

## SCHEDULES

### SCHEDULE 3

#### CLAIMANTS DEPENDENT ON DRUGS ETC.

#### PART 2

#### EMPLOYMENT AND SUPPORT ALLOWANCE

*Requirements imposed on persons dependent on drugs etc.*

6 After section 15 of the [Welfare Reform Act 2007 \(c. 5\)](#) insert—

*“Persons dependent on drugs etc.*

#### **15A Persons dependent on drugs etc.**

(1) Schedule 1A makes provision for or in connection with imposing requirements on persons in cases where—

- (a) they are dependent on, or have a propensity to misuse, any drug, and
- (b) any such dependency or propensity is a factor affecting their prospects of obtaining or remaining in work.

(2) That Schedule also contains a power for its provisions to apply in relation to alcohol.”

7 After Schedule 1 to the [Welfare Reform Act 2007 \(c. 5\)](#) insert—

“SCHEDULE 1A

Section 15A

#### PERSONS DEPENDENT ON DRUGS ETC.

#### **1 Requirements imposed in relation to use of drugs**

(1) Regulations may make provision for or in connection with imposing on a person who is—

- (a) entitled to an employment and support allowance, and
- (b) not a member of the support group,

a requirement to answer questions within sub-paragraph (2) as a condition of continuing to be entitled to the full amount payable to the person in respect of the allowance apart from the regulations.

(2) A question is within this sub-paragraph if it is asked for the purpose of ascertaining—

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- (a) whether the person may be dependent on, or have a propensity to misuse, any drug, and
  - (b) (if so) whether any such dependency or propensity may be a factor affecting the person's prospects of obtaining or remaining in work.
- (3) Regulations under this paragraph may, in particular, make provision—
  - (a) prescribing the questions which a person may be required to answer under the regulations (which may include questions relating to any use of the drug in question or any treatment connected with its use);
  - (b) for notifying a person of any requirement to answer questions under the regulations;
  - (c) for the determination, and notification, of the time and place at which a person is required to answer questions under the regulations.
- (4) Regulations under this paragraph must include provision for a requirement imposed on a person by the regulations to cease to have effect if the person becomes a member of the support group.
- (1) Regulations may make provision for or in connection with imposing on a person who is subject to a requirement imposed under paragraph 1 a requirement to take part in—
  - (a) a substance-related assessment, and
  - (b) a subsequent interview (a “drugs interview”) with an approved person to discuss any matters arising out of that assessment,as a condition of continuing to be entitled to the full amount payable to the person in respect of an employment and support allowance apart from the regulations.
- (2) For the purposes of this paragraph—
  - a “substance-related assessment” means an assessment by an approved person carried out for the purpose of assessing—
    - (a) whether a person is dependent on, or has a propensity to misuse, any drug, and
    - (b) (if so) whether the person's dependency or propensity is such as requires and may be susceptible to treatment;
  - an “approved person” means a person having the necessary qualifications or experience who is approved by the Secretary of State for the purposes of this paragraph.
- (3) Regulations under this paragraph must include provision for the requirement mentioned in sub-paragraph (1) to be imposed on a person only if the Secretary of State has reasonable grounds for suspecting that—
  - (a) the person may be dependent on, or have a propensity to misuse, any drug, and
  - (b) any such dependency or propensity may be a factor affecting the person's prospects of obtaining or remaining in work.
- (4) Regulations under this paragraph may, in particular, make provision—
  - (a) for notifying a person of a requirement to take part in a substance-related assessment or a drugs interview;

