EXPLANATORY MEMORANDUM TO

THE JOBSEEKER'S ALLOWANCE (JOBSEEKING AND WORK FOR YOUR BENEFIT) (AMENDMENT AND REVOCATION) REGULATIONS 2012

2012 No.

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes provision for Work Programme (a programme designed to assist jobseekers to find work) entry for prison leavers, immediately on release from custody (for those who claim Jobseeker's Allowance).

2.2 This instrument also revokes the Jobseeker's Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 (S.I. 2010/1222) http://www.dwp.gov.uk/docs/a11-7185.pdf . On 21 June 2010 DWP notified bidders that it would not be proceeding with the scheme, and on the 19 November 2010 Chris Grayling MP, Minister for Employment, issued a Written Ministerial Statement confirming that the scheme would not go ahead. As a result of this decision, no Jobseeker's Allowance claimants have been selected for participation in this scheme.

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

None

4. Legislative Context

4.1 The regulation changes will allow prison leavers to be mandated to the Work Programme immediately on release, giving them appropriate support at the point they need it most (by taking those referred to the Work Programme out of coverage of the "treated as" available and actively seeking employment provisions in the Jobseeker's Allowance Regulations 1996)

4.2 Under current legislation the earliest prison leavers can be mandated to participate in the Work Programme is the eighth day after leaving custody. This is because under regulations 14 and 19 of the Jobseeker's Allowance Regulations 1996, they are treated as meeting the requirement to be available for and actively seeking employment for the first week of their award of Jobseeker's Allowance.

4.3 The Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 provide the means by which the Secretary of State can mandate participation onto the Work Programme for Jobseeker's Allowance claimants. However, those Regulations cannot be used if a claimant is not required to meet one or more of the jobseeking conditions (i.e. being available for, and actively seeking, employment and having a valid jobseeker's agreement), and this includes claimants, such as prison leavers, who are treated as meeting those conditions.

4.4 However, the Department recognises the importance of the first seven days in resettling prison leavers into the community, so amendments are being made to the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 to the effect that a newly released claimant who is referred to the Work Programme is excused from having to be available for, or actively seeking, work for the first seven days from release without this affecting their eligibility for Jobseeker's Allowance.

4.5 Where it is not appropriate to refer prison leavers to the Work Programme, they will continue, under the Jobseeker's Allowance Regulations 1996, to have the seven day period on leaving custody during which they will be treated as available and actively seeking employment. For example, young prison leavers who are aged 16 and 17 will not be mandated to the Work Programme immediately on release.

4.6 It is proposed to make additional legislative changes linked to this initiative. In order to enable a Jobseeker's Allowance claim to be made in advance within prison and activated on release, the Department will seek to make use of the amendment to s.5(1)(d) the Social Security Administration Act 1992 (conditional awards) which is being made through clause 95(2)(i) of the Welfare Reform Bill. The Department plans to make regulations as soon as possible once Royal Assent has been received, so that the prescribed time at which requirements for entitlement are satisfied for prison leavers making advanced claims to Jobseeker's Allowance is their date of release.

4.7 The Jobseeker's Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 (S.I. 2010/1222) http://www.dwp.gov.uk/docs/a11-7185.pdf were approved in draft by each House of Parliament in March 2010 and were made on 7 April 2010. They came into force on 22 November 2010, and are due to lapse on 21 November 2013.

4.8 The Regulations allow the Secretary of State for Work and Pensions to select claimants in specified pilot areas for participation in the scheme if they meet certain conditions. They also provide for the loss or reduction of benefit if persons selected fail to participate without good cause. The Department for Work and Pensions has previously made it clear that the "Work for Your Benefit Pilot Scheme" would not proceed, and therefore the regulations would be revoked.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister for Employment, Chris Grayling, has made the following statement regarding human rights:

"In my view the provisions of the Jobseeker's Allowance (Jobseeking and Work for Your Benefit) (Amendment and Revocation) Regulations 2012 are compatible with the Convention rights".

7. Policy background

- ***What is being done and why***

7.1 The Government's Coalition Agreement sets out a commitment to "create a Rehabilitation Revolution" by "introducing more effective sentencing policies, as well as overhauling the system of rehabilitation to reduce re-offending and provide much greater support and protection for the victims of crime". The Ministry of Justice is leading on this commitment via a number of payments by results pilots with involvement from prisons and providers from the public, private and voluntary sectors.

