

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT JOBSEEKERS (BACK TO WORK SCHEMES)  
ACT 2013 (REMEDIAL) ORDER 2019

*Tuesday 14 July 2020*

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**Saturday 18 July 2020**

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**The Committee consisted of the following Members:**

*Chair:* PETER DOWD

- |  |   |
|--|---|
| † Afriyie, Adam ( <i>Windsor</i> ) (Con)   | † Eshalomi, Florence ( <i>Vauxhall</i> ) (Lab/Co-op)        |
| † Allan, Lucy ( <i>Telford</i> ) (Con)   | † Garnier, Mark ( <i>Wyre Forest</i> ) (Con)                |
| † Antoniazzi, Tonia ( <i>Gower</i> ) (Lab)   | † Malhotra, Seema ( <i>Feltham and Heston</i> ) (Lab/Co-op) |
| † Clarke, Theo ( <i>Stafford</i> ) (Con)   | † Moore, Robbie ( <i>Keighley</i> ) (Con)                   |
| † Clarke-Smith, Brendan ( <i>Bassetlaw</i> ) (Con)                                     | † Richardson, Angela ( <i>Guildford</i> ) (Con)             |
| † Cruddas, Jon ( <i>Dagenham and Rainham</i> ) (Lab)                                   | Smith, Nick ( <i>Blaenau Gwent</i> ) (Lab)                  |
| Cryer, John ( <i>Leyton and Wanstead</i> ) (Lab)                                       | Thompson, Owen ( <i>Midlothian</i> ) (SNP)                  |
| † Davies, Gareth ( <i>Grantham and Stamford</i> ) (Con)                                | Yohanna Sallberg, <i>Committee Clerk</i>                    |
| † Davies, Mims ( <i>Parliamentary Under-Secretary of State for Work and Pensions</i> ) |   |
| † Docherty, Leo ( <i>Aldershot</i> ) (Con)   | † <b>attended the Committee</b>                             |

## Fourth Delegated Legislation Committee

Tuesday 14 July 2020

[PETER DOWD *in the Chair*]

### Draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019

9.25 am

**The Chair:** Good morning. Before we begin, I remind Members of the social distancing regulations. Spaces available to Members are clearly marked. Our *Hansard* colleagues would also be grateful if you could send any speaking notes to [hansardnotes@parliament.uk](mailto:hansardnotes@parliament.uk).

#### The Parliamentary Under-Secretary of State for Work and Pensions (Mims Davies): I beg to move,

That the Committee has considered the draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019.

The draft order was laid before the House on 5 September 2019, and I am grateful to have the opportunity to move it. In 2013, my Department passed the Jobseekers (Back to Work Schemes) Act 2013. The Act validated sanctions and notifications that were issued to claimants who failed to take part in employment programmes designed to help them into work. The Court of Appeal found the Act to be an effective and valid way to achieve this end but recognised that, in a small number of very specific circumstances, some individuals had lost their right to a fair hearing under the Act. The draft remedial order amends the Act to resolve that issue, and it allows the tribunals to find in favour of claimants whose appeals were affected, where it is right to do so.

The order also gives my Department the ability to reconsider relevant sanction decisions in such cases and to pay any affected individuals anything that they are then due. It is of fundamental importance to me that people who appealed a sanction decision, but were prevented from having a fair hearing because of the Act, should have their right restored. Only a small group of people—around 5,000 individuals—have been affected by the Act in that way. As the remedial order applies only in very specific circumstances, not all cases will lead to a payment. The 2013 Act is valid for all other groups of claimants.

My Department aims to resolve such cases and make any necessary payments to those individuals as soon as it can. We anticipate that it might take up to 12 months for us to identify and pay any affected individuals. We aim to commence work on such claims in the autumn and to begin reconsidering decisions and payments. Unfortunately, I cannot say at this time how the current circumstances, or any subsequent wave of the pandemic, might affect the process. The order is not just about resolving this matter for the small number of claimants affected; we must also ensure that we learn important lessons around communicating with claimants and do not create similar instances in the future.

Members will be acutely aware that on Wednesday the Chancellor announced an unprecedented package of measures to not only protect jobs but ensure that we get back into work those individuals who may have lost

their jobs as a result of the covid-19 emergency. I have real confidence that the digital nature of universal credit, and its improved means of communication with our claimants via the online journal, mean that a future Minister for Employment will not find herself in a similar situation in another eight years' time. Instead, we will be discussing how our digital systems ensured that people were supported back into work through this difficult period.

The draft remedial order was laid for 60 sitting days on 28 June 2018, and then again for another 60 days last year. This was done to enable representations to be made by Members of both Houses and the Joint Committee on Human Rights. Through the use of a non-urgent remedial order, Parliament has been given time and the opportunity to scrutinise and consult on the contents of the order.

