

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MEDICAL EVIDENCE) AND STATUTORY SICK PAY (MEDICAL EVIDENCE) (AMENDMENT) (NO. 2) REGULATIONS (NORTHERN IRELAND) 2022

SR 2022 No. 182

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Communities 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)(j) and(1A),12(2) and 165(1), (4) and (5) of the Social Security Administration (Northern Ireland) Act 1992, and Articles 16(1), 74(1),(3) and (5) and paragraph 3 of Schedule 4 to, the Social Security (Northern Ireland) Order 1998 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 At present, Statements of Fitness for Work (commonly referred to as ‘fit notes’) are issued and authorised by doctors, usually General Practitioners (GPs), following an assessment of a patient’s fitness for work. Fit notes are the most readily available and commonly used form of medical evidence used to demonstrate eligibility for Statutory Sick Pay (SSP), Occupational Sick Pay and Social Security benefits.
- 2.2 These regulations expand the range of healthcare professionals that are able to certify fit notes by including registered nurses, occupational therapists, pharmacists and physiotherapists, in addition to doctors.
- 2.3 This Statutory Rule amends the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 and the Statutory Sick Pay (Medical Evidence) Regulations (Northern Ireland) 1985
- 2.4 The Statutory Rule also makes consequential amendments to other sets of Regulations which refer to fit notes being issued by doctors. by removing references to fit notes as being “doctor’s” statements and references to statements being issued by a doctor. These changes will not have a broader impact beyond ensuring that the amended provisions are consistent with fit notes issued under the amended 1976 and 1985 Regulations.

3. Background

What is being done and why?

- 3.1 Currently only doctors can certify fit notes which, is a barrier to the most relevant healthcare professional engaging in work and health conversations, is not reflective of modern ways of working in healthcare and leads to unnecessary bureaucracy, particularly in general practice. By extending certification to a wider group of healthcare professionals we are better enabling relevant healthcare professionals to undertake health and work conversations and certify and issue fit notes without having to refer patients to their doctor.

- 3.2 Enabling the healthcare professional with the most relevant expertise to certify the fit note will help improve the continuity of care, enable better conversations about work and health, better facilitate return(s) to work and help people stay in work where appropriate. This change further recognises the importance of healthcare services being delivered by multi-disciplinary teams, particularly with regards to general practice.

4. Consultation

- 4.1 The Department for Work and Pensions (DWP) has publicly consulted on the policy intent to extend certification to a wider set of healthcare professionals
- 4.2 The Department for Communities and the Department of Health for Northern Ireland has engaged extensively with DWP throughout the development of this policy.
- 4.3 The decision as to which professions to extend to has been agreed through consultation with and advice from the Department of Health for Northern Ireland.

5. Equality Impact

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise and concluded that the changes did not have any significant implications for equality opportunity. In light of this, the Department considered that an equality impact assessment was not necessary.

6. Regulatory Impact

- 6.1 These Regulations do not require a Regulatory Impact Assessment as there is no, or no significant impact on business, charities, social enterprises or voluntary bodies.
- 6.2 There will be a small impact associated with the time required for employers to familiarise themselves with the regulation change, but the simplicity of the regulation change means that the time required by the employer will be negligible.

7. Financial Implications

- 7.1 None for the Department.

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 that the Rule –
- (a) is not incompatible with any Convention rights;
 - (b) is not incompatible with Community law;
 - (c) does not discriminate against a person or class of person on the grounds 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. E U Implications

- 9.1 Not applicable.

10. Parity or Replicatory Measure

- 10.1 These Regulations are equivalent to the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) (No. 2) Regulations 2022 in Great Britain, which come into force on 1st July 2022.

11. Additional Information

- 11.1 Separate guidance will be available for interested parties on NIDirect to assist understanding of how to comply with fit note regulations which will be updated and publicly available at the time of enacting to support the change.