

EXPLANATORY MEMORANDUM TO
SOCIAL SECURITY (FLEXIBLE NEW DEAL) (No. 2) REGULATIONS 2009

2009 No. 2710

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 concerns the circumstances in which a 26-week benefit sanction imposed in relation to a person's participation in the Flexible New Deal ("FND") employment programme must be brought to an end before the expiry of that period. Where a claimant agrees in writing to undertake the Flexible New Deal activities set out in an action plan, the Regulations provide for the benefit sanction to last for either four weeks or until the claimant agrees to comply with the relevant requirements of the programme (whichever is the longer). Otherwise the sanction will last for 26 weeks. .

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

3.1 None.

4 Legislative Context

4.1 FND is an employment programme under section 2 of the Employment and Training Act 1973 (c. 50), introduced from 5th October 2009 onward, for those people unemployed and claiming JSA for either six months or a year. Access to the programme after claiming for six months aims to help those people that Jobcentre Plus Advisers assess as in most need of support to find work. The relevant legislation is the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207) and the Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480).

4.2 The programme consists of a combination of a number of activities an individual undertakes to improve their prospects of obtaining employment. This can include work placements or other work-related activity or experience, skills training, guidance, support, motivation, assistance with job search or pursuing self-employed earner's employment, or other activity designed to assist the individual to select, train for, obtain and retain suitable employment or self-employment. Participants are expected to assist in the completion of an action plan to record the activity that the person will undertake whilst attending the programme in order to improve the person's employment prospects or to obtain employment.

4.3 JSA is not payable when a person fails to attend, refuses or loses a place on FND without good cause or is dismissed from the programme due to misconduct. The first sanction for such acts or omissions is for two weeks, and a second act or omission within 12 months carries a four week loss of benefit.

4.4 Under current legislation, where a third or subsequent FND sanction is imposed within 12 months of a previous FND sanction, the sanction period is 26 weeks. Where a person agrees in writing undertake the activities in an FND action plan,, this instrument alters that sanction period so that it lasts;

- a) four weeks, or
 - b) until the end of the benefit week in which the person agrees to take part in the FND programme, if later,
- 4.5 Otherwise it will remain as 26 weeks. A Jobcentre Plus Decision Maker will then determine the date from which JSA is payable.
- 4.6 This will give people whose benefit is subject to an FND-related sanction a clear route to regain their income by undertaking the activities in FND, the failure to do so being the cause of their benefit being stopped in the first place.

5 Territorial Extent and Application

- 5.1 This instrument applies to Great Britain

6 European Convention on 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 instrument puts in place the conditions that a person who is entitled to a Jobseeker's Allowance must meet for a third or successive FND-related sanction of 26 weeks to come to an end earlier. This will be following their agreement to undertake the activities detailed on an action plan relevant to them. It will have been the failure to carry out this activity in FND that led to their benefit being sanctioned.
- 7.2 This provision is necessary to ensure there is a clear route back into receiving benefit for those people who would otherwise be sanctioned for 26 weeks. Unlike the schemes that FND replaces (such as New Deal for Young People) those taking part in the scheme will not generally automatically transfer from JSA to a Training Allowance, for which payment is not subject to sanction. This instrument provides the mechanism for people to regain their benefit where they demonstrate their agreement to take part in the FND programme.
- 7.3 The alternative would be to make discretionary payments to those agreeing to participate in the programme following imposition of a 26-week sanction. These would be difficult to administer, involving either error-prone clerical processes or expensive IT solutions.

- **Consolidation**

- 7.4 This legislation will be included 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.¹ Changes will also be made to volume 6 of the Decision Makers Guide (DMG) which is also available free on the DWP internet².

8 Consultation outcome

- 8.1 This instrument was considered by the Social Security Advisory Committee (SSAC) on 5th August 2009. The Committee decided not that the proposals for Regulations need not be referred to it and decided not to consult on the proposals.
- 8.2 This instrument supplements the measures introduced by the Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480), SSAC considered these Regulations and sought public opinion between 8th October and 7th November 2008. The Committee received 11 responses which, along with Committee members' views and recommendations, were reflected in SSAC's report of December 2008.
- 8.3 The Committee was able to give broad support to introduction of the FND. The Committee's concerns about the proposals included 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. The report, together with the Government's response to the Committee's recommendations and observations, were provided in the Command Paper published at the same time as the Social Security (Flexible New Deal) Regulations 2009 on 11 March 2009.³

9 Guidance

- 9.1 Information products have been developed to help claimants participating in FND understand their rights and responsibilities. This covers the consequent loss of benefit if they fail to attend, lose or leave the programme without good cause and how they will be able to regain payment by re-engaging in FND.
- 9.2 Guidance has also been developed for staff in Jobcentre Plus offices who advise customer and benefit delivery centres who maintain JSA claims including Decision Makers. Guidance has also been developed for organisations that will deliver FND to ensure they understand the circumstances in which a participant will be able to agree to re-engage with the programme and what that means for the person's benefit payments.

10 Impact

- 10.1 This instrument has no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector will be negligible.
- 10.3 A full impact assessment has not been prepared for this instrument.

¹ http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/c_0031.pdf

² Decision Makers Guide: <http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

³ Command Paper Reference Cm 7566 <http://www.official-documents.gov.uk/document/cm75/7566/7566.asp>

11 Regulating small business

11.1 The instrument does not apply to small businesses.

12 Monitoring and review

12.1 The evaluation of all aspects of FND will be undertaken by an independent research consortium headed by Policy Studies Institute. The key elements to this evaluation are:

- 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 Some of the key questions for the evaluation will be:

- is Flexible New Deal (along with the revised jobseekers regime) being implemented as intended?
- what lessons can be learned from implementation and what improvements might be made to achieve maximum impact? Have there been any unintended consequences from the reforms?
- has Flexible New Deal helped more people find and sustain work? and
- is Flexible New Deal using the resources available to support the long-term unemployed as effectively as possible?

12.3 Regular evaluation research reports will be published on the DWP web site, including a report of early findings in December 2009, and a final assessment in 2012/13.

13 Contact

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