

2010 No. 137

SOCIAL SECURITY

TERMS AND CONDITIONS OF EMPLOYMENT

**The Social Security (Medical Evidence) and Statutory Sick Pay
(Medical Evidence) (Amendment) Regulations 2010**

| | |
|-------------------------------|--------------------------|
| <i>Made</i> - - - - | <i>25th January 2010</i> |
| <i>Laid before Parliament</i> | <i>29th January 2010</i> |
| <i>Coming into force</i> - - | <i>6th April 2010</i> |

The Secretary of State for Work and Pensions, in exercise of powers conferred by sections 5(1)(h) and (i), 14(1) and (2), 189(1) and (4) and 191 of the Social Security Administration Act 1992(a) with the concurrence of the Commissioners for Her Majesty's Revenue and Customs, insofar as this is required(b), and after agreement by the Social Security Advisory Committee that the proposals to make these Regulations should not be referred to it(c), makes the following Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010.

(2) These Regulations shall come into force on 6th April 2010.

(3) In these Regulations—

“the 1976 Regulations” means the Social Security (Medical Evidence) Regulations 1976(d);

“the 1985 Regulations” means the Statutory Sick Pay (Medical Evidence) Regulations 1985(e).

-
- (a) 1992 c.5; section 14(2) was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2), Schedule 3, paragraph 42. Section 189(1) was amended by the Social Security Act 1998 (c.14), Schedule 7, paragraph 109 and Schedule 8, by the Social Security Contributions (Transfer of Functions, etc.) Act 1999, Schedule 3, paragraph 57(1) and (2) and by the Tax Credits Act 2002 (c.21), Schedule 6. Section 189(4) was amended by the Social Security Act 1998, Schedule 7, paragraph 109. Section 191 is cited for the definition of “prescribe” and was amended by the Welfare Reform Act 2007 (c.5), Schedule 5, paragraph 10.
- (b) By virtue of section 14(2) and 191 of the Social Security Administration Act 1992 regulations made by the Secretary of State pursuant to section 14(2) of that Act require the concurrence of the Commissioners for Her Majesty's Revenue and Customs. By virtue of section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c.11) references to the Commissioners of Inland Revenue in enactments are to be taken as references to the Commissioners for Her Majesty's Revenue and Customs.
- (c) See section 173(1)(b) of the Social Security Administration Act 1992 (c.5).
- (d) S.I. 1976/615; relevant amending instruments are S.I. 1992/247, 1994/2975, 1999/3109 and 2008/1554.
- (e) S.I. 1985/1604; relevant amending instrument is S.I. 1992/247.

Amendment of the 1976 Regulations

2.—(1) The 1976 Regulations are amended as follows.

(2) In regulation 2 (evidence of incapacity for work, limited capability for work and confinement) for paragraph (1) substitute the following—

“2.—(1) Subject to regulation 5 and paragraph (1A) below, where a person claims to be entitled to any benefit, allowance or advantage (other than industrial injuries benefit or statutory sick pay) and entitlement to that benefit, allowance or advantage depends on that person being incapable of work or having limited capability for work, then in respect of each day until that person has been assessed for the purposes of the personal capability assessment or the limited capability for work assessment they shall provide evidence of such incapacity or limited capability by means of a statement given by a doctor in accordance with the rules set out in Part 1 of Schedule 1 to these Regulations.

(1A) Where it would be unreasonable to require a person to provide a statement in accordance with paragraph (1) above that person shall provide such other evidence as may be sufficient to show that they are incapable of work or have limited capability for work so that they should refrain (or should have refrained) from work by reason of some specific disease or bodily or mental disability.”.

(3) For Schedule 1 (rules) substitute—

“SCHEDULE 1

Regulation 2(1)

PART 1

RULES

1. In these rules, unless the context otherwise requires—

“assessment” means either a consultation between a patient and a doctor which takes place in person or by telephone or a consideration by a doctor of a written report by another doctor or other health care professional;

“condition” means a specific disease or bodily or mental disability;

“doctor” means a registered medical practitioner, not being the patient;

“other health care professional” means a person (other than a registered medical practitioner and not being the patient) who is a registered nurse, a registered midwife, an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 of the Health Act 1999^(a), or a member of any profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002^(b);

“patient” means the person in respect of whom a statement is given in accordance with these rules.

