



The Social Security (Flexible New Deal) Regulations 2009 (SI 2009 No.480)

Report by the Social Security Advisory Committee under Section 174(1)
of the Social Security Administration Act 1992 and the statement by the
Secretary of State for Work and Pensions in accordance with Section 174(2)
of that Act.

*Presented to Parliament by the Secretary of State for Work and Pensions by
Command of Her Majesty*

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Statement by the Secretary of State for Work and Pensions in accordance with Section 174(2) of the Social Security Administration Act 1992

Introduction

- 1 The Government referred proposals concerning the draft Social Security (Flexible New Deal) Regulations 2009 to the Social Security Advisory Committee (SSAC) on 1 October 2008 in accordance with Section 172(1) of the Social Security Administration Act 1992.
- 2 This Regulation will implement the Government's proposals to introduce an enhanced regime for those claiming Jobseeker's Allowance (JSA). This will include implementing the Flexible New Deal (FND) as a new employment programme for those who claim the benefit for a year, or after six months for those assessed as having greatest need of help to find work. These proposals were first announced in the Green Paper "*In work, better off: next steps to full employment*" (published July 2007, reference Cm 7130) and following public consultation in the Command Paper "*Ready for Work; full employment in our generation*" (published December 2007, reference Cm 7290).
- 3 The changes these proposals will introduce support the Government's aim of helping more people secure sustained employment through tailored, flexible help and support, particularly for those people who experience repeated cycles of unemployment. These changes will also contribute to the Government's aim to reduce child poverty by continuing to promote work as the best form of self-support coupled with in work support via the Tax Credits system. The Government believes these changes represent a fair balance between providing financial support for people whilst they are out of work in exchange for an increased level of job search activity people are obliged to take as their duration of claim increases.
- 4 The Government has carefully considered the views and recommendations of the Committee and of those who made representations to it. The Government has decided to proceed with the proposals as laid out in the Regulations originally referred to the Committee on 1 October 2008.

The Committee's report

- 5 In its report following public consultation the Committee repeated its support for the Government's intention to reduce social exclusion by improving the employment prospects for the most disadvantaged, promoting equality for the disabled and eradicating child poverty. The Committee recognised and commended the achievements made to date by the Department for Work and Pensions towards these goals through the current arrangements and range of employment programmes. The

Committee also recognised customers would likely benefit from greater flexibility and discretion on the part of Jobcentre Plus Advisers coupled with common access to New Deal provision for all. The Committee was therefore able to give broad support to elements of the revised Jobseekers Regime and the Flexible New Deal. The Committee also expressed a number of concerns about the proposals, and made eight recommendations. These fell under four broad headings:

- the extension of conditionality;
- the speed of the rollout of the full programme;
- the contracting out of services; and
- the changed economic situation.

6 In summary the Committee's report raised concerns on the following aspects of the proposals:

- The effectiveness and timing of the "Back to Work session" in the early stages of the claim.
- Concern that the necessary infrastructure in relation to childcare, health care, skills and training may not be available across the UK.
- The flexibility of FND in practice, in relation to the Department in the way it chooses to engage customers, and in relation to customers in terms of offering a tailored service that they can access on request.
- Customer choice, and in particular the absence of choice in four contract areas.
- The extension of conditionality and the use of sanctions to include customers' failure to attend the Back to Work Session, mandatory activities for potentially vulnerable customers and voluntary participation in any extension to FND beyond a year.
- The need for clarity concerning the role of FND contractors in raising benefit doubts and the robustness of the decision making process.
- The importance of all contractors complying with the Freedom of Information Act and having customer complaints systems in place.
- Funding arrangements, and the risk that contractors could target 'quick wins' whilst avoiding providing effective help for those with the greatest need of support.
- The capacity of FND providers to deliver quality tailored support to the diverse range of customers that will be referred to them.
- The transitional arrangements between current employment programmes and FND.
- The need for more information on the evaluation of FND.
- Greater clarity on how FND providers will claim job outcome payments and how these will be validated by the Department.
- Concern that Phase 2 would be rolled out before Phase 1 was fully evaluated.

- The capacity of the Department, Jobcentre Plus and partners to deliver the service as proposed in the changed economic situation.
- 7 Some individuals and organisations that responded to the Committee's consultation exercise also expressed concerns about the implications these proposals will have for those claiming JSA as a result of the changes introduced by the Social Security (Lone Parent and Miscellaneous Amendments) Regulations 2008 (SI 2008/3051). This requires, in stages, lone parents to claim JSA rather than Income Support once their youngest child reaches the age of seven. Respondents wanted reassurance that the flexibilities set out in these regulations would be applied to any activities required of lone parents during the Flexible New Deal, and that contractors would be made fully aware that lone parents have these flexibilities available to them.

The Government's response

- 8 The Government is grateful to the Committee for considering the implications of these proposals and for the broad support it has extended to the aims of the revised Jobseekers Regime and the Flexible New Deal. This section sets out the Government's response to the concerns outlined above, cross-referring where appropriate to the final section of this statement which responds to the Committee's eight recommendations.

Back to Work sessions – **see SSAC Recommendation 1, below**

Flexibility

- 9 As the Committee points out, the availability of childcare, training and other necessary provision may differ across England and the devolved administrations in Wales and Scotland. However, the standard of service required for all customers has been made clear to potential FND contractors, and it has been made equally clear that contractors, in designing and delivering services, must take account of the availability of existing local provision. This could well mean that, for example, skills training freely available to FND customers in one part of the UK might need to be sourced by the contractor if required in another part of the UK.
- 10 The Committee also queried the flexibility of FND in practice, in relation to the Department in the way it chooses to engage customers, and in relation to customers in terms of offering a tailored service that they can access on request. During the first three stages of the proposed new regime Jobcentre Plus Advisers will use their knowledge and judgement to tailor their approach to meet the needs of individual customers, for example by identifying basic skills needs at the earliest possible stage and by agreeing appropriate activities that will help people prepare for work. As for access on request, whilst that might appear attractive in some respects, it is important to target finite resources to best effect.

The Government therefore believes that initially it is the individual's responsibility to seek work, with the support of the services available through Jobcentre Plus. Nevertheless, early access to more intensive support from Jobcentre Plus (and FND providers if still claiming after 6 months) will be available for those with the greatest need.

Choice

- 11 The Committee was concerned about the extent to which the proposed model would allow for meaningful customer choice, noting that there would be a single provider in four areas. Whilst it is the Government's intent to offer customers a choice of provider, each provider must deliver a comprehensive and flexible range of support, and the DWP contracting strategy recognises it will not always be possible to have more than one viable contract, for example in large but comparatively sparsely populated rural areas.
- 12 The Committee also queried how a customer could make an informed choice between providers during the first year of operation when there will be insufficient information about their performance. In fact choice will not be available during the first year of operation for precisely that reason. During the first year customers will be assigned at random to the two providers operating in the ten areas that will offer choice after the first year. Random allocation means that both providers in an area will receive similar customers, enabling fair performance comparisons to be made. In second and subsequent years customers will be able to make informed choices between providers.

Sanctions and hardship

see also SSAC Recommendations 2 & 3 below

- 13 The Government believes that the welfare state should combine rights with responsibilities. The basic principle of Jobseeker's Allowance (JSA) is 'something for something'. In return for benefit payments and extra support in finding work, customers are expected to do their best to get and keep a job.
- 14 It remains Jobcentre Plus' aim to encourage those claiming JSA to take full advantage of the help they are offered to return to work. Where someone deliberately refuses or loses such help and support then the loss of benefit is an effective mechanism to encourage future compliance. The introduction of FND as an employment programme maintains the current structure of sanctions for those people who, without good cause, fail to comply with the help they are offered to find work through the New Deals for Young People and 25 Plus, and Employment Zones.

- 15 The extension of sanctions for those who do not carry out a Jobseeker's Direction to attend a Back to Work Session reflects the importance the Government associates with this intervention in ensuring people are focused on job search activities at an early stage of their claim. However, these proposals acknowledge that the existing minimum two week sanction is disproportionate in relation to the duration of the session, and as such propose to reduce the period of sanction for failure to attend this session to one week.
- 16 These proposals maintain the existing financial protection for those in vulnerable groups, and it is important to remember that during the FND customers can choose to regain their full payment by re-engaging and complying with the regime.

The role of FND providers in raising benefit doubts

See also SSAC Recommendation 4, below

- 17 Once an FND provider has agreed an action plan with a customer all aspects are enforceable. Where a customer fails to agree an action plan or fails to undertake any activity set out in the action plan the provider will collect evidence about this failure. Where a reason is either not given or the case is not straightforward (as currently defined in JSA Regulation 72 and 73) the provider will refer the doubt to a Jobcentre Plus Decision Maker. The Decision Maker will decide whether or not a sanction is justified and will apply the sanction, taking into account possible good cause for this failure.
- 18 The FND Decision Making process is no different to the one already in place for both existing contracted provision and for Jobcentre Plus Personal Advisers. It is built around the principle of a separation of powers between the provider collecting evidence about the doubt and the Decision Maker deciding whether a sanction (or disentitlement) is warranted. This will ensure customers are not sanctioned or disentitled unfairly, and as is the case currently, the customer will be able to put their case to the Decision Maker and will have the right of appeal against any decision.

Customer complaints – ***see SSAC Recommendation 5***

Funding arrangements – ***see SSAC Recommendation 6***

The capacity of FND providers to deliver quality tailored support

- 19 The FND procurement process has been designed to ensure that organisations bidding for contracts have the necessary capacity and capability. The Department anticipates that, as with employment programmes of a comparable size, contractors will bring together a range of specialist and local organisations that will ensure that the diverse needs of all customers can be met. The Department is promoting

a Code of Conduct to encourage fair treatment of sub-contractors and has run a series of awareness sessions for potential sub-contractors, which addresses the Committee's concern that smaller organisations including those from the Third Sector could be financially vulnerable when entering into contracts with larger organisations.

Transitional arrangements

- 20 The Department aims to make transition to the new arrangements as straightforward as possible for customers who are either already claiming JSA or engaged on an employment programme at the time these proposals are introduced. At the time these proposals were considered by SSAC the transition arrangements were still being finalised. Arrangements are now nearing completion.
- 21 In Phase 1 areas, referrals to the current range of employment programmes will end in the week commencing 26 June 2009 (rather than April, as originally intended) and the contracts for these programmes will end just before the new FND contracts start. This will allow continuity of provision for all customers, and will reduce the impact on providers and Jobcentre Plus during the transition period. The provider community has welcomed this decision.
- 22 Similar arrangements will be implemented between April and September 2010 for those people claiming JSA in Phase 2 areas.

Evaluating FND

- 23 DWP have commissioned an independent research consortium headed by the Policy Studies Institute to undertake the evaluation of the Jobseekers Regime and Flexible New Deal in order to determine the overall effectiveness of the reforms. The evaluation will incorporate qualitative and quantitative approaches, including interviews with Jobcentre Plus staff, providers, customers (including a large-scale customer survey), cost-benefit analyses and an assessment of JRFND compared to current provision.
- 24 Early results on the operation of phase one will be available in Autumn 2010 with a final impact assessment and cost-benefit analysis in 2012/13.

Job entry payments and validation – see **SSAC Recommendation 7**

Implementing Phase 2 - see **SSAC Recommendation 8**

Economic situation

- 25 The Committee has noted its concern that DWP will have insufficient capacity to deliver these revisions, particularly with the recent and forecast increasing unemployment. The Government is confident the

Department will be able to allocate sufficient resource to maintain delivery standards – in his Pre-Budget Report the Chancellor announced an additional £1.3bn over the next two years for DWP to deal with the increased workload and associated pressures resulting from changes in the economy.

- 26 The Committee also asked for greater clarity on contract safeguards, citing the case of organisations such as Instant Muscle that became insolvent despite being awarded a DWP contract to deliver Pathways to Work.
- 27 The Department continues to learn lessons from previous procurements and previous provider insolvencies, and a wider range of measures are now being employed to mitigate the risk of future financial distress (and associated risks to customer service and delivery). In particular, as contract viability depends on achieving job outcomes, performance offers are rigorously assessed to ensure that targets are realistic and well evidenced, and that due regard has been given to potential future economic conditions. Also, bidders' detailed financial models are assessed to ensure they have sufficient working capital, given the need for initial capital outlay, and sufficient credit arrangements where appropriate. Parent Company Guarantees are also sought in order to safeguard delivery in the event of provider failure.
- 28 During tender evaluation, the Department will also assess the overall financial health of each bidder. This involves detailed assessment of key financial metrics and accounts, as well as current performance on existing DWP contracts. These measures are key considerations when assessing an appropriate and prudent level of potential contract value (and associated risk) suitable for award.
- 29 Once awarded contracts, providers will be subject to regular performance reviews, together with an ongoing overall Financial Viability Risk Assessment. Where considered to be high risk, a provider may be subject to monthly reviews of financial accounts/ forecasts, improvement plans and overall cash-flow management. The objective here is to alert the Department as early as possible as to potential provider viability risk, allow delivery contingency plans to be developed at the earliest opportunity, and provide an opportunity for the Department to work with 'at risk' providers to alleviate financial difficulties. It should be noted that this active approach to viability monitoring and contingency planning ensured that Pathways to Work services and customers were not affected by Instant Muscle's insolvency.

Lone Parents

- 30 The Government can confirm that the flexibilities set out in the Social Security (Lone Parent and Miscellaneous Amendments) Regulations 2008 will be applied to any activities required of lone parents during the Flexible New Deal, and that contractors will be made fully aware that lone parents have these flexibilities

available to them.

The Committee's recommendations

- (1) If the mandatory Back to Work Sessions are to proceed, **we recommend that the timing of their delivery is reconsidered** and that they are designed in a customer-focused manner and delivered in the appropriate environment for the different client groups.

ACCEPTED

The Back to Work Session model has worked well in tests, with customers appreciating the job search advice and clarity on rights and responsibilities. The Government has always recognised that delivery of the session must be flexible, accommodating the specific requirements of all those claiming Jobseeker's Allowance, and with the make-up of attendees at group sessions sensitive to individuals' circumstances. Jobcentre Plus will identify individuals for whom attendance at a group session would not be appropriate, for whatever reason, and deliver the content of the session for these people on a one-to-one basis. Current forecasts are that around 15 per cent of customers will receive individual delivery of the session.

The current planning assumption is that sessions will be delivered six to eight weeks from the start of the claim, although the Government acknowledges that the impact of rising unemployment means that the delivery and timing of the session will need to be kept under review.

- (2) **We recommend that well trained staff are deployed** to ensure that the decision making process relating to sanctions is expedient and transparent.

ACCEPTED

The Government acknowledges the importance of customers being fully aware of their rights and responsibilities in claiming JSA, and the importance of timely and transparent decision making when entitlement doubts are raised. Well trained staff are a key component in achieving that, and Jobcentre Plus is developing appropriate processes and guidance that build on existing arrangements and expertise.

(3) We recommend that sanctions for those customers who volunteer for the FND extension be removed.

NOT ACCEPTED

The Government does not accept the recommendation that those people agreeing to take part in an extension period should not be subject to a fixed-period sanction.

The extension of the Flexible New Deal for up to a further 26 weeks is a useful option to be agreed to between the customer, the provider and Jobcentre Plus. It is designed to help customers who have been making good progress with their FND provider over the previous 12 months but may need a little more time and help to move into employment. Whilst this extension is voluntary, once the customer has agreed to continue and has agreed a continuing course of action with the provider, that agreement is binding and underpinned by the normal FND sanctioning regime.

This is no different to the way that the sanction regime applies for those volunteering to participate in the current range of employment programmes that FND will supersede, including for example, New Deal for Young People, New Deal 25 Plus and Employment Zones.

The provider's option to stop engaging with a customer in any extension will be based on their professional judgement as to the point at which they consider their services can no longer provide additional value in helping that individual into work. By the same token, dissatisfied customers would have the option to complain if they felt the extension was not working.

(4) We recommend that steps be taken to ensure that the sanctions regime cannot be used by providers as a reason not to work with the hardest-to- help customers and that this requirement be enshrined in the contract conditions.

ACCEPTED

The Government acknowledges it is vital that providers make genuine efforts to help all customers fairly and equally according to individual needs. Success in working with, and finding work for, those with multiple barriers to work will be a key indicator of the success of the new programme. The funding structure for FND contracts – with the emphasis on payment for job placements – makes it of no value at all for providers to raise spurious doubts against individuals.

However, despite their best efforts there will be occasions when providers are obliged to raise doubts about individuals' commitment and involvement in the programme. Regardless of the outcome of these

doubts the FND provider will still be required to make best efforts to continue engaging with affected individuals.

