

Chapter 13 - Incapacity for work

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Chapter 13 - Incapacity for work

General

Benefits affected

13001 The following guidance should be used to determine whether a person is capable or incapable of work¹. Unless specified in other legislation the rules apply to any benefit, allowance or advantage where a condition of entitlement is that they are capable or incapable of work.

1 SS (IfW) Act 94; SS CB Act 92, s 171A(1)

13002 The benefits and allowances include IB, SDA, IS and JSA. The advantages include incapacity credits and premiums paid with HB and CTB. The rules do not apply to IIDB¹, SSP² and ESA³.

1 SS CB Act 92, s 171G(1)(a); 2 s 171G(1)(b); 3 WR Act 07, s (1)(3)

13003 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, reg 10

13004 - 13024

The tests of incapacity

13025 There are two tests of incapacity

1. the OOT (see DMG 13200) **and**
2. the PCA (see DMG 13300).

The DM must first determine which test applies.

13026 The OOT 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 eight of the 21 weeks before the first day of incapacity² (see DMG 13218).

1 SS (Med Ev) Regs, reg 2; 2 SS CB Act 92, s 171B(3); SS (IW) (Gen) Regs, reg 4 & 5

13027 The PCA applies from the

1. 197th day onwards **or**
2. beginning of the claim if the OOT conditions do not apply¹.

1 SS CB Act 92, s 171B(3)

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 PCA has been assessed¹.

1 SS CB Act 92, s 171C(1); SS (IW) (Gen) Regs, 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 13652 - 13655 for cases where contact with the claimant **has** been lost) **or**
2. fail without good cause to return the questionnaire for the PCA² (see DMG 13660 - 13668) **or**
3. fail without good cause to attend or submit to a medical examination for the OOT or the PCA³ (see DMG 13676 - 13721) **or**
4. are working, other than in defined categories⁴ (see DMG 13846 - 13980) **or**
5. claim JSA⁵ (see DMG 13725 - 13727) **or**
6. behave inappropriately⁶ (see DMG 13730 - 13813).

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

13051 - 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 PCA applies, who have certain prescribed severe conditions¹ **or**
2. with a relevant infection or contamination² **or**
3. who are hospital in-patients³ **or**
4. who are receiving certain regular treatments⁴ **or**
5. who are WtWBs⁵ **or**

6. in certain circumstances, who are pregnant⁶ or
7. who are engaged in approved work on a trial basis⁷.

1 SS (IW) (Gen) Regs, 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 PCA is carried out¹ (see DMG 13610).

1 SS CB Act 92, s 171C(3); SS (IW) (Gen) Regs, reg 6(3) & 28

13077 Certain people who do not satisfy the PCA assessment by having enough points must be treated as incapable of work if there are exceptional circumstances in their case¹ (see DMG 13625).

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

13078 - 13099

Evidence and information

General

13100 Information or evidence is needed to determine whether a person is capable or incapable of work¹ **except** when considering whether a person

1. who has claimed JSA is capable of work² **or**
2. is to be treated as incapable of work under certain legislation³.

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

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

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

1. self-certification¹ (see DMG 13120) **or**
2. a statement from a doctor² (see DMG 13140) **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 (see DMG 13160).

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

13102 Certain transitionally protected cases are required to provide evidence of incapacity to be exempt from the PCA. If acceptable evidence of incapacity ends, continuing entitlement will be subject to the PCA assessment¹. For SDA cases see DMG Chapter 57.

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

13103 - 13119

Evidence

Self-certification

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

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

13121 "Spell of incapacity" means 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 incapacity¹.

1 SS (Med Ev) Regs, reg 5(2); SS CB Act 92, s 171B(3)

13122 A self-certificate is a declaration made in writing by the person, in a form approved by the Secretary of State. 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, 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, reg 2(1) & Sch 1, Pt 2

13141 A doctor means a registered medical practitioner and includes a medical practitioner outside the UK who is asked for a medical opinion by the Secretary of State. Doctors must be registered or recognized as such in the country in which they pursue a medical practice¹. A statement from a GP, hospital dental officer or consultant can be accepted.

1 SS (IW) (Gen) Regs, 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 specific disease or disablement.

1 SS (Med Ev) Regs, reg 2(1A)

13161 The DM 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 circumstances 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 proof¹.

1 R(S) 9/51

13163 - 13179

Information

- 13180 The DM 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, reg 6(1)(c)

- 13181 Where the PCA 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, 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, reg 16

- 13183 In such cases, the DM must apply the PCA. 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 JSA. Where there is little or no evidence, the DM may draw adverse inferences and award no points when scoring the PCA. Advice should be sought from medical services in cases of doubt. Insufficient evidence does not mean that the PCA 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 DM can suspend payment to the claimant because of the failure to provide medical evidence, but cannot conclude they are not entitled to IB without carrying out the PCA¹. 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 PCA 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 13652 - 13655.

13186 - 13199

Own occupation test

The Test

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

1 SS CB Act 92, s 171B(2)

13201 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 bodies². If a person's only qualifying occupation (see DMG 13230) is as a councillor, the PCA should be applied from the outset.

1 SS CB Act 92, s 171F; 2 Local Authority Act 72, s 177(1); Local Government (Scotland) Act 73, s 49(1) & (1A)

13202 Although a person with a severe condition is exempt from the PCA, incapacity during the OOT 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 OOT applies when a person has been in remunerative work (see DMG 13218) for more than eight out of the 21 weeks immediately before the day for which incapacity for work has to be determined¹ (see DMG 13249). The person should have worked for at least eight weeks and part of a day to qualify.

1 SS CB Act 92, s 171B(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 SSP count as paid leave during the 21 weeks before the first day of incapacity claimed. If SSP is paid for less than 196 days up to the first day of incapacity claimed the OOT will apply for the balance of the 196 days.

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

Definitions

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

1. in one occupation (see 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.

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

13219 A “week” means any period of seven days¹.

1 SS (IW) (Gen) Regs, 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, 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 could differ².

1 SS (IW) (Gen) Regs, reg 4(2); 2 Johnson 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 word processing, 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 OOT period is the 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, reg 5

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

13233 - 13244

Duration of test

13245 Once the conditions for the OOT are satisfied, the test applies until the earlier of

1. the end of the spell of incapacity **or**
2. 196 days¹.

1 SS CB Act 92, s 171B(3)

13246 A spell of incapacity means 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 incapacity¹. The days in between the spells are not days of incapacity².

1 SS CB Act 92, s 171B(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 days¹. DMG 13550 and Annex 4 to this Chapter give more information on the treatment categories.

1 SS CB Act 92, s 171B(8), SS (IW) (Gen) Regs, reg 13(4)

13248 To calculate the 196 days of the OOT 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 SSP **or**
3. which falls within the MAP **or**
4. which is treated as a day of IfW¹.

1 SS CB Act 92, s 171B(4)

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

1. the OOT applied to the last claim for less than 196 days **and**
2. the break between the claims was eight weeks or less¹.

1 SS CB Act 92, s 171(B)(3)

13250 The OOT conditions should be considered again if

1. the PCA applied to the last claim whether the break between the claims was more or less than eight weeks **or**
2. the OOT applied to the last claim and the break between claims was more than eight weeks.

