

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (FLEXIBLE NEW DEAL) REGULATIONS 2009**

2009 No. 480

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 instrument makes the legislative changes required to introduce a revised structure for those claiming Jobseeker's Allowance (JSA). This instrument amends the Jobseeker's Allowance Regulations (S.I. 1996/207) with the result that claimants who fail without good reason to take part in a new employment programme – the “Flexible New Deal” (FND) aimed at helping those claiming Jobseeker's Allowance to find work – may have their benefit reduced or stopped for 2, 4 or 26 weeks. It also introduces a sanction of one week loss of benefit for those claimants who fail without good reason to attend a “Back to Work Session” when directed to do so.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None

4. **Legislative Context**
 - 4.1 This instrument introduces the changes necessary to implement an enhanced jobseekers regime and the Flexible New Deal for those claiming JSA, as announced in the Command Paper “Ready for Work; full employment in our generation” (published December 2007, reference Cm 7290).
 - 4.2 In addition to the introduction of the loss of benefit for failing to attend a “Back to Work Session” and the Flexible New Deal (referred to in paragraph 2.1), this instrument also makes the following changes;
 - Unless a person is in one of the currently defined vulnerable groups¹ who would suffer hardship if payment of JSA did not continue (for example lone parents, or where one member of a couple is pregnant), JSA Hardship payments are not payable to claimants who are sanctioned in connection with non-attendance at a “Back to Work Session” or during the period they are required to take part in the Flexible New Deal (the latter mirrors current New Deal policy).
 - An additional case where a person is to be regarded as having good cause for not taking part in the Flexible New Deal where he or she is not notified in advance about the possibility of a sanction being applied to their benefit.
 - Minor change to the housing costs linking rules in relation to JSA to take account of the introduction of the Flexible New Deal.

1 See Chapter 35, para 35057 of the Decision Makers Guide <http://www.dwp.gov.uk/publications/dwp/dmg/pdf/ch35.pdf>

- Income and capital disregards for certain payments made in connection with a person's participation in the Flexible New Deal in the Jobseeker's Allowance Regulations, Housing Benefit Regulations, Council Tax Benefit Regulations and Housing Renewal Grants Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 The Secretary of State for Work and Pensions proposes a revised structure for people claiming Jobseeker's Allowance. This will introduce a four stage regime that increases their level of job search activity the longer they remain on benefit, with a clearer structure of the support Jobcentre Plus will provide. This will culminate in referral to the employment programme, "Flexible New Deal" (FND), which will offer help and support in finding work that is tailored to individuals' needs. This instrument introduces the additional features of the regime which are not currently covered by Jobseeker's Allowance Regulations 1996 (S.I. 1996/207).
- 7.2 The first stage (referred to as "self managed job search") will run for 13 weeks from the date of claim. This stage will identify those people who face the greatest challenge in finding work and who will be accelerated to the intense support available in stage three. For those customers not accelerated to stage three, stage one introduces the "Back to Work Session". This session aims to give people advice at an early stage of their claim on job search techniques, the opportunities available in their locality, the services available from Jobcentre Plus and a reminder of their obligations to be available for and actively seek employment to receive the benefit.
- 7.3 Attendance at this session will be required by Jobseeker's Direction and reflects the importance the Government associates with this intervention in ensuring people are focused on job search activities at an early stage of their claim. However, the Government acknowledge that the existing minimum two week sanction for failing to comply with a Jobseeker's Direction is disproportionate to the duration of the "Back to Work Session". Therefore, this instrument introduces a one week loss of benefit for those people who fail to attend this session without good cause. Those customers who fall into one of the current vulnerable groups will be able to apply for payment of JSA Hardship for the period of any sanction for failing to attend the "Back to Work Session"