The Decision Making role will remain within DWP, providing independent assurance that customers are not sanctioned inappropriately.

- (5) **We recommend that the FND contracts require providers to have in place a clearly communicated complaints procedure, which is independently overseen.**

ACCEPTED IN PART

It is a tendering requirement that organisations bidding for FND contracts set out robust plans for systems to allow customers to resolve grievances, concerns or complaints promptly, with the minimum level of bureaucracy and without causing embarrassment. This will include complaints in relation to discrimination. FND providers would normally be expected to resolve complaints and other problems but where necessary DWP/Jobcentre Plus will become involved – this would always be the case where complaints related to benefit entitlement.

Customer feedback will be monitored as part of DWP's contract management arrangements, and will inform the planned star rating system for providers. The Government believes that this will obviate the need for additional independent oversight, although it should be noted that in England and Wales employment programmes are inspected by Ofsted and Estyn respectively, who will consider whether the provider has up to date policies and procedures to deal effectively with discrimination, complaints and grievances.

Also, FND contract terms and conditions will require providers to acknowledge that Jobcentre Plus is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and must assist and cooperate with Jobcentre Plus (at the provider's expense) to enable Jobcentre Plus to comply with disclosure requirements.

- (6) **We recommend that contracts are monitored for 'creaming or parking' activities and that contracts should contain penalties to ensure that this does not occur.**

ACCEPTED IN PART

The Government shares the Committee's concern, and will expect providers to work constructively with all customers. Whilst it would be technically difficult to devise penalty clauses to prevent providers adopting a more selective approach, the contract specification will require providers to ensure that every customer receives a level and

type of support appropriate to their individual needs, and this will be monitored through DWP's contract management arrangements.

In practice, it would be difficult for providers to achieve acceptable levels of job outcomes and payments if they selectively neglected customers. It would also be difficult to make such selections, given that everyone referred to FND will by definition be those in greatest need of support.

- (7) We recommend that systems for job entry validation are clear to all and providers' results be available for public scrutiny.**

ACCEPTED

The Government acknowledges that it is essential to have transparent methods for validating providers' outcome claims. The process for validating providers' claims for job outcomes and sustained jobs were detailed in the Invitation to Tender for FND and will be reflected in the terms and conditions once contracts are awarded.

In brief, claims will be validated by checking that the individual concerned has stopped claiming benefit. Outwith the claim process, FND providers' systems will be audited to ensure that they have in place adequate procedures to establish the validity of their claims before submitting them to the Department.

We will assess all FND contracts using Star Ratings and will publish the results. Star Rating will be based on a basket of measures including job outcomes, sustained jobs and customer service-related quality measures.

The Committee was also concerned that the funding arrangements, which will result in higher payments for short job outcomes than for sustained jobs, will create perverse incentives to place people in short term and potentially unsuitable jobs. This is not the case. The key point is that the sustained job outcome payment is an additional payment made after the short job outcome has been achieved. In other words, it provides an incentive to providers to continue supporting people during the crucial early weeks in a new job. All the evidence is that such support greatly increases the chances that a person will remain in employment during what can be a difficult transition back to the world of work.

- (8) We strongly recommend that the Department consider delaying the introduction of the second phase of the FND** (due to start in October 2010) until Phase 1 has been evaluated fully, the results published, and the design of the FND reviewed in the light of prevailing economic and labour market conditions.

NOT ACCEPTED

The Government considers that it would be impractical to defer implementing the second phase of Flexible New Deal until evaluation of the first phase is completed and published. These proposals are founded on a wealth of research and evidence¹ and the Government has concluded the Jobseekers Regime and Flexible New Deal represent the best way forward to support people into work. When jobs are harder to find it is even more important that we help people prepare for work with practical advice and support. To delay its introduction would mean delaying access to personalised support for people in Phase 2 areas.

In determining a phased approach to implementation, the Government has taken into account the opportunity a one-year interval affords both the provider community and the Department to incorporate early emerging recommendations into the new arrangements. The Department's contract management arrangements will allow for suitable changes to Terms and Conditions to be negotiated where appropriate.

Conclusion

The Government is grateful to the Committee and to those interested parties who responded to the consultation exercise for their consideration of the Government's proposals and their comments on them. These regulations are now laid before Parliament.

¹ (<http://www.dwp.gov.uk/welfarereform/readyforwork/flexible-new-deal.pdf>)



From the Chairman

The Rt Hon James Purnell MP
Secretary of State for Work and Pensions
Caxton House
London SW1H 9DA

9 December 2008

Dear Secretary of State

**REPORT OF THE SOCIAL SECURITY ADVISORY COMMITTEE MADE
UNDER SECTION 174(2) OF THE SOCIAL SECURITY ADMINISTRATION
ACT 1992 ON THE SOCIAL SECURITY (FLEXIBLE NEW DEAL)
REGULATIONS 2009**

1. Background

1.1 At the Committee's meeting on 1st October 2008, officials from the Department for Work and Pensions presented proposals for the Flexible New Deal regulations for our consideration. A detailed Explanatory Memorandum of the Department's position (Appendix 1) accompanied these proposed draft regulations.

1.2 Following discussions with officials, we decided to take these regulations on 'formal referral' for the preparation of this report. On 8th October we published a press release inviting comments on the proposals to reach us by 7 November 2008.

1.3 We received eleven responses, including one by telephone. Details of the organisations and individuals who responded are at Appendix 2. We are grateful to those who responded and to officials of the Department for Work and Pensions for their assistance.

2. The proposals

2.1 The Secretary of State for Work and Pensions proposes the following amendments to regulations:

- a sanction of the loss of one week's benefit for those who, without good cause, refuse or fail to carry out a jobseeker's direction which relates to attendance at a Back to Work Session;
- the inclusion of the Flexible New Deal as an employment programme in regulation 75(1) of the Jobseeker's Allowance Regulations 1996, meaning that benefit may not be payable to claimants who, without good reason, refuse or fail to take part in the Flexible New Deal or who lose their place on the scheme due to misconduct;
- the application of the current New Deal approach to benefit sanctions of 2, 4 or 26 week for acts or omissions relating to the Flexible New Deal;
- unless the person is in a vulnerable group, hardship payments are not payable to claimants who are sanctioned in connection with acts or omissions relating to a Back to Work Session or during the period they are required to take part in the Flexible New Deal (the latter mirrors current New Deal policy);
- an additional case where a person is to be regarded as having good cause for not taking part in the Flexible New Deal where he or she is not notified in advance about the application of sanctions;
- a minor change to the linking rules in relation to JSA housing costs to take account of the Flexible New Deal; and
- income and capital disregards for certain payments made in connection with a person's participation in Flexible New Deal in the Jobseeker's Allowance Regulations, Housing Benefit, Council Tax Benefit and Housing Renewal Grants Regulations.

3. Summary of the Department's Position

3.1 The Government is committed to reducing social exclusion by improving employment prospects for those facing the greatest disadvantage, ending child poverty and promoting equality for disabled people. In order to help achieve these goals one of the Government's ambitions is an employment rate of 80 per cent.

3.2 In 'Ready for Work: full employment in our generation', published December 2007, the Government set out how it intends to move towards achieving this goal. The proposals included a revised structure for those claiming Jobseeker's Allowance (JSA). Currently job seekers are required to actively seek work to qualify for JSA and this is supported through regular review meetings with Jobcentre Plus staff. With the introduction of the revised Jobseekers Regime and Flexible New Deal, the level of job search activity and support offered by Jobcentre Plus will be increased for all, but particularly for those who remain claiming JSA for longer periods. The revised Jobseekers Regime will put into place a framework for Jobcentre Plus to apply support and direction to those

customers who are most in need of help to find and sustain work. The four-stage approach to the claim-cycle aims to strengthen customers' awareness of their rights and responsibilities by increasing the intensity of their job search activity and the support available to them as their duration of unemployment progresses.

3.3 The intention is that the revised Jobseekers Regime and Flexible New Deal will offer a more flexible personalised approach with guidance tailored to individuals' needs and circumstances. As part of this approach, claimants of JSA will be expected to engage with the regime and the support on offer. They will be notified of the activities they are required to undertake and the possible consequences, such as loss of benefit, if they fail to do so without good cause. This approach broadly replicates what currently happens in the New Deals. If they are still unemployed after 12 months, JSA claimants will be referred to specialist contractors who will provide an intensive work focused service, funded on the basis of results.

3.4 The DWP Commissioning Strategy was published in February 2008, and sets out the principles which will be applied to the commissioning of all new employment programme contracts. The Commercial Strategy for Flexible New Deal reflects those principles, and opens the way for larger, longer contracts in which prime providers are allocated funding which is more outcome-based. The contracts will encourage more active customer engagement (including with employers), a focus on localisation with strong linkages with local partnerships, and stronger performance management.

3.5 The Department's position is set out in detail in the attached Explanatory Memorandum (see Appendix 1).

4. The Committee's View

Introduction

4.1 These regulations follow upon the Freud Report (March 2007) and the Green Papers *In work, better off: next steps to full employment* (July 2007), and *No one written off: reforming welfare to reward responsibility* (July 2008). We have commented previously on the proposals set out in these documents ¹

1 SSAC (2007) Twentieth Report Annexe E 'Committee response to the Freud Report' pp 32-39
<http://www.ssac.org.uk/pdf/reports/20threport.pdf>
SSAC (2007) *In work, better off: next steps to full employment*: Response by the Social Security Advisory Committee
http://www.ssac.org.uk/pdf/gp_response_version_8.pdf
SSAC (2008) *No one written off: reforming welfare to reward responsibility*: Response by the Social Security Advisory Committee <http://www.ssac.org.uk/pdf/finalresponse.pdf>

4.2 We have long supported the Government's intention to increase the employment rate to 80 per cent of the working age population, and its commitment to the eradication of child poverty. We recognise and commend the progress that the DWP has made in supporting its customers and developing employment-focused programmes that help those who are furthest from the labour market. Evaluation of the current range of New Deal programmes has shown that they would benefit from greater flexibility, increased discretion for Personal Advisers, and an end to artificial differences between the types of provision available to people in different age groups.

4.3 Accordingly, we broadly welcome a number of elements of the proposed Flexible New Deal (FND), in particular giving greater access for unemployed customers to the full range of services available from Jobcentre Plus, and the fast tracking of those requiring intensive help to the (6-month) gateway stage. We agree that those facing multiple barriers to employment should be assisted at an early stage.

4.4 However, we also have a number of concerns about the proposals, including the extension of conditionality, the speed of the rollout of the full programme and the contracting out of services. These are considered in more detail below.

4.5 There is a further over-arching concern, which was not apparent at the time when we responded to the publications detailed in paragraph 4.1 above. Since these were published there has been a sudden and dramatic change in the economic situation of the UK. Large numbers of people are losing their jobs, and the unemployment rate is rising at a rate not seen for many years. Even if at the same time there are still plenty of job vacancies to be filled, this will mean increased demand on Jobcentre Plus and its services, and a challenging test of the resilience of the Department's policies, programmes, and service delivery mechanisms. The Department and its partners in the provision of services will need to have in place sufficient resources and a robust infrastructure to ensure that the flexibility of the Flexible New Deal is not compromised, and its potential left unfulfilled.

Jobseekers Regime - Back to Work Sessions

4.6 It is the Department's intention that customers who have not been offered the more intensive support available in Stage 3 of the claim cycle will be directed to attend a Back to Work Session, within six to eight weeks of making a claim. During these sessions, customers will be reminded of benefit entitlement conditions and given information on how to find work. However, since the Department has told us that around 60 per cent of new jobseekers find work within three months of making a claim, we would question whether holding these events at this early stage is the most efficient and effective use of resources. As the topics due to be discussed at these sessions should have been clearly articulated at the start of the claim, we are unclear about what the Department hopes to achieve by delivering these sessions at this time.

4.7 We would also question how effective group sessions can be, given the very different characteristics and needs of those claiming JSA. For those, for example, with poor language and/or comprehension skills, it cannot be assumed that they will have absorbed the key messages conveyed at the sessions. For those with good skills and a good understanding of their rights and responsibilities, the sessions may be unnecessary and a waste of time, particularly if they find themselves placed in a group with widely varying skills and understanding.

How flexible is the FND?

4.8 The Flexible New Deal regime is based upon assumptions about the availability of provision within Great Britain in relation to childcare, health care and skills and training provision. We note that these assumptions cannot be taken to hold good for Scotland and Wales (and Northern Ireland, should similar proposals be taken forward by the Department for Social Development) where the administrations may make alternative arrangements. This is a point we made recently in our report on the regulations that will bring lone parents of older children from Income Support into the JSA regime. It is a matter of concern that there is no guarantee that the necessary infrastructure to support the Flexible New Deal will be in place across Great Britain when it is rolled out, and that some customers may not be able to access the promised services¹.

4.9 There also seems to be some uncertainty generally about how far the flexibility in the FND will apply to the Department in the way it chooses to engage customers, and to customers in terms of offering a tailored service that they can access on request.

Customer Choice

4.10 We would welcome customers being able to make choices and request engagement at stages in the FND when they think is appropriate to their needs. As has been pointed out in a recent Joseph Rowntree Foundation (JRF) report², a lack of choice, and a lack of understanding of the choices available, may hinder customer engagement.

4.11 We understand that under the FND customers will be randomly allocated to a provider. Performance data will be collected so that, in subsequent years, customers will be able to make an informed choice about their provider. Nevertheless, in four areas of the country there will be only one provider and customers will be mandated to this provider. We are concerned about the limited extent to which the proposed model of a Flexible New Deal allows for meaningful customer choice and flexibility for PAs. At the same time, it is not clear to us how entrants, in the first year of the FND, can make an informed choice between

1 The Stationery Office, (Oct 2008) Cm 7480, The Social Security (Loner Parents and Miscellaneous Amendments) Regulations 2008, Report by the Social Security Advisory Committee under Section 174 (1) of the Social Security Administration Act 1992 and the statement by the Secretary of State for Work and Pensions in accordance with Section 172 (2) of the Act.

2 Finn, D., Madon, D., Rahim, N & Casebourne, J. (2008) Delivering benefits, tax credits and employment services: Problems for disadvantaged users and potential solutions. Joseph Rowntree Foundation, York.

providers when information on provider performance will not be available until subsequent years.

Sanctions and Hardship

4.12 We understand why the Department is trying to improve claimants' understanding of their obligations in relation to claiming JSA, but we have doubts about how effective the proposed 'Back to Work Sessions' will be in practice. We are also concerned that this new additional mandatory activity will push up the numbers of people who will receive a one-week fixed sanction, removing them from benefit for this period. Sanctions have a consequent negative impact on child poverty and family hardship, and although there is some evidence that they may improve compliance with the JSA regime, they do not necessarily promote the sort of positive engagement with Jobcentre Plus that the FND is seeking to secure¹. We would suggest that, as the compliance regime is toughened, it would be sensible to put the necessary resources into making the decision making process more expedient and transparent. For sanctions to 'work', customers must be able to understand the process, including their appeal rights, and receive a timely decision close enough to the event for the consequences of non-compliance to be clearly evident.

4.13 For those customers with 'multiple barriers' who are fast-tracked to the 6-month 'gateway' we are concerned that some of these activities may be mandatory, and that non-compliance would carry a sanction. Again, we suspect that it will be the most vulnerable claimants who fail to fully understand, and respond to, increased conditionality who will be most at risk of sanctions.

4.14 Customers who are nearing the end of their time within the FND may ask for a voluntary extension. This would be at the provider's discretion, and the agreement of Jobcentre Plus. In effect, customers may remain on the FND for up to a further six months, unless the provider decides to terminate the extension. We note that customers do not appear to have the same freedom of choice to terminate the extension. We do not understand the logic whereby, if a customer enters a voluntary extension, sanctions may be applied to their benefit if they fail to undertake activities as notified by their provider, during this 'voluntary' extension period.

4.15 We would welcome greater clarity about the role of the private sector organisations in the sanctions regime. As we understand it, Jobcentre Plus staff refer cases for consideration to a Decision Maker (DM) only after following certain procedures and processes as set out in guidance, and that this will continue to be the case under the FND. We also understand that the final decision upon sanctions rests with a DM. However we question whether the evidence presented by a private or voluntary sector organisation to a DM should be treated in the same way as evidence from a DWP official. In making referrals to a DM Jobcentre Plus staff are in a position of neutrality, while it might be argued that external providers may have an interest in the outcome. Added to

¹ Peters, M & Joyce, L. (2006) A review of the JSA sanctions regime: Summary research findings, DWP Research Report No. 313

this, is the framework within which external providers will refer cases to a DM. We are unclear whether external providers will be subject to the same principles and guidelines that Jobcentre Plus would use when making referrals. Will, for example, external providers be expected to provide the same or similar levels of evidence when making a referral that could result in a sanction? We would, therefore like there to be greater clarity about how the position of the unemployed citizen is protected within the FND regime.

