

**EXPLANATORY MEMORANDUM TO
THE JOBSEEKER'S ALLOWANCE
(EMPLOYMENT, SKILLS AND ENTERPRISE SCHEME) REGULATIONS
2011**

2011 No. 917

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 establishes the Employment, Skills and Enterprise Scheme ('the Scheme') which provides the conditionality and sanctions framework for Jobseeker's Allowance customers participating in the following employment initiatives: Skills Conditionality, Service Academies, the New Enterprise Allowance and the Work Programme.

2.2 The instrument details:

- Selection for participation in the Scheme and notification of activities required;
- The definition of failure to participate in the Scheme;
- The provisions for 'good cause' for failure to participate in the Scheme;
- The arrangements for the payment of hardship to those sanctioned;
- Consequential amendments required as a result of these Regulations;
- Provision for contracting out certain functions of the Scheme.

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

3.1 None

4. Legislative Context

4.1 As part of the government's package of welfare reform measures designed to assist customers to move into work, these Regulations will introduce powers to enable Jobcentre Plus and external providers to require Jobseeker's Allowance customers to participate in activities which are designed to assist them in preparing for and finding employment.

4.2 The Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 are part of a wider set of proposed legislative changes to the support offered by Jobcentre Plus and the Department for Work and Pensions. Other changes include:

- The Social Security (Work Experience)(Amendment) Regulations 2011;
- The Jobseeker's Allowance (Mandatory Work Activity Scheme) Regulations 2011 (SI 2011/688); and
- The Employment and Support Allowance (Work Related Activity) Regulations 2011.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention of Human Rights

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

7. Policy background

- *What is being done and why*

7.1 This Scheme will be used to underpin much of the flexible programme of back to work support delivered by both Jobcentre Plus and third-party providers to provide personalised support to Jobseeker's Allowance customers to help them to achieve this aim. In particular, Jobseeker's Allowance customers on the Skills Conditionality, the Service Academies, the New Enterprise Allowance and the Work Programme will be subject to the conditionality and sanctions regime contained in the Scheme.

7.2 All Jobseeker's Allowance customers who are required to meet the jobseeking conditions of availability, actively seeking employment and entering into a Jobseeker's Agreement, may be required to participate in support provided by the Employment, Skills and Enterprise Scheme.

7.3 The Jobcentre Plus adviser may also require the customer to undertake activities relevant to the particular initiative by way of participation in the Scheme. In some instances, e.g. the Work Programme, the functions of the Secretary of State to require particular activities under the Scheme will be contracted out to providers and it will be the provider who requires the customer to undertake a specified activity by way of participation in the Scheme.

7.4 In relation to some of the employment initiatives, e.g. Service Academies and New Enterprise Allowance, the customer will be able to decide themselves whether or not the particular initiative is suitable for them. Once a customer decides that the particular initiative is suitable, the Jobcentre Plus adviser will exercise the powers in these Regulations and require the customer to participate in the Scheme.

7.5 The Jobcentre Plus adviser or the provider will work with Jobseeker's Allowance customers to assist them to find work, addressing customers' individual needs as required. In discussion with the customer, a Jobcentre Plus

adviser or a provider will decide specific activities which will form elements of the customer's participation in the Scheme and include these in the customer's action plan, together with the timescales for completion.

7.6 When someone fails to participate in the Scheme without good cause, for example by neglecting to undertake any of the activities as specified by a Jobcentre Plus adviser or a provider, they risk losing benefit under the sanction regime introduced by this legislation.

7.7 The Employment, Skills and Enterprise Scheme provides the conditionality and sanctions framework for Jobseeker's Allowance customers on four initiatives:

- **Skills Conditionality** - this will offer focused help and support for those customers with an identified skills need that is a barrier to them gaining and keeping employment. Jobcentre Plus will refer customers to a skills training provider, Further Education College or Next Step careers adviser with potential benefit sanctions for non-participation.
- **Service Academies** will support job seekers who are close to the labour market but who would benefit from participating in pre-employment training and work experience to help them move into sustained employment in a demand sector (for example retail) and; to support employers in those sectors to fill their vacancies more efficiently. Skills policy is a devolved matter in Scotland and Wales and information around the design of Service Academies in England is being shared with devolved administrations.
- **The New Enterprise Allowance** will promote self-employment under the guidance of a business mentor, providing access to a weekly financial allowance and business start-up loan finance.
- **The Work Programme** will provide both back-to-work and in-work support for a range of customers, including Jobseeker's Allowance customers, and customer on Employment and Support Allowance, Income Support and incapacity benefits. It will replace much of the employment programme provision currently offered by the Department for Work and Pensions including Flexible New Deal, Employment Zones and Pathways to Work.