- 7.4 The second stage (referred to as “directed job search”) will also run for 13 weeks and will step-up the level of job search activity a claimant is expected to undertake. This will be detailed in their revised Jobseeker’s Agreement. Stage three (“supported job search”) will then commence after an individual has claimed JSA for six month (or immediately after making a claim for those identified as being in greater need of help to return to work – as referred to in paragraph 7.2). This stage will comprise a Jobcentre Plus Adviser agreeing a detailed Action Plan of steps that the individual will undertake over the next 26 weeks to return to work, with regular interviews to check progress. This will include mandatory activity that will be enforced by Jobseeker’s Directions.
- 7.5 Stage four – the Flexible New Deal – will be delivered by private, public or voluntary organisations through contracts with the Department for Work and Pensions. Most claimants will be referred to this programme once they have claimed JSA for a year. Those identified at the start of their claim as being in greater need of help to secure work will be referred to FND after claiming for six months (having experienced the “supported job search” stage for the first six months of their claim). FND suppliers will determine and deliver the range, nature and level of support appropriate for an individual to return to work or self employment. Participation in FND will last for up to 12 months and activities will be employment focused. During their participation, claimants will remain on JSA for the majority of the time rather than receive a Training Allowance as is the case for existing New Deals. A Training Allowance will still be payable where a person participates in full time activity, such as full time work related experience. In this way, Jobcentre Plus remains responsible for every customers’ ‘journey’ whilst out of work, paying their benefits and remaining as a regular point of contact. With the agreement of all parties (customer, provider and Jobcentre Plus) participation in the Flexible New Deal can be extended for a further six months.

Sanctions

- 7.6 The Government believes that the welfare state should combine rights with responsibilities. The basic principle of JSA is ‘something for something’. In return for benefit payments and extra support in finding work, customers are expected to do their best to get and keep a job. This instrument carries forward the current structure of benefit sanctions in New Deal for Young People and New Deal 25 Plus to the Flexible New Deal. That is a 2-week loss of benefit the first time a customer fails to attend, loses or refuses a place on FND without good cause or is dismissed from the programme due to misconduct, 4-weeks for a second occurrence within 12 months and 26 weeks for subsequent acts with 12 months of the previous act or omission. This instrument replicates that approach of 2, 4 or 26 week sanctions.
- 7.7 Those customers whose benefit is subject to a sanction for failing to participate in FND, and who fall into one of the current JSA vulnerable groups, will be able to apply for payment of JSA Hardship. This instrument also introduces an additional “good cause” whereby a sanction cannot be applied to a person’s JSA when they have not been notified in advance of their participation in FND of the possible loss of benefit for failing to attend, losing or refusing a place on the programme without good cause.

Payments

- 7.8 This instrument ensures that certain payments made to the customer or a third party in connection with the person's participation in the FND are disregarded so that they do not affect the person's JSA, Housing Benefit, Council Tax Benefit or any Housing Renewal Grant. For example, payments for travel or child care expenses. Likewise, this instrument also replicates existing arrangements to protect payment of a customer's housing costs in JSA by including the period of Flexible New Deal participation in the linking rules. Both these measures carry forward the arrangements for the existing New Deal programmes.

Phasing

- 7.9 The Flexible New Deal will replace existing employment programme provision for people claiming JSA; Gateway to Work; New Deal for Young People; New Deal for 25 Plus; New Deal 50 Plus; Employment Zones. This includes New Deal for Musicians and New Deal for Self Employed which operate as options within the New Deals. The proposed revised jobseekers regime and the Flexible New Deal will be implemented across Great Britain in two phases. Phase 1 will cover 28 Jobcentre Plus districts and will commence the revised jobseekers regime from 6 April 2009 with the Flexible New Deal starting from 5 October 2009.
- 7.10 The Government plans that Phase 2 will implement the proposed jobseeker's regime in the remaining 20 districts from April 2010 with FND contracts starting from October 2010 in most of the remaining areas of Great Britain.

Future Initiatives

- 7.11 As announced in the White Paper "*Raising Expectation and increasing support: reforming welfare for the future*" (published December 2008, reference Cm 7506) the Government intends to pilot a new Personalised Employment Programme from March 2011. Two of the areas that would have introduced FND from October 2010 (Phase 2) will instead introduce the new programme to deliver a single, integrated, flexible programme for people claiming Jobseeker's Allowance and for people claiming Employment and Support Allowance.
- 7.12 Introduction of the jobseekers regime and the Flexible New Deal will lay the foundation for further reforms, including provisions in clause 1 of the current Welfare Reform Bill (Bill 8 08/09). In particular, the proposals for a "Work for Your Benefit" initiative for those people still unemployed after two years will build on the introduction of the Flexible New Deal.

