

FLEXIBLE NEW DEAL - RE-ENGAGEMENT FOLLOWING A SANCTION

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INTRODUCTION

- 1 This memo gives guidance on The Social Security (Flexible New Deal) (No. 2) Regulations 2009 (S.I. 2009 No. 2710) (SS (FND) (No. 2) Regs). The changes come into force on 2.11.09¹.

1 SS (FND) (No. 2) Regs, reg 1

BACKGROUND

- 2 From 5.10.09 JSA legislation was amended¹ to include "Flexible New Deal" (FND) as an employment programme. This also replicated the approach to sanctions in other mandatory New Deal employment programmes, e.g. NDYP, ND25+. This is a structure of fixed period sanctions²; of 2 weeks for the first offence, 4 weeks for a second offence within 12 months and 26 weeks for subsequent offences within 12 months of previous determination.

1 JSA Regs, reg 75; 2 reg 69

- 3 Currently claimants who participate in employment programmes such as NDYP and ND25+, receive a Training Allowance paid at a rate equivalent to their JSA award. This means that when they re-engage with activity after being sanctioned the training allowance is reinstated¹. However, FND participants will remain on JSA for the majority of the time and will not routinely transfer to a Training Allowance. When claimants re-engage with activity after a sanction has been imposed, JSA cannot

currently be reinstated as the sanction is still in place, except where the claimant is in a vulnerable group and entitled to hardship payments.

1 JSA Regs, reg 74A

CHANGES

- 4 From 2.11.09 and where the condition in paragraph 5 below is met, the prescribed period of a FND sanction where a claimant is subject to a third or subsequent determination within 12 months of a previous sanction will be amended¹. This will be for the longer of
1. 4 weeks **or**
 2. the period, not exceeding 26 weeks, to the end of the benefit week in which the claimant agrees in writing to undertake the activities specified in an action plan².
- 1 reg 69; 2 reg 69(1A) & (1B)*
- 5 Paragraph 4 above will be satisfied where the claimant has
1. agreed (in co-operation with the FND provider) to take part in activities detailed on an action plan **and**
 2. signed a statement to signify their agreement,
- otherwise the sanction period will remain 26 weeks.
- 6 This puts into place the conditions that a claimant must meet for a third or successive FND-related sanction of 26 weeks to come to an end on an earlier date. It ensures that claimants can regain JSA if they agree to participate in the FND programme, however, a minimum of 4 weeks of a 26 week sanction must be served. Guidance in DMG Chapter 34 will be expanded to cover situations when a 26 week FND sanction can end from an earlier date if a claimant re-engages with FND activity.

Example

James fails to attend an appointment with his FND provider on 1.3.10 and the provider raises a sanction doubt. The DM considers if there is good cause for not attending the interview and decides there is not, so a sanction decision is made on 5.3.10 for failing to attend.

As James has already had 2 previous FND sanctions within the last 12 months this sanction is for 26 weeks and runs from the start of his next benefit week which is

11.3.10. While the DM has been considering the referral, the provider has made another appointment for James which he has attended and he has agreed in writing to take part in the activities in his action plan. However even though James has now re-engaged with FND activity he must still serve 4 weeks of the sanction period, 11.3.10 to 7.4.10.

ANNOTATIONS

Please annotate the number of this memo (DMG 38/09) against DMG paragraph 34030.

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in Memo DMG 26/08 - Obtaining legal advice and guidance from DMA Leeds.

DMA Leeds: October 2009