



2007 CHAPTER 2

PART 1

EMPLOYMENT AND SUPPORT ALLOWANCE

Conditionality

Work-focused health-related assessments

11.—(1) Regulations may make provision for or in connection with imposing on a person who is—

- (a) entitled to an employment and support allowance, and
- (b) not a member of the support group,

a requirement to take part in one or more work-focused health-related assessments as a condition of continuing to be entitled to the full amount payable to him in respect of the allowance apart from the regulations.

(2) Regulations under this section may, in particular, make provision—

- (a) prescribing circumstances in which such a person is subject to a requirement to take part in one or more work-focused health-related assessments;
- (b) for notifying such a person of any such requirement;
- (c) prescribing the work-focused health-related assessments in which a person who is subject to such a requirement is required to take part;
- (d) for the determination, and notification, of the time and place of any such assessment;
- (e) prescribing circumstances in which a person attending such an assessment is to be regarded as having, or not having, taken part in it;

- (f) for securing that the appropriate consequence follows if a person who is required under the regulations to take part in a work-focused health-related assessment—
 - (i) fails to take part in the assessment, and
 - (ii) does not, within a prescribed period, show that he had good cause for that failure;
- (g) prescribing matters which are, or are not, to be taken into account in determining whether a person had good cause for any failure to comply with the regulations;
- (h) prescribing circumstances in which a person is, or is not, to be regarded as having good cause for any such failure.

(3) For the purposes of subsection (2)(f), the appropriate consequence of a failure falling within that provision is that the amount payable to the person in question in respect of an employment and support allowance is reduced in accordance with regulations.

(4) Regulations under subsection (3) may, in particular, make provision for determining—

- (a) the amount by which an allowance is to be reduced,
- (b) when the reduction is to start, and
- (c) how long it is to continue,

and may include provision prescribing circumstances in which the amount of the reduction is to be nil.

(5) Regulations under this section shall include provision for a requirement to take part in one or more work-focused health-related assessments to cease to have effect if the person subject to the requirement becomes a member of the support group.

(6) Regulations under this section may include provision—

- (a) that in such circumstances as the regulations may prescribe a requirement to take part in a work-focused health-related assessment that would otherwise apply to a person by virtue of such regulations is not to apply, or is to be treated as not having applied;
- (b) that in such circumstances as the regulations may prescribe such a requirement is not to apply until a prescribed time;
- (c) that in such circumstances as the regulations may prescribe the time and place of a work-focused health-related assessment in which a person is required by regulations under this section to take part may be redetermined.

(7) In this section, “work-focused health-related assessment” means an assessment by a health care professional approved by the Department which is carried out for the purpose of assessing—

Status: This is the original version (as it was originally enacted).

- (a) the extent to which a person still has capability for work,
 - (b) the extent to which his capability for work may be improved by the taking of steps in relation to his physical or mental condition, and
 - (c) such other matters relating to his physical or mental condition and the likelihood of his obtaining or remaining in work or being able to do so, as may be prescribed.
- (8) In subsection (7), “health care professional” means—
- (a) a registered medical practitioner,
 - (b) a registered nurse,
 - (c) an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 of the Health Act 1999 (c. 8), or
 - (d) a member of such other profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17) as may be prescribed.

Work-focused interviews

12.—(1) Regulations may make provision for or in connection with imposing on a person who is—

- (a) entitled to an employment and support allowance, and
- (b) not a member of the support group,

a requirement to take part in one or more work-focused interviews as a condition of continuing to be entitled to the full amount payable to him in respect of the allowance apart from the regulations.

- (2) Regulations under this section may, in particular, make provision—
- (a) prescribing circumstances in which such a person is subject to a requirement to take part in one or more work-focused interviews;
 - (b) for notifying such a person of any such requirement;
 - (c) prescribing the work-focused interviews in which a person who is subject to such a requirement is required to take part;
 - (d) for determining, in relation to work-focused interviews under the regulations, when and how the interview is to be conducted and, if it is to be conducted face to face, where it is to take place;
 - (e) for notifying persons who are required under the regulations to take part in a work-focused interview of what is determined in respect of the matters mentioned in paragraph (d);

