations and Community Enterprise) Act 2004

The support worker

13901 The support worker must direct and oversee the performance of the worker regularly although the frequency of contact is not laid down. Some workers may require daily contact, with others it may be as infrequent as, for example, monthly. The extent and the frequency of the support will vary according to the progress each person is making towards a return to full-time employment.

The level of supervision

13902 The supervision must be more than the normal supports put in place by employers. The support worker will, at least initially, have close involvement in the day to day routine of the worker and, by implication, with the employer. This involvement will be ongoing at regular intervals according to each person's circumstances.

**Example 1**

 Peter's appointee returns form PW1. Peter wants to work in a local market garden for 4 hours on a Friday afternoon, earning £17 a week. Part 3 of the form PW1 has been completed by Peter's caseworker, who works for Kaleidoscope NSF. It is a charitable organisation that supports disabled people in work.

 Peter's caseworker will visit him regularly and this support will continue. The decision maker determines that even though the work is for less than £20 a week and could be permitted work lower limit, it should be supported permitted work because the work is supported. He can do this work without it affecting his incapacity for work for as long as his earnings are not more than the set weekly limit and the support continues.

 **Example 2**

 Sarah's appointee returns form PW1. It states that Sarah who has Down's Syndrome intends to start work on 1.5.02. The work is in a supermarket collecting trolleys from the car park and stacking shelves. She will be working for 4 hours a day each Wednesday and Thursday earning £40 a week. Sarah's work has been arranged by Disability Action. Sarah's support worker visits regularly and this support will continue. The decision maker determines that the work she is doing is supported permitted work. She can do this work without it affecting her incapacity for work for as long as the earnings remain no more than the set weekly limit and the support continues.

 13903 – 13904

Permitted work lower limit

13905 Permitted work lower limit is work done in any week for which the earnings do not exceed £201. There is no limit to the period during which permitted work lower limit can be undertaken. A person will move out of this type of permitted work if their earnings in any week are more than £20. They may move into another category of permitted work if the relevant conditions are met. Alternatively, they may be treated as capable of work if the relevant conditions are not met.

1 SS (IW) (Gen) Regs (NI), reg 17(2)

 13906 – 13909

Specified work (Permitted work higher limit) [See DMG Memo Vols 3/98 & 8/85]

13910 Specified work1, commonly known as permitted work higher limit is work done for less than 16 hours, or less than 16 hours on average (see DMG 13912), in a week and earn no more than the set amount. This is known as permitted work higher limit2. They are able to do this for a limited period and have to satisfy certain conditions before they can qualify to do another period of permitted work higher limit (see DMG 13920).

1 SS (IW) (Gen) Regs (NI), reg 17(8); 2 reg 17(4)

Permitted work (personal capability assessment exempt)

13911 This is work which is done

 **1.** for less than 16 hours a week **and**

 **2.** for which earnings in any week are not more than the set limit **and**

 **3.** by a person who is treated as incapable of work because1 they

**3.1** have a severe condition2 **or**

**3.2** are transitionally protected3.

1 SS (IW) (Gen) Regs (NI), reg 17(4)(b); 2 reg 10; 3 SS (IB) (Trans) Regs (NI), reg 31(3) & (5)(c)-(k)

16 hour limit

13912 Permitted work higher limit and permitted work (personal capability assessment exempt) are limited to work of less than 16 hours in a week. This means1

 **1.** a combined total of less than 16 hours in a week **or**

 **2.** where the hours fluctuate, an average of less than 16 hours in the week in the period of

 **2.1** the cycle in which that week falls, where there is a recognized cycle of work (see example 1) **or**

 **2.2** that week and the four weeks before it if there is no recognized cycle (see examples 2 & 3).

1 SS (IW) (Gen) Regs (NI), reg 17(8)

 **Note:** When calculating the number of hours worked in a week, only the time spent engaged in actual working activities fall to be counted, e.g. paid or unpaid travelling time or meal/refreshment breaks are excluded from the calculation.

 **Example 1**

 A person who has an established four week cycle of 0, 8, 8 and 20 hours, has an average of a nine hour week (36 divided by 4) for the period of the cycle. This average is applied to the week in which the 20 hours are worked so that the person is not disallowed for that week.

