The Committee will meet at 9.30 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private**: The Committee will decide whether to take items 3 and 4 in private.

2. **Employability and sanctions**: The Committee will take evidence from—

   Jamie Hepburn, Minister for Employability and Training, Michael McElhinney, Employability Programme Lead, and Julie Bilotti, Policy Manager, Employability Policy Team, Scottish Government.

3. **Employability and sanctions**: The Committee will review the evidence heard earlier in the meeting.

4. **Universal Credit roll-out**: The Committee will consider a draft letter to the Secretary of State.
The papers for this meeting are as follows—

**Agenda Item 2**

Written correspondence  SC/S5/17/2/1  
SPiCe Briefing on employability and sanctions  SC/S5/17/2/2

**Agenda Item 4**

PRIVATE PAPER  SC/S5/17/2/3 (P)
Social Security Committee

2nd Meeting, 2017 (Session 5), Thursday 2 February 2017

Employability programmes and sanctions

Today's Business

1. The Committee will undertake its second evidence session as part of its mini inquiry into employability programmes and sanctions. Last week the Committee heard from representatives of users of employability programmes and providers. Today, the Minister for Employability and Training will be giving evidence.

2. Correspondence received from the Minister in advance of his appearance is attached in Annexe A.
15th January 2017

In advance of my attendance at Committee on Thursday 2 February, I am writing as you requested to update Members on the progress we are making towards implementing devolved employment services from April of this year.

The Scottish Government are on track to deliver not only the transitional services from April this year but also the full devolved employment programme from April 2018 and I believe that in the coming years, we can make a real difference to the lives of those participating in our services.

Transition

Contracts have now been awarded for both Work First Scotland and Work Able Scotland services. In Work First Scotland, a 1 year contract will deliver employment support and advice for up to 3,300 disabled people. The procurement process has been completed and it was announced on 23rd November 2016 that the contracts would be awarded to Shaw Trust, Momentum Skills and Remploy Ltd.

In Work Able Scotland, Skills Development Scotland will deliver a 1 year transitional employability service for up to 1,500 clients with a disability or health condition and who are at risk of long term unemployment, and want to enter work. This service will provide a combination of advice, support and coaching. It was announced on 30 December 2016 that the contracts would be awarded to The Wise Group, Remploy Ltd and Progress Scotland.
Full service from April 2018

We are scheduled to publish the Invitation to Tender for the 2018 services in March 2017. I believe that the service will provide personalised support based on the level of help each individual needs, rather than the benefit they receive. We will put in place a funding model with a mix of service fee and outcome payments, which will help ensure those who need extra support receive it. There will be three levels of support – Core, Advanced and Intensive. Most participants will receive up to 12 months pre-work support, with the same period of in-work support to help them sustain employment. For those who need additional time and help, the pre-work support element can be extended to 18 months.

As a result of the commitment by Scottish ministers to provide £20m additional funding in each year of the programme, we will be able to provide many more places in Scotland than would otherwise have been the case, given the level of cuts made by the UK Government to programme funding. Achieving value for money is key on employment support. However, we saw on DWP’s Work Programme that a ‘race to the bottom’ on costs resulted in services for some being underfunded, to the extent that customers did not receive the support they needed. Value for money for me will represent a balance between the quality of the service, realistic investment in those participating on programme and achievement of sustained employment outcomes.

In addition, I have decided that rather than having one contract package area to cover the whole of Scotland which we saw in the DWP Work Programme, there will be a number of geographically split contracts. In doing this, I hope we can encourage a wide range of providers to bid for services and can access the skills required to deliver effective provision for all of the people who will use the new services. I believe these contract areas can provide the foundation for developing locally responsive services and greater alignment and integration between employability and other areas such as health care and skills provision.

Benefit conditionality

Our decision to run the service on an entirely voluntary basis is, I believe, the right one. You are aware of the serious concerns I had that many of those participating on our programmes might have been doing so out of fear of losing their benefits. I don’t think this is the best way to motivate and support people into sustained work and I am sure that those who participate would agree. People we have talked to have described the lack of control they feel in the current welfare system and I want to ensure that while they are receiving support from the Scottish Government at least, that sense of control is returned to them. I was pleased to receive confirmation today from Damian Hinds MP, Minister for Employment, that they will respect the wish of the Scottish Government and that DWP will make referrals to devolved employability services on a voluntary basis.