Sanctions

7.8 The sanction regime under the Scheme is designed to be transparent, effective, and easy for the customer to understand. It comprises just one defined ground for the raising of a doubt about whether a customer has complied, i.e. 'Failure to Participate'. Compliance concerns will be raised by Jobcentre Plus or providers, with decisions on failures, good cause and penalties being made by Jobcentre Plus decision makers.

7.9 The level of penalty imposed will escalate with each successive failure, and will work as follows: 2 weeks loss of benefit for the first failure to participate, 4 weeks loss of benefit for the second failure to participate no more than 12 months after the first, and 26 weeks loss of benefit for a third - and any subsequent failure to participate within 12 months of a previous failure determination.

Customers subject to a benefit sanction will not be eligible for hardship payments unless they, or a member of their family are a vulnerable person – for example:

- A person who is responsible for a child who would experience hardship if no payment were made;
- A person or their partner who is pregnant would experience hardship if no payment were made; and
- The person's Jobseeker's Allowance includes a disability premium and person for whom that is paid would experience hardship if no payment were made.

Customers always retain the opportunity to re-engage with the required activity at any time. If they do so during a 26 week sanction, that sanction will be shortened (provided a minimum of four weeks has been served) and benefit payments will resume.

- ***Consolidation***

7.10 Informal consolidation of this instrument will be provided 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-law-relating-to-social-security/>

7.11 Prior to the implementation of these regulations, changes will be made to volume 9 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

Skills Conditionality

8.1 The Department for Work and Pensions and the Department for Business, Innovation and Skills launched a public consultation on the implementation of Skills Conditionality which ran from 9 December 2010 to 3 February 2011. The consultation period was shorter than the standard 12 weeks because we were consulting on the implementation rather than the policy design.

8.2 We proactively engaged with the key delivery partners to draw the consultation to their attention and to maximise the response to the consultation. Responses from 120 stakeholders were received including training providers,

customer representative groups and Jobcentre Plus staff. In addition we also held a number of workshops with skills providers and Jobcentre Plus staff to discuss our proposals for skills conditionality. The delivery plans for skills conditionality will take account of the comments raised in response to the consultation.

8.3 The majority of respondents supported the policy objective of improving claimants' attendance on skills provision. A number of risks were also identified, including both financial and reputational risks for colleges and training providers if mandatory referrals result in fewer learning achievements. Concerns were also raised around the potential additional administrative burden on colleges and training providers. Many commented that the key to success lies in effective working relationships at a local level as well as a clear understanding on all sides of the role and responsibility of the claimant, the Next Step careers adviser, the Jobcentre Plus adviser and the college or training provider. The response to the consultation addresses these issues. More information about the consultation is available on the Department for Work and Pensions website at: <http://www.dwp.gov.uk/consultations/2010/skills-conditionality.shtml>

Service Academies

8.4 Officials from the Department for Work and Pensions, Jobcentre Plus, the Department for Business, Innovation and Skills and the Skills Funding Agency met with 28 employers and 10 employer representative groups, including Sector Skills Councils, to obtain initial thoughts and reactions to the developing policy on Service Academies. The Department for Work and Pensions and Jobcentre Plus also met with 3 customer representative groups. There was broad interest in the measure. Employers will continue to be involved in the implementation of Service Academies through partnership working with Jobcentre Plus and Training Providers.

New Enterprise Allowance

8.5 In formulating the policy on New Enterprise Allowance, internal and external stakeholders have been consulted to learn from their experience of delivering mentoring and financial support. Internally, this includes Jobcentre Plus, the Department for Business, Innovation and Skills (BIS) and the Devolved Administrations to learn from their roles in the current self-employment offer.

8.6 We have also been involved in wider Department for Business, Innovation and Skills-led stakeholder events on mentoring and microfinance events. The purpose of these events was to work with stakeholders to discuss how mentoring provision might be better joined up and made more accessible to customers, how to open up microfinance and make it more accessible and understandable to customers who need it; and Government's role in delivering this type of support.

8.7 External engagement with stakeholders with relevant self-employment/enterprise expertise, including those which provide business

mentoring or advice, such as the Princes Trust, ACT, Advantage 42, Avanta and Horseshmouth has also taken place.

- 8.8 A number of key points were raised during our consultation including:
- Many business people and organisations already share their time, skills and experience on an entirely voluntary nature;
 - Organisations providing mentoring support tell us that one-to-one mentoring boosts motivation, helps people set goals and plan ahead, enabling them to achieve outcomes they would not have achieved by themselves; and
 - Involving mentors in the final approval of a customer's business proposition could compromise the relationship between customer and mentor.
- 8.9 The responses have helped to inform the final design of the initiative.

