

Title: Jobseekers (Back to Work Schemes) Bill IA No: N/A Lead department or agency: Department for Work and Pensions Other departments or agencies:	Impact Assessment (IA)	
	Date: 12/03/2013	
	Stage: Final	
	Source of intervention: Domestic	
	Type of measure: Primary legislation	
	Contact for enquiries: Jobseekers.billstrategy@dwp.gsi.gov.uk	
Summary: Intervention and Options		RPC Opinion: GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as One-Out?
£m	£0m	£0m	No	NA

What is the problem under consideration? Why is government intervention necessary?

The Court of Appeal in the case of Wilson and Reilly v DWP held that the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 were invalid because they failed to describe the schemes made under them in sufficient detail and that notices given under the Regulations were inadequate. If DWP does not obtain leave to, or win in, an appeal to the Supreme Court, claimants who have failed to comply with the schemes and have been sanctioned are entitled to a refund and pending sanction decisions cannot be made. The estimated liability is up to £130m. Primary legislation is necessary to ensure DWP does not incur this liability and to protect the national economy.

What are the policy objectives and the intended effects?

The policy intention is to ensure that where claimants on schemes based on the Regulations have had their benefit sanctioned, they are not due a refund on the basis of the Court of Appeal Judgment, and that where benefit sanction decisions have been stockpiled DWP can issue a benefit sanction. This will ensure that claimants who have failed to take all reasonable steps to increase their chances of finding work do not obtain a windfall as a result of what was ultimately a technical challenge to the ESE Regulations.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

There is no other remedy. While we will be seeking leave to appeal the Court of Appeal judgment to the Supreme Court there is no guarantee that the Department will be granted an appeal, or if granted win it. The Department needs to provide certainty to taxpayers that claimants who have failed to take all reasonable steps to increase their chances of finding work do not obtain an undeserved advantage over compliant claimants.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____

Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low	Optional		Optional	Optional	
High	Optional		Optional	Optional	
Best Estimate				£110-130m	
Description and scale of key monetised costs by ‘main affected groups’ This legislation will ensure that claimants who have been sanctioned under the Regulations will not be entitled to a refund and that stockpiled decisions to sanction can be made. The cost to this group of people is estimated at £110m-£130m.					
Other key non-monetised costs by ‘main affected groups’					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low	Optional		Optional	Optional	
High	Optional		Optional	Optional	
Best Estimate				£110m-£130m	
Description and scale of key monetised benefits by ‘main affected groups’ This legislation will ensure that claimants who have been sanctioned under the Regulations will not be entitled to a refund and that stockpiled decisions to sanction can be made. This legislation will save the Government and taxpayers £110m-£130m.					
Other key non-monetised benefits by ‘main affected groups’					
Key assumptions/sensitivities/risks				Discount rate (%)	

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	Benefits: N/A	Net: N/A	No	NA

Introduction

1. The Jobseeker's Allowance (Employment, Skills and Enterprise) Regulations 2011 (S.I. 2011/917) ("the ESE Regulations") were found to be *ultra vires* by the Court of Appeal on 12 February 2013¹ on the grounds that the programmes covered by the Regulations (the ESE schemes) were not described in sufficient detail, as is required by the primary legislation². The Court of Appeal also held that the notices sent to claimants advising them that they were required to take part in a programme within the ESE scheme did not comply with the requirements of regulation 4 of the ESE Regulations.
2. The Department intends to apply to the Supreme Court for permission to appeal. If permission is refused, or the appeal is unsuccessful, claimants who have been subject to a sanction (which comprises a reduction of benefit) for failing to take part in the schemes would be entitled to a refund of that sanction. It would also mean that Secretary of State has no power to impose sanctions in relation to failures under the ESE Regulations, in cases where no sanction decision has yet been taken.
3. The Department has already taken steps to address the effects of the judgment prospectively. The SAPOE Regulations³, which were made and came into force on 12 February 2013, describe the relevant schemes more fully and the notices issued to claimants under the SAPOE regulations (which mirror the notice requirements contained in the ESE Regulations) have been revised. However the impact of the judgment in relation to ESE Regulations is significant - the potential cost to the public purse of refunding sanctions made under those Regulations and/or under the non-compliant notices, and not being able to impose a sanction where a decision has not yet been made is estimated to be up to £130 million.
4. The purpose of the Bill is to reverse the effect of both of the Court of Appeal's adverse decisions and to validate, with retrospective effect, the ESE Regulations. The Bill will reverse the effects of the Court of Appeal's decision by treating as valid all sanctions imposed for failures to comply with the ESE Regulations. This will ensure that claimants have no right to claim a refund of a sanction on the basis that the ESE Regulations are *ultra vires* and/or that the notices are non-compliant. It will also allow the Secretary of State to lawfully impose a sanction for failure to take part in a programme provided for by the ESE Regulations where the decision on whether to sanction has been stockpiled since the High Court ruling⁴, notwithstanding the fact that the notice been held to be non-compliant and the ESE Regulations have been quashed.
5. The Bill also addresses the risk that previous notifications to claimants made under the Jobseeker's Allowance (Mandatory Work Activity Scheme) Regulations 2011 (the 'MWA Regulations'), which contain the same notification provisions as the ESE Regulations, may also be open to challenge on the basis of the Court of Appeal's judgement.

