EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (MEDICAL EVIDENCE) AND STATUTORY SICK PAY (MEDICAL EVIDENCE) (AMENDMENT) REGULATIONS 2022

2022 No. 298

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 At present doctors are required to complete and sign the Statement of Fitness for Work (commonly referred to as 'fit note') in ink. The aim of these regulations is to improve the process for completing and receiving a fit note by removing the obstacles to digital issuing of fit notes by removing the requirement for fit notes to be completed and signed in ink.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland.

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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 Medical evidence which can be required for Social Security is prescribed by the Social Security (Medical Evidence) Regulations 1976 ("the 1976 Regulations")[1] and medical evidence which can be required for Statutory Sick Pay is prescribed by the Statutory Sick Pay (Medical Evidence) Regulations 1985 ("the 1985 Regulations")[2]. These regulations specify the form in which medical evidence is to be provided, including who is to sign the statement and that the statement must be completed, and signed, in ink.

6.2 This Instrument amends the 1976 Regulations and the 1985 Regulations. The 1976 and 1985 Regulations (prior to amendment) impose certain requirements which are inconsistent with digital signing and issuing of fit notes. Therefore, these Regulations remove the requirement for the fit note, for Social Security and Statutory Sick Pay ("SSP") purposes, to be completed in ink or other indelible substance and removes the

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

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

requirement that the fit note must be signed in ink by the issuing doctor. It also prescribes a new version of the fit note form, which will be used in parallel with the existing version of the form.

6.3 The version of the fit note which is currently prescribed in Part 2 of Schedule 1 to both the 1976 and 1985 Regulations will continue to be able to be used following the commencement of these Regulations. This is because the current version will not be recalled and, therefore, to avoid the risk of fit notes being issued in the wrong form, Part 2 will not be repealed at this stage. To reflect that Part 2 includes a signature box, the amending Regulations require the name of the doctor to be included but provide that this can be in the form of a signature. Part 2 may be repealed once the prospect of this form being used in practice is removed.

7. Policy background

What is being done and why?

7.1 This statutory instrument removes barriers to the fit note being completed, authorised and issued digitally where systems and capability allow by removing the requirement to complete and sign a fit note in ink.

Explanations

7.2 Currently 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 and Social Security benefits. Fit notes are issued 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.

7.3 The 1976 and 1985 Regulations require the fit note to be completed in ink or other indelible substance and signed in ink, meaning it must be printed or completed by hand and signed by hand into order to comply with the regulations. This is inconsistent with digital authorisation and issuing of the fit note.

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 No formal published consultation has been undertaken regarding this change and there are no plans for one.

10.2 Although not directly consulted on, respondents offered feedback on fit note as part of the Government's Health is everyone's business: Proposals to reduce ill-health related

job loss consultation[3]. Following this the Government committed to this regulatory change in its response to this consultation published July 2021[4].

10.3 Employer representative groups and representative bodies for doctors have been engaged throughout development of this change. This engagement reflected support for updating the fit note to remove barriers to digital issuing and improving the process for doctors to complete a fit note.

10.4 As the supporting IT systems within healthcare are coordinated separately within the Devolved Administrations both Scottish and Welsh officials have been involved in supporting this change. Collaborative work has been undertaken to update the respective IT systems that the fit note is embedded in across England, Scotland and Wales.

11. Guidance

11.1 Guidance is available on GOV.UK[5] for individuals, doctors and employers to understand how to comply with fit note regulations and will be updated and publicly available at the time of enacting to support the change.

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 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 (well 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), the approach taken is to update the fit note guidance and information for employers on GOV.UK[6].

14. Monitoring & review

14.1 The approach to monitoring of this legislation is split into two parts. Fit note Management Information data will be used to track changes in the volume of fit

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[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815944/health-is-everyones-business-proposals-to-reduce-ill-health-related-job-loss.pdf

[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/collections/fit-note

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

notes issued. Interviews will also be carried out with GPs and practice managers to understand the impact of digital certification, and to explore any barriers to this change.

14.2 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 joint Work Health Unit for DHSC and 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.