
STATUTORY RULES OF NORTHERN IRELAND

2013 No. 246

**The Social Security (Miscellaneous Amendments
No. 2) Regulations (Northern Ireland) 2013**

Amendment of the Employment and Support Allowance Regulations

11.—(1) The Employment and Support Allowance Regulations (Northern Ireland) 2008⁽¹⁾ are amended in accordance with paragraphs (2) to (3).

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) omit the definition of “relevant disease”⁽²⁾, and

(ii) omit the definition of “service user group”⁽³⁾;

(b) after paragraph (7)⁽⁴⁾ add—

“(8) References in these Regulations to a person or claimant participating as a service user are to—

(a) a person who is being consulted by or on behalf of—

(i) a body which has a statutory duty to provide services in the field of health, social care or social housing, or

(ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,

in their capacity as a user, potential user, carer of a user or person otherwise affected by the provisions of those services; or

(b) the carer of a person consulted under sub-paragraph (a).”.

(3) In regulation 4 (the end of the assessment phase)—

(a) in paragraph (1)⁽⁵⁾ for “paragraph (2)” substitute “paragraphs (2) and (3)”; and

(b) for paragraph (2) substitute—

“(2) Where paragraph (3) applies, the assessment phase is to end when it is determined whether the claimant has limited capability for work.

(3) This paragraph applies where, at the end of the 13 week period referred to in paragraph (1)—

(a) the claimant has not been assessed in accordance with a limited capability for work assessment; and

(1) S.R. 2008 No. 280; relevant amending Regulations are; S.R. 2008 No. 413, S.R. 2009 Nos. 68 and 338, S.R. 2010 No. 200, S.R. 2011 Nos. 76, 135, 357 and 368 and S.R. 2013 No. 2

(2) The definition of “relevant disease” was amended by regulation 21(2)(c) of S.R. 2011 No. 357

(3) The definition of “service user group” was inserted by regulation 8(2)(b) of S.R. 2009 No. 338

(4) Paragraph (7) was added by regulation 5(2)(b) of S.R. 2011 No. 368

(5) Paragraph (1) was amended by regulation 9(3) of S.R. 2010 No. 200

- (b) the claimant has not been treated as having limited capability for work in accordance with regulations 20, 25, 26, 29 or 33(2) (persons to be treated as having limited capability for work).”.
- (4) In regulation 5 (the assessment phase – previous claimants)—
- (a) in paragraph (1)(b)(6) for “paragraphs (3) and (4)” substitute “paragraphs (3), (3A) and (4)”;
- (b) for paragraph (3) substitute—
- “(3) Where paragraph (3A) applies, the assessment phase is to end when it is determined whether the claimant has limited capability for work.
- (3A) This paragraph applies where on the day referred to in paragraph (1)(b)—
- (a) the claimant has not been assessed in accordance with a limited capability for work assessment; and
- (b) the claimant has not been treated as having limited capability for work in accordance with regulations 20, 25, 26, 29 or 33(2).”; and
- (c) in paragraph (4)(a)(7) for “paragraph (3) does” substitute “paragraphs (3) and (3A) do”.
- (5) In the definition of “advanced education” in regulation 9(5) (condition relating to youth – claimants aged 20 or over but under 25)—
- (a) in paragraph (a) for “Technician” substitute “Technology”; and
- (b) in paragraph (b) for “Technician” substitute “Technology”.
- (6) In regulation 19 (determination of limited capability for work)—
- (a) in paragraph (3)—
- (i) for “any descriptor” substitute “each descriptor”, and
- (ii) after “listed in that Schedule” insert “which applies in the claimant’s case”;
- (b) in paragraph (5)(c)(i)(8) after “disablement;” insert “or”; and
- (c) in paragraph (6) for “apply” substitute “applies”.
- (7) In regulation 20 (certain claimants to be treated as having limited capability for work)—
- (a) renumber the existing provision as paragraph (1);
- (b) in that paragraph (1)(c)(9)(i)—
- (i) omit “, or from work of such a kind,”, and
- (ii) after “made” insert “or given”;
- (c) in paragraph (1)(e)(i) after “period” insert “(which has the meaning it has in section 35(2) of the Contributions and Benefits Act)”;
- (d) in paragraph (1)(g)(10)—
- (i) insert “the claimant meets” at the beginning of the paragraph, and
- (ii) for “apply to the claimant” substitute “in accordance with regulation 34(2), (3) and (6)(11) where applicable”; and
- (e) after paragraph (1) insert—