Rationale for intervention

6. The Department will be seeking permission to appeal the Court of Appeal's judgment. Primary legislation is needed to ensure that, if permission to appeal to the Supreme Court is not granted, or the Supreme Court finds against the Department, to ensure that the Government does not have to repay sanctions to (and can impose sanctions where decisions have been stayed, on) all claimants who failed to take part in programmes

¹ R. (on the application of Reilly) v Secretary of State for Work and Pensions [2013] EWCA Civ 66.

² Section 17A of the Jobseekers Act 1995.

³ Jobseeker's Allowance (Schemes for Assisting Persons to Obtain Employment) Regulations 2013/297.

⁴ R. (on the application of Reilly) v Secretary of State for Work and Pensions [2012] EWHC 2292 (Admin).

comprised in the ESE Regulations. Introducing this Bill is necessary in order to provide certainty and thus safeguard the Government's position. As soon as the litigation ends the Government would be under a duty to repay these benefit sanctions. The only way to ensure that the Department does not have to make any benefit repayments is to press ahead with emergency legislation.

7. It is vital that in the present context of austerity measures the public purse is protected from such claims which could cost up to £130 million. It is also critical that scarce public resources are targeted at those who need and deserve them most. A retrospective transfer of public money to this group of claimants would represent poor value to the taxpayer and will not help those unemployed enter employment. Many of the individuals who would gain from such a payment may now be in work, and so funds intended to support the unemployed would be diverted elsewhere.
8. If the Department cannot make these retrospective changes, then further reductions in benefits might be required in order to find the money to repay the sanctions. This would mean that claimants who have failed to engage in these programmes (programmes which the Court of Appeal fully endorsed) and have not taken all reasonable steps to increase their chances of finding employment would profit at the cost of future benefit claimants.
9. The ultimate aim of the proposed retrospective legislation is to restore the law to that which Parliament originally intended – and to that which it has always been apparent to claimants, and others it is intended to be, namely that claimants receiving JSA (at a substantial cost to the public purse) should be required to participate in programmes which can assist them to obtain employment and should face sanctions if they fail to do so without good cause. The policy intention of the ESE Regulations was clear to all involved and there is an important public interest, as the Court of Appeal recognised, in getting people back to work by ensuring that JSA is only paid to those actively seeking employment and who engage with attempts made by the state to achieve that end. The proposed legislation would do no more than to ensure that the programmes are to be taken as having operated as was intended and understood.

Exchequer impact (see Annex A for Methodology)

10. The estimated impact on the exchequer as a result of having to refund the particular sanctions in question, and not being able to issue sanctions on stockpiled decision cases is set out in the tables below, split by the following categories:
 - a. sanctions issued (expired and live) under the ESE Regulations;
 - b. sanction decisions under the ESE Regulations, which have been put on hold pending the outcome of litigation;
 - c. sanctions issued under the MWA Regulations (expired and live); and
 - d. sanction decisions under the MWA Regulations, which have been put on hold pending the outcome of litigation.

	Sanctions (000s)	Total value (£m)
ESE sanctions issued*	221-259	80-99
ESE sanction decisions stockpiled	59	20-21
MWA sanctions issued*	10	8
MWA sanction decisions stockpiled	4	3
Total	294-332	110-130

*sanctions issued include both expired and live sanctions
 Figures may not sum due to rounding

The total value only includes the potential refund of Jobseeker's Allowance payments to claimants. It does not include any additional administrative or legal costs that might be incurred by the Department.

