

**2009 No. 480**

**SOCIAL SECURITY**

**The Social Security (Flexible New Deal) Regulations 2009**

*Made* - - - - *3rd March 2009*

*Laid before Parliament* *11th March 2009*

*Coming into force in accordance with regulation 1(2) and (3)*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 12(4)(a) and (b), 19(2), (8)(b) and (10)(c), 20(4), 20A(3), 20B(4), 35(1) and 36(1), (2) and (4) of, and paragraph 3(b) of Schedule 1 to, the Jobseekers Act 1995(a), and sections 123(1)(d) and (e), 136(5)(a) and (b), 137(1) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(b).

In respect of the provisions in these Regulations relating to housing benefit and council tax benefit, he has consulted with the organisations appearing to him to be representative of the authorities concerned(c).

The Secretary of State referred the proposals for these Regulations to the Social Security Advisory Committee(d).

**Citation and commencement**

1.—(1) These Regulations may be cited as the Social Security (Flexible New Deal) Regulations 2009.

(2) These Regulations come into force for the purposes of this regulation, regulation 2(2)(a), (3)(a), (b), (c), (8)(a), (c) and (10)(a) and (c) on 6th April 2009 in so far as those provisions relate to a Back to Work Session.

(3) They come into force for all other purposes on 5th October 2009.

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(a) 1995 c. 18. Section 20(4) was amended by the Welfare Reform and Pensions Act 1999 (c. 30) (“the 1999 Act”), section 70, Schedule 8, Pt 5, para 29(1), (5); section 20A and 20B were inserted by section 59 of, and paragraph 13 of Schedule 7 to, the 1999 Act; sections 35(1) and 36(4) were amended by section 2 of, and paragraphs 62 and 63 respectively of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2); section 35(1) is an interpretation provision and is cited because of the meaning it gives to the word “prescribed”.

(b) 1992 c. 4. Section 137(1) is an interpretation provision and is cited because of the meaning given to the word “prescribed”; section 175(1) and (4) was amended by section 2 of, and paragraph 29(1) and (2) of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(c) See section 176(1) of the Social Security Administration Act 1992 (c. 5) (“the 1992 Act”). Section 176(1) was amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c. 14), section 69(6) of the Child Support, Pensions and Social Security 2000 Act (c. 19) and paragraph 3 of Schedule 13 to the Housing Act 1996 (c. 52).

(d) See section 172(1) of the 1992 Act.

## **Amendment of the Jobseeker's Allowance Regulations**

2.—(1) The Jobseeker's Allowance Regulations 1996<sup>(a)</sup> are amended as follows.

(2) In regulation 1(3) (citation, commencement and interpretation) in the appropriate places insert the following definitions—

- (a) ““Back to Work Session” means a seminar or appointment referred to as “a Back to Work Session” arranged by or on behalf of the Secretary of State, the purpose of which is to provide a person who attends with information, support and advice with a view to assisting him to find employment or to improve his chances of finding employment;”;
- (b) ““the Flexible New Deal” means the employment programme specified in regulation 75(1)(a)(v);”.

(3) In regulation 69 (prescribed period for the purposes of section 19(2))<sup>(b)</sup>—

- (a) in paragraph (1)(a), for “or (d)” substitute “, (d), (e) or (f)”;
- (b) in paragraph (1)(b)—
  - (i) after “75(1)(a)(i)(bb)” insert “or a case which falls within sub-paragraph (f)”;
  - (ii) in sub-paragraph (ii)(aa), after “regulation 75(1)(a)(iv)” insert “or the Flexible New Deal”;
  - (iii) in sub-paragraph (ii)(cc), at the end omit “and”;
  - (iv) at the end of sub-paragraph (ii)(cc), insert “; or” and the following head—
    - “(dd) where the determination in (i) above relates to the Flexible New Deal, on a previous occasion the jobseeker's allowance was determined not to be payable to him in circumstances falling within section 19(5) or section 20A(2)(a) to (c) that relate to any element of that programme, and”.

