EXPLANATORY MEMORANDUM TO

THE JOBSEEKER'S ALLOWANCE (SANCTIONS) (AMENDMENT) 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

This instrument makes provision for the introduction of a new three tier sanctions regime for Jobseeker's Allowance (JSA) claimants. It is proposed that this measure will be introduced from October 2012.

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

None.

4. Legislative Context

4.1 Section 46 of the Welfare Reform Act 2012 provides for the reform of the Jobseeker's Allowance sanctions regime by replacing section 19 of the Jobseekers Act 1995 with new section 19, 19A and 19B. This instrument sets out the detail of the revised sanctions regime for jobseekers.

4.2 The reform of the JSA sanctions regime is part of a wider package of measures which seek to broadly align the JSA and Employment and Support Allowance (ESA) sanctions regimes with the model to be introduced under Universal Credit (UC). In the new regime the consequences of failure will be clearer for claimants. The new system will also be more robust, particularly for claimants who repeatedly fail to meet their most important responsibilities. The changes to the ESA sanctions regime are being made through a separate instrument.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister for Employment, the Rt Hon Chris Grayling MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Jobseeker's Allowance (Sanctions)(Amendment) Regulations 2012 are compatible with the Convention rights".

7. Policy Background

What is being done and why?

7.1 Sanctions play an important role in encouraging claimants to comply with requirements to help them move into or prepare for work. DWP research suggests that:

- 40% of claimants say they are more likely to look for work due to a threat of a sanction
- Of those who are sanctioned the vast majority receive just one sanction during their claim and most say they would not repeat the behaviour which led them to being sanctioned[1]

7.2 However, under the existing regime some sanctions are not proportionate to the failure and the consequences of failing to comply with requirements are not always clear, for example if a claimant refuses a job offer he/she may be sanctioned between 1- 26 weeks, as it is not a fixed period claimants will not know in advance what the sanction will be. DWP research[2] into the impact of sanctions on the behaviour of lone parents found that many sanctioned claimants had little knowledge of the duration or amount of their sanction and some were adamant that they had not been sanctioned contrary to Jobcentre Plus records. This kind of confusion is not limited to lone parents[3], there is therefore a need to revise the sanctions model to provide greater clarity about the consequences of non compliance.

7.3 The White Paper *Universal Credit: welfare that work*, November 2012 Universal Credit: welfare that works set out proposals to revise the JSA sanctions regime ahead of the introduction of Universal Credit. UC will be phased in through pathfinder areas from April 2013 and nationwide from October 2013. The revised regime will go some way to aligning with the sanctions model for UC and therefore help pave the way for UC and ease the transition for claimants and staff. The revised regime is intended to make the consequences of non compliance clearer and impose more proportionate sanctions for claimants who repeatedly fail to meet their responsibilities. No changes will be made to the requirements imposed on jobseekers and they will continue to have access to flexibilities which allow requirements to be tailored to suit their circumstances, for example, to allow for caring responsibilities.

Three categories of sanctionable failure

[1] Peters and Joyce (2006) A review of the JSA sanctions regime: summary findings, DWP Research Report 313
[2] DWP Research Report 2008, 'More support, higher expectations; the role of conditionality in improving employment outcomes'
[3] Peters and Joyce (2006) A review of the JSA sanctions regime: summary findings, DWP Research Report 313

7.4 The revised sanctions regime will feature three categories of sanction to be applied in different situations. The first situation is when claimants fail to comply with the most important jobseeking requirements, these are:

- through misconduct loses employment as an employed earner;
- without good reason - voluntarily leaving employment; refuses or fails to apply for, or accept if offered, a situation in any employment which an employment officer has informed him is about to become vacant; neglects to avail himself of a reasonable opportunity of employment; and fails to participate in Mandatory Work Experience

These sanctions will apply to the types of failure that currently receive a variable length sanction of between 1- 26 weeks, with a new addition of failure to comply with Mandatory Work Activity. As the revised sanction will be for fixed periods it will provide greater clarity for claimants on the consequences of not meeting requirements.