 **Note:** When calculating the number of hours worked in a week, only the time spent engaged in actual working activities falls to be counted, e.g. paid or unpaid travelling time or meal/refreshment breaks are excluded from the calculation.

 **Example 2**

 A person with no established cycle who has worked 8, 11, 9, 0 and 17 hours has an average of nine hours (45 hours divided by 5). This average is applied to the week in which the 17 hours are worked so that the person is not disallowed for that week.

 **Example 3**

 A person who works 20 hours on the first week of work but expects to work an average of less than 16 hours in future has an average of four hours a week over the preceding four weeks and the first week of work (20 divided by 5). The person is not disallowed for the week in which the 20 hours are worked.

 13913 – 13919

Permitted work period [See DMG Memo Vols 3/98 & 8/85]

13920 Where DMG 13910 applies, the first day of a permitted work period is calculated from the first day of a period of specified work provided that

**1.** the person has not previously done specified work **or**

**2.** since the beginning of the last period of specified work, the person has ceased to be entitled to a relevant benefit for a continuous period exceeding 8 weeks **or**

**3.** not less than 52 weeks have elapsed since the last period of specified work1.

1 SS (IW) (Gen) Regs (NI), reg 17(4)(a)

 **Note:** A ‘Relevant benefit’ is Incapacity Benefit, Severe Disablement Allowance, Income Support, Housing Benefit and credits, entitlement to which is on the basis of incapacity for work1.

1 SS (IW) (Gen) Regs (NI), reg 17(8)

13921 For the purposes of the permitted work period, a period of specified work begins on the first day on which any specified work is undertaken and continues for a period of 52 weeks, whether or not any further specified work is undertaken during that period1.

1 SS (IW) (Gen) Regs (NI), reg 17(9)

 **Example 1**

John is receiving Incapacity Benefit. He starts work ten hours a week with earnings of £75. He has not previously worked whilst incapable of work. The work is permitted work higher limit and he can continue to do it during a 52 week period beginning on the first day worked.

 **Example 2**

 Susan claims Incapacity Benefit from 3.5.06. On her claim form she reports that she has been working for the last five years and continues to work. She earns £50 for five hours work on Thursday each week. This work is permitted work higher limit. The 52 week period starts on Thursday 4.5.06.

13922 If they have previously done specified work, they will have to satisfy certain conditions before they can do permitted work higher limit. See DMG 13920 **2.** and 13920 **3.**.

 **Example 1**

 David was in receipt of Incapacity Benefit and doing permitted work higher limit that started on 10.4.06. From 5.6.06 his hours and earnings increase and his work is no longer exempt. He is no longer entitled to a relevant benefit.

 At the end of September his hours and earnings drop to within the limits for permitted work higher limit and he reclaims on 2.10.06. The previous permitted work higher limit from 10.4.06 was specified work. Because he has had a break of more than eight weeks during which he was not entitled to a relevant benefit he starts a new permitted work period from 2.10.06 (he works on Monday 2.10.06) and the work he is doing is permitted work higher limit.

 **Example 2**

 Judith is in receipt of Income Support because she is incapable of work. On 17.4.06 she starts work 15 hours a week with earnings of £80. In 2005 she did permitted work higher limit. Her permitted work period ended 20.8.05. Her new work is not exempt because there has not been a period of at least 52 weeks since the end of her last permitted work period.

 **Example 3**

 Diane is in receipt of Incapacity Benefit. On 17.4.06 she starts work of five hours a week earning £30. She last did permitted work higher limit on 29.4.05. She has not had a break in her entitlement to a relevant benefit of more than eight weeks. Her work is not permitted work higher limit because only 50 weeks have elapsed since the end of her last permitted work period. She is treated as capable of work from 17.4.06.

 If she reclaims after a further two weeks, she could start a new permitted work period and her work would be permitted work higher limit.

 **Example 4**

 Mary starts work that is permitted work higher limit. Her permitted work period starts on 8.5.06. She does this work until 10.6.06. On 7.8.06 she starts another job. She remained entitled to a relevant benefit during the period since she last worked. Her work is permitted work higher limit because she is still within her 52 week permitted work period.