(c) after paragraph (1)(d) add—

- “(e) 26 weeks in any case (other than a case where a jobseeker's allowance is determined not to be payable in circumstances relating to the employment programme known as “Gateway to Work” specified in regulation 75(1)(a)(i)(bb)) in which—
  - (i) a jobseeker's allowance is determined not to be payable to the claimant in circumstances falling within section 19(5) or section 20A(2)(a) to (c) and the determination relates to an act or omission arising after this regulation comes into force in respect of the Flexible New Deal; and
  - (ii) on two or more previous occasions a jobseeker's allowance has been determined not to be payable to the claimant in circumstances falling within section 19(5) or section 20A(2)(a) to (c) and each such determination relates to the Flexible New Deal; and
  - (iii) no more than 12 months have elapsed between the beginning of the day on which the determination mentioned in (e)(i) above is made and the beginning of the first day on which a jobseeker's allowance was not payable to the claimant as a result of the determination which most recently preceded it whether the preceding determination is either—
    - (aa) a determination falling within sub-paragraph (b)(i) to which the circumstances in paragraph (b)(ii)(dd) apply; or
    - (bb) itself an earlier determination falling within sub-paragraph (e)(i);
- (f) one week in a case where a jobseeker's allowance is determined not to be payable in circumstances—

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<sup>(a)</sup> S.I. 1996/207.

<sup>(b)</sup> Regulation 69 was substituted by S.I. 2000/239 and amended by S.Is. 2000/1370, 2000/1978 and 2001/1029.

- (i) relating to a Back to Work Session; and
  - (ii) falling within section 19(5)(a) or 20A(2)(a).”;
- (d) in paragraph (3)—
- (i) for “(1)(c) or (d)” substitute “(1)(c), (d) or (e)”;
  - (ii) in sub-paragraph (c), after “regulation 75(1)(a)(iv)” insert “or the Flexible New Deal”.
- (e) for paragraph (4)(a) substitute—
- “(a) begin on either—
  - (i) the day specified in a notice by the Secretary of State as being the day on which the claimant is or was no longer required to participate in—
    - (aa) any of the New Deal options,
    - (bb) the Intensive Activity Period specified in regulation 75(1)(a)(iv), or
    - (cc) the Flexible New Deal, or
  - (ii) the day four weeks after the first day on which a jobseeker’s allowance was not payable as a result of the first determination mentioned in paragraph (3), whichever is the later;”.
- (4) In regulation 73(2A)(a) (good cause for the purposes of section 19(5)(b))(a), after “or (iv)” insert “or (v)”.
- (5) In regulation 75(1)(a) (interpretation)(b)—
- (a) in head (iii), at the end omit “and”;
  - (b) at the end of head (iv), insert “; and” and the following head—
    - “(v) the Flexible New Deal, being the programme known by that name and provided pursuant to arrangements made by the Secretary of State or on his behalf under section 2 of the Employment and Training Act 1973, which lasts for up to 78 weeks for any individual and consisting for that individual of one or more of the following elements—
    - (aa) assisting in the completion of an action plan to record the activity that he will undertake whilst attending the programme in order to improve his employment prospects or to obtain employment;
    - (bb) a work placement, training or other work-related activity lasting for a continuous period of at least four weeks;
    - (cc) other work experience or training, guidance, support, motivation, assistance with job search or in pursuing self-employed earner’s employment or other activity designed to assist him to select, train for, obtain and retain suitable employment.”.
- (6) In regulation 105(10A)(c) (notional income)(c), at the end of (iii), insert “; or” and the following head—
- “(iv) in the Flexible New Deal.”;
- (7) In regulation 113(3A)(b) (notional capital)(d), at the end of head (iii), insert “; or” and the following head—
- “(iv) in the Flexible New Deal;”.
- (8) In regulation 140 (meaning of “person in hardship”)—

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(a) Paragraph (2A) was inserted by S.I. 1997/2863 and was amended by S.Is. 2000/1978 and 2001/1029.

(b) Regulation 75 was substituted by S.I. 1997/2863. Relevant amending instruments are S.Is. 2000/721, 2001/1029, 2006/909 and 2007/1316.