4.16 Overall, we are troubled by the degree of conditionality being imposed upon claimants, particularly at a time of rising unemployment.

Contracting Arrangements

4.17 In phase one, FND contracts will be awarded in 14 contractual areas, 10 of which will have two providers. Contracts will be for five years and providers will be paid by results. Such longer contracts will enable providers to plan for the long-term and provide continuity and stability and they are to be welcomed.

4.18 The funding arrangements for the FND will mean providers will receive a monthly service fee, a short job outcome payment and a sustained job outcome payment. The short job outcome payment will be worth 50 per cent of the contract value, for customers who find work for 13 continuous weeks. The sustained job outcome payment will be worth 30 per cent of the contract value, for customers who find work for 26 out of 30 weeks. It would appear to us that the payment system for assisting customers into work is skewed towards short-term outcomes, and this could lead to perverse behaviour on the part of providers.

4.19 We have been told by officials that there is no evidence that providers are more likely to 'cream and park' customers than DWP staff carrying out similar functions. However, the DWP retains the customer, while providers will return 'parked' customers at the end of 52 weeks. This might suggest that there is a greater incentive for providers to 'park' and do the minimum for those who are the hardest to help. We would like to see this monitored over the course of the contracts.

4.20 In 2006, a Charity Commission report found that 40 per cent of charitable organisations delivering public services in the UK did not have a complaints procedure. This will need to be addressed for those that become providers. All organisations delivering public services should also comply with the Freedom of Information Act 2000; currently this requirement does not apply to the private or the third sectors. It is important that these issues are clarified in any contract awarded and before FND commences.

4.21 We have previously raised questions, in our response to the Freud Report, over the capacity of providers to deliver quality services given the diversity of customers and the scale of provision that is required. Very many of the customers that will be referred to FND providers will be those who face multiple, complex barriers to labour market entry. For this reason it is very

important to ensure that providers deliver effective support to these customers and cannot avoid meeting their obligations to customers and the tax payer.

4.22 Primary providers are likely to be large multi-national operations who may not have substantial experience of working with large numbers of people facing multiple, complex barriers to work. Voluntary and charitable organisations, who do have this experience, are unlikely to be able to compete with the large private sector organisations, and in entering into contracts with primary providers may be financially vulnerable.

4.23 We have already mentioned the changing economic climate, and we would welcome greater clarity on contract safeguards. As we have seen in the past, being awarded a government contract is no guarantee against provider insolvency, as happened in the cases of *One Plus* in Glasgow and *Instant Muscle* in Surrey and Sussex.

Transitional Arrangements

4.24 The transitional arrangements between current employment programmes and the FND appear untidy and rather complex. They are untidy for two reasons. First, there will be two sets of staff guidance running in tandem. Second, the time customers spend in the transitional period will vary between locations, because ND contracts will be allowed to expire naturally. In effect, this means that customers currently on an employment programme when their Jobcentre Plus office migrates to the FND will be able to complete their current programme before the contracts for these schemes end, while other eligible customers of the same Jobcentre will commence on the FND.

4.25 The transitional arrangements are also complicated because unless they satisfy the qualifying conditions, customers in the FND who move to a non-FND area will not be offered a place on ND25+, and young people in the NDYP who move to a FND area will not be offered a place on FND. We note that customers could join stage 3 (Supported Job Search) if it is deemed appropriate. Any movement of customers between FND and non-FND locations will mean that customers previously on employment programmes may miss out. We note that the numbers likely to be affected are unknown at this stage, but it does mean that some customers will be placed at a disadvantage.

4.26 All of these arrangements introduce yet another layer of complexity and raise concerns about provider capacity.

Evaluation of the FND

4.27 Although the Explanatory Memorandum contains information on how the Jobseekers Regime will be evaluated, no detail is offered on the evaluation of the FND. It is proposed that the Regulations for the FND will come into force on the 5 October 2009 and it therefore follows that evaluation of the end-to-end impacts of FND can only commence at the same time. Accordingly, if the first participants to enter the scheme were placed in work within the first weeks, it

would be early 2010 before sustainability of employment could begin to be tested.

4.28 The Explanatory Memorandum produced by the Department is unclear as to the methods that will be employed by providers to notify, record and validate job entries. Jobcentre Plus uses the Labour Market System (LMS) and the Job Outcome Target (JOT) to measure, record and validate job entries. If a system other than LMS/JOT is to be used, the question of job entry validation must be addressed, in order to ensure that the data gathered is sound, reliable and meaningful that the interests of customers, the Department and taxpayers are properly protected.

4.29 Jobcentre Plus is currently trialling, as far as is possible, the procedures required to support the FND process. The trials have been designed to identify lessons for national implementation rather than the impacts of the FND. Although interim reports will be produced, the final report is not due until the spring of 2009. Meanwhile, the Jobseekers Regime is to be implemented in April 2009. This allows very little time for learning from the evaluation and, if necessary, modifying the processes. We are concerned that the Department could be rolling out in the Districts participating in phase 2 of the FND before the impacts of the phase 1 FND have been fully evaluated.

5. Summary of Responses to the Consultation

5.1 In response to our consultation, respondents focussed upon four main areas of these regulations: the extent of choice within the Flexible New Deal; the role of sanctions within the New Deal regime, the contracting arrangements and the impact assessment provided to the Committee.

Choice and Flexibility

5.2 Some respondents questioned what was 'flexible' about the Flexible New Deal, pointing out that the stage at which participants would enter would be determined by JCP rather than the customer. It was pointed out to us that the changes suggested seem to replicate what already happens on New Deal, simply adjusting the terminology to Flexible New Deal

5.3 It was also suggested that competition amongst providers would not always be related to quality of provision and that this could lead to competition in ways unrelated to quality of service, but more in the form of 'gimmicky' short-term gifts to customers to influence their choice of a particular provider. Concern was expressed about how vulnerable claimants might access the appropriate information to make an informed judgement about providers, where they are offered a choice.

5.5 One Parent Families/Gingerbread expressed support for lone parents being able to access 'stage 3' directly. They hope that, in addition to making the full range of support associated with the New Deal for Lone Parents available to lone parents at this time, Jobcentre Plus will also ensure that lone parents see a specialist lone parent Adviser during this stage. In addition, they would like to

see it further spelt out that the flexibilities set out in the *Social Security (Lone Parents and Miscellaneous Amendments) Regulations 2008* would be applied to any activities that are required of lone parents during the Flexible New Deal stage, and that providers are made fully aware that lone parents have these flexibilities available to them.

Sanctions and Back to Work Sessions

5.6 One respondent expressed the view that Back to Work Sessions would not be particularly effective in a period of economic downturn, and that the net effect of this measure will be to make claimants even more sceptical about the advantages of engaging with Jobcentre Plus.

5.7 The Wise Group supported the proposals for the mandatory Back to Work Sessions to be completed between week six and eight of a claim. They argued that it is appropriate that claimants be informed about the need to attend a Back to Work Session at their New Jobseekers Interview and that these sessions form part of their initial Jobseekers Agreement. Their response went on to point out that it was critical to ensure that customers receive their invitation letter when attendance at group sessions becomes mandatory and sanctions follow non-attendance.

5.8 Their support was tempered by pointing out that the sessions should be tailored to have maximum benefit to customers. The sessions need to be strongly customer-focused and a significant proportion of the session should relate to provision of information surrounding the local labour market, the training available that is relevant to local skills needs and advice on job search.

5.9 One Parent Families/Gingerbread questioned whether Back to Work Sessions will be delivered in environments appropriate for lone parents, and whether client groups will be differentiated in order to tailor provision to their particular needs. The requirements for a lone parent, in terms of support to enable them to access paid work, are likely to be very different from, for example, someone who has been out of the labour market due to substance misuse problems. It was noted that Employment Zone providers have often found it necessary to set up separate provision, and, in some cases, locations, in order to deal with the distinct needs of lone parents. They argue that all efforts should be made to deliver the Back to Work Sessions separately to lone parents.

5.10 Concern was expressed about the sanction arrangements for the Flexible New Deal, where claimants who are sanctioned have no right to hardship payments for the first fortnight of the sanction, unless they are members of a vulnerable group.

5.11 Respondents also noted that the introduction of new mandatory activities would also impact on the workload on Jobcentre Plus staff and the Appeals Service, at a time when workloads were increasing generally. It was suggested that sanctioning should only take place after repeated failure to attend rather than on the first offence.

5.12 Respondents also asked for more evidence to be produced to prove that sanctions and compulsion are effective in generating engagement with employment services and securing long term sustainable employment. They argue that there needs to be a more thorough examination of the evidence that might demonstrate that increased conditionality and the use of sanctions in the benefit system is an efficient and effective use of public resources.

5.13 Concern was also expressed that there is a risk that the sanctions regime might be open to abuse, particularly if providers use the sanction element of FND to cease working with customers that they do not want to deal with. The application of sanctions during any voluntary extension of the Flexible New Deal was also questioned. It appeared perverse to ask a claimant to 'volunteer' for extension and thus make themselves subject to mandatory activity underpinned by further sanctions.

Contracting

5.14 The Public and Commercial Services (PCS) union expressed concern that some of the allegations that they have received about the behaviour and performance of some private and voluntary sector providers suggest that there is a risk to the public purse and to customers. Other respondents raised the issue of the payments system and how far these would encourage sustainable employment outcomes.

5.16 One respondent argued that developing a contract culture, which rewards performance, increases flexibility for providers to operate in a market place and allows for innovation in delivery will better suit the labour market conditions within which providers operate. However, large monopolies may have a tendency to centralise functions purely on the basis of cost reduction and profit maximisation. In turn, if cost is driven too low, this will stifle innovation and creativity, leading ultimately to an erosion of the provider base over time. Concern was also expressed about the incentive on primary providers to push the risks in a contract down to their sub-contractors, making the provision of quality services a more challenging prospect for welfare to work providers.

5.17 Respondents also raised a range of concerns about how 'customer-centred' the contract regime could be, pointing to contractors possibly having a strong financial incentive to interpret issues such as the appropriateness of a job vacancy for any given client with a view to their funding, rather than the client's best interest. Concern was expressed about giving contractors Employment Officer status to allow them to determine the specific course of action most appropriate for individuals to follow in order to find work (Paragraph 5.4 of the Explanatory Memorandum). Similar concerns were expressed about the role of faith-based groups in the provision of services and how far these organisations would be willing and able to work within the equality duty. Finally, it was observed that the state remains ultimately responsible for the interests of the customer where contractors fail to deliver. The risk will be borne not by the contractor but the public sector.

The Impact Assessment

5.21 One Parent Families/Gingerbread expressed the view that the impact assessment presented to the committee appeared flawed. In the section on flexibility, the impact assessment states that 'EZs are better than their equivalent New Deal programmes at placing jobseekers into (sustained) employment'. However, their submission points to the synthesis of EZ evaluations stating that:

*"EZs results may also be short lived. Not only are relatively few jobs sustained longer than 13 weeks, but over time, there is a marked convergence between the performance of EZs and mandatory New Deals. For all their flexibilities, additional funding and focus on sustainable job outcomes, EZs results may simply reflect a funding regime which incentivises short term interventions and job outcomes."*¹

5.22 They also questioned why the impact assessment did not appear to have considered the impact on lone parents when assessing the impact in terms of gender. Nine out of ten lone parents are women, and comprise a group who have particular and specific needs in terms of employment support.

5.23 They were also concerned that the section on ethnicity has not taken into account the possible impact of discrimination in sanctioning decisions. They refer to evidence from the USA, which has showed this to be a considerable issue within their programmes², and suggest that the potential for this needs to be considered in the UK context.

6. The Committee's Conclusions

6.1 We agree with the Government's activation policies and attempts to ensure that those out of work and seeking work are engaged with the labour market and encouraged to explore the opportunities that may be available to them. However, we are not persuaded that at a time of rapidly rising unemployment, and projections of high levels of unemployment into 2009 and beyond, that these proposals constitute a policy response which will be equitable and effective.

6.2 We note that, under the current welfare reform programme there will be an on-flow onto JSA of Lone Parents who no longer qualify for Income Support. We also note that the new Work Capability Assessment as a gateway to Employment Support Allowance will almost certainly add to an on-flow onto JSA. At the same time, projections of the increase in the numbers of people losing their jobs and applying for JSA over the next year are very high. This is taking place at a time when Jobcentre Plus is also attempting to reduce footfall through its offices. We note and welcome the increase in resources to be provided to Jobcentre Plus announced in the recent Pre - Budget Report, the proposed recruitment of more

1 Griffiths, R & Durkin, S (2007) Synthesising the evidence on employment zones. DWP Research Report No.449

2 Monnatt, S. (2008) Sanctions: A multi-level analysis of benefit reductions and case closures
Presentation to Welfare Research and Evaluation Conference at:
<http://peerta.acf.hhs.gov/uploadedFiles/ACFPresentation.Monnat.ppt#256>

staff, and the moratorium on the closure of, offices. However, it will take time for new recruits to be fully trained and effectively and suitably deployed. In the near future Jobcentre Plus will be dealing with many more customers attending Jobcentre Plus offices by appointment (for fortnightly signing, work focussed interviews etc), and this is bound to put services under pressure.

6.3 We have a particular concern that the Flexible New Deal is based upon a model highlighted in the Freud Report, involving shifting money from the Department's Annual Managed Expenditure (AME) (benefit payments), through savings in benefit payments, to Departmental Expenditure Limits (DEL) (operational costs). We recognise the logic of this 'spend to save' strategy at a time of economic prosperity and job opportunities. Our concern is that, with unemployment rising rapidly and the economy predicted to contract, the Annual Managed Expenditure is going to increase very dramatically and pressure will be placed upon the existing Departmental Expenditure Limits set in the last Comprehensive Spending Review. In addition, the Flexible New Deal proposes transferring DEL to private sector providers, thus making Jobcentre Plus less able to cope with pressures which arise from the economic downturn.

6.4 In terms of the detail of the proposals, we share the view of some of our respondents that in order for Back to Work Sessions to be of maximum utility to customers, these should be focussed upon the different needs of the participants. We also agree that an automatic mandatory sanction for failure to attend may be more resource intensive and more punitive than is necessary.

6.5 We support the principles of flexibility and choice upon which these proposals are based. However, we do not see how choice and flexibility for customers are to be promoted through the current contracting arrangements, and in particular, the proposal to extend a sanctioning regime to those who voluntarily extend their participation in the FND would seem to extend choice with a punitive regime.

6.6 We agree with respondents who expressed concerns about the nature of contracts with the private sector and agree with the PCS that the use of faith-based providers represents a challenge to the equality duty of the Department. We would like to have seen a clear statement from the Department about how their equality duty would be transmitted through the supply chain of contractors.

7. Recommendations

7.1 If the mandatory Back to Work Sessions are to proceed, **we recommend that the timing of their delivery is reconsidered** and that they are designed in a customer-focused manner and delivered in the appropriate environment for the different client groups.

7.2 **We recommend that well trained staff are deployed** to ensure that the decision making process relating to sanctions is expedient and transparent.

7.3 We recommend that sanctions for those customers who volunteer for the FND extension be removed.

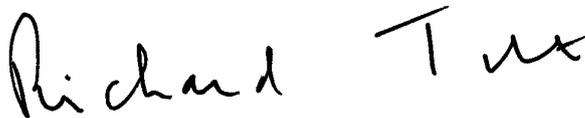
7.4 We recommend that steps be taken to ensure that the sanctions regime cannot be used by providers as a reason not to work with the hardest-to-help customers and that this requirement be enshrined in the contract conditions.

7.5 We recommend that the FND contracts require providers to have in place a clearly-communicated complaints procedure, which is independently overseen.

7.6 We recommend that contracts are monitored for ‘creaming or parking’ activities and that contracts should contain penalties to ensure that this does not occur.

7.7 We recommend that systems for job entry validation are clear to all and providers’ results be made available for public scrutiny.

7.8 We strongly recommend that the Department considers delaying the introduction of the second phase of the FND (due to start in October 2010) until phase 1 has been evaluated fully, the results published, and the design of the FND has been reviewed in the light of prevailing economic and labour market conditions.

A handwritten signature in black ink that reads "Richard Tilt". The signature is written in a cursive, slightly slanted style.

