

EXPLANATORY MEMORANDUM

THE SOCIAL SECURITY (MEDICAL EVIDENCE) AND STATUTORY SICK PAY (MEDICAL EVIDENCE) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010

S.R. 2010 No. 55

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under sections 5(1)(h) and (j), 12(1) and (2) and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations amend the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 and the Statutory Sick Pay (Medical Evidence) Regulations (Northern Ireland) 1985 to make provision to change the format of the medical statement and update the rules associated with its completion.
- 2.2 Regulation 1 provides for the title and commencement.
- 2.3 Regulation 2 amends the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 to update the rules concerning the completion of a medical statement and prescribe the form of the medical statement to which those rules relate. The medical statement will help a person claim certain health-related social security benefits such as Employment and Support Allowance.
- 2.4 Regulation 3 amends the Statutory Sick Pay (Medical Evidence) Regulations (Northern Ireland) 1985 to update the rules concerning the completion of a medical statement and prescribe the form of the medical statement to which those rules relate. The medical statement will help employees claim Statutory Sick Pay.
- 2.5 Regulation 4 makes consequential revocations.

3. Background

- 3.1 The medical statement is the normal method by which employees provide evidence of sickness to employers during absence. From day 8 of a period of incapacity for work an employer can request that an employee provides this evidence of their incapacity for work for Statutory Sick Pay purposes.

A similar provision applies to claims for social security benefits, for example, Employment and Support Allowance and Incapacity Benefit.

- 3.2 Dame Carol Black's review of the health of the working age population *Working for a healthier tomorrow* recommended that action should be taken to facilitate a revision of the medical statement process to create a 'fit note'. She envisaged that the revised certificate or 'fit note' would act as a vehicle for providing practical advice to both the patient and the employer about how a return to work can be achieved, rather than as a notification to refrain from work in all cases.
- 3.3 The medical statement used by GPs to document advice on fitness for work to patients with a health condition has remained largely unchanged since the foundation of the Health Service. This is despite the fact that in the intervening years the environment in which doctors give their advice has changed-
- In general, work has become safer and much less physically demanding, and less rigid, allowing more people with physical problems to work through their illness rather than take time off work.
 - Employers are now more flexible and, given the right information about what an individual could be capable of, simple low-cost changes can be made to facilitate an individual's return to work. They are also now obliged to take account of disability rights legislation to help disabled people back to work and to retain their jobs.
 - Leaders of healthcare professions have recognised the positive health benefits of being in work, even for those who have to limit their activities, and their role in assisting patients to work.

Evidence shows that, in general being in work is good for health and that being out of work leads to poor physical and mental health. It also increases the likelihood of an individual experiencing poverty and social exclusion.

4. Consultation

- 4.1 As the Regulations make, in relation to Northern Ireland, only provision corresponding to provision contained in Regulations made by the Secretary of State for Work and Pensions in relation to Great Britain they do not have to be submitted to the Social Security Advisory Committee.
- 4.2 Public consultation on draft Regulations took place between May and September 2009. A total of 8 responses were received in Northern Ireland along with 140 in Britain from a wide range of stakeholders which included healthcare professionals, employers, employer representatives, unions and voluntary organisations, as well as some individuals.

4.3 Overall, respondents were supportive of the need to reform the medical statement. The main conclusions from the consultation were-

- There is agreement that the current medical statement is no longer fit for purpose as it does not capture the current needs of the individual or their employer.
- The proposed new statement should benefit both the individual and the employer by helping them gain a better understanding of how their health condition might affect their function and as a result what basic adjustments to the workplace or job role could help facilitate a return to work.
- The important role of GPs in the successful implementation of the new medical statement.

Some changes have been made to the Regulations based on responses from the consultation, namely-

- There is no longer an option for a doctor to state that their patient is *'fit for work'*. This will potentially reduce unnecessary appointments for GPs which can then be used for patients who require medical attention.
- Change to the wording of the option *'may be fit for some work'* to *'may be fit for work taking account of the following advice'*.
- The maximum period for which a medical statement can be issued in the first six months of incapacity has been reduced from 6 months to 3 months.
- Where a medical statement is based on a written report from another doctor or other healthcare professional, the restriction that the written report cannot be more than one month old has been removed.

5. Equality Impact

5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on this legislative proposal. The Regulations make amendments to revise the format and content of medical statements for Statutory Sick Pay and social security benefit purposes. The changes will apply to all individuals equally irrespective of age, gender, religion, disability, dependants, political opinion, racial group, marital status or sexual orientation and will have a positive impact. In light of this, the Department considers that they do not have significant implications for equality of opportunity.

6. Regulatory Impact

6.1 These Regulations will have a positive impact on business, charities or voluntary bodies as well as for the economy as a whole. The new medical statement is aimed at what an individual can do, and how and whether advice given by the doctor could be facilitated in the workplace to help an individual to return to work earlier. An earlier return to work should result in an increase in output and reduction in costs of sickness absence.

Reasonable adjustments to help facilitate an earlier return to work are expected to have minimal or no additional costs to employers. It is not mandatory for employers to take any action; it is for each individual employer to consider whether such investments are worthwhile. For doctors an early return to work for individuals is expected to lead to improved health conditions resulting in a reduction in the number of consultations. A Regulatory Impact Assessment will be issued when the rule is laid.

7. Financial Implications

7.1 There are some set-up costs for the Department in relation to printing the new statement and producing guidance.

8. Section 24 of the Northern Ireland Act 1998

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

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain Regulations are the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010 and in keeping with the long-standing policy of parity in social security, the Regulations will come into operation on 6 April 2010, the same date as the corresponding Great Britain Regulations. Parity of timing and substance is an integral part of the maintenance of single systems of social security, pensions and child support provided for in section 87 of the Northern Ireland Act 1998.