7.2 The Department for Work and Pensions is also fully committed to supporting the Government's commitments to the rehabilitation of prison leavers. It will do this by using the Work Programme as the primary vehicle of support. This policy change will facilitate and promote additional employment support for prison leavers claiming Jobseeker's Allowance through mandatory participation in the Work Programme at the earliest stage possible.

7.3 To enable a mandatory referral to the Work Programme immediately on release and to provide immediate support from a Work Programme provider, the Jobseeker's Allowance claim process will be brought forward from the current process (where the claim for Jobseeker's Allowance is taken at the Jobcentre nearest to the prisoner leaver's home at the point when they contact the Jobcentre) and will be conducted by a Jobcentre Plus adviser in the prison. The intention is that entitlement to Jobseeker's Allowance will begin immediately on release, allowing mandatory referral to the Work Programme from that time.

7.4 Further regulations are planned so that the prescribed time at which requirements for entitlement are satisfied for prison leavers making advanced claims to Jobseeker's Allowance, is their date of release. This will make the process more streamlined. Without this the claimant will need to sign the Jobseeker's Agreement on release with associated delays to the mandatory referral point. Introduction of this legislation is dependant on the passage of the Welfare Reform Bill.

7.5 Ex-prisoners who claim Jobseeker's Allowance more than a week after their release are not affected by this change to the Regulations. However, if they claim within 13 weeks after their release, they will similarly be referred to the Work Programme from their date of claim, i.e. earlier than most other Jobseeker's Allowance claimants are referred, which is normally after claiming Jobseeker's Allowance for 9 or 12 months depending on their age. Ex-prisoners, who are mandated to the Work Programme, will be subject to the same conditionality regime as all other Work Programme participants. However, during the first week after release the focus will be on re-integration into the community and establishing a secure base (e.g. suitable accommodation), from which later work preparation and job search. During that seven day period the claimants will be treated as available and actively seeking employment.

7.6 Evidence suggests that individuals who are in employment are between a third and a half less likely to re-offend[1]. Therefore, when considered alongside interventions aimed at other crimonogenic factors such as substance misuse, accommodation and behavioural issues, helping offenders into work is clearly a key element in transforming the lives of offenders and breaking the cycle of re-offending for the benefit of wider society.

7.7 Most prison leavers have much greater difficulty in finding and retaining work than unemployed people with no criminal conviction. This can be due to a number of factors including: employer prejudice against people with a criminal conviction; problems with accommodation; high prevalence of health conditions especially mental health; motivation; and low educational and skills achievements.

7.8 These factors contribute to high rates of unemployment amongst prison leavers, which in turn increases social exclusion and can exacerbate other issues, including re-offending levels and long-term benefit dependency. A strong socio-economic case exists to provide additional employment support at the earliest point to individuals who leave prison without employment.

7.9 There is evidence that many prisoners lack motivation to find work[2] . A study of those who left prison found that nearly 70% of those who had said that they would be looking for a job and training on release had done nothing to make this happen[3]. Many organisations report prison leavers frequently not turning up to job interviews or other appointments. This highlights the need for ongoing and flexible individual support if the progress made in prison is to be maintained.

7.10 The Ministry of Justice and the Department for Business, Innovation and Skills, already deliver support in prisons to develop the necessary skills and prepare prisoners for employment on release. This policy change will build on this work preparation by delivering additional employment related support for individuals in the prison leaver group who need it, at the critical point from release back into the community.

Sanctions

7.11 The sanction regime for this instrument will be the same used as for other Jobseeker's Allowance claimants to whom the Employment, Skills and Enterprise Scheme Regulations apply. (The Work Programme is one of the employment schemes covered by those Regulations.).

7.12 Under the Regulations, a sanction will be imposed if a participant fails to participate in the scheme without good cause. Compliance concerns will be raised by Jobcentre Plus or providers, with decisions on failures, good cause and penalties being

[1] Cabinet Office - Social Exclusion Unit 2002 report on Reducing Re-offending

[2] DWP Research Report 509: "High Hopes: supporting ex-prisoners in their lives after prison". "Lack of interest and motivation among prisoners was also found in relation to job searches and referrals to post-release employment support and training". (page 78, High Hopes). Community-based service providers also reported back a lack of interest or motivation among prison leavers to take up offers of support. The issue was raised by Jobcentre Plus advisers in relation to offering prison leavers referrals to voluntary specialist support such as p2w/p2w LinkUp (page 80, High Hopes).

[3] Home Office resettlement survey 2001

made by Jobcentre Plus decision makers.

