Sanction-free Scotland:

The case for voluntary employability programmes

A report for the Green MSPs

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Introduction

Responsibility over some aspects of the benefits system and also the programmes that provide support to benefit recipients seeking work will be devolved to Scotland in April 2017. This is part of a broader devolution package recommended by the Smith Commission and made law in the form of the Scotland Act (2016) in March this year.

From then, the Scottish Parliament will replace the UK government's Work Programme and Work Choice schemes. Currently, benefit recipients can be referred to the Work Programme on a mandatory basis, and sanctions applied to recipients' benefits if they refuse to take part, or are deemed not to be sufficiently engaging with the support offered.

There is a wealth of evidence to suggest that benefit sanctions have increased hardship; fuelled the need for foodbanks; worsened sanctioned claimants' health, and all this whilst having limited positive impact on helping claimants return to work.

Whilst the sanctions regime will remain a reserved matter, this report makes the argument that devolution of responsibility for employment programmes means that the Scottish Parliament can significantly reduce the level of sanctioning in Scotland and ensure that no employment programme run by the Scottish Government is associated with sanctions.

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Published: August 2016

Employment Programmes and Sanctions in Scotland

Several different UK programmes provide employment support to Scots who receive non-employment benefits. The Work Programme and Work Choice are the two largest programmes, the former being aimed at all non-employed benefit recipients, and the latter helping disabled jobseekers only. The Work Programme is mandatory for all Jobseeker's Allowance (JSA) and some Universal Credit recipients, whilst Employment and Support Allowance (ESA) recipients classed as capable of 'Work Related Activity' are also expected to participate as a condition of receiving their benefit. Work Choice is a voluntary programme.

JSA and Universal Credit recipients can also be mandated to a range of other schemes which run outside the Work Programme and Work Choice. These include Help to Work; Skills Conditionality and, until February 2016, Mandatory Work Activity.

In all, there have been over 200,000 mandatory referrals to UK employment programmes since 2011.

Table 1. Scottish mandatory referrals to employment programmes, June 2011 – latest data

Scheme	Mandatory participants (% of total referrals)
Work Programme[1]	159,924 (90%)
Mandatory Work Activity[2]	28,030 (100%)
Skills Conditionality[3]	12,620 (100%)[4]
Help to Work[5]	24,200 (100%)

Sanctions applied through these programmes numbered around 79,000 in the same period, accounting for around 22% of all sanctions applied in Scotland (See Table 2). This averages around 13,000 sanctions a year.

Table 2. Sanctions made in connection to employment programmes, Scottish JSA and ESA recipients, January 2010 – December 2015[6]

Year	Total number of sanctions	% of total sanctions
2010	8537	15%
2011	7596	14%
2012	15559	21%
2013	25744	30%
2014	13741	24%
2015	7921	29%

[1] DWP Stat-Xplore, Work Programme Referrals dataset. Data for June 2011 – December 2015.
[2] DWP (2016). Data tables: Mandatory Programmes official statistics: May 2011 to February 2016. Sheet 2.1
[3] ibid. Sheet 4.1. Data for May 2011 – February 2016.
[4] Skills Conditionality is mandatory but sanctions are not enforced in Scotland.
[5] DWP (2016). Tables: Quarterly Help to Work statistics to March 2016. Sheet 2. Data for April 2014 – March 2015
[6] DWP Stat-Xplore, JSA and ESA individual sanctions datasets. Data for January 2010 – December 2015.

The case against sanctions for employment programme participants

Does compulsory participation in employment programmes increase employment?

The past two decades have seen some level of mandatory participation become a more common feature of employment programmes, which also have been extended to a greater proportion of the working-age benefit recipient population. Most programmes in the 1990s and 2000s required at least some participation in Work-Focused Interviews, with this later being extended to ongoing participation over a matter of months or years, and also to some groups that had previously had little or no requirement to take-up offers of support, in particular non-employed sick and disabled people.

Despite this, the evidence that mandatory schemes have a positive impact on helping people into employment is limited. Whilst there is relatively extensive evidence to suggest that compulsory participation has a 'deterrent' or 'threat' effect whereby recipients will find work or otherwise cease their benefit claim in order to avoid conditionality, there is much less evidence to suggest that positive impacts on getting participants into work are sustained.

Summarising a wide range of studies, Eichorst, Werner and Konle-Seidl argue:

> *Some studies point at the fact that activating interventions based on the threat potential and demanding principle may help move benefit recipients to low-skill, low-pay and instable jobs so that they run the risk of continued partial reliance or repeated return to benefits*[7].

