



STATUTORY INSTRUMENTS.

S.I. No. 340 of 2013

SOCIAL WELFARE (CONSOLIDATED CLAIMS, PAYMENTS AND
CONTROL) (AMENDMENT) (No. 7) (PARTIAL CAPACITY BENEFIT)
REGULATIONS 2013

SOCIAL WELFARE (CONSOLIDATED CLAIMS, PAYMENTS AND CONTROL) (AMENDMENT) (No. 7) (PARTIAL CAPACITY BENEFIT) REGULATIONS 2013

I, JOAN BURTON, Minister for Social Protection, in exercise of the powers conferred on me by section 4 (adapted by the Social and Family Affairs (Alteration of Name of Department and Title of Minister) Order 2010 (S.I. No. 186 of 2010)) and by sections 46A, 46B and 46C (inserted by section 12 of the Social Welfare and Pensions Act 2010 (No. 37 of 2010)) of the Social Welfare Consolidation Act 2005 (No. 26 of 2005), hereby make the following Regulations:

Citation and construction.

1. (1) These Regulations may be cited as the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 7) (Partial Capacity Benefit) Regulations 2013.

(2) These Regulations and the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to 2013 shall be construed together as one and may be cited together as the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to 2013.

Commencement.

2. These Regulations come into operation on 9 September 2013.

Partial Capacity Benefit.

3. Chapter 1A (inserted by article 4 of the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 2) (Partial Capacity Benefit) Regulations 2012 (S.I. No. 43 of 2012)) of Part 2 of the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007) is amended—

(a) by substituting the following articles for articles 28A to 28D:

“Conditions for which person assessed as having a profound restriction on capacity for work.

28A. (1) For the purposes of section 46A(1)(b), a person shall be regarded as having a profound restriction on his or her capacity for work where that person has a residual capacity for work which is not more than a quarter of the norm in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 6th September, 2013.

(2) In assessing whether a person has a profound restriction on his or her capacity for work for the purposes of section 46A(1)(b), a deciding officer shall have regard to any one or more of the following—

- (a) the opinion of a medical assessor,
- (b) medical evidence furnished by a registered medical practitioner,
- (c) the claimant's own assessment of his or her capacity for work, or
- (d) any other relevant material evidence.

Conditions for which person assessed as having a mild restriction on capacity for work.

28B. (1) For the purposes of section 46A(4), a person shall be regarded as having a mild restriction on his or her capacity for work where that person has a capacity for work which is not materially different to the capacity for work of a person of the same age who has no restriction on his or her capacity for work.

(2) In assessing whether a person has a mild restriction on his or her capacity for work for the purposes of section 46A(4), a deciding officer shall have regard to any one or more of the following—

- (a) the opinion of a medical assessor,
- (b) medical evidence furnished by a registered medical practitioner,
- (c) the claimant's own assessment of his or her capacity for work, or
- (d) any other relevant material evidence.

Reduced rates of partial capacity benefit.

28C. (1) Where a person would be entitled to partial capacity benefit but for the fact that he or she does not satisfy the requirement specified in section 46A(1)(b) that he or she has a profound restriction on his or her capacity for work in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work, he or she shall be entitled to partial capacity benefit where he or she has—

- (a) a severe restriction on his or her capacity for work in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work, or

(b) a moderate restriction on his or her capacity for work in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work.

(2) For the purposes of sub-article (1)(a), a person shall be regarded as having a severe restriction on his or her capacity for work in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work where that person—

(a) has a residual capacity for work which is not more than a half of the norm in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work, and

(b) has not been assessed as having a profound restriction on his or her capacity for work.

(3) For the purposes of sub-article (1)(b), a person shall be regarded as having a moderate restriction on his or her capacity for work in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work where that person—

(a) has a residual capacity for work which is not more than four fifths of the norm in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work, and

(b) has not been assessed as having a profound or a severe restriction on his or her capacity for work.

(4) In assessing whether a person has a severe or moderate restriction on his or her capacity for work for the purposes of this article, a deciding officer shall have regard to any one or more of the following—

(a) the opinion of a medical assessor,

(b) medical evidence furnished by a registered medical practitioner,

(c) the claimant's own assessment of his or her capacity for work, or

(d) any other relevant material evidence.

(5) Where a person qualifies for partial capacity benefit under this article, benefit shall be paid in accordance with Schedule 7A.

Rate of partial capacity benefit payable where person requalifies for benefit.

28D. (1) In the case of a person to whom section 46A(1)(c)(ii) applies, not being a person to whom section 46C(3)(a)(ii) applies—

- (a) where that person has been assessed as having the same restriction on his or her capacity for work as had been assessed in relation to the period of entitlement to partial capacity benefit immediately before the date of exhaustion of the previous period of entitlement, partial capacity benefit shall be paid at the same rate as had been paid immediately before the exhaustion of that period of entitlement to benefit,
- (b) where that person has been assessed as having a different restriction on his or her capacity for work from that which had been assessed in relation to the period of entitlement to partial capacity benefit immediately before the date of exhaustion of the previous period of entitlement, partial capacity benefit shall be paid at the rate of benefit that would have been paid immediately before the exhaustion of the previous period of entitlement to benefit in accordance with—
 - (i) the revised restriction on that person’s capacity for work, and
 - (ii) that person’s other circumstances.

(2) Notwithstanding sub-article (1)—

- (a) any change in circumstances that would have resulted in a variation in the rate of illness benefit, invalidity pension or partial capacity benefit payable, if that person had continued receiving the said benefit or pension, or
- (b) any general variation in the weekly rates of benefits, pensions, allowances or supplements under the Principal Act,

shall have similar effect in relation to the rate of partial capacity benefit payable in accordance with this article.”,

(b) in article 28F—

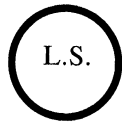
- (i) in paragraph (a), by substituting “who has” for “assessed by a medical assessor as having”, and
- (ii) in paragraph (b), by substituting “who has” for “assessed by a medical assessor as having”,

and

(c) by inserting the following article after article 28G:

“Definition.

28H. In this Chapter ‘medical assessor’ means an officer of the Minister who is a registered medical practitioner.”.



GIVEN under my Official Seal,
2 September 2013.

JOAN BURTON,
Minister for Social Protection.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

Section 8 of the Social Welfare and Pensions (Miscellaneous Provisions) Act 2013 amends the conditions of entitlement applying to the Partial Capacity Benefit scheme to enable decisions relating to whether or not a claimant has a restriction on his or her capacity for work and the level of that restriction to be appealed to the Social Welfare Appeals Office. These Regulations provide for the associated amendments to the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007.

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nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€2.54



Wt. (B30045). 285. 9/13. Clondalkin. Gr 30-15.