Richard Tilt
Chair of the Social Security Advisory Committee

APPENDIX 2

LIST OF RESPONDENTS TO THE CONSULTATION EXERCISE (In order of date received)

1. Ian Hunt
2. Community Links (Aaron Barbour)
3. Kajsa Cowne
4. Education Otherwise (Fiona Nicholson)
5. TUC (Richard Exell)
6. Wise Group (Lorne Berkley)
7. Action for Home Education (Barbara Stark)
8. Public and Commercial Services (PCS) union (Sarah Kavanagh)
9. One Parent Families | Gingerbread (Kate Bell)
10. Citizens Advice (Katie Lane)

Responses by Telephone

11. Child Poverty Action Group (Kate Green)

Social Security Advisory Committee Members

Chairman

Sir Richard Tilt

Members

Kwame Akuffo

Les Allamby

Simon Bartley

Brigid Campbell

Dr Angus Erskine

Richard Exell OBE

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6 October 2008

Dear Gill

The Social Security (Flexible New Deal) Regulations 2009

Following the presentation to SSAC on 1 October of the proposed amendments to the Social Security (Flexible New Deal) Regulations 2009 the committee requires that the regulations be formally referred.

Officials have taken the opportunity in advance of formal consultation to make some minor changes to the Explanatory Memorandum. These changes expand or clarify areas commented on by Members at the meeting.

The changes are highlighted in the revised Memorandum, which is attached at Annex 1 and includes the following:

- Paragraphs 2 and 8 (Background and Equality Impact Assessment) – clarifies that the proposals aim to tailor support to individuals' needs, in a fair and equal way, irrespective of their age, ethnicity, gender and taking account of any disability or beliefs.
- Paragraph 4.4 (Supported Job Search) – clarifies that referring a customer to suitable vacancies aims to support them in finding work.
- Paragraph 4.5.3 (FND Sanctions and Hardship) – amended to:
 - clarify that customers will always be given the opportunity to provide good cause before a decision is made as to whether or not a sanction is appropriate; *and*
 - make sure providers use Employment Officer status properly and that they do not, for example, use the sanction element of JSA to stop working with customers they do not want to deal with.
- Paragraph 5.3 (Information Exchange) amended to reflect that the initiative will use the existing systems to exchange data with contractors, and that these will continue to be refined in line with any changes to data security or data protection requirements.
- Paragraph 5.4 (Employment Officer Status) refined to detail the purpose of contractors having this role.
- Paragraph 5.9 (Costs and Savings) amended to clarify the description of using FND spending to secure match funding from the European Social Fund.

- Paragraph 8.4 (Child Poverty) updated to match the statement in the July 2008 Consultation Paper: “*No one written off: reforming welfare to reward responsibility.*”
- Annexe 1 (Draft Regulations) Spelling correction in 4(1).

We will liaise with your office to provide details of stakeholders who you may wish to approach as part of the consultation process.

Yours sincerely

Derek French
Jobseekers Regime and Flexible New Deal Project Manager
DWP

DWP

Appendix 1

Explanatory memorandum for the Social Security Advisory
Committee from the Department for Work and Pensions

The Social Security (Flexible New Deal) Regulations 2009

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The Social Security (Flexible New Deal) Regulations 2009

Regulations to support the introduction of a revised regime of activities for those claiming Jobseeker's Allowance, including referral to the Flexible New Deal

1 Introduction

It is proposed the Social Security (Flexible New Deal) Regulations 2009 (attached at [Annexe 1](#)) are made to bring about changes to the following Regulations:

- Jobseeker's Allowance Regulations 1996 (SI 1996/207);
- Housing Benefit Regulations 2006 (SI 2006/213);
- Council Tax Benefit Regulations 2006 (SI 2006/215); and
- Housing Renewal Grant Regulations 1996 (SI 1996/2890).

In summary, the key changes these proposals introduce are:

- a one week loss of benefit (sanction) for those who, without good cause, refuse or fail to carry out a jobseeker's direction which relates to attendance at a "Back to Work Session";
- the inclusion of the Flexible New Deal as an employment programme in regulation 75(1) of the Jobseeker's Allowance Regulations 1996, meaning that benefit may not be payable to claimants who, without good reason, refuse or fail to take part in the Flexible New Deal or who lose their place on the scheme due to misconduct;
- the application of the current New Deal approach of 2, 4 or 26 week benefit sanctions for acts or omissions relating to the Flexible New Deal;
- unless the person is in a vulnerable group (see [Annex 2](#)), hardship payments are not payable to claimants who are sanctioned in connection with acts or omissions relating to a Back to Work Session or during the period they are required to take part in the Flexible New Deal (the latter mirrors current New Deal policy);
- an additional case where a person is to be regarded as having good cause for not taking part in the Flexible New Deal where he or she is not notified in advance about the application of sanctions;
- a minor change to the linking rules in relation to JSA housing costs to take account of the Flexible New Deal;

- income and capital disregards for certain payments made in connection with a person's participation in Flexible New Deal in the Jobseeker's Allowance Regulations, Housing Benefit, Council Tax Benefit and Housing Renewal Grants Regulations.

2 Background

Ministers announced their intention to introduce a revised structure for those claiming JSA in the Green Paper *"In work, better off: next steps to full employment"*, published in July 2007 and the Command Paper *"Ready for Work: full employment in our generation"* published December 2007). This proposes an increase in the level of job search activity by those claiming the benefit the longer they remain on benefit, with a clearer structure of the support Jobcentre Plus will provide. Jobseeker's Allowance Regulations 1996 already contain the powers needed to implement many of these changes; the additional features of the regime which require new legislation are included in the draft Regulations.

The Jobseekers Regime and Flexible New Deal will deliver support and guidance tailored to individuals' needs and circumstances on a fair and equal basis, and irrespective of their ethnicity, gender, age, disabilities or beliefs.

The revised regime and the introduction of Flexible New Deal aim to maximise employment opportunities for all and reduce the numbers claiming out-of-work benefits. The wider aims include refreshing the New Deal so that it can continue to address longer term unemployment over the next decade.

The DWP Commissioning Strategy was published in February 2008, and set out the principles which will be applied to the commissioning of all new employment contracts. The Commercial Strategy for Flexible New Deal reflects those principles, and opens the way for larger, longer contracts in which prime providers are allocated more outcome-based funding (which achieves best value for money for the taxpayer). The contracts will encourage more active customer engagement (including with employers), a focus on localisation with strong linkages with local partnerships, and stronger performance management.

3 Scope of the proposed changes

3.1 Regulation 1 - Citation, commencement and interpretation

It is proposed that the Regulations come into force on 6 April 2009 so far as they relate to attendance at a "Back to Work Session". The proposed coming into force date for all other purposes, including the Flexible New Deal, is 5 October 2009.

3.2 Regulation 2 - Jobseeker's Allowance Regulations

Paragraph (2)

Paragraph (2) inserts a reference to the Flexible New Deal in regulation 1(3) (interpretation) of the JSA Regulations '96, as defined in 2(5)(b) of these Regulations. It also defines a "Back to Work Session".

Paragraph (3) - amendments to regulation 69 - Sanction durations

This amends regulation 69 to provide that a Jobseeker's Allowance shall not be payable for one week in connection with a failure to comply with a Jobseeker's Direction given under ss19(5)(a) or 20A(2)(a) of the Jobseeker's Act 1995 and which relates to a 'Back to Work Session'. This will have the effect of applying a one week sanction each time a customer fails, without good cause, to comply with a Jobseeker's Direction to attend a Back to Work Session.

This also provides that the sanction period for acts or omissions under section 19(5) and 20A(2) relating to the Flexible New Deal is 2, 4 or 26 weeks' duration (see paragraph 4.5.3). This replicates the existing structure of sanctions for acts or omissions in respect of the New Deal Options and the Intensive Activity Period of New Deal 25 Plus.

Sub-paragraph (f) amends regulation 69(3) and (4) so that an income-based Jobseeker's Allowance becomes payable where a 26-week sanction is imposed for the first time and the claimant is notified that he or she is no longer required to participate in the Flexible New Deal programme. Provided that no further 26 week sanction is imposed in the interim, income-based JSA can be paid after 4 weeks.

Paragraph (4) - regulation 73 - Good cause

This applies the existing provisions in regulation 73(2A) to the Flexible New Deal with the result that a claimant may not be sanctioned for losing his or her place, or for refusing, or failing to attend the programme if that person had not, prior to the act or omission, been given a written notice by an employment officer advising him or her that JSA could cease to be payable or be payable at a reduced rate for these reasons.

Paragraph (5) regulation 75 - Interpretation

This defines the Flexible New Deal, with the result that if a claimant, 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.

Paragraphs (6) & (7) - Notional income and capital

These paragraphs make minor amendments to the notional income and capital rules in the JSA Regulations so that certain payments made in connection with a person's participation in the Flexible New Deal are disregarded in the same way as currently applies in relation to the New Deal options and the Intensive Activity Period.

Paragraphs (8) to (11) JSA Hardship

These paragraphs amend Regulations 140, 140A, 146A & 146B in relation to a Back to Work Session and the Flexible New Deal. The effect of these amendments is that unless the claimant is in a vulnerable group (see [Annexe 2](#)) he or she will not be able to claim hardship payments during the sanction period. Where a person who is not in a vulnerable group is subject to a Flexible New Deal sanction, but is no longer required to take part in the programme, he or she will not have access to hardship payments for the first 14 days of the sanction period.

The draft Regulations makes no change to the existing vulnerable groups who can access JSA Hardship, such as those with child care responsibilities.

Paragraph - (12) Schedule 2 paragraph 13 (Housing costs)

This amends the linking rules in sub-paragraphs (1)(ee) & (3A)(a) so that certain claimants/joint claimants are treated as being in receipt of income-based JSA for the period they or their partner are participating in the Flexible New Deal. This is to maintain entitlement to housing costs as part of their applicable amount (defined by JS Reg 83(f)).

3.3 Regulation 3 - Housing and Council Tax Benefit Regulations

This makes minor amendments to the notional income and capital rules in the Housing Benefit and Council Tax Benefit Regulations so that the Flexible New Deal is treated in an equivalent manner to the current New Deal options and the Intensive Activity Period. The effect is to disregard certain payments made to the claimant (or another person) in connection with his or her participation in the FND (eg travel or child care expenses).

3.4 Regulation 4 - Housing Renewal Grants Regulations

This amends Schedule 3 of the Housing Renewal Grant Regulations so that any child care costs reimbursed to those taking part in the Flexible New Deal are disregarded in the calculation of income other than earnings under those Regulations.

3.5 Tax Credits Regulations

Her Majesty's Revenue and Customs will take forward a minor change to the Tax Credits (Definition and Calculation of Income) Regulations 2002 (SI 2002/2006) to disregard certain payments a customer receives whilst taking part in the Flexible New Deal. They anticipate this change to be included in a package of amendments to be made during April 2009.

This change is required to row 2 of Table 7 in Regulation 19 (General disregards in the calculation of income) of the Tax Credit Regulations to disregard travel and childcare expenses for those participating in Flexible New Deal for Tax Credit purposes. This will provide the same protection as currently exists for the New Deal Options and the Intensive Activity Period of New Deal 25 Plus.

4 How the changes will impact customers

4.1 Introduction

The revised Jobseekers Regime will put into place a framework for Jobcentre Plus to apply support and direction to customers most in need of that help to find and sustain work. The four stage approach to the claim-cycle aims to strengthen customers' awareness of their rights and responsibilities by increasing the intensity of their job search activity and the support available to them as their duration of unemployment progresses.

Around 60 per cent of customers leave Jobseeker's Allowance within 13 weeks and around 80 per cent within six months. So the vast majority of jobseekers need only light touch support to monitor and motivate job search. However, the new regime recognises that some people need earlier support to find and sustain employment, so some will be provided with intensive job search support from the start of their claim.

The changes will introduce the Flexible New Deal (Stage 4) as an employment programme under section 2 of the Employment and Training Act '1973. Within guidelines, Advisers will determine when it is appropriate for a customer to receive the tailor-made assistance offered by this programme. This will include those whose claim duration reaches a year (about 10 per cent of customers), with earlier access for those identified as having greater need of help. Flexible New Deal will replace the current New Deals for young people and older adults as well as Employment Zones and will draw on the strengths of providers in the public, private and third sectors.

The Department acknowledges that the numbers of people claiming JSA will change over time in part due to the introduction of new obligations for lone parents, the introduction of Employment and Support Allowance (ESA), and equalisation of the State Pension Age. The new regime, including Flexible New Deal, will need to address the needs of all individuals, taking into account all their circumstances, and will need to be responsive to fluctuating customer volumes.

4.2 Stage 1: Self Managed Job Search

(weeks 1 to 13)

At the New Jobseeker's Interview an Adviser will assess the customer's personal circumstances to establish what help they may need in securing work. This may include giving immediate Job Search Support (Stage 3) to those with the greatest needs (see paragraph 4.2.2).

The initial New Jobseekers Interview will also incorporate basic skills screening to determine any numeracy, literacy or language training requirements individuals may need to address to improve their job search skills and prospects of securing employment.

Activities will remain largely unchanged from the current JSA model for the majority of customers, ie those not offered immediate access to Supported Job Search help (Stage 3). That is, Fortnightly Job search Reviews (FJR) to check customers' compliance with their Jobseeker's Agreement and any Permitted Period agreed at the New Jobseekers Interview. The one new feature in the first 3 months of the claim will be the customer's invitation to a Back to Work Session (see paragraph 4.2.3).

4.2.1 Linking rules

Where customers make renewal claims within the linking periods, they will return to the point at which they left the new regime.

These linking periods will be:

- a) in Stage 3 (Supported Job Search), reclaim JSA within four weeks; and
- b) in Stage 4 (Flexible New Deal), reclaim within 26 weeks, unless a sustained Job Outcome has been achieved (see paragraph 5.2.)

Customers leaving JSA in Self Managed Job Search or Directed Job Search (Stages 1 or 2), will begin again at the start of the Self Managed Job Search (Stage 1), no matter when they reclaim, experiencing the same journey as a new claimant. Some of these customers may, however, meet the criteria for the more intensive support in Supported Job Search (Stage 3) on the basis of the duration of their previous claims and so may be moved directly to this stage (see below).

4.2.2 Immediate Supported Job Search (Stage 3)

JSA claim history can be a strong indicator of labour market disadvantage, and on that basis some customers will receive the immediate support of the Supported Job Search (Stage 3). This will provide these customers with an early opportunity to improve their employability and tackle skills challenges. This will also apply to younger customers who have spent a significant time on JSA or have not been in full time education, training or employment for a period prior to claiming JSA.

Customers who fall into certain groups (see [Annexe 3](#)) will be given the opportunity to volunteer to enter the Supported Jobsearch Stage early, in the same way as they can volunteer for the New Deals at present.

Those who will receive the more intensive stage 3 from the outset of their claim are:

- those who have claimed JSA for 22 out of the 24 months prior to their current date of claim;
- those 18-year olds who have not been in full-time education, employment or training (NEET) continuously for six months prior to claiming JSA, or if they have a combined JSA/NEET duration of 6 months. This criteria can be met at a date after the New Jobseekers Interview if the customer remains 18 and on JSA for long enough for the criteria to be met; and

Overall, those customers immediately accessing Supported Job Search (Stage 3) are likely to be fewer than 5 per cent of those making new claims.

4.2.3 Back to Work Session

In Stage 1, customers who have not been offered the more intense support of the Supported Job Search (Stage 3) immediately, will be invited to attend a “Back to Work Session” between six and eight weeks after making their claim. They will be informed about the need to attend this session at their New Jobseekers Interview and this will form part of their initial Jobseekers Agreement.

The sessions will be led by a Jobcentre Plus staff member, will last between 40 minutes and an hour and where possible will be delivered in a group environment. The aim will be to help customer;:

- understand what help to find work they can get from Jobcentre Plus services;
- plan their activities and actions to find work;
- become more familiar with the type of job opportunities and sources of help in their local labour market; and
- understand the steps they need to take while claiming JSA for entitlement to continue, eg attendance at reviews, and availability for and actively seeking employment.

To ensure effective delivery, the recommended maximum for each session will be 15 customers. For those customers for whom a group session would not be appropriate the information and activities of the session will be delivered on a one-to-one basis. This might include those who require interpretation facilities, or have learning difficulties.

Evaluation from early testing of the Session in the Marches District (Herefordshire, Worcestershire and Shropshire), highlighted some shortcomings in the initial design. Since then the scope and content of the Session have been revised to make it more customer-focused, for example by including more information on the local labour market and advice on jobsearch, as well as reminding customers of their rights and responsibilities. Revised training for staff presenting the session has also been developed and has been well received.