7.5 For these failures the sanction periods will usually be the following fixed periods set out below:

- 13 weeks for a first failure;
- 26 weeks for a second failure committed within 52 weeks of the previous failure; and
- 156 weeks (3 years) for a third or subsequent failure committed within 52 weeks of a previous failure that resulted in a 26 week sanction. 3 year sanctions will apply only in the most extreme cases where claimants have serially and deliberately breached their most important requirements, and they have not changed behaviour after receiving previous sanctions.

7.6 There will be exceptions to the fixed periods where a failure occurs before a claimant applies for JSA and relates to losing employment due to misconduct, leaving employment voluntarily or neglecting to avail themselves of a reasonable opportunity of employment. In these cases the sanction period will reflect the length the employment was expected to last if this is shorter than the standard 13, 26 or 156 weeks length. The sanction imposed will be reduced by the period between the failure and the date of claim. In addition if a claimant commits multiple failures within the same two weekly signing period then the sanction will not escalate to the next level, this applies to all 3 sanction situations. This rule will help to ensure claimants do not accumulate lengthy sanctions over a short period.

7.7 The next situation is when a claimant becomes re-entitled to JSA following disentitlement for not being available or actively seeking work. Currently claimants who are disentitled for these reasons can reclaim JSA straightaway and if they meet entitlement conditions then benefit resumes after a small number of waiting days as appropriate. Under the revised regime claimants who re-apply for benefit following disentitlement for not being available for or actively seeking work will be subject to a

7.8 The loss of benefit period will deduct any period for which the claimant was not paid benefit or during which he was not claiming benefit. To provide an example Claimant A is disentitled on the same day as his Fortnightly Jobsearch Review and does not receive the previous 2 weeks benefit he was due. He reapplies for JSA after 1 week. His sanction on reclaim would be 1 week, this takes into account the 2 weeks benefit he was not paid at the point of disentitlement and 1 week spent away from benefit (to take him to the 4 week sanction period)

7.9 There are certain circumstances where claimants are disentitled but it would be inappropriate to apply a sanction if they make a new claim and in these situations the claimant will be exempted from the sanction. The exceptions will include situations where a claimant is disentitled because they exhausted the allowed periods where they can be treated as available for or actively seeking work but they are not ready to return to jobseeking activity, for example, where a claimant is treated as available and actively seeking work during a period of domestic emergency, the allowed period expires but the claimant requires more time to attend to the matter and is disentitled.

7.10 The final situation applies when a claimant fails to comply with a requirement under s.19A that was designed to improve their chances of finding work or preparing for work, this will include the following failures:

- Failing to attend an adviser interview at the Jobcentre;
- Failing to participate in schemes to assist claimants in obtaining employment under section 17A of the Jobseeker's Act (other than Mandatory Work Activity), this includes the Work Programme and Skills Conditionality;
- Refusing or failing to comply with a reasonable opportunity to take part in a training scheme or employment programme;
- Refusing or failing to apply for or accept a place on a scheme or programme; or
- Giving up a place, failing to attend a training scheme or employment programme or losing a place through misconduct

7.11 Currently there is a range of sanctions for these types of failure, including 1 or 2 week sanctions for failing to attend an interview at a Jobcentre, 2 and 4 week sanctions for other failures such as failing to carry out a Jobseeker's Direction and 26 week sanctions for some claimants in the Work Programme which can end sooner if claimants engage with requirements. The sanction for these failures will be set at a period of 4 weeks for a first failure, and 13 weeks for a second or subsequent failure within 52 weeks of the previous failure..

<u>Hardship payments</u>

7.12 Under the current hardship provisions, JSA claimants that are engaged in an Employment, Skills and Enterprise (ESE) scheme under the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 (S.I. 2011/917) are not eligible for hardship payments.

7.13 We propose to remove this restriction on hardship applications so that claimants on ESE schemes are eligible to apply for hardship payments in the same way as other JSA claimants. This is recognition of the fact that under the new provisions they may face a fixed period sanction under s.19A of up to 13.

