EXPLANATORY MEMORANDUM TO

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

2022 No. 630

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations allow registered nurses, occupational therapists, pharmacists, and physiotherapists, in addition to doctors, to issue fit notes following an assessment of a patient's fitness for work. Fit notes are the most readily available and commonly used form of medical evidence to support eligibility for Statutory Sick Pay, Occupational Sick Pay and Social Security benefits.

3. Matters of special interest to Parliament

3.1 None.

4. Extent and Territorial Application

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5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 The Social Security (Medical Evidence) Regulations 1976 ("the 1976 Regulations")[1] and Statutory Sick Pay (Medical Evidence) Regulations 1985 ("the 1985 Regulations")[2] specify that fit notes must be issued by doctors and do not allow for other professions to issue fit notes.

6.2 These regulations amend the 1976 and 1985 Regulations by providing that a fit note can be issued by "healthcare professionals", which is defined as meaning doctors, registered nurses, occupational therapists, pharmacists, and physiotherapists. This expands the number of healthcare professions that are able to issue fit notes and removes the necessity for a fit note to be issued by a doctor. The regulations amend the 1976 and 1985 Regulations to replace all relevant references to "doctor" with "healthcare professional".

6.3 These regulations also make consequential amendments to other sets of regulations which refer to fit notes being issued by doctors. These consequential amendments will remove the reference to fit notes as being "doctor's" statements and remove

[1] https://www.legislation.gov.uk/uksi/1976/615/contents
[2] https://www.legislation.gov.uk/uksi/1985/1604/contents

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 Regulations and 1985 Regulations.

7. Policy background

What is being done and why?

7.1 This statutory instrument expands the range of healthcare professions that are able to certify fit notes by including nurses, occupational therapists, pharmacists, and physiotherapists in addition to doctors.

Explanations

7.2 Fit notes are issued and certified by doctors following an assessment of a patient's fitness for work and are used as medical evidence to demonstrate eligibility for Statutory Sick Pay, Occupational Sick Pay and Social Security benefits. Fit notes are issued predominantly in two settings: primary care, where they are embedded in the GP IT systems, and in secondary care, where they are issued via paper pads which are ordered from the Department for Work and Pensions (DWP).

7.3 In April 2022, the Social Security (Medical Evidence) Regulations 1976 and Statutory Sick Pay (Medical Evidence) Regulations 1985 were amended to remove the legal requirement for doctors to provide a signature in ink to authenticate a fit note. This removed the barriers to fit notes being completed, authorised and issued digitally where IT systems allow, thereby improving the process of issuing and receiving a fit note.

7.4 Currently only doctors can certify fit notes. This is not reflective of modern ways of multi-disciplinary working in healthcare where alternative Healthcare Professionals (HCPs) such as nurses often lead a patient's diagnosis and healthcare management. Extending certification to a wider group of HCPs will better enable relevant HCPs to undertake health and work conversations to issue and certify fit notes without having to refer patients to their doctors.

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

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate either the 1975 or 1986 Regulations.

10. Consultation outcome

10.1 DWP have publicly consulted on the policy intent to extend certification to a wider set of HCPs and conducted research, through "Improving Lives" (green paper 2016,

response published 2017)[3], "Health is Everyone's Business" (consultation 2019, response published 2021)[4] and a published research report (2020)[5]. Respondents offered feedback on fit notes and how more specific work and health advice could be offered. These responses have suggested there is broad support for the policy intent.

10.2 The Department for Work and Pensions (DWP) have had regular engagement with a range of stakeholders throughout the policy development. This has included targeted engagement with a key set of stakeholders, including within the healthcare sector and with major employer representative groups, who have signalled their support for this change.

10.3 The decision as to which professions to extend to has been agreed through engagement with and advice from the Department of Health and Social Care (DHSC), Chief Allied Health Professional Officers, Chief Nursing Officers, Chief Pharmaceutical Officers, relevant professional bodies, and regulators from across England, Wales, Scotland, and Northern Ireland.

10.4 DWP have worked closely with officials across the Devolved Administrations, including establishing a monthly forum to discuss the policy development and delivery.

11. Guidance

11.1 Health Education England (HEE) have been commissioned to produce non-statutory guidance, working with representatives across the Devolved Administrations to support this change and provide clarity for individuals, regulators, and employers of healthcare professionals on which individuals within a professional grouping can perform fit note certification. This guidance will help mitigate the risk of any individual taking up this task if it is not within their scope of practice and could assist in any regulatory proceedings. The guidance will be available on GOV.UK from 1 July 2022 in line with the date from which the regulations take effect.

11.2 Separate guidance is available for individuals, doctors, and employers on GOV.UK[6] to understand how to comply with fit note regulations. This will be updated and publicly available at the time of enacting the regulations to support the change.

11.3 An online training module hosted on E-learning for Healthcare (Elfh)[7], has been developed to support Healthcare Professionals (HCPs) in preparing to issue fit notes as part of their practice. This has been developed with HEE and an expert clinical sub-group. The training course will be available on the Elfh site and accessible to all HCPs across all four nations from 1 July 2022.

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies. There will be a small impact associated with the time required for employers to familiarise

[3] https://www.gov.uk/government/publications/improving-lives-the-future-of-work-health-and-disability
[4] https://www.gov.uk/government/consultations/health-is-everyones-business-proposals-to-reduce-ill-health-related-job-loss/outcome/government-response-health-is-everyones-business
[5] https://www.gov.uk/government/publications/exploring-perceptions-and-attitudes-towards-the-extension-of-fit-note-certification/exploring-perceptions-and-attitudes-towards-the-extension-of-fit-note-certification
[6] https://www.gov.uk/government/collections/fit-note
[7] https://www.e-lfh.org.uk/

themselves with the regulation change, but the simplicity of the regulation change means that the time required per employer will be negligible.

12.2 There is no, or no significant, impact on the public sector.

12.3 No formal regulatory impact assessment is required for this regulation change as the impacts on private businesses are expected to be small familiarisation costs only (under £5m).

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), guidance will be offered in the form of information on GOV.UK.[8]

14. Monitoring & review

14.1 Fit note data will be closely monitored following this legislative change. A commissioned evaluation will identify and address any issues that arise through implementation.

14.2 There will be continuous close engagement with professional bodies, Chief Professional Officers and the regulatory bodies to identify trends and issues in clinical practice to ensure that this change is embedded effectively.

14.3 The instrument does not include a statutory review clause.

15. Contact

15.1 David Long at the Department for Work and Pensions Telephone: 07825 101768 or email: david.long@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jean King, Deputy Director for the joint Work and Health Unit for Department of Health and Social Care (DHSC) and Department for Work and Pensions (DWP), can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chloe Smith MP, Minister for Disabled People, Health and Work at the Department for Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.

[8] https://www.gov.uk/government/publications/fit-note-guidance-for-employers-and-line-managers