EXPLANATORY MEMORANDUM TO

THE JOBSEEKER'S ALLOWANCE AND EMPLOYMENT AND SUPPORT ALLOWANCE (AMENDMENT) REGULATIONS 2021

2021 No. 1132

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These regulations correct an error which exists in current regulations causing ambiguity, and clarify when sanctions can be escalated.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of the instrument is Great Britain.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 A sanction is a reduction in benefit for a period of time as a result of a claimant failing to comply with work-related requirements without good reason. There are different levels of sanctions, depending on the severity of the failure.

6.2 When a claimant receives two or more sanctions at the same level within 365 days but not 14 days, the second or subsequent sanction will escalate. This means that the length of the second or subsequent sanction will increase.

6.3 The sanction will escalate provided that an earlier sanction of the same level has:

- a failure date in the 365 days immediately preceding the date of the current failure, and
- the date of the previous failure is not in the 14 days immediately preceding the date of the current failure.

6.4 This is set out in the tables in Regulations 19 to 21 of the Jobseekers Allowance Regulations 2013 https://www.legislation.gov.uk/uksi/2013/378/regulation/19 and Regulation 52 of the Employment Support Allowance Regulations 2013 https://www.legislation.gov.uk/uksi/2013/379/regulation/52.

6.5 A consequential amendment should have been included in the Social Security (Jobseeker's Allowance, Employment and Support Allowance and Universal Credit) (Amendment) Regulations 2016. Not having this amendment may cause ambiguity around whether a sanction can escalate.

6.6 This instrument corrects the error in those regulations to remove any ambiguity by amending the Jobseekers Allowance Regulations 2013 and the Employment and Support Allowance Regulations 2013.

7. Policy background

What is being done and why?

7.1 At the time of designing the policy, DWP intended that New Style Jobseekers Allowance and New Style Employment and Support Allowance sanctions would escalate, to match the approach to sanctions in Universal Credit, with increasing penalties for subsequent failures. When the legislation was originally passed (in the Employment and Support Regulations 2013 and the Jobseeker's Allowance Regulations 2013), the provision was there for sanctions to escalate in New Style awards in the same way as other benefits.

7.2 The legislation was subsequently amended through The Social Security (Jobseeker's Allowance, Employment and Support Allowance and Universal Credit (Amendment) Regulations 2016, which came into force on 25 July 2016. This amendment was made as it was discovered that the provisions did not work as the policy intended.

7.3 A consequential amendment should have been included. Not having this amendment may cause ambiguity around whether a sanction can escalate, which may cause confusion for claimants and DWP staff.

7.4 This instrument will amend the Jobseeker's Allowance Regulations 2013 and the Employment and Support Allowance Regulations 2013 to omit the provision that may cause ambiguity.

7.5 The disregard in the provision being removed has not been applied in practice and so no claimants will be adversely affected by the removal of the provision and it is simply a minor correction.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union/trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Informal consolidated text of instruments is available to the public free of charge via the National Archive website: www.legislation.gov.uk

10. Consultation outcome

10.1 A formal consultation has not been carried out on these Regulations. Consultation was not considered necessary as this is not a new policy. The amendments make a minor change to existing regulations, which clarifies existing legislation to reflect the policy intention and prevent ambiguity.

11. Guidance

11.1 Current guidance is already reflective of escalations and as such, no new guidance is necessary as a result of this amendment.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because this change fixes an error in the legislation.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This is not a new policy and our aim is to make the regulations clear. The existing sanctions policy will continue to be monitored and reported via our regular statistics released on gov.uk and Stat-Xplore.

15. Contact

15.1 Leana Scullion at the Department of Work and Pensions (Telephone: 07824 526377 or email: leana.scullion@dwp.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Victoria Hogan, Deputy Director for Employment Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mims Davies, Minister for Employment at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.