

2011 No. 265

SOCIAL SECURITY

The Employment and Support Allowance (Work-related Activity) Regulations (Northern Ireland) 2011

Made - - - - - *11th July 2011*

Coming into operation - *12th July 2011*

Approved by resolution of the Assembly on 22nd November 2011

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The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 10 and 11 of the Social Security (Northern Ireland) Order 1998(a) and sections 11, 12(1) and (2), 13, 14, 15, 16, 17(3)(b) and 25 of the Welfare Reform Act (Northern Ireland) 2007(b).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Work-related Activity) Regulations (Northern Ireland) 2011 and shall come into operation on 12 July 2011.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Welfare Reform Act (Northern Ireland) 2007;

“action plan” means an action plan in accordance with regulation 5;

“carer’s allowance”, “child”, “lone parent”, “medical treatment” and “working day” have the meaning given in regulation 2(1) of the Employment and Support Allowance Regulations;

“the Department”, for the purposes of Part 2 and 3, includes the Department for Employment and Learning;

“the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2008(c);

“member of the support group” has the meaning given by section 24(4) of the Act; and

“work-related activity” has the meaning given by section 13(7) of the Act.

(2) For the purpose of these Regulations where a written notice is given by sending it by post it is taken to have been received on the second working day after posting.

PART 2

Work-related Activity

Requirement to undertake work-related activity

3.—(1) The Department may require a person who satisfies the requirements in paragraph (2) to undertake work-related activity as a condition of continuing to be entitled to the full amount of employment and support allowance payable to that person.

(2) The requirements referred to in paragraph (1) are that the person is—

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- (a) S.I. 1998/1506 (N.I. 10); paragraph (1) of Article 11 was amended by paragraph 17(a) of Schedule 6 and paragraph (4) was repealed by Schedule 9 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)
 - (b) 2007 c. 2; sections 12(1), 13 and 15 were amended respectively by sections 3(3) and (4) and 10 of the Welfare Reform Act (Northern Ireland) 2010 (c.13 (N.I.))
 - (c) S.R. 2008 No. 280

- (a) required to take part in, or has taken part in, one or more work-focused interviews pursuant to regulation 54 of the Employment and Support Allowance Regulations;
 - (b) not a lone parent who is responsible for and a member of the same household as a child under the age of 5;
 - (c) not entitled to carer's allowance; and
 - (d) not entitled to a carer premium under paragraph 8 of Schedule 4 to the Employment and Support Allowance Regulations.
- (3) A requirement to undertake work-related activity ceases to have effect if the person becomes a member of the support group.
- (4) A requirement imposed under paragraph (1)—
- (a) must be reasonable in the view of the Department, having regard to the person's circumstances; and
 - (b) may not require the person to—
 - (i) apply for a job or undertake work, whether as an employee or otherwise, or
 - (ii) undergo medical treatment.
- (5) A person who is a lone parent and in any week is responsible for and a member of the same household as a child under the age of 13, may only be required to undertake work-related activity under paragraph (1) during the child's normal school hours.

Directions about work-related activity

- 4.—(1) The circumstances in paragraph (2) are the circumstances prescribed for the purposes of section 15(1)(a) of the Act.
- (2) The circumstances referred to in paragraph (1) are that—
- (a) the person has been identified by the Department as having a barrier to work and in the view of the Department has refused to address that barrier; and
 - (b) the Department considers that the activity specified in the direction given under section 15(1) of the Act is a prerequisite to the person's ability to obtain or remain in work.

Notification of work-related activity and action plans

- 5.—(1) The Department must notify a person of the requirement to undertake work-related activity by including the requirement in a written action plan given to the person.
- (2) The action plan must specify—
- (a) the work-related activity which the person is required to undertake; and
 - (b) any other information that the Department considers appropriate.

Requirement to undertake work-related activity at a particular time not to apply

6. The Department may determine that a requirement as to the time at or by which work-related activity is to be undertaken is not to apply, or is to be treated as not having applied, if in the view of the Department it would be, or would have been, unreasonable to require the person to undertake the activity at or by that time.

Reconsideration of action plans

- 7.—(1) A person may request reconsideration of an action plan.
- (2) On receipt of a request the Department must reconsider the action plan.
- (3) A decision of the Department following a request must be in writing and given to the person.

Failure to undertake work-related activity

8.—(1) A person who is required to undertake work-related activity but fails to do so must show good cause for the failure within 5 working days of the date on which the Department gives notice of the failure.