Following these changes, interim evaluation of the revised Session has shown improved attendance rates and much more positive feedback from customers and staff.

Back to Work Session – Sanctions and Hardship

Ministers have placed great emphasis on the importance of customers' attendance at the Back to Work Session. Therefore, unless there are good reasons why they should not attend, customers will be required to attend by a Jobseeker's Direction.¹

However, the current minimum sanction for failure to comply with a Jobseeker's Direction is two weeks, and four weeks for subsequent acts within 12 months.² This is disproportionate for failing to attend the Back to Work Session, and therefore Regulation 2(3)(d) of these proposed Regulations will introduce a one-week fixed sanction for failure to attend the Back to Work Session. This will ensure there is a proportionate enforcement mechanism to encourage attendance at this mandatory session.

Customers will be advised of the session when they attend their new claim interview, and will subsequently receive a written Jobseeker's Direction with the specific time and date to attend the session. This Direction will be given when the customer attends their Fortnightly Job search Review before the date for which they have been booked to attend (or posted for those who claim by post). Jobcentre Plus staff will telephone the customer in advance of the session to remind them of the time, place and the requirement for them to attend. Throughout, the emphasis will be on positively engaging the customer, by emphasising the benefits of the session if they are still unemployed when attendance is due.

¹ Jobseekers Act '95 s19(5)(a)

² Jobseeker's Allowance Regulations '96 69(1)(a) & (b)

As for other Jobseeker's Directions, when a customer fails to attend the Session they will be given the opportunity to give their reason for not attending (good cause).³ The customer will be given the opportunity to attend a Session at a future date; each failure to attend will carry a further one-week sanction. Customers in the current vulnerable groups⁴ will continue to have access to JSA Hardship for the period of the sanction.

This approach to administering the Back to Work Sessions is still being evaluated at the test sites, and the design may be adapted as the evidence from this testing comes to light, so that our customers get the most value out of this session.

4.3 Stage 2: Directed Job Search

(weeks 14 to 26)

Around 60 per cent of jobseekers have left JSA within 13 weeks leaving around 40 per cent of new claims joining stage 2.

As now, an Adviser will review the customer's Jobseeker's Agreement once they have been claiming JSA for 13 weeks (as well as at the end of any Permitted Period if that is earlier), to widen the customer's job search expectations. This will be followed by six consecutive weekly job search reviews to follow up actions agreed at the 13-week review.

Around a fifth of customers who are assessed as having the greatest need of help to secure work, but who fall short of being offered immediate assistance in the Supported Job Search stage, will be selected for two additional reviews with an Adviser during this stage. Subject to evaluation of the test sites we expect that customers selected for this additional support will be those who, at the start of their claim, have claimed JSA for 12 out of the past 24 months with some discretion for Advisers to identify others who they judge to need additional help.

4.4 Stage 3: Supported Job Search

(weeks 26 – 52)

Around 80 per cent of customers have left JSA within 26 weeks leaving around 20 per cent of customers joining stage 3. Supported Job Search aims to provide a flexible system to enable a more personalised service for those who have been on benefit longer, to accelerate their return to work.

³ Jobseeker's Allowance Regulation 72

⁴ Jobseeker's Allowance Regulation 140(1) and 146A(1)'96

Customers entering this stage will therefore include:

- a) those unemployed for six months, ie completed Stage 1 and 2; and
- b) those whom Advisers consider would benefit from the intense help this stage offers on making a claim, including those meeting the criteria in paragraph 4.2.2.

Evaluations of all New Deal programmes have pointed to the critical role of the Personal Adviser. Advisers provide continuity of support for customers and, where a good relationship is established, the likelihood of a positive outcome is increased. Adviser support improves the frequency and quality of job search activity, and customers' confidence and motivation.⁵

The reformed Jobseekers Regime builds on this experience by extending Adviser support to all jobseekers from six months. From the start of the Support Job Search Stage every customer will be allocated to a named Adviser.

The initial interview with the Adviser will determine the customer's action plan, which will be stretching and will cover activity over and above that of the Jobseeker's Agreement. The Jobseeker's Agreement will remain in place. In addition to some common tasks – such as updating CVs – the Adviser will assess the customer's needs and identify specific activity that they must do to improve employability and find work. The Adviser and customer will agree the activity and the timetable for achieving it.

As part of the first Supported Jobsearch Stage interview all customers identified with potential basic skills that have not been addressed since the start of the claim will be referred, and in some cases directed, to attend a Skills Health Check at the new Adult Advancement and Careers Service (for customers in England only). The Adviser will use the skills check results to determine the customer's required activity. A customer's engagement with the advancement service will be identified on their Action Plan.

Advisers will have an average of three hours resource to spend with each customer during this stage, to use as they judge best suits the individual's needs. A general guide will be to see the customer at a minimum of 4-weekly intervals to follow up actions and review how the customer is progressing in achieving and deploying their new skills in seeking work. This will be in addition to the customer's usual Job Search Reviews, which will be weekly for the first six consecutive weeks of this stage. To support the customer's efforts in finding employment, Advisers will also submit the customer to suitable vacancies.

5 Flexible New Deal Evidence Paper, December 2007

Some customers may be identified as requiring employment-related training in order to return to work. To meet this need they will be able to participate in short periods of full-time training, of up to eight weeks duration, focused on getting them back to work and on meeting employers' needs. Vacancies identified through Local Employment Partnerships will be supported by this measure, where appropriate. For this activity customers will move off JSA and onto a Training Allowance.

For customers aged 25 and over, the services of an Adviser for intensive job search activities will come a year earlier than they would have done under current arrangements, where they would generally have to wait until they were on the benefit for 18 months.

4.5 Stage 4: Flexible New Deal

(weeks 53 to 104: Approximately 10 per cent at week 52 of original flow of customers)

(week 26 to 78 for those undertaking Stage 3 from new claim)

Customers who are still unemployed after completing the Supported Job Search stage will be referred to the Flexible New Deal. The Flexible New Deal will replace the following employment programmes defined in Regulation 75 of the Jobseeker's Allowance Regulations '96:

- New Deal for Young People (NDYP)
- New Deal 25 plus (ND25+)
- Employment Zones

This also includes the Private Sector-led New Deal which operates in 12 areas, and both the New Deal for Musicians and the New Deal Self Employed options within NDYP and ND25+. Flexible New Deal will also replace the voluntary New Deal 50 Plus programme for JSA customers.

Flexible New Deal providers will identify and deliver employment support tailored to individuals' needs. This draws on the experience, innovation, and additional flexibility contractors have in deploying their resource to improve customers' work skills and support them into a job. Flexible New Deal providers will work with customers for up to 52 weeks to put them in a position where they can find and sustain employment or self-employment. Contractors will be largely paid for the outcomes they achieve (see paragraph 5.2).

Jobcentre Plus will supply the FND provider with the customer's latest Action Plan and Jobseeker's Agreement. FND suppliers will be responsible for contacting customers to arrange initial meetings and confirming attendance to Jobcentre Plus. The period of 52 weeks provision will start from that initial meeting date. Providers will then work intensively with individuals to agree an action plan that will help the person make a speedy return to work.

People who participate in the FND will remain on JSA. They will continue to attend their Jobcentre Plus office on a fortnightly basis unless they undertake a period of training or other activity outside the JSA rules⁶, when they will receive a Training Allowance. It will be Jobcentre Plus' continuing responsibility to oversee the customer's journey through the Flexible New Deal and the payment of the allowance appropriate to the work-related activity.

The 52 weeks on the FND will comprise time spent on JSA or an allowance – time spent in employment or off benefit will not count. Participation in the programme will end when the participant has moved into sustained (26 weeks) employment or has been off JSA continuously for 26 weeks or has completed 52 weeks in receipt of JSA or an allowance from their start date. Where the participant has agreed an extension (see 4.5.2), the same principles apply and participation ends either when the 78 weeks have been served or earlier if the provider decides to terminate the extension.

Customer Choice

For the first year, in those areas with two prime suppliers (see paragraph 5.2 and [Annexe 4](#)), Advisers will randomly allocate customers to providers on an equal share basis. The aim will be to gather sufficient performance data so that, in subsequent years, customers will be able to make an informed choice as to which provider they engage with.

Equality

Contractors will be expected to treat all customers equitably, meeting the Department's equality, diversity and equal opportunities duties and by providing support that works for everyone. These expectations will be set out in contracts in a similar way to those for current Employment Zones.

4.5.1 Work related activity

For those who do not achieve at least 4 weeks employment whilst on the Flexible New Deal, providers will need to demonstrate that the customer has undertaken at least four weeks of full-time work-related activity designed to improve their work prospects. This might be with a local employer, community or voluntary organisation, or a work trial, and could be at any stage in the 12 month period. For those with ambitions to be self employed it could include a period of 'test trading'.

This activity will:

- be for a continuous period of four weeks, five days per week, for a minimum of 30 hours per week (unless the customer's Jobseeker's Agreement has a restriction on the hours they are available for work in which case the activity must be for the maximum hours they are available);

⁶ Jobseeker's Allowance Regulations 14 & 19

- be suitable for and address the customer's assessed needs and could include one or more of training, work experience, work trial, or work on a project of benefit to the local community (other activity could be included at the provider's discretion);
- give priority to work-like activity (eg work experience, community projects) where the participant has no or little recent experience of work disciplines or habits. As the four week period is a minimum, other assessed needs will be addressed by additional mandatory activity; and
- be supported by payment of Training Allowance, with the result that the person may be entitled to an income-based JSA without having to be available for and actively seeking employment⁷.

These activities will not:

- be for profit or displace or substitute for any activity or employment in the open labour market;
- conflict with any restriction, agreed in the Jobseeker's Agreement, on the type of work the customer can undertake for reasons of health, conscience etc; or
- require the customer to pay for additional services (eg childcare, travel etc) solely incurred as a result of undertaking the activity.

Requiring customers to undertake a period of full-time activity is designed to benefit both customers and providers. It is a positive aspect of the flexible menu of support providers can offer customers, and they will have to arrange suitable activity which responds to an individual's needs. This will mean that everyone will get the experience of a period in work-like activity, and will ensure providers invest in all customers, including those who are the hardest-to-help.

4.5.2 FND - Voluntary extension

Although customers will be required to participate in the FND for up to 52 weeks, the draft Regulation 2(5)(b) includes the reference to the FND lasting for up to 78 weeks. This is to cater for the possibility of a customer extending their participation in the programme on a voluntary basis for an additional six months. This would be at a provider's discretion, and with the agreement of both Jobcentre Plus and the customer. Some customers may be close to moving into work after one year on the programme, and would likely do so with the appropriate continuing support; this policy will allow them to stay on FND for longer and achieve this.

Customers agreeing to participate in such an extension will be subject to the same benefit sanctions described below.

⁷ Regulation 170 of the Jobseeker's Allowance Regulations 1996.

4.5.3 FND – Sanctions and Hardship

Based on their agreed Action Plan, FND participants will be notified by their provider as to what activities they are required to undertake and the possible consequences if they do not do so. Contractors will collect evidence on doubts concerning compliance and submit them to the Decision Maker for judgment as to whether or not good cause has been demonstrated.

The provisions of s19(5)(b) and s20A(2) of the Jobseekers Act 1995 will apply to Flexible New Deal. That is, a fixed period sanction will apply if a person, without good cause:

- neglects to avail themselves of a reasonable opportunity of a place;
- refuses or fails to apply for a place offered to them;
- gives up a place;
- fails to attend a place offered to them, including initial interviews; or
- loses a place through misconduct.

These draft Regulations replicate the current employment programme sanction durations which apply to the New Deal options and the Intensive Activity Period of the New Deal 25 Plus. Accordingly, it is proposed that there is:

- a fixed 2-week sanction for the first act or omission;
- a fixed 4-week sanction for a second occurrence within 12 months of the first sanction being applied;
- a 26 week sanction for the third act within 12 months of a second sanction being applied; and
- 26 weeks for subsequent acts and omissions which occur within 12 months of the previous sanction.

FND providers will raise doubts with Decision Makers if a customer fails to apply for notified vacancies (subject to a variable sanction of up to 26 weeks) (see paragraph 5.4). Before any sanction decision is taken, the customer will have the opportunity to present evidence of good cause to the Decision Maker.

The number of sanction referrals will be monitored by Contract Managers and local Jobcentre Plus Managers to quickly identify and resolve potential issues, and to make sure that providers use Employment Officer status properly and that they do not, for example, use the sanction element of JSA to stop working with customers they do not want to deal with.

These Regulations also follow the same approach for access to JSA Hardship as applies now in the case of claimants who are sanctioned in respect of one of the mandatory New Deal Options and the Intensive Activity Period. The current definition of vulnerable groups, which will cover eligible Lone Parents with children, applies to these proposals.⁸

Those people subject to a fixed term sanction due to a Flexible New Deal act or omission who subsequently agree, and are permitted, to participate in the programme will receive a subsistence payment. This will replicate current arrangements for the New Deal Options, under s2 of the Employment and Training Act 1973, to provide an incentive for those affected to re-engage with the FND and so regain an income. The payment will be at the customer's equivalent JSA entitlement and provide continuing eligibility to associated benefits such as Housing Benefit.

This allowance will be paid whilst the person is participating in the FND for the duration of the sanction. If the person successfully completes the programme the allowance will no longer be payable, although they may then become eligible to apply for Hardship if the sanction remains in force.

4.5.4 Payment of other benefits

These proposed Regulations ensure customers' JSA, Housing Benefit and Council Tax Benefit entitlement and Housing Renewal Grants are not affected by payments made to them or on their behalf for activities made solely due to their participation in the Flexible New Deal.

We are consulting the Local Government Association of these minor changes, and the rollout programme described in paragraph 5.1 below.

5 How DWP will implement the changes

5.1 Phased approach

The Department announced its intention for a phased approach to introducing the Jobseekers Regime and the Flexible New Deal in March 2008. This will see 28 Jobcentre Plus Districts introducing the changes from April 2009, with the remaining 20 Districts implementing the initiative a year later from April 2010 (see [Annexe 4](#))

⁸ Regulation 140(1) and 146A(1) of Jobseeker's Allowance Regulations 1996

The phased approach aims to drive value for money through competitive pressure and to give new suppliers the opportunity to enter the market, including unsuccessful Phase 1 bidders, as happened with Provider-led Pathways to Work. This approach will also ensure the market of potential providers is able to respond positively to the commercial tendering process and enable DWP to build on lessons learned from Phase 1 for Phase 2 contracting.

Within each phase, the revised regime for JSA will start in April with contracts for providers to deliver the Flexible New Deal commencing six months later. This will be 5 October 2009 for Phase 1 areas.

5.2 Contracting arrangements

FND is the first employment programme to be procured under the new DWP Commercial Strategy, which seeks to drive up performance through larger, longer contracts and through competition driven by customer choice.

For Phase 1 of these changes, Jobcentre Plus Districts are being arranged into 14 contractual 'packages' with two contracts to be awarded in ten of these areas and one in each of the remaining four.

This approach will significantly reduce the number of contracts through which the Department delivers employment programmes. Contracts will be for five years - longer than existing New Deal contracts – and providers will be paid largely by results. These larger, longer, outcome based contracts will aid providers' long-term planning and investment, and should increase efficiency and achieve better value for money for the taxpayer. Contracts will focus on delivering sustained job outcomes, not on specifying how those outcomes should be achieved, affording suppliers the freedom to use their knowledge and experience to deliver a flexible, personalised and responsive service tailored to the individual employment and skills needs of long-term jobseekers.

Customer choice will be provided in 10 of the 14 contract areas in Phase 1. Three of the single-provider contracts are in large rural areas, where competition could lead to inefficient duplication of delivery infrastructures. The fourth single-contract area will be Manchester, where Ministers want to test single-provider delivery in a large conurbation.

Funding

The funding arrangements for the FND will mean contractors receive:

- a monthly service fee, equivalent to 20 per cent of the contract value;
- Short Job Outcome payments, worth 50 per cent of the contract value, for customers who find work for 13 continuous weeks; and

- Sustained Job Outcome payments, worth 30 per cent of the contract value, for customers who find work for 26 out of 30 weeks.

The service fee will be “weighted” towards the beginning of the five-year contract duration, recognising it will take some time to start achieving job outcomes. Suppliers will receive:

- 58 per cent of the average annual service fee for the first six months of the contract;
- 32 per cent of the average annual service fee for the next six months; and
- 13.8 per cent of the average annual service fee during years two to five.

Job outcomes will be paid as a unit price, derived from the number of outcomes offered in the successful bidders’ contract and the total budget available.