Values are net of estimated numbers of appeals and hardship payments.

Impact on individuals (see Annex A for Methodology)

11. The estimated number of affected individuals and the average value of sanctions imposed, for which they would be entitled to seek a refund, should the Department not win in an appeal to the Supreme Court or the Government enact this legislation, are set on in the table below, split by the categories described in paragraph 10.

	Individuals (000s)	Total value (£m)	Average value (£)
ESE sanctions issued*	136-159	80-99	590-620
ESE sanction decisions stockpiled	59	20-21	340-360
MWA sanctions issued	10	8	780-810
MWA sanction decisions stockpiled	4	3	740-760
Total**	208-231	110-130	530-570

*sanctions issued include both expired and live sanctions

** The total number of individuals assumes that the three groups are mutually exclusive. Given it is likely that there will be some overlap between the groups, the total number of individuals affected will be an overestimate with the consequence that the total average value will be an underestimate

Figures may not sum due to rounding

The average value is rounded to the nearest £10 and only includes the potential refund of Jobseeker's Allowance payments to claimants. It does not include any additional administrative or legal costs that might be incurred by the Department.

Average values are net of estimated numbers of appeals and hardship payments.

Impact on protected groups

12. Individuals with a protected characteristic (as defined by the Equality Act 2010) will be affected by this policy if they have had a sanction imposed on them in one of the programmes under the ESE Regulations or the MWA Regulations.
13. There is no disproportionate impact on protected groups.

Annex A

Methodology

14. The methodology for calculating the exchequer and individual impacts for each of the four categories of cases relies on a number of assumptions, some of which are estimates.
15. The numbers of existing sanctions under ESE and MWA Regulations was calculated as follows. The number of sanctions (and individuals) prior to 22 October 2012 was derived from the Sanctions and Disallowance Official Statistics database. Around 95% of ESE sanctions were for failing to participate on the Work Programme; most of the rest of ESE sanctions were for failing to participate in Skills Conditionality. The number of sanctions prior to 22 October 2012 was then added to the estimated minimum and maximum number of sanctions between 22 October 2012 and 12 February 2013 (when the Court of Appeal's judgment was handed down).
16. The numbers of sanction decisions stockpiled was estimated using a combination of internal Management Information and Official Statistics.
17. The three categories of sanctions are not mutually exclusive. Given that there are likely to be overlaps between the four categories, the total number of individuals estimated will be an overestimate of the actual total number of individuals affected.
18. The total value of having to refund sanctions of Jobseeker's Allowance (JSA) payments was estimated using the following calculation:
 - Total value = number of sanctions multiplied by number of weeks for particular sanction multiplied by (percentage of cases under 25, multiplied by JSA weekly rate for under 25s + percentage of cases 25 or over, multiplied by JSA weekly rate for 25 or over) multiplied by reduction due to successful appeals and hardship.
19. It should be noted that this calculation only includes the potential refund to claimants. It does not include any additional administrative or legal costs that might be incurred by the Department.
20. The average value was calculated as the value divided by the number of individuals. Given that the total number of individuals is likely to be an overestimate because of overlaps between categories, the total average value will be an underestimate.
21. A key assumption is that all sanction lengths have been (or will be) served. For example where an individual was given a 13 week sanction it has been assumed that they have served that entire sanction- so potentially they would be able to claim a refund equivalent to 13 weeks of benefit. When in reality some would have signed off Jobseekers Allowance, say after 3 weeks and would only be able to claim a refund equivalent to 3 weeks of benefit. While this would suggest that the figures below are overestimates, if in the example given, a claimant signed back on they would immediately serve the remainder of their 13 week sanction. Thus there would still be a cost to Government of the full 13 week sanction should the Government be under a duty to repay benefit sanctions.
22. During 2011/12 and 2012/13 Jobseeker's Allowance (JSA) was paid at the following weekly rates

	2011/12	2012/13
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JSA under 25	£53.45	£56.25
JSA 25 or over	£67.50	£71.00

23. Given that the majority of sanctions applied were in 2012/13, and for ease of calculation, the estimated average rate for all sanctions applied to under 25s for the period was £55 and for 25s and over it was £70.