2. Where a doctor issues a statement to a patient in accordance with an obligation arising under a contract, agreement or arrangement under Part 4 of the National Health Service Act 2006^(c) or Part 4 of the National Health Service (Wales) Act 2006^(d) or Part 1 of the

(a) 1999 c.8.
(b) 2002 c.17.
(c) 2006 c.41.
(d) 2006 c.42.

National Health Service (Scotland) Act 1978^(a) the doctor's statement shall be in a form set out at Part 2 of this Schedule and shall be signed by that doctor.

3. Where a doctor issues a statement in any case other than in accordance with rule 2, the doctor's statement shall be in the form set out in Part 2 of this Schedule or in a form to like effect and shall be signed by the doctor attending the patient.

4. A doctor's statement must be based on an assessment made by that doctor.

5. A doctor's statement shall be completed in ink or other indelible substance and shall contain the following particulars—

- (a) the patient's name;
- (b) the date of the assessment (whether by consultation or consideration of a report as the case may be) on which the doctor's statement is based;
- (c) the condition in respect of which the doctor advises the patient they are not fit for work;
- (d) a statement, where the doctor considers it appropriate, that the patient may be fit for work;
- (e) a statement that the doctor will or, as the case may be will not, need to assess the patient's fitness for work again;
- (f) the date on which the doctor's statement is given;
- (g) the address of the doctor,

and shall bear, opposite the words "Doctor's signature", the signature in ink of the doctor making the statement.

6. Subject to rule 8, the condition in respect of which the doctor is advising the patient is not fit for work or, as the case may be, which has caused the patient's absence from work shall be specified as precisely as the doctor's knowledge of the patient's condition at the time of the assessment permits.

7. Where a doctor considers that a patient may be fit for work the doctor shall state the reasons for that advice and where this is considered appropriate, the arrangements which the patient might make, with their employer's agreement, to return to work.

8. The condition may be specified less precisely where, in the doctor's opinion, disclosure of the precise condition would be prejudicial to the patient's well-being, or to the patient's position with their employer.

9. A doctor's statement may be given on a date after the date of the assessment on which it is based, however no further statement shall be furnished in respect of that assessment other than a doctor's statement by way of replacement of an original which has been lost, in which case it shall be clearly marked "duplicate".

10. Where, in the doctor's opinion, the patient will become fit for work on a day not later than 14 days after the date of the assessment on which the doctor's statement is based, the doctor's statement shall specify that day.

11. Subject to rules 12 and 13, the doctor's statement shall specify the minimum period for which, in the doctor's opinion, the patient will not be fit for work or, as the case may be, for which they may be fit for work.

12. The period specified shall begin on the date of the assessment on which the doctor's statement is based and shall not exceed 3 months unless the patient has, on the advice of a doctor, refrained from work for at least 6 months immediately preceding that date.

(a) 1978 c.29; Part 1 was amended by the Primary Medical Services (Scotland) Act 2004 (asp 1), sections 1(2) and 4 and Schedule 1, paragraph 1(7).

13. Where—

- (a) the patient has been advised by a doctor that they are not fit for work and, in consequence, has refrained from work for at least 6 months immediately preceding the date of the assessment on which the doctor's statement is based; and
- (b) in the doctor's opinion, the patient will not be fit for work for the foreseeable future,

instead of specifying a period, the doctor may, having regard to the circumstances of the particular case, enter, after the words "case for", the words "an indefinite period".

PART 2
FORM OF DOCTOR'S STATEMENT

**STATEMENT OF FITNESS FOR WORK
FOR SOCIAL SECURITY OR STATUTORY SICK PAY**

Patient's name

I assessed your case on:

and, because of the following condition(s):

I advise you that: you are not fit for work.
 you may be fit for work taking account of the following advice:

If available, and with your employer's agreement, you may benefit from:

| | |
|--|--|
| <input type="checkbox"/> a phased return to work | <input type="checkbox"/> amended duties |
| <input type="checkbox"/> altered hours | <input type="checkbox"/> workplace adaptations |

Comments, including functional effects of your condition(s):

This will be the case for

or from to

I will/will not need to assess your fitness for work again at the end of this period.
(Please delete as applicable)

Doctor's signature

Date of statement

Doctor's address

(4) Schedules 1A and 1B are omitted.

