

EXPLANATORY MEMORANDUM

THE EMPLOYMENT AND SUPPORT ALLOWANCE (LIMITED CAPABILITY FOR WORK AND LIMITED CAPABILITY FOR WORK-RELATED ACTIVITY) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2011 S.R. 2011 No. 76

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 section 8(1), 9(1) and 25(2) of, and paragraph 1 and 9 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations amend the Employment and Support Allowance Regulations (Northern Ireland) 2008 relating to the work capability assessment with effect from 28 March 2011.
- 2.2 The 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.

Background

- 3.1 Employment and Support Allowance was introduced in October 2008 to replace Incapacity Benefit for new claims. It was accompanied by a new functional health assessment to determine entitlement – the Work Capability Assessment. The Work Capability Assessment is used to determine limited capability for work and limited capability for work-related activity.
- 3.2 The work capability assessment is based on the principle that a health condition or disability should not automatically be regarded as a barrier to work, and on evidence which shows that work is good for physical and mental well-being and can be beneficial for individuals with health conditions and disabilities and that being out of work can contribute to poorer health and other negative outcomes. It is a functional assessment which focuses not on an individual's medical condition but on the functional effects the condition has on that individual. The assessment considers a range of different activities related to physical, mental, cognitive and intellectual functions and certain additional criteria that do not directly measure function (such as terminal illness) to determine capability for work.

- 3.3 A review of the work capability assessment was undertaken by the Department for Work and Pensions to ensure that it was accurately identifying an individual's capability for work. The review considered both the appropriateness of the content of the assessment and how it could be amended to better account for an individual's adaptation to their condition, with a view to enabling a more accurate reflection of functional ability and capability for work.
- 3.4 The review engaged with medical experts, stakeholders and employers and found that generally the work capability assessment accurately identifies an individual's capability for work. The review also identified a number of ways in which the work capability assessment could be improved and made a series of recommendations, with the aim of—
- simplifying the descriptors by removing unnecessary complexities and overlaps to ensure ease of administration and transparency for the claimant;
 - expanding the support group in relation to certain mental function and communication problems;
 - ensuring that claimants who are awaiting or in between courses of chemotherapy are treated in the same way as those already receiving it, in that they are treated as having limited capability for work and limited capability for work-related activity and therefore placed in the support group;
 - taking greater account of the effects of adaptations and aids in improving an individual's function so that the assessment more accurately identifies those individuals who lack the capability to work, rather than assuming a particular functional impairment results in inability to work; and
 - improving the assessment of fluctuating conditions by ensuring that the effects of exhaustion are recognised, as well as the effects of discomfort.
- 3.5 To implement these recommendations the proposed Regulations make amendments to the Employment and Support Allowance Regulations (Northern Ireland) 2008 by—
- substituting the activities and descriptors in relation to physical disabilities and mental, cognitive and intellectual function, used for determining limited capability for work and limited capability for work-related activity;
 - expanding the provisions for treating a claimant as having limited capability for work and the provisions for treating a claimant as having limited capability for work-related activity to include individuals awaiting chemotherapy;
 - broadening the provisions in relation to hospital in-patients to include claimants attending residential rehabilitation for drug or alcohol problems; and
 - providing that where limited capability for work-related activity is demonstrated in relation to eating and drinking, the claimant is also

treated as having limited capability for work, which brings eating and drinking into line with the other activities.

4. Consultation

- 4.1 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.

5. Equality Impact

- 5.1 The Regulations make amendments to revise the content of the work capability assessment for Employment and Support Allowance. The changes will apply to all individuals equally irrespective of age, gender, religion, disability, dependants, political opinion, racial group, marital status or sexual orientation. Many Employment and Support Allowance claimants are likely to be considered to have a disability in relation to section 75 of the Northern Ireland Act 1998 so the proposed changes are of significance for disabled people. However, the changes to the work capability assessment are not targeting any particular group of claimants with health conditions in relation to their condition. The assessment is based on the severity of functional limitation caused by a condition, not on the basis of the condition itself, as different people may be affected in different ways by the same condition. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has assessed the proposals in line with the Department's Equality Scheme and concluded that they do not have significant 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 Costs to the Department in implementing these amendments include training for Social Security Agency decision makers and the health care professionals who carry out the assessments, along with changes to administrative processes and updating forms. The cost of delivery of the necessary training is not considered to be significant and can be funded from existing resources.

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 (Limited Capability for Work and Limited Capability for Work-related Activity) (Amendment) Regulations 2011 and come into force on 28 March 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.