Consolidation

- 7.13 Informal consolidation will be included in due course in the Department's "the Law Relating to Social Security" (the Blue Volumes) which are available free on the internet at http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/c_0031.pdf.

8. Consultation outcome

Green Paper

- 8.1 The planned changes to the regime for Jobseeker's Allowance and the introduction of the Flexible New Deal were initially announced in the Green Paper "*In work, better off: next steps to full employment*" (published in July 2007, reference Cm 7130). Public consultation on this Green Paper was carried out between 18 July 2007 and 31 October 2007 through a number of seminars, discussion groups and events as well as formal written and on-line submissions. During this period the House of Commons Work and Pensions Select Committee also conducted an inquiry into the proposals².
- 8.2 In total, 469 responses were received to all the proposals in the Green Paper from individuals, organisations, public bodies and social groups. The summary of the responses relevant to the jobseekers regime and the Flexible New Deal were published in Annexe A of the Command Paper "*Ready for Work: full employment in our generation*" (published December 2007, reference Cm 7290) which also clarified the Government's proposals in respect of those claiming Jobseeker's Allowance.
- 8.3 Responses to the Green Paper's theme of rights and responsibilities were generally positive. The general view was that offering more support and asking more from customers in exchange was acceptable as long as it was fair. The use of benefit sanctions was often criticised, though many respondents appeared to be under the impression that sanctions are used far more widely than they are; just four per cent of all Jobseeker's Allowance and New Deal customers are sanctioned³. A Department for Work and Pensions survey in 2006 noted that three-quarters of respondents thought it was fair to stop or reduce someone's benefit if they did not stick to the rules for claiming JSA and around two-fifths of those affected thought that their own sanction was fair⁴.
- 8.4 Responses to the proposed progressive regime of support and conditionality were mixed. Many believed that the extra help should be available on demand, rather than at a specific point in a person's benefit claim, particularly the "supported job search" phase (Stage three). Some questioned the role of Jobcentre Plus Advisers and whether they had the expertise necessary to help the more disadvantaged jobseekers. Others believed staff would not be given enough interview time to adequately serve customers' needs and feared that the new arrangements would put unrealistic expectations upon them. The consensus was that people who have multiple barriers to work and young people not in education, employment or training should be given priority.
- 8.5 The proposal for work experience was generally welcomed. It was widely recognised that work experience is a valuable asset when seeking employment, particularly for those who have been out of work for a long time. However, many thought it should be voluntary rather than mandatory. There were also concerns that mandatory work experience placements would take away proper jobs in the

2 "Full employment and world class skills: responding to the challenge" Ref HC 939 31 October 2007 <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmworpen/939/939.pdf>

3 DWP statistical information – JSA sanctions and disallowance decisions statistics <http://83.244.183.180/sanction/sanction/LIVE/tabtool.html>

4 Peters, M. and Joyce, L., 2006. A review of the JSA sanctions regime. Summary research findings. DWP Research Report No 313 <http://www.dwp.gov.uk/asd/asd5/rports2005-2006/rrep313.pdf>

community. Some also thought that the proposals were at odds with the philosophy of the National Minimum Wage or the role fulfilled by existing volunteers.

- 8.6 On the Flexible New Deal itself, using the expertise in the public, private and third sectors to deliver specialist back to work provision was broadly welcomed, with many people believing that this provision should be available from day one. The proposals for giving providers more flexibility to develop back to work programmes was welcomed. Some commented that this stage of support needed to be longer than 12 months for those who would benefit from more time with a specialist provider. There were also concerns that small-scale specialist providers in the third sector may lose out to big private sector contractors.

