

# Withdrawn

This publication is withdrawn.  
The publication is no longer current.

## Section 13 Working with Supported Businesses

**NOTE: THE GUIDANCE IN THIS SECTION APPLIES TO  
 THE ORIGINAL WORK CHOICE CONTRACTS i.e.  
 ALL PROGRAMME REFERRALS PRIOR TO 25<sup>th</sup> OCTOBER 2015  
EXCEPT REMPLOY**

**FOR PROGRAMME REFERRALS FROM 25<sup>th</sup> OCTOBER 2015 ALL  
 PROVIDERS SHOULD FOLLOW GUIDANCE IN SECTION 13a**

13.1. This Section covers:

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### Introduction

- 13.2. **Note1:** This section must be read in conjunction with your Contract Schedule on Supported Business. If there is any conflict between the contract and this guidance the contract takes precedence. If there is any conflict between the ITT Specification and this guidance in relation to DWP's internal procedures and processes, this guidance takes precedence.
- 13.3. **Note 2:** Much of this section, addressed to you the Prime Provider, is broadly duplicated in the next section ([Section 14](#)), which is addressed to Supported Businesses themselves. You must ensure all Supported Business in your Contract Package Area have access to, and read, this Guidance and particularly [Section 14](#).
- 13.4. Please see your contractual terms and conditions for a description of the contractual relationship between yourself, the Prime Contractor (Prime), and any Supported Business which has protected places as a result of pre-existing WORKSTEP contracts. Confirmation of status as Supported Business and the number of protected places has been validated by DWP.
- 13.5. The DWP Commissioning Strategy imposes minimal constraints around the dynamics of Prime Contractor led supply chains. Within the Work Choice contract, protected places agreed within Supported Businesses are

positioned within the funding package and are therefore subject to contractual requirements and expectations within the Prime contract.

### **Contractual Obligations**

- 13.6. As the Prime Contractor you are responsible for the contractual relationship and interface with DWP. This includes responsibility for Supported Businesses with whom you are required to have a direct sub-contractual arrangement as part of the new contract.
- 13.7. Some Primes may own a Supported Business. In this case the term of the contract will remain the same.
- 13.8. The number of Supported Business protected places has been agreed with DWP and forms part of the main contract. These numbers will reduce during the period of the Work Choice contract if Supported Businesses do not fill vacant protected places, reduce in size or if they cease trading as a Supported Business.
- 13.9. In the event of a reduction in the number of Supported Business places, the funding allocated to protect those places will reduce. DWP will make a decision at the point we are made aware of any reduction whether unallocated funding should be used for additional supported places within the original contract package, or whether it should be relocated to other contract packages. It should not be assumed that any funding will automatically be retained by the Prime Provider.
- 13.10. You are contractually required by DWP to manage a direct sub-contractual arrangement with the Supported Business for protected places under the terms of the Prime contract. This arrangement may take the form of a legally binding agreement or memorandum of understanding between yourself and the Supported Business.
- 13.11. You are not permitted to transfer these obligations to a third party through other sub-contract arrangements; although you may have sub-contract arrangements in place to deliver appropriate support that facilitates the Supported Business to achieve their contractual requirements.
- 13.12. As the sub-contractual relationship between the Prime and the Supported Business is directly specified by DWP, any significant changes regarding the relationship must be discussed with your DWP Performance Manager before action is taken.
- 13.13. You must be clear that, under the terms of your contractual arrangements, your responsibilities extend ONLY to those participants who are on the Work Choice programme, and not to any other employees of the Supported Business.

## Customer and Employer Relationship

- 13.14. For participants that transfer into the new Work Choice contract as protected places, the Supported Business is the employer, as well as offering in-work support. You should therefore not only interface with the Supported Business, under the requirements of the contract, regarding payment and quality assurance, but could also develop a relationship with the Supported Business as an employer in its own right.