(2) The Department must determine whether a person who is required to undertake work-related activity has failed to do so and, if so, whether the person has shown good cause for the failure.

(3) In deciding whether a person has shown good cause for the failure, the Department must take account of all the circumstances of the case including in particular the person's physical or mental health or condition.

PART 3

Contracting Out

Contracting out

9.—(1) Any function of the Department specified in paragraph (2) may be exercised by, or by employees of, such person (if any) as may be authorised by the Department.

(2) The functions are—

(a) any function under—

(i) regulation 3 (requirement to undertake work-related activity);

(ii) regulation 5 (notification of work-related activity and action plans);

(iii) regulation 6 (requirement to undertake work-related activity not to apply);

(iv) regulation 7 (reconsideration of action plans);

(b) any function under regulation 64(1)(a) and (c) and (1A)(a) of the Employment and Support Allowance Regulations (cessation of reduction).

PART 4

Amendment of the Employment and Support Allowance Regulations

Amendment of the Employment and Support Allowance Regulations

10.—(1) The Employment and Support Allowance Regulations are amended in accordance with paragraphs (2) to (11).

(2) In regulation 2(1) (interpretation) omit the definition of “action plan”.

(3) Omit—

(a) regulation 47 (requirement to take part in a work-focused health-related assessment);

(b) regulation 48 (work-focused health-related assessment);

(c) regulation 49 (notification of assessment);

(d) regulation 51 (taking part in a work-focused health-related assessment);

(e) regulation 52 (deferral of a requirement to take part in a work-focused health-related assessment);

(f) regulation 53 (failure to take part in a work-focused health-related assessment); and

(g) regulation 58 (action plans).

(a) Regulation 64(1) is substituted and paragraph (1A) is added by regulation 11(8) of these Regulations

- (4) In regulation 56(1) (notification of interview)—
- (a) for “attend” substitute “take part in”; and
 - (b) after “time and” insert “if required to attend in person, the”.
- (5) In regulation 57(1) (taking part in a work-focused interview)—
- (a) in sub-paragraph (a) at the beginning insert “if required to attend in person,”;
 - (b) after sub-paragraph (a) insert—
 - “(aa) if not required to attend in person, is available and responds at the date and time notified in accordance with regulation 56 to any contact made at that time for the purpose of carrying out the interview;”; and
 - (c) omit sub-paragraph (d).
- (6) For regulation 61(3) (failure to take part in a work-focused interview) substitute—
- “(3) In deciding whether a person has shown good cause for the failure, the Department must take account of all the circumstances of the case including in particular the person’s physical or mental health or condition.”.
- (7) In regulation 62(2) (contracting out certain functions relating to work-focused interviews) omit sub-paragraph (d).
- (8) In regulation 63 (reduction of employment and support allowance)—
- (a) for paragraph (1) substitute—
 - “(1) Where the Department has determined—
 - (a) that a claimant who was required to take part in a work-focused interview has failed to do so and has failed to show good cause for that failure in accordance with regulation 61; or
 - (b) that a claimant who was required to undertake work-related activity has failed to do so and has failed to show good cause for that failure in accordance with regulation 8 of the Employment and Support Allowance (Work-related Activity) Regulations (Northern Ireland) 2011,
 (“a failure determination”), the amount of the employment and support allowance payable to the claimant is to be reduced in accordance with this regulation.”; and
 - (b) in paragraph (3)(b)(i) for “a work-focused health-related assessment” substitute “work-related activity”.
- (9) In regulation 64 (cessation of reduction)—
- (a) for paragraph (1) substitute—
 - “(1) Any reduction imposed as a result of a failure determination which resulted from a failure to undertake work-related activity in accordance with the Employment and Support Allowance (Work-related Activity) Regulations (Northern Ireland) 2011 ceases to have effect if—
 - (a) the claimant complies with a requirement to undertake the work-related activity specified in the action plan or, where permitted by the Department, an alternative activity;
 - (b) the claimant subsequently ceases to be subject to a requirement to undertake work-related activity; or
 - (c) the Department decides it is no longer appropriate to require the person to undertake work-related activity at that time.”;
 - (b) after paragraph (1) insert—
 - “(1A) The Department must notify the person in writing—
 - (a) where an alternative activity is permitted under paragraph (1)(a) by inclusion of that activity in the action plan; and
 - (b) of any decision under paragraph (1)(c).”; and

(c) in paragraph (2)(a) for “attend” substitute “take part in”.

