
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

(L.S.)

Anne McCleary
A senior officer of the Department for Social
Development

SCHEDULES

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—	15
	(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.	
	(b) Cannot mount or descend two steps unaided by another person even with the support of a handrail.	9
	(c) Cannot either—	9
	(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.	
	(d) Cannot either—	6
	(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	

(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

Status: This is the original version (as it was originally made).

(1) Activity	(2) Descriptors	(3) Points
	(c) Cannot transfer a light but bulky object such as an empty cardboard box.	6
	(d) None of the above apply.	0
5. Manual dexterity.	(a) Cannot either— (i) press a button, such as a telephone keypad, or (ii) turn the pages of a book, with either hand.	15
	(b) Cannot pick up a £1 coin or equivalent with either hand.	15
	(c) Cannot use a pen or pencil to make a meaningful mark.	9
	(d) Cannot use a suitable keyboard or mouse.	9
	(e) None of the above apply.	0
6. Making self understood through speaking, writing, typing, or other means normally used, unaided by another person.	(a) Cannot convey a simple message, such as the presence of a hazard.	15
	(b) Has significant difficulty conveying a simple message to strangers.	15
	(c) Has some difficulty conveying a simple message to strangers.	6
	(d) None of the above apply.	0
7. Understanding communication by both verbal means (such as hearing or lip reading) and non-verbal means (such as reading 16 point print) using any aid it is reasonable to expect them to use, unaided by another person.	(a) Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.	15
	(b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment.	15
	(c) Has some difficulty understanding a simple message from a stranger due to sensory impairment.	6
	(d) None of the above apply.	0
8. Navigation and maintaining safety, using a guide dog or other aid if normally used.	(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15
	(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.	15

(1) Activity	(2) Descriptors	(3) Points
	(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.	9
	(d) None of the above apply.	0
9. Absence or loss of control leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting) despite the presence of any aids or adaptations normally used.	(a) At least once a month experiences— (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, or (ii) substantial leakage of the contents of a collecting device, sufficient to require cleaning and a change in clothing.	15
	(b) At risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.	6
	(c) None of the above apply.	0
10. Consciousness during waking moments.	(a) At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	15
	(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	6
	(c) None of the above apply.	0

PART 2

MENTAL, COGNITIVE AND INTELLECTUAL FUNCTION ASSESSMENT

(1) Activity	(2) Descriptors	(3) Points
11. Learning tasks.	(a) Cannot learn how to complete a simple task, such as setting an alarm clock.	15
	(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.	9
	(c) Cannot learn anything beyond a moderately complex task, such as the steps	6

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

(1) Activity	(2) Descriptors	(3) Points
	involved in operating a washing machine to clean clothes.	
	(d) None of the above apply.	0
12. Awareness of everyday hazards (such as boiling water or sharp objects).	(a) Reduced awareness of everyday hazards leads to a significant risk of— (i) injury to self or others, or (ii) damage to property or possessions, such that they require supervision for the majority of the time to maintain safety.	15
	(b) Reduced awareness of everyday hazards leads to a significant risk of— (i) injury to self or others, or (ii) damage to property or possessions, such that they frequently require supervision to maintain safety.	9
	(c) Reduced awareness of everyday hazards leads to a significant risk of— (i) injury to self or others, or (ii) damage to property or possessions, such that they occasionally require supervision to maintain safety.	6
	(d) None of the above apply.	0
13. Initiating and completing persona action (which means planning, organisation, problem solving, prioritising or switching tasks).	(a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	15
	(b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions for the majority of the time.	9
	(c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions.	6
	(d) None of the above apply.	0
14. Coping with change.	(a) Cannot cope with any change to the extent that day to day life cannot be managed.	15
	(b) Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.	9

(1) Activity	(2) Descriptors	(3) Points
	(c) Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.	6
	(d) None of the above apply.	0
15. Getting about.	(a) Cannot get to any specified place with which the claimant is familiar.	15
	(b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.	9
	(c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.	6
	(d) None of the above apply.	0
16. Coping with social engagement due to cognitive impairment or mental disorder.	(a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.	15
	(b) Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the individual.	9
	(c) Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the individual.	6
	(d) None of the above apply.	0
17. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
	(d) None of the above apply.	0