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- (b) for the determination, and notification, of the time and place of any substance-related assessment or drugs interview in which a person is required to take part.
- (5) Regulations under this paragraph may, in particular, make provision for a requirement imposed on a person (“P”) under this paragraph to cease to have effect if—
  - (a) P agrees to provide a sample, in accordance with instructions given by an approved person, for the purpose of ascertaining whether there is or has been any drug in P’s body, and
  - (b) the sample provided indicates that no drug is or has been in P’s body.
- (6) Regulations under this paragraph must include provision for a requirement imposed on a person by the regulations to cease to have effect if the person becomes a member of the support group.
- (1) Regulations may make provision for or in connection with imposing on a person who—
  - (a) is subject to a requirement imposed under paragraph 2, and
  - (b) fails to comply with it without showing, within a prescribed period, good cause for the failure,a requirement to take part in one or more relevant tests as a condition of continuing to be entitled to the full amount payable to the person in respect of an employment and support allowance apart from the regulations.
- (2) Regulations under this paragraph must include provision for the requirement mentioned in sub-paragraph (1) to be imposed on a person only if the Secretary of State is satisfied that the proposed test or tests will, or will be likely to, assist in determining whether the person is dependent on, or has a propensity to misuse, any drug.
- (3) Regulations under this paragraph must include provision for informing a person of the consequence of failing to comply with a requirement to take part in a relevant test.
- (4) Regulations under this paragraph may, in particular, make provision—
  - (a) for notifying a person of a requirement to take part in a relevant test;
  - (b) for the determination, and notification, of the time and place of any relevant test in which a person is required to take part.
- (5) Regulations under this paragraph must include provision for a requirement imposed on a person by the regulations to cease to have effect if the person becomes a member of the support group.
- (6) For the purposes of this paragraph a person takes part in a relevant test if the person provides a permissible sample in accordance with instructions given by an approved person (within the meaning of paragraph 2) for the purpose of ascertaining whether there is or has been any drug in the person’s body.
- (7) In sub-paragraph (6) “permissible sample”, in relation to any drug, means—
  - (a) a sample of urine, or
  - (b) such sample (other than an intimate sample) as may be prescribed in relation to that drug.
- (8) In sub-paragraph (7)(b) “intimate sample” means—

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- (a) a sample of blood, semen or any other tissue fluid or pubic hair;
- (b) a dental impression;
- (c) a swab taken from any part of a person's genitals (including pubic hair) or from a person's body orifice other than the mouth.

#### **4 Paragraphs 1 to 3: supplementary**

- (1) A person must comply with a requirement imposed by regulations under any of paragraphs 1 to 3 even if doing so might constitute evidence that the person has committed an offence.
- (2) But in criminal proceedings in which a person is charged with an offence—
  - (a) no evidence relating to any answer given, or anything else done, in pursuance of the regulations may be adduced by or on behalf of the prosecution, and
  - (b) no question relating to those matters may be asked by or on behalf of the prosecution,
 unless evidence relating to those matters is adduced, or a question relating to those matters is asked, in the proceedings by or on behalf of the person.
- (3) Sub-paragraph (2) does not apply to—
  - (a) an offence under section 112 of the Administration Act;
  - (b) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath in England and Wales); or
  - (c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (corresponding provision for Scotland).

#### **5 Voluntary and mandatory rehabilitation plans**

- (1) Regulations may make provision for or in connection with securing that a person (“P”) who at any time complies with a voluntary rehabilitation plan is not required at that time—
  - (a) to take part in a work-focused interview under section 12(1), or
  - (b) to undertake work-related activity under section 13(1).
- (2) Regulations under this paragraph may include provision for P not to be required to do the things mentioned in sub-paragraph (1)(a) or (b) only if the Secretary of State is satisfied that—
  - (a) P is dependent on, or has a propensity to misuse, any drug, and
  - (b) P's dependency or propensity is a factor affecting P's prospects of obtaining or remaining in work.
- (3) For the purposes of this paragraph a “voluntary rehabilitation plan” is an agreement entered into by the Secretary of State and P under which P agrees to take one or more of the following steps.
- (4) The steps are—
  - (a) submitting to treatment by or under the direction of a person having the necessary qualifications or experience,
  - (b) taking part in specified interviews, and specified assessments, at specified places and times, and
  - (c) taking such other steps (if any) as may be specified,

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with a view to the reduction or elimination of P’s dependency on, or propensity to misuse, the drug in question.

