POLICY NOTE

THE SCOTLAND ACT 1998 (AGENCY ARRANGEMENTS) (SPECIFICATION) ORDER 2014

2014/1892

Introduction

This policy note has been prepared by the Scottish Government and is laid before Parliament.

The Scotland Act 1998 (Agency Arrangements) (Specification) Order 2014 is made in exercise of the power conferred by section 93 of the Scotland Act 1998. The instrument is subject to annulment by either House of the UK Parliament and is also subject to negative procedure in the Scottish Parliament.

Policy Objectives

The purpose of this instrument is to allow a Minister of the Crown to make arrangements for certain of the functions of the Secretary of State for Work and Pensions under section 2 of the Employment and Training Act 1973 and section 3 of the Social Security Act 1998 to be exercised by the Scottish Ministers. This will enable the Scottish Ministers to deliver a health and work assessment and advisory service in Scotland on behalf of the UK Government, which will provide occupational health assessments to persons resident in Scotland who are absent from employment, or at risk of being absent from employment, due to sickness; advice to persons in connection with those assessments; and occupational health and related advice.

November 2011 saw the publication of "Health at work - an independent review of sickness absence". This review gave a comprehensive analysis of the current system and identified a lack of access to independent occupational health advice as one of the key barriers preventing many people from returning to work.

The Scottish Government published a response to the review in February 2012, broadly accepting the recommendations but noting that these mainly related to reserved matters.

In the UK Government response, “Fitness for work: the Government response to ‘Health at work – an independent review of sickness absence’”, published in January 2013, the Department for Work and Pensions announced its intention to launch a new health and work assessment and advisory service across Great Britain to make independent occupational health advice more readily available to employees, employers, and General Practitioners (GPs) so they can better manage sickness absence.

The review can be accessed here –
https://www.gov.uk/government/publications/review-of-the-sickness-absence-

system-in-great-britain. The Scottish Government response can be accessed here – http://www.scotland.gov.uk/Resource/0041/00411536.pdf. The UK Government response can be accessed here – https://www.gov.uk/government/publications/government-response-to-the-review-of-the-sickness-absence-system-in-great-britain.

By making occupational health expertise more widely available to employees, employers and GPs, the new service is intended to support a reduction in the length of sickness absence and reduce the resulting impacts on, individuals, employers and the State.

The service will deliver both specialist occupational health assessment and advice in respect of employees absent from work due to sickness, and general health and work advice to employees, employers and GPs.

The service will have both an advice and an assessment element:

Advice: Employers, employees, the self-employed and GPs will be able to access, through a website and phone line, advice to assist with issue identification, adjustments and self-help for common obstacles preventing a return to work or to support employment.

Assessment: Once an employee has reached, or is expected to reach, four weeks of sickness absence, with their consent, they will normally be referred by their GP for an assessment by an health professional with skills in occupational health assessment. This will identify all the obstacles preventing a return to work, and any measures, steps or interventions that would facilitate a return to work. All referrals will be case managed whilst they are with the service and employees will receive a Return To Work Plan, elements of which, with the employee's consent, will be shared with their GP and employer. In certain circumstances, to be set out in guidance, employers will also be able to refer an employee to the service if the GP has not done so by the four week point.

Referral to the assessment service has been pitched at four weeks sickness absence, as evidence suggests that it is after this point when it becomes more likely that a longer term absence will occur and there is an increased chance of the employee going on to claim benefits.[1] GPs will however be able to refer to the service before four weeks sickness absence is reached, where the GP considers it appropriate (guidance will be provided).

The assessment service is currently intended to provide occupational health assessments only to employees absent from employment due to sickness. However, the drafting of the Order allows for future policy change to include other groups, such

[1] Black C, Frost D (2011) 'Health at work - an independent review of sickness absence' DWP - available at https://www.gov.uk/government/publications/review-of-the-sickness-absence-system-in-great-britain

as those that are not currently absent from employment due to sickness but are at risk of sickness absence.

The new service is to be established under section 2(1) of the Employment and Training Act 1973, which gives the Secretary of State for Work and Pensions power to “make such arrangements as he considers appropriate for the purpose of assisting persons to … obtain and retain employment”, and to incur expenditure to do so. The subject matter of this Act is reserved to GB (with some exceptions not relevant to this Order); and transferred with respect to Northern Ireland.

The new service will be delivered in England and Wales through a supplier procured in open competition. Following consultation between DWP and the Scottish Government on the design and implementation of the service, DWP and Scottish Ministers have agreed that the Scottish Government should deliver the service in Scotland on behalf of the UK Government, specifically by building on existing arrangements with bodies in NHS Scotland accountable to the Scottish Government.

The rationale for this agreement is that in Scotland there is already a relatively developed public sector health, work and wellbeing infrastructure in place, which includes occupational health, rehabilitation and other services. This has been developed in part from experience of rolling out programs which were supported and partly funded by DWP, including the Occupational Health Advice Line pilots and, Scotland-wide, the Fit for Work pilot. By building on this existing capability and expertise, delivery of this service in Scotland by the Scottish Government should support the delivery of a high quality service to Scottish users while also providing greater value for money.

In order to facilitate the delivery of the service in Scotland by the Scottish Government, this Order is required to specify the functions which the Scottish Ministers can exercise, on behalf of the Secretary of State for Work and Pensions. Section 3 of the Social Security Act 1998 has been specified to enable arrangements to be made for information to be shared between DWP's service providers (including those instructed by Scottish Ministers pursuant to the arrangements) and the Scottish Ministers for the purposes of, or for any purposes connected with, the new service.

Legislative Context

Section 93(1) of the Scotland Act 1998 enables a Minister of the Crown to make arrangements for any of that Minister’s specified functions to be exercised on that Minister’s behalf by the Scottish Ministers; and the Scottish Ministers may make arrangements for any of their specified functions to be exercised on their behalf by a Minister of the Crown. By section 93(3), functions to be subject to such arrangements must be specified in an Order in Council.

Consultation

Prior to the publication of the Government response to the independent review of sickness absence in January 2013, consultation with stakeholders across GB took place on the proposals for a new health and work assessment and advice service.

Following publication consultation continued, and informed the design of the service. This consultation involved a series of stakeholder events with representatives of organisations from occupational health; healthcare professionals, including GPs; employers, including Small and Medium Enterprises; employee representatives, including from special interests such as from charities and unions; and the devolved administrations.

This consultation with stakeholders indicated widespread support from employers, healthcare professionals, and employees for a service that assists employees to return to work, while indicating some points to consider for the detailed design of the service. For instance GPs and employee representatives highlighted the need for the service to take account not only of health related issues but also workplace issues and non-health/non-work related issues that do, or could, prevent the employee from returning to work. The service has as result been designed to deliver biopsychosocial assessments and advice which adopt a holistic approach.

Impact Assessments

A Business and Regulatory Impact Assessment has not been prepared for this Order as it will have no impact on business or civil society organisations.

Monitoring and Review

There is no need for review or monitoring as any arrangements made as a consequence of this Order will be subject to individual agreements.

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