Amendment of the 1985 Regulations

3.—(1) The 1985 Regulations are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation) for ““the 1982 Act” means the Social Security Housing and Benefits Act 1982” substitute ““the 1992 Act” means the Social Security Administration Act 1992;”.

(3) Regulation 2 (medical information) is amended as follows—

(a) for paragraph (1) substitute—

“(1) Medical information required under section 14(1) of the 1992 Act relating to incapacity for work shall be provided either—

- (a) in the form of a statement given by a doctor in accordance with the rules set out in Part 1 of Schedule 1 to these Regulations; or
- (b) by such other means as may be sufficient in the circumstances of any particular case.”.

(b) in paragraph (2) for “section 17(2) of the 1982 Act” substitute “section 14(1) of the 1992 Act”.

(4) For Schedule 1 substitute—

“SCHEDULE 1

Regulation 2(1)(a)

PART 1

RULES

1. In these rules, unless the context otherwise requires—

“assessment” means either a consultation between a patient and a doctor which takes place in person or by telephone or a consideration by a doctor of a written report by another doctor or other health care professional;

“condition” means a specific disease or bodily or mental disability;

“doctor” means a registered medical practitioner, not being the patient;

“other health care professional” means a person (other than a registered medical practitioner and not being the patient) who is a registered nurse, a registered midwife, an occupational therapist or physiotherapist registered with a regulatory body established by an Order in Council under section 60 of the Health Act 1999(a), or a member of any profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(b);

“patient” means the person in respect of whom a statement is given in accordance with these rules.

2. Where a doctor issues a statement to a patient in accordance with an obligation arising under a contract, agreement or arrangement under Part 4 of the National Health Service Act 2006(c) or Part 4 of the National Health Service (Wales) Act 2006(d) or Part 1 of the

(a) 1999 c.8.
(b) 2002 c.17.
(c) 2006 c.41.
(d) 2006 c.42.

National Health Service (Scotland) Act 1978^(a) the doctor's statement shall be in a form set out at Part 2 of this Schedule and shall be signed by that doctor.

3. Where a doctor issues a statement in any case other than in accordance with rule 2, the doctor's statement shall be in the form set out in Part 2 of this Schedule or in a form to like effect and shall be signed by the doctor attending the patient.

4. A doctor's statement must be based on an assessment made by that doctor.

5. A doctor's statement shall be completed in ink or other indelible substance and shall contain the following particulars—

- (a) the patient's name;
- (b) the date of the assessment (whether by consultation or consideration of a report as the case may be) on which the doctor's statement is based;
- (c) the condition in respect of which the doctor advises the patient they are not fit for work;
- (d) a statement, where the doctor considers it appropriate, that the patient may be fit for work;
- (e) a statement that the doctor will or, as the case may be will not, need to assess the patient's fitness for work again;
- (f) the date on which the doctor's statement is given;
- (g) the address of the doctor,

and shall bear, opposite the words "Doctor's signature", the signature in ink of the doctor making the statement.

6. Subject to rule 8, the condition in respect of which the doctor is advising the patient is not fit for work or, as the case may be, which has caused the patient's absence from work shall be specified as precisely as the doctor's knowledge of the patient's condition at the time of the assessment permits.

7. Where a doctor considers that a patient may be fit for work the doctor shall state the reasons for that advice and where this is considered appropriate, the arrangements which the patient might make, with their employer's agreement, to return to work.

8. The condition may be specified less precisely where, in the doctor's opinion, disclosure of the precise condition would be prejudicial to the patient's well-being, or to the patient's position with their employer.

9. A doctor's statement may be given on a date after the date of the assessment on which it is based, however no further statement shall be furnished in respect of that assessment other than a doctor's statement by way of replacement of an original which has been lost, in which case it shall be clearly marked "duplicate".

