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Jobseeker's Allowance (Mandatory Work Activity Scheme) Regulations 2011

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Motion of Regret

7.54 pm

Moved By **The Countess of Mar**

That this House regrets that it has been given insufficient information to understand the policy objectives of the Jobseeker's Allowance (Mandatory Work Activity Scheme) Regulations 2011 (SI 2011/688), how the scheme will work and whether claimants' prospects of obtaining employment will be improved.

Relevant document: 27th Report from the Merits Committee.

The Countess of Mar: My Lords, in moving this Motion I may cover some of the ground to be covered by the noble Lord, Lord Knight of Weymouth, in his Motions. The 27th report of the Merits of Statutory Instruments Committee draws our attention to the fact that:

"Although there is a considerable amount of paper attached to this instrument the information it contains is ... vague".

The committee makes it plain that it has asked for clarification on the regulations from the Department for Work and Pensions and that very little has been forthcoming. The committee points to several inconsistencies between the Explanatory Memorandum and the departmental memorandum to the Social Security Advisory Committee. Like the SSAC before it, the Merits Committee is particularly concerned because,

"the sanction on the individual claimant for failing in any element",
of the scheme,

"is the loss of 3 months' benefit".
It also points to how:

"The degree of flexibility and discretion built into the arrangements causes the Committee to question how it can be delivered with any degree of consistency".

Noble Lords have always been assured by Ministers that primary legislation lays down the framework and that the detail would be provided in secondary legislation. In this statutory instrument, we have little detail. We are told that the Department for Work and Pensions does not intend to provide detailed guidance on the criteria within the regulations, as it believes the best way to select participants is via adviser discretion. It admits that it has limited evidence for the effectiveness of the four-week placement in mandatory work activity and that that activity is a new scheme. In other words, it is making the rules on the hoof-rules for which there will be no scrutiny and no appeal for the claimants.

I have the greatest sympathy with anyone not versed in legislation who may need to refer to it for a particular purpose. I feel that I almost fell at the first post when I tried to find Section 17A(10) of the Act for the meaning of "jobseeking conditions", as referred to in the last footnote on page 3 of the statutory instrument. I have a copy of the Jobseekers Act 1995 with a Section 17 but no Section 17A, let alone Section 17A(10). There is no indication of when or under which legislation Section 17A(10) was inserted. I would have thought that I would find Section 17A on the internet, but no

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such luck. With the help of the wonderful staff in the Printed Paper Office, I was led to Section 1 of the Welfare Reform Act 2009-but still no luck. I found that "jobseeking conditions" means conditions set out in Section 1(2)(a) to (c) of the Jobseekers Act 1995. Why on earth could the footnote not have read just that? I can imagine that a member of the public would be enraged at having to spend an unnecessary £18 for a copy of the Welfare Reform Act in addition to the £7.70 for the Jobseekers Act simply to find the definition that is pivotal to the statutory instrument.

Regulations 4 and 5 are clear in so far as they go. Noble Lords will be aware that I am concerned with a number of charities that represent people with CFS/ME, but may not know that this week is ME Awareness Week. The Department for Work and Pensions seems to be singularly unaware of and indeed determined to ignore the disabling symptoms of this fluctuating condition. It seems odd to me that the World Health Organisation and the Department of Health recognise it as a neurological condition, while the former Chief Medical Officer, Professor Sir Liam Donaldson, told the BBC online on 11 January 2002 that CFS/ME should be classified alongside multiple sclerosis and motor neurone disease. The National Institute for Health and Clinical Excellence recognises it to be as disabling as multiple sclerosis, rheumatoid arthritis, congestive heart failure and other chronic conditions.

I note from a Written Answer that the Department for Work and Pensions refers to chronic fatigue syndrome when my Questions relate to chronic fatigue syndrome/ME. The two are entirely different conditions, defined by different sections of the International Classification of Diseases in ICD-10. It is high time that the department recognised this, for its failure to do so by applying unjustifiably harsh sanctions which seek to force people with CFS/ME back to work before they are ready could be counterproductive, resulting in a deterioration of their health or delaying their recovery.

I have recently been sent correspondence from a person helping claimants with CFS/ME who are being transferred from incapacity benefit to employment and support allowance. She explains that the claimants are first sent a letter, as outlined in Regulation 4 of the statutory instrument, and states:

"This tells them briefly about the start of the process and that they'll be contacted by 'phone".

The time period appears to be about two weeks. She says:

"When the claimants get the 'phone call they are read a statement outlining the process. This appears to be read from a script. The claimants are also given the opportunity to ask questions. I'm aware of several claimants who say the statement is lengthy and due to their cognitive problems, they have been unable to remember the content of it. One claimant asked for a written copy of the statement to be sent to her but was told this wasn't possible as 'they were doing it this way' i.e. verbally".