 **Example 5**

 For several years Joe has been treated as incapable of work without having to satisfy the personal capability assessment. For the last two years he has been working five or six hours each week earning no more than £70. This work was permitted work (personal capability assessment exempt).

 On 6.6.08 it is determined that he is no longer exempt from satisfaction of the personal capability assessment. His work is no longer permitted work (personal capability assessment exempt). But because the work is within the limits, the first time he next does it he starts a 52 week permitted work period during which he can continue to work.

 13923 – 13925

13926 Where a person has a permitted work period at 10.4.06 and they do work for less than 16 hours a week and their earnings are not more than £81 in any week on or after 10.4.06, the 52 week period begins on the first day of their current permitted work period. The effect of this is that the 52 week permitted work period that they can work for includes the period already allowed under permitted work rules.

**Example 1**

 John has a permitted work period from 9.1.06 to 9.7.06. As his permitted work period is ongoing at 10.4.06 it is extended. His 52 week permitted work period runs from 9.1.06 to 7.1.07.

 **Example 2**

 Joanne had a permitted work period from 12.9.05 to 12.3.06. She last worked 13.12.05. The permitted work period was not extended. She starts work on 8.5.06. The work is within the weekly limits of hours and earnings. The work cannot be exempt under the transitional provisions because her permitted work period ended before 10.4.06. She will have to satisfy the conditions in DMG 13920 - 13922 to be able to start a new permitted work period.

 13927 – 13929

Other categories of exempt work

13930 There are three other groups of people who can undertake work which can be exempt work. These are

 **1.** volunteers (see DMG 13931)1 **and**

 **2.** panel members with a disability qualification who are members of an appeal tribunal and Disability Living Allowance Advisory board members who do not attend the tribunal or board on either one full day or two half days a week2 (see DMG 13932) **and**

 **3.** self-employed earners whilst test trading3 (see DMG 13934).

1 SS (IW) (Gen) Regs (NI), reg 17(6); 2 reg 17(7); 3 reg 17(5)

13931 A volunteer is a person who

**1.** is engaged in voluntary work other than for a close relative(DMG 13853) **and**

**2.** the only payment received or due to be paid is expenses reasonably incurred in connection with the work1.

1 SS (IW) (Gen) Regs (NI), reg 2

13932 A person who is working but does not accept a wage is not necessarily a volunteer. It may be helpful to consider the definition of employment for a person claiming Incapacity Benefit and Income Support1. This includes any trade, business profession, office or vocation.

1 SS C&B (NI) Act 92, sec 122(1); IS (Gen) Regs (NI), reg 2(1)

13933 Work as a panel member with a disability qualification who is a member of an appeal tribunal or a member of the Disability Living Allowance Advisory board is subject to the condition that the work is not done for more than one full day or two half days a week1. ‘Week’ is the seven days starting on Sunday2. This category of exempt work is not affected by the prescribed earnings and hour limits. A person who works more than one full day or two half days a week is treated as capable of work for the whole week.

1 SS (IW) (Gen) Regs (NI), reg 17(7); 2 reg 16(6)

13934 Work done whilst receiving help to become a self-employed earner is exempt work1 as long as the programme or arrangement the person is on is set up under certain legislation2.

1 SS (IW) (Gen) Regs (NI), reg 17(5); 2 E&T Act (NI) 50, sec 1

 13935 – 13949

Particular categories of work

Councillors

13950 Separate provisions allow any work as a councillor to be disregarded when determining incapacity for work1. Work as a councillor includes work as a member of specified bodies If a person’s only qualifying occupation (DMG 13230) is as a councillor, the personal capability assessment should be applied from the outset. The work as a councillor should be taken into account when deciding which descriptors apply.

1 SS C&B (NI) Act 92, sec 30E(1)-(2) & 167F

13951 In relation to Northern Ireland, councillor means a member of a district council1.

1 SS C&B (NI) Act 92, sec 167F(2)

13952 Guidance on the effect of councillors’ allowances on Incapacity Benefit and Severe Disablement Allowance is in DMG Chapter 56. Guidance on the treatment of allowances and expenses is in DMG Chapter 15.

 13953 – 13959

Community service

13960 Community service should not be regarded as work. Courts will take account of a person’s incapacity and the type and extent of activities prescribed by the Court should be appropriate to the incapacity.

