

**EXPLANATORY MEMORANDUM TO**  
**THE JOBSEEKER'S ALLOWANCE (SCHEMES FOR ASSISTING PERSONS TO**  
**OBTAIN EMPLOYMENT) (AMENDMENT) REGULATIONS 2017**

**2017 No. 1020**

**1. Introduction**

1.1 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 prescribes a further scheme, namely the Work and Health Programme (WHP), in addition to those schemes already prescribed in the Jobseeker's Allowance (Schemes to Assist Persons to Obtain Employment) Regulations 2013<sup>1</sup> ("the 2013 Regulations"). This provides the legal framework to enable the Secretary of State for Work and Pensions (SSWP) to require Jobseeker's Allowance (JSA) claimants who are long-term unemployed to attend and participate in the WHP. The effect of the instrument is that a claimant, who fails without good reason to comply with such a requirement to participate, can be liable to a benefit sanction, i.e. the reduction or loss of JSA for a period of several weeks.

2.2 This instrument also removes the following schemes that have now ceased:

- Day One Support for Young People;
- The Derbyshire Mandatory Youth Activity Programme; and
- Community Work Placements.

2.3 Finally, the instrument also removes definitions relating to ceased schemes.

**3. Matters of special interest to Parliament**

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

3.1 None.

*Other matters of interest to the House of Commons*

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

4.1 These Regulations are made under section 17A of the Jobseekers Act 1995<sup>2</sup>, which was inserted by the Welfare Reform Act 2009<sup>3</sup>. Section 17A provides a power to impose on claimants in prescribed circumstances a requirement to participate in schemes of any prescribed description that are designed to assist them to obtain employment.

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2013/2584/contents/made>

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/1995/18/contents>

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2009/24/contents>

- 4.2 This section is repealed by Part 4 of Schedule 14 to the Welfare Reform Act 2012<sup>4</sup>, and that repeal has been partially commenced as part of the transition from JSA (and other income-related benefits) to Universal Credit, but section 17A remains in force in relation to claimants still in receipt of JSA.
- 4.3 These Regulations provide the legal basis to require income-based JSA claimants to participate in the WHP. Powers to require equivalent Universal Credit claimants are already in force under section 16 of the Welfare Reform Act 2012.
- 4.4 For JSA claimants failing to attend or participate in the WHP without good reason, their JSA benefit may be either stopped or reduced for an initial period of four weeks or a longer period of 13 weeks where failure to attend or participate continues. Sanctions for failing to take part in the schemes covered by the Regulations are dealt with by the Jobseeker's Allowance Regulations 1996<sup>5</sup>, as amended.
- 4.5 Where the Secretary of State for Work and Pensions has selected a claimant for participation in the WHP under regulation 4 of the 2013 Regulations, regulation 17 of those regulations provides that an authorised provider may send out the notification of the requirement to participate.
- 4.6 As part of the legislative context for this instrument, a Designation Order is also being prepared that designates the employees of WHP providers as 'employment officers' for the purpose of section 19(2)(c) of the Jobseekers Act 1995. This means that a higher level sanction can be imposed if a participant fails to apply for and/or accept a job offer as required/notified by a provider.
- 4.7 Where a claimant, without good reason, refuses to apply for or accept, if offered, such employment, a higher level sanction can be considered by DWP Labour Market Decision Makers. There is, however, no power within the Designation Order for providers to impose sanctions directly.
- 4.8 Providers will always need to refer WHP participants back to a DWP Labour Market Decision Maker for consideration of a sanction doubt and to determine whether there was good cause in failing to attend or participate

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

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is 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.

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2012/5/contents>

<sup>5</sup> <http://www.legislation.gov.uk/uksi/1996/207/contents/made>

## 7. Policy background to the Work and Health Programme

The information provided in the following sections relates to the programme as a whole, and is far wider than the scope of the instrument itself, which will apply only to claimants of income-based Jobseeker's Allowance (gradually being replaced by Universal Credit).

