

**EXPLANATORY MEMORANDUM TO  
THE JOBSEEKER'S ALLOWANCE (SCHEMES FOR ASSISTING PERSONS  
TO OBTAIN EMPLOYMENT) REGULATIONS 2013**

**2013 No. 276**

1. This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument provides the legal framework for Jobseeker's Allowance (JSA) claimants participating in the following employment schemes:

- The Work Programme;
- sector-based work academies;
- Skills conditionality;
- Full-time training flexibilities;
- Day One Support for Young People;
- Derbyshire Mandatory Youth Activity Programme; and
- New Enterprise Allowance.

2.2 The instrument covers:

- Selection for participation in one of the schemes covered by the Regulations and what must be contained in a notice given to a claimant selected to take part in such a scheme;
- Circumstances in which a requirement to take part in a scheme is suspended or ceases to apply;
- Circumstances in which participants on certain schemes will not be required to comply with the jobseeking conditions (to be available for work and actively seek work) while they are on the scheme;
- Consequential amendments required as a result of these Regulations;
- Provision for contracting out certain functions of the Secretary of State in relation to the schemes.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 These regulations replace the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 ('the ESE regulations'), which have been quashed by the Court of Appeal. These Regulations will come into force with immediate effect, rather than 21 days after they are laid before Parliament. This is because it is essential that the DWP is able to continue to mandate claimants to take part in the schemes to which the Regulations apply, which were previously covered by the 2011 regulations. In particular:

- the principles of conditionality are fundamental to JSA, and to the Department's employment schemes. Losing the ability to mandate, even

- temporarily, would seriously undermine the operation of these employment schemes and the quality of support that the Department is able to offer;
- we need to be able to reassure providers that their programmes will continue to be backed by mandation. If providers lose the ability to mandate, then this will jeopardise their ability to achieve both outcomes and outcome payments, and would potentially have adverse consequences for participants on the schemes;
  - bringing regulations in with immediate effect minimises the risk of administrative confusion and complexity for Jobcentre Plus staff, for providers and for claimants.

#### **4. Legislative Context**

4.1 These Regulations are made under section 17A of the Jobseekers Act 1995, which was inserted by the Welfare Reform Act 2009. Sanctions for failing to take part in the schemes covered by the Regulations are dealt with by the Jobseeker's Allowance Regulations 1996, as amended by Jobseeker's Regulations (Sanctions) (Amendment) Regulations 2012.

4.2 The ESE Regulations, which previously set out the legal framework for the employment schemes listed in paragraph 2.1, were subject to an application for judicial review in the case of *Reilly and Wilson v DWP*. The Court of Appeal found in favour of the Department for Work and Pensions on two grounds:

- (a) It rejected the claimants' argument that the ESE regulations were contrary to European Convention on Human Rights Article 4 (forced labour);
- (b) It rejected the claimants' argument that the ESE regulations could not be enforced in the absence of a published policy in relation to them.

4.3 However, the Court of Appeal found against DWP on two grounds:

- (a) The ESE Regulations were quashed on the grounds that they failed to describe the schemes to which the regulations apply in sufficient detail, as required by the primary legislation;
- (b) The Court upheld the High Court's ruling that letters sent to claimants when they were mandated to an ESE Scheme did not comply with the regulations.

4.4 The Court did not cast doubt on the intention behind any of the schemes, and noted that the use of mandation was appropriate in such schemes.

#### ***Universal Credit***

4.5 These Regulations and the decision of the Court of Appeal do not affect Universal Credit (UC) claimants. The primary legislation for UC - specifically s.16 of the Welfare Reform Act 2012 - permits the Secretary of State to require certain claimants to undertake particular "work preparation" action including "participating in an employment programme". This will allow – without regulations - mandatory referral of claimants to the schemes listed in paragraph 2.1. We will continue to ensure all necessary information is provided to claimants, Jobcentre Plus staff, third-party providers and relevant bodies so that the schemes are administered fairly, claimants

know what they have to do, and the consequences of any failure to comply. We will be working with providers to ensure existing schemes can continue to operate smoothly as UC is introduced.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **6. European Convention of Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required. However, it should be noted that the Court of Appeal rejected the argument that the ESE regulations, which served the same purpose as these regulations, contravened article 4 of the European Convention on Human Rights.