13251 - 13259

Evidence of incapacity

13260 During the OOT 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 disablement¹ (see DMG 13101).

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

13261 - 13274

Consideration of evidence

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

1. the evidence is not provided on the prescribed form (see 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 (see DMG 13284) **or**
4. evidence suggests that the person is capable of work (see DMG 13290) **or**
5. a referral for medical advice 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 OOT period. If there is a gap in the evidence of incapacity or evidence ceases, the DM considers whether it is unreasonable for the person to provide a doctor's statement. (see DMG 13101 **3.**).

13281 - 13283

Doubtful diagnosis

13284 The DM may request a medical 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 (see DMG 13285) **or**
2. the diagnosis is one that is not usually accepted as an incapacity without further enquiries (see DMG 13286) **or**
3. there is no diagnosis (see DMG 13288).

13285 If there is doubt about IfW because of diagnoses such as deafness, blindness (see DMG 13201) or loss of limb the DM 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 DM 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 DM 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 their qualifying occupation¹.

1 SS CB Act 92, s 171B(2)

13291 The DM first decides if they should be treated as capable of work because the work is not in the exempt categories¹ (see DMG 13890). If the work is in an exempt category², but the activities involved are the same as for the qualifying occupation, the DM can refer the person for a medical examination.

1 SS (IW) (Gen) Regs, reg 16; 2 reg 17

13292 A person may undertake activities other than work whilst incapable of work. These could include education and training. IfW could be in doubt if the tasks within the activities suggest that the person is actually capable of the functions involved in their qualifying occupation. The DM should ask 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 (see DMG 13604, 13846 and 13980).

13294

Fit for qualifying occupation

13295 Medical 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 PCA at the same time. The PCA 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 DM should consider all available evidence before deciding whether, on the balance of probabilities¹, the test is no longer satisfied. DMs 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 evidence that is contrary, direct or circumstantial¹. 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 01 for further guidance.

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

13298 - 13299

Personal capability assessment

The test

13300 The PCA 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 PCA the extent of a person's IfW 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 work¹ (see DMG 13416).

1 SS CB Act 92, s 171C(3); SS (IW) (Gen) Regs, regs 24-27

When it applies

13302 Where the OOT does not apply or has ceased to apply, the test is the PCA. The PCA 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 OOT are not satisfied¹ (see DMG 13200).

1 SS CB Act 92, s 171C(1)

13303 A PCA carried out before the OOT has ceased to apply can be used in determining a person's capability for work once the PCA is the relevant test¹.

1 SS CB Act 92, s 171C(4)

13304 Where a person has been determined to be incapable of work as a result of a PCA, the Secretary of State can call for a further PCA¹ to determine whether the person is still incapable of work. This applies even if the previous PCA was called for by the Secretary of State.

1 SS CB Act 92, s 171C(5)

Treated as incapable of work

13305 When either the OOT or the PCA is the test of capacity a person is treated as incapable of work if they

1. are WtWBs¹ (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, reg 13A; 2 regs 11-14; 3 reg 10A

13306 When the PCA 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 PCA but there are exceptional circumstances² (see DMG 13625).

1 SS (IW) (Gen) Regs, 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 et seq).

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

Treated as capable of work

13308 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 work¹ (see DMG 13650).

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

13309 - 13349

Exemption from the assessment

General

13350 Where

1. the PCA 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 3 to this Chapter).

1 SS (IW) (Gen) Regs, 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 HCP approved by the Secretary of State **or**
2. evidence from any other HCP **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 “HCP”.

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

Note: This definition does not apply to the circumstances in DMG 13652.

13354 - 13399

Application of the assessment

Method of assessment

13400 A DM uses evidence and information to carry out the PCA. 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, reg 6(1)(b)

13401 A person does not need to complete a questionnaire if the DM

1. already has sufficient information to carry out the PCA¹ **or**
2. can treat the claimant as incapable without carrying out the PCA².

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

13402 If the claimant fails to complete a questionnaire when asked to do so, the DM can proceed to determine capacity without it¹.

1 SS (IW) (Gen) Regs, reg 6(2)

13403 In addition a DM may ask for any other information needed to determine whether the person satisfies the PCA¹.

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

13404

13405 In the main, medical reports will be completed electronically. There is no requirement for them to be signed by the examining HCP¹. However the report must identify the status of the HCP, i.e. whether he/she is a doctor or a registered nurse (see DMG 13411).

1 R(IB) 7/05

13406 The DM considers the information contained in the questionnaire and the medical services report. There may be differences between the answers from the person and medical services. The DM then considers the merit of each answer and any other evidence to determine an overall score¹ (see DMG 13425). DMs have to decide what weight to give to this evidence.

1 SS (IW) (Gen) Regs, 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 IfW is made.

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

13409 The examination report from medical services includes an opinion of a HCP approved by the Secretary of State on whether any prescribed exceptional circumstances apply. The DM should consider that opinion when deciding whether a person can be treated as incapable of work if they do not satisfy the test from the descriptors¹ (see DMG 13625).

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

13410

Health care professional

13411 A HCP¹ is

1. a registered medical practitioner **or**
2. a registered nurse **or**
3. a registered occupational therapist or physiotherapist² **or**
4. a member of such other regulated profession as prescribed³.

Note: No other professions have been prescribed at present.

*1 SS (IW) (Gen) Regs, reg 2(1); 2 Health Act 99, s 60;
3 NHS Reform & Health Care Professions Act 02, s 25(3); SS Act 98, s 39(1)*

Qualifying conditions

13412 The PCA 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 CB Act 92, s 171C(2); SS (IW) (Gen) Regs, reg 24; 2 reg 25 & 26; 3 SS CB Act 92, s 171A(1)

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, reg 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, reg 25(2)

13415 The information to be provided for the PCA is contained in legislation¹.

1. **Activity** means an activity referred to in legislation².
2. **Descriptor** means the descriptor referred to in legislation and which describes a person's ability to perform the activity³.

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

13416 A person satisfies the PCA 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, Sch, Part I; 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, 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 twelve 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 DM 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 DM 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. He could hold a pen or pencil in his left hand but he could not write legibly with it¹.

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 DM should consider the specified period immediately before the day the test is decided.

13458 The PCA 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 PCA 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 DM must record the final scores for each descriptor and the reasons for the decision. Guidance on burden of proof is in DMG Chapter 01.

13462 If the required number of points is not reached the person is not incapable of work¹.

1 SS CB Act 92, s 171A(1)

13463 The PCA 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 PCA determination applies to them.

13464 - 13474

Further claim after determination that person is capable

- 13475 A person may make a new claim and provide medical statements after the DM has determined that they are capable of work. The DM
1. confirms which test of incapacity applies **and**
 2. applies the relevant test of incapacity.
- 13476 If the relevant test is the PCA, the DM may already have sufficient information with which to carry out a new PCA. 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 DM relevant to assessment of the PCA on the new claim.
- 13477 If the DM considers there is sufficient information they should carry out the PCA (see DMG 13450 - 13463).
- 13478 If the DM considers there is insufficient information to carry out the PCA they should consider whether the person can be treated as incapable of work until the PCA is carried out¹ (see DMG 13610 - 13614).

