STATUTORY RULES OF NORTHERN IRELAND

2011 No. 265

SOCIAL SECURITY

The Employment and Support Allowance (Work-related Activity) Regulations (Northern Ireland) 2011

Made - - - -	*11th July 2011*
Coming into operation	*12th July 2011*

Approved by resolution of the Assembly on 22nd November 2011

The Department for Social Development makes the following Regulations in exercise of the powers conferred by Articles 10 and 11 of the Social Security (Northern Ireland) Order 1998(**1**) and sections 11, 12(1) and (2), 13, 14, 15, 16, 17(3)(b) and 25 of the Welfare Reform Act (Northern Ireland) 2007(**2**).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Work-related Activity) Regulations (Northern Ireland) 2011 and shall come into operation on 12 July 2011.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Welfare Reform Act (Northern Ireland) 2007;

"action plan" means an action plan in accordance with regulation 5;

"carer's allowance", "child", "lone parent", "medical treatment" and "working day" have the meaning given in regulation 2(1) of the Employment and Support Allowance Regulations;

"the Department", for the purposes of Part 2 and 3, includes the Department for Employment and Learning;

(**1**) S.I. 1998/1506 (N.I. 10); paragraph (1) of Article 11 was amended by paragraph 17(a) of Schedule 6 and paragraph (4) was repealed by Schedule 9 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671)

(**2**) 2007 c. 2; sections 12(1), 13 and 15 were amended respectively by sections 3(3) and (4) and 10 of the Welfare Reform Act (Northern Ireland) 2010 (c.13 (N.I.))

"the Employment and Support Allowance Regulations" means the Employment and Support Allowance Regulations (Northern Ireland) 2008(**3**);

"member of the support group" has the meaning given by section 24(4) of the Act; and

"work-related activity" has the meaning given by section 13(7) of the Act.

(2) For the purpose of these Regulations where a written notice is given by sending it by post it is taken to have been received on the second working day after posting.

PART 2

Work-related Activity

Requirement to undertake work-related activity

3.—(1) The Department may require a person who satisfies the requirements in paragraph (2) to undertake work-related activity as a condition of continuing to be entitled to the full amount of employment and support allowance payable to that person.

(2) The requirements referred to in paragraph (1) are that the person is—

(a) required to take part in, or has taken part in, one or more work-focused interviews pursuant to regulation 54 of the Employment and Support Allowance Regulations;

(b) not a lone parent who is responsible for and a member of the same household as a child under the age of 5;

(c) not entitled to carer's allowance; and

(d) not entitled to a carer premium under paragraph 8 of Schedule 4 to the Employment and Support Allowance Regulations.

(3) A requirement to undertake work-related activity ceases to have effect if the person becomes a member of the support group.

(4) A requirement imposed under paragraph (1)—

(a) must be reasonable in the view of the Department, having regard to the person's circumstances; and

(b) may not require the person to—

(i) apply for a job or undertake work, whether as an employee or otherwise, or

(ii) undergo medical treatment.

(5) A person who is a lone parent and in any week is responsible for and a member of the same household as a child under the age of 13, may only be required to undertake work-related activity under paragraph (1) during the child's normal school hours.

Directions about work-related activity

4.—(1) The circumstances in paragraph (2) are the circumstances prescribed for the purposes of section 15(1)(a) of the Act.

(2) The circumstances referred to in paragraph (1) are that—

(a) the person has been identified by the Department as having a barrier to work and in the view of the Department has refused to address that barrier; and

(**3**) S.R. 2008 No. 280

(b) the Department considers that the activity specified in the direction given under section 15(1) of the Act is a prerequisite to the person's ability to obtain or remain in work.

Notification of work-related activity and action plans

5.—(1) The Department must notify a person of the requirement to undertake work-related activity by including the requirement in a written action plan given to the person.

(2) The action plan must specify—

(a) the work-related activity which the person is required to undertake; and

(b) any other information that the Department considers appropriate.

Requirement to undertake work-related activity at a particular time not to apply

6. The Department may determine that a requirement as to the time at or by which work-related activity is to be undertaken is not to apply, or is to be treated as not having applied, if in the view of the Department it would be, or would have been, unreasonable to require the person to undertake the activity at or by that time.

Reconsideration of action plans

7.—(1) A person may request reconsideration of an action plan.

(2) On receipt of a request the Department must reconsider the action plan.

(3) A decision of the Department following a request must be in writing and given to the person.

Failure to undertake work-related activity

8.—(1) A person who is required to undertake work-related activity but fails to do so must show good cause for the failure within 5 working days of the date on which the Department gives notice of the failure.

(2) The Department must determine whether a person who is required to undertake work-related activity has failed to do so and, if so, whether the person has shown good cause for the failure.

(3) In deciding whether a person has shown good cause for the failure, the Department must take account of all the circumstances of the case including in particular the person's physical or mental health or condition.

PART 3

Contracting Out

Contracting out

9.—(1) Any function of the Department specified in paragraph (2) may be exercised by, or by employees of, such person (if any) as may be authorised by the Department.

(2) The functions are—

(a) any function under—

(i) regulation 3 (requirement to undertake work-related activity);

(ii) regulation 5 (notification of work-related activity and action plans);

(iii) regulation 6 (requirement to undertake work-related activity not to apply);

(iv) regulation 7 (reconsideration of action plans);

(b) any function under regulation 64(1)(a) and (c) and (1A)(**4**) of the Employment and Support Allowance Regulations (cessation of reduction).

PART 4

Amendment of the Employment and Support Allowance Regulations

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

(2) In regulation 2(1) (interpretation) omit the definition of "action plan".

(3) Omit—

(a) regulation 47 (requirement to take part in a work-focused health-related assessment);

(b) regulation 48 (work-focused health-related assessment);

(c) regulation 49 (notification of assessment);

(d) regulation 51 (taking part in a work-focused health-related assessment);

(e) regulation 52 (deferral of a requirement to take part in a work-focused health-related assessment);

(f) regulation 53 (failure to take part in a work-focused health-related assessment); and

(g) regulation 58 (action plans).

(4) In regulation 56(1) (notification of interview)—

(a) for "attend" substitute "take part in"; and

(b) after "time and" insert "if required to attend in person, the".

(5) In regulation 57(1) (taking part in a work-focused interview)—

(a) in sub-paragraph (a) at the beginning insert "if required to attend in person,";

(b) after sub-paragraph (a) insert—

"(aa) if not required to attend in person, is available and responds at the date and time notified in accordance with regulation 56 to any contact made at that time for the purpose of carrying out the interview;"; and

(c) omit sub-paragraph (d).

(6) For regulation 61(3) (failure to take part in a work-focused interview) substitute—

"(3) In deciding whether a person has shown good cause for the failure, the Department must take account of all the circumstances of the case including in particular the person's physical or mental health or condition.".

(7) In regulation 62(2) (contracting out certain functions relating to work-focused interviews) omit sub-paragraph (d).

(8) In regulation 63 (reduction of employment and support allowance)—

(a) for paragraph (1) substitute—

"(1) Where the Department has determined—

(**4**) Regulation 64(1) is substituted and paragraph (1A) is added by regulation 11(8) of these Regulations