

EXPLANATORY MEMORANDUM TO
THE FLEXIBLE NEW DEAL (MISCELLANEOUS PROVISIONS) ORDER 2009

2009 No. 1562

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

2 Purpose of the instrument

2.1 This Order specifies the legislation for which a person, whilst participating in the Flexible New Deal (FND) employment programme and receiving or is entitled to receive a Training Allowance, is not to be treated as being in employed earner's employment. Rather, that person is to be treated as being engaged in training under section 2 of the Employment and Training Act 1973 (c. 50). Any payment, other than a trading payment made to a person receiving assistance in becoming self-employed, is to be treated as a payment of Training Allowance.

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

3.1 None

4 Legislative Context

4.1 Flexible New Deal is an employment programme under s2 of the Employment and Training Act 1973 (c. 50), being introduced from October 2009, for those people unemployed and claiming Jobseeker's Allowance (JSA) for either six months or a year. Access to the programme after claiming for six months aims to help those people that Jobcentre Plus Advisers assess as requiring most need of support to find work. The relevant legislation is the Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480).

4.2 The programme consists of a combination of a number of activities an individual undertakes to improve their prospects of obtaining employment. This can include work placements or other work-related activity or experience, skills training, guidance, support, motivation, assistance with job search or pursuing self-employed earner's employment, or other activity designed to assist the individual to select, train for, obtain and retain suitable employment. Generally, people will remain in receipt of Jobseeker's Allowance for the duration they are on the programme but will receive a Training Allowance when an activity, or combination of activities, means they cannot available for, and actively seeking, employment - conditions for continued entitlement to JSA. In particular, this will apply to periods of full-time work experience and work-related activity.

5 Territorial Extent and Application

5.1 This instrument applies to Great Britain

6 European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7 Policy background

7.1 This Order ensures that:

- a) claimants are not treated for certain purposes as being engaged in employment whilst they are participating in the Flexible New Deal, but are regarded as taking part in training; and
- b) payments to participants are treated as Training Allowances, except where the person receives payments for goods or services he or she supplies when receiving help under FND to set up in self-employment.

7.2 The Order applies for the purposes of the benefits, awards and grants referred to in Article 1 and the Schedule of the Order. For example, it ensures that those taking part in full-time activity as part of FND are not to be treated as in remunerative work under Jobseeker's Allowance legislation nor may payments made to FND participants attract liability to pay Class 1 or 2 National Insurance Contributions. This Order also protects payments of the other benefits, awards or bursaries listed in the Schedule to the Order that an FND participant, or (in some cases) a member of their family, may be receiving by ensuring those taking part in FND are not treated as being in receipt of earned income.

7.3 Payments for goods and services supplied by those receiving assistance in FND to become self-employed are exempted from the Order. This is because Her Majesty's Revenue & Customs treat such payments as contributing towards that person's tax-assessable income of their business. Otherwise, Training Allowance payments are not liable to tax or treated as taxable income.

7.4 The provisions in this Order adopts a similar approach to Orders for the New Deal schemes that Flexible New Deal subsumes – New Deal for Young People, and New Deal for 25 Plus (*see* S.Is. 1998/217 and 2001/970). Introduction of the Flexible New Deal programme, which is coupled to the revised regime for those claiming Jobseeker's Allowance, is being implemented across Great Britain in two major phases commencing October 2009 and October 2010.¹

Consolidation

7.5 This legislation will be included 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.²

1 Command Paper Cm 7566 page 66 <http://www.official-documents.gov.uk/document/cm75/7566/7566.asp>

2 http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/c_0031.pdf.

8 Consultation outcome

- 8.1 This instrument is made as a direct consequence of the introduction of the Flexible New Deal, which was introduced by the Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480). The Social Security Advisory Committee (SSAC) considered these Regulations and sought public opinion between 8 October and 7 November 2008. The Committee received 11 responses which, along with Committee members' views, were reflected in SSAC's report of December 2008. The Committee was able to give broad support to introduction of the Flexible New Deal. The Committee's concerns about the proposals included the extension of conditionality for receipt of benefit, the speed of the rollout of the full programme across Great Britain and the contracting out of public services. The report, together with the Government's response to the Committee's recommendations and observations, is provided in the Command Paper published at the same time as the Social Security (Flexible New Deal) Regulations 2009 on 11 March 2009.¹
- 8.2 During October and November 2008 the proposed Social Security (Flexible New Deal) Regulations 2009 were also considered by organisations representing local authorities in England, Scotland and Wales. No objections were received from these representatives to the proposals. Of the three organisations that responded, two welcomed the simplification that brigading the current employment programme under one process will bring to their administration of Housing and Council Tax Benefits.

9 Guidance

- 9.1 Information products have been developed to help claimants participating in the Flexible New Deal understand their rights and responsibilities.
- 9.2 Guidance has also been developed for Department for Work and Pensions staff, in Jobcentre Plus offices, contact centres and benefit delivery centres, contract management teams and Decision Makers. Guidance has also been developed for organisations that will deliver Flexible New Deal to ensure they understand the circumstances in which a participant will need to transfer from JSA to a Training Allowance.

10 Impact

- 10.1 This instrument has no impact on business, charities or voluntary bodies
- 10.2 The impact on the public sector will be negligible.
- 10.3 A full impact assessment has not been prepared for this instrument.

11 Regulating small business

- 11.1 The instrument does not apply to small businesses.

¹ Command Paper Reference Cm 7566 <http://www.official-documents.gov.uk/document/cm75/7566/7566.asp>

12 Monitoring and review

12.1 The evaluation of all aspects of the Flexible New Deal programme will be undertaken by an independent research consortium headed by Policy Studies Institute. The key elements to this evaluation are:

- a process evaluation of implementation;
- qualitative analysis to understand the view of staff, customers and providers; and
- quantitative evaluation to understand the impact and effect of the reforms, and the experiences of customers.

12.2 Some of the key questions for the evaluation will be:

- is FND (along with the revised jobseekers regime) being implemented as intended?
- what lessons can be learned from implementation and what improvements might be made to achieve maximum impact? Have there been any unintended consequences from the reforms?
- has FND helped more people find and sustain work? and
- is FND using the resources available to support the long-term unemployed as effectively as possible?

12.3 Regular evaluation research reports will be published on the DWP web site, including a report of early findings in December 2009, and a final assessment in 2012/13.

13 Contact

Richard Divall at the Department for Work and Pensions Tel: 0114 294 3133 or email: Richard.divall@jobcentreplus.gsi.gov.uk can answer any queries regarding the instrument.