STATUTORY RULES OF NORTHERN IRELAND

2013 No. 2

SOCIAL SECURITY

The Employment and Support Allowance (Amendment) Regulations (Northern Ireland) 2013

Made - - - -	*7th January 2013*
Coming into operation	*28th January 2013*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 8(1), (2), (3) and (5), 9(1), (2) and (3), 25(2) and 28(2) of, and paragraphs 1 and 9 of Schedule 2 to, the Welfare Reform Act (Northern Ireland) 2007 [F1].

Annotations:
F1 2007 c. 2 (N.I.)

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Amendment) Regulations (Northern Ireland) 2013 and shall come into operation on 28th January 2013.

(2) In these Regulations—

"the Employment and Support Allowance Regulations" means the Employment and Support Allowance Regulations (Northern Ireland) 2008 [F2]; and

"the commencement date" means the date on which these Regulations come into operation.

Annotations:
F2 S.R. 2008 No. 280

Application, transitional and savings provisions

2.—(1) Subject to paragraphs (2) and (3), these Regulations apply to—

(a) a person who makes a claim for an employment and support allowance on or after the commencement date (including a claim in respect of any period beginning before that date);

(b) a person who made a claim for an employment and support allowance before the commencement date in respect of whom a determination is made on or after that date—

(i) 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

(ii) 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;

(c) a person who is entitled to an employment and support allowance immediately before the commencement date 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 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) a notified person within the meaning of regulation 4 of the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 [F3] in respect of whom a determination is made on or after the commencement date as to whether that person—

(i) has or is to be treated as having limited capability for work under Part 5 of the Employment and Support Allowance Regulations, or

(ii) is to be treated as having limited capability for work-related activity under Part 6 of those Regulations.

(2) Where a person has been issued with a questionnaire which relates to the provisions of Schedule 2 of the Employment and Support Allowance Regulations as they had effect immediately before the commencement date, regulation 5 does not apply for the purposes of making a determination on or after that date as to that person's limited capability for work under Part 5 of the Employment and Support Allowance Regulations and, for those purposes, the provisions of Schedule 2 of the Employment and Support Allowance Regulations are to continue to apply in respect of that person as they had effect immediately before the commencement date.

(3) Where a person has been issued with a questionnaire which relates to the provisions of Schedule 3 of the Employment and Support Allowance Regulations as they had effect immediately before the commencement date, regulation 6 does not apply for the purposes of making a determination on or after that date as to that person's limited capability for work under Part 6 of the Employment and Support Allowance Regulations and, for those purposes, the provisions of Schedule 3 of the Employment and Support Allowance Regulations are to continue to apply in respect of that person as they had effect immediately before the commencement date.

(4) The provisions of paragraphs (2) to (3) do not apply to any determination made in respect of a person on or after 28th July 2013.

Annotations:

F3 S.R. 2010 No. 312. Regulation 4 provides that a notified person is a person to whom a notice is issued. A notice may be issued to any person who is entitled to an existing award. The issue of the notice begins the conversion phase in relation to that person with effect from the date of issue. An existing award is an award of incapacity benefit, severe disablement allowance, or income support on the grounds of incapacity (as defined by paragraph 11 of Schedule 4 to the Welfare Reform Act (Northern Ireland) 2007 (2007 c. 2) (N.I.))

Amendment of Part 5 of the Employment and Support Allowance Regulations

3.—(1) Part 5 of the Employment and Support Allowance Regulations (limited capability for work) is amended in accordance with paragraphs (2) to (6).

(2) In regulation 19 (determination of limited capability for work)—

(a) for paragraph (4) substitute—

"(4) In assessing the extent of a claimant's capability to perform any activity listed in Part 1 of Schedule 2, the claimant is to be assessed as if—

(a) fitted with or wearing any prosthesis with which the claimant is normally fitted or normally wears; or, as the case may be,

(b) wearing or using any aid or appliance which is normally, or could reasonably be expected to be, worn or used."; and

(b) for paragraph (5) substitute—

"(5) In assessing the extent of a claimant's capability to perform any activity listed in Schedule 2, it is a condition that the claimant's incapability to perform the activity arises—

(a) in respect of any descriptor listed in Part 1 of Schedule 2, from a specific bodily disease or disablement;

(b) in respect of any descriptor listed in Part 2 of Schedule 2, from a specific mental illness or disablement; or

(c) in respect of any descriptor or descriptors listed in—

(i) Part 1 of Schedule 2, as a direct result of treatment provided by a registered medical practitioner for a specific physical disease or disablement;

(ii) Part 2 of Schedule 2, as a direct result of treatment provided by a registered medical practitioner for a specific mental illness or disablement.".

(3) In regulation 20 [F4] (certain claimants to be treated as having limited capability for work), for paragraph (b) substitute—

"(b) the claimant is—

(i) receiving treatment for cancer by way of chemotherapy or radiotherapy,

(ii) likely to receive such treatment within 6 months after the date of the determination of capability for work, or

(iii) recovering from such treatment,

and the Department is satisfied that the claimant should be treated as having limited capability for work.".