 13961 – 13964

Magistrates

13965 Magistrates who only receive expenses should be considered as volunteers (DMG 13931).

 13966 – 13969

Work that includes caring and domestic tasks

13970 Claimants who care for other children or adults should be considered within the definition of work (DMG 13853). Care of relatives, whether or not in the claimant’s home, and domestic tasks in the claimant’s own home, are not work. The work can be paid or unpaid1.

1 SS (IW) (Gen) Regs (NI), reg 16(3) & (6)

13971 The types of work will include adult placement schemes, foster parents pre-adoption situations, child minders and nannies. Each case should be considered individually under the following paragraphs, to decide if the activity is actually work before the exempt work conditions are applied.

13972 Care means to provide for or look after and should be interpreted broadly. It includes personal care, such as bodily functions but can also include domestic tasks such as cooking, shopping, cleaning and supervision of children.

13973 Domestic tasks is not defined but means “of the home, household or family affairs”. Examples of domestic tasks are preparing and cooking food, shopping, cleaning, washing clothes or dishes, making beds.

13974 In addition to taking place in the claimant’s own home a domestic task must relate to the claimant’s home, household or family affairs. Personal care such as attending to bodily functions or supervision or education of children, are domestic tasks if carried out for a member of the family (including a close relative). If carried out for others the tasks do not relate to the home, household or family affairs. A claimant who provided accommodation and food to students was found to be working.

1 R(IB) 1/03

13975 Looking after a child or children other than relatives will include fostering and pre-adoption situations. In these cases the child is living as part of the family and their care will normally consist of domestic tasks in the claimant’s home unless the care includes activities which do not relate to the home, household or family affairs.

13976 Placement of difficult, retarded or sick children will attract an allowance as well as expenses in recognition of the extra supervision, education or care necessary. The allowance can be regarded as being for work over and above the normal domestic tasks in the claimant’s home, and is subject to the prescribed earnings and hours limits.

13977 If the earnings do not exceed the weekly limit, the hours attributable to the work element of the placement should be estimated to see if these are less than 16.

13978 Other activities carried out in the claimant’s home, such as child minding other than of relatives, or tuition, should be regarded as work. Although child minding may include some tasks which could be said to be domestic, the activity as a whole does not relate to the home, household or family affairs. All the hours which the children spend with the minder require supervision and should therefore be treated as work which is then subject to the earnings and hours limits.

 13979

Work trials

13980 Work trials are normally available to unemployed claimants. If a person attends a work trial whilst incapable of work the decision maker should

**1.** consider if the work is work within the definition (DMG 13851)

**2.** if the work is within the definition, decide if it can be accepted as in an exempt category (DMG 13890) or is approved work (DMG 13620)

**3.** if the work is not in an exempt category, or approved work on a trial basis, treat the person as capable of work

**4.** if the work is not work within the definition, decide if the activities involved mean that incapacity for work should be questioned (DMG 13290).

 13981 – 13999

Annex 1

Conditions for satisfying the Own Occupation Test

**Flowchart for DMG 13200**

The table does not apply if a claim links with a previous spell of incapacity which was less than 196 days (DMG 13249)

**NO**

Has the person worked in the 21 weeks

before the first day of claim (including paid/ unpaid leave), employed or self employed?

Did the person work a total of 16 hours or more

a week in the same kind of work?

Has the person worked 16 hours or more a

week for more than 8 weeks in the same kind

of work?

Own Occupation Test does not apply. Decide if exempt from Personal Capability Assessment or if not, whether Personal Capability Assessment can be treated as satisfied until assessed.

Own Occupation Test

One occupation tested.

Own Occupation test

Last occupation is

the one tested.

Own Occupation Test applies.

Each occupation is tested.

Decide which is the last week worked in the

qualifying occupations. Was there more than

one of those occupations in that week?

**YES**

**NO**

**YES**

**YES**

**NO**

**YES**

Did the person work in two or more occupations

each for a total of 16 or more hours a week and

more than 8 weeks? (Qualifying occupations).