## **7. Policy background**

7.1 These Regulations will be used to underpin the various programmes of employment support delivered by both Jobcentre Plus and third-party providers.

7.2 The regulations apply to all JSA claimants who are required to meet the jobseeking conditions of availability, actively seeking employment and entering into a Jobseeker's Agreement, though each scheme is designed to be appropriate for particular groups of claimants depending on their circumstances.

7.3 A Jobcentre Plus adviser will select a claimant for participation in a scheme and will require them to participate by way of a notice under regulation 5 of the Regulations. A Jobcentre Plus adviser or third party provider may then impose specific requirements on the claimant to undertake activities relevant to the particular scheme. In some circumstances the requirement to meet the jobseeking conditions is suspended while the claimant takes part in a scheme – see reg 7.

7.4 When someone fails to participate in a scheme without a good reason, for example by failing to undertake any of the activities as specified by a Jobcentre Plus adviser or a provider, they risk losing benefit. The sanctions regime was changed by the Jobseeker's Regulations (Sanctions) (Amendment) Regulations 2012. The sanctions are now:

- four weeks; or
- 13 weeks, if we have previously decided on one or more occasions that a claimant's JSA should be sanctioned. This could either be because of a failure to comply with requirements, or because the claimant committed any of the failures listed below within 52 weeks (but not within two weeks) of their last failure.

7.5 The failures referred to are if a claimant, without a good reason:

- fails to attend an adviser interview;
- if applicable, fails to take part in a particular employment programme (such as the Work Programme);

- does not take the opportunity of a place on an employment programme or training scheme;
- refuses or fails to apply for or accept a place on such a programme or scheme notified to them by their adviser;
- fails to attend or gives up a place or through their own misconduct loses a place on such a programme or scheme;
- fails to comply with a Jobseeker's Direction.

7.6 The schemes covered by the Regulations all aim to support JSA claimants towards or into employment. They address various issues, such as lack of experience of work and the associated skills needed within the work place, which can have a significant effect on the employment chances of unemployed people. The schemes are as follows:

- Day One Support for Young People. It comprises of up to 30 hours per week in a work placement for the benefit of the community and up to 10 hours per week of supported work search over a period of 13 weeks, for any claimant aged between 18 and 24 years who has less than 6 months work history since leaving full-time education. "Work history" includes employment, voluntary work, internships and work experience.
- The Derbyshire Mandatory Youth Activity Programme. This scheme is running as a trailblazer in the Derbyshire Jobcentre Plus district, and is targeted at young people on JSA. It will give young people who need it work based experience and instil basic work habits i.e. turning up to work on time, working as a member of a team. It will identify if this support increases the likelihood of young JSA claimants being in employment and off benefit. The scheme will run until 2014 and includes up to 30 hours per week in work-related activity for the benefit of the community and up to 6 hours per week of supported work search over a period of 8 consecutive weeks.
- Full-time training flexibilities are used to support longer-term JSA claimants who need to develop numeracy, literacy or general employability skills. Full-time training flexibility allows claimants who have been claiming JSA for six months or more to be referred, on a mandatory basis, to full-time training of up to and including 30 hours per week whilst remaining in receipt of JSA. This is part of the day-to-day employment support provided by Jobcentre Plus.
- New Enterprise Allowance is a voluntary scheme designed to assist JSA claimants into self-employment. It comprises of guidance and support provided by a business mentor, access to a loan (subject to status) and a weekly allowance for a period of 26 weeks once the claimant starts trading.
- The sector-based work academy is a scheme which provides training over a period of 6 weeks, followed by a work experience placement for a period to be agreed with the claimant; this may be followed by either a job interview with an employer or support with a job application. The academies are designed to support claimants of JSA, aged 18 years and over, who are relatively job-ready. The training and work experience is tailored to employers' needs to help fill vacancies more efficiently, whilst supporting participants into sustained employment in a demand sector.