5.3 Information exchange

Systems and processes are already in place to make sure the exchange of customers’ personal information between Jobcentre Plus and current contractors takes place in a secure environment and in accordance with current Information Risk Management guidance from the Cabinet Office. We will require potential FND providers to adhere to these procedures, adapting them as necessary in line with any changes to data security or data protection requirements.

The scope of these exchanges will be:

- customers identity and contact details to allow providers to arrange interviews;
- a copy of the customer’s Jobseeker’s Agreement and agreed Action Plan and circumstances at the point they are referred to allow the FND provider to plan specific tasks with the customer;
- confirmation from providers that they have successfully started to engage with the customer;
- evidence from providers on doubts, eg failure to participate in the FND, refusal of employment;
- notifications on outcomes of decisions, changes of circumstance, claim termination; and
- claims for payment for job outcomes achieved for the customer.

Contractors will also supply the Department with monthly management information to inform performance and evaluation reports.

5.4 Employment Officer Status

We propose that contractors will be given Employment Officer status to allow them to determine the specific course of action most appropriate for individuals to follow in order to find work. This is under:

- Sections 8(3), 9(13) and 19(10) of the Jobseeker's Act '95; and
- Regulation 4 of the Jobseeker's Allowance Regulations '96.

This will enable contractors to:

- specify the time and place at which participants are required to attend;
- vary a Jobseeker's Agreement;
- require participants to provide information and evidence about their circumstances, availability for, and efforts to find, employment;
- notify participants of job vacancies; and
- direct participants to take specific actions to improve their prospects of finding work.

Responsibility for determining a customer's continuing entitlement to JSA will remain the responsibility of Jobcentre Plus. This is the model which currently exists in the Provider-led Pathways regime. We will be working on the details of these proposals with the Department's Solicitors.

5.5 Transition to the new arrangements

The Department is currently developing the precise details of how customers whose claims will have commenced before 6 April 2009 will move to the new arrangements in Phase 1 areas. The overarching aim will be to ensure that no customer is disadvantaged or denied access to appropriate support. Those people making new or repeat claims on or after 6 April 2009 will follow the new regime in sequence.

5.6 Referral to existing Employment Programmes

Customers who will be on one of the existing New Deal schemes or Employment Zones when their Jobcentre Plus location migrates to the new arrangements will be able to complete their provision before contracts for these schemes end.

Once on one of these programmes, customers will be able to stay on the appropriate programme for the full duration, if necessary, before the schemes are completely withdrawn. The existing structure of sanctions will therefore remain in place for anybody not complying with the requirement to undertake a New Deal or Employment Zone programme.

5.7 Transfer between current and new regimes

Customers transferring between offices that run the current and new arrangements will follow the regime appropriate to their new location. This may mean that some customers aged 25 or over previously participating in the FND are not offered New Deal 25 Plus in their new location as their duration of claim is less than 18 months.

Similarly, customers formerly participating in New Deal for Young People who transfer their claim to an area operating these new arrangements might not be offered a place on the FND, where they have been unemployed less than a year. However, such customers could join the Supported Job Search (Stage 3) and receive guidance and support from Advisers, similar to the current New Deal for Young People 'Gateway'.

5.8 Communicating the change to staff

There is an extensive communication plan in place to keep all staff informed of the changes. The following paragraphs describe some of the key features.

5.8.1 Updates and briefings

The Project has introduced a site on the internal Jobcentre Plus intranet to update staff on the background, development and emerging news of the changes. Information has also been cascaded via a senior managers' update, the monthly Managers Briefing and the staff magazine 'Plus'.

5.8.2 Guidance

The phased approach to implementing these changes will require existing and new process guidance to run side-by-side for the period of transition. The Project has completed an assessment of the current guidance impacted and new instructions required, and work is now under way to produce the changes. This includes enhancements to the major IT systems such as the Labour Market System (LMS) and the Jobseeker's Allowance Payment System (JSAPS).

5.8.3 Learning and Development

These wide-reaching changes will impact many job roles within DWP and Jobcentre Plus, from those making first contact with customers through to Contract Managers dealing with suppliers, requiring differing levels of awareness and/or skills training. A full learning needs analysis is being conducted and suitable supporting learning routeways will be delivered to meet the needs identified.

Role of Advisers

Key to successful delivery of Stages 1 to 3, and the foundation for Stage 4, will be Advisers' skills in assessing individuals' needs, translating that into appropriate action and agreeing this with customers. Of particular importance will be Advisers' skill in

distinguishing between those with greater need and those who, for the early stages of a claim at least, will require less support to find work.

Role of FJR and Diary Administration Support Officers

Two other key roles, to work in conjunction with Advisers, will be that of Fortnightly Job search Review (FJR) officers and Diary Administration Support Officers (DASO). Changes to their respective roles will also be crucial to ensure customers receive a cohesive journey whilst claiming JSA.

5.9 Costs and benefits

5.9.1 Costs and savings

Overall, operation of the revised regime, including the Flexible New Deal, is designed to be introduced at no additional cost to the existing structure of interventions and New Deals.

The principal financial benefits include the following assumptions:

- It is expected the enhanced regime will help more customers find and sustain employment more quickly. The estimated saving is around £400 million in JSA payments (Annually Managed Expenditure) over the next 10 years. In addition to this saving, helping more customers into employment is expected to increase tax flow backs to the Exchequer and wider benefits for the UK economy.
- Departmental Expenditure Limit (administration) savings of approximately £32m per annum which will fund moving the hardest-to-help customers to Stage 3, resulting in a corresponding increase in Departmental Expenditure Limit Programmes spend.

Implementation costs to October 2010 have been estimated at around £30m.

The Department intends to use FND to claim match funding from the European Social Fund under the ESF 2007-2013 Programme in England and to support ESF projects in Scotland and Wales. The new ESF programme will measure this benefit separately.

5.9.2 Non financial benefits

These changes aim to:

- support the Ministerial expectation of the Government's stated aim to achieve an 80 per cent employment rate across the UK labour market;
- support the Department's Public Service Agreement (PSA) Targets;
- support Jobcentre Plus job outcome targets;
- improve the customer journey and expectations by providing a structured, yet more flexible and personalised, approach;

- reduce gaps in employment rates between different groups in society based on increased intervention for those who are most disadvantaged and who may face multiple barriers to employment;
- improve procurement processes by using prime providers to reduce the volume of contracts so as to allow enhanced contract management;
- enable suppliers to deliver provision based on their knowledge and expertise, through contracts that specify the job outcomes required, not the means of achieving them – the “what” not the “how”; and
- improve services to employers by preparing jobseekers more effectively for work.

5.9.3 Jobcentre Plus staffing

The additional activities in Stages 1 to 3 are designed to make best use of the existing Adviser and administrative staff within Current Spending Review resources. It is expected that the intensive activity in Stages 3 and 4 (FND) will increase the speed with which customers leave their JSA claim. Over time staffing of the new regime is planned to be cost neutral.

The contracting of Flexible New Deal to private, public and third sector organisations will not involve Jobcentre Plus transferring to successful bidders under Transfer of Undertakings (Protection of Employment) legislation.

5.10 Links with other welfare reforms

5.10.1 Lone Parent Obligations

The revised Jobseekers Regime and the Flexible New Deal proposals will accommodate changes for lone parents brought about by the “Lone Parent Obligations” changes where their youngest child reaches the age of seven.

All lone parents will have voluntary access to New Deal for Lone Parents (NDLP) from the start of their JSA claim, with an anticipated 35per cent taking up this offer. Where possible, appointments with the NDLP Adviser will be combined with their FJR to minimise visits to the Jobcentre Plus office.

The full range of NDLP help will be available to all lone parents once they enter Stage 3 (Supported Job Search). The Adviser allocated to the lone parent for Stage 3 will tailor the additional support available to help them comply with the increased expectations during this Stage.

At the end of Stage 3, Lone Parents will, as for other JSA customers, participate in the FND. Their access to NDLP services will cease at the point they start FND provision. As well as providing help tailored to meet needs of individuals, FND suppliers will also need to take into account any lone parents' variations in JSA conditions, such as availability.

5.10.2 **Employment and Support Allowance**

Those customers moving from the new Employment and Support Allowance (ESA) and incapacity benefits will be able to opt to enter Stage 3 on making a claim to JSA and thus have access to the FND after 6 months.

5.10.3 **Command Paper "Ready for work"**

The December 2007 DWP Command Paper "*Ready for Work: full employment in our generation;*" (responding to the July 07 Green Paper: "*In Work Better Off: next steps to full employment*") also included proposals to assess customers' basic skills needs. Those with poor levels of literacy, numeracy or spoken-English will be referred to the new adult careers service to encourage them to improve their abilities, with the aim of improving their chances of securing employment. The new Jobseekers Regime will include basic skills screening by Jobcentre Plus Advisers, referral to the new Department for Innovation, Universities and Skills (DIUS) agency and follow-up the outcome of any training or help provided.

5.10.4 **Green Paper "No one written off":**

As well as re-iterating the changes introduced by these Regulations, the Green Paper – "*No one written off; reforming welfare to reward responsibility*" (published July 2008) includes proposals to pilot full time community based work experience in order to re establish work habits that may have been lost and therefore move jobseekers closer to the labour market.

The Department is currently consulting on what will follow Flexible New Deal for those jobseekers who reach the end of the programme without having moved into employment. The revised JSA regime and Flexible New Deal proposals will form the foundation for these further reforms to be introduced.

6 Evaluation

The Jobseekers Regime and Flexible New Deal reforms are a good example of evidence-based policy making, building on three decades of experience and analysis. The “*Flexible New Deal Evidence Paper*” published alongside the Command Paper *Ready for work: full employment in our generation* (December 2007) describes the evidence base that underpins the design of the enhanced Jobseekers Regime.⁹

The jobseeker regime and Flexible New Deal reforms will be comprehensively evaluated as they are implemented to learn lessons and identify the effectiveness of the reforms.

There are two parts to the evaluation;

- learning lessons from trialling Stages 1 to 3 in the Jobcentre Plus test sites, and
- comprehensively evaluating the Jobseekers Regime and the Flexible New Deal reforms as they are implemented nationally.

6.1 Learning lessons from the Jobcentre Plus test sites

Most individual features of the new jobseekers regime have been tried and tested, but during the period before national roll-out of Stages 1 to 3 (from April 2009) field trials are operating in four Jobcentre Plus Districts to ensure, so far as possible in advance of changes to regulations, that Jobcentre Plus has the right procedures in place to implement and deliver the overall regime. The emerging research and evaluation will inform the final design and ‘best practise’ for national implementation. This testing is taking place in:

- Wandsworth Jobcentre Plus office;
- Edinburgh High Riggs Jobcentre Plus office;
- Wrexham Jobcentre Plus office; and
- The Marches Jobcentre Plus District (17 offices).

Evaluation of these tests is being undertaken by the Institute of Employment Studies (IES) of the University of Sussex. This will be a significant piece of work to identify lessons learnt to inform the national implementation. There will be regular reports from the field, a significant interim report in the late autumn 2008 and a final report in spring 2009. Some of the key policy and operational issues these will address include:

- What lessons can we learn to ensure that national roll out will deliver the step change in the number of jobseekers finding and sustaining employment?
- What are experiences of staff, customers and wider stakeholders of the enhanced jobseeker regime?

⁹ www.dwp.gov.uk/welfare-reform/readyforwork/flexible-new-deal.pdf

- What are the impacts of the reforms on Jobcentre Plus, eg introduction of the Back to Work Sessions?
- What lessons can we learn from integrating the employment and skills aspects of the enhanced Jobseekers Regime?
- What is the capacity of Jobcentre Plus to develop and use non-contracted provision and work with external partners to develop packages of support tailored to the individual needs of jobseekers?

The trials have been designed to learn lessons for national implementation rather than identify the impact of the enhanced Jobseekers Regime on the likelihood of jobseekers finding and sustaining employment. That will be for the longer term evaluation described below.

6.2 Evaluating the Jobseeker Regime reforms

The Department has developed a high level evaluation strategy and will be working with expert independent evaluators to develop and implement a comprehensive evaluation of the reforms.

There will be three key elements to the evaluation:

- a process evaluation of implementation;
- qualitative analysis to understand the view of all stakeholders including staff, customers and providers; and
- quantitative evaluation to understand the impact and effect of the reforms, and the experiences of customers.

Some of the key questions for the evaluation are;

- is the enhanced Jobseekers Regime being implemented as intended?
- what lessons can we learn from implementation and how can the reforms be improved to have the maximum impact possible? Have there been any unintended consequences from the reforms?
- have the reforms helped more jobseekers find and sustain employment? and
- are the reforms using the resources available to support the long-term unemployed as effectively as possible?

7 Communication products

As well as information being given to customers face-to-face by Advisers and other Jobcentre Plus staff, each stage will be supported by leaflets to:

- ensure customers have a clear understanding of these changes;
- the stage they are “in” and what is expected of them; and
- what support and direction they can expect from Jobcentre Plus.

During the 'Back to Work Session' there will be a "3-step plan" which customers will be given time to complete. This will focus customers' attention on their existing skills and the jobs they can do, their contacts to find work, and alternative methods they could use to find employment. This would be supported by the existing "Job Kit" that gives general advice on finding work.

FND providers will also need to supply relevant communications materials for customers, to support their part of the new regime.

Articles on these proposals will appear in "Touchbase", the Department's quarterly magazine for Advisers, intermediaries and other professionals.

8 Equality Impact Assessment

The full equality impact assessment is provided at [Annexe 5](#). The initial equality impact assessment was carried out in December 2007¹⁰ and updated in August 2008. The project has firm plans to review the equality impact assessment on a quarterly basis. The next review is planned for the end of October 2008.

The Jobseekers Regime & Flexible New Deal will deliver support and guidance tailored to individuals' needs and circumstances on a fair and equal basis, irrespective of their ethnicity, gender, age, disabilities or beliefs.

8.1 Complexity and simplification

The revised Jobseekers Regime will provide greater clarity for customers as to what to expect as their claim progresses, in terms of what they must do and what support they can expect from Jobcentre Plus. At the same time the revisions will also benefit staff in reducing the possible variations and directions a claim can currently take.

Whilst providing a clearer routeway, these reforms introduce greater flexibility than at present to tailor service to suit individuals' needs.

8.2 Equality and diversity impact

The Jobseekers Regime will apply to all customers claiming Jobseeker's Allowance, regardless of their gender, race, disability or age. The Flexible New Deal will apply to all customers aged 18 and over and displaces any distinction between customers on the basis of their age and claim duration and the help they receive. Customers under 18 will continue to receive help via their Connexions or Careers Service.

¹⁰ <http://www.dwp.gov.uk/welfarereform/readyforwork/>

8.3 Business impact

These reforms do not affect businesses by imposing any additional administrative procedures or costs on the private and voluntary sector.

8.4 Child poverty

As stated in the July 2008 Consultation Paper: *No one written off: reforming welfare to reward responsibility*, Ministers' motivation is the compelling evidence about the benefits of work for people's well-being and their children's life chances. The objective of these proposals is to increase employment, particularly among disadvantaged groups and those who have been on benefits for a long time. This will in turn help reduce child poverty, as well as poverty and exclusion more widely.

These proposals make the financial protection of JSA Hardship available to customers with responsibility for children who are sanctioned for failing to comply with either a Jobseeker's Direction or participate in the Flexible New Deal without good cause.

8.5 Rural impact

The existing attendance arrangements for travel to weekly and fortnightly job search reviews will continue to apply in the revised jobseekers review. That is, customers will be offered the postal facility where:

- travel by public transport between their home and nearest Jobcentre Plus office would take more than one hour in either direction;
- total absence from home would exceed four hours; or
- they have a condition that restricts mobility.

Customers must attend notified interviews with Advisers during all stages of their claim and participate in the FND. Contractors will be expected to treat all participants equally and ensure they are able to access their services and premises, or have means of transport to enable this to happen.

2009 No. 000

SOCIAL SECURITY

The Social Security (Flexible New Deal) Regulations 2009

Made - - - - 000

Laid before Parliament 000

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 4(5), 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), 135(1), 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 Social Security Advisory Committee has agreed that proposals in respect of these Regulations should not be referred to it ^(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 regulation 2(3)(a), (b), (d), (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.

Amendment of the Jobseeker’s Allowance Regulations

- 2.—(1) The Jobseeker’s Allowance Regulations 1996^(e) are amended as follows.