**NO YES**

**NO YES**

Annex 2

Information to be provided for the Personal capability assessment (DMG 13300)

|  |  |  |
| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **1.** Walking on level ground with a walking stick or other aid if such aid is normally used. | **Part 1 Physical disabilities****1.****a.** Cannot walk at all.**b.** Cannot walk more than a few steps without stopping or severe discomfort.**c.** Cannot walk more than 50 metres without stopping or severe discomfort.**d.** Cannot walk more than 200 metres without stopping or severe discomfort.**e.** Cannot walk more than 400 metres without stopping or severe discomfort.**f.** Cannot walk more than 800 metres without stopping or severe discomfort.**g.** No walking problem. | 1515157300 |

|  |  |  |
| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **2.** Walking up and down stairs. | **2.****a.** Cannot walk up and down one stair.**b.** Cannot walk up and down a flight of 12 stairs.**c.** Cannot walk up and down a flight of 12 stairs without holding on and taking a rest.**d.** Cannot walk up and down a flight of 12 stairs without holding on.**e.** Can only walk up and down a flight of 12 stairs if he goes sideways or one step at a time.**f.** No problem in walking up and down stairs. | 15157330 |

|  |  |  |
| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **3.** Sitting in an upright chair with a back, but no arms. | **3.****a.** Cannot sit comfortably.**b.** Cannot sit comfortably for more than 10 minutes without having to move from the chair because the degree of discomfort makes it impossible to continue sitting.**c.** Cannot sit comfortably for more than 30 minutes without having to move from the chair because the degree of discomfort makes it impossible to continue sitting.**d.** Cannot sit comfortably for more than 1 hour without having to move from the chair because the degree of discomfort makes it impossible to continue sitting.**e.** Cannot sit comfortably for more than 2 hours without having to move from the chair because the degree of discomfort makes it impossible to continue sitting.**f.** No problem with sitting. | 15157300 |

|  |  |  |
| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **4.** Standing without the support of another person or the use of an aid except a walking stick. | **4.****a.** Cannot stand unassisted.**b.** Cannot stand for more than a minute before needing to sit down.**c.** Cannot stand for more than 10 minutes before needing to sit down.**d.** Cannot stand for more than 30 minutes before needing to sit down.**e.** Cannot stand for more than 10 minutes before needing to move around.**f.** Cannot stand for more than 30 minutes before needing to move around.**g.** No problem standing. | 1515157730 |
| **5.** Rising from sitting in an upright chair with a back but no arms without the help of another person. | **5.****a.** Cannot rise from sitting to standing.**b.** Cannot rise from sitting to standing without holding on to something.**c.** Sometimes cannot rise from sitting to standing without holding on to something.**d.** No problem with rising from sitting to standing. | 15730 |

|  |  |  |
| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **6.** Bending and kneeling. | **6.****a.** Cannot bend to touch his knees and straighten up again.**b.** Cannot either bend or kneel or bend and kneel as if to pick up a piece of paper from the floor and straighten up again.**c.** Sometimes cannot either bend or kneel or bend and kneel as if to pick up a piece of paper from the floor and straighten up again.**d.** No problem with bending or kneeling. | 151530 |
| **7.** Manual dexterity. | **7.****a.** Cannot turn the pages of a book with either hand.**b.** Cannot turn a sink tap or the control knobs on a cooker with either hand.**c.** Cannot pick up a coin which is 2.5 centimetres or less in diameter with either hand.**d.** Cannot use a pen or pencil.**e.** Cannot tie a bow in laces or string.**f.** Cannot turn a sink tap or the control knobs on a cooker with one hand but can with the other.**g.** Cannot pick up a coin which is 2.5 centimetres or less in diameter with one hand but can with the other.**h.** No problem with manual dexterity. | 1515151510660 |

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| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **8.** Lifting and carrying by the use of upper body and arms (excluding all other activities specified in Part 1 of this Schedule). | **8.****a.** Cannot pick up a paper-back book with either hand.**b.** Cannot pick up and carry a 0.5 litre carton of milk with either hand.**c.** Cannot pick up and pour from a full saucepan or kettle of 1.7 litre capacity with either hand.**d.** Cannot pick up and carry a 2.5 kilogramme bag of potatoes with either hand.**e.** Cannot pick up and carry a 0.5 litre carton of milk with one hand but can with the other.**f.** Cannot pick up and carry a 2.5 kilogramme bag of potatoes with one hand but can with the other.**g.** No problem with lifting and carrying. | 1515158600 |