(6) Paragraph (1)(b) was amended by regulation 9(4)(a) of [S.R. 2010 No. 200](#)

(7) Paragraph (4)(a) was added by regulation 9(4)(c) of [S.R. 2010 No. 200](#)

(8) Paragraph (5) was substituted by regulation 3(2)(b) of [S.R. 2013 No. 2](#)

(9) Paragraph 1(c) was amended by regulation 21(4) of [S.R. 2011 No. 357](#)

(10) Paragraph (1)(g) was inserted by regulation 3(2)(b) of [S.R. 2011 No. 76](#)

(11) Paragraph (3) was substituted by regulation 4(2)(a) of [S.R. 2013 No. 2](#) and paragraph (6) is inserted by regulation 11(16) (c) of these Regulations

- “(2) In this regulation, “relevant disease” means an infectious disease to which—
- (a) section 15(1) of the Public Health Act (Northern Ireland) 1967(**12**) (power to require person in contact with infectious disease to discontinue employment and compensation therefor.) applies;
 - (b) regulations 8 and 9 of the Public Health (Ships) Regulations (Northern Ireland) 2008(**13**) (examination etc., of persons on ships and powers in respect of persons leaving ships) apply; or
 - (c) regulations 7 and 8 of the Public Health (Aircraft) Regulations (Northern Ireland) 2008(**14**) (examination etc., of persons on aircraft and powers in respect of persons leaving aircraft) apply.”.

(8) In regulation 21(2) (information required for determining capability for work) for “shall” substitute “must”.

(9) In regulation 22 (failure to provide information in relation to limited capability for work)—

 - (a) for paragraph (2)(a)(**15**) substitute—
 - “(a) the claimant was sent a further request at least 3 weeks after the date of the first request;” and
 - (b) in paragraph (2)(b)(**16**) omit from “the claimant” to “request, and”.
 - (10) In regulation 23 (claimant may be called for a medical examination to determine whether the claimant has limited capability for work)—
 - (a) in paragraph (2) for “listed” substitute “mentioned”; and
 - (b) for paragraph (3) substitute—
 - “(3) Paragraph (2) does not apply unless—
 - (a) written notice of the date, time and place for the examination was sent to the claimant at least 7 days in advance; or
 - (b) that claimant agreed to accept a shorter period of notice whether given in writing or otherwise.”.
 - (11) In regulation 26(1)(**17**) (claimants receiving certain regular treatment) after “engaged in” insert “receiving”.
 - (12) After regulation 29(3)(**18**) (exceptional circumstances) add—
 - “(4) In this regulation “medical evidence” means—
 - (a) evidence from a health care professional approved by the Department; and
 - (b) evidence (if any) from any health care professional or a hospital or similar institution,or such part of such evidence as constitutes the most reliable evidence available in the circumstances.”.
 - (13) In regulation 30 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made)—

(12) 1967 c. 36; section 15(1) was amended by paragraph 75(c) of Schedule 16 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N. I. 14)) and Article 32(1) and (2)(c) of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1))

(13) S.R. 2008 No. 333

(14) S.R. 2008 No. 436

(15) Paragraph (2)(a) was amended by regulation 21(5)(a) of S.R. 2011 No. 357

(16) Paragraph (2)(b) was amended by regulation 21(6)(a) and (b) of S.R. 2011 No. 357