She says:

"I feel this highlights the inadequacy of the DWP in catering for those with conditions that involve cognitive problems and further underlines just how these problems are being ignored and poorly understood by this Government department".

She goes on to say that her contacts are from Kent and the Midlands,

"so they cannot say they are dealing with the process differently-my contacts were both read the same statement over the phone".

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Regulation 4 deals only with what must be done in writing. There is no mention of any verbal statement given over the telephone. There is no indication of the procedure for dealing with a person who cannot understand or take in what has been read to them and my example would seem to indicate that, far from being a flexible and tailor-made service, the process is designed to catch the innocent and the unwary. Action for ME has commented for some time that the DWP does not properly understand the impact of ME on the individual's capacity to work. In its response to the call for evidence for the independent review of the work capability assessment, it reported that there is unfounded scepticism towards the diagnosis of ME, set within a broader cultural perception within the benefits system that applicants are fraudsters until proven otherwise and that the system lacks recognition of barriers to work which are not patently visible, including cognitive problems and fatigue, particularly when the applicant "looks well". There is insufficient understanding of and training in up-to-date data on ME by assessors and decision-makers, including medical staff, and unrealistic expectations on claimants with ME to find and sustain work over time.

Another correspondent, Mr Keith Anderson, who is a CFS/ME nurse in Fife, wrote:

"My anger is growing because I can see no reason why this group of patients is being singled out other than deliberate removal from benefits because the DWP staff do not believe the condition exists, or they recognise many will not appeal due to the stress and illness it will cause them".

I had another letter today, which I will send to the Minister, on precisely that fact. The nurse continues:

"Patients are suffering greater symptom impact, relapse in their condition management, exacerbation of any mental issues and, of course, a huge increase in the workload for me".

He maintains that the oath "First, do no harm" is not being adhered to by DWP doctors.

I understand that claimants will be given placements that last up to four weeks and will be expected to work for up to 30 hours a week. We are not told the type of work they are to be given. There is no indication as to what will happen to a person with a fluctuating condition who has been found by Atos doctors to be fit for some work, but who finds they cannot sustain the work allocated for the number of hours expected, except that they will fail to meet the jobseeking conditions and suffer sanctions. After all,

is it not the case that those with CFS/ME need to change their attitude and behaviour- nothing a little cognitive behaviour therapy won't cure?

I find it extraordinary that so much is left to the discretion of DWP personal advisers and private providers. I wonder whether the Minister saw an article in the *Guardian* of 1 April 2011-not a joke, I understand. It details how, in order to meet targets, vulnerable jobseekers are being tricked into breaching the rules so that benefits can be held back. A Jobcentre Plus adviser is quoted as saying:

"Suddenly you're not helping somebody into sustainable employment, which is what you're employed to do. You're looking for ways to trick customers into 'not looking for work'".

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We know that we must not believe everything we read in the papers, but if there is so much as a grain of truth in the contents of this article, it is extremely worrying. I would be grateful if the Minister will categorically assure the House that there are no targets applicable to the DWP, Jobcentre Plus or private providers.

The Social Security Advisory Committee and the Merits Committee are highly critical of the sanctions system. They appear sceptical that sanctions will achieve the results they are designed to achieve. The Merits Committee points out that the department's own research indicates that,

"there is little evidence that workfare increased the likelihood of finding work", unless conditions are as close to work as possible. The DWP admits that it has not even asked bidders to specify the placements that they propose to find. The reasoning behind this is that contractors will be allowed as much flexibility as possible to consider what will best support customers. If I place a contract with an individual or a company, I expect to know in detail exactly what they propose to do. I expect my Government to do the same for me and my fellow citizens.

The Merits Committee tells the House that these regulations bear similarities to the Work for your Benefit regulations considered last year but not implemented, and which are revoked by the current regulations. It explains that:

"One of the key concerns at the time was that the providers should not exploit participants as a source of cheap labour and that participants should gain relevant skills from the experience. These concerns remain for the replacement scheme set out in the current regulations. The Work for your Benefit Scheme differed in that it was based on a randomised selection process and was a small pilot scheme with a clear evaluation plan aimed at examining whether mandatory work activity had demonstrable benefits".

It went on to say, tellingly:

"That evidence was not obtained, but the mandatory work activity scheme is being introduced nationally from the start of May 2011".

I readily acknowledge that there are a small proportion of benefits claimants who are work-shy and lack the disciplines required to obtain and sustain viable employment. I contend that sanctions are probably unnecessary for people with CFS/ME. A survey by

Action for ME in 2008 found that people with ME want to work, and that when people with ME do not work it is because they are physically and mentally unable to sustain paid employment. Action for ME would prefer to see a system based on incentives and support, rather than sanctions. I recognise that there are also others in the population with mental and physical health problems that may not be immediately obvious and who are, in fact, very vulnerable. How does Her Majesty's Government propose to ensure that their policies will not do irreparable damage to minds and bodies?