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| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **9.** Reaching. | **9.****a.** Cannot raise either arm as if to put something in the top pocket of a coat or jacket**b.** Cannot raise either arm to his head as if to put on a hat.**c.** Cannot put either arm behind back as if to put on a coat or jacket.**d.** Cannot raise either arm above his head as if to reach for something.**e.** Cannot raise one arm to his head as if to put on a hat, but can with the other.**f.** Cannot raise one arm above his head as if to reach for something, but can with the other.**g.** No problem with reaching. | 15151515600 |
| **10.** Speech. | **10.****a.** Cannot speak.**b.** Speech cannot be understood by family or friends.**c.** Speech cannot be understood by strangers.**d.** Strangers have great difficulty understanding speech.**e.** Strangers have some difficulty understanding speech.**f.** No problems with speech. | 1515151080 |

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| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **11.** Hearing with a hearing aid or other aid if normally worn. | **11.****a.** Cannot hear sounds at all.**b.** Cannot hear well enough to follow a television programme with the volume turned up.**c.** Cannot hear well enough to understand someone talking in a loud voice in a quiet room.**d.** Cannot hear well enough to understand someone talking in a normal voice in a quiet room.**e.** Cannot hear well enough to understand someone talking in a normal voice on a busy street.**f.** No problems with hearing. | 1515151080 |
| **12.** Vision in normal daylight or bright electric light with glasses or other aid to vision if such aid is normally worn. | **12.****a.** Cannot tell light from dark.**b.** Cannot see the shape of furniture in the room.**c.** Cannot see well enough to read 16 point print at a distance greater than 20 centimetres.**d.** Cannot see well enough to recognise a friend across the room at a distance of at least 5 metres.**e.** Cannot see well enough to recognise a friend across the road at a distance of at least 15 metres.**f.** No problem with vision. | 1515151280 |

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| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **13.** Continence (other than enuresis (bedwetting)). | **13.****a.** No voluntary control over bowels.**b.** No voluntary control over bladder.**c.** Loses control of bowels at least once a week.**d.** Loses control of bowels at least once a month.**e.** Loses control of bowels occasionally.**f.** Loses control of bladder at least once a month.**g.** Loses control of bladder occasionally.**h.** Has no problem with continence. | 151515159300 |

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| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **14.** Remaining conscious without having epileptic or similar seizures during waking moments. | **14.****a.** Has an involuntary episode of lost or altered consciousness at least once a day.**b.** Has an involuntary episode of lost or altered consciousness at least once a week.**c.** Has an involuntary episode of lost or altered consciousness at least once a month.**d.** Has had an involuntary episode of lost or altered consciousness at least twice in the last 6 months before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.**e.** Has had an involuntary episode of lost or altered consciousness once in the last 6 months before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.**f.** Has had an involuntary episode of lost or altered consciousness once in the 3 years before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.**g.** Has no problems with consciousness. | 15151512800 |

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| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **15.** Completion of tasks. | **Part 2 Mental Disabilities****15.****a.** Cannot answer the telephone and reliably take a message.**b.** Often sits for hours doing nothing.**c.** Cannot concentrate to read a magazine article or follow a radio or television programme.**d.** Cannot use a telephone book or other directory to find a number.**e.** Mental condition prevents him from undertaking leisure activities previously enjoyed.**f.** Overlooks or forgets the risk posed by domestic appliances or other common hazards due to poor concentration.**g.** Agitation, confusion or forgetfulness has resulted in potentially dangerous accidents in the 3 months before the day in respect to which it falls to be determined whether he is incapable of work for the purposes of entitlement to any benefit, allowance or advantage.**h.** Concentration can only be sustained by prompting. | 22111111 |

|  |  |  |
| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **16.** Daily living. | **16.****a.** Needs encouragement to get up and dress.**b.** Needs alcohol before midday.**c.** Is frequently distressed at sometime of the day due to fluctuation of mood.**d.** Does not care about his appearance and living conditions.**e.** Sleep problems interfere with his daytime activities. | 22111 |
| **17.** Coping with pressure. | **17.****a.** Mental stress was a factor in making him stop work.**b.** Frequently feels scared or panicky for no obvious reason.**c.** Avoids carrying out routine activities because he is convinced they will prove too tiring or stressful.**d.** Is unable to cope with changes in daily routine.**e.** Frequently finds there are so many things to do that he gives up because of fatigue, apathy or disinterest.**f.** Is scared or anxious that work would bring back or worsen his illness. | 221111 |