Jobcentre closures

I know Committee members were as concerned as I was about the timing and manner of the announcement by DWP to close half of its Glasgow offices with a clear threat that there will be further announcements to come on the rest of the Scottish estate. Given the full terms of the Smith Agreement, I believe the Scottish Government should have been consulted on the matter.

I made this clear to Damian Hinds when we met last week but I’m afraid there was no commitment for closer working on this matter. He is aware of my very real concerns about the impact on the people who currently use the offices that are scheduled for closure.

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
I have urged him to work more closely with us on this matter so that all avenues of co-location or outreach working can be explored and agreed before announcements are made.

Following last week’s debate in Parliament, I have written to him on this and will raise it again at the next meeting of the Joint Ministerial Working Group on Welfare on 20th February.

I hope this letter is helpful in advance of our meeting and I look forward to attending you meeting next month.

JAMIE HEPBURN
Social Security Committee

1st Meeting, 2017 (Session 5), Thursday 26 January 2017

Inquiry into Employability and Sanctions

1. Introduction

This paper provides background information in relation to the Committee’s inquiry into devolved employability programmes and sanctions. It describes the two interim programmes to be introduced from April 2017, and how the successor arrangements are developing. It then considers how the new programmes might interact with conditionality in the reserved benefits system.

Members can find further information on the various existing employability programmes that were available in September 2015 in SPICe Briefing SB15-53 Scotland Bill: Employment Support.

2. New devolved employment programmes

From 5 September 2016, Section 31 of the Scotland Act 2016 devolved responsibility for programmes to support the following groups of people to select, obtain and retain employment:

- people entitled to reserved benefits and at risk of long-term unemployment (programmes must last at least a year)
- disabled people (as defined by the Equality Act 2010).

Whilst there was disagreement over the range of employment programmes which the Smith Commission recommended should be devolved, the administrations agreed that the replacements for the current Work Programme and Work Choice were to be devolved. These current programmes will continue to take referrals until the end of March 2017. People referred to them by that point will continue to be supported under the current arrangements.¹

In September, the Scottish Government announced that in Scotland two transitional programmes will be introduced for one year from April 2017: Work First Scotland (replacing Work Choice) and Work Able Scotland (replacing the Work Programme for claimants with a health condition or disability). These programmes are the focus of the remainder of this paper.

¹ Scottish Government personal communication to SPICe, 5 January 2017. This appears similar to the position in the rest of the UK – see House of Commons Hansard (2016) Employment Schemes: Disability (Written question 53205)
**Funding and capacity of the new programmes**

In March 2016, it was estimated that Scotland would receive £7m in 2017-18 to support programme spend on devolved employment programmes. The Scottish Government estimated that this was an 87% budget cut, and committed:

“to provide up to £20 million in additional funding, to replace the UK Government’s Work Choice and Work Programme schemes. This trebles the funding being made available to exercise new devolved powers on employability from 1 April 2017.”

The budget for the new schemes is set out in Table 1.

**Table 1: Budget for devolved employment programmes, 2017-18**

<table>
<thead>
<tr>
<th>Area of spend</th>
<th>2017-18 budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Work First Scotland contracts</td>
<td>£14m</td>
</tr>
<tr>
<td>Work Able Scotland contracts</td>
<td>£5m</td>
</tr>
<tr>
<td>Development of successor programmes</td>
<td>£1m</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£20m</strong></td>
</tr>
</tbody>
</table>

**Sources**

Table 2 below compares the number of people supported by the UK programmes for the most recent available full-year period with the proposed capacity of the devolved programmes.

