

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MEDICAL EVIDENCE) AND STATUTORY SICK PAY
(MEDICAL EVIDENCE) (AMENDMENT) REGULATIONS (NORTHERN IRELAND)
2022

S. R. 2022 No. 120

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 This Statutory Rule is made under sections 5(1)(j) and (1A), 12(2) and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992 and Articles 16(1), 74(1) and paragraph 3 of Schedule 4 to, the Social Security (Northern Ireland) Order 1998 and is subject to the negative resolution procedure

2. Purpose

- 2.1 At present doctors are required to complete and sign the Statement of Fitness for Work (commonly referred to as ‘fit note’) in ink. The aim of these regulations is to improve the process for completing and receiving a fit note by removing the obstacles to digital issuing of fit notes by removing the requirement for fit notes to be completed and signed in ink.

3. Legislative Context

- 3.1 The statement of fitness for work is regulated by the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 for Social Security and the Statutory Sick Pay (Medical Evidence) Regulations (Northern Ireland) 1985 for Statutory Sick Pay. The Regulations specify the medical evidence which can be required, and specify the form in which medical evidence is to be provided, including who is to sign the statement and that the statement must be completed, and signed in ink.
- 3.2 Regulation 2(2), (3) and (4) amend the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 by removing the requirement for a doctor’s statement to be completed in ink or indelible substance and for it to be signed by the doctor providing the statement. In place of this regulation 2(4) (c) requires that the name of the doctor is contained within the statement. Regulations 2(2) and (3) also amend the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 to permit the statement to be on the form provided for in the new Part IIA, as well as Part II. Regulation 2(5) inserts a new version of the doctor’s statement which will, over time, replace the version currently set out in Part II. As the forms in both Part II and 11A will be used in parallel for an interim period, Part II has not yet been repealed.
- 3.3 Regulation 3(2) amends part of the definition of “signature” which is rendered superfluous by Regulation 3(3)-(5). Regulation 3(3), (4) and (5) amend the Statutory Sick

Pay (Medical Evidence) Regulations (Northern Ireland) 1985 by removing the requirement for a doctor's statement to be completed in ink or indelible substance and for it to be signed by the doctor providing the statement. In place of this regulation 3(5) (c) requires that the name of the doctor is contained within the statement. Regulations 3(3) and (4) also amend the Statutory Sick Pay (Medical Evidence) Regulations (Northern Ireland) 1985 to permit the statement to be on the form provided for in Part IIA, as well as Part 11. Regulation 3(6) inserts a new Part 11A which contains a version of the doctor's statement which will, over time, replace the version currently set out in Part II. As the forms in both Part II and IIA will be used in parallel for an interim period, Part 11 has not yet been repealed.

4. Policy background

- 4.1 This Statutory Rule removes barriers to the fit note being completed, authorised and issued digitally where systems and capability allow by removing the requirement to complete and sign a fit note in ink.
- 4.2 Currently, Fit Notes are issued and authorised by doctors, usually General Practitioners (GPs), following an assessment of a patient's fitness for work and are used as medical evidence to demonstrate eligibility for Statutory Sick Pay and Social Security benefits. Fit notes are issued in two settings; primary care, where they are embedded in the GP IT systems and in secondary care where they are issued via paper pads which are supplied by the Health and Social Care (NI) Business Services Organisation.
- 4.3 Both the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 and the Statutory Sick Pay (Medical Evidence) Regulations (Northern Ireland) 1985 require the fit note to be completed in ink or other indelible substance and signed in ink, meaning it must be printed or completed by hand and signed by hand in order to comply with the regulations. This is inconsistent with digital authorisation and issuing of the fit note.

5. Consultation

- 5.1 There is no requirement to consult on these regulations.

6. Equality Impact

- 6.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise and concluded that the changes did not have any significant implications for equality of opportunity. In light of this, the Department considered that an equality impact assessment was not necessary.

7. Regulatory Impact

- 7.1 Not applicable.

8. Financial Implications

8.1 None for the Department

9. Section 24 of the Northern Ireland Act 1998

9.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that 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.

10. EU Implications

10.1 Not applicable

11. Parity or Replicatory measure

11.1 These Regulations are equivalent to The Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2022 in Great Britain which come into force on 6th April 2022.

12. Additional Information

12.1 Guidance is available on NIDirect (www.nidirect.gov.uk) for individuals, doctors and employers to understand how to comply with fit note regulations.