1 SS (IW) (Gen) Regs, 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 OOT or the PCA apply if they are
1. pregnant and satisfy the prescribed conditions (see DMG 13560) **or**
 2. receiving hospital treatment (see DMG 13570) **or**
 3. receiving regular treatment for certain medical conditions (see DMG 13580)
or
 4. unable to work because of a relevant infection or contamination (see DMG 13588) **or**
 5. incapable for part of a day (see DMG 13595) **or**
 6. WtWBs (see DMG 13600) **or**
 7. engaged in approved work on a trial basis (see DMG 13603).

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

- 13551 When the PCA is the relevant test, a person can be treated as incapable of work¹ if they
1. are in receipt of certain benefits **or**
 2. have specific medical conditions.

(See Annex 3 to this Chapter)

1 SS (IW) (Gen) Regs, 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 PCA is actually assessed¹ (see DMG 13610 et seq).

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

- 13553 When the PCA is carried out, if the person is not incapable of work they can nevertheless be treated as incapable if exceptional circumstances apply¹ (see DMG 13625).

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

13554 - 13559

Pregnancy

- 13560 Any day within the MAP is treated as a day of IfW unless disqualification applies¹. Days within the MPP can be treated as days of incapacity in certain circumstances² (see DMG Chapter 62).

1 SS CB Act 92, s 30C(2); 2 SS (SMP) Regs, 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
 - 1.1 if the OOT applies, in the qualifying occupation **or**
 - 1.2 if the PCA applies, in any occupation **or**
 2. if she is not entitled to MA or SMP 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 MA or SMP were she to make a claim in respect of that period³.

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

- 13562 "Sickness of pregnancy", which can also be described as "emesis", "hyperemesis", "hyperemesis gravidarum", or "morning sickness", comes 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 (see DMG Chapter 18 for guidance on 'hospital or similar institution').

1 SS CB Act 92, s 171D(1); SS (IW) (Gen) Regs, 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 who receive

1. regular weekly treatment by
 - 1.1 haemodialysis or peritoneal dialysis for chronic renal failure **or**
 - 1.2 total parenteral nutrition for gross impairment of enteric function **or**
2. treatment by
 - 2.1 plasmapheresis **or**
 - 2.2 radiotherapy **or**
 - 2.3 parenteral chemotherapy with cytotoxic drugs, anti-tumour agents or immuno-suppressive drugs¹

are treated as incapable of work on the days that they receive that treatment.

1 SS CB Act 92, s 171D(1); SS (IW) (Gen) Regs, reg 13

13581 An explanation of the treatments in DMG 13580 is in Annex 4 to this Chapter.

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 OOT or DMG 13300 if it is the PCA.

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, reg 13(3); reg 16

13584 - 13587

Person with a relevant infection or contamination

13588 A person is treated as incapable of work on any day¹ on which they are

1. excluded or abstain from work because of a written request or notice lawfully given under an enactment **or**
2. otherwise prevented from working under an enactment because
 - 2.1 it is known or reasonably suspected that they have been infected or contaminated by **or**

2.2 been in contact with a case of
a relevant infection or contamination.

1 SS CB Act 92, s 171D; SS (IW) (Gen) Regs, reg 11(1)

Definitions

Meaning of “contamination” - Scotland

13589 In Scotland, the term “contamination” is the same as defined in legislation¹.

1 Public Health etc (Scotland) Act 2008, s 1(5)

Meaning of “enactment”

13590 “Enactment” means¹ one comprised in, or in an instrument made under

1. an Act or
2. an Act of the Scottish Parliament.

1 SS (IW) (Gen) Regs, reg 11(2)

Meaning of “infection or contamination” - England and Wales

13591 In England and Wales, the term “infection or contamination” shall be read in accordance with legislation¹.

1 Health and Social Care Act 2008, s 45A(3)

Meaning of “infectious disease” - Scotland

13592 In Scotland, the term “infectious disease” is the same as defined in legislation¹.

1 Public Health etc (Scotland) Act 2008, s 1(5)

Meaning of “relevant infection or contamination” - England and Wales

13593 In England and Wales, the term “relevant infection or contamination” means

1. any incidence or spread of infection or contamination, in respect of which certain legislation applies¹, for the purpose of preventing, protecting against, controlling or providing a public health response
2. any disease, food poisoning, infection, infectious disease or notifiable disease to which certain legislation applies².

1 Public Health (Control of Disease) Act 1984, Part 2A; 2 Public Health (Aircraft) Regulations 1979, reg 9 & Public Health (Ships) Regulations 1979, reg 10

Meaning of “relevant infection or contamination” - Scotland

- 13594 In Scotland, the term “relevant infection or contamination” means
1. any infectious disease or exposure to an organism causing that disease **or**
 2. contamination or exposure to a contaminant to which certain legislation applies¹.

1 Public Health etc (Scotland) Act 2008, s 56 to 58

Incapable for part of a day

- 13595 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, reg 15; 2 reg 16

- 13596 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 day.

- 13597 When DMs determine that a person is incapable of work they can consider if this provision applies to treat them as incapable of work for the day at the beginning or end of the period of illness.

- 13598 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 13846).

13599

Welfare to Work Beneficiaries

- 13600 A person who is a WtWB (see DMG 13642) is treated as incapable of work for a cumulative period of no more than 91 days beginning within the LT and ending on a day not later than 13 weeks from the end of that LT if they

1. claim benefit for any day within that LT **and**
2. provide medical evidence **and**
3. in their IPPIW
 - 3.1 were incapable of work following application of the PCA **or**

3.2 were treated as incapable of work because they were excepted from application of the PCA¹.

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

13601 - 13602

Approved work on a trial basis

13603 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 PIW 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, reg 10A(1) and (2)

13604 “Approved work”¹ means work arranged in writing for the person with an employer by an officer of the Secretary of State or a person providing services to the Secretary of State and who has been authorized by the Secretary of State for that purpose.

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

13605 “A prescribed benefit”¹ means any benefit, allowance or advantage under prescribed legislation² for which entitlement is dependent on IfW but not SSP, SMP or IIDB.

1 SS (IW) (Gen) Regs, reg 10A(4); 2 SS CB Act 92, JSA Act 95

13606 “Trial basis”¹ means the trial period and other related matters arranged between the person, an officer of the Secretary of State or a person providing services to the Secretary of State and who has been authorized by the Secretary of State for that purpose and an employer in relation to the approved work.

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

13607 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 the OOT or the PCA.

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

13608 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 as in DMG 13603.

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

13609

Period before personal capability assessment is determined

General

13610 When a person claims a benefit, credit or advantage on the basis of incapacity for work and the PCA is the relevant test it is possible to treat the person as incapable of work if certain conditions are met but only if the PCA has not been carried out. See DMG 13619 if the conditions are satisfied and DMG 13621 if they are not.

13611 The DM first has to ensure that the

1. PCA 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).

13612 The person can be treated as incapable of work for as long as

1. they provide evidence of incapacity¹ (see DMG 13100 - 13181) **and**
2. certain other conditions are satisfied (see DMG 13613).

1 SS CB Act 92, s 171C(3); SS (IW) (Gen) Regs, reg 28; SS (Med Ev) Regs, regs 2 & 5

Conditions

13613 Evidence of incapacity must be provided for every day until the PCA is actually carried out¹. This must be in the form stipulated in the legislation² (see DMG 13101).

