
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employment and Support Allowance Regulations (Northern Ireland) 2008 relating to the work capability assessment. These Regulations substitute the descriptors and criteria applied to determine capability for work, and for work-related activity, and amend provisions which allow a person to be treated as having limited capability for work, or for work-related activity, without an assessment in certain circumstances.

Regulation 2 sets out who the Regulations apply to. It provides that they apply to all persons who claim employment and support allowance on or after the date these Regulations come into operation. The regulations also apply to persons who claim before that date, and persons who have been notified under the reassessment process (from incapacity benefit, severe disablement allowance or income support on grounds of incapacity), who have their capability for work or their capability for work-related activity determined on or after that date. Finally, the regulations apply to persons who are re-assessed on or after that date. However, where the person was sent a questionnaire (as to their capability for work or for work-related activity) based on the un-amended provisions before that date these Regulations will not apply. Instead the determination in such cases will be based on the un-amended provisions. This is subject to a six month limit after which all assessments will be made under the amended provisions (regulation 2(6)).

Regulation 3 amends the provisions in regulations 20 (certain claimants to be treated as having limited capability for work), 25 (hospital in-patients) and 35 (certain claimants to be treated as having limited capability for work-related activity) and substitutes Schedules 2 and 3. Paragraph (2) adds persons who are likely to receive chemotherapy treatment within 6 months after the date of the determination of capability for work, and those who meet the eating and drinking descriptors in paragraphs 15 and 16 of Schedule 3, to those who are to be treated as having limited capability for work. Paragraph (3) makes clear that a person who attends residential rehabilitation for treating drugs or alcohol addiction is regarded as receiving treatment within the terms of regulation 25. Paragraph (4) similarly adds persons likely to receive chemotherapy treatment within 6 months after their determination of capability for work-related activity to those who are to be treated as having limited capability for work-related activity. Paragraphs (5) and (6) substitute Schedules 2 and 3 respectively to set out the criteria for the assessment of whether a person has limited capability for work or for work-related activity.

Regulation 4 makes a consequential revocation.

These Regulations make in relation to Northern Ireland only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.