**Table 2: Capacity of devolved employment programmes and the schemes that they replace**

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Programme</td>
<td>Number</td>
</tr>
<tr>
<td>Work Choice</td>
<td>1,400</td>
</tr>
<tr>
<td>Work Programme (Non-JSA)</td>
<td>3,085</td>
</tr>
<tr>
<td>Work Programme (JSA claimants)</td>
<td>(7,363)</td>
</tr>
<tr>
<td>Total (excluding Work Programme JSA claimants)</td>
<td>4,485</td>
</tr>
</tbody>
</table>

**Sources**

The reason that the total in Table 2 above does not include JSA claimants on the Work Programme is that the UK Government is replacing the Work Programme in other parts of the UK with a new Work and Health Programme. This will begin in Autumn 2017, and primarily provide support to people with

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2 Scottish Government (2016), A New Future for Employability Support in Scotland
3 Scottish Government press release, Investment in Employability, 22 March 2016
health conditions or disabilities, as well as support for people who have been unemployed for over two years. As a consequence of this change, “more employment support will be delivered through the Jobcentre Plus network than is currently the case.” Support provided by Jobcentre Plus staff remains reserved to Westminster.

Leaving aside JSA claimants, it seems that there may be a modest increase in the capacity of employment programmes from April 2017. However, the most significant change appears to be the shift in numbers between the two programmes (the details of which are explained further below).

**The “Scottish approach” to employment support**

As part of the process of developing these programmes and their longer-term replacements, the Scottish Government held a public consultation on *Creating a Fairer Scotland: Employability Support*, seeking views on an initial discussion paper. Most of the organisations giving evidence to the Committee’s inquiry responded to the consultation.6

Building on the independent analysis of the consultation responses, the Scottish Government set out its vision for *A New Future for Employability Support in Scotland* in March 2016. This explained the three values that will underpin the approach to Scottish employability programmes from 1 April 2017, linked to the wider Fairer Scotland agenda:

- dignity and respect
- fairness and equality
- continuous improvement.

Six principles are also set out for Scottish employability services:

- a flexible, tailored ‘whole person’ approach
- designed and delivered in partnership
- a drive towards real jobs
- designed nationally but adapted and delivered locally
- contracts should combine payment by job outcomes and progression towards work
- responsive to those with high needs.

In a *Scottish Government debate about devolved employment services* on 5 October 2016, the Minister for Employability and Training confirmed that Jobcentre Plus “will be a critical conduit for people to pass into devolved employability services.” The referral routes for the new employment programmes below make clear how vital Jobcentre Plus staff will be to securing participants on the new schemes.

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4 In contrast, all groups currently mandated to take part in the Work Programme have been claiming JSA for a year or less – see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507282/wp-pg-chapter-2.pdf at Annex A

5 House of Commons Library (2016) *Work and Health Programme*

6 The responses from each organisation can be found at the following links: Inclusion Scotland; Scottish Association of Mental Health; Action for Children Scotland; Scottish Local Authority Economic Development Group; Employment Related Services Association; One Parent Families Scotland
**Work First Scotland**

The Work First Scotland (WFS) programme “will deliver employment support for up to 3,300 people, working with existing DWP providers of Work Choice in Scotland.” In November 2016, the WFS contract (worth a total of £14 million) was awarded to The Shaw Trust, Momentum Skills and Remploy. The contract is described as being to provide “specialist support for disabled people in the workplace and those not already in work, through working with employers, government, schools, colleges and other statutory referral organisations.”

It is clear from the guidance to WFS providers that it is intended to provide a high degree of continuity with the previous Work Choice guidance, utilising similar referral and payment systems. To be eligible for WFS, people must:

- be of working age;
- have a recognised disability (as defined by the Equality Act 2010) that means they find it hard to get or keep a job;
- not be able to be helped through other existing DWP provision;
- require support in work as well as help with finding work;
- have in work support requirements which cannot be overcome through workplace adjustments required under the Equality Act 2010 and/or Access to Work support; and
- be assessed by a Jobcentre Plus Work Coach as being able to enter work of 16 hours a week or more within 26 weeks.

These entry requirements are almost identical to those for the current Work Choice scheme. Whilst there is no requirement for people to receive a social security benefit to access the scheme, and self-referrals or referrals via “Statutory Referral Organisations” (SROs) are possible, the expectation is that the majority of referrals will come through Jobcentre Plus.

