

JOBSEEKERS (BACK TO WORK SCHEMES) ACT 2013

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INTRODUCTION

1 The Jobseekers (Back to Work Schemes) Act 2013 (JS (BWS) Act 13) received Royal Assent on 26.3.13 and makes provision about the effect of provisions relating to

1. participation in a scheme designed to help claimants to obtain employment **and**
2. notices relating to participation in such a scheme¹.

1 JS (BWS) Act 13

2 This memo provides guidance on these provisions .

DMA ACTION

3 The provisions outlined in this memo have the effect that for any case where there has been a failure to participate in the ESE scheme the DM can impose a sanction where the claimant does not show good cause/good reason. For

failures prior to 22.10.12 the DM should follow the guidance in DMG 34771 et seq and for failures from 22.10.12 the guidance in DMG Memo 37/12 will apply.

- 4 The Act makes provision to treat the ESE scheme as validly made under the ESE Regulations. It also makes provision to treat all notices given under regulations governing the ESE Scheme or the MWA Scheme as effective despite the court's judgement² so long as they contained the information referred to in paragraphs 8 – 11³.

1 JSA (ESE Scheme) Regs & JSA (MWA(Scheme) Regs; 2 The Queen on the application of Caitlin Reilly and Jamieson Wilson and the Secretary of State for Work and Pensions; 3 JS (BWS) Act 13, s 1(4), (5), (6), (7), (8) &(9)

REGULATIONS AND NOTICES REQUIRING PARTICIPATION IN A SCHEME

Employment Skills and Enterprise Scheme (ESE scheme)

- 5 The provisions introduced on 26.3.13¹ ensure that the ESE Regulations are to be treated for all purposes as properly made under their enabling powers³.

1 JS (BWS) Act 13, ; 2 JSA (ESE scheme) Regs 2011; 3 JS Act, s 17A

and that the ESE scheme mentioned in those regulations is to be treated as a scheme within the relevant section of the JS Act³ until the coming into force of the new regulations which replace the ESE Regulations⁴.

1 JS (BWS) Act 13, s 1(2); 2 JSA (ESE scheme) Regs; 3 JS Act, s 17A ; 4 JSA (SAPOE) Regs

- 6 The provisions also ensure that the following programmes are to be treated as having been part of the ESE scheme¹
 1. Day One Support for Young People
 2. The Derbyshire Mandatory Youth Activity Programme
 3. Full-time Training Flexibility
 4. New Enterprise Allowance
 5. The sector-based work academy
 6. Skills conditionality
 7. The Work Programme **and**

8. Community Action Programme.

These provisions have the effect of reversing the Court's finding that the ESE Regulations and the programmes within them were not effective.

Note: See DMG Memo 4/13 for detailed guidance on the prescribed programmes.

1 JS (BWS) Act 13, s 1(3)

Notifications – ESE scheme

7 A notice given to a claimant at any time from 20.5.11 to 12.2.13 under the provisions in the JSA(ESE Scheme) regulations relating to details of what a person is required to do by way of participation, is to be treated as an effective notice where it refers to the ESE scheme or any programme listed at paragraph 7¹.

1 JSA (ESE scheme) Regs, reg 4 (1)(c), JS (BWS) Act 13, s 1(4)

8 A notice given to a claimant at any time from 20.5.11 to 12.2.13 under the provisions in the JSA(ESE Scheme) regulations relating to information about the consequences of failing to participate in the ESE scheme or any programme listed at paragraph 7 is to be treated as an effective notice that complies with the specified requirements¹ where it described an effect on payments of JSA as a consequence or possible consequence of not participating as required.

1 JSA (ESE scheme) Regs, reg 4(1)(e), JS (BWS) Act 13, s 1(5)

9 A notice of changes in what a claimant is required to do by way of participation in the ESE scheme is to be treated as correctly notified provided it notified the person of any changes made to details given in an earlier notice¹.

1 JS (BWS) Act 13, s 1(6), JSA (ESE scheme) Regs, reg 4(2)(c)

10 The effect is that all notices given under the ESE regulations¹ are to be treated as effective despite the court's judgement so long as they contained the information referred to in paragraphs 8 - 10¹.

Note: The DM can therefore accept that the ESE scheme is a valid scheme and that claimants were correctly notified of their requirements and of the consequences of not meeting those requirements as required by the regulations. Therefore any appeal based on such grounds can be rejected.

1 JS Act, s 17A, JSA (ESE scheme) Regs, reg 4(1), 4(2)(c), 4(2)(e) & reg 4(3)

Notifications – MWA scheme

- 11 In relation to MWA notices the position is the same as outlined in paragraphs 8 – 11 for ESE scheme notices.

Note: The DM can accept that claimants were correctly notified as required by the MWA regulations¹.

1 JS (BWS) Act 13, s 1(7), (8) & (9); JSA (MWA scheme) Regs, reg 4(2)(d) & (f) and reg 4(3)

EFFECT OF THE REVOCATION OF REGULATIONS

- 12 From 22.10.12 certain regulations applicable to the ESE scheme were revoked¹ (i.e. the provisions on good cause and the consequences of failing to participate). Amended legislation² provided for a new sanctions regime (see DMG Memo 37/12 for detailed guidance). The effect is that any failure to participate in the ESE scheme prior to 22.10.12 is to be considered under the old provisions and the guidance in DMG Chapter 34 – 34771 et seq will apply. The guidance in DMG Memo 4/13 applies to any failure from and including 12.2.13 where the claimant was issued with the correct notice.

Note 1: The provisions in the revoked regulations are treated as having effect for any determination made after 22.10.12 which relates to a failure that occurs before 22.10.12³.

Note 2: The 2011 regulations⁴ are to be treated as having been revoked by the coming into force of the 2013 regulations⁵ on 12.2.13⁶. The sanctions provisions effective from 22.10.12 apply to any failures to comply with requirements to participate in a programme under the 2013 Regulations. However, stockpiled cases which are now being dealt with and which relate to failures that occurred prior to 22.10.12, are subject to the old sanctions provisions in the ESE Regulations.

*1 JSA (ESE scheme) Regs, reg 7 & 8; 2 JSA (Sanctions) Amdt Regs; 3 JS (BWS) Act 13, s 1(10);
4 JSA (ESE scheme) Regs; 5 JSA(Sanctions) Amdt Regs; 6 JS (BWS) Act 13, s 1(14)*

Sanction already imposed

- 13 Where a sanction determination for a failure to participate in a relevant scheme¹
1. has already been imposed before the release of this memo that sanction is to be treated as being lawfully made² **or**

2. is to be imposed on a case that has been stayed due to the court of appeal decision³ a sanction decision can now be made⁴.

Note: This guidance does not affect the claimant's right to apply for a revision or supersession or to appeal against a decision to impose a sanction on any other grounds, for example good cause/good reason⁵.

1 JS Act, s 17A; 2 JS (BWS) Act 13, s 1(12); 3 The Queen on the application of Caitlin Reilly and Jamieson Wilson and the Secretary of State for Work and Pensions; 4 JS (BWS) Act 13,s 1(12) ; 5 s 1(13)

ANNOTATIONS

Please annotate the number of this memo (DMG/Memo 11/13) against DMG paragraphs:- 34031, 34032, 34034, 34766(Heading), 34771, 34951, 35144, 35151, DMG Memo 37/12, DMG Memo 4/13,

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: March 2013