### *What is being done and why*

- 7.1 During the Spending Review 2015 it was announced that the WHP - a new employment support programme - would launch in 2017 following the end of referrals to Work Choice and the Work Programme.
- 7.2 The labour market has significantly changed since the Work Programme and Work Choice were launched. Employment rates are at near-record levels, and unemployment rates are similarly far lower. This is particularly clear amongst people who do not face barriers to work.
- 7.3 At the same time, there are groups who do not fare as well in the employment market. In particular, the Government has committed to increase the number of people with disabilities in work by one million. That is why the new programme will focus predominantly on people with disabilities, whilst also offering places to a number of disadvantaged groups and very long-term unemployed people.
- 7.4 The WHP will commence from November 2017 under a phased roll-out until February 2018. It will primarily be an outsourced employment programme, in which third-party providers will deliver support to specific customer groups in England and Wales:
- A person with a disability, as defined in the Equality Act 2010, who can volunteer to join the programme at any time;
  - Early Access Disadvantaged Groups (EADGs) who can volunteer to join the programme at any time; and
  - Long Term Unemployed (LTU) – these will be claimants in the intensive work search regime in Universal Credit or income-based Jobseekers Allowance (JSA) claimants who have not moved into employment within 24 months of their claim. They will be eligible for referral to the programme on a mandatory basis at this point.
- 7.5 The programme has been designed to offer individualised support to the specific customer groups above, where places are available. We expect that around 245,000 people will be supported in England and Wales during the life of the programme. In line with the original funding envelope for the programme, it is anticipated that 75% of places will be for disabled people, 15-25% for the LTU and up to 10% for EADGs. Participation on the programme will be voluntary for both disabled people and EADGs. Participation will be mandatory for the LTU.
- 7.6 The WHP will complement the Work Coach Delivery Model and provide enhanced specialist support for those who need it. It is designed to ensure providers work in partnership with local areas, including supporting local growth priorities; particularly in areas which have agreed devolution deals regarding employment support. A WHP Public Sector Comparator (PSC) will run alongside the WHP and will be delivered by Jobcentre Plus (JCP). The PSC will enable us to evaluate whether Jobcentre Plus can deliver a similar level of performance as our contracted employment providers when

given similar resources and freedoms. This will enhance the current evaluation approach planned for the WHP programme and inform future investment decisions.

7.7 The WHP has been developed on the basis of a number of key principles:

- Resources should focus on those who really need extra support – with a stronger labour market this now needs to focus on those needing most help to access or return to work. This programme will support claimants with needs greater than those which can usually be met through JCP;
- DWP will better target support – sending claimants who are prepared and motivated for the intensive support the new programme will offer, and ensuring claimants are referred who have a genuine chance of moving into work whilst on the programme;
- Supporting localism (a Government priority). This gives local areas a role in shaping how the programme is designed so that it meets local needs and is tailored to the local labour market to afford claimants the best chance of moving into employment.

***What is the objective of the Programme?***

7.8 The Work and Health Programme is designed to help participants from all the target groups – disabled people, early access disadvantaged groups and the long-term unemployed – get into sustained employment.

***What does the Work and Health Programme involve?***

7.9 Work and Health Programme providers will work closely with participants to provide them with personalised and targeted support to help them overcome their barriers to employment. Providers will be expected to support people based on the needs, strengths and aspirations of the individual; deliver effective services which are integrated with local services; and connect individuals with local employers and place and support them into sustainable employment. By ensuring that wider barriers to employment are tackled, individuals have a better chance of finding, securing and retaining employment.

7.10 Individuals, even with similar barriers or characteristics, can respond differently and so require tailored support. This is why we have elected to give providers considerable freedom in how they support participants to move into lasting work rather than specify particular services.