I have considered the views of the tribunals and have amended the draft remedial order accordingly. The Joint Committee on Human Rights approved it in March and has recommended it to Parliament. There are currently no other Bills planned that could accommodate this specific legal objective and resolve the incompatibility. The order is a way of achieving that end without repealing the Act itself, which still holds for the majority of claimants.

Although the process has been long and complex, we have comprehensively assessed the issue and carefully considered any representations that we have received. I am keen to resolve these appeal cases for the individuals involved as soon as we can and to take the learnings forward as we look to support people back into work. I hope the Committee will support the order during its final passage through Parliament. I am satisfied that it is compatible with the European convention on human rights.

9.31 am

**Seema Malhotra** (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Dowd.

I thank the Minister for her opening remarks. It is a pleasure to be working as her opposite number. As she outlined, the remedial order amends the Jobseekers (Back to Work Schemes) Act 2013, which retrospectively validated sanction decisions and notifications issued under the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 and the Jobseeker's Allowance (Mandatory Work Activity Scheme) Regulations 2011.

In 2016 the Court of Appeal found that the 2013 Act was incompatible with article 6 of the European convention on human rights, which concerns the right to a fair hearing. The court issued a declaration of incompatibility, which related to claimants with an undetermined appeal in the tribunal system on 26 March 2013, the date when the Act came into force.

We welcome the remedial order, which will restore the right to a fair hearing for the relevant group of claimants. It gives the courts the power to find in a claimant's favour and provides the Secretary of State for Work and Pensions with the power to revise sanction decisions in those cases, or to make decisions that supersede them, and to pay the affected individuals the amount to which they would then become legally entitled.

Section 10 of the Human Rights Act 1998 allows a remedial order of this kind to be used to amend an Act of Parliament where there is incompatibility between domestic law and a right under the European convention on human rights, but it is extraordinary that we are here at all. I am pleased that the Government say they take a breach of the convention seriously, but there are two important points to be made.

First, the case and the experience of claimants—it must have been a traumatic experience to take the Government to court at a quite difficult time in their lives—show a strong contrast in conduct, culture and approach between the Department for Work and Pensions workfare scheme at the time, and, for example, the future jobs fund, which was cancelled by the Cameron Government. The future jobs fund worked closely and in a personalised way with young people to get them into good jobs.

Caitlin Reilly, an unemployed geology graduate, and Jamieson Wilson, an unemployed driver, brought their legal challenge to the Department in 2012, on the basis that the DWP forced claimants to take on unpaid work for private companies, at the risk of having their benefits cut through the sanction. As the Minister said, the outcome of the case affected about 5,000 claimants.

Ms Reilly was told by her jobcentre adviser that if she did not attend an unpaid work placement in a Poundland store, she would be sanctioned and her jobseeker's allowance would be cut. Yet, at the time, Ms Reilly had just completed a paid work experience placement at a museum, where she continued to volunteer, with the ambition of pursuing a career in that field. The Court of Appeal later ruled that the instructions she had been given were unlawful, as the description of the schemes and the notices given to her were both insufficiently clear.

This happened a long time before the Minister was in her post or I was in mine, but there is a point to be made here. The Minister has talked about communications needing to be improved, but there may also be a lesson to be learned about the schemes themselves and how they operated. There were also the consequences of the Department's instructions in the case of Ms Reilly, which were contrary to the purpose of a system and a programme that existed to help her get back into the employment she sought, in which she could have an ongoing career and sustainable employment. Those methods were in contrast to Labour's approach through the future jobs fund, where engaging with employers to achieve sustainable and fulfilling work opportunities was a priority, not only at a local level, in how local authorities were involved in delivering employment outcomes, but in the culture that was enabled and created from the centre.

Unfortunately, in this case, Ms Reilly was forced to give up her voluntary work in the museum. The case raises real questions about the quality of work support and the sanctions culture that was in operation—a punitive, rather than an enabling, culture at the heart of the DWP—and there are important lessons for today.

The second issue I want to raise in relation to that case is the culture of a national politics that opts to fight citizens and seek to win in the courts—including, in this case, by taking away the rights of others to appeal—rather than to learn from rulings what systemic change might be needed to improve the system and its goal of supporting people back into employment.

While this remedial order is welcome, it should never have been necessary. I put on record my dismay at the length of time it has taken to get here—it has been eight years since the original appeal. Families have had their appeals and their lives on hold, with all the stress and strain that that will have caused. Claimants affected by the declaration of incompatibility have been waiting for their appeal or their hearing to be decided since that time. Some may no longer be claiming benefit. Some may have moved away or even passed away.

I thank the Minister for laying out a timetable for resolving this issue—I appreciate some of the difficulties with covid—for her commitment to ensuring that the process starts as soon as possible in the autumn, and for her hope that the issue will be resolved within 12 months. Will she lay out precisely how the Government intend to identify those affected who have entitlements? Do Ministers already have those records? Will she also lay out the approach they intend to take in calculating the entitlement to refunds of sanctioned benefits?