10. Where, in the doctor's opinion, the patient will become fit for work on a day not later than 14 days after the date of the assessment on which the doctor's statement is based, the doctor's statement shall specify that day.

11. Subject to rules 12 and 13, the doctor's statement shall specify the minimum period for which, in the doctor's opinion, the patient will not be fit for work or, as the case may be, for which they may be fit for work.

12. The period specified shall begin on the date of the assessment on which the doctor's statement is based and shall not exceed 3 months unless the patient has, on the advice of a doctor, refrained from work for at least 6 months immediately preceding that date.

(a) 1978 c.29; Part 1 was amended by the Primary Medical Services (Scotland) Act 2004 (asp 1), sections 1(2) and 4 and Schedule 1, paragraph 1(7).

13. Where—

- (a) the patient has been advised by a doctor that they are not fit for work and, in consequence, has refrained from work for at least 6 months immediately preceding the date of the assessment on which the doctor's statement is based; and
- (b) in the doctor's opinion, the patient will not be fit for work for the foreseeable future,

instead of specifying a period, the doctor may, having regard to the circumstances of the particular case, enter, after the words "case for", the words "an indefinite period".

PART 2
FORM OF DOCTOR'S STATEMENT

**STATEMENT OF FITNESS FOR WORK
FOR SOCIAL SECURITY OR STATUTORY SICK PAY**

Patient's name

I assessed your case on:

and, because of the following condition(s):

I advise you that: you are not fit for work.
 you may be fit for work taking account of the following advice:

If available, and with your employer's agreement, you may benefit from:

| | |
|--|--|
| <input type="checkbox"/> a phased return to work | <input type="checkbox"/> amended duties |
| <input type="checkbox"/> altered hours | <input type="checkbox"/> workplace adaptations |

Comments, including functional effects of your condition(s):

This will be the case for

or from to

I will/will not need to assess your fitness for work again at the end of this period.
(Please delete as applicable)

Doctor's signature

Date of statement

Doctor's address

(5) Schedule 1A is omitted.

Signed by authority of the Secretary of State for Work and Pensions.

25th January 2010

William D. McKenzie
Parliamentary Under-Secretary of State,
Department for Work and Pensions

The Commissioners for Her Majesty's Revenue and Customs hereby concur.

25th January 2010

Lesley Strathie
Mike Eland
Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Social Security (Medical Evidence) Regulations 1976 (“the 1976 regulations”) and the Statutory Sick Pay (Medical Evidence) Regulations 1985 (“the 1985 regulations”).

Regulation 2(3) amends the 1976 regulations by substituting Schedule 1. Part 1 of the substituted Schedule contains new rules concerning the completion of a doctor’s statement. Part 2 of the substituted Schedule prescribes the form of the doctor’s statement to which those rules relate. The doctor’s statement will help a person claim certain health-related social security benefits such as Employment and Support Allowance.

Regulation 2(4) omits Schedule 1A and 1B of the 1976 regulations.

Regulation 2(2) amends regulation 2(1) of the 1976 regulations in consequence of regulation 2(3) and (4) of these regulations.

Regulation 3(2) and (3) inserts references to the Social Security Administration Act 1992 in the 1985 regulations.

Regulation 3(4) amends the 1985 regulations by substituting Schedule 1. Part 1 of the substituted Schedule contains new rules concerning the completion of a doctor’s statement. Part 2 of the substituted Schedule prescribes the form of the doctor’s statement to which those rules relate. The doctor’s statement will help employees claim Statutory Sick Pay.

Regulation 3(5) omits Schedule 1A of the 1985 regulations.

This instrument imposes no costs on the private or voluntary sectors. An assessment of the impact of these Regulations has been made. Copies of this impact assessment are available in the libraries of both Houses of Parliament, and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 6B Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>

© Crown copyright 2010

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

2010 No. 137

SOCIAL SECURITY

TERMS AND CONDITIONS OF EMPLOYMENT

The Social Security (Medical Evidence) and Statutory Sick Pay
(Medical Evidence) (Amendment) Regulations 2010

£5.50