

Consultation Response

Reforming the Medical Certificate

Consultation on draft regulations

August 2009

National Association of Welfare Rights Advisers

The National Association of Welfare Rights Advisers was established in 1992 and represents advisers from local authorities, the voluntary sector, trade unions, solicitors and other organisations who provide legal advice on social security and tax credits.

We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practise amongst our members.

NAWRA holds a number of conferences throughout the year across the UK, attended by members from all sectors of the industry. An integral part of these events are workshops that help to develop and lead good practice.

Our members have much experience in providing both front line legal advice on benefits and in providing training and information as well as policy support and development. Much of this work relates to people who hold medical certificates. As such NAWRA is able to bring much knowledge and insight to this consultation exercise.

Member's views have also been sought through our website.

Consultation Question 1: Do you have any further information, data or analysis which would be useful for improving the quality of the analysis in the attached Impact Assessment?

NAWRA has no comment to make.

Consultation Question 2: The Government welcomes views on whether listing common types of changes is helpful; whether those listed are sufficient; and on whether 'Occupational Health assessment' should be added to the revised statement.

NAWRA is concerned that there will be several practical difficulties with this proposal.

A GP may not be aware of all the tasks or the nature of tasks undertaken by a patient and conversely a patient may not be aware of the implications of the medical condition that they

are suffering from. Its likely that neither the GP or the patient will be able to identify the nature of the work and helpful changes from a list within the time of a usual consultation, reducing the value of what will inevitably be an incomplete list of “changes”.

A list of changes may be useful for some more common physical ailments but NAWRA questions the value of these for patients with a learning disability or mental health problem.

Allied to this NAWRA suggests that many employers will be unlikely to be implement such changes and this creates a danger that some employees particularly those with mental health problems may subject to pressure to return and remain at work even when suggested changes are not able to be carried out or have little effect.

We note that not all employers have Occupational Health facilities and that particularly SME employers may not have sufficient resources to facilitate changes to work patterns even within the DDA.

Consultation Question 3: Will the changes described in paragraph 40 ensure that the current functions of the special statement - form Med 5 - are accurately incorporated in the revised form Med 3 and associated rules for its completion?

NAWRA has no comment.

Consultation Question 4: The Government welcomes views on whether medical statements should only be issued when a patient is assessed as “not fit for work” or ‘may be fit for some work’.

In NAWRA's experience we find that it can often be helpful to have a “fit for work” statement in situations where the patient has less insight into their condition or otherwise feels under pressure to return to work.

The option to discuss with the GP a return to work could reduce the risk of a return to work before the patient is fully ready. This could happen irrespective of the nature of the illness or disability and can see the employment being terminated and patient may need to further rely on benefits for a period. This may have a negative effect on health and thus undermine the current policy of encouraging people back to work at the earliest suitable point.

Where changes have been made or an Occupational Health service is involved this may not be a high risk, but as previously noted not all employers have this function and may not be sympathetic to a residual or enduring health problem.

For this reason it would be helpful to achieving the overall policy aim to retain this option on the statement.

Consultation Question 5: The Government welcomes views on whether the draft regulations, including the rules, achieve the intentions expressed in the commentary. In particular, bearing in mind the Government's aim of reducing sickness absence and supporting people with health conditions to return to work at the earliest opportunity, should the maximum duration of a medical statement be less than 6 months? (See Rule13.)

NAWRA's view is that 6 months may well be a suitable period over which to refrain from work where the patient has a condition such as cancer or others involving an intense or prolonged period of treatment including mental health problems. For those in work this is likely to tie in with the ending of SSP and the ability to claim ESA so is a useful point in time to review the ability to go to work.