I would like to see these regulations taken away and returned to us as a complete picture, rather than a sketch, but of course that depends upon the flexibility of the Minister. I regret that he has ignored the advice of the SSAC and the Merits Committee. I beg to move.

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terms of the department's inability to persuade people that we have enough information to take sensible decisions about these regulations this evening.

Benchmarking was mentioned by the noble Baroness, Lady Lister of Burtersett. The guidance should be public. Although it may be technical, I understand that it will be searchable under freedom of information, and if it is, I do not know why it has not been made public. It will be kept within the department unless people ask for it. Benchmarking and targets become interchangeable, and staff in Jobcentre Plus offices will start making sure that they achieve the targets. I do not think they have been worked out. I am not convinced that we have had enough discussion about when a benchmark is a target and when it is not. There are all sorts of problems in some of these things.

Finally, coming from a rural area of south-east Scotland, I am really concerned about how transport costs and childcare costs are dealt with in rural areas. My honest opinion is that the £8 million would have been better spent on training schemes, but if we are going to do this, we are entitled to seek more detail. I think that as things stand, these schemes are of doubtful value. The sanctions are very severe, and I will need some persuasion by the Minister not to support the Motion moved by the noble Countess, Lady Mar, if she presses it to a Division this evening.

The Parliamentary Under-Secretary of State, Department for Work and

Pensions (Lord Freud): My Lords, thank you for giving me the opportunity to clarify the objectives of the mandatory work activity scheme and to explain further how the scheme will operate.

Before I go into that, I want to say that the department takes the concerns raised by this House very seriously. The concerns raised here and by the Merits Committee tell the ministerial team in the department that something has gone wrong. I am aware that this is not the first time in this Session that the department's instruments have been called to the attention of this House, and we find that very serious. The full ministerial team is in agreement that providing the Merits Committee and the House with all the necessary information is of central importance, and we all regret—I particularly regret—any occasion when the Committee felt it received inadequate information. We are working hard to improve on this. We have arranged for senior officials to meet with the committee's advisers this week in order to take a serious look at how we are falling down, and they will work with the committee team to ensure that the House is in future supplied with all

necessary information. I can assure noble Lords that I am going to make sure that there is a process in the department that makes sure that the right information goes to the committee. This will not continue in this way.

Let me now offer some assurances about this particular instrument. The mandatory work activity scheme represents a new approach. I understand why some noble Lords feel that we should have conducted a pilot before introducing the scheme nationwide. Such an approach may have been the norm in the past, but there has been a change of philosophy in this area. The problem with small, limited pilots is that in the mean time they leave you with a moribund system.

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Central to the new philosophy of the department is that it is best to provide the freedom to allow initiatives to flourish into success. That is what the structure of the work programme is designed to do. It provides our own staff with the freedom to innovate. Advisers are given greater flexibility to make decisions on what help an individual needs in order to find work. It is one of a range of available support options that can be considered.

The budget is set by a central contracting process, but it will up to Jobcentre Plus to decide whether to use it and in what numbers. It will depend on whether there are claimants in a particular Jobcentre Plus area whose characteristics suggest that they would benefit from this intervention. Contracted providers will not be paid for places we do not use, so there is no incentive to use places that customers do not need. My noble friend Lord Kirkwood's maths on his calculator is more or less spot on. We have the money for up to 19,000 places costing £8 million, which on the calculation of my team in the Box comes to £421. That is close enough to my noble friend's answer of £423. How he got that discrepancy suggests that it is obviously a Hewlett Packard calculator.

It is important to recognise that we are not undertaking this work without assessing its place in the wider picture. We intend to learn from how mandatory work activity is used and what impact it has on the customers who are referred to it. I shall come back to precisely how we plan to report to the House on that.

I should also like to take this opportunity to address some of the other concerns that have been raised in the debate. It is vital to recognise that this support was asked for specifically by Jobcentre Plus personal advisers themselves. After all, they are the people best placed to understand what help those struggling to find work really need. During the summer, ministerial colleagues went out, listened and gathered opinions from Jobcentre Plus advisers. The consistent message was that they wanted a tool like this to engage a particular group of people. So the introduction of the mandatory work activity programme has been driven by the grass roots. The programme is aimed at a particular, rather small group of people who have become disengaged and stuck in a rut in their search for work. By getting them involved in mandatory work activity within their local communities, the aim is to give them the confidence they need to approach finding employment proactively as well as the basic disciplines that any employer would expect.