The UK's Mandatory Work Activity (MWA) clearly reflects this tendency. A National Institute for Economic and Social Research review of a DWP evaluation of MWA found that:

> *Among those who did actually start the progamme, there was essentially no impact. And while there was a substantial impact on those who didn't start - as you would expect, given that the programme was compulsory and they could be sanctioned for non-attendance - this was transitory. Overall, the maximum impact was a 5 percentage point reduction in benefit receipt, and only 13 weeks after starting the programme the impact had disappeared completely. On average, someone referred to MWA spent just 4 days less on benefit as a result*[8].

On the contrary, MWA appears to have moved some claimants *further away* from work, increasing the likelihood that participants would claim benefits for sick and disabled people. The same review found that;

> *13 weeks after referral, those referred were 3 percentage points more likely to be on ESA. Not to put too fine a point on it, this is a complete policy disaster. ESA claimants are both more expensive and more difficult to get off benefit than JSA claimants. Indeed, the main thrust of welfare-to-work policy under both this government and the previous one has been to*

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[7] Eichhorst, Werner, Otto Kaufmann, and Regina Konle-Seidl, eds. 2008. *Bringing the jobless into work?: experiences with activation schemes in Europe and the US*. Springer Science & Business Media.

[8] Portes (2012). DWP analysis shows mandatory work activity is largely ineffective. Government is therefore extending it. NIESR: http://www.niesr.ac.uk/blog/dwp-analysis-shows-mandatory-work-activity-largely-ineffective-government-therefore-extending#.V6Hx8xUrK70

try to move ESA claimants closer to the labour market. MWA appears to achieve precisely the opposite[9].

Given that participants will not in most cases start Scottish employment programmes until a year or more of employment, it is worth highlighting that the limited positive impacts noted earlier in this section tend to be concentrated in the earlier stages of benefit conditionality being applied. At the point of entrance to Scottish programmes, however, benefit recipients will already have been under the threat of sanctions for some considerable length of time. Mandating participation in Scottish programmes is therefore unlikely to lead to one of the few positive outcomes for which there is strong evidence.

Aside from the deterrent effect, there is little evidence the compulsory participation in employment programmes leads to positive change in the behaviour of participants. This has been the finding[10] of the recent *Welfare Conditionality: Sanctions, Support and Behaviour Change* project, which conducted 500 interviews with benefit recipients and stakeholders in both England and Scotland. This replicates similar findings in earlier studies[11].

Another issue to consider when assessing the justifiability of sanctions is the likelihood that compulsory participation will help the participant into work. Van Aerschot's[12] proportionality principle suggests that compulsory participation in employment programmes is only justifiable when there is a reasonable chance of it having the desired effect. Around 2/3 of participants leave the Work Programme not having gained and stayed in a job for at least 3 or 6 months[13], and this figure is considerably lower for participants with health conditions or disabilities[14]. As reported above, the likelihood of success is even lower for other schemes.

If the purpose of sanctions is to help benefit recipients into work by enforcing participation in employment programmes and if recipients go through such programmes at risk of a sanction – with around 10% likely to be sanctioned – and those programmes are unlikely, in some cases very unlikely, to help them, then the whole basis of the sanctions regime is brought into very serious and fundamental question.

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[9] ibid

[10] Welfare Conditionality (2016). First Wave Findings: Overview http://www.welfareconditionality.ac.uk/wp-content/uploads/2016/05/WelCond-findings-Overview-May16.pdf

[11] Griggs and Evans (2010). A Review of Benefit Sanctions. CPAG. https://www.jrf.org.uk/file/40752/download?token=0ZlhZ_yT

[12] Van Aerschot, P. (2016). *Activation policies and the protection of individual rights: A critical assessment of the situation in Denmark, Finland and Sweden*. Routledge.

[13] DWP (2016). Quarterly Work Programme Statistics to March 2016. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537180/work-programme-statistics-to-mar-2016.pdf

[14] ibid

Other impacts of compulsory employment programme participation and sanctions

In addition to limited positive effects, negative impacts on debt and health and wellbeing of participation in work-related activity enforced by sanctions have been widely observed:

- **Health**: Hale's[15] survey of 500 ESA claimants being supported on the Work Programme found that 61% said participation had worsened their health condition. Participants with mental health conditions were the most likely to report a negative impact on their health.
- **Hunger**: A joint report from the Trussell Trust, the Church of England, and the charities Oxfam and Child Poverty Action Group found that as many as 30% of foodbank users had had their benefit sanctioned[16]. A statistical study by Loopstra et al found that each 1% increase in the rate of benefit sanctions was associated with a significant increase of 0.09% in the prevalence of food parcel distribution[17].
- **Debt and hardship:** Sanctioned participants in research by Peters and Joyce[18] reported hardship, which made it difficult for them to meet household expenses, such as housing costs and utility bills.

