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# The exception that became the rule

– The Swedish Social Insurance Agency’s use of overriding reasons at 180 days of sick leave

## Summary

On 15 March 2021, the regulations for the national sickness insurance system changed. The aim was to extend the exception from assessing capacity to work in relation to commonly performed work after day 180 in the rehabilitation chain. It became possible to defer the assessment if overriding reasons indicate a return to work at the employer no later than on day 365. The Government wished to give insured individuals better means for returning to their normal job, where they have their professional identity, training and experience.

The Swedish National Audit Office (“the Swedish NAO”) notes that it has become easier for insured individuals to be assessed on the basis of conditions for returning to their regular job, which is in line with intentions. The total proportion of cases assessed in relation to regular jobs after 180 days of sick leave was just over 10 per cent before the reform. After the reform, this proportion rose to more than half. The Swedish NAO’s impact study also shows that those who are assessed in relation to the exception have better prospects of returning to work. At the same time, there are indications that the Swedish Social Insurance Agency has used the exception to a greater extent than intended by the regulatory change.

## The exception is used as the main rule

A fundamental principle in the national sickness insurance system is that capacity to work after a period of sick leave shall be assessed in relation to more factors than the

individual's own job. Individuals who are unable to return to work at their own employer, but who have work capacity for other jobs, are expected to switch to such work instead of remaining in the sickness insurance system. The outcome of the audit shows, however, that overriding reasons are used to a greater extent than intended by exceptions in the rehabilitation chain. The Swedish NAO notes that overriding reasons are used as a main rule rather than an exception.

### **Somewhat deficient precision in terms of who is assessed with *overriding reasons*, although the exception improves prospects of returning to regular jobs**

According to the Government's intention, overriding reasons shall be applied, and the assessment of capacity to work in relation to the entire labour market shall be deferred, when there are more indications in favour of, than against, the insured individual returning to work at their employer, with the same number of working hours as before they went on sick leave, within a year. The audit shows that barely half of insured individuals granted overriding reasons return to work at their employer with the same number of working hours within a year. The Swedish NAO therefore considers that there are precision deficiencies in terms of who should have their capacity to work assessed on the basis of overriding reasons.

At the same time, the Swedish NAO notes that there is a positive effect for insured individuals associated with having their work capacity assessed on the basis of overriding reasons. The Swedish NAO's impact study shows that there is a higher probability of returning to work with the same number of working hours within 365 days when assessed on the basis of overriding reasons, compared with commonly performed work or other exceptions.

### ***Overriding reasons* easy to apply, but risk of overuse on the rise**

Almost two-thirds of individuals signed off sick for more than 180 days have their capacity to work assessed on the basis of overriding reasons. The audit shows that the reform has been appreciated by sickness benefit administrators. The administrators have a heavy workload and they express that overriding reasons ease their work. However, the regulations leave tremendous scope for discretion. This, together with shortcomings in the Swedish Social Insurance Agency's own guidelines, creates a risk of overuse. The Swedish Social Insurance Agency's implementation of overriding reasons is not considered effective. It is important for the legitimacy of the system that overriding reasons are not used when an assessment of work capacity for other jobs should be performed.

## Swedish Social Insurance Agency not fulfilling its coordination remit

The Swedish NAO also notes that the Swedish Social Insurance Agency contacts employers – and has information about their plan for returning to work – in about half of examined cases when the right to sickness benefit is assessed on the basis of overriding reasons. Such contact, according to the Swedish NAO, should be made in the vast majority of cases in which overriding reasons are relevant, if the Swedish Social Insurance Agency is to fulfil its coordination remit.

## Shortcomings in the Swedish Social Insurance Agency's follow-up on the exception

Finally, the Swedish NAO notes that the Swedish Social Insurance Agency has reported a more positive picture of the outcome than is actually the case, because the reported measure cannot distinguish between returning to work at the same or a different employer, or returning with the same or fewer working hours. The Swedish Tax Agency's information on earned income from employers can enable the Swedish Social Insurance Agency to develop precision in its analyses.

The Swedish NAO also demonstrates that follow-up on outcomes does not reach the administrators. Because of this, the administrators get a distorted picture of how the exception works, such that they perceive that the vast majority of individuals signed off sick, who are assessed on the basis of the exception, return to work with the same working hours within 365 days. The Swedish NAO considers that it would have been beneficial for administrators to be given information showing that only half return; that is, that there are precision deficiencies. With better knowledge of the outcome, conditions improve for precise application of the regulations. At the same time, the Swedish Social Insurance Agency is being developed as a knowledge agency.

## Recommendations

The Swedish NAO makes the following recommendations:

### To the Government

- Review the design of Chapter 27, section 48 of the Social Insurance Code concerning overriding reasons with a view to improving uniformity and precision in application.

### To the Swedish Social Insurance Agency

- Develop decision support with the aim of empowering administrators in their role of civil servants as regards requirements for equal treatment in assessing entitlement to sickness benefit.

- Ensure that follow-up and evaluation are used to enhance quality in case processing.
- To a greater extent, make contact with employers regarding information on plans for returning to work in cases where overriding reasons are applied.