## Financial Obligations

- 13.15. You will be given guaranteed funding corresponding to the protected places within the overall contract package for the 5 year period of your contract. This commitment to the Supported Business would remain in place should there be any change of Prime within the 5 year period.
- 13.16. Supported Businesses will receive guaranteed financial payment for each protected full time place of £4,800 per annum for up to the 5 year period of the new contract, subject to accepting the sub-contract arrangement with you, the Prime, including measures for meeting quality requirements and performance levels.
- 13.17. **Note:** in this context, for WORKSTEP participants who occupied a protected place within a Supported Business and transferred to Work Choice in October 2010, 'full time' continues to be defined as working 21 hours and over. (This definition applies only to WORKSTEP participants who transfer; participants who start under the Work Choice programme are defined as full time when working 16 hours and over).
- Note 2:** Cases will be treated on their own merit in circumstances where hours reduce below 21 hours but not below 16 hours. You will need to speak to your Performance Manager in this instance. All relaxed cases must be documented and the signed authority from the Performance Manager should be kept on the participant's file.
- 13.18. You are required to make direct full payments to the Supported Business of £4,800 per annum per full time equivalent place (FTEP) during the 5 year contract period, under the terms specified in the contract Specification. The Supported Business can only expect to receive guaranteed financial payments up to the level of protected places agreed in the contract.
- 13.19. The payment transfer will be agreed as part of the sub-contract arrangement between the Prime and Supported Business. Payment terms can be negotiated and agreed between the two parties but as a minimum should mirror timescales for payment of monies to Primes by DWP. You must agree how and when this payment is made.

- 13.20. As part of normal business planning activity, you and the Supported Business should consider in advance the implication that contract arrangements based on guaranteed funding are not certain beyond the 5 year contract period.

### Quality and Customer Service Obligations

- 13.21. You must work with the Supported Business to ensure that the quality of provision and customer service for the participants meets the quality and customer service obligations within the main Prime contract and the service delivery requirements relevant to the modules (performance, quality, equality, and legislative standards) as detailed in the relevant sections in this guidance.
- 13.22. The Supported Business will provide the participant's day-to-day support but you are responsible for, and must monitor, the service provided to Work Choice participants within any Supported Business in line with the quality and customer service expectations of the main contract. In the same way as for all your sub-contractors the minimum support that Supported Business provides participants must be in line with the service requirement for Modules Two and Three.
- 13.23. More information about self-assessment can be found in [DWP Generic Guidance Chapter 7](#) but you should note, this guidance is currently under review and is subject to change. You should consult your Performance Manager for updated information.

### Merlin Standard

- 13.24. DWP has worked with suppliers to develop the Merlin Standard during the procurement process. This new Standard provides a means of assessing the success of supply chain behaviours equally through procurement rounds and once contracts are implemented.
- 13.25. The Merlin Standard underpins the contractual requirements of the Code of Conduct already part of the Prime Contract. Additionally it links to a mediation and arbitration service where there is evidence that suppliers are acting in breach of the contractual obligations of the Code of Conduct.
- 13.26. Further information will be found in Annex 3 of this guidance: "Working with Sub-contractors", in your contract and in The Merlin Standard: A Guide for Prime Providers, to be found via this link: [The Merlin Standard publication page](#)

### Performance

- 13.27. Performance is your responsibility.