I reiterate that these are real human stories. These people could be her constituents or mine, or any of us on this Committee today. Using this order to insert new provisions into the 2013 Act will achieve the necessary change in the law to restore the right to a fair hearing to those affected, and ensuring fairness must now be a priority.

The delay in bringing forward this order has been quite extraordinary. That was not all due to the Minister, and I appreciate her point that the process has allowed for scrutiny, but it has been a considerably long time. It has been eight years since the original claim went through the courts. The Joint Committee on Human Rights said:

“The Committee does, however, regret the delay between the declaration of incompatibility and the laying of the proposed draft Remedial Order.”

I hope the Minister will understand the concerns about the delay, but it is important that, if there were reasons for the delay that could have been addressed, those should be taken on board and we should not see this situation arise in the future.

To conclude, I hope the Minister acknowledges that mistakes were made by the Department under her predecessors, regarding the treatment of jobseekers between 2011 and 2013; that the law was interpreted wrongly, sanctioned by her Department; that lessons will continue to be learned in terms of the culture and the way in which work support should be designed; and that resources should be in place to deliver that work support to the quality that our citizens need and deserve.

While we welcome and support the remedial order, at this time of national crisis we have approximately nine jobseekers seeking work for every vacancy. I hope the Minister will reflect on the use of sanctions in her Department and on the mixed messages that are coming out and, perhaps, finally agree that applying sanctions at this time is incomprehensible when we look at the situation. Organisations such as Disability Rights UK have this week highlighted the great anxiety that this causes people and their families.

More broadly, I hope the lessons that her Department has learned from this case, and that it learns in the future, mean it spends less time in the courtroom and more time, when things go wrong, better supporting people and getting them quickly back into meaningful, sustainable and fulfilling employment.

9.41 am

**Mims Davies:** I thank the hon. Lady for her constructive views, and I particularly welcome her closing thoughts. We fully agree that getting people back to work and giving them wide support is important.

We will look at this matter on a case-by-case basis and look closely at what happens on the ground and at its impact. That is what this Department does; we are a learning and understanding Department. In this role, I am determined that we will listen and engage with stakeholders, as the hon. Lady mentioned, and learn from the experience of claimants.

I accept that it has taken some time to address this issue. The draft legislation is a successful outcome of what has, frankly, been a long and complex court process. As a result of that, it was important that we considered how to address the issue carefully. I am extremely keen to resolve the appeal cases for claimants as soon as we can. I hope we can all support this order through its final passage, so that we can do that.

We use sanctions as a consequence of people not meeting the agreed commitments that a claimant accepts in order to be entitled to benefits. Sanctions are a last resort. We always apply reasonable judgment before any actions and take into account current circumstances. Our work coaches support us with their judgment of what are reasonable steps. Claimant commitments must be reasonable and, in this unprecedented time, they will be. I understand the points that the hon. Lady raises, but I am clear that we are in a good place as we move forward from the changes at the beginning of July.

The exercise of looking through the 5,000 people, potentially, who we need to understand will be important in terms of how we check all those who have been affected by the new remedial order. If it is determined that a person is affected and a payment is due, it is key that we have gone through their legal entitlements with the administrative practice that we have, and therefore that we can go back to claimants and make the payment appropriately.

I thank my hon. Friends and all hon. Members for joining today's important debate. This remedial order will amend the 2013 Act so that, for all relevant appeals, where it is right to do so, the court and tribunals can find in an individual's favour. It also allows my Department to revise or supersede the relevant sanction decisions so that the individual does not need to pursue their appeal.

I am keen to resolve the appeal cases for those individuals as soon as we can. It is of fundamental importance to me that those who appealed a sanction decision but were prevented from having a fair hearing because of the Act should have that right restored.

We aim, as I say, to begin revising all affected cases in the autumn of this year. I recognise the importance of resolving this incompatibility as swiftly as possible. It has taken time to consult and to develop the appropriate best course of action.

**Seema Malhotra:** I thank the Minister for taking this intervention in her closing remarks. Should the Department decide not to agree to a claimant's claim retrospectively, what will happen in that circumstance, where the Department is, in a sense, marking its own homework?

**Mims Davies:** I thank the hon. Lady for raising that point. That is exactly why we are going to do it carefully and considerately through each individual circumstance. I am not going to comment on individual cases that I do not understand at this point, but I am happy to take that away and write to her to explain where that will land as an issue. As I say, I think a very small proportion of people will be impacted and, hopefully, there will not be a large number of such situations.

As we have heard this morning, there is no argument to justify delaying this process. I hope we will all be able to support this remedial order so that it can complete its final passage and be reported to Parliament. I commend the order to the Committee.

*Question put and agreed to.*

9.46 am

*Committee rose.*