(c) Paragraph (10A) was inserted by S.I. 1998/2117. Relevant amending instruments are S.Is. 1999/2640, 2001/1029, 2003/455, 2006/588 and 2008/698.

(d) Paragraph (3A) was inserted by S.I. 1998/2117. Relevant amending instruments are S.Is. 1999/2640, 2001/1029, 2003/455, 2004/2308, 2005/3391, 2006/588 and 2008/698.

- (a) in paragraph (2)(a), after “or (4A)” insert “or (4B)”;
- (b) in paragraph (4A)(b), at the end insert “or to the Flexible New Deal.”;
- (c) after paragraph (4A), insert—
  - “(4B) In paragraph (2), a “person in hardship” does not include a claimant to whom section 19(5)(a) applies by virtue of any refusal or failure relating to a Back to Work Session.”.
- (9) In regulation 140A (period when a person is not a person in hardship)(c)—
  - (a) in paragraph (1)(a), after “75(1)(a)(iv)” insert “or in the Flexible New Deal”;
  - (b) in paragraph (4), at the end add “or to the Flexible New Deal.”.
- (10) In regulation 146A (meaning of “couple in hardship”)(d)—
  - (a) in paragraph (2), for “or (5)” substitute “, (5) or (5A)”;
  - (b) in paragraph (5), at the end add “or to the Flexible New Deal.”.
  - (c) after paragraph (5), insert—
    - “(5A) In paragraph (2), a “couple in hardship” does not include a joint-claim couple where section 20A(2)(a) applies to either or both members by virtue of any refusal or failure relating to a Back to Work Session.”.
- (11) In regulation 146B (period when a joint-claim couple is not in hardship)(e)—
  - (a) in paragraph (1)(a), after “75(1)(a)(iv)” insert “or in the Flexible New Deal”;
  - (b) in paragraph (4), at the end add “or to the Flexible New Deal.”.
- (12) In paragraph 13 of Schedule 2 (housing costs) (linking rule)—
  - (a) in sub-paragraph (1)(ee)(i) (f), after “75(1)(a)(iv)” insert “or in the Flexible New Deal”;
  - (b) in sub-paragraph (3A)(a)(g), after “employment zone programme”, insert “or in the Flexible New Deal”.

### **Amendments to the Housing Benefit and Council Tax Benefit Regulations**

- 3.—(1) This regulation applies to the following provisions—
  - (a) regulations 42(7)(c)(h) (notional income) and 49(4)(b) (notional capital)(i) of the Housing Benefit Regulations 2006; and
  - (b) regulations 32(7)(c) (notional income)(j) and 39(4)(b) (notional capital)(k) of the Council Tax Benefit Regulations 2006.
- (2) Each of the provisions to which this regulation applies are amended as follows—
  - (a) in head (iii), omit “or”;
  - (b) at the end of head (iv), insert “; or” and the following head—
    - “(v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;”

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(a) Paragraph (2) was amended by S.Is. 1996/1516, 1997/2863, 1999/2860 and 2000/1978.  
 (b) Paragraph (4A) was inserted by S.I. 1997/2863 and was amended by S.I. 2001/1029.  
 (c) Regulation 140A was inserted by S.I. 1997/2863 and was amended by S.Is. 2000/239 and 2001/1029.  
 (d) Regulation 146A was inserted by S.I. 2000/1978 and was amended by S.Is. 2001/1029, 2005/2687 and 2005/2877.  
 (e) Regulation 146B was inserted by S.I. 2000/1978 and was amended by S.I. 2001/1029.  
 (f) Head (ee) was inserted by S.I. 1997/2863 and was amended by S.Is. 2001/1029 and 2008/698.  
 (g) Paragraph (3A) was inserted by S.I. 1997/2863 and was amended by S.Is. 2000/1978, 2000/724, 2001/1029 and 2008/698.  
 (h) S.I. 2006/213. Paragraph (7) was amended by S.Is. 2006/588, 2008/698 and 2008/2767.  
 (i) Paragraph (4) was amended by S.Is. 2006/588, 2008/698 and 2008/2767.  
 (j) S.I. 2006/215. Paragraph (7) was amended by S.Is. 2006/588, 2008/698 and 2008/2767.  
 (k) Paragraph (4) was also amended by S.Is. 2006/588, 2008/698 and 2008/2767.