|  |  |  |
| --- | --- | --- |
| **Activity** | **Descriptor** | **Points** |
| **18.** Interaction with other people. | **18.****a.** Cannot look after himself without help from others.**b.** Gets upset by ordinary events and it results in disruptive behavioural problems.**c.** Mental problems impair ability to communicate with other people.**d.** Gets irritated by things that would not have bothered him before he became ill.**e.** Prefers to be left alone for 6 hours or more each day.**f.** Is too frightened to go out alone. | 222111 |

Annex 3

Conditions for treating the person as incapable of work pending assessment

Flowchart for DMG 13637

Is the work in an exempt category?

Has there been a determination that the test is not satisfied in the last six months? (DMG 13632)

Is there evidence of incapacity for work?

Is the person working whilst sick?

Was the person treated as capable of work because the questionnaire was not returned but has since returned it?

Is there a new or significantly worse incapacity?

The person is not treated as incapable and benefit is not payable pending assessment.

Treat the person as incapable of work pending assessment.

Treat the person as capable of work.

**NO**

**YES**

**YES**

 **NO**

**YES**

**NO YES**

**NO**

**YES NO**

**YES**

**NO**

Annex 4

Categories exempt from the personal capability assessment (DMG 13350)1

Decided on available evidence

1 SS (IW) (Gen) Regs (NI), reg 10

**1.** A person who is in receipt of the highest rate care component of Disability Living Allowance, an increase of disablement pension for constant attendance which is greater than the lower rate or at the higher rate1 for forces2, constant attendance allowance **or** an increase of constant attendance allowance for civilians3.

**2.** A person who is 80% disabled and entitled to Industrial Injuries Death Benefit4, War Disablement Pension5, or disablement pension under the Personal Injuries Civilian Scheme6.

**3.** A person for whom there is evidence which establishes not less than 80% disability for Severe Disablement Allowance.

**4.** A person who has a progressive disease whose death in consequence of that disease can reasonably be expected within six months.

**5.** A person who has been certified as blind and in consequence is registered as blind in a register maintained by, or on behalf of a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972.

**6.** A person who has tetraplegia, persistent vegetative state, dementia, paraplegia or uncontrollable involuntary movements or ataxia which effectively renders the sufferer functionally paraplegic.

Decided on medical evidence

**7.** A person for whom there is medical evidence of a severe learning disability (which for the purposes of this regulation, means a condition which results from the arrested or incomplete physical development of the brain, or severe damage to the brain, and which involves severe impairment of intelligence and social functioning).

**8.** A severe and progressive neurological or muscle wasting disease.

**9.** An active and progressive form of inflammatory polyarthritis.

**10.** A progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance.

**11.** Dense paralysis of the upper limb, trunk and lower limb on one side of the body.

**12.** Multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory, and intellectual deficits.

**13.** Manifestations of severe and progressive immune deficiency states characterised by the occurrence of severe constitutional disease, opportunistic infections or tumour formation.

**14.** A severe mental illness involving the presence of mental disease which severely and adversely affects a person’s mood or behaviour and which severely restricts their social functioning or awareness of their immediate environment.

1 SS C&B (NI) Act 92, sec 104 & Sch 4, part V, para 2(a)-2(b); SS (Gen) Regs (NI), reg 10;
2 Naval Military & Air Forces etc (Disablement and Death) Service Pensions Order 1983;
3 Personal Injuries (Civilian) Scheme 83, art 14 & Sch 3, para 3(a);
4 SS C&B (NI) Act 92, sec 103; 5 Naval Military & Air Forces etc (Disablement & Death)
Service Pensions Order 1983; 6 Personal Injuries (Civilian) Scheme 83

Annex 5

Regular treatment categories (DMG 13580)

List of treatments

People are treated as incapable of work for any day on which they receive

**1.** regular weekly treatment by haemodialysis for chronic renal failure, or peritoneal dialysis for chronic renal failure **or** total parenteral nutrition for gross impairment of enteric function

**2.** treatment by plasmapheresis, parenteral chemotherapy with cytotoxic drugs, anti-tumour agents or immuno-suppressive drugs1 or radiotherapy.