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

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

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

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

7.16 The sanctions proposed in the Jobseeker's Allowance (Work for Your Benefit Pilot Scheme) Regulations 2010 that would provide for the loss or reduction of benefits if persons selected failed to participate without good cause, were not introduced. No Jobseeker's Allowance claimants were selected for participation in the Scheme. This followed a Written Ministerial Statement laid by Chris Grayling MP, Minister for Employment on 19 November 2010, confirming that the scheme would not go ahead and that support to improve the job chances of long term unemployed people would be looked at as part of the wider reforms to welfare.

- ***Consolidation***

7.17 Informal consolidation of this instrument will be provided in due course in the 'Law Relating to Social Security' (referred to as "The Blue Books") which are regularly updated and are available to the public at no cost via the internet at: http://www.dwp.gov.uk/publications/specia list-guides/law-volumes/the-law-relating-to-social-security/

7.18 Prior to the implementation of these regulations, changes will be made to volume 9 of the Decision Makers Guide (DMG) which is also available free on the DWP internet at: http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/

8. Consultation outcome

8.1 This instrument does not introduce changes to the Work Programme, other than providing immediate access to the Work Programme for a new claimant group (prison leavers).

8.2 Whilst a full (twelve weeks) consultation has not been carried out in

relation to this instrument, the Department for Work and Pensions and the Department for Business, Innovation and Skills previously launched a public consultation on the implementation of skills conditionality in preparation for introducing the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations. These regulations established the Work Programme and were previously considered by the Merits Committee. More information about the consultation is available on the Department for Work and Pensions website at: http://www.dwp.gov.uk/consultations/2010/skills-conditionality.shtml

8.3 Stakeholders have long pushed for early engagement with prison leavers in terms of employment support. The Department for Work and Pensions are currently consulting stakeholders and interested parties over the implementation of this policy. Meetings have taken place with Work Programme providers and will continue to take place with organisations representing offender interests.

8.4 The draft Jobseeker's Allowance (Jobseeking and Work for Your Benefit) (Amendment and Revocation) Regulations 2012 were referred to the Social Security Advisory Committee in October 2011, which after careful consideration decided that a public consultation exercise on the proposals was not required.

9. Guidance

9.1 Information products for the Work Programme, such as leaflets and letters, including accessible formats, have already been developed to ensure that people claiming Jobseeker's Allowance who are required to participate in the Work Programme understand their rights and responsibilities. DWP will update the information products to reflect the requirements of the new claimant group.

9.2 The Department will also ensure that the current Jobcentre Plus prison leaver leaflet is updated with information about the change and also utilise existing communication channels via the National Offenders Management Service and the Scottish Prison Service to ensure that prisoners are aware of this change in advance of the regulations coming into force.

9.3 Guidance will be developed for Jobcentre Plus staff who advise claimants and process claims to Jobseeker's Allowance, including decision makers and Jobcentre Plus Advisers based in prisons (employment and benefit advisers).

9.4 Work Programme guidance has been developed for the third party providers who deliver the Work Programme scheme to ensure they understand what is expected of them and their duty to claimants. This has been distributed to providers and made available on Department for Work and Pensions website. The guidance will be updated to reflect the requirements of the new claimant group.

10. Impact

10.1 This instrument has no impact on business or civil society organisations.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been prepared for this instrument but an equality impact assessment can be accessed and viewed on the Department for Work and Pensions internet site at http://www.dwp.gov.uk/publications/impact-assessments/equality-impact-assessments.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Work and Pensions will commission a comprehensive, independent evaluation of the Work Programme. This evaluation, which is due to start shortly and conclude in 2014, will gather evidence on delivery, performance, impact and value for money. This analysis will include flows off benefit and into employment, as well as the quality of the claimant experience and delivery volumes.

12.2 In addition to measuring the outcome rates and other impacts of the Work Programme for claimants in the Jobseeker's Allowance and Employment Support Allowance customer groups, the evaluation will provide an assessment of programme performance and effects by claimant sub-group. The claimant characteristics to be captured and analysed will include those of ex-offenders.

12.3 This analysis will contribute to measuring the Work Programme's contribution to combating child poverty and improving the labour market position of disadvantaged groups which include offenders.

12.4 There is also an expectation that there will be an evaluation of the initiative to give prison leavers immediate access to the Work Programme on leaving prison. The Department is giving consideration as to how best to take this forward.

13. Contact

13.1 Ismay MacDonald at the Department for Work and Pensions (Tel: 0114 294 8330) or email: Ismay.MacDonald@dwp.gsi.gov.uk, who can answer any queries regarding the instrument.