#### **Amendments to the Housing Renewal Grants Regulations**

**4.**—(1) The Housing Renewal Grants Regulations 1996<sup>(a)</sup> are amended as follows.

(2) In paragraph 11(d) of Schedule 3 (sums to be disregarded in the calculation of income other than earnings)<sup>(b)</sup>, after the words “50 Plus” insert “or in the Flexible New Deal specified in regulation 75(1)(a)(v) of the Jobseeker’s Allowance Regulations 1996”.

Signed by authority of the Secretary of State for Work and Pensions.

3rd March 2009

*Tony McNulty*  
Minister of State,  
Department for Work and Pensions

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<sup>(a)</sup> S.I. 1996/2890.

<sup>(b)</sup> Paragraph 11(d) was amended by S.Is. 1998/808, 2000/973, 2002/530 and 2002/2798.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Jobseeker's Allowance Regulations 1996 ("the Jobseeker's Allowance Regulations") on account of the introduction of the employment programme known as the Flexible New Deal and the attendance by jobseeker's allowance claimants at a Back to Work session.

In particular, they amend regulation 75 of the Jobseeker's Allowance Regulations so that the employment programme known as the Flexible New Deal is an employment programme for the purposes of sections 19 and 20A of the Jobseekers Act 1995 ("the 1995 Act") and the Jobseeker's Allowance Regulations (see regulation 2(5) of these Regulations). The effect is that if a person, without good cause, refuses or fails to participate in the programme, or loses their place on the programme due to misconduct, that person will receive a sanction under section 19 or 20A of the 1995 Act.

These Regulations amend regulation 69 of the Jobseeker's Allowance Regulations to provide for the sanction period for an act or omission relating to the Flexible New Deal. A sanction may be of 2, 4 or 26 weeks' duration (see regulation 2(3)).

They also amend regulation 69 with the effect that a person who fails to take part in a Back to Work Session when directed to do so by an employment officer may lose one week's benefit for each failure (see regulation 2(3)(c)).

These Regulations provide for an additional case where a person is to be regarded as having good cause for the purposes of section 19(5)(b) and 20A(2)(b) of the 1995 Act. The circumstances relate to where the person is not notified that they are required to take part in the Flexible New Deal (see regulation 2(4)).

Where a jobseeker's allowance is not payable to a person as a result of an act or omission relating to their participation in the Flexible New Deal or as the result of a failure to take part in a Back to Work Session when directed to do so, these Regulations amend the Jobseeker's Allowance Regulations to provide that the person shall not be a person in hardship (see regulation 2(8) and (10)). Where the sanction relates to the Flexible New Deal, they also amend those Regulations to prescribe the period during which a person shall not be a person in hardship (see regulation 2(9) and (11)). The effect of these amendments is that the allowance that would otherwise be available to a person in hardship is not available to a person who is subject to a sanction during the period they are required to take part in the Flexible New Deal or for 14 days, whichever is the longer.

Regulation 2 also amends the Jobseeker's Allowance Regulations concerning notional income and notional capital in relation to Flexible New Deal participants. Regulation 3 ensures that certain payments made in connection with a person's participation in the Flexible New Deal are also not treated as either notional income or notional capital for the purposes of entitlement to housing or council tax benefit.

Regulation 4 amends the Housing Renewal Grants Regulations 1996 with the result that certain payments of child care expenses reimbursed in consequence of a person's participation in the Flexible New Deal shall be disregarded in the calculation of income.

The Report of the Social Security Advisory Committee dated 9th December 2008 on the proposals referred to them in respect of these Regulations together with a statement showing the extent to which these Regulations give effect to the recommendations of the Committee, and in so far as they do not give effect to them, the reasons why not, are contained in Command Paper Cm 7566 published by the Stationery Office Ltd.

A full impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.

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STATUTORY INSTRUMENTS

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