The noble Lord, Lord Rix, was particularly concerned about people with learning disabilities. We aim to replicate all the existing protections in referring people. JCP advisers are not looking for customers in this group. Equally, I shall pick up the concerns of the noble Countess, Lady Mar. Customers in poor health are absolutely not the target group for this scheme, which is aimed at those whose key barriers to work are the disciplines of employment. We know that every customer's circumstances are different. As much as possible, we are giving discretion to Jobcentre Plus advisers on when to refer customers to mandatory work activity.

Although we are not being prescriptive, we are providing guidance to JCP so that it can provide a framework and achieve continuity of approach across

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the country. The guidance will indicate the type of characteristics that we expect claimants who benefit from this provision to display. As a department, we are choosing to trust those who have day-to-day experience of working with jobseekers. They are, after all, the people who are asking for greater freedom in how to help customers.

The noble Lord, Lord Rix, was concerned about the complaints procedure. A clear, independent complaints procedure exists through the independent case examiner. If providers are at fault, a hefty fine will be attached. The noble Countess, Lady Mar, expressed concern about trickery and quoted from an article in the *Guardian*. I can assure her that there are no targets in place to deliver sanctions, either in JCP or among providers. The noble Lord, Lord Knight, was concerned about costs. We have taken on board the recommendation of the SSAC that we pay childcare costs. Lack of suitable childcare is good cause for failing to attend. Therefore, there would be no sanction. We also pay transport costs under the programme. More detailed guidance will be available to JCP advisers. The guidance will be internal for them, so it would not make much sense to publish it.

We have now completed the procurement process and are able to discuss the suggestions of those who participate in the scheme. That may be helpful in clarifying how mandatory work activity will help customers as they look for employment. The noble Lord, Lord Knight, and the noble Baroness, Lady Lister, said that research shows that workfare is not effective. We must make it clear that this is not workfare; it is a short, supportive and personalised programme. That is why flexibility is built into it. The noble Baroness said that that can be looked at in two ways, but the intention here, given the brevity of the programme, is to be supportive.

We have not asked contracted providers to give us details of every placement, but, as an example, several organisations have suggested that they will place people with charities that renovate old furniture to be used in social housing or by low-income families. The noble Baroness, Lady Thomas of Winchester, spoke of benefiting the community. Examples of placements include improving local green spaces, improving community cohesion by working with excluded groups, maintaining cultural spaces and helping the development of social enterprises. Our aim is not only to provide visible benefit for local communities but also to give people the chance to develop skills that they can take forward when looking for work in the future. Most importantly, they will be expected to turn up for work every day for four weeks. They will be expected to work with their colleagues and to complete tasks that they have been set in a timely way.

In response to the concerns of the noble Baroness, Lady Lister, about placement monitoring, we will monitor placements through direct relationships with providers. It is clear in the contracts that placements must not replace current or future employees. We are seeking in this programme to instil essential work disciplines. Research with employers has consistently shown that they value such characteristics highly. A short experience of the workplace can help that development.

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My noble friends Lady Thomas and Lord Kirkwood were concerned that there was no indication about how we would operate good cause. We will explicitly include good cause in the guidance in a similar way to that in other regulations. The noble Lord, Lord Knight, was concerned about there being no appeal for mandation. The decision to refer is an administrative decision subject to judicial review if it is unreasonable.

I thank noble Lords for allowing me this opportunity to try to explain these regulations more than we seem to have done to the Merits Committee. I hope that I provided some enlightenment. I recognise that some noble Lords hold deep concerns and I respect and acknowledge those. But in response to those concerns, I assure noble Lords that as well as monitoring the management information generated by the scheme from day one, we will be conducting an impact assessment in November 2012 to assess how mandatory work activity has changed outcomes for individuals.

On top of that, we have set aside £150,000 to conduct external independent research in February 2012 to learn about the experience that customers have while on the scheme, and the difference that it makes to the approach that customers take on their job searches. That will report in summer 2012. Any decisions about the future of the scheme will be based on the outcome of those reports. In order to ensure that the House has the opportunity for further scrutiny of any future changes, I commit that these reports will be laid before the House and noble Lords will be alerted that that has occurred allowing for further debate at that time. I hope that those offers are satisfactory and I urge noble Lords not to press their Motions.

The Countess of Mar: My Lords, I am grateful to the noble Lord, Lord Freud, for going to so much trouble, and I have no doubt about his sincerity. I doubt that any noble Lord in this House is completely against these regulations. We agree that some people need to be offered the discipline of work. But we are not happy about the sanctions and the noble Lord has made no effort to justify these draconian sanctions—they are very severe.

I am very grateful to all noble Lords who have taken part. I will not go through their speeches individually because I know that everybody is hungry and will want to go to dinner. I am not satisfied despite the Minister's efforts that he has filled in all the gaps. We have a statutory instrument before us that is not clear and I wish to test the feeling of the House.

9.04 pm

Division on Countess of Mar's Motion

Contents 122; Not-Contents 155.

Countess of Mar's Motion disagreed.