STATUTORY RULES OF NORTHERN IRELAND

2011 No. 76

SOCIAL SECURITY

The Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-related Activity) (Amendment) Regulations (Northern Ireland) 2011

Made - - - -	*7th March 2011*
Coming into operation	*28th March 2011*

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-related Activity) (Amendment) Regulations (Northern Ireland) 2011 and shall come into operation on 28th March 2011.

(2) In these Regulations—

"the Employment and Support Allowance Regulations" means the Employment and Support Allowance Regulations (Northern Ireland) 2008(**2**); and

"the Reassessment Regulations" means the Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010(**3**).

Application

2.—(1) These Regulations apply to—

(a) a person who makes a claim for employment and support allowance on or after 28th March 2011 (including a claim in respect of any period before that date);

(b) subject to paragraphs (2) and (3), a person who made a claim for employment and support allowance before 28th March 2011 in respect of whom a determination is made on or after that date 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 (limited

(**1**) 2007 c. 2
(**2**) S.R. 2008 No. 280
(**3**) S.R. 2010 No. 347

capability for work) or 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 (limited capability for work-related activity);

(c) subject to paragraphs (2) and (3), a person who is entitled to employment and support allowance immediately before 28th March 2011 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 (determination of limited capability for work) 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) subject to paragraphs (2) and (3), a notified person as defined by regulation 4 of the Reassessment Regulations(**4**) in respect of whom a determination is made on or after 28th March 2011 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 as to whether that person has or is to be treated as having limited capability for work-related activity under Part 6 of the Employment and Support Allowance Regulations.

(2) Where, before 28th March 2011, a questionnaire relating to the previous version of Schedule 2 to the Employment and Support Allowance Regulations was issued to a person in accordance with regulation 21(1)(b) of those Regulations (information required for determining capability for work), regulation 3(5) does not apply to that person for the purposes of making a determination as to limited capability for work under Part 5 of the Employment and Support Allowance Regulations.

(3) Where, before 28th March 2011, a questionnaire relating to the previous version of Schedule 3 to the Employment and Support Allowance Regulations was issued to a person in accordance with regulation 36(1)(a) of those Regulations (information required for determining capability for work-related activity) regulation 3(6) does not apply to that person for the purposes of making a determination as to limited capability for work-related activity under Part 6 of the Employment and Support Allowance Regulations.

(4) In this Regulation "the previous version of Schedule 2 to the Employment and Support Allowance Regulations" and "the previous version of Schedule 3 to the Employment and Support Allowance Regulations" mean those Schedules as they have effect immediately before the date on which these Regulations come into operation.

(5) The provisions of paragraphs (2) to (4) do not apply to any determination made, on or after 28th September 2011.

Amendment of the Employment and Support Allowance Regulations

3.—(1) The Employment and Support Allowance Regulations are amended in accordance with paragraphs (2) to (6).

(2) In regulation 20 (certain claimants to be treated as having limited capability for work)—

(a) at the end of paragraph (b)(i) insert ", or is likely to receive such treatment within 6 months after the date of determination under this sub-paragraph"; and

(b) after paragraph (f) insert—

"(g) any of the descriptors at paragraph 15 or 16 of Schedule 3 apply to the claimant.".

(**4**) Regulation 4 of the Reassessment Regulations defines a notified person as a person to whom a notice is issued. A notice commences the conversion phase under the Reassessment Regulations for persons who are entitled to an existing award. An existing award is an award of incapacity benefit, severe disablement allowance or income support on the grounds of incapacity (*see* paragraph 11 of Schedule 4 to the Welfare Reform Act (Northern Ireland) 2007)

(3) In regulation 25 (hospital in-patients), after paragraph (1) insert—

"(1A) 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.".

(4) At the end of regulation 35(1)(b)(i) (certain claimants to be treated as having limited capability for work-related activity), insert ", or is likely to receive such treatment within 6 months after the date of the determination under this sub-paragraph".

(5) For Schedule 2 substitute the Schedule in Schedule 1 of these Regulations.

(6) For Schedule 3 substitute the Schedule in Schedule 2 of these Regulations.

Revocation

4. Regulation 3(28) of the Employment and Support Allowance (Miscellaneous Amendments) Regulations (Northern Ireland) 2008(**5**) is revoked.

Sealed with the Official Seal of the Department for Social Development on 7th March 2011

Anne McCleary
A senior officer of the Department for Social Development

(**5**) S.R. 2008 No. 413

S C H E D U L E S

SCHEDULE 1 Regulation 3(5)

"SCHEDULE 2 Regulation 19(2) and (3)

Assessment of whether a claimant has limited capability for work

PART 1

PHYSICAL DISABILITIES

(1) Activity		(2) Descriptors	(3) Points
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.	(a)	Cannot either— (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.	15
	(b)	Cannot mount or descend two steps unaided by another person even with the support of a handrail.	9
	(c)	Cannot either— (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.	9
	(d)	Cannot either— (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or (ii) repeatedly mobilise 200 metres within a reasonable timescale	6

(1) Activity		(2) Descriptors	(3) Points
		because of significant discomfort or exhaustion.	
	(e)	None of the above apply.	0
2. Standing and sitting.	(a)	Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.	15
	(b)	Cannot, for the majority of the time, remain at a work station, either— (i) standing unassisted by another person (even if free to move around), or (ii) sitting (even in an adjustable chair), for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion.	9
	(c)	Cannot, for the majority of the time, remain at a work station, either— (i) standing unassisted by another person (even if free to move around), or (ii) sitting (even in an adjustable chair), for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion.	6
	(d)	None of the above apply.	0
3. Reaching.	(a)	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
	(b)	Cannot raise either arm to top of head as if to put on a hat.	9
	(c)	Cannot raise either arm above head height as if to reach for something.	6
	(d)	None of the above apply.	0
4. Picking up and moving or transferring by the use of the upper body and arms.	(a)	Cannot pick up and move a 0.5 litre carton full of liquid.	15
	(b)	Cannot pick up and move a one litre carton full of liquid.	9