

WELFARE REFORM ACT 2009

EXPLANATORY NOTES

SCHEDULES

Schedule 3: Claimants dependent on drugs etc.

Part 1 – Jobseeker’s allowance

317. *Paragraphs 1 and 2 of Schedule 3 make provision to impose certain requirements on persons claiming jobseeker’s allowance (JSA) who have a propensity to misuse drugs by inserting new section 17C and new Schedule A1 into the Jobseekers Act 1995.*

Schedule A1

Persons dependent on drugs etc.

318. *In paragraph 1, sub-paragraphs (1), (2) (3) and (4) make provision for regulations to require claimants, who are required to meet the job-seeking conditions (to be available for employment; to be actively seeking employment; and to have agreed and signed a jobseeker’s agreement), to answer questions, at a specific time and place, about their use of drugs and whether it affects their chances of finding work. They can also be required to answer questions about any treatment they may be receiving.*
319. *Paragraph 2 is a regulation-making power which may require someone to undertake a substance-related assessment. The substance-related assessment is divided into two stages - an initial assessment followed by an interview a few days later to discuss matters arising. This applies where there are reasonable grounds for suspecting they may have a drug problem which is affecting their prospects of finding work. The assessment would be carried out by an approved person with the necessary qualifications or experience.*
320. *Those who fail to take part in a substance-related assessment, without good cause, can be required by regulations to take part in one or more drugs tests under paragraph 3, where this will assist in determining whether a person is dependent on, or has a propensity to misuse any drug. The requirement for persons to attend an assessment or interview will disapply where they agree to submit to a drugs test which then produces a negative result. Sub-paragraphs (7) and (8) set out the types of test that can be prescribed in regulations.*

Paragraph 1 to 3: supplementary

321. *Paragraph 4 applies to information provided by claimants under paragraphs 1 to 3. It ensures that information or evidence provided by claimants about their drug possession, or drug use cannot be used against them in criminal proceedings unless they choose to refer to it. Sub-paragraph (3) excludes from this provision criminal proceedings for offences under section 112 of the Social Security Administration Act 1992, and offences under section 5 of the Perjury Act 1911 and its Scottish equivalent.*

Voluntary and mandatory rehabilitation plans

322. *Paragraph 5 provides a regulation-making power providing for claimants to have the jobseeking conditions suspended and to receive a treatment allowance when they are*

prepared to agree to receive treatment in accordance with a voluntary rehabilitation plan. *Paragraph 6* provides regulation-making powers in respect of problem drug users who do not agree to receive treatment in accordance with a voluntary rehabilitation plan. This group will be required to comply with a mandatory rehabilitation plan.

323. The mandatory rehabilitation plans ensure that all identified problem drug users who do not voluntarily sign up to a rehabilitation plan and treatment are required to comply with a mandatory education programme. *Sub-paragraph (6)* provides for the agreement, form, signature, review, variation and revocation of rehabilitation plans. *Sub-paragraph (7)* provides that a person is not required to submit to certain types of treatment without consent. Regulations may also be made which will require claimants to provide information or evidence about their compliance with the plan.

Sanctions

324. *Paragraph 7(1)* provides powers to prescribe the sanctions which will apply to people who, without good cause, fail to comply with the requirements to attend an interview and answer questions about drug use, take part in a substance-related assessment or a drugs interview, take part in a drug test or comply with a mandatory rehabilitation plan. What constitutes good cause will be set out in regulations. Under *sub-paragraphs (2)* and *(3)* benefit will cease where a claimant is not part of a joint-claim couple, or where both claimants are part of such a couple. If only one member of a joint-claim couple is required to comply their JSA will be reduced and paid to the other member of the couple. In all cases the sanction may last for up to 26 weeks.
325. *Sub-paragraphs (4)* and *(5)* are regulation-making powers which allow for income-based JSA to be payable at a prescribed rate even though the sanctions might have otherwise prevented payment. This will allow for payments on the ground of hardship.

Information

326. *Paragraph 8* enables the Secretary of State to make regulations authorising information to be obtained from the police, the probation service or other prescribed body for the purposes of Schedule 3. Regulations may also make provision allowing the Secretary of State to share this information with other relevant persons. The regulation making power expressly prevents information about a person's medical or social work history being disclosed to the Department for Work and Pensions by either the prison service or the probation service. Restrictions apply to limit the persons to whom the Department may pass on the information obtained and to restrict subsequent use of the information by them to use only for the purposes of administering Schedule 3. The only exceptions to this are where disclosure is supplied for the purposes of court proceedings, or is required under other legislation.
327. *Paragraph 9 of new Schedule A1* provides a definition of "drug" and also provides a power to set out in regulations which drugs the provisions described above will apply to.
328. The jobseeking conditions are defined as being actively seeking and available for work and having agreed a Jobseeker's Agreement.

Power to extend provisions to alcohol

329. *Paragraph 10* would allow the Secretary of State to make regulations extending these provisions to persons who misuse alcohol.

Consequential amendments

330. *Paragraphs 3* and *4* of *Schedule 3* make consequential amendments to the Jobseekers Act 1995. *Paragraph 3(2)* would enable the drugs provisions to be introduced gradually across different areas of Great Britain. Under *sub-paragraph (3)* all regulations made under *Schedule A1* are subject to affirmative resolution. *Paragraph 4* amends Schedule 3 to the Social Security Act 1998 so that there would be a right of appeal to a first-tier tribunal against a decision to impose a benefit sanction on a person who fails to comply with a requirement imposed by regulations under *Schedule A1*, for example by not complying with the terms of a rehabilitation plan.

Report on initial operation of drugs provisions

331. *Paragraph 5 of Schedule 3* provides that the Secretary of State must report to Parliament on the operation of the drugs provisions within 30 months of their coming into operation. He must then table an order either continuing or repealing the provisions. The affirmative procedure applies to an order continuing the provisions, and the negative procedure to an order repealing the provisions.

Part 2 – Employment and support allowance

332. *Paragraphs 6 and 7 of Schedule 3* amend the Welfare Reform Act 2007 by inserting a new *section 15A* and *Schedule 1A* into that Act, which largely mirror the amendments made to the Jobseekers Act 1995 as described above and which apply to those in the employment and support allowance ('ESA') work-related activity group. The new provisions do not apply to those who are in the Support Group.
333. In line with other ESA provisions, the sanction is not a complete withdrawal of benefit, but rather, a reduction in benefit, by an amount and for a period of time prescribed in regulations.

Consequential amendments

334. *Paragraph 8 of Schedule 3* makes amendments to the Welfare Reform Act 2007 in consequence of the drugs provisions. In particular, it amends section 16 of that Act to permit some of the Secretary of State's functions under the drugs provisions to be contracted out. It also provides for the affirmative procedure to apply to all regulations made under the new Schedule 1A inserted by paragraph 7.
335. *Paragraph 9* provides for the Secretary of State to report on the operation of regulations made under Schedule 1A to the Welfare Reform Act 2007 as in paragraph 334 above.