Work Programme

8.10 The introduction of the Work Programme was a Conservative party manifesto commitment, and was included in the Coalition Agreement. We have run face-to-face meetings with around 60 stakeholder groups, and set up an online forum on the Department for Work and Pensions website to gather stakeholder views. This was publicised to around 600 stakeholder organisations, and around 300 responses were received. As the design of the programme has progressed, further stakeholder consultations have been run to gather input on specific issues, such as the safeguards we will need to have in place to protect customers on the Work Programme.

- 8.11 In their responses, stakeholders expressed a significant range of opinions in relation to the Work Programme proposals. These included:
- Broad support for fast-tracking vulnerable groups onto the Work Programme, and avoiding payment for people who would have found work anyway;
 - Concern from providers regarded management of volumes of Work Programme customers;
 - Customer Representative groups concern regarding the equality impact of the planned flexible approach to delivery, and the plans to monitor the equality impact of the Work Programme; and
 - Concerns from the voluntary sector regarding monitoring of sub-contracting arrangements.

These issues have been used to inform the development of Work Programme policy.

8.12 As the design of the programme has progressed, further stakeholder consultations have been held to gather input on specific issues, such as the Work Programme complaints procedures.

8.13 These issues have informed the development of the Work Programme policy. A brief online summary of issues raised in the consultation and a brief

response to each substantive point was published in November 2010 and is available at: <http://www.dwp.gov.uk/docs/work-prog-prospectus-v2.pdf>

- *Social Security Advisory Committee referral*

8.14 Draft Work Programme Regulations were referred to the Social Security Advisory Committee (SSAC), which after careful consideration decided that a public consultation exercise on the proposals was not required.

8.15 The decision to use the Scheme established by these regulations to underpin the conditionality and sanctions structure for a broader set of policies was made after this initial referral. In order to enable SSAC to fulfil its function of advising and assisting the Secretary of State in relation to the full range of policies that will be making use of the powers set out in the Regulations, officials presented the proposals for the three additional employment initiatives (Skills Conditionality, Service Academies, New Enterprise Allowance) to SSAC in the usual way along with a set of detailed Explanatory Memoranda and separate Equality Impact Assessments.

8.16 SSAC have some concerns that the regulations are drafted in a way which leaves scope for them to be used to support further mandatory employment initiatives. SSAC has requested that should the Department wish to use the powers in these regulations to support significant further policies, that the proposals are discussed with SSAC first. The Department has agreed to this.

8.17 In addition to the use of the regulations, SSAC also has concerns about these additional policies. SSAC are not convinced that mandation is necessary for the implementation of Skills Conditionality, Service Academies or the New Enterprise Allowance. The Government does not accept the Committee's key recommendation that the sanctions-based conditionality regime should be removed from the three policy proposals. It is the Government's view that these policies will have a positive impact on claimants to help them get better equipped to find employment. In addition, SSAC has set out a number of more detailed concerns with the operation of the policies. A full response to SSAC's concerns is being drafted and will be published as an Act Paper alongside the regulations.

9. Guidance

9.1 Information products such as leaflets and letters, including in accessible formats, are being developed to ensure that people claiming Jobseeker's Allowance who are required to participate in the initiatives, understand their rights and responsibilities.

9.2 Guidance will be developed for Jobcentre Plus staff who advise customers and maintain claims to Jobseeker's Allowance, including decision makers. This guidance will contain information relevant to all of the processes involved in each of the four initiatives covered by this legislation.

9.3 Guidance is also being developed for the third-party providers who will deliver the Work Programme Scheme to ensure they understand what is

expected of them and their duty to customers. This will be distributed to providers and made available on the Department for Work and Pensions website.

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. An equality impact assessment can be accessed and viewed on the Department for Work and Pensions internet site at: <http://www.dwp.gov.uk/publications/impact-assessments/equality-impact-assessments/>

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department is currently developing a light touch evaluation approach for the measures of the employment initiatives, as part of a wider evaluation strategy for Jobcentre Plus support. This will examine:

- flows off benefit and into employment;
- the quality of customer experience, as well as delivery volumes; and
- the value for money and productivity story.

12.2 The management information collected will be used to account for public spend, enable performance improvement and inform evaluation.

13. Contact

Richard Jackson at the Department for Work and Pensions, telephone: 0114 2408769 or email: richard.jackson@jobcentreplus.gsi.gov.uk, can answer any queries regarding the instrument.