Effective date of a sanction

7.14 We propose to change the effective date of a sanction, that is, the date from which a sanction is applied to a claimant's benefit. The aim is to make the link between claimants' failure to comply and the subsequent sanction clearer and swifter. Currently there can be a delay of up to two weeks between non compliance and the subsequent sanction which can confuse claimants. We are changing the approach to ensure that a sanction will be applied to the next payment due.

7.15 Under the revised approach a sanction will be applied from the first day of the benefit week in which the failure occurred, unless payment has already been made for that period at the time the decision to sanction is made, in which case the sanction is to be applied from the first day of the benefit week after the one for which the claimant was last paid JSA.

7.16 Whilst we are bringing forward the effective date of the sanction we are maintaining the safeguards of ensuring that claimants receive notification of the decision to sanction before it is applied and have the opportunity to show good reason for non compliance (in which case no sanction will be applied) and a right of appeal against the decision.

Sanction amount

7.17 The amount of the sanction for all three types of sanction will not change under the revised regime, the reductions will be as follows:

- Single claimants and joint claimants where both partners are non compliant - 100% of JSA, that is, all of their applicable amount;

- Joint claim cases where only one claimant is non compliant - if the compliant partner is eligible for contributory JSA they will receive the personal rate allowance for JSA (C) – currently this is up to £67.50. If the compliant member is not eligible for JSA (C) he will be paid the single person rate of Income Based JSA taking into account any income or capital, currently this is up to £67.50. If the couple are determined to be in hardship then they will receive the relevant hardship payment.

Existing features

7.18 Alongside the introduction of a revised sanctions structure important elements of the existing sanctions regime will be carried forward, these include:

- Safeguards such as providing claimants with an opportunity to explain why they have not complied. If they provide a good reason then a sanction will not be imposed. Within the existing system this is currently called providing 'good cause' or 'just cause' whereas in the revised regime it will be referred to as 'good reason' but it will apply in the same way. However, in the revised regime regulations will not set out particular circumstances or situations for the Decision Maker leaving him to take into account all reasons considered relevant when determining good reason;

- Enabling claimants to be able to request further information about the decision to sanction, request a reconsideration and appeal the decision ;

- Carrying forward exceptions where sanctions are not applied, for example a sanction is not applied if a claimant leaves work during a trial period;

- Sanctions will continue to run concurrently;

- The provision whereby once a sanction has begun it continues unbroken until the period comes to an end. This means that if, for example, a claimant finds a job and leaves JSA during the period of a sanction if they reclaim benefit during that period they must serve any balance remaining on the sanction. The exception to this rule will be where a claimant becomes re-entitled to benefit after working for six months or more, in this situation the balance of the sanction would be lifted. This approach is intended to encourage claimants to move into and remain in employment; and

- Where claimants fail to attend an appointment at the Jobcentre and do not make contact within 5 days then they will continue to be disentitled. Where they make contact within 5 days and do not show good reason then a sanction of 4 weeks or 13 weeks (for second or subsequent failures) will be applied

Consequential and related changes

7.19 Consequential amendments will need to be made to a number of provisions, this includes:

- Amending the hardship provisions in the JSA Regulations 1996 to reflect the revised sanctions structure;

- Amending the Social Security and Child Support (Decision and Appeals) Regulations 1999 to enable a right of appeal against a sanction applied to a new award following a disentitlement;
- Amending the Social Security (Credits) Regulations 1975 to reflect and update references to the sanctions regime

7.20 The JSA Regulations are also being amended through a separate instrument which revokes regulation 74A. Regulation 74A had the effect that where a claimant subject to a sanction went onto full time training, they did not feel the effect of the sanction as they were paid their full JSA allowance by way of a training allowance. However, as it is desired that such claimants remain subject to a sanction for the duration of the sanction whilst they are participating in full time training, the regulation is being revoked. Claimants will remain on JSA for the duration of the sanction whilst participating in full time training. Claimants will not lose entitlement to JSA as a result of being a full time student however as they will be paid a nominal amount of training allowance. This will bring regulation 170 into play whereby they are then exempt from meeting the jobseeking conditions. They will also continue to be able to access housing benefit and council tax benefit as they retain entitlement to JSA. .