(a) 1995 c. 18. Section 20(4) was amended by the Welfare Reform and Pensions Act 1999 (c. 30) (“the 1999 Act”), section 70, Sch 8, Pt V, para 29(1), (5); section 20A was inserted by paragraph 13 of Schedule 7 to the 1999 Act; section 20B was added 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 Social Security Administration Act 1992 (c.5). Section 176(1) was amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992 (c.14), by section 69(6) of the Child Support, Pensions and Social Security 2000 Act (c. 19), and by paragraph 3 of Schedule 13 to the Housing Act 1996 (c. 52).

(d) See section 173(1)(b) of the Social Security Administration Act 1992.

(e) S.I. 1996/207.

- (2) In regulation 1(3) (interpretation) in the appropriate place, insert—
- (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 that person to find employment or to improve his or her 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))^(a)—
- (a) in paragraph (1)(a), after “(d)” insert “(da) or (db)”;
 - (b) in paragraph (1)(b)—
 - (i) after “75(1)(a)(i)(bb)” insert “or a case which falls within sub-paragraph (db)”;
 - (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) after sub-paragraph (ii)(cc), insert—
 - “or
 - (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.”.
 - (c) after sub-paragraph (d) insert—
 - “(da) 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 (da)(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 (da)(i).”.
 - (d) after paragraph (1)(da), as inserted by paragraph (3)(c) of this regulation, insert—
 - “(db) one week in a case where a jobseeker’s allowance is determined not to be payable in circumstances—
 - (i) relating to a Back to Work Session; and
 - (ii) falling within section 19(5)(a) or 20A(2)(a);”;

(a) Regulation 69 was substituted by S.I. 2000/239.

- (e) in paragraph (3)—
- (i) for “(1)(c) or (d)” substitute “(1)(c), (d) or (da)”;
 - (ii) in sub-paragraph (c), after “regulation 75(1)(a)(iv)” insert “or the Flexible New Deal”.
- (f) 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 paragraph (1)(a) of regulation 75 (interpretation)^(b)—
- (a) in head (iii), at the end omit “and”;
 - (b) after head (iv), insert—

“and

 - (v) the Flexible New Deal, being the programme known by that name or by such other name as the Secretary of State may from time to time determine, and provided pursuant to arrangements made by or on his behalf under section 2 of the Employment and Training Act 1973^(c), 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 the individual 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 that person to select, train for, obtain and retain suitable employment.”.
- (6) In regulation 105(10A)(c) (notional income)^(d), after head (iii), insert—
- “or
- (iiia) in the Flexible New Deal specified in regulation 75(1)(a)(v).”;
- (7) In regulation 113(3A)(b) (notional capital)^(e), after head (iii), insert—
- “or;
- (iiia) in the Flexible New Deal specified in regulation 75(1)(a)(v).”.

(a) Paragraph (2A) was inserted by S.I. 1997/2863.

(b) Regulation 75 was substituted by S.I. 1997/2863.

(c) 1973 c.50, Section 2 was amended by section 25 of the Employment Act 1988 (c.19), Schedule 7 to the Employment Act 1989 (c. 38) and section 47 of the Trade Union Reform and Employment Rights Act 1993 (c.19).

(d) Paragraph (10A) was inserted by S.I. 1998/2117.

(e) Paragraph (3A) was inserted by S.I. 1998/2117.

- (8) In regulation 140 (persons in hardship)^(a)—
- (a) in paragraph (2), after “or (4A)” insert “or (4B)”;
 - (b) in paragraph (4A), 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)^(b)—
- (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)^(c)
- (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)^(d)—
- (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)—
- (a) in sub-paragraph (1)(ee)(i) (linking rule)^(e), after “ 75(1)(a)(iv) “ insert “or in the Flexible New Deal”;
 - (b) in sub-paragraph (3A)(a)^(f), 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) (notional income) and 49(4)(b) (notional capital) of the Housing Benefit Regulations 2006^(g); and
 - (b) regulations 32(7)(c) (notional income) and 39(4)(b) (notional capital) of the Council Tax Benefit Regulations 2006^(h).
- (2) Each of the provisions to which this regulation applies are amended as follows—
- (a) in head (iii), omit “or”;
 - (b) after head (iv), insert—

“or;
 - (c) (v) in the Flexible New Deal specified in regulation 75(1)(a)(v) of those Regulations;”.

(a) Paragraph (4A) was inserted by SI 1997/2863.
 (b) Regulation 140A was substituted by S.I. 2000/239.
 (c) Regulation 146A was inserted by S.I. 2000/1978.
 (d) Regulation 146B was inserted by S.I. 2000/1978.
 (e) sub-paragraph (ee) was inserted by S.I. 1997/2863.
 (f) Paragraph (3A) was S.I. 1997/2863.
 (g) S.I. 2006/213.
 (h) S.I. 2006/215.

Amendments to the Housing Renewal Grants Regulations

4.—(1) The Housing Renewal Grants Regulations 1996 ^(a) (sums to be disregarded in the calculation of income other than earnings) are amended as follows.

(2) In paragraph 11(d) of Schedule 3, 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.

	<i>Name</i>
Address	Parliamentary Under-Secretary of State,
Date	Department for Work and Pensions

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 employment programme currently known as the Flexible New Deal.

In particular, they amend regulation 75 of the Jobseeker's Allowance Regulations so that the Flexible New Deal (or its successor in title) 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)).

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 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 person may not be entitled to a jobseeker's allowance 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.

Regulations 3 and 4 make various consequential amendments.

Regulation 3 ensures that certain payments made in connection with a person's participation in the Flexible New Deal are not treated as either notional income or notional capital for the purposes of entitlement to housing or council tax benefit.

(a) S.I. 1996/2890.

Regulation 4 amends the Housing Renewal Grants Regulations 2006 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.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

Annexe 2 Existing Vulnerable groups for JSA Hardship

JSA Regulations 1996 (SI 1996/207), Regulation 140(1) and 146A(1)

A claimant is in a vulnerable group if

- they or their partner are pregnant and would experience hardship if no payment were made;
- they are a member of a couple and one of them is responsible for a child under 16 or a qualifying young person who would experience hardship if no payment were made;
- they are not a member of a couple and are responsible for a qualifying young person who would experience hardship if no payment were made;
- their income-based JSA includes a disability premium or would include one if their claim were to succeed and the person for whom the premium is paid would experience hardship if no payment were made;
- they or their partner have a chronic medical condition and as a result they (or their partner's) functional capacity is 'limited or restricted by physical impairment', and the decision maker is satisfied that:
 - it has lasted or is likely to last for at least 26 weeks; *and*
 - the health of the person with the condition will decline further than that of a 'normal healthy adult' within the next two weeks and that person would experience hardship if no payment were made.
- they and/or their partner
 - are caring for someone who:
 - is getting Attendance Allowance (AA) or the highest or middle rate of the care component of Disability Living Allowance (DLA) or has claimed one of these benefits, but only for up to 26 weeks from the date of the claim or until the claim is decided, whichever is first; *or*
 - has been awarded AA or the highest or middle rate of DLA care component but it has not yet been paid; *and*
 - would not be able to continue caring if no hardship payment were made. They do not have to show that the person they are caring for would experience hardship.
- they or their partner are a 16/17-year-old who can claim income-based JSA and would experience hardship if no payment were made (or if they are a joint-claim couple, the couple will experience hardship);
 - they or their partner are claiming JSA on the basis of a Severe Hardship direction. They do not have to show that they would experience hardship. However, they do not count as in a vulnerable group if the person subject to the direction does not satisfy the labour market conditions; *or*
- they (or if they are a joint-claim couple, at least one of them) are under 21 at the date of their hardship statement and within the last three years were being looked after by the local authority, were someone the local authority had a duty to keep in touch with under the Children Act 1989, or qualified for advice and assistance.

Annexe 3 Voluntary entry to Supported Job Search

The groups of customers claiming JSA who can volunteer for immediate access to Stage 3, if there is capacity, are as follows:

- Ex-Offenders.
- Refugees and others granted leave to stay.
- Homeless including rough sleepers.
- Drug and alcohol misusers.
- Jobseekers who have been in residential care.
- Ex-Armed Forces and their partners
- Jobseekers with language, literacy or numeracy problems.
- Jobseekers who are lone parents, have a disability or are a carer.
- People in contact with secondary mental health services.
- People leaving Incapacity Benefit or Employment and Support Allowance for JSA because they have failed the Work Capability Assessment.
- Young people with any previous history of being out of education, employment or training (ie NEET).
- Adviser discretion in exceptional circumstances.

Annexe 4 Jobcentre Plus Districts in each Phase

Phase 1 by contract package

Phase 2

1	Ayrshire, Dumfries, Galloway & Inverclyde Lanarkshire & East Dunbartonshire Edinburgh, Lothian & Borders (2)	Bedfordshire & Hertfordshire Berkshire, Buckinghamshire & Oxfordshire. Cheshire, Halton & Warrington
2	Birmingham & Solihull (2)	City & East London
3	Black Country (2)	Cumbria & Lancashire
4	Cambridgeshire & Suffolk Norfolk Lincolnshire & Rutland (2)	Dorset & Somerset Essex
5	Central London Lambeth, Southwark & Wandsworth (2)	Forth Valley Fife & Tayside Glasgow
6	Coventry & Warwickshire, The Marches Staffordshire (2)	Gloucestershire, Wiltshire & Swindon Merseyside Hampshire & Isle of Wight
7	Derbyshire South Yorkshire (2)	Highland and Islands
8	Devon & Cornwall (1)	North & NE London
9	Greater Manchester Central Greater Manchester East & West (1)	Northumbria South London South Tyne and Wear valley
10	Kent Surrey & Sussex (2)	West London
11	Leicestershire & Northamptonshire Nottinghamshire (2)	West of England West Yorkshire
12	North & Mid Wales South East Wales (1)	
13	North East Yorkshire & the Humber Tees Valley (2)	
14	South Wales Valleys South West Wales (1)	

(number of prime contractors in brackets)

Annexe 4 (continued)
Jobseeker Plus Districts in each Phase

 Phase 1 – 6 April & 5 October 2009

 Phase 2 – April & October 2010



Annexe 5 Equality Impact Assessments

- 1 This Impact Assessment is a working document that has developed alongside the Jobseeker Regime and Flexible New Deal reforms. A previous version of this Impact Assessment was published alongside the Command Paper *'Ready for work: full employment in our generation'*, in December 2007.¹ The Impact Assessment is a living document and is being updated as more information becomes available and policy develops.
- 2 Underlying the Impact Assessment will be a comprehensive and robust evaluation of the reforms as they are introduced.

Introduction and policy rationale

- 3 The Government has set the challenging aspiration of increasing the employment rate to 80%. The current policy approach is based on mandatory participation by jobseekers in the Jobseekers Regime and New Deals. This has helped to achieve an employment rate today of 74.8%. However, to reach an 80% employment rate would mean helping significantly more jobseekers into employment.
- 4 The current New Deal programme has helped more than 1.85 million people into work. It has virtually eradicated long-term (12 months plus) youth unemployment and reduced long-term adult unemployment to close to its lowest level for 30 years.
- 5 However, the New Deals are nearly 10 years old and there is now a weight of evidence, including the Leitch and the Freud reports, suggesting the need to:²
 - improve the flexibility of employment support and increase personalisation to meet customer needs;
 - ensure jobseekers with longer duration unemployment get additional help;
 - help jobseekers get the skills training they need to help them get better jobs;
 - make greater use of the flexibility and innovation that partnership working with the public, private, third and voluntary sectors can provide.

1 <http://www.dwp.gov.uk/welfare-reform/readyforwork/>

2 *Prosperity for all in the global economy – world class skills*, December 2006. Lord Leitch's review of long-term skills needs.

- 6 Ensuring that the long-term unemployed are equipped with the key employability skills that they need to effectively engage with the labour market requires more personalised and tailored support than the current New Deals provide. Using experience from the New Deal programmes and Employment Zones (EZs), the Flexible New Deal (FND) has been designed to provide this support and replace the current suite of employment support for the long-term unemployed. The Flexible New Deal will also simplify the current range of programmes for the long-term unemployed, replacing them with a single route way for all jobseekers.
- 7 We propose a strengthening of the requirements for those claiming JSA and the introduction of a new, Flexible New Deal for all jobseekers. This would replace the current, separate New Deals for unemployed young people and adults. The effect of this would be to provide increasing levels of support and require corresponding effort on the customer's part as the duration of the claim for Jobseeker's Allowance (JSA) increased.

Methodology

- 8 There are two key elements to the estimated Flexible New Deal costings: (1) the number of jobseekers receiving interventions, and (2) the unit cost of each intervention.
- 9 To estimate the number of jobseekers who will receive additional support through, for example, the Supported Jobsearch Stage or Flexible New Deal stage, it has been assumed that the number of jobseekers reaching six and 12 months will be approximately the same as the number of jobseekers who started a JSA claim in 2004/05 and reached six and 12 months unemployment. Jobseekers starting a claim in 2004/05 have been used so that they can be followed for at least two years.
- 10 The number of jobseekers reaching specific durations of unemployment have then been modified to take account of the key features of the FND model:
 - Off-flows (number of jobseekers leaving JSA) for young people after six months have been replaced by off-flows for 25 to 29 year olds because young jobseekers will enter the Supported Jobsearch Stage from six months followed by the Flexible New Deal from 12 months. Twenty-five to 29 year olds are the group of jobseekers most similar to young jobseekers.
 - Off-flows for all jobseekers have been increased after six months because the Supported Jobsearch Stage will help more jobseekers into employment quicker.
- 11 The unit costs of Jobcentre Plus interventions have been estimated using Jobcentre Plus Finance's staff costs and the costs of non-Jobcentre Plus interventions have been estimated using the costs of similar interventions.

- 12 In the Flexible New Deal Invitation to Tender we have set performance expectations to reflect the step change in performance that we expect FND to achieve. The expectations are set at 55% of starts get a short job outcome (13 weeks employment) and 50% get a sustained job outcome (26 out of 30 weeks).
- 13 The cost of the Flexible New Deal stage has been estimated based on the cost of EZs and the New Deals. We expect to drive efficiencies through, increasing the size and scale of contracts and bearing down on EZ costs, which are particularly high.
- 14 The final element of the Jobseeker Regime and Flexible New Deal reforms is providing early access to the Supported Jobsearch Stage. To estimate the number of jobseekers who could be involved, the pot of money left over after paying for mandatory Flexible New Deal participants has been divided by the additional cost of allowing jobseekers to join the Supported Jobsearch Stage rather than at day one.

Sensitivities

- 15 The main assumption in the costings model is the number of jobseekers flowing through six and 12 months and therefore receiving additional support during the Supported Jobsearch and Flexible New Deal stages. This is a particular risk because the off-flows for jobseekers from 2004/05 have been used for costings, but the level of unemployment might be different in 2009/10 and 2010/11.
- 16 To understand the scale of this risk, we have tested the robustness of the base model against a number of possible sensitivities. Independent forecasts estimate higher flows through six and 12 months than off-flows for jobseekers from 2004/05, which increases the costs of Flexible New Deal.
- 17 In addition, assuming no additional off-flows as a result of the extra Jobcentre Plus interventions during the Supported Jobsearch Stage, more jobseekers enter the Flexible New Deal stage – the major cost of the proposed model. It is, however, still possible to remain within a balanced budget.

Impact of the Flexible New Deal

- 18 We have estimated that overall the claimant count will fall by between 10,000 and 20,000 as a result of the Jobcentre Plus and Flexible New Deal stages (before taking into account the reclassification of customers moving off Training Allowance and on to JSA). These estimates have been made using evidence from evaluations of the mandatory New Deals and EZs. This considerable reduction in the claimant count has been achieved through using resources more effectively.

- 19 Helping more jobseekers into work will provide benefits for four groups:
- **Jobseekers:** Jobseekers will gain financially as their in work income from earnings and tax credits (where applicable) will be higher than their out of work income from benefits and tax credits. There will also be wider benefits for jobseekers from moving into employment.
 - **Employers:** There will be benefits for firms that employ the jobseekers.
 - **The Exchequer:** There will be financial savings to the Exchequer from reduced benefit payments and higher Income Tax, National Insurance, and VAT receipts.
 - **Society:** There will be wider benefits for society from reduced crime, reduced social exclusion and improved health.
- 20 The ongoing costs of the Jobseeker Regime and Flexible New Deal reforms will be met from within existing funding for employment support targeted at the long-term unemployed.

