The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by [section] 9 of and Schedule 2 to the Welfare Reform [Act 2007]:

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Limited Capability for Work-Related Activity) Regulations 2007 and shall come into force on [date] 2007.

Determination of limited capability for work-related activity

2.—(1) For the purposes of Part I of the Welfare Reform [Act 2007], a person’s capability for work-related activity is limited by his physical or mental condition and the limitation is such that it is not reasonable to require him to undertake such activity if one or more of the descriptors set out in the Schedule applies to him.

(2) A descriptor applies to a person if that descriptor applies to him for the majority of the time or, as the case may be, on the majority of the occasions on which he undertakes or attempts to undertake the activity described by that descriptor.

(3) In determining whether a descriptor applies to a person, he is to be assessed as if he were wearing any prosthesis with which he is fitted or, as the case may be, wearing or using any aid or appliance which he normally wears or uses.

Certain persons to be treated as having limited capability for work-related activity

3.—(1) A person is to be treated as having limited capability for work-related activity if any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are—

(a) that he is suffering from a progressive disease and his death in consequence of that disease can reasonably be expected within 6 months;

(b) that he is receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy;
(c) that 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 not to have limited capability for work-related activity;

(d) that in the case of a woman, she is pregnant and there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work-related activity.

Information required for determining capability for work-related activity

4.—(1) Subject to paragraph (2), the information or evidence required to determine whether a person has limited capability for work-related activity is—

(a) any information relating to the descriptors set out in the Schedule that the Secretary of State may request in the form of a questionnaire; and

(b) any such additional information as the Secretary of State may request.

(2) Where the Secretary of State is satisfied that he has sufficient information to determine whether a person has limited capability for work-related activity without the information specified in paragraph (1)(a), that information will not be required for the purposes of making the determination.

Failure to provide information

5.—(1) Where a person fails without good cause to comply with the Secretary of State’s request that he provide the information referred to in regulation 4(1)(a), he is, subject to paragraph (2), to be treated as not having limited capability for work-related activity.

(2) Paragraph (1) does not apply unless—

(a) at least 6 weeks have passed since the Secretary of State sent the person the first request for the information; and

(b) the Secretary of State sent that person a further request at least 4 weeks after the date of the first request, and at least 2 weeks have passed since the further request was sent.

Person may be called for a medical examination

6.—(1) When it falls to be determined whether a person has limited capability for work-related activity, he may be called by or on behalf of a health care professional approved by the Secretary of State to attend for a medical examination.

(2) Subject to paragraph (3) where a person fails without good cause to attend for or to submit himself to such an examination, he is to be treated as not having limited capability for work-related activity.

(3) Paragraph (2) does not apply unless written notice of the time and place for the examination was sent to him at least 7 days in advance, or unless he agreed to accept a shorter period of notice.

(4) The reference in paragraph (1) to a health care professional is to a member of a profession (whether or not regulated by, or by virtue of, any enactment) which is concerned (wholly or partly) with the physical or mental health of individuals.

Matters to be taken into account in determining good cause

7. The matters to be taken into account in determining whether a person has good cause under regulations 5 or 6 (failure to provide information or attend a medical examination) include—

(a) whether he was outside Great Britain at the relevant time;

(b) his state of health at the relevant time; and

(c) the nature of any disability he has.
This document refers to the Welfare Reform Bill as introduced in the House of Commons on 4 July 2006 [Bill208]

Signed by the authority of the Secretary of State for Work and Pensions

Date

Parliamentary Under Secretary of State
Department for Work and Pensions

SCHEDULE

Assessment of whether a person has limited capability for work-related activity

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
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<tbody>
<tr>
<td>Activity</td>
<td>Descriptors</td>
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<tr>
<td>1. Walking or moving on level ground—</td>
<td>Cannot—&lt;br&gt;(a) walk (with a walking stick or other aid if such aid is normally used); &lt;br&gt;(b) move (with the aid of crutches if crutches are normally used); or &lt;br&gt;(c) manually propel his wheelchair, more than 30 metres without repeatedly stopping, experiencing breathlessness or severe discomfort.</td>
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<td>2. Rising from sitting and transferring from one seated position to another—</td>
<td>Cannot complete both of the following—&lt;br&gt;(a) rise to standing from sitting in an upright chair without receiving physical assistance from another person; and &lt;br&gt;(b) move between one seated position and another seated position located next to one another without receiving physical assistance from another person.</td>
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<tr>
<td>3. Lifting and carrying by the use of the upper body and arms—</td>
<td>Cannot pick up and move 0.5 litre carton full of liquid to a distance of 60 centimetres at tabletop level with either hand.</td>
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<td>4. Reaching—</td>
<td>Cannot raise either arm as if to put something in the top pocket of a coat or jacket.</td>
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<td>5. Manual dexterity—</td>
<td>Cannot—&lt;br&gt;(a) turn a “star-headed” sink tap with either hand; or &lt;br&gt;(b) pick up a £1 coin or equivalent with either hand.</td>
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<td>6. Continence—</td>
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(a) Continence other than enuresis (bed wetting) where claimant does not have an artificial stoma or urinary collecting device—