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Consolidation

7.21 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/specialist-guides/law-volumes/the-law-relating-to-social- security

8. Consultation outcome

8.1 The Green Paper *21st Century Welfare,(* November 2010,Cm 7971) invited views on reform of the conditionality and sanctions regime. Whilst the focus was on proposals for the Universal Credit conditionality and sanctions regime as the revised JSA sanctions regime is broadly aligned to the UC model the views expressed also apply to the reform of the JSA regime. A range of views were expressed on the issue of sanctions including noting conditions for receipt of benefit would be ineffective without some form of sanction to ensure compliance and that the system should be weighted in favour of incentives rather than punishments. A link is provided to the document which summarised the responses.

8.2 The proposals for the revised JSA sanctions regime were set out in the White Paper '*Universal Credit;welfare that works'* November 2012, Cm 7971, page 26 onwards Universal Credit: welfare that works

8.3 The revised sanctions regime was also subject to full and comprehensive debate during the passage of the Welfare Reform Act 2012. A particular concern raised

was to ensure the new system incorporates sufficient safeguards, particularly for vulnerable claimants. Assurance was provided that all relevant facts are taken into account before a sanction decision is made. When decision makers are deciding whether to impose a sanction they must consider any evidence put forward by the claimant as good reason (or as described under the current legislation good or just cause) for that failure. If good reason is shown a sanction is not imposed.

8.4 The introduction of a three year sanction was also challenged (in the context of the Universal Credit regime which the revised JSA sanctions system mirrors). Three year sanctions will only apply in extreme cases where claimants have repeatedly breached their most important requirements and the consequences of continued non compliance will have been clearly explained to the claimants.

8.5 The draft regulations are not subject to statutory referral to the Social Security Advisory Committee (SSAC) as they are being made within six months of commencement of the enabling provisions in the Welfare Reform Act and therefore fall within the exemption for referral. Nonetheless, officials provided SSAC with the draft Statutory Instrument for comment.

9. Guidance and Learning and Development

9.1 A comprehensive suite of products is being developed for operational staff which include guidance, awareness and learning and development products to support both staff and claimants in understanding the revised regime. The type of training that staff will receive will vary across the business. All staff will receive general awareness training on the changes. Staff dealing more directly with sanctions aspects of the benefit will receive specific training. Learning and Development officers will deliver facilitated and online training to all benefit delivery, advisory and decision making staff. Guidance will be updated for all staff and a bespoke operational guidance product is being developed for decision-making staff.

9.2 Existing information leaflets will be updated to explain the revised sanctions system along with a factsheet giving fuller information as required, these will be issued to new claimants when they first make a claim to JSA and to existing claimants at the fortnightly jobsearch review. Claimants will be able to access information via a helpline which will be made available for a limited period following go-live to explain the new sanction regime to claimants.

10. Impact

10.1 This instrument imposes no costs on the private sector or civil society organisations.

10.2 The impact on the public sector is limited.

10.3 A full impact assessment has not been prepared for this instrument since it has no impact on the private sector or civil society organisations.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The new sanctions regime will be monitored and evaluated through:
i) analysis of internal management information (MI);and
ii) the evaluation of the Jobcentre Plus Offer which will include qualitative assessments from staff and claimants of the new sanctions regime and a survey of claimants about their experience of receiving JSA and associated support from Jobcentre Plus.

12.2 The Department will consider undertaking further analysis should these findings suggest further lines of enquiry.

13. Contact

Harsha Parmar at the Department for Work and Pensions (Tel: 020 7449 5923 or email: harsha.parmar@dwp.gsi.gov.uk) can answer any queries regarding this instrument.