

EXPLANATORY MEMORANDUM

THE EMPLOYMENT AND SUPPORT ALLOWANCE (WORK-RELATED ACTIVITY) REGULATIONS (NORTHERN IRELAND) 2011

S.R. 2011 No. 265

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 10 and 11 of the Social Security (Northern Ireland) Order 1998 and sections 11, 12(1) and (2), 13 to 16, 17(3)(b) and 25 of the Welfare Reform Act (Northern Ireland) and is subject to the confirmatory resolution procedure.

2. Purpose

- 2.1 These Regulations allow the Department or the Department for Employment and Learning to specify particular work-related activity which a claimant must undertake to meet the requirement of the claim. They also make consequential amendments to the Employment and Support Allowance Regulations (Northern Ireland) 2008 and the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999.
- 2.2 These Regulations build on the provisions that already exist to require Employment and Support Allowance work-related activity group claimants to attend work-focused interviews. The Regulations enable work-related activity to be required at the discretion of personal advisers. The overall aim is to help claimants move closer to a return to work. All work-related activities will be recorded in an action plan, together with the timescale for completion and any evidence requirements. Once an activity is recorded in the action plan it will be mandatory for the claimant and must be completed by the deadline set unless the claimant requests, and is granted, a reconsideration. If a claimant fails to undertake work-related activity specified on the action plan a sanction may be applied to their benefit.
- 2.3 The Regulations make a number of consequential and miscellaneous amendments to the Employment and Support Allowance Regulations (Northern Ireland) 2008 to provide for work-focused interviews to be carried out other than in person, substitute the new good cause provisions for work-focused interview failures and provide that travel and other expenses paid to claimants in connection with undertaking work-related activity are disregarded as income and capital for the purposes of income-related Employment and Support Allowance.

- 2.4 They also provide that regulations regarding action plans relating to work-focused interviews are revoked as action plans will only be required if work-related activity is imposed under these Regulations. Provisions relating to work-focused health-related assessments which will no longer be required are also revoked.

3. Background

- 3.1 Work-related activity is an activity which helps the claimant to obtain work, remain in work or be more likely to obtain or remain in work.
- 3.2 Claimants who are assessed by the work capability assessment to be capable of undertaking work-related activity will be required to take steps to prepare for a return to work, including complying with directions where appropriate. Personal advisers will always encourage, persuade and support people to take up work-related activity which is considered necessary before considering requiring someone to undertake a particular activity.
- 3.3 The provisions are intended to be used flexibly so that the personal adviser can devise a tailored plan for each claimant. This means that the nature and amount of work-related activity required could vary from claimant to claimant but the requirement must always be reasonable in the claimant's circumstances. The overall aim is to help claimants move closer to a return to work. Personal advisers will have the flexibility to choose not to apply the work-related activity provisions if they do not believe they will be effective in moving a particular individual closer to work.
- 3.4 It is expected that decisions about the nature of work-related activity would be decided in consultation with the claimant.
- 3.5 There are three situations where a claimant can be directed to undertake a specific activity:
- where a claimant has been identified as having a barrier to work and has refused to address that barrier; or
 - the adviser considers that the activity in question is a prerequisite to the person's ability to obtain or remain in work; or
 - there is only one particular activity that the adviser considers appropriate for the person to undertake at that time.
- 3.6 In the case of a direction, the activity specified by the adviser is the only activity that the claimant can undertake in order to fulfil the work-related activity requirements.
- 3.7 If a claimant fails to undertake work-related activity specified on the action plan a sanction may be applied to their benefit. Employment and Support Allowance sanctions for failure to undertake work-related activity will operate in a similar way to work-focused interviews. Claimants will receive a 50 per cent reduction of their work-related activity component

for the first 4 weeks of the sanction period followed by a 100 per cent reduction of their work-related activity component if they continue with non compliance. The sanction remains in place until the claimant complies with either the original activity, or an alternative activity (with the consent of their adviser) in order to have their benefit reinstated.

- 3.8 Claimants in the Employment and Support Allowance Support Group (those who have both limited capability for work and limited capability for work-related activity) will not be required to undertake work-related activity. Lone parents on Employment and Support Allowance with a youngest child under the age of 5 and claimants who also receive Carers Allowance or a carer's premium will also not be required to undertake work-related activity.
- 3.9 The Regulations also makes a consequential amendment to the Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 to include the requirement to undertake work-related activity.

4. Consultation

- 4.1 The proposals to introduce specific work-related activity for Employment and Support Allowance claimants were consulted on as part of the Welfare Reform Act (Northern Ireland) 2010. As the 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 they do not have to be submitted to the Social Security Advisory Committee. The Social Security Advisory Committee considered proposals for the corresponding Great Britain amendment and decided that it did not want the Regulations formally referred.

5. Equality Impact

- 5.1 The impact of introducing a requirement for claimants of Employment and Support Allowance to undertake specific work-related activity on equality of opportunity among those groups listed in section 75 of the Northern Ireland Act 1998 was assessed as part of the Equality Impact Assessment of the Welfare Reform Act (Northern Ireland) 2010 and these Regulations do not have any additional implications for equality of opportunity.

6. Regulatory Impact

- 6.1 These Regulations do not require a Regulatory Impact Assessment as they do not impose any new costs on business, charities or voluntary bodies.

7. Financial Implications

- 7.1 There are no significant costs to the Department to implement these proposals.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the Rule—
- (a) is not incompatible with any of the Convention rights,
 - (b) is not incompatible with Community law,
 - (c) does not discriminate against a person or class of person on the ground of religious belief or political opinion, and
 - (d) does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1 Not applicable.

10. Parity or Replicatory Measure

- 10.1 The corresponding Great Britain Regulations are the Employment and Support Allowance (Work-Related Activity) Regulations 2011 (S.I. 2011/1349) and come into force on 1 June 2011. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.