7.11 We expect that providers will:

- Give all participants more intensive, tailored support offer than can be provided by Jobcentre Plus;
- Deliver high quality support and experience, and utilise contacts with other partner organisations enabling providers to offer unique support to every individual claimant;
- Have strong links to national and local employers to identify employment needs, carve out roles and provide bespoke training to enable better matching of skills to roles; and
- Bring a different and refreshed energy and approach.

***Is the programme all advice-based or will there be work placements?***

7.12 Providers have considerable freedom in how they support claimants into work. This is by design – given the groups being referred, we do not believe that a single, standard journey is appropriate, and we want to encourage providers to offer a personalised approach based on the different circumstances of different people. This means that whilst advice will be part of everyone’s experience, a provider may choose to include work placements if that will help the individual if agreed between the participant and provider.

7.13 Beyond this, we expect a wide variety of different support to be available. This could include, but is not limited to, participants having a personal keyworker with regular 1:1 face to face contact; mentoring and peer support; integrated access to specialist support networks at local level including health and wellbeing professionals and support from dedicated employer experts with knowledge of the local labour market and job opportunities.

***How long will the programme last for each individual? How many hours a week are required?***

7.14 There are no set requirements on the support required each week for each individual or by each provider, except that:

- Each participant must meet any conditionality requirements of their benefit whilst on the programme, and
- Each successful provider has identified in their bid how their support for individuals will provide additional support over and above that provided by Jobcentre Plus.

7.15 Participants will remain on the programme for up to 456 days of job finding support (the standardised time period for 15 months’ support). If in that period they find a job they will stay on the programme until either the Earnings Threshold has been achieved, or for a maximum period of 639 calendar days (the standardised time period for 21 months’ support) from (and including) their start on WHP. It should be noted that a long-term unemployed participant in receipt of JSA can only be mandated for the initial 456 days of programme participation, since this is what is set out in the regulations. The Earnings Threshold is the level of earnings - initially around £2,995 - then subject to uprating in line with changes to the national living wage. The amount is equivalent to the amount that someone would earn on the national living wage working for 16 hours per week for six months. The amount is designed to incentivise providers to help participants to find work even for a small number of hours, since we believe that this will help individuals to progress further and build up their experience over time.

7.16 If after 456 days of support they do not find a job they return to the JCP offer (see further detail below regarding measures of success).

- 7.17 Following a job start, the provider may provide light touch in-work support, for the participant, if the provider and participant agree it is necessary in order for them to remain in work.
- 7.18 In-work support will continue until the Earnings Threshold has been achieved. WHP programme participation cannot be extended beyond 639 calendar days from the participant's start on WHP, but arrangements for continuation of support will be put in place if necessary - for example, 'Access to Work' - before the provider support ends. Providers can continue to provide in-work support to former programme participants (outside the scope of the programme) should this be agreed with the former participant.

***Will there be a variety of schemes and regional differences?***

- 7.19 The Work and Health Programme is a national programme in England and Wales; however:
- Each provider has freedom in how they support participants and there will therefore be regional differences in the nature and package of support between different Contract Package Areas (CPAs).
  - Each Devolution Deal Area (DDA) has also provided information about the current priority groups within their area. Jobcentre Plus is aware of DDA priority groups within each CPA and will consider these priority groups when considering who should be referred onto the WHP.
  - We have allocated funding to London and Manchester to develop, procure and deliver localised versions of the programme to fit the needs of their areas.
- 7.20 We have worked with devolution deal areas and London and Manchester to try and learn more about whether localised approaches result in better outcomes for participants, and are keen to see whether it allows better join-up with other services in an area – part of our evaluation will explore this.

***How does the Work and Health Programme differ from existing contracted employment schemes?***

- 7.21 The key elements in the structure of WHP and lessons learned from existing programmes of support are:
- Having a 'payment by results' funding model to drive performance including a price accelerator element to deliver better performance by increasing the return for investment in people who require more intensive support. Essentially this means that we will make higher payments as providers get more of the harder to help people in a cohort into work.
  - Flexibility within contracts to allow providers room to innovate.
  - Using lessons learned on performance managing providers from previous programmes, in particular through continuous assessment of groups of people entering the programme by month – this gives a clearer view of the effectiveness of the programme at any given time.
  - Having greater emphasis on localism and integration with local funding, stakeholders and services.