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

13614 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, reg 28(2)(b)

Last determination

13615 For the purposes of DMG 13614 the last determination includes

1. capable of work determinations under the OOT or PCA 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 OOT or PCA¹ (see DMG 13676), or failure to return the questionnaire for the PCA² (see DMG 13660), unless it now has been returned.

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

13616 A determination under DMG 13615 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 JSA which is not preceded by a determination that a person is capable of work does not count.

Previous six months

13617 For the purposes of DMG 13614 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

13618 When considering whether the last determination falls within six months of the current determination, the date of the previous determination is the date the PCA was carried out or the person was treated as capable as in DMG 13610¹.

1 R(IB) 8/04

Conditions satisfied

- 13619 If all conditions are satisfied the person is treated as incapable of work until¹
1. medical evidence ceases **or**
 2. the PCA 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 PCA questionnaire **or**
 - 3.2 attend for or submit to a medical examination.

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

13620 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 PCA determination, when it is made, will apply to any undetermined days.

Conditions not satisfied

- 13621 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. PCA actually being carried out **or**
 2. expiry of the six-month period.

Personal capability assessment carried out

- 13622 When the PCA is carried out the determination applies to all days before the PCA 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 PCA determination (see DMG 13182 - 13184).

End of six-month period

- 13623 If the PCA 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 13613 - 13614.

The table at Annex 2 to this Chapter shows the conditions in DMG 13610 - 13616.

Exceptional circumstances

- 13624 DMs should note that the guidance in DMG 13626 to 13633 relates to the current version of the Regulation as impacted by the “Howker” judgment dated 08.11.02. See Annex 5 for further information about the pre and post “Howker” versions of the Regulation including the impact of further Regulation changes.
- 13625 If the PCA is carried out and it is determined that the person does not satisfy the PCA assessment by having enough points they must nevertheless be treated as incapable of work if they have¹
1. a previously undiagnosed potentially life-threatening condition discovered during the PCA **or**
 2. 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 recognized therapeutic procedure **or**

4. medical evidence that they need a major surgical operation or other major therapeutic procedure which is likely to be carried out within three months of the date on which they were examined by the approved HCP.

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

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

Substantial risk

- 13626 '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.
- 13627 The substantial risk can be to the person 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.
- 13628 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.
- 13629 A Court of Appeal judgment¹ 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

- 13630 The aforementioned judgment states that the DM 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 DM 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 suffers from alcohol dependency syndrome. He has never worked and says that his condition prevents him from undertaking any kind of work. The DM identifies that Peter could undertake straightforward and unstructured, unskilled work without substantial risk to himself or any person. The DM need not identify a particular type of work that Peter could be capable of.

Example 2

Phillip has recently been diagnosed as suffering from epilepsy. For the past four years 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 DM determines that Phillip could now undertake closely supervised, indoor or outdoor work, at ground level without risk to himself or any person. The DM need not identify a particular type of work that Phillip could be capable of.

Risk associated with travelling to and from work

13631 In assessing risk associated with journeys to and from work, the DM may find it useful to examine evidence of the person's daily life to identify if travel is undertaken and what, if any, risks the travel poses. For example when:

1. going shopping **or**
2. visiting friends **or**
3. attending appointments e.g. at a hospital.

Allergic health conditions

13632 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 DM may need to refer to the HCP'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

13633 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 DM may need to refer to the HCP'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

- 13634 There should be medical evidence that the disease is either uncontrolled or uncontrollable by a recognized 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

- 13635 '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.
- 13636 The DM 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 HCP and the DM do not agree.
- 13637 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 PCA 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.
- 13638 In making this determination DMs should adopt a practical approach taking account of
1. the nature of the disease or disability
 2. the operation or therapeutic procedure
 3. the NHS waiting list practices in the relevant area.
- 13639 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 NHS targets.

Welfare to Work Beneficiaries

General

13640 The intention of the Welfare to Work initiative is to assist people to move into full time work. It is recognized 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.

13641 A person who is identified as satisfying the conditions is a WtWB. 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 WtWB. A determination that they are a WtWB is relevant to IB, SSP, SDA, RP, IS and JSA. Being a WtWB has different effects for each benefit. Once a person has been identified as a WtWB the DM should consider

1. the benefit specific guidance in DMG **and**
2. treating the person as incapable of work as in DMG 13600.

Identification

13642 A person is a WtWB on any day in a LT¹ if

1. the most recent IPPIW includes more than 196 days of incapacity for work **and**
2. benefit entitlement stopped at the end of that IPPIW - but see DMG 13643 **and**
3. they actually started remunerative work within one month of benefit stopping at the end of that IPPIW.

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

13643 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 PCA or OOT, they successfully appealed against the outcome decision incorporating that determination².

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

Definitions

13644 “Benefit”¹ means any benefit, allowance or advantage where incapacity for work is a condition of entitlement, but not SSP. For example, benefit includes credits, IS, JSA, HB, CTB disability related premiums and housing costs linking rules.

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

13645 “IPPIW”¹ means the most recent PIW. It can be a single or linked PIW and can include periods of SSP.

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

13646 “LT”¹ means a fixed period of 104 weeks starting on the first day immediately after the last day of a PIW. It can be made up of any type of days, for example, days of incapacity for work, work or unemployment.

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

13647 “Remunerative work”¹ means either

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 arrangements made under prescribed legislation².

1 SS (IW) (Gen) Regs, reg 13A(4); 2 E & T Act 73, s 2(1); Enterprise & New Towns (Scotland) Act 1990, s 2(3)

Example

A claim to IB is made from 22.3.07. The DM looks at the IPPIW. 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 WtWB in a LT, the DM considers this first. The LT in this case would be 7.6.05 - 4.6.07. The new period of IfW starts within the LT so the DM considers the conditions in DMG 13642 and determines that they are satisfied. This person is a WtWB.

13648 - 13649

Treated as capable of work

General

- 13650 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 13652 - 13655 for cases where contact with the claimant **has** been lost) **or**
 2. fail without good cause to return the questionnaire for the PCA² (see DMG 13660 - 13668) **or**
 3. fail without good cause to attend or submit to a medical examination for the OOT or PCA³ (see DMG 13676 - 13721) **or**
 4. are working, other than in defined categories⁴ (see DMG 13850 - 13980) **or**
 5. claim JSA⁵ (see DMG 13725 - 13727) **or**
 6. behave inappropriately⁶ (see DMG 13730 - 13813).

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

- 13651 DMs must be able to show that the conditions placed on the Secretary of State by the legislation have been met if a person is to be treated as capable of work.

Medical evidence ceases

Contact with claimant lost

- 13652 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 Secretary of State 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 Secretary of State to indicate that they wish to have the question of their IfW determined.

1 SS (IW) (Gen) Regs, reg 16A(1) & 16A(2); 2 SS (Med Ev) Regs, regs 2 & 5

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

- 13653 The six week period begins on
1. the date of the Secretary of State'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, reg 16A(1)(d)

- 13654 If at the end of the six weeks no further medical evidence is received, or the claimant does not contact the DWP, the DM 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, 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 DWP by then. She is treated as capable of work from 20.5.10, the day after medical evidence ends.

- 13655 Where the person
1. fails to provide further medical evidence **and**
 2. asks for their IfW to be determined
- the DM should conduct the PCA 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 DM may accept this as a request from William for his IfW to be determined for the period from 6.7.10 to 11.7.10.