(10) In Schedule 8 (sums to be disregarded in the calculation of income other than earnings) after paragraph 14 insert—

“**14A.** Any payment made to the claimant in respect of any travel or other expenses incurred, or to be incurred, in complying with a requirement to undertake work-related activity.”.

(11) In Schedule 9 (capital to be disregarded) after paragraph 32 insert—

“**32A.** Any payment made to the claimant in respect of any travel or other expenses incurred, or to be incurred, in complying with a requirement to undertake work-related activity but only for 52 weeks beginning with the date of receipt of the payment.”.

PART 5

Consequential Amendment and Revocations

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations

11. In regulation 1(2) of the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999(a) (interpretation), for the definition of “failure determination” substitute—

““failure determination” means a determination by the Department under regulation 61(2) of the Employment and Support Allowance Regulations (failure to take part in a work-focused interview) or regulation 8(2) of the Employment and Support Allowance (Work-related Activity) Regulations (Northern Ireland) 2011 (requirement to undertake work-related activity) that a claimant has failed to satisfy a requirement of regulation 54 of the Employment and Support Allowance Regulations (requirement to take part in a work-focused interview) or regulation 3 of the Employment and Support Allowance (Work-related Activity) Regulations (Northern Ireland) Regulations 2011 (requirement to undertake work-related activity).”.

Revocations

12. Regulations 9(11), (13) and (14) of the Social Security (Miscellaneous Amendments No. 4) Regulations (Northern Ireland) 2010(b) are revoked.

Sealed with the Official Seal of the Department for Social Development on 11th July 2011

(L.S.)

Anne McCleary

A senior officer of the Department for Social Development

(a) S.R. 1999 No. 162; the definition of “failure determination” was inserted by regulation 22(2)(d) of S.R. 2008 No. 286

(b) S.R. 2010 No. 200

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the provisions in Part 1 of the Welfare Reform Act (Northern Ireland) 2007. Section 13 of that Act introduced work-related activity requirements for claimants of employment and support allowance who are not in the “support group” (defined in section 24(4) as a person in respect of whom it is determined that they have, or are to be treated as having, limited capability for work-related activity).

Regulation 3 sets out the circumstances in which the Department may require a person to undertake work-related activity and who such a requirement may be applied to. It also makes clear that a requirement must be reasonable in the view of the Department, having regard to the person’s circumstances and may not require the person to apply for a job, undertake work or undergo medical treatment as part of the work-related activity requirement. It also provides that a lone parent with a child under the age of 13 may only be required to undertake work-related activity during normal school hours.

Regulation 4 sets out the circumstances in which the Department may exercise the power to give a direction under section 15 of the Act.

Regulation 5 sets out the way in which the Department must notify a person of a requirement to undertake work-related activity, by including the requirement in a written action plan.

Regulation 6 provides that the requirement to undertake work-related activity at or by a particular time may be adjusted in certain circumstances.

Regulation 7 sets out a right to request reconsideration of the action plan. On receipt of the request the action plan must be reconsidered and a decision notified to the person.

Regulation 8 sets out what happens if a person fails to undertake work-related activity and provides an opportunity to show good cause for the failure. If good cause is not shown, a sanction may be given under regulation 63 of the Employment and Support Allowance (Northern Ireland) Regulations 2008 as amended by regulation 11(8) of these Regulations.

Regulation 9 makes provision for contracting out the work-related activity functions (with the exception of functions relating to the consideration of good cause and the imposition of sanctions).

Regulation 10 makes certain consequential and miscellaneous amendments to the Employment and Support Allowance Regulations (Northern Ireland) 2008 to allow for work-focused interviews to be carried out other than in person, substitute new good cause provision for work-focused interview failures which align with work-related activity failures, apply the existing sanctions regime for failure to take part in a work-focused interview to any failure to undertake work-related activity and provide that travel and other expenses paid to persons in connection with their undertaking of work-related activity are disregarded as income and capital for the purposes of income-related employment and support allowance.

Regulation 11 makes a consequential amendment to the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999.

Regulation 12 makes other minor consequential revocations.

Sections 13 and 15 of the Welfare Reform Act (Northern Ireland) 2007, some of the enabling provisions under which these Regulations are made, were brought into operation on 11th July 2011, by virtue of the Welfare Reform (2007 Act) (Commencement No. 9) Order (Northern Ireland) (S.R. 2011 No. 260 (C.18)).

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.

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