The guidance states that every person referred must have an initial interview with a Jobcentre Plus Work Coach, to assess eligibility for the scheme. The only exception is if a person is in work and at risk of losing their job due to the onset of a health condition or disability (a “retention” case). In retention cases, the provider may organise an initial meeting with the person but is instructed to refer to Jobcentre Plus for a formal referral to the scheme as well, if this has not already happened.

WFS provides up-to 26 weeks “pre-employment support”, which the Scottish Government can extend to 34 weeks on application from the provider. If a participant enters employment (or self-employment) of 16 hours a week or more, support can continue, with a limit of 52 week’s support in total.

Referrals will end in December 2017, with the last people coming to the end of the programme a year later. It is not clear whether any alternative support will be available between December 2017 and the planned introduction of longer-term arrangements from April 2018.

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7 Scottish Government press release Employment support programmes from April 2017
8 September 2016
8 Scottish Government press release New employment support powers 23 November 2016
The equivalent Work Choice rules gave providers the discretion to extend “Module 1” (the equivalent of pre-employment support) to up to one year without consulting the DWP. There were two stages of in-work support, the first of which could last up to two years. The compressed timescales for the WFS scheme may result from the fact that it is an interim scheme operating for one year.

Providers can claim the following three types of payment.

- A service fee, to provide a guaranteed monthly payment towards service costs.
- Job outcome payments for people who achieve 13 weeks continuous employment at 16 hours or more a week. These are at different rates for “supported” and “un-supported” work.
- Sustained job outcome payments for being in unsupported work for 26 of the 30 weeks after leaving the WFS programme.

The amount of these payments formed part of the successful providers’ bids to deliver the scheme. Outcomes can also be claimed for people who start work within six weeks of finishing the WFS programme. The structure of outcome payments mirrors those made to Work Choice providers.

**Work Able Scotland**

Work Able Scotland (WAS) “will ensure up to 1,500 starts for people with a health condition who want to enter work.” The programme is managed by Skills Development Scotland (SDS), and provision “is mapped across all stages of the Scottish Government - Strategic Skills Pipeline Framework.” It uses the same method of commissioning programmes as Employability Fund activity.

In December 2016, contracts for four geographical lots worth a total of £5m were awarded to Remploy, the Wise Group and Progress Scotland. In the press release announcing the contract award, these providers all refer to the fact that they will make local partnership arrangements with other organisations.

The [Work Able Scotland Programme Rules](#) provide that people are eligible for WAS if they are:

- not in employment or self-employment;
- at least 18 years of age;
- not eligible to participate in any programme available through the DWP;
- willing to participate in and complete the WAS activity, and to work; and
- in receipt of ESA in the Work-Related Activity Group (WRAG) and assessed by a DWP Work Coach as being able to enter work for at least 16 hours a week within 12 months, or in receipt of the UC WRAG equivalent – in the “work preparation” group of claimants.

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10 Scottish Government press release [Employment support programmes from April 2017](#) 8 September 2016
11 SDS Guidance to help complete the ‘Work Able Scotland’ referral form 2017-18
12 Progress Scotland is a joint venture of the Lennox Partnership and Working Links
Whilst WAS replaces the Work Programme, a significant difference is that only claimants assessed as unfit for work are eligible. Jobseeker’s Allowance (JSA) and equivalent Universal Credit (UC) claimants will be able to access the existing range of devolved employability support, in addition to support from Jobcentre Plus.\textsuperscript{14}

People on any other Government or SDS-funded training programme are ineligible for WAS. Only DWP can refer people to the programme. Providers will give details of the support that they offer to Jobcentre Plus, to enable people to decide whether it meets their needs. This contrasts with the Work Programme, which is compulsory for many people. Claimants are currently referred to one of the two Work Programme “prime contractors”, who may then choose to sub-contract services from other organisations.

WAS outcome payments are made to providers on a similar basis to the Work First Scotland programme:

- A service fee is paid for each permitted start on the programme.\textsuperscript{15} The fee is reduced if a provider does not achieve at least 75% of the predicted starts set out in their contract.
- A job outcome payment (of £800) is paid for participants who undertake work of 16 hours or more a week for six continuous weeks.
- A job sustainment payment (of £1,200) is paid for participants who remain in work at this level for 26 weeks out of 30.