- Skills Conditionality is a scheme comprising training or other activity designed to assist a claimant to obtain skills identified as needed to get employment. Skills conditionality embraces all types of training. Claimants receiving JSA can be referred on a mandatory basis to undertake activity to address an identified skills need; his puts activity to address a skills need onto the same basis as other conditionality requirements.
- The Work Programme is a long-term scheme supporting some of the hardest-to-help benefit claimants. This scheme is designed to assist a claimant at risk of becoming long-term unemployed to move into and stay in work. The scheme is delivered by contracted private, public and voluntary and community sector providers who are mainly paid for the results they achieve. Over a period of up to 2 years, the claimant is given such support as the provider of the Work Programme considers appropriate (which must be reasonable given the claimants' circumstances, and is subject to minimum levels of support published by the provider) to assist the claimant to obtain and sustain employment. Support may include, but is not limited to, work search support, provision of skills training, and work placements for the benefit of the community.
- Of these schemes, Day One Support for Young People, the Derbyshire Mandatory Youth Activity Programme and the Work Programme are delivered by third party providers; the other programmes are primarily delivered through Jobcentre Plus.

### ***Consolidation***

7.7 These Regulations will be published in due course in the 'Law Relating to Social Security' (referred to as "The Blue Books") which are regularly updated and are available to the public at no cost via the internet at:

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-lawrelating-to-social-security/>

7.8 To support implementation of these Regulations, changes will be made to volume 6 of the Decision Makers Guide (DMG) which is also available free on the DWP internet at:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

### **8. Consultation outcome**

8.1 In view of the urgency of the situation (see paragraph 3.1 above) we have not referred these Regulations to the Social Security Advisory Committee or to the Local Government Association, but we will show them the Regulations once they have been made. The timeframes for implementation mean that it has not been possible to consult these groups; however, as these Regulations serve the same purpose as the ESE Regulations, we do not believe such consultation is necessary.

### **9. Guidance**

9.1 Letters will be sent to all claimants who have been referred to schemes under the ESE regulations, and are currently participating in them, in order to inform them that

they are now taking part in a scheme under established under the Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013.

9.2 Information products such as leaflets and letters, including in accessible formats, have already been developed to ensure that people claiming JSA who are required to participate in the schemes, understand their rights and responsibilities. These products will be amended as necessary in the light of these Regulations.

9.3 Guidance has been developed for Jobcentre Plus staff, including decision makers. This guidance will contain information relevant to all of the processes involved in each of the schemes covered by this legislation. This guidance will be amended if necessary to reflect these new Regulations. We do not anticipate that any fundamental change will be needed since the Regulations do not substantially change any of the schemes.

9.4 This also applies to the guidance which has been developed for the third-party providers who will assist claimants on some of the schemes.

## **10. Impact**

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring**

12.1 The Department routinely monitors and evaluates its policies through a combination of statistics on performance and delivery volumes; qualitative research with participants and people responsible for delivering our services in order to examine the quality of customer experience and opportunities to improve delivery; and quantitative research and analysis to understand the impacts of individual policy interventions.

12.2 There is a broad programme of research and analysis covering the schemes which fall under these regulations, results from which will continue to be published on the Departmental website. This is consistent with the Department's strong commitment to open government.

12.3 Key milestones over the coming months include:

- Official Statistics on New Enterprise Allowance and Sector Based Work Academies starts: 13 February 2013 (6 monthly)
- Official Statistics on Skills Conditionality: May 2013 (6 monthly)

- Sector based work academies: Survey of participating employers' views of the scheme and its delivery. To be published in spring 2013.
- Work Programme statistics: the total number of job outcomes paid, and total number of sustainment payments paid, May 2013
- NEA: qualitative research with participants. To be published spring/ summer 2013.

### **13. Contact**

13.1 Laurence Martindale at the Department for Work and Pensions, telephone: 020 7449 5779 or email: [laurence.martindale@dwp.gsi.gov.uk](mailto:laurence.martindale@dwp.gsi.gov.uk), can answer any queries regarding the instrument.