13656 - 13659

Failure to return the questionnaire for the personal capability assessment

13660 A person who is subject to the PCA 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, reg 6(1)(b)(i); 2 reg 6(1)(b)(ii)

13661 The questionnaire is not required if

1. the person is in an exempt category¹ (see DMG 13350) **or**
2. the person can be treated as incapable of work² (see DMG 13550 **1. - 4. and 6. - 7.**) **or**
3. the Secretary of State is satisfied that there is sufficient information to decide whether a person is capable or incapable of work without it³ **or**
4. the question of capacity relates to a claim for JSA⁴.

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

13662 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 Secretary of State has not exercised the discretion to proceed without it².

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

13663 A person is treated as capable of work for failure to return the questionnaire without good cause if the Secretary of State 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 Secretary of State 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, reg 7(2)

The Secretary of State's duty

13664 The DM needs to make sure that the Secretary of State has complied with the duty set out in the legislation to send the questionnaire and the reminder to the person¹. The DM 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, reg 7(2); 2 Inte Act 78, s 7

Has the questionnaire been sent

- 13665 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 DM 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

- 13666 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, reg 2(b)

Example

A questionnaire was sent to John on 07.11.11. A reminder is due and sent on 29.11.11. If he still does not return the questionnaire, the first day on which the DM can consider whether he should be treated as capable of work is 07.12.11.

Good cause

- 13667 If the DM concludes that the Secretary of State 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 13700).

Questionnaire returned before good cause considered

- 13668 As in DMG 13664 the law imposes time limits on the Secretary of State 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 Secretary of State has expired but **before** the DM 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 PCA action should resume.

13669 - 13675

Failure to attend or submit to a medical examination

13676 People may be called to attend a medical examination by a HCP approved by the Secretary of State where it has to be determined whether they are capable of work under either the OOT or PCA¹.

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

13677 People are treated 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, reg 8(2); 2 reg 8(3)

The Secretary of State's duty

13678 The DM needs to make sure that the Secretary of State has complied with the duty set out in the legislation 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 person had agreed to accept a shorter period of notice **and**
4. if the person 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, reg 8(3)

13679 If, after calculating the period of time which passed between the date the written notice was sent and the time of the examination, the DM decides that seven days had not elapsed, they should consider whether the person has agreed to accept a shorter period of notice¹. If there is no evidence that the person had agreed to accept a shorter period of notice they cannot be treated as capable of work.

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

13680 If the DM cannot confirm that the provisions in DMG 13678 above were met, the person cannot be treated as capable of work.

Has notice been sent

13681 The DM needs to be sure that the person has been sent notice. The DM 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 DM should make sure that the notice was in writing and included the time and place of the medical examination.

1 Inte Act 78, s 7

Have seven days passed

- 13682 The DM needs to be sure that the correct period of notice has been given. The DM 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

- 13683 People cannot fail to attend the medical examination if the appointment had already been cancelled by medical services. The DM should investigate any indications that the person 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 person.

Good cause

- 13684 If the DM concludes that the Secretary of State has complied with the duty set out in DMG 13678, they may go on to consider whether the person had good cause for their failure to attend or submit to medical examination (see DMG 13700).

13685 - 13699

Consideration of good cause

- 13700 When a person fails to return the questionnaire for the PCA or fails to attend or submit to medical examination, the DM has to consider whether the person has good cause for their failure. The DM's consideration must include

1. whether the person was outside GB at the relevant time **and**
2. the person's state of health **and**
3. the nature of the disability¹.

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

- 13701 The onus of proving good cause lies with the person. The test of good cause is whether the DM 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.
- 13702 The person will have been asked to give the reasons for not complying with the Secretary of State's request for information or to attend for or submit to medical examination. The DM should bear in mind the guidance about considering evidence in DMG Chapter 01.
- 13703 The DM may determine that a person 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

- 13704 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 DM 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.
- 13705 If the person contends that they did not receive the questionnaire or the notice of the appointment, DMs 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.
- 13706 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.

13707 - 13714

- 13715 If a person says that they were too ill to attend because of the nature of their disability, the DM 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 them to have attended on that occasion. Exceptionally, a person may be examined at home if they are unable to travel.

13716 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 DM accepts the evidence, they have shown good cause for their non-attendance.

13717 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

13718 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 DM 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

13719 It is possible for the DM 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.

13720 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 person had not shown good cause for failing to attend for medical examination.

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

13721 A failure to comply with a notice to attend a medical examination will be deliberate, except in cases where the person 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.

13722 - 13724

Claims for jobseeker's allowance

13725 People who are incapable of work, or are treated as incapable of work because they

1. pass the PCA 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 JSA if certain conditions are satisfied¹.

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

13726 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.

13727 Work preparation activities include education or training courses or other activities designed to prepare people for work.

13728 - 13729

Inappropriate behaviour and incapacity for work

13730 People entitled to any benefit, allowance or advantage other than IIDB, SSP, IB or SDA 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 (see DMG 13760) **or**
3. fail without good cause
 - 3.1 to refrain from behaviour calculated to delay recovery **or**
 - 3.2 not to be absent from place of residence without leaving word where they may be found¹ (see DMG 13790).

Note: See DMG Chapter 56 (for IB) and DMG Chapter 57 (for SDA) for guidance on when disqualification is appropriate in these cases.

1 SS CB Act 92, s 171E; SS (IW) (Gen) Regs, reg 18(1) & (2)(b)

13731 DMG 13730 1. does not apply where a person's IfW is due to

1. pregnancy **or**
2. a sexually transmitted disease¹.

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

13732 Guidance on misconduct may be relevant if the type of misconduct being considered would have resulted in

1. dismissal from employment **and**
2. a JSA sanction (see DMG 34060 et seq).

13733 Conduct which is blameworthy, reprehensible, wrong or wilful should be distinguished from involuntary behaviour due to other factors¹.

1 R(S) 2/64

13734 A determination to treat as capable of work can apply to misconduct outside a person's employment.

13735 Alcoholism is one example of behaviour which may be misconduct if a person became 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.

13736 If a person becomes incapable of work as a result of an accident which occurred while intoxicated but which could have happened if they were sober, incapacity would not be due to misconduct.

13737 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.

13738 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.

13739 When deciding whether to treat as capable of work the DM should judge how far the person's actions have been deliberate and unreasonable rather than thoughtless.

13740 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.

13741 - 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, reg 18(1)(b) & (2)(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 CB Act 92, s 122(1); 2 R(S) 3/57

13762 The person 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, reg 18(1)(c) & (2)(b)

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

1. undertaken a journey calculated to delay recovery **and**
2. 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 person 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 DM 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 - 13845

Incapacity for Work and Working

General

13846 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 those receiving certain regular treatment² and at the beginning and end of a period of work³ (see DMG 13880).

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

13847 This applies¹ to any person who works who is

1. incapable of work under the OOT or the PCA **or**
2. treated as incapable of work because they
 - 2.1. are exempt from the PCA² **or**
 - 2.2. qualify under the special provisions for
 - 2.2.a. relevant infections or contaminations³ **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 WtWB⁷ **or**
 - 2.4. were incapable for part of a day⁸ **or**
 - 2.5. do not satisfy the PCA but the exceptional circumstances apply⁹ **or**
 - 2.6. have not as yet been assessed under the PCA¹⁰.