- 13.28. Numbers of places and achievement of performance targets as set out in Schedule 2 will be reviewed with you by DWP Performance Managers.
- 13.29. The ethos of the Work Choice programme is one of independence and progression for all participants who have the potential to progress and who feel able to progress. You are required to formally agree with your supported business(es) minimum targets for progressing participants into unsupported employment. Annual minimum targets are expected to be in the 5% to 10% range of participants within each Supported Business.
- 13.30. These targets reflect that expected progression rates may be different for protected and non-protected Work Choice places. It is expected that you will negotiate progression rates with each individual Supported Business, taking into account the size and makeup of each Supported Business workforce. The expectation of progression needs to be made particularly clear to new entrants into protected supported business places.
- 13.31. You should note Work Choice participants in both protected and non-protected places can be counted towards your Supported Businesses' annual progression target.
- 13.32. For those participants whose progression option is to leave the Supported Business in order to enter unsupported employment, you must work closely with your Supported Business and make available all necessary resources to assist them and the participant. You, the Prime, are responsible for providing job search support, if the participant wishes it.
- 13.33. Supported Businesses provide positive opportunities for participants and may be able to expand their role, by agreement with you, the Prime, over and above any guaranteed funding places. They may, with your agreement, mirror all aspects and responsibilities of other sub-contractors. If you are satisfied that they have the capacity and resources to do so, they can place participants with host employers, other than their own organisation. Moving these participants into unsupported employment will count towards progression targets. The terms and conditions of any subcontract arrangement, beyond the guaranteed places, is purely a matter for agreement between yourself and the Supported Business.
- 13.34. Should a Supported Business cease trading or significantly change its business model during the 5 year period to which the contract applies, you will be required, at the earliest opportunity, to discuss the impact with DWP Performance Managers (who will seek advice from commercial specialists and the legal teams) in respect of any re-allocation of funding, including the priority to continue to support any participants affected.

### **Filling Vacant Protected Places**

- 13.35. You are reminded that the maximum number of protected places should remain constant throughout the life of the contract. The number of funded

places may reduce if vacancies remain unfilled, or increase (with appropriate funding) if it becomes necessary to reallocate places in the event of a closure.

- 13.36. When a protected place becomes vacant, it is the responsibility of the Supported Business to notify you promptly and appropriately. The need for replacement can frequently be foreseen well in advance of the place becoming vacant. You must respond to this notification as a matter of priority.
- 13.37. Upon receipt of notification of a vacant place you must inform DWP Work Choice Policy Team, via encrypted email, exactly which occupant has left / is expected to leave the protected place, including the following details:
- Forename
  - Surname
  - National Insurance Number
  - Name/location of Supported Business
  - Date the protected place is expected to be vacated
- Note:** Personal details (e.g. Names, National Insurance Numbers, etc) should always be emailed in **encrypted form only** – in this case, to DWP Work Choice Policy Team, specifically Mick Furniss  
[mick.furniss@dwp.gsi.gov.uk](mailto:mick.furniss@dwp.gsi.gov.uk) and copy to:  
[SPECIALIST.DISABILITYPROGRAMMEQUERIES@DWP.GSI.GOV.UK](mailto:SPECIALIST.DISABILITYPROGRAMMEQUERIES@DWP.GSI.GOV.UK).
- 13.38. It is the joint responsibility of you, as the Prime, and the Supported Business to identify a replacement employee to fill a vacant protected place.
- 13.39. It may be good practice to seek a suitable replacement within Module One of your programme, but the candidate would have to be a suitable employee for the Supported Business. Ultimately, the choice of employee is a commercial decision and rests with the Supported Business. Responsibility for ensuring the potential employee is eligible and suitable for the Work Choice programme will depend on entry route i.e. via the DEA or Statutory Referral Organisation. However, DWP would not find it acceptable to continuously turnover the employee base with Work Choice participants merely as a means of enabling Job Outcomes and subsequent payments to be claimed. The Strategic intent of the Work Choice programme is to place participants into sustained employment either within the Supported Business or in alternative employment.
- 13.40. The timescale for continuing to receive and pay guaranteed funding payments when a protected place becomes vacant takes into account the need to find an eligible, suitable replacement and is as follows:
- 13.41. To reflect the work that the Supported Business may have to do with the Prime to find a suitable replacement, you will continue to make the monthly protected place payment for up to thirteen weeks from the date the occupant left.