**Employment programmes from April 2018**

The process of developing longer term employability programmes will continue through 2017-18. Around £1 million has been earmarked to “develop new ways of integrating and supporting the Scottish Government’s new devolved employment services.”\textsuperscript{16} This may also involve the “integration and alignment of existing employability services.”\textsuperscript{17}

A series of supplier engagement events took place in late 2016.\textsuperscript{18} The Scottish Government presentation to the events\textsuperscript{19} is clear that plans are still in development. It suggests that three levels of service will be provided. Levels of service may depend on an individual’s needs rather than what benefit they receive, and that support will be provided to the following groups:

- Disabled people (on JSA, ESA, UC, or not on benefit)
- ESA WRAG and equivalent UC claimants (post-WCA);
- At risk JSA or UC groups early in their claim, such as ex-offenders; care leavers; refugees; and lone parents
- JSA or unemployed UC claimants at 24 months.

\textsuperscript{14} Scottish Parliament Written Question S5W-02964
\textsuperscript{15} Paid at a higher rate in Highlands & Islands, Dumfries & Galloway and Scottish Borders.
\textsuperscript{16} Scottish Government press release Support for new powers 21 December 2016
\textsuperscript{17} http://www.employabilityinscotland.com/news-events/latest-news/march-2016/march-update-on-scotlands-future-employability-services/
\textsuperscript{19} http://www.employabilityinscotland.com/media/590739/scottish_employability_support_services_-_final_presentation_glasgow_9_december.pdf
The programmes are expected to support up to a total of 10,000 people a year. “Pre-employment” support is likely to be time-limited to 12-18 months. Similarly to the interim schemes, it is proposed that payments will comprise a service fee and outcome payments for sustained job outcomes. An invitation to tender is expected in March 2017, with contracts divided into geographical lots (although how many there will be is yet to be finalised).

3. Conditionality, sanctions and employability schemes

In a letter to the Convener, the Secretary of State for Work and Pensions confirmed that “referrals to devolved employment programmes [will be] on a voluntary basis if that is how the Scottish Government wish to proceed.” However, the Secretary of State also highlighted that:

“claimants [on devolved employment programmes] will still be required to meet other conditions to continue to receive benefit – meaning they will need to demonstrate that they are looking for work – so [he] will be interested to learn of SG’s plans to ensure that employment programmes support participants to demonstrate this.”

This leaves the practical relationship between the new programmes and conditionality in the reserved benefits system unclear. In the Daily Record on 10 September 2016, the Cabinet Secretary for Communities, Social Security and Equalities was quoted as saying that the Scottish Government are “not going to be giving [the DWP] any information or responding to inquiries if we think that might lead to a sanction.” Similarly, during the Scottish Government debate on devolved employment services on 5 October 2016, the Minister for Employability and Training made a commitment that “our employability programme will in no way facilitate the UK Government’s sanctions regime.”

This may have less impact on claimants during the interim year from April 2017, as the Work Choice programme (to be replaced by Work First Scotland) is already voluntary. The group of Scottish claimants eligible for Work Able Scotland are entitled to ESA (or the Universal Credit (UC) equivalent), and so cannot be required to be available for and actively seeking work. The following sections look at the relationship between the new employment programmes and benefits conditionality requirements.

Work First Scotland and conditionality

It is not clear whether those people on the Work First Scotland (WFS) programme who are entitled to Jobseeker’s Allowance (JSA) or its UC equivalent will be expected to undertake job search activity alongside the WFS. The following information is taken from the WFS Guidance in relation to participants who are entitled to UC (emphasis added).

“8.2 The Claimant Commitment has replaced the current Jobseeker’s Agreement and, for claimants with no restrictions, usually requires a 35 hour work-related activity commitment.

8.3 A WFS Customer will have an adjusted Claimant Commitment, indicating that active participation in WFS will be classed as a contribution towards this requirement for UC Customers (sic) work search activity…”
8.9 We expect that the normal WFS support that you give each of your Customer’s (sic) will enable them to meet the requirements of their Claimant Commitment.”

However, there are no equivalent sections dealing with participants getting JSA or ESA, just a general statement as follows:

“WFS is a voluntary programme and therefore no Customer can be mandated to join this programme, regardless of benefit claimed. However, whilst in the PreEmployment Support stage of WFS, Customers will continue to be subject to the conditionality associated with the benefit or allowance they may be claiming.”