1 SS (IW) (Gen) Regs, 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)

13848 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, reg 16(3); 2 reg 16(3)(a); 3 reg 16(3)(b) & reg 10A; 4 reg 16(3)(c) & reg 2(1); 5 reg 16(3)(c); 6 reg 16(3)(d); 7 reg 16(3)(e) & reg 17

Definitions

13849 “Week” means a period of seven days beginning with Sunday¹.

1 SS (IW) (Gen) Regs, reg 16(6)

13850 “Work” means any work which a person does, whether or not it is undertaken in expectation of payment¹.

1 SS (IW) (Gen) Regs, reg 16(6)

13851 “Relative” means¹

1. a close relative **or**
2. the other member of a couple **or**
3. a grandparent **or**
4. grandchild **or**
5. uncle **or**
6. aunt **or**
7. nephew **or**
8. niece.

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

13852 “Close relative” means¹

1. a parent **or**
2. parent-in-law **or**
3. son **or**
4. son-in-law **or**
5. daughter **or**
6. daughter-in-law **or**
7. step-parent **or**
8. step-son **or**
9. step-daughter **or**
10. brother **or**
11. sister **or**
12. if any of the preceding persons is one member of a couple, the other member of that couple.

Note: References to step relationships and in-laws include relationships arising through civil partnerships.

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

13853 “Couple” means¹

1. a man and a woman who are married to each other and are members of the same household **or**
2. a man and a woman who are not married to each other but are LTAHAW **or**
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 LTACP.

Note: Two people of the same sex are to be regarded as LTACP where they would be regarded as LTAHAW if they were two people of the opposite sex. See DMG Chapter 11 for further guidance on LTAHAW and LTACP.

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

Work

13854 The meaning of work is defined (see DMG 13850). 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 person 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 hours, the type of work and the effort required in relation to full normal duties¹. When deciding if work is “de minimis”, the DM should consider the relevant case law.

1 R(S) 2/61

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) 2/61; 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 which they

1. became incapable **or**
2. start or return to work¹ **or**
3. receive certain regular treatment².

1 SS (IW) (Gen) Regs, 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 DM 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 DM 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 P/T basis for a past period of incapacity. He did not declare this work, which has now ended and was not exempt. The DM 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 this guidance 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 PIW. The normal rules on PIWs 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. PWK¹ (see DMG 13891)
 2. work done whilst test trading as a S/E earner² (see DMG 13934)
 3. work as a volunteer³ (see DMG 13931)
 4. duties undertaken on either one full day or two half days a week⁴ as a panel member who is eligible for appointment under specified legislation⁵ to be such a member.

1 SS (IW) (Gen) Regs, reg 17(1)-(4); 2 reg 17(5); 3 reg 17(6); 4 reg 17(7); 5 The Qualifications for Appointments of Members to the First-tier Tribunal and Upper Tribunal Order 2008, art 2(3)

Permitted work

General

- 13891 There are three types of PWK each with its own conditions (see DMG 13892). People can only be in one type of PWK at any one time. They do not need prior medical approval and undertaking PWK will not affect the determination of a person's IfW. If they have two or more jobs the hours and earnings are added together to determine if the work is exempt.

- 13892 The three types of PWK are
1. SPW¹ (see DMG 13896)
 2. PWLL² (see DMG 13905)
 3. PW³ (see DMG 13911).

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

Calculation of weekly earnings

- 13893 Weekly earnings limits apply in PWK¹ (see Annex 7 to this Chapter). There is no definition of 'earnings' specific to IfW but provision for calculating weekly earnings can be found in other legislation². Guidance on earnings is in DMG Chapter 15.

1 SS (IW) (Gen) Regs, reg 17(1)-(4); 2 SS Ben (C of E) Regs; R(IB) 1/06

- 13894 When a weekly earnings figure has been identified the DM 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, 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 they are 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. They continue to be incapable of work during weeks in which they do no work to which the regulation applies.

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

- 13896 Where the weekly earnings limit is 16 x NMW, this means the highest rate of NMW as specified in legislation¹ (see Annex 6). Where 16 x NMW 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, reg 17(10)

Example

Meryl starts work on 1 November for 15 hours weekly. The NMW is 16 x £6.31 = £100.96. As this includes an amount which is more than 50p and less than £1, it is rounded up to £101.00. The DM uses this amount to consider whether Meryl's work is exempt work.

Supported permitted work

13897 SPW is work that is

1. part of a treatment programme done under medical supervision while the person 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
 - 2.1 a public or local authority **or**
 - 2.2 a voluntary organisation (see DMG 13899) **or**
 - 2.3 a Community Interest Company (see DMG 13900)

which provides or finds work for persons with disabilities² (see DMG 13902 **Examples 1 and 2**).

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

13898 SPW 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 SPW must be no more than 16 x NMW¹. There is no limit to the period during which SPW can be done.

1 SS (IW) (Gen) Regs, 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 DM accepts that Jennifer is doing SPW.

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, reg 17(8)

Community Interest Companies

13900 A CIC, 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.

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 from PW1. Peter wants to work in a local market garden for four 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 DM determines that even though the work is for less than £20 a week and could be PWLL, it should be SPW because the work is supported. He can do this work without it affecting his IfW for as long as his earnings are no more than the set weekly limit and the support continues.

Example 2

Sarah's appointee returns from PW1. It states that Sarah, who has Down's Syndrome, will start work in a supermarket collecting trolleys from the car park and stacking shelves. She will be working for four hours a day each Wednesday and Thursday earning £50 a week. Sarah's work has been arranged by Bexley Twofold, an organisation funded by Bexley Council and Mencap to arrange work for people with disabilities. Sarah's support worker will visit regularly and this support will continue. The DM determines that the work she is doing is SPW. She can do this work without it affecting her IfW 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 PWLL is work done in any week for which the earnings do not exceed £20¹. There is no limit to the period during which PWLL can be undertaken. A person will move out of this type of PWK if their earnings in any week are more than £20. They may move into another category of PWK if the relevant conditions are met. Alternatively, they may be treated as capable of work if the relevant conditions are not met².

1 SS (IW) (Gen) Regs, reg 17(2); 2 reg 16

13906 - 13909

Permitted work

13910 Permitted work is work done for less than 16 hours, or an average of less than 16 hours (see DMG 13912) in any week, for which the earnings do not exceed 16 x NMW¹.

1 SS (IW) (Gen) Regs, reg 17(4)

13911

16 hour limit

13912 PW is 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 a 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).

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.

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

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.

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 - 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. volunteers¹ (see DMG 13931) **and**
 2. panel members who are eligible for appointment under specified legislation² to be such members who do not attend the tribunal on more than one full day or two half days a week³ (see DMG 13932) **and**
 3. S/E earners whilst test trading⁴ (see DMG 13934).

1 SS (IW) (Gen) Regs, reg 17(6); 2 The Qualifications for Appointments of Members to the First-tier Tribunal and Upper Tribunal Order 2008, art 2(3); 3 SS (IW) (Gen) Regs, reg 17(7); 4 reg 17(5)

- 13931 A volunteer is a person who

1. is engaged in voluntary work other than for a close relative (see 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, 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 IB and IS¹. This includes any trade, business, profession, office or vocation.