- (5) The treatment may be—
  - (a) treatment as a resident in a specified institution or place, or
  - (b) treatment as a non-resident at a specified institution or place, and at specified intervals.
- (6) Regulations under this paragraph may, in particular, make provision—
  - (a) as to the maximum period for which a person may benefit from the provision made by the regulations;
  - (b) about the form of voluntary rehabilitation plans (including provision as to their signing);
  - (c) about the review, variation and revocation of voluntary rehabilitation plans;
  - (d) for securing that a person who agrees to comply with a voluntary rehabilitation plan provides information, and such evidence as may be prescribed, as to compliance with the plan.
- (7) An employment and support allowance may also be known as a “treatment allowance” at any time when it is payable to a person to whom this paragraph applies.
- (8) In this paragraph “specified”, in relation to a voluntary rehabilitation plan, means specified in or determined in accordance with the plan.
- (1) Regulations may make provision for or in connection with imposing on a person a requirement to comply with a mandatory rehabilitation plan as a condition of continuing to be entitled to the full amount payable to the person in respect of an employment and support allowance apart from the regulations.
- (2) Regulations under this paragraph must include provision for securing that a person is subject to the requirement mentioned in sub-paragraph (1) at any time only if—
  - (a) the person has not at that time agreed to comply with a voluntary rehabilitation plan under paragraph 5, and
  - (b) the Secretary of State is satisfied as mentioned in sub-paragraph (2) of that paragraph.
- (3) For the purposes of this paragraph a “mandatory rehabilitation plan” is a document—
  - (a) which is provided to the person by the Secretary of State, and
  - (b) which contains one or more of the following requirements.
- (4) The requirements are that the person—
  - (a) must attend an educational programme at a specified place and at specified times,
  - (b) must take part in specified interviews, and specified assessments, at specified places and times, and
  - (c) must take such other steps (if any) as may be specified,with a view to the reduction or elimination of the person’s dependency on, or propensity to misuse, the drug in question.

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- (5) Nothing may be specified in a mandatory rehabilitation plan which requires a person to submit to medical or surgical treatment.
- (6) Regulations under this paragraph may, in particular, make provision—
  - (a) as to the involvement of a person in determining the particular requirements to be contained in a mandatory rehabilitation plan with which the person is to be required to comply;
  - (b) about the form of mandatory rehabilitation plans (including provision as to their signing);
  - (c) about the review, variation and revocation of mandatory rehabilitation plans;
  - (d) for securing that a person who is required to comply with a mandatory rehabilitation plan provides information, and such evidence as may be prescribed, as to compliance with the plan.
- (7) Regulations under this paragraph must include provision for a requirement imposed on a person under this paragraph to cease to have effect if the person becomes a member of the support group.
- (8) In this paragraph “specified”, in relation to a mandatory rehabilitation plan, means specified in or determined in accordance with the plan.

## **7 Sanctions**

- (1) Regulations under paragraph 1, 2, 3 or 6 may, in particular, make provision—
  - (a) for securing that the appropriate consequence follows if a person has failed to comply with any requirement imposed by any such regulations and the person does not show, within a prescribed period, good cause for the failure;
  - (b) prescribing matters which are, or are not, to be taken into account in determining whether a person has good cause for any failure to comply with any such requirement;
  - (c) prescribing circumstances in which a person is, or is not, to be regarded as having good cause for any failure to comply with any such requirement.
- (2) The appropriate consequence for the purposes of sub-paragraph (1)(a) is that the amount payable to the person in question in respect of an employment and support allowance is reduced in accordance with the regulations.
- (3) The provision that may be made by virtue of sub-paragraph (2) includes, in particular, provision for determining—
  - (a) the amount by which an allowance is to be reduced,
  - (b) when the reduction is to start, and
  - (c) how long it is to continue,and may include provision prescribing circumstances in which the amount of the reduction is to be nil.

## **8 Information**

- (1) Regulations may make provision for or in connection with authorising the supply of information, other than excluded information, held by—

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- (a) a police force,
  - (b) the probation service, or
  - (c) such other person as may be prescribed,
- to a person within sub-paragraph (2) for use for the purposes of any provision of this Schedule.
- (2) The persons within this sub-paragraph are—
    - (a) the Secretary of State;
    - (b) a person providing services to the Secretary of State;
    - (c) an approved person (within the meaning of paragraph 2).
  - (3) Information supplied under the regulations may not be supplied by the recipient to any other person unless—
    - (a) it could be supplied to that person under the regulations;
    - (b) it is supplied for the purposes of any civil or criminal proceedings; or
    - (c) it is required to be supplied under any enactment.
  - (4) In sub-paragraph (1) “excluded information” means any information relating to or acquired as a result of—
    - (a) the provision of medical or surgical treatment or care, or
    - (b) the provision of services by a social worker,other than information as to whether a person is having (or has had) treatment in respect of the person’s use of any drug.
  - (5) In sub-paragraph (1) “the probation service” means—
    - (a) in England and Wales, a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 or a provider of probation services;
    - (b) in Scotland, a local authority within the meaning of the Social Work (Scotland) Act 1968.