- Introducing automated and accurate payment validation – we are using real time earnings information rather than reporting by providers for a system that is both more accurate and less costly.
- Learning from increasing numbers of Universal Credit claimants and better understanding of their circumstances.
- Ensuring WHP delivers evidence to improve understanding through robust evaluation. The current evidence based on what works to support people with a disability and/or with multiple barriers to employment into work is less developed than for other claimant groups, such as the long-term unemployed. As well as assessing the impact of the programme on the target claimant groups, we will evaluate new elements of the programme, such as the localism approach, tailoring delivery to local area needs.

***What is the anticipated cost per participant?***

- 7.22 Through a range of policy and design changes, we have simplified the processes for both providers and DWP, enabling cost reductions. For the WHP, the initial WHP plan was to spend £2,300 per start however further to the procurement process a unit cost of £2,044 per start is expected and will be achieved, provided the number of starts as planned in contracts are delivered. Whilst we have driven a reduction from £2,300 to £2,044, we have reinvested the monies back into WHP to secure additional places – this has not been taken as a saving. The average unit cost for Work Programme and Work Choice was circa £3,600 per start. However it is crucial to note that WHP does not replace Work Choice and Work Programme, but builds on the lessons from those programmes; the costs are therefore not directly comparable.
- 7.23 Suppliers will provide personalised support for all participants to help them overcome barriers to employment and help them into work. Over the five years of the programme DWP expects providers to support circa 245,000 participants. The majority will be disabled people who will attend on a voluntary basis.

***What sort of success criteria are being anticipated?***

- 7.24 Stretching minimum performance levels were developed by Work and Health Programme bidders via the tendering process. DWP will measure and manage supplier performance within each Contract Package Area in line with the minimum performance levels set out in the commercial specification which include:
- Contract Package Area level
  - Disability customer group
  - Early entry customer group
  - Long-term unemployed customer group
  - Devolution Deal Areas
- 7.25 In addition to achievement of the job outcome performance, the success of WHP provision will be measured against a series of Customer Service Standards (CSS), to ensure that service delivery expectations are met throughout each stage of the participant journey.

- 7.26 The performance management regime will measure WHP suppliers against the contracted minimum performance levels (MPLs) and CSSs and DWP will seek to use appropriate commercial levers to ensure a good quality of service in each contract package area.
- 7.27 In simplistic terms, based on averages so that individual providers and CPAs cannot be identified (as individual MPLs have been agreed with each provider/CPA area):
- The average job outcome performance for Work and Health Programme is circa 49% (compared to circa 32% on existing Work Programme and Work Choice provision) where an individual has earned over the threshold requirement of working 16 hours per 182 days at the adult rate of the National Living Wage (NLW) - this currently stands at circa £2,995. The provider is able to work with the individual for a period of 639 days (approx. 21 months) to achieve the outcome.
  - The average job outcome performance rate for the Work and Health Programme is 50% greater than current provision, where the baseline business case assessed this at circa 32%. Therefore success will be measured and assessed bearing in mind the context of previous provision to that of the contract rates achieved through the Commercial process.
  - Over 50% of spending (direct/indirect) is with SME and Voluntary Sector organisations.

***How will volumes be managed during the lifetime of the programme?***

- 7.28 The expected referral levels for the Work and Health Programme are based on the Department's previous experience of delivering similar programmes and extend across all areas for the full duration of the contracts. Working closely with our providers and partners, the Department will rigorously monitor referrals to the programme and how this is performing. This will help ensure that providers get the referrals they expect and that the programme is delivering the right outcomes for the participants.