1 SS CB Act 92, s 122(1); IS Gen Regs, reg 2(1)

13933 Work as a panel member who is eligible for appointment under specified legislation¹ to be such a member is subject to the condition that the work is not done for more than one full day or two half days a week². 'Week' is the seven days starting on Sunday³. 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 The Qualifications for Appointments of Members to the First-tier Tribunal or Upper Tribunal Order 2008, art 2(3); 2 SS (IW) (Gen) Regs, reg 17(7); 3 reg 16(6)

- 13934 Work done whilst receiving help to become a S/E 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, reg 17(5); 2 E&T Act 1973 s 2; Enterprise & New Towns (Scotland) Act 1990, s 2

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 bodies². If a person's only qualifying occupation (see DMG 13230) is as a councillor, the PCA should be applied from the outset (see DMG 13201). The work as a councillor should be taken into account when deciding which descriptors apply.

1 SS CB Act 92, s 171F; 2 Local Authority Act 72, s 177(1); Local Government (Scotland) Act 73, s 49(1) & (1A)

- 13951 A councillor means

1. in England and Wales, a member of London borough council **or** a county council **or** a district council **or** a parish or community council **or** the Common Council of the City of London or the Council of the Isles of Scilly **or**
2. in Scotland a member of a regional islands or district council¹.

1 SS CB Act 92, s 171F(2)

- 13952 Guidance on the effect of councillors' allowances on IB and SDA 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 (see DMG 13931).

13966 - 13969

Work that includes caring and domestic tasks

13970 People who care for other people's children or adults should be considered within the definition of work (see DMG 13850 and 13852). 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, reg 16(3); reg 16(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 their own home a domestic task must relate to their 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 person who provided accommodation and food to students was found to be working¹.

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 person's home unless the care includes activities which do not relate to the home, household or family affairs.

13976 Placement of difficult, mentally ill 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 person'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 person'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 people. If a person attends a work trial whilst incapable of work the DM should

1. consider if the work is within the definition (see DMG 13846 - 13848)
2. if the work is within the definition, decide if it can be accepted as in an exempt category (see DMG 13890) or is approved work (see DMG 13620)

if the work is not in an exempt category or approved work on a trial basis, treat the person as capable of work.

If the work is not work within the definition, decide if the activities involved mean that IfW should be questioned (see DMG 13290).