- (f) prescribing circumstances in which a person who is a party to a work-focused interview under the regulations is to be regarded as having, or not having, taken part in it;
 - (g) for securing that the appropriate consequence follows if a person who is required under the regulations to take part in a work-focused interview—
 - (i) fails to take part in the interview, and
 - (ii) does not, within a prescribed period, show that he had good cause for that failure;
 - (h) prescribing matters which are, or are not, to be taken into account in determining whether a person had good cause for any failure to comply with the regulations;
 - (i) prescribing circumstances in which a person is, or is not, to be regarded as having good cause for any such failure.
- (3) For the purposes of subsection (2)(g), the appropriate consequence of a failure falling within that provision is that the amount payable to the person in question in respect of an employment and support allowance is reduced in accordance with regulations.
- (4) Regulations under subsection (3) may, in particular, make provision for determining—
- (a) the amount by which an allowance is to be reduced,
 - (b) when the reduction is to start, and
 - (c) how long it is to continue,
- and may include provision prescribing circumstances in which the amount of the reduction is to be nil.
- (5) Regulations under this section shall include provision for a requirement to take part in one or more work-focused interviews to cease to have effect if the person subject to the requirement becomes a member of the support group.
- (6) Regulations under this section may include provision—
- (a) that in such circumstances as the regulations may prescribe a requirement to take part in a work-focused interview that would otherwise apply to a person by virtue of such regulations is not to apply, or is to be treated as not having applied;
 - (b) that in such circumstances as the regulations may prescribe such a requirement is not to apply until a prescribed time;
 - (c) that in such circumstances as the regulations may prescribe matters mentioned in subsection (2)(d) may be redetermined.
- (7) In this section, “work-focused interview” means an interview by the Department for Employment and Learning conducted for such purposes

connected with getting the person interviewed into work, or keeping him in work, as may be prescribed.

Work-related activity

13.—(1) Regulations may make provision for or in connection with imposing on a person who is subject to a requirement imposed under section 12(1) a requirement to undertake work-related activity in accordance with regulations as a condition of continuing to be entitled to the full amount payable to him in respect of an employment and support allowance apart from the regulations.

(2) Regulations under this section may, in particular, make provision—

- (a) prescribing circumstances in which such a person is subject to a requirement to undertake work-related activity in accordance with regulations;
- (b) for notifying such a person of any such requirement;
- (c) prescribing the time or times at which a person who is subject to such a requirement is required to undertake work-related activity and the amount of work-related activity he is required at any time to undertake;
- (d) prescribing circumstances in which a person who is subject to such a requirement is, or is not, to be regarded as undertaking work-related activity;
- (e) for securing that the appropriate consequence follows if a person who is subject to such a requirement—
 - (i) fails to comply with the regulations, and
 - (ii) does not, within a prescribed period, show that he had good cause for that failure;
- (f) prescribing the evidence which a person who is subject to such a requirement needs to provide in order to show that he has complied with the regulations;
- (g) prescribing matters which are, or are not, to be taken into account in determining whether a person has complied with the regulations;
- (h) prescribing matters which are, or are not, to be taken into account in determining whether a person had good cause for any failure to comply with the regulations;
- (i) prescribing circumstances in which a person is, or is not, to be regarded as having good cause for any such failure.

(3) For the purposes of subsection (2)(e), the appropriate consequence of a failure falling within that provision is that the amount payable to the person in question in respect of an employment and support allowance is to be reduced in accordance with regulations.

(4) Regulations under subsection (3) may, in particular, make provision for determining—

- (a) the amount by which an allowance is to be reduced,
- (b) when the reduction is to start, and
- (c) how long it is to continue,

and may include provision prescribing circumstances in which the amount of the reduction is to be nil.

(5) Regulations under this section shall include provision for a requirement to undertake work-related activity in accordance with regulations to cease to have effect if the person subject to the requirement becomes a member of the support group.

(6) Regulations under this section may include provision that in such circumstances as the regulations may provide a person's obligation under the regulations to undertake work-related activity at a particular time is not to apply, or is to be treated as not having applied.

(7) In this Part, "work-related activity", in relation to a person, means activity which makes it more likely that the person will obtain or remain in work or be able to do so.

Action plans in connection with work-focused interviews

14.—(1) The Department for Employment and Learning shall in prescribed circumstances provide a person subject to a requirement imposed under section 12(1) with a document prepared for such purposes as may be prescribed (in this section referred to as an action plan).

(2) Regulations may make provision about—

- (a) the form of action plans;
- (b) the content of action plans;
- (c) the review and updating of action plans.

(3) Regulations under this section may, in particular, make provision for action plans which are provided to a person who is subject under section 13 to a requirement to undertake work-related activity to contain particulars of activity which, if undertaken, would enable the requirement to be met.

(4) Regulations may make provision for reconsideration of an action plan at the request of the person to whom the plan is provided and may, in particular, make provision about—

- (a) the circumstances in which reconsideration may be requested;
- (b) the period within which any reconsideration must take place;
- (c) the matters to which regard must be had when deciding on reconsideration whether the plan should be changed;

- (d) notification of the decision on reconsideration;
- (e) the giving of directions for the purpose of giving effect to the decision on reconsideration.