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

SCHEDULE 2

Regulation 3(6)

“SCHEDULE 3

Regulation 34(1)

Assessment of whether a claimant has limited capability for work-related activity

Column 1 Activity	Column 2 Descriptors
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.	Cannot either— (a) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion, or (b) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.
2. Transferring from one seated position to another.	Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.
3. Reaching.	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule).	Cannot pick up and move a 0.5 litre carton full of liquid.
5. Manual dexterity.	Cannot either— (a) press a button, such as a telephone keypad; or (b) turn the pages of a book, with either hand.
6. Making self understood through speaking, writing, typing, or other means normally used.	Cannot convey a simple message, such as the presence of a hazard.
7. Understanding communication by hearing, lip reading, reading 16 point print or using any aid if reasonably used.	Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.
8. Absence or loss of control over extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting), despite the presence of any aids or adaptations normally used.	At least once a week experiences— (a) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (b) substantial leakage of the contents of a collecting device, sufficient to require the individual to clean themselves and change clothing.

Column 1 Activity	Column 2 Descriptors
9. Learning tasks.	Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.
10. Awareness of hazard.	Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of— (a) injury to self or others; or (b) damage to property or possessions, such that they require supervision for the majority of the time to maintain safety.
11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.
12. Coping with change.	Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.
13. Coping with social engagement, due to cognitive impairment or mental disorder.	Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.
14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.
15. Conveying food or drink to the mouth.	(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else; (b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort; (c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence; or (d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving— (i) physical assistance from someone else, or (ii) regular prompting given by someone else in the claimant's presence.
16. Chewing or swallowing food or drink.	(a) Cannot chew or swallow food or drink;

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

Column 1 Activity	Column 2 Descriptors
	<p>(b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to—</p> <p style="padding-left: 40px;">(i) chew or swallow food or drink, or</p> <p style="padding-left: 40px;">(ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.”</p>

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employment and Support Allowance Regulations (Northern Ireland) 2008 relating to the work capability assessment. These Regulations substitute the descriptors and criteria applied to determine capability for work, and for work-related activity, and amend provisions which allow a person to be treated as having limited capability for work, or for work-related activity, without an assessment in certain circumstances.

Regulation 2 sets out who the Regulations apply to. It provides that they apply to all persons who claim employment and support allowance on or after the date these Regulations come into operation. The regulations also apply to persons who claim before that date, and persons who have been notified under the reassessment process (from incapacity benefit, severe disablement allowance or income support on grounds of incapacity), who have their capability for work or their capability for work-related activity determined on or after that date. Finally, the regulations apply to persons who are re-assessed on or after that date. However, where the person was sent a questionnaire (as to their capability for work or for work-related activity) based on the un-amended provisions before that date these Regulations will not apply. Instead the determination in such cases will be based on the un-amended provisions. This is subject to a six month limit after which all assessments will be made under the amended provisions (regulation 2(6)).

Regulation 3 amends the provisions in regulations 20 (certain claimants to be treated as having limited capability for work), 25 (hospital in-patients) and 35 (certain claimants to be treated as having limited capability for work-related activity) and substitutes Schedules 2 and 3. Paragraph (2) adds persons who are likely to receive chemotherapy treatment within 6 months after the date of the determination of capability for work, and those who meet the eating and drinking descriptors in paragraphs 15 and 16 of Schedule 3, to those who are to be treated as having limited capability

for work. Paragraph (3) makes clear that a person who attends residential rehabilitation for treating drugs or alcohol addiction is regarded as receiving treatment within the terms of regulation 25. Paragraph (4) similarly adds persons likely to receive chemotherapy treatment within 6 months after their determination of capability for work-related activity to those who are to be treated as having limited capability for work-related activity. Paragraphs (5) and (6) substitute Schedules 2 and 3 respectively to set out the criteria for the assessment of whether a person has limited capability for work or for work-related activity.

Regulation 4 makes a consequential revocation.

These 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 and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992, are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.