(17) Paragraph (1) was amended by regulation 3(5) of S.R. 2013 No. 2

(18) Paragraph (3) was added by regulation 3(6)(b) of S.R. 2013 No.2

- (a) in paragraph (2)(b)—
 - (i) after “claim” insert “for employment and support allowance”, and
 - (ii) for “unless” to the end substitute “unless paragraph (4) applies.”;
 - (b) omit paragraph (2)(c)(19); and
 - (c) after paragraph (3) add—
 - “(4) This paragraph applies where—
 - (a) the claimant is suffering from some specific disease or bodily or mental disablement from which the claimant was not suffering at the time of that determination;
 - (b) a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened; or
 - (c) in the case of a claimant who was treated as not having limited capability for work under regulation 22 (failure to provide information in relation to limited capability for work), the claimant has since provided the information requested under that regulation.”.
- (14) In regulation 32(1)(20) (certain claimants to be treated as not having limited capability for work) omit “for Defence”.
- (15) In regulation 32A(1)(21) (certain claimants to be treated as not having limited capability for work at the end of the period covered by medical evidence) omit “then”.
- (16) In regulation 34 (determination of limited capability for work-related activity)—
- (a) in paragraph (1)—
 - (i) for “claimant’s”, the second time it occurs, substitute “claimant has limited”,
 - (ii) omit “shall be limited”, and
 - (iii) after “limitation” for “shall” substitute “must”;
 - (b) omit paragraph (3A)(22); and
 - (c) after paragraph (5) add—
 - “(6) In assessing the extent of a claimant’s capability to perform any activity listed in Schedule 3, it is a condition that the claimant’s incapability to perform the action arises—
 - (a) in respect of descriptors 1 to 8, 15(a) and (b) and 16(a) and (b)—
 - (i) from a specific bodily disease or disablement, or
 - (ii) as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement; or
 - (b) in respect of descriptors 9 to 14, 15(c) and (d) and 16(c) and (d)—
 - (i) from a specific mental illness or disablement, or
 - (ii) as a direct result of treatment provided by a registered medical practitioner for a specific mental illness or disablement.”.
- (17) In regulation 36(2) (information required for determining capability for work-related activity) for “shall” substitute “must”.
- (18) In regulation 37(2) (failure to provide information in relation to work-related activity)—

(19) Paragraph (2)(c) was added by regulation 9(8) of [S.R. 2010 No. 200](#)

(20) Regulation 32 was substituted by regulation 3(5) of [S.R. 2008 No. 413](#)

(21) Regulation 32A was inserted by regulation 9(9) of [S.R. 2010 No. 200](#) and paragraph (1) was amended by regulation 14(3) (a) of [S.R. 2011 No. 135](#)

(22) Paragraph (3A) was inserted by regulation 4(2)(b) of [S.R. 2013 No. 2](#)