This mirrors the ambiguity in the current Work Choice provider guidance, which states that for participants getting UC “active participation in Work Choice will be accepted as meeting the requirements of their Universal Credit work search activity.”

Regarding JSA/ESA claimants, the Guidance states that “participants will continue to be subject to the conditionality associated with the benefit or allowance they may be claiming.”

DWP Work Coaches are able to switch off some conditionality requirements for a particular JSA/UC/ESA claimant at their discretion. It is not clear whether the DWP intends to reduce reserved conditionality requirements for those claimants referred to devolved employment programmes. If this is done, it could be achieved either through legislation, or by producing internal guidance for Decision Makers and Work Coaches.

**Work Able Scotland and conditionality**

ESA and UC claimants eligible for Work Able Scotland (WAS) are normally subject to some conditionality. This is described as “work-related activity” for ESA and “work preparation” for UC, and can include “work-focussed interviews” with Jobcentre Plus staff, as well as mandatory referrals to training courses and unpaid work placements.

In the current Work Programme, the decision of what conditionality was appropriate is effectively left to the individual provider, with Jobcentre Plus staff dealing only with referrals to the provider and compliance doubts – effectively deciding whether a claimant should be sanctioned of not.

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20 Scottish Government, Operational Guidance Employability Support Services (Work First Scotland)
21 Scottish Government, Operational Guidance Employability Support Services (Work First Scotland)
22 DWP, Work Choice Provider Guidance Section 04
23 DWP, Work Choice Provider Guidance Section 03
24 For ESA see Regulation 6 of The Employment and Support Allowance (Work-related Activity) Regulations 2011 No. 1349. For JSA and UC the situation is more complicated, but similarly dependent on an exercise of discretion. Some JSA claimants are treated as actively seeking work if on certain Employment Programmes, which could potentially include new Scottish programmes (see Regulation 19 of The Jobseeker’s Allowance Regulations 1996 No. 207), but must still be available to take up a job offer.
25 There are some exceptions, which may also be different for UC claimants. For example claimants who are also entitled to Carer’s Allowance and lone parents of a child under one year old are exempt from work-related activity/work preparation.
26 For example, for ESA equivalent UC claimants, see para 3.7 Work Programme: Universal Credit claimant provider guidance
However, the law permits compulsory work preparation/work-related activity requirements to be imposed directly by the DWP. As above, it is unclear whether the DWP intends to impose mandatory conditionality whilst claimants are undertaking voluntary WAS activity, and if so whether this will be achieved through regulations or guidance.

**Employment programmes from April 2018 and conditionality**

Until the details of the longer term employability schemes are finalised it is difficult to predict how they may interact with the reserved benefits system. However, it is likely that some kind of devolved employability support for claimants at risk of long-term unemployment who do not have a health condition or disability will be introduced. This might include long-term JSA claimants, or potentially those in vulnerable groups for reasons unrelated to health or disability (see above).

The following information (from the Work Programme provider guidance) makes clear that JSA claimants are currently expected to continue to search for work and attend Jobcentre Plus offices alongside participation in the Work Programme. However, there is flexibility to take account of activities undertaken as part of employment programmes when assessing if claimants have met their conditionality requirements.

> “While participants are on the Work Programme, Jobcentre Plus will continue to see them to check that they are meeting their conditions for claiming benefits (if applicable). For example Jobseeker’s Allowance (JSA) participants will continue to be required to attend Jobsearch Reviews and demonstrate that they are actively seeking and available for work. Jobcentre Plus will be mindful that you may have discussed and agreed appropriate activities to help secure employment and these activities may be used by participants to demonstrate meeting their actively seeking work conditions.”

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**Jon Shaw**  
**SPICe Research**  
**27 January 2017**

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The Scottish Parliament, Edinburgh, EH99 1SP [www.scottish.parliament.uk](http://www.scottish.parliament.uk)

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27 DWP, [Work Programme Provider Guidance Chapter 1](http://workprogramme.gov.uk/Guidance/Chapter1.html)