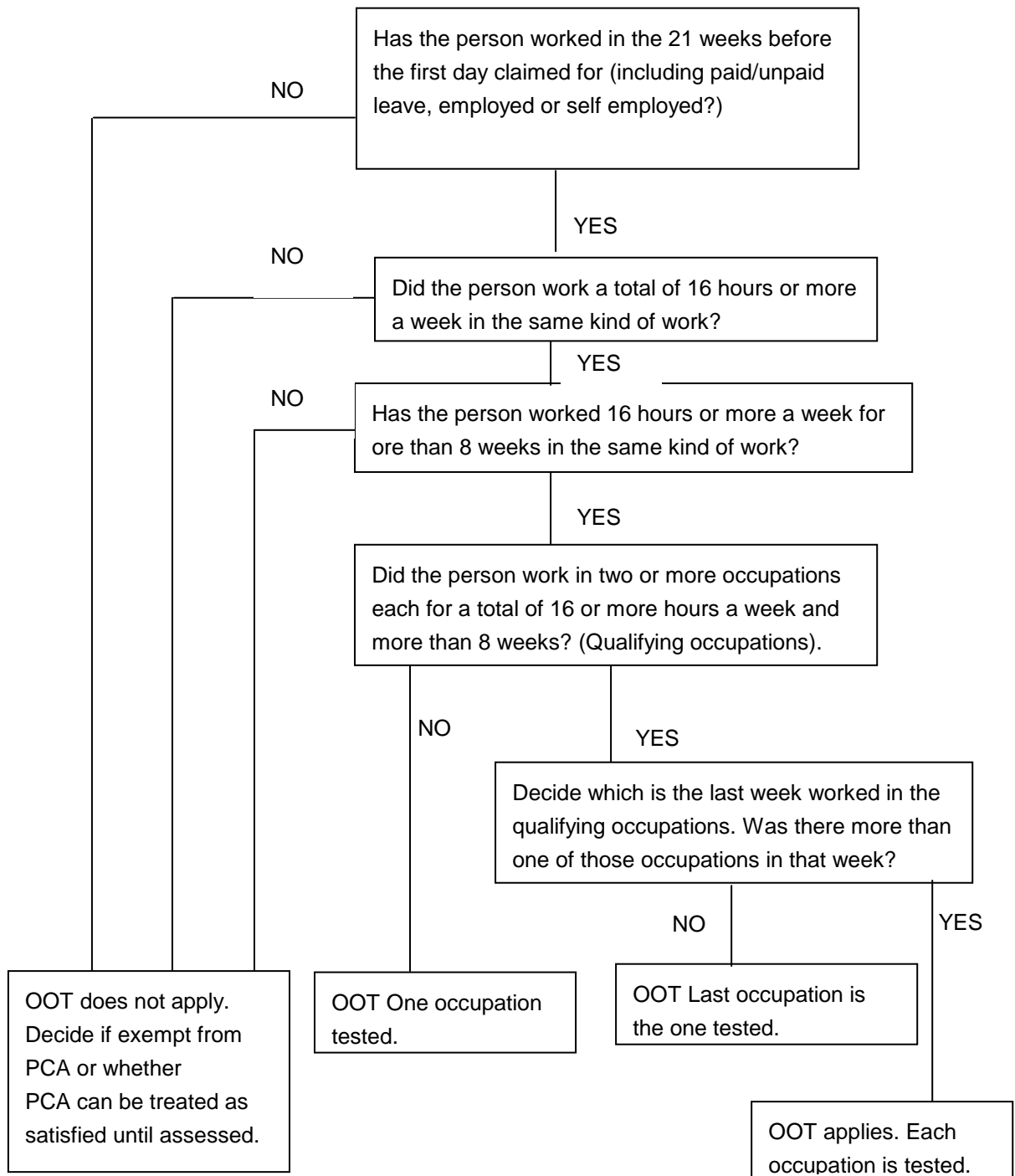
13981 - 13999

Annex 1

Conditions for satisfying the OOT

Flowchart for DMG 13200

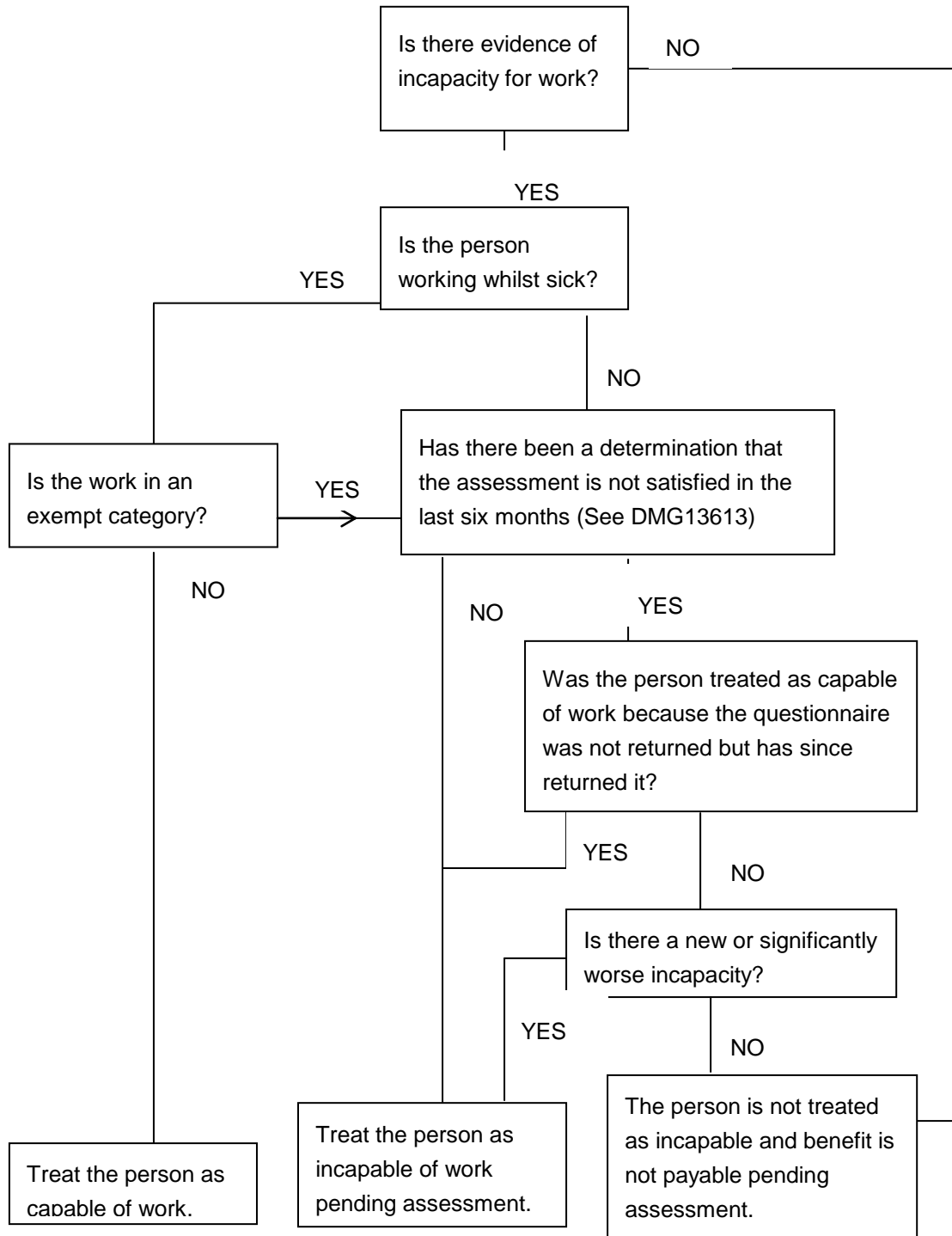
The table does not apply if a claim links with a previous spell of incapacity which was less than 196 days (see DMG 13249)



Annex 2

Conditions for treating the person as incapable of work pending assessment

Flowchart for DMG 13610 et seq



Annex 3

Categories exempt from the personal capability assessment

(See DMG 13350)¹

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

Decided on available evidence

- A person who is in receipt of the highest rate care component of DLA an increase of disablement pension for constant attendance which is greater than the lower rate or at the higher rate¹ for forces² CAA or an increase of constant attendance allowance for civilians³.

1 SS CB Act 92, s 104 & Sch 4, part V, para 2(a)-2(b); SS (Gen) Regs, 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)

- A person who is 80% disabled and entitled to IIDB¹ WdisP or² disablement pension under the Personal Injuries Civilian Scheme³.

1 SS CB Act 92, s 103; 2 Naval Military & Air Forces etc (Disablement & Death)

Service Pensions Order 83; 3 Personal Injuries (Civilian) Scheme 83

- A person for whom there is evidence which establishes not less than 80% disability for SDA.
- A person who has a progressive disease whose death in consequence of that disease can reasonably be expected within six months.
- A person who is registered as blind in a register compiled by a LA¹ or, in Scotland, has been certified as blind in a register maintained by or on behalf of a regional or islands council.

1 National Assistance Act 1948, (Welfare Service) s 29(4)(g)

- 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

- 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).
- a severe and progressive neurological or muscle wasting disease.
- an active and progressive form of inflammatory polyarthritis.

- a progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance.
- dense paralysis of the upper limb, trunk and lower limb on one side of the body.
- multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory, and intellectual deficits.
- manifestations of severe and progressive immune deficiency states characterized by the occurrence of severe constitutional disease, opportunistic infections or tumour formation.
- 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.

Annex 4

Regular treatment categories

(See DMG 13580)

List of treatments

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

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

1 SS (IW) (Gen) Regs, 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 5

The effect of the “Howker” judgment on Regulation 27 of the Social Security (Incapacity for Work) (General) Regulations 1995

(See DMG 13624 and DMG 13626 to DMG 13633)

Pre Howker (i.e. prior to 08.11.02) - the regulation reads as follows

27(1) A person who does not satisfy the all work test shall be treated as incapable of work if any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are that -

(a) he is suffering from a severe life-threatening disease in relation to which –

(i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and

(ii) in the case of a disease which is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure;

(b) he suffers from a previously undiagnosed potentially life-threatening condition which has been discovered during the course of a medical examination carried out for the purposes of the all work test by a doctor approved by the Secretary of State;

(c) there exists medical evidence that he requires a major surgical operation or other major therapeutic procedure and it is likely that that operation or procedure will be carried out within three months of the date of a medical examination carried out for the purposes of the all work test.

Post Howker (i.e. since 08.11.02) - the regulation reads as follows

27(1) A person who does not satisfy the all work test shall be treated as incapable of work if any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are that -

(a) he is suffering from a severe life-threatening disease in relation to which -

(i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and

(ii) in the case of a disease which is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure;

(b) he suffers from a previously undiagnosed potentially life-threatening condition which has been discovered during the course of a medical examination carried out for the purposes of the all work test by a doctor approved by the Secretary of State;

(c) there exists medical evidence that he requires a major surgical operation or other major therapeutic procedure and it is likely that that operation or procedure will be carried out within three months of the date of a medical examination carried out for the purposes of the all work test,

Added as a result of the “Howker” judgment

“he suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if he were found capable of work”.

Post Howker (i.e. since 08.11.02) - the regulation (as impacted by other Regulation) reads as follows (changes shown in *italics*)

27(1) A person who *is not incapable of work in accordance with the personal capability assessment* shall be treated as incapable of work if any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are that -

(a) he is suffering from a severe life-threatening disease in relation to which -

(i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and

(ii) in the case of a disease which is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure;

(b) he suffers from a previously undiagnosed potentially life-threatening condition; which has been discovered during the course of a medical examination carried out for the purposes of the *personal capability assessment by a health care professional* approved by the Secretary of State;

(c) there exists medical evidence that he requires a major surgical operation or other major therapeutic procedure and it is likely that that operation or procedure will be carried out within three months of the date of a medical examination carried out for the purposes of the *personal capability assessment*,

Added as a result of the “Howker” judgment

“he suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if he were found capable of work”.

Annex 6

NMW rates since 1.10.10

(See DMG 13896)

From	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	£6.70
1.4.16	£7.20
1.4.17	£7.50

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

The content of the examples in this document (including use of imagery) is for illustrative purposes