- (a) for sub-paragraph (a)(**23**) substitute—
 - “(a) the claimant was sent a further request at least 3 weeks after the date of the first request; and”; and
 - (b) in sub-paragraph (b)(**24**) omit from “the claimant” to “, and”.
- (19) In regulation 38 (claimant may be called for a medical examination to determine whether the claimant has limited capability for work-related activity)—
- (a) in paragraph (2) for “referred to” substitute “mentioned”; and
 - (b) for paragraph (3) substitute—
 - “(3) Paragraph (2) does not apply unless—
 - (a) written notice of the date, time and place for the examination was sent to the claimant at least 7 days in advance; or
 - (b) the claimant agreed to accept a shorter period of notice whether given in writing or otherwise.”.
- (20) In regulation 40(2)(d) (a claimant who works to be treated as not entitled to an employment and support allowance) after “earnings” insert “or”.
- (21) In regulation 45 (exempt work)—
- (a) for paragraph (4)(b) substitute—
 - “(b) is done by a claimant who has or is treated as having limited capability for work-related activity.”; and
 - (b) after paragraph (4)(b) insert—
 - “(4A) For the purposes of paragraph (4)(a), a period of specified work begins on the first day on which any specified work is undertaken and continues for a period of 52 weeks, whether or not any further specified work is undertaken during that period.”.
- (22) In regulation 70(4)(**25**) (special cases: supplemental – persons from abroad)—
- (a) for sub-paragraph (h) substitute—
 - “(h) a person who has been granted leave or who is deemed to have been granted leave outside the rules made under section 3(2) of the Immigration Act 1971 where that leave is—
 - (i) discretionary leave to enter or remain in the United Kingdom;
 - (ii) leave to remain under the Destitution Domestic Violence concession, or
 - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005;”;
 - (b) at the end of sub-paragraph (i) add “or”; and
 - (c) omit sub-paragraphs (k) and (l)(**26**).
- (23) In regulation 76(1)(**27**) (deductions for councillor’s allowance) for “person” substitute “claimant”.
- (24) In regulation 95 (earnings of employed earners)—
- (a) in paragraph (2)(f)(**28**) for “claimant’s participation in a service user group” substitute “claimant participating as a service user.”; and

(23) Sub-paragraph (a) was amended by regulation 21(5)(b) of [S.R. 2011 No. 357](#)

(24) Sub-paragraph (b) was amended by regulation 21(6)(b) of [S.R. 2011 No. 357](#)

(25) Regulation 70(4) was amended by regulation 7 of [S.R. 2013 No. 167](#)

(26) Sub-paragraph (k) was amended by regulation 7(a) of, and sub-paragraph (l) was added by regulation 7(b) of [S.R. 2009 No. 68](#)

(27) Regulation 76(1) was amended by regulation 14(5)(a) of [S.R. 2011 No. 135](#)

(28) Paragraph (2)(f) was added by regulation 8(6) of [S.R. 2009 No. 338](#)

(b) in paragraph (4)(b) for “(e)” substitute “(f)”.

(25) In regulation 106(9)(**29**) (notional income – deprivation and income on application) for “claimant’s participation in a service user group” substitute “claimant participating as a service user”.

(26) In regulation 107(8)(**30**) (notional income – income due to be paid or income paid to or in respect of a third party) for “claimant’s participation in a service user group” substitute “claimant participating as a service user”.

(27) In regulation 108(4)(**31**) (notional income – other income) for “claimant’s participation in a service user group” substitute “claimant participating as a service user”.

(28) For regulation 168 (reduction in certain cases) substitute—

“Reduction in certain cases

168.—(1) Where a disqualification is to be made in accordance with regulation 157 in respect of a part-week, the amount referred to in paragraph (2) is to be payable by way of an employment and support allowance in respect of that part-week.

(2) The amount mentioned in paragraph (1) is—

(a) one seventh of the employment and support allowance which would have been paid for the part-week if—

(i) there was no disqualification under regulation 157, and

(ii) it was not a part-week; multiplied by

(b) the number of days in the part-week in respect of which no disqualification is to be made in accordance with regulation 157.”.

(29) In Part 1 (physical disabilities) of Schedule 2(**32**) (assessment of whether a claimant has limited capability for work)—

(a) in column 2, opposite the entry for paragraph 1 in column 1(**33**) (activity)—

(i) in paragraphs 1(a), (c) and (d) after “cannot” insert “unaided by another person”,

(ii) in paragraph 1(b)—

(aa) after “cannot” insert “unaided by another person”; and

(bb) after “steps” omit “unaided by another person”, and

(iii) in paragraph 1(e) for “apply” substitute “applies”;

(b) in column 2, opposite the entry for paragraph 5 in column 1—

(i) for paragraph 5(a) substitute—

“(a) cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand.”;

(ii) in paragraph 5(c) after “mark” insert “with either hand”, and

(iii) in paragraph 5(e) for “apply” substitute “applies”;

