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STATUTORY RULES OF NORTHERN IRELAND

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**2011 No. 76**

**The Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-related Activity) (Amendment) Regulations (Northern Ireland) 2011**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-related Activity) (Amendment) Regulations (Northern Ireland) 2011 and shall come into operation on 28th March 2011.

(2) In these Regulations—

“the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations (Northern Ireland) 2008(1); and

“the Reassessment Regulations” means the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010(2).

**Application**

2.—(1) These Regulations apply to—

- (a) a person who makes a claim for employment and support allowance on or after 28th March 2011 (including a claim in respect of any period before that date);
- (b) subject to paragraphs (2) and (3), a person who made a claim for employment and support allowance before 28th March 2011 in respect of whom a determination is made on or after that date as to whether that person has or is to be treated as having limited capability for work under Part 5 of the Employment and Support Allowance Regulations (limited capability for work) or as to whether that person has or is to be treated as having limited capability for work-related activity under Part 6 of those Regulations (limited capability for work-related activity);
- (c) subject to paragraphs (2) and (3), a person who is entitled to employment and support allowance immediately before 28th March 2011 in respect of whom, on or after that date—
  - (i) the Department determines afresh under regulation 19(7) of the Employment and Support Allowance Regulations (determination of limited capability for work) whether the person has or is to be treated as having limited capability for work;
  - (ii) the Department determines afresh under regulation 34(4) of the Employment and Support Allowance Regulations whether the person has or is to be treated as having limited capability for work-related activity; and
- (d) subject to paragraphs (2) and (3), a notified person as defined by regulation 4 of the Reassessment Regulations(3) in respect of whom a determination is made on or after 28th

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(1) S.R. 2008 No. 280

(2) S.R. 2010 No. 347

(3) Regulation 4 of the Reassessment Regulations defines a notified person as a person to whom a notice is issued. A notice commences the conversion phase under the Reassessment Regulations for persons who are entitled to an existing award. An

March 2011 as to whether that person has or is to be treated as having limited capability for work under Part 5 of the Employment and Support Allowance Regulations or as to whether that person has or is to be treated as having limited capability for work-related activity under Part 6 of the Employment and Support Allowance Regulations.

(2) Where, before 28th March 2011, a questionnaire relating to the previous version of Schedule 2 to the Employment and Support Allowance Regulations was issued to a person in accordance with regulation 21(1)(b) of those Regulations (information required for determining capability for work), regulation 3(5) does not apply to that person for the purposes of making a determination as to limited capability for work under Part 5 of the Employment and Support Allowance Regulations.

(3) Where, before 28th March 2011, a questionnaire relating to the previous version of Schedule 3 to the Employment and Support Allowance Regulations was issued to a person in accordance with regulation 36(1)(a) of those Regulations (information required for determining capability for work-related activity) regulation 3(6) does not apply to that person for the purposes of making a determination as to limited capability for work-related activity under Part 6 of the Employment and Support Allowance Regulations.

(4) In this Regulation “the previous version of Schedule 2 to the Employment and Support Allowance Regulations” and “the previous version of Schedule 3 to the Employment and Support Allowance Regulations” mean those Schedules as they have effect immediately before the date on which these Regulations come into operation.

(5) The provisions of paragraphs (2) to (4) do not apply to any determination made, on or after 28th September 2011.

### **Amendment of the Employment and Support Allowance Regulations**

**3.—**(1) The Employment and Support Allowance Regulations are amended in accordance with paragraphs (2) to (6).

(2) In regulation 20 (certain claimants to be treated as having limited capability for work)—

(a) at the end of paragraph (b)(i) insert “, or is likely to receive such treatment within 6 months after the date of determination under this sub-paragraph”; and

(b) after paragraph (f) insert—

“(g) any of the descriptors at paragraph 15 or 16 of Schedule 3 apply to the claimant.”.

(3) In regulation 25 (hospital in-patients), after paragraph (1) insert—

“(1A) The circumstances in which a claimant is to be regarded as undergoing treatment falling within paragraph (1) include where the claimant is attending a residential programme of rehabilitation for the treatment of drug or alcohol addiction.”.

(4) At the end of regulation 35(1)(b)(i) (certain claimants to be treated as having limited capability for work-related activity), insert “, or is likely to receive such treatment within 6 months after the date of the determination under this sub-paragraph”.

(5) For Schedule 2 substitute the Schedule in Schedule 1 of these Regulations.

(6) For Schedule 3 substitute the Schedule in Schedule 2 of these Regulations.

**Revocation**

4. Regulation 3(28) of the Employment and Support Allowance (Miscellaneous Amendments) Regulations (Northern Ireland) 2008(4) is revoked.

Sealed with the Official Seal of the Department for Social Development on 7th March 2011

(L.S.)

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Development