1 SS (IW) (Gen) Regs (NI), reg 13

Explanation of treatments

**Chemotherapy**

Chemotherapy means treatment with cell-killing (cytotoxic) drugs. They are used mainly in the treatment of cancer; quite often a combination of several drugs is used. The aim is to kill cancer cells, but inevitably other cells are also damaged, especially blood cells.

Treatment is intermittent, usually for one or two days every four to six weeks. People having chemotherapy often feel very unwell for a few days after each course of treatment.

**Plasmapheresis**

Plasmapheresis is a process by which harmful substances can be removed from the bloodstream. Blood is taken from the person’s vein, and the fluid part (plasma) containing the harmful substance is separated from the blood cells and removed. The blood cells are then mixed with an appropriate substitute fluid and returned to the person.

**Radiotherapy**

Radiotherapy is the use of X-rays to kill cancer cells. It is given as a series of administrations, with varying intervals between doses. Persons undergoing radiotherapy often fell very unwell for a few days after each dose.

**Renal dialysis**

Renal dialysis is used in the treatment of kidney (renal) failure. It is the process whereby waste products, which would usually be excreted in the main by the kidneys, are artificially removed from the body. There are two forms of dialysis: haemodialysis and peritoneal dialysis.

In haemodialysis, blood is circulated from the person’s arm into a machine which removes the waste substances; the cleansed blood is then returned to the person. Haemodialysis is usually carried out two or three times a week.

In peritoneal dialysis the process involves introducing fluid into the abdomen through a permanently-positioned tube (an in dwelling catheter). Harmful waste products are removed from the blood into this fluid through the inner lining of the abdomen (the peritoneum). After some hours, the fluid is drained from the abdomen and replaced with a fresh volume, and the cycle is repeated on a continuous basis.

**Total parenteral nutrition**

Total parenteral nutrition is a recent development in the treatment of serious intestinal conditions such as Crohn’s disease. It is a way of ensuring adequate nutrition when normal absorption of food and fluid from the gut is impossible as a result of severe disease.

A fine tube (catheter) is inserted into a major vein in the neck, and is held in permanent position; its end is capped when not in use. A special feeding solution, three to five litres in all, is pumped through the catheter using a special pump mounted on a stand. The process takes eight to fourteen hours, and is usually carried out overnight.

For most people, the need for total parenteral nutrition will be life-long.

Annex 6

National Minimum Wage rates since 1.10.10

(See DMG 13896)

|  |  |
| --- | --- |
| **Date** | **Hourly rate** |
| 1.10.10 | £5.93 |
| 1.10.11 | £6.08 |
| 1.10.12 | £6.19 |
| 1.10.13 | £6.31 |
| 1.10.14 | £6.50 |
| 1.10.15 | £6.74 |
| 1.4.16 | £7.20 |

Annex 7

Exempt work - weekly earnings limits since 13.4.95

(See DMG 13893)

|  |  |
| --- | --- |
| **From** | **Weekly earnings limit** |
| 13.4.95 | £44.00 |
| 8.4.96 | £45.50 |
| 7.4.97 | £46.50 |
| 6.4.98 | £48.00 |
| 12.4.99 | £49.50 |
| 10.4.00 | £58.50 |
| 2.10.00 | £59.50 |
| 9.4.01 | £60.50 |
| 1.10.01 | £66.00 |
| 1.10.02 | £67.50 |
| 1.10.03 | £72.00 |
| 1.10.04 | £78.00 |
| 1.10.05 | £81.00 |
| 1.10.06 | £86.00 |
| 1.10.07 | £88.50 |
| 1.10.08 | £92.00 |
| 1.10.09 | £93.00 |
| 1.10.10 | £95.00 |
| 1.10.11 | £97.50 |
| 1.10.12 | £99.04 |
| 1.10.13 | £101.00 |
| 1.10.14 | £104.00 |
| 1.10.15 | £107.50 |
| 1.10.16 | £115.50 |