Also concerning is that disadvantaged groups with the most barriers to employment and employment programme participation are also the most likely to be sanctioned, a finding of Griggs and Evans' review of academic studies of sanctions:

> *A large body of research exploring the characteristics of sanctioned claimants has demonstrated that those most vulnerable to sanctions are the most disadvantaged. Strong links have been identified among barriers to employment and opportunity – lack of education and work experience, disability and practical constraints, such as lack of transport. Exploration of demographic differences has also shown that young claimants, those with large families and those belonging to black and minority ethnic groups are at increased risk of sanctions[19].*

[15] Hale (2014). ESA and the fate of the Work-Related Activity Group. Centre for Welfare Reform. https://www.mind.org.uk/media/933438/2014-support-not-sanctions-report.pdf

[16] Perry et al (2014). Emergency Use Only: Understanding and reducing the use of food banks in the UK. Oxfam. http://policy-practice.oxfam.org.uk/publications/emergency-use-only-understanding-and-reducing-the-use-of-food-banks-in-the-uk-335731

[17] Loopstra, R., Reeves, A., Taylor-Robinson, D., Barr, B., McKee, M., & Stuckler, D. (2015). Austerity, sanctions, and the rise of food banks in the UK. *BMJ*, *350*, h1775.

[18] Peters, M. and L. Joyce (2006) A review of the JSA sanctions regime: summary research findings. Department for Work and Pensions Research Report No. 313. Leeds, DWP

[19] Griggs and Evans (2010).

A vision for sanction-free employment programmes in Scotland

There is a strong evidence base to suggest that mandating benefit recipients to employment programmes under threat of sanction does not achieve positive, long-term outcomes in terms of helping non-employed people into sustained employment. On the contrary, there is some evidence to suggest that it may have the opposite effect in certain cases, and also negative effects on a range of factors that have an important influence on returns to work, health and wellbeing, for example. Further, mandatory participation appears to be particularly ineffectual for benefit recipients with multiple and complex barriers to work, and it is these recipients who will make up the bulk of referrals to Scottish employment programmes.

Therefore, this report recommends that when Scottish employment programmes start to operate in April 2017, these should be voluntary as far as possible. Whilst the Scotland Act (2016) does not devolve the sanctions system, the operation of that system relies heavily on employment programme providers reporting sanctionable behaviour to the DWP so that they can apply sanctions. The Scottish Government could therefore oblige Scottish programme providers not to share such information with the DWP. This would insulate tens of thousands of non-employed Scots from sanctions every year. With the average benefit sanction for JSA recipients being around £530[20] and an average of 13,000 Scottish benefit recipients being sanctioned as part of employment programmes every year, such a move could put approximately £7m[21] back in the hands of poor Scots.

There is a clear precedent for this kind of arrangement in the history of devolved employment programmes. The Scottish and Welsh governments have refused to co-operate with the sanctions regime operating on the UK government's Skills Conditionality and Sector Based Work Academies programmes[22] [23]. Both governments instructed providers of devolved skills programmes not to report non-attendance to the DWP[24].

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[20] Tinson (2015). The Rise of Sanctioning in Great Britain. http://npi.org.uk/files/1314/3444/4908/Sanction_report_1606.pdf

[21] This estimate does not include ESA claimants, for whom an average sanction value is not available. £7m would therefore be a slight underestimate.

[22] Skills Development Scotland (2016). Employability Fund Frequently asked questions 2015/16: https://www.skillsdevelopmentscotland.co.uk/media/1146/employability-fund-faq-15-16-14-december-2015.pdf : "The Training Allowance is linked to benefit rules and Scottish Government has agreed the policy with DWP. Scottish Government policy is clear that they will not support any action that may result in sanctions on the individual" (p10).

[23] Scottish government advice to SPICe in August 2016 is that "should the customer not attend or complete the EF [Employability Fund] funded provision, SDS [Skills Development Scotland] and their contracted providers do not provide information to support any conditionality action by DWP. For administrative purposes, they will be advised the customer is no longer an EF participant, but no further information is provided."

[24] Learning and Work Institute (2016). Scotland's Future Employment Services. http://www.learningandwork.org.uk/sites/niace_en/files/resources/Scotlands%20future%20employment%20services%20final%20report.pdf