(c) in column 2, opposite the entry for paragraph 7 in column 1(**34**)—

(i) in paragraph 7(a)—

(aa) after “message” insert “, such as the location of a fire escape,”; and

(29) Regulation 106(9) was added by regulation 8(8)(b) of S.R. 2009 No. 338

(30) Regulation 107(8) added by regulation 8(9) of S.R. 2009 No. 338

(31) Regulation 108(4) added by regulation 8(10) of S.R. 2009 No. 338

(32) Schedule 2 was substituted by regulation 3(5) of and Schedule 1 to S.R. 2011 No. 76

(33) The wording in paragraph 1 was substituted by regulation 5(1)(a) of S.R. 2013 No. 2

(34) The wording in column 1 was substituted by regulation 5(1)(e) of S.R. 2013 No. 2

- (bb) after “impairment,” omit the words to the end of the sentence,
 - (ii) in paragraph 7(d) for “apply” substitute “applies”; and
 - (d) in column 2, opposite the entry for paragraph 9 in column 1(**35**), in paragraph 9(c) for “None of the above apply” substitute “Neither of the above applies”.
- (30) In Part 2 (mental, cognitive and intellectual function assessment) of Schedule 2—
- (a) in column 2, opposite the entry for paragraph 12 in column 1—
 - (i) in paragraph 12(a) for “they require” substitute “the claimant requires”,
 - (ii) in paragraph 12(b) for “they frequently require” substitute “the claimant frequently requires”, and
 - (iii) in paragraph 12(c) for “they occasionally require” substitute “the claimant occasionally requires”;
 - (b) in column 2, opposite the entry for paragraph 13 in column 1—
 - (i) in paragraph 13(b) after “2” insert “sequential”,
 - (ii) in paragraph 13(c) after “2” insert “sequential”, and
 - (iii) in paragraph 13(d) for “apply” substitute “applies”; and
 - (c) in column 2, opposite the entry for paragraph 16 in column 1—
 - (i) in paragraph 16(a), (b) and (c) for “individual” substitute “claimant”, and
 - (ii) in paragraph 16(d) for “apply” substitute “applies”.
- (31) In Schedule 3 (assessment of whether a claimant has limited capability for work-related activity)—
- (a) in column 2, opposite the entry for paragraph 5 in column 1, for paragraph 5 substitute—

“5. Cannot press a button (such as a telephone keypad) with either hand or cannot turn the pages of a book with either hand.”;
 - (b) in column 2, opposite the entry for paragraph 7 in column 1(**36**)—
 - (i) after “message” insert “, such as the location of a fire escape,”, and
 - (ii) after “impairment” omit the words to the end of the sentence;
 - (c) in column 2, opposite the entry for paragraph 10 in column 1, for “they require” substitute “the claimant requires”;
 - (d) in column 2, opposite the entry for paragraph 13 in column 1, for “individual” substitute “claimant”; and
 - (e) in column 2, opposite the entry for paragraph 15 in column 1, in paragraph 15(b) for “stopping,” substitute “stopping or”.
- (32) In column 1 of paragraph 13(**37**) of Part 2 (amounts prescribed for the purposes of sections 2(1) and 4(2) of the Act) of Schedule 5 (special cases) for “the other” substitute “each”.
- (33) In paragraph 2A(**38**) of Schedule 8 (sums to be disregarded in the calculation of income other than earnings) for “claimant’s participation in a service user group” substitute “claimant participating as a service user”.

(35) The wording in column 1 was substituted by regulation 5(1)(g)(i) of [S.R. 2013 No. 2](#)

(36) The wording in column 1 was substituted by regulation 6(c) of [S.R. 2013 No. 2](#)

(37) Paragraph 13 was amended by regulation 5(4)(b) of [S.R. 2010 No. 58](#)

(38) Paragraph 2A was inserted by regulation 8(18)(a) of [S.R. 2009 No. 338](#)