Directions about work-related activity

15.—(1) In prescribed circumstances, the Department or the Department for Employment and Learning may by direction given to a person subject to a requirement imposed under section 13(1) provide that the undertaking of activity specified in the direction is, in his case, to be treated as not being the undertaking of work-related activity.

- (2) The power under subsection (1) to give directions—
 - (a) is exercisable in writing, and
 - (b) includes power to vary or revoke a direction given in previous exercise of the power.

(3) Where a direction under subsection (1) varies or revokes a previous direction, it may provide for the variation or revocation to have effect from a time before the giving of the direction.

Contracting out

16.—(1) The following functions of the Department may be exercised by, or by employees of, such person (if any) as it may authorise for the purpose, namely—

- (a) conducting interviews under section 12;
- (b) providing documents under section 14;
- (c) giving, varying or revoking directions under section 15.

(2) Regulations may provide for any of the following functions of the Department to be exercisable by, or by employees of, such person (if any) as it may authorise for the purpose—

- (a) any function under regulations under any of sections 11 to 15, except the making of a decision to which subsection (3) applies (an “excluded decision”);
- (b) the function under Article 10(1) of the 1998 Order (revision of decisions), so far as relating to decisions, except excluded decisions, that relate to any matter arising under such regulations;
- (c) the function under Article 11(1) of that Order (superseding of decisions), so far as relating to decisions, except excluded decisions, of the Department that relate to any matter arising under such regulations;
- (d) any function under Chapter 2 of Part 2 of that Order (social security decisions), except Article 25(2) and (3) (decisions involving issues that

arise on appeal in other cases), which relates to the exercise of any of the functions falling within paragraphs (a) to (c).

- (3) This subsection applies to the following decisions—
- (a) a decision about whether a person has failed to comply with a requirement imposed by regulations under section 11, 12 or 13;
 - (b) a decision about whether a person had good cause for failure to comply with such a requirement;
 - (c) a decision about reduction of an employment and support allowance in consequence of failure to comply with such a requirement.
- (4) Regulations under subsection (2) may provide that a function to which that subsection applies may be exercised—
- (a) either wholly or to such extent as the regulations may provide,
 - (b) either generally or in such cases or areas as the regulations may provide, and
 - (c) either unconditionally or subject to the fulfilment of such conditions as the regulations may provide.
- (5) An authorisation given by virtue of subsection (1), or by virtue of regulations under subsection (2), may authorise the exercise of the function concerned—
- (a) either wholly or to such extent as may be specified in the authorisation,
 - (b) either generally or in such cases or areas as may be so specified, and
 - (c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.
- (6) In the case of an authorisation given by virtue of regulations under subsection (2), subsection (5) is subject to the provisions of the regulations.
- (7) An authorisation given by virtue of subsection (1), or by virtue of regulations under subsection (2)—
- (a) may specify its duration,
 - (b) may be revoked at any time by the Department, and
 - (c) shall not prevent the Department or any other person from exercising the function to which the authorisation relates.
- (8) Where a person is authorised to exercise any function by virtue of subsection (1), or by virtue of regulations under subsection (2), anything done or omitted to be done by or in relation to him (or an employee of his) in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done by or in relation to the Department.
- (9) Subsection (8) shall not apply—

- (a) for the purposes of so much of any contract made between the authorised person and the Department as relates to the exercise of the function, or
- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the authorised person (or an employee of his).

(10) Any decision which a person authorised to exercise any function by virtue of subsection (1), or by virtue of regulations under subsection (2), makes in exercise of the function shall have effect as a decision of the Department under Article 9 of the 1998 Order.

(11) Where—

- (a) a person is authorised to exercise any function by virtue of subsection (1), or by virtue of regulations under subsection (2), and
- (b) the authorisation is revoked at a time when a relevant contract is subsisting, the authorised person shall be entitled to treat the relevant contract as repudiated by the Department (and not as frustrated by reason of the revocation).

(12) In subsection (11), the reference to a relevant contract is to so much of any contract made between the authorised person and the Department as relates to the exercise of the function.

(13) In this section, references to functions of the Department under—

- (a) a statutory provision contained in, or in regulations under, this Part; or
- (b) a statutory provision contained in Chapter 2 of Part 2 of the 1998 Order, include a reference to any function which the Department has by virtue of the application in relation to that provision of Article 9(1)(c) of that Order (decisions under certain statutory provisions to be made by the Department).

(14) In this section “the Department” means the Department for Social Development or the Department for Employment and Learning.