Social Security Advisory Committee

- 8.7 This instrument was referred to the Social Security Advisory Committee (SSAC) on 1 October 2008, in accordance with Section 172(1) of the Social Security Administration Act 1992. The Committee decided to refer the proposals for public consultation and sought representations from interested organisations and members of the public between 8 October and 7 November 2008. The Committee received 11 responses.
- 8.8 The Committee repeated its support for the Government's intention to reduce social exclusion by improving the employment prospects for the most disadvantaged, promoting equality for the disabled and eradicate child poverty. The Committee recognised and commended the achievements made to date by the Department for Work and Pensions towards these goals through the current arrangements and range of employment programmes. The Committee also recognised customers would likely benefit from greater flexibilities and discretion on the part of Jobcentre Plus Advisers coupled with common access to New Deal provision for all. The Committee was therefore able to give broad support to elements of the revised jobseekers regime and the Flexible New Deal.
- 8.9 The Committee's report raised a number of concerns about the proposals, including 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. SSAC's over-arching concern relates to the impact the sudden and dramatic change in the UK's economic situation will have on the aims of these welfare reforms with large numbers of people losing their jobs, and the unemployment rate rising at a rate not seen for many years. The Committee feels that even if there are plenty of vacancies to be filled, this will mean increased demand on Jobcentre Plus and its services, and a challenging test of the resilience of the Department's policies, programmes, and service delivery mechanisms. The Committee sees the Department and its partners in the provision of services as needing to have in place sufficient resources and a robust infrastructure to ensure that the flexibility of the Flexible New Deal is not compromised, and its potential left unfulfilled.

- 8.10 The Committee's report made eight recommendations, of which one related directly to this instrument; the removal of the threat of sanction to those people who leave FND whilst participating in any extension period. The Government has decided not to accept this recommendation as it believes those engaged in any extension should remain committed to the programme. This carries forward the same arrangements that exist for the programmes that Flexible New Deal will replace; eg New Deal for Young People, New Deal for 25 Plus. The other seven recommendations related to operational and contractual arrangements.
- 8.11 The SSAC report and response by the Secretary of State for Work and Pensions is available in the Command Paper which also contains the Explanatory Memorandum to SSAC. This can be obtained from the official documents website: <http://www.official-documents.gov.uk/menu/cmd2009.htm>

Local Authority representatives

- 8.12 As this instrument makes minor amendments to Housing Benefit and Council Tax Benefit Regulations, in accordance with Section 176(1) of the Social Security Administration Act 1992, between 10 October and 21 November 2008 the Department for Work and Pensions consulted with six organisations that represent local authorities in England, Scotland and Wales. No objections were received from these representatives to the instrument. 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 the benefits. The third organisation had no comments to make on the proposals.

9. Guidance

- 9.1 Guidance has 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. The changes brought about by this instrument have also been incorporated into the Department's learning and development routeways and supporting products. Guidance has also been developed for organisations that will deliver the Flexible New Deal.
- 9.2 Information products have been developed to help claimants understand what job search activities they will be expected to do as their claim progresses, as well as the range of help and support available to them from Jobcentre Plus.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There impact on the public sector is that operating costs for the revised jobseekers regime and the Flexible New Deal will be absorbed within the current Department for Work and Pensions budget allocation, by utilising resource available for current interventions by Jobcentre Plus and the employment programmes that FND will replace.
- 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 & review

12.1 The Department for Work and Pensions has commissioned an independent research consortium headed by Policy Studies Institute to undertake the evaluation of the jobseekers regime and the Flexible New Deal, in order to determine the overall effectiveness of the reforms. There will be three key elements to the evaluation:

- 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 The evaluation will include an impact assessment and cost-benefit analysis to determine the difference that the reforms make over current provision, in terms of key measures such as job outcomes, job sustainability and the value for money of the reforms. This will be supplemented with internal analysis of management information and administrative data. Some of the key questions for the evaluation will include;

- Is the enhanced jobseekers regime being implemented as intended?
- What lessons can we learn from implementation and how can the reforms be improved to have the maximum impact possible? Have there been any unintended consequences from the reforms?
- Have the reforms helped more jobseekers find and sustain employment? and
- Are the reforms using the resources available to support the long-term unemployed as effectively as possible?

12.3 Research reports will be published from the evaluation, including a report of early findings from the evaluation in December 2009, and a final impact assessment and cost-benefit analysis in 2012/13.

13 Contact

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