(4) For regulation 25 [F5] (hospital in-patients) substitute—

"**Hospital patients**

25.—(1) A claimant is to be treated as having limited capability for work on any day on which that claimant is undergoing medical or other treatment as a patient in a hospital or similar institution, or on any day which is a day of recovery from that treatment.

(2) 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.

(3) For the purposes of this regulation, a claimant is to be regarded as undergoing treatment as a patient in a hospital or similar institution only if that claimant has been advised by a health care professional to stay in a hospital or similar institution for a period of 24 hours or longer.

(4) For the purposes of this regulation, "day of recovery" means a day on which a claimant is recovering from treatment as a patient in a hospital or similar institution and the Department is satisfied that the claimant should be treated as having limited capability for work on that day.".

(5) In regulation 26(1)(b) (claimants receiving certain regular treatment) after "plasmapheresis" omit "or by way of radiotherapy".

(6) In regulation 29 (exceptional circumstances)—

(a) in paragraph (2) insert " Subject to paragraph (3) " at the beginning of the paragraph; and

(b) after paragraph (2) add—

"(3) Paragraph (2)(b) does not apply where the risk could be reduced by a significant amount by—

(a) reasonable adjustments being made in the claimant's workplace, or

(b) the claimant taking medication to manage the claimant's condition where such medication has been prescribed for the claimant by a registered medical practitioner treating the claimant.".

Annotations:

F4 Regulation 20(b) was amended by regulation 3(2)(a) of S.R. 2011 No. 76

F5 Regulation 25 was amended by regulation 3(3) of S.R. 2011 No. 76

Amendment of Part 6 of the Employment and Support Allowance Regulations

4.—(1) Part 6 of the Employment and Support Allowance Regulations (limited capability for work-related activity) is amended in accordance with paragraphs (2) and (3).

(2) In regulation 34 (determination of limited capability for work-related activity)—

(a) for paragraph (3) substitute—

"(3) In determining whether a descriptor applies to the claimant, the claimant is to be assessed as if—

(a) the claimant were fitted with or wearing any prosthesis with which the claimant is normally fitted or normally wears; or, as the case may be,

(b) wearing or using any aid or appliance which is normally, or could reasonably be expected to be, worn or used."; and

F6(b) . . . . . .

(3) In regulation 35(1) F7 (certain claimants to be treated as having limited capability for work-related activity) for sub-paragraph (b) substitute—

"(b) the claimant is—

(i) receiving treatment for cancer by way of chemotherapy or radiotherapy,

(ii) likely to receive such treatment within 6 months after the date of the determination of capability for work-related activity, or

(iii) recovering from such treatment,

and the Department is satisfied that the claimant should be treated as having limited capability for work-related activity; or".

Annotations:

F6 Reg. 4(2)(b) revoked (29.10.2013) by The Social Security (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 2013 (S.R. 2013/246), regs. 1(1), 12, **Sch.**

F7 Regulation 35(1) was amended by regulation 3(4) of S.R. 2011 No. 76

Amendment of Schedule 2 of the Employment and Support Allowance Regulations

5.—(1) In Part 1 of Schedule 2 [F8] to the Employment and Support allowance Regulations (assessment of whether a claimant has limited capability for work)—

(a) in Activity 1 for the wording in column 1 substitute—

"1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally, or could reasonably be, worn or used.";

(b) in Activity 2, in column 2—

(i) in paragraph 2(b)(ii) after "(even in an adjustable chair)" insert—

"; or

(iii) a combination of (i) and (ii),";

(ii) in paragraph 2(c)(ii) after "(even in an adjustable chair)" insert—

"; or

(iii) a combination of (i) and (ii),";

(c) in Activity 5, in column 2, in paragraph 5(d) after "Cannot" insert " single-handedly ";

(d) in Activity 6, for the wording in column 1 substitute—

"6. Making self understood through speaking, writing, typing, or other means which are normally, or could reasonably be, used, unaided by another person.";

(e) in Activity 7, for the wording in column 1 substitute—

"7. Understanding communication by—

(a) verbal means (such as hearing or lip reading) alone,

(b) non-verbal means (such as reading 16 point print or Braille) alone, or

(c) a combination of (a) and (b),

using any aid that is normally, or could reasonably be, used, unaided by another person.";

(f) in Activity 8, for the wording in column 1 substitute—

"8. Navigation and maintaining safety, using a guide dog or other aid if either or both are normally, or could reasonably be, used.";

(g) in Activity 9—

(i) for the wording in column 1 substitute—

"9. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting), despite the wearing or use of any aids or adaptations which are normally, or could reasonably be, worn or used.",

(ii) in column 2 in paragraph 9(b) for "At risk" substitute " The majority of the time is at risk ".