(b) Continence where claimant uses a urinary collecting device, worn for the majority of the time including an indwelling urethral or suprapubic catheter—

(c) Continence other than enuresis (bed wetting) where claimant has an artificial stoma—

(a) has no voluntary control over bowel evacuation;
(b) has no voluntary control over voiding of bladder;
(c) loses control of bowel so that he cannot control the full evacuation of the bowel at least once per week;
(d) loses control of bladder so that he cannot control the full voiding of the bladder at least once a week;
(e) fails to control full evacuation of the bowel at least once a week, owing to a severe disorder of mood or behaviour; or
(f) fails to control full voiding of the bladder at least once a week, owing to a severe disorder of mood or behaviour.

(a) is unable to affix, remove or empty the catheter bag or other collecting device without receiving physical assistance from another person;
(b) is unable to affix, remove or empty the catheter bag or other collecting device without causing leakage of contents;
(c) has no voluntary control over bowel evacuation;
(d) loses control of bowel so that he cannot control the full evacuation of the bowel at least once per week; or
(e) fails to control full evacuation of the bowel at least once a week, owing to a severe disorder of mood or behaviour.

(a) is unable to affix, remove or empty stoma appliance without receiving physical assistance from another person;
(b) is unable to affix, remove or empty stoma appliance without causing leakage of contents;
(c) where the claimant’s artificial stoma relates solely to the evacuation of the bowel, has no voluntary control over voiding of bladder;
(d) where the claimant’s artificial stoma relates solely to the evacuation of the bowel, loses control of the bladder so that he cannot control the full voiding of the bladder at least once per week; or
(e) where the claimant’s artificial stoma relates solely to the evacuation of the bowel, fails to control the full voiding of the bladder at least once a week, owing to a severe disorder of mood or behaviour.
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7. Maintaining personal hygiene—

Cleaning own torso

(a) cannot clean own torso (excluding own back) without receiving physical assistance from another person;
(b) cannot clean own torso (excluding own back) without repeatedly stopping, experiencing breathlessness or severe discomfort;
(c) cannot clean own torso (excluding own back) without receiving regular prompting given by another person in the physical presence of the claimant; or
(d) owing to a severe disorder of mood or behaviour, fails to clean own torso (excluding own back) without receiving—
   (i) physical assistance from another person, or
   (ii) regular prompting given by another person in the physical presence of the claimant.

8. Eating and drinking—

(a) Conveying food or drink to his mouth

(a) cannot convey food or drink to his mouth without receiving physical assistance from another person;
(b) cannot convey food or drink to his mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;
(c) cannot convey food or drink to his mouth without receiving regular prompting given by another person in the physical presence of the claimant; or
(d) owing to a severe disorder of mood or behaviour, fails to convey food or drink to his mouth without receiving—
   (i) physical assistance from another person, or
   (ii) regular prompting given by another person in the physical presence of the claimant.

(b) Chewing or swallowing food or drink

(a) cannot chew or swallow food or drink;
(b) cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;
(c) cannot chew or swallow food or drink without receiving regular prompting given by another person in the physical presence of the claimant; or
(d) owing to a severe disorder of mood or
behaviour, fails to—
(i) chew or swallow food or drink; or
(ii) chew or swallow food or drink without regular prompting given by another person in the physical presence of the claimant.

9. Comprehension and application of information or instructions—
(a) cannot understand simple instructions;
(b) cannot carry out simple instructions without regular prompting given by a person in the presence of the claimant;
(c) cannot learn a simple new task to the extent of being able to carry it out without regular prompting given by a person in the presence of the claimant;
or
(d) fails to do any of the matters referred to in (a) to (c) owing to a severe disorder of mood or behaviour.

10. Personal action—
(a) cannot initiate and sustain basic personal action, for example, the organisation and completion of a simple task, without regular prompting and supervision given by a person in the presence of the claimant; or
(b) fails to initiate and sustain basic personal action without regular prompting and supervision given by a person in the presence of the claimant, owing to a severe disorder of mood or behaviour.

11. Communication—
(a) none of the following forms of communication can be achieved by the claimant—
(i) speaking (to a standard that may be understood by strangers);
(ii) writing (to a standard that may be understood by strangers);
(iii) typing (to a standard that may be understood by strangers);
(iv) sign language to a standard equivalent to Level 3 British Sign Language;
(b) none of the forms of communication referred to in (a) are achieved by the claimant, owing to a severe disorder of mood or behaviour;
(c) frequently misunderstands communication from others causing distress to himself or others; or
(d) effectively cannot make himself understood to others because of his disassociation from reality owing to a severe disorder of mood or behaviour.