***Have issues with payments by results models in previous schemes been addressed in the Work and Health Programme?***

- 7.29 Performance in the Work and Health Programme will fall into a range. There will be two distinct elements to the WHP funding model. Suppliers will be paid a delivery fee and an outcome payment.
- 7.30 There is also a price acceleration element which becomes available, subject to providers achieving certain performance criteria. The intent of this is to incentivise them to make an impact with the cohort who are furthest from the labour market and therefore in the 'hardest to help' category.
- 7.31 The programme's funding model has been designed to predominantly be 'Payment by Results' to drive sustained work outcomes. DWP will pay for outcomes measured using earnings data provided by HMRC.



- 7.32 To secure a job outcome payment, an eligible WHP participant must have been directly employed, with accumulated earnings at least equivalent to working for 16 hours per week for 182 days, earning the adult rate (aged 25 or over) of the National Living Wage (NLW) (currently £7.50 an hour during their time on the WHP, or within 182 days after provision completion.
- 7.33 If after the initial 456 days (15 months) of programme support the participant does not find a job, they return to the JCP offer. However, the interest will remain flagged on the Real Time Earnings (RTE) system until 639 days has elapsed (21 months). If a participant has gone back to JCP after day 456 with no job and subsequently moves into work prior to day 639, then if they reach the earnings threshold by day 639 the provider will be paid the outcome fee. If they do not reach the earnings threshold prior to day 639 then the provider will not be paid an outcome fee. The 639 day period is counted from day one on WHP until the last day the Provider can potentially be paid an outcome. Self-employed outcomes are generated when a participant's business has sustained six months of cumulative work.

### ***Consolidation***

- 7.34 These Regulations are available to the public at no cost from the National Archives via the internet at: [www.legislation.gov.uk](http://www.legislation.gov.uk) where informal consolidated text is also available.

## **8. Consultation outcome**

- 8.1 The Social Security Advisory Committee agreed that the Regulations should not be referred to it for formal consultation. During the design phase of the WHP, there was general support from stakeholders consulted for the emerging intent and policy direction of the programme including mandation to support for the long term unemployed cohort. There was strong support however that referrals for disabled people and disadvantaged groups should be on a voluntary basis.
- 8.2 Stakeholders included charitable groups, local authorities and providers who have participated in previous programmes as well as Local Enterprise Partnerships (LEPs) and others.

## **9. Guidance**

- 9.1 Guidance for externally contracted providers has been produced and a draft has been shared with them through departmental systems. This Provider Guidance will be available in the public domain from the point the programme commences and participants will be able to access this information, which is pitched at a technical level for delivery bodies. Clear comprehensive instructions to providers have been developed to ensure the application of mandatory requirements is appropriate. This includes the need to set and agree realistic and achievable conditionality requirements, to support all claimants towards work. For claimants with complex needs or those needing additional support, additional considerations are outlined. Specific sessions on this process will take place ahead of the LTU referrals commencing from April 2018. This is to ensure clear messages are provided about the delivery of the process, the responsibility on the provider and the consequences.
- 9.2 Guidance and awareness products will be made available to Departmental employees responsible for referring claimants to the programme. The Department does not

routinely produce guidance for participants because sufficient information will be made available to them at the point of referral by Jobcentre staff and this will be supplemented by additional information communicated by the WHP provider. Because the majority of starts on the programme are expected to be from the voluntary cohort, it is expected that the exchange of information at the beginning of the referral process will be part of a staged consensual dialogue firstly between the participant and DWP, then between the provider and the participant. In addition, publically accessible material will be available on GOV.UK summarising the purpose of the Work and Health Programme.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is negligible impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 The Department 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 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.

## **13. Contact**

- 13.1 Deborah Nuttall at the Department of Work and Pensions Telephone: 0113 208 3175 email: [deborah.nuttall2@dwp.gsi.gov.uk](mailto:deborah.nuttall2@dwp.gsi.gov.uk) can answer any queries regarding the instrument.