Flexibility

- 21 The Flexible New Deal model will draw on the most successful aspects of current programmes and provision, notably EZs. Employment Zones have three stages: developing an action plan, implementing that action plan and in work support. Providers are able to tailor a package of support to individuals' needs as a result of their flexibility. Employment Zones are work-focused and centre their attention on 'realistic aspirations'.
- 22 Evidence shows that EZs are better than their equivalent New Deal programmes at placing jobseekers into (sustained) employment: EZ performance is significantly better than equivalent New Deals for all client groups, including those with multiple barriers. For example, for clients aged 25+, EZs achieve between five and 10 percentage more job outcomes and sustained job outcomes.³ There has been further analysis which has shown not only do EZs help more jobseekers into work than the New Deals but also that the impact is sustained for at least a year, longer for young people.
- 23 There is evidence that jobseekers, staff and providers support the move towards greater flexibility in determining jobseekers' package of support. There is high jobseeker satisfaction with EZs, even among those who did not secure work. Satisfaction was principally related to the quality and content of the jobseeker-Adviser relationship. Jobseekers perceived that EZs allowed them to pursue employment goals of their own choosing, not being compelled into jobs they did not want.⁴

3 Griffiths, R. and Durkin, S. (2007), *Synthesising the evidence on Employment Zones*. DWP Research Report 449.

4 Griffiths, R. and Durkin, S. (2007), *Synthesising the evidence on Employment Zones*. DWP Research Report 449.

- 24 Employment Zones aim to build trust and a good rapport with their jobseekers. As part of this process, and to attain good job outcomes, some have attempted to match the Personal Adviser with the jobseeker, for example, younger jobseekers will have a younger Personal Adviser. Evidence has shown that they are then in a better position to engage with individual jobseekers. In addition, it is known that younger jobseekers have appreciated the greater amount of time they had to spend with their EZ Adviser and the level of attention and support they received. It is expected that Flexible New Deal providers will use this type of individual, tailored support to help jobseekers find sustained employment.
- 25 What differentiates EZ delivery from mainstream employment services and contributes to improved performance is the way in which the flexibilities afforded to providers feed into the interface between Adviser and jobseeker. Employment Zones Advisers are able to devote more time to getting to know jobseekers, and to identifying their barriers and job aspirations. They are also persuasive and accommodating, aiming to place jobseekers into work of their own choosing rather than compelling them into jobs they do not want.⁵
- 26 Employment Zones have both operational and financial flexibility. In practice this means that Advisers can, for example, meet jobseekers in alternative locations, such as cafés or outreach centres. In terms of tailoring support to the individual Advisers will ascertain what real barriers the jobseeker faces, for example, childcare responsibilities, and they can then help to find a solution. With respect to financial flexibility, EZs are able to shift resources between jobseekers, allowing them to spend more money on those who need it.
- 27 Since their introduction, EZs have shown that they are able to experiment and innovate to improve and tailor their support to the individual needs of jobseekers. Some examples of provider innovations are:
- Some providers have developed in-house courses for jobseekers with English as a second language but, with an enhanced focus on work-based language.
 - Some providers have exploited the skills of psychologists or behavioural experts, for example, using Cognitive Behavioural Therapy to help jobseekers with lower level behavioural disorders.
 - Some Advisers scheduled a half or entire day to visit potential employers with individual jobseekers, running 'Discovery sessions' (month-long programmes with two weeks in the classroom, and two weeks at computers searching for jobs), setting up placements for jobseekers with employers to enable

5 Griffiths, R., Durkin, S. and Mitchell, A. (2006), Evaluation of the Single Provider Employment Zone Extension. DWP Research Report 312.

them to build relationships, running confidence building workshops with 'homework', and distributing CVs.

- At least one provider organised workshops inside prisons to gain knowledge of the likely needs of ex-offenders.
- Advisers have met jobseekers in cafés and pubs to strengthen the rapport they build with jobseekers.
- Advisers have taken jobseekers' phone calls out of office hours and liaised directly with employers on jobseekers' behalves.
- The introduction of specialist Advisers and counselling support for jobseekers with mental health conditions, or drug-and alcohol-related problems.

- 28 Other examples of EZ Advisers using their flexibility to customise their support to jobseekers' needs include:
- financial help toward advertising a new gardening business to help jobseekers into self-employment. and
 - helping a jobseeker to lose weight and then set up a personal fitness business.

Small Firms Impact Test and contracting for the Flexible New Deal

- 29 The Flexible New Deal will be purchased in accordance with the Department's Commissioning Strategy, which was published in February 2008.⁶
- 30 The Flexible New Deal will not increase regulatory requirements for small and medium-sized firms so no negative impacts are expected in this respect.
- 31 To ensure that providers are improving outcomes for the most disadvantaged, their performance will be monitored on an ongoing basis. The performance of the Flexible New Deal will be scrutinised through independent qualitative and quantitative evaluations.

Health Impact Assessment

- 32 There is a strong positive association between unemployment and increased rates of overall mortality and poorer physical, mental and general health. Furthermore, there is strong evidence that unemployment can cause, contribute or aggravate most of these conditions. Similarly, there is a strong theoretical case supported by a great deal of background evidence that work and paid employment are generally beneficial for physical and mental health and well-being.⁷ Our estimates suggest that the Flexible New Deal will help more jobseekers

6 DWP Commissioning Strategy, <http://www.dwp.gov.uk/publications/dwp/2008/comstrategy/cs-rep-08.pdf>

7 Waddle and Burton. (July 2006), *Is Work Good for your Health and Well Being?* Black, (March 2008), *Working for a healthier tomorrow*, <http://www.workingforhealth.gov.uk/Carol-Blacks-Review>

into employment. The Flexible New Deal may, therefore, have positive health effects. It is not possible to quantify the scale of these effects.

Equality Impact Assessment

Gender

- 33 The proportion of female jobseekers claiming JSA has increased over time, from 23% in May 1997 to 27% in May 2007.
- 34 New Deal for Young People (NDYP) has seen an increase in female participants of similar proportions to that seen in the JSA caseload, from 27% in 1998/99, to 31% in 2006/07. There is a two percentage point gap in performance between males and females, with the female employment destination rate at 36%, while for males it is 38%.
- 35 New Deal 25 plus (ND25+) has seen a small increase in female participation from 16% in 2001/02 to 19% in 2006/07. There are fewer female ND25+ participants than the proportion of females on the claimant count aged over 25 (24%). There are no gender differences in terms of employment outcomes; they are both 29%.
- 36 We do not expect negative impacts on the basis of gender. Providers will offer greater support tailored to the individual needs of jobseekers, much like that provided in EZs. Our experience of EZs suggests that greater flexibility will have a positive effect. Evaluation backs this up as EZ performance is significantly greater than equivalent New Deals for all client groups, including those with multiple barriers. Evidence on female customers in EZs (early entrants who were over 25) indicates that they benefited from the encouragement offered by their personal Adviser. In some cases they had secured jobs in sectors they were unfamiliar with or initially reluctant to apply for.

Ethnicity

- 37 The proportion of white jobseekers claiming JSA has fallen from 76% in May 2002, to 71% in May 2007. This reduction has been offset by a two per cent increase in jobseekers from an ethnic minority and a three per cent combined increase in 'unknown ethnicity' and jobseekers who 'prefer not to say'. Ethnic minorities currently make up 16% of the caseload, while unknown ethnicity accounts for 13%. This is a substantially greater proportion than their representation in the total population.
- 38 There has been a slight increase in NDYP participants from an ethnic minority, increasing from 14% in 1998/99 to 18% in 2006/07. Ethnic minorities have a higher proportion of female participants (34%) than white participants (30%). The proportion of ethnic minorities leaving NDYP to employment is lower than that for whites at 31% compared with 38%, but there is wide variation between different ethnic groups.

- 39 There has been a significant increase in ND25+ participants from an ethnic minority, from 12% in 2001/02 to 17% in 2006/07. Unlike with NDYP, there is no significant gender difference with ethnic minorities (although females are slightly higher among ethnic minorities). White leavers to employment are only slightly higher than ethnic minorities at 29% compared with 28%.
- 40 It is not expected that the Flexible New Deal will result in negative impacts for any ethnic group. Providers will offer greater support tailored to the individual needs of jobseekers, much like that provided in EZs. Analysis of EZs highlights many examples of their flexibility in supporting ethnic groups. Some providers have developed in-house courses for English for speakers of other languages, with a specific work focus. In addition, one provider had a Kurdish immigrant on their staff to help with supporting the large Kurdish community – not just for language issues, but in order to help understanding of the wider cultural and social issues that are pertinent to Kurdish jobseekers. Evaluation substantiates this as EZ performance is significantly greater than their equivalent New Deals for all client groups, including those with multiple barriers.
- 41 We are currently consulting with jobseekers about their experiences of EZs and the New Deals. We will monitor and evaluate the Flexible New Deal using administrative data to ensure it works effectively for all groups including ethnic minorities. The performance of the Flexible New Deal for ethnic minorities will be scrutinised through independent qualitative and quantitative evaluations.

Disability

- 42 There has been a marginal increase in the proportion of NDYP participants with a recorded disability, from 13% in 1998/99 to 14% in 2006/07. ND25+ has a much larger proportion of participants with a recorded disability. This has increased from 27% in 2001/02 to 33% in 2006/07.
- 43 Participants without a disability perform significantly better on the New Deal: on NDYP 38% leave to employment compared with 31% who have a disability. A similar difference can be seen on ND25+ where only a quarter of participants with a disability leave the New Deal for employment, compared with 31% who do not have a disability.

- 44 Hales et al. (2003) compared EZ performance with ND25+. They found that EZs outperformed comparative New Deal areas for participants who were in poor health, which included jobseekers with a health condition or a disability⁸. The report also found that jobseekers in good and poor health had a greater probability of starting a job in EZs than on ND25+. The focus on individuals' barriers to employment and a range of provision should ensure that like EZs, the Flexible New Deal achieves better outcomes for this group than seen under the New Deal.
- 45 It is not expected that the Flexible New Deal will have a negative effect on jobseekers with a disability. Providers will offer greater support tailored to the individual needs of jobseekers, much like that provided in EZs. However, we will monitor and evaluate the Flexible New Deal programme to ensure it works effectively for jobseekers with a disability. The performance of the Flexible New Deal will be scrutinised through independent qualitative and quantitative evaluations.

Age

- 46 There are a greater number of young JSA claimants compared with older claimants; 28% are aged 18 to 24, compared to only 17% aged 50 to 59 years. The proportion of 18 to 24 year olds has increased over time by a similar proportion to the fall of 25 to 34 year olds.

Proportion of JSA caseload by age

	Under18	18-24	25-34	35-44	45-49	50-54	55-59	60-64
May 1997	1%	24%	29%	21%	9%	9%	7%	1%
May 2007	1%	28%	24%	21%	9%	8%	8%	1%

- 47 Under the JSA and Flexible New Deal intervention regime, jobseekers will not be segmented on the basis of age, removing the current differential treatment under the mandatory New Deals. No negative effects relating to the Flexible New Deal are expected. The Flexible New Deal will bring forward additional support for jobseekers aged 25 years and over from 18 months to six months. Young people will receive a Supported Jobsearch Stage from six months. Jobseekers of all ages will now enter the Supported Jobsearch Stage at six months.

⁸ Hales, J., Taylor, R., Mandy, W. and Miller, M. (2003), Evaluation of Employment Zones: Report on a Cohort Survey of Long-Term Unemployed People in the Zones and a Matched Set of Comparison Areas. National Centre for Social Research.

- 48 Jobseekers aged over 50 years will benefit from access to earlier and mandatory, rather than voluntary help, as demonstrated in the recent ND25+ Intensive Activity Period (IAP) pilot. Older jobseekers mandated to participate in the IAP stage were more likely to enter employment: 29.8% compared to 23.4% for those not mandated. The number of days spent on Jobseeker's Allowance reduced by 49 days over a two-year period. The number of days spent in employment increased by 25 days over a two-year period.⁹
- 49 There is evidence that jobseekers aged over 50 years have less success in moving into jobs than younger people. However, the 'gap' in success in moving into jobs between jobseekers aged 50 years and over and those aged 25-49 years is narrower in EZs than ND25+. This suggests that EZs have more success at helping older jobseekers than ND25+, with the greater flexibility in EZs potentially being an important factor in helping older jobseekers.¹⁰
- 50 In addition, the State Pension age will be progressively increased from 60 years to 65 years for females between 2010 and 2020. This reform is expected to increase the number of male and female jobseekers aged 60 to 64 years claiming JSA. The reform is expected to increase the number of males because males are currently eligible for Pension Credit from 60 years of age.
- 51 We expect jobseekers aged 60 years and over will benefit from the enhanced Jobseekers Regime and Flexible New Deal as jobseekers aged 50 and over and jobseekers of other ages will. Integrating older jobseekers into the revised Jobseekers Regime should provide the support necessary to improve the chances of this group moving into employment. As the FND is introduced across the country and the State Pension age is equalised we will monitor the experiences of jobseekers aged 60 years and over.
- 52 Griffiths et al. (2007) highlighted that young people performed better with an EZ provider than returning to the NDYP.¹¹ We expect the flexibility of FND provision to benefit jobseekers of all ages. Jobseekers will receive individually tailored support, which should be an improvement on the prescribed activities in the current New Deal provision.
- 53 We will monitor and evaluate the programme to ensure it works effectively for jobseekers of all age groups. The performance of the Flexible New Deal will be scrutinised through independent qualitative and quantitative evaluations.

9 Dorsett, R. and Speckesser, S. (2006), Mandating IAP for older New Dealers: an Interim report of the quantitative evaluation. DWP Research Report 362.

10 Hasluck, C. and Green, A. (2007), *What works for whom: A review of evidence and meta-analysis for the Department of Work and Pensions*. DWP Research Report 407.

11 Griffiths, R. and Durkin, S. (2007), *Synthesising the evidence on Employment Zones*. DWP Research Report 449.

Rural

- 54 For both NDYP and ND25+, the more rural districts perform better than the urban ones. Under the Jobseeker Regime and Flexible New Deal reforms more frequent support and increased conditionality should not negatively affect rural areas and should positively impact upon the lower urban performance.
- 55 The flexibility of FND should cater for both urban and rural participants by ensuring they receive the correct support. Jobseekers in varying geographical locations may need differing help, with diverse local labour market conditions (eg, type of vacancies) commanding different support requirements.

Contractor's Equality, Diversity and Equal Opportunities accreditation

- 56 FND suppliers' obligations to meet current and future equality legislative requirements are specified in the Invitation to Tender and will be included in contracts. The Flexible New Deal should promote equality in a proactive way by integrating gender equality and equal opportunities into the planning, implementation, monitoring and evaluation of the programme. Suppliers will be required to promote equal opportunities and ensure that provision identifies and meets the specific requirements of customers so that they can participate fully in provision.
- 57 Suppliers will be asked whether any findings of unlawful discrimination in relation to non-employment matters have been made against them in the last three years, or if any of their contracts have been terminated on the grounds of failure to comply with legislation prohibiting discrimination or contract conditions relating to equal opportunities.
- 58 Suppliers will confirm they have a complaints procedure in place and that complaints are addressed and monitored in relation to discrimination. They will also need to have an Equal Opportunities Policy for staff and customers, which covers issues such as:
- recruitment processes;
 - meeting the needs of the varying customer groups;
 - access to premises; and
 - publicising the FND to ensure equal treatment.

Summary

- 59 Disadvantaged groups will be over-represented amongst Flexible New Deal participants and they currently have worse outcomes than the wider group of jobseekers and hence remain unemployed for longer. The Flexible New Deal is expected to help improve outcomes for disadvantaged groups by offering individualised support, tailored to their specific needs. We expect the Flexible New Deal to improve both the absolute and relative position of disadvantaged groups by targeting resources at those jobseekers with the greatest needs. Targeting early access to the Supported Jobsearch Stage on jobseekers who have

shown they are disadvantaged through their histories of unemployment, should also help to provide greater support for jobseekers requiring more help to find sustained employment.

- 60 However, securing better outcomes for the most disadvantaged in practice will be dependent on ensuring that providers, whether from the public, private or voluntary sector, have the;
- flexibility to tailor their support to the needs of the most disadvantaged, including those from specific ethnic groups and those with health conditions;
 - experience, knowledge and tools to be able to do so in an efficient and effective way; and
 - incentives to do so, through the contracting structure.
- 61 There is a theoretical concern that funding providers on the basis of outcomes will encourage 'parking' (not focusing on the most disadvantaged). Available evidence suggests that while parking is always a concern in this context, it is no more so for outcome-focused contracts than for Jobcentre Plus support.¹² However, it is important in contract design of the Flexible New Deal to ensure that providers are properly incentivised to focus on the most disadvantaged.

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¹² Griffiths, R. and Durkin, S. (2007), Synthesising the evidence on Employment Zones. DWP Research Report 449



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