## **9 Interpretation**

In this Schedule “drug” means such controlled drug (as defined by section 2 of the Misuse of Drugs Act 1971) as may be prescribed.

## **10 Power to extend provisions to alcohol**

- (1) If regulations so provide and subject as follows, the preceding paragraphs of this Schedule are to apply in relation to alcohol as they apply in relation to drugs.
- (2) Regulations under this paragraph may provide for a different definition of a “relevant test” to apply in relation to alcohol for the purposes of paragraph 3.”

### *Consequential amendments*

- 8 (1) Part 1 of the [Welfare Reform Act 2007 \(c. 5\)](#) (employment and support allowance) is amended as follows.
- (2) In section 16 (contracting out)—

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- (a) in subsection (1), at the end insert—
    - “(d) asking questions under paragraph 1 of Schedule 1A;
    - (e) making decisions under paragraph 2 or 3 of that Schedule;
    - (f) exercising any functions in relation to rehabilitation plans under paragraph 5 or 6 of that Schedule.”,
  - (b) in subsection (2)(a), after “15” insert “or Schedule 1A”, and
  - (c) in subsection (3)(a), after “13” insert “or Schedule 1A”.
- (3) In section 25(6) (regulations), after “15” insert “or Schedule 1A”.
- (4) In section 26(1) (regulations subject to the affirmative resolution procedure), after paragraph (c) insert—
- “(d) regulations under any paragraph of Schedule 1A.”
- (5) In Schedule 2 (employment and support allowance: supplementary provisions)—
- (a) in paragraph 10A(1), which is inserted by section 30(2), after “13” insert “or Schedule 1A”,
  - (b) in paragraph 12(c), after “13,” insert—
    - “(ca) Schedule 1A,”, and
  - (c) in paragraph 13, after “13” insert “, or under any paragraph of Schedule 1A other than paragraph 8,”.

*Report on the initial operation of drugs provisions*

- 9 (1) The Secretary of State must prepare a report on the operation of the first set of regulations made under paragraphs 1, 2, 3, 5 and 6 of Schedule 1A to the [Welfare Reform Act 2007 \(c. 5\)](#) during the review period.
- (2) “The review period” is the period of 24 months beginning with the day on which those regulations come into force.
- (3) The Secretary of State must—
- (a) prepare the report, and
  - (b) lay it before Parliament,
- within 6 months from the end of the review period.
- (4) The continued effect of the drugs provisions depends on whether the Secretary of State makes an order under this sub-paragraph within the relevant period providing for those provisions to continue to have effect.
- (5) “The relevant period” means the period of 30 days beginning with the day on which the report is laid before Parliament; and, in reckoning this period, no account is to be taken of any time during which Parliament—
- (a) is dissolved or prorogued, or
  - (b) is adjourned for more than 4 days.
- (6) If no order is made as mentioned in sub-paragraph (4), the Secretary of State must instead make an order under this sub-paragraph providing for the repeal of the drugs provisions on a date specified in the order.
- (7) An order under sub-paragraph (6) may contain transitional provision or savings.



- (8) Any power to make an order under this paragraph is exercisable by statutory instrument.
- (9) An order under sub-paragraph (4) may not be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (10) A statutory instrument containing an order under sub-paragraph (6) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) In this paragraph “the drugs provisions” means—
  - (a) section 15A of, and Schedule 1A to, the [Welfare Reform Act 2007 \(c. 5\)](#),
  - (b) the words inserted into that Act by paragraph 8 of this Schedule, and
  - (c) paragraphs 6 to 8 of this Schedule.
- (12) This paragraph applies whether or not the regulations mentioned in sub-paragraph (1) are, by virtue of section 19 of the [Welfare Reform Act 2007](#) (pilot schemes), made so as to have effect for a limited period.