- 13.42. After this, if the place is still unfilled it can remain categorised as protected for a further thirteen weeks (i.e. twenty-six weeks in total), while a replacement is sought, but you are not required to make any further payment after thirteen weeks until a new participant has started.
- 13.43. You will continue to receive your element of the Protected Supported Place payment for the first thirteen weeks, but you must ensure your performance manager is notified of the situation by email so they may prepare to adjust the level of payment to you at the end of week thirteen. If you cease payment you must immediately notify your performance manager by phone and confirm in writing.
- 13.44. Although in this second thirteen week period no payment is made you must ensure that you and the Supported Business continue to give priority to exploring every avenue to engage with prospective replacement participants.
- 13.45. Should the place be unfilled after twenty-six weeks have elapsed, the protected supported place must normally be regarded as lost and no further payments will be made. However, there are two circumstances where DWP may be able to exercise discretion:
- If at the end of the twenty-six week period there are exceptional reasons preventing a suitable candidate from taking up post, you may raise this with your Performance Manager who will allow a reasonable time for the obstacle to be overcome. Evidence of the action taking place to hasten the candidate's take up of the place will be required.
  - If a business is subsequently able to recruit a Work Choice participant, you may raise this with your Performance Manager who will consider re-instating a lost place and the associated payment. (The payment would be restored from the date that the new recruit commences employment.)
- 13.46. Supported Businesses are not obliged to give priority to filling protected places if it is not the interest of their business needs .i.e. they are not prohibited from employing new participants into any additional non-protected places. However you must remind them of the risk to the protected place if you and they fail to fill it within the time allowed.
- 13.47. A Work Choice participant in an unprotected place may be moved to a vacant protected place.
- 13.48. Supported Businesses will need to provide you with regular information regarding filled and unfilled protected places to support the receipt of payments as detailed in the contract.
- 13.48. This is particularly important if/when a vacant protected place reaches the unpaid stage at thirteen weeks (detailed above), as you must monitor the situation closely to avoid losing the place at twenty-six weeks. You must



keep DWP informed of the ongoing status of vacant protected places via your usual reporting channels.

- 13.49. If the place is still vacant at twenty-two weeks your Performance Manager will formally notify you of the date the protected place will be lost and prepare to arrange a contract variation. You must ensure to alert your Supported Business of the urgency of filling the vacant place.
- 13.50. If you are responsible for more than one Supported Business you may reallocate unfilled protected places among Supported Businesses within your CPA, provided you have the formal agreement of both the exporting and the importing Supported Business.
- 13.51. This decision must be reached before week twenty-six when the protected place will be lost. Once a vacancy has been unfilled for twenty-six weeks the decision on where the vacancy should be allocated is for DWP.
- 13.52. If you decide to reallocate protected places within your CPA you must notify DWP, via your Performance Manager, in the format set out below:

CPA Prime contact name	
Supported Business relinquishing the protected place(s)	
Contact name in Supported Business relinquishing the protected place	
Supported Business gaining the protected place(s)	
Contact name in Supported business gaining the protected place(s)	
Number of places	
Effective date of change	

- 13.53. You must also issue a formal letter to both the importing and the exporting Supported Business confirming the changed allocation of protected places, and send a copy to your Performance Manager.

## Work Choice Guidance

- 13.54. If you have no free places to reallocate, you may request additional places on behalf of your Supported Businesses, in a similar format (below). Requests will be considered on a case by case basis and will depend on availability of places. Restoration of any place which was voluntarily relinquished cannot be guaranteed.

CPA	
Name of Prime Provider	
Name of Supported Business for which places are requested	
Number of additional places requested	
Reason for increase	
Timescale for filling vacancies	
Name of Requester	
Date from which place(s) requested	
For DWP use only: date of variation and variation reference	

- 13.55. When you succeed in filling a vacant protected place you must send details of the new occupant to DWP Work Choice Policy Team, via encrypted email, as at para 13.37 above, i.e.
- Forename
  - Surname
  - National Insurance Number
  - Name/location of Supported Business
  - Date the new occupant began work in the protected place.

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