Draft Order laid before Parliament under paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

SOCIAL SECURITY

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

Made - - - -	***
Coming into force - -	***

The Jobseekers (Back to Work Schemes) Act 2013(**1**) has been declared(**2**) under section 4 of the Human Rights Act 1998(**3**) to be incompatible with a Convention right(**4**).

The Secretary of State considers that there are compelling reasons for proceeding by way of remedial order(**5**) to make such amendments to the Jobseekers (Back to Work Schemes) Act 2013 as she considers necessary to remove the incompatibility.

In accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, a draft of this instrument was laid before Parliament and was approved by resolution of each House of Parliament, a document containing a draft of this instrument having previously been laid before Parliament in accordance with paragraph 3(1)(a) of that Schedule.

Accordingly, the Secretary of State makes the following Order in exercise of the powers conferred by section 10(2) of, and paragraph 1(1), (2) and (3) of Schedule 2 to, the Human Rights Act 1998.

Citation, commencement and extent

1.—(1) This Order may be cited as the Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019 and comes into force on the day after the day on which it is made.

(2) This Order extends to England and Wales and Scotland.

(**1**) 2013 c. 17.
(**2**) By the Court of Appeal in the case of *R (on the application of Reilly and another) v Secretary of State for Work & Pensions; Jeffrey and another v Secretary of State for Work Pensions* [2016] EWCA Civ 413.
(**3**) 1998 c. 42.
(**4**) *See* section 1 of the Human Rights Act 1998 for the definition of "the Convention rights" and section 21(1) of that Act for the definition of "the Convention".
(**5**) *See* section 21(1) of the Human Rights Act 1998 for the definition of "remedial order".

Amendment of the Jobseekers (Back to Work Schemes) Act 2013

2. In the Jobseekers (Back to Work Schemes) Act 2013, after section 1 (regulations and notices requiring participation in a scheme) insert—

"**Certain appeals against penalties under the 2011 Regulations**

1A.—(1) This section applies where—

(a) the Secretary of State has made a decision imposing on a claimant for jobseeker's allowance a penalty for failing to comply with the 2011 Regulations ("the penalty decision"), and

(b) the claimant lodged an appeal against the penalty decision before 26 March 2013, and the appeal had not been finally determined, abandoned or withdrawn before 26 March 2013.

(2) If the Secretary of State revises the penalty decision under section 9 of the Social Security Act 1998, in making the revised decision, the Secretary of State must disregard subsections (1) to (6) of section 1 of this Act and subsection (12) of section 1 so far as it relates to those subsections.

(3) Subsection (4) applies where a tribunal has decided the appeal before this section comes into force.

(4) In a case where the tribunal decided to uphold the penalty decision (in whole or in part), the Secretary of State must make a decision superseding the tribunal's decision.

(5) In making a superseding decision under subsection (4), the Secretary of State must disregard subsections (1) to (6) of section 1 and subsection (12) of section 1 so far as it relates to those subsections.

(6) Section 10(1)(b) of the Social Security Act 1998 (power of the Secretary of State to supersede a tribunal decision) does not apply in a case where subsection (4) applies.

(7) A superseding decision made under subsection (4) is to be treated for all purposes as if it were a superseding decision made under section 10 of the Social Security Act 1998.

(8) Subsection (9) applies where, after this section has come into force, a court or tribunal is considering—

(a) the appeal mentioned in subsection (1)(b),

(b) an appeal against a revised decision made under section 9 of the Social Security Act 1998 by virtue of subsection (2), or

(c) an appeal against a superseding decision made under subsection (4).

(9) In considering the appeal, the court or tribunal must disregard subsections (1) to (6) of section 1 and subsection (12) of section 1 so far as it relates to those subsections.

(10) A revised decision made by virtue of subsection (2) and a superseding decision made under subsection (4) are to be treated as having effect from the date on which the penalty decision had effect (other than for the purposes of any rule as to the time allowed for bringing an appeal).

(11) In this section—

"the 2011 Regulations" has the same meaning as in section 1;

"court" means the Court of Appeal, the Court of Session or the Supreme Court;

"tribunal" means the First-tier Tribunal or the Upper Tribunal.

Certain appeals against penalties under the Mandatory Work Activity Scheme Regulations

1B.—(1) This section applies where—

(a) the Secretary of State has made a decision imposing on a claimant for jobseeker's allowance a penalty for failing to comply with the Mandatory Work Activity Scheme Regulations ("the penalty decision"), and

(b) the claimant lodged an appeal against the penalty decision before 26 March 2013, and the appeal had not been finally determined, abandoned or withdrawn before 26 March 2013.

(2) If the Secretary of State revises the penalty decision under section 9 of the Social Security Act 1998, in making the revised decision, the Secretary of State must disregard subsections (7) to (9) of section 1 of this Act and subsection (12) of section 1 so far as it relates to those subsections.

(3) Subsection (4) applies where a tribunal has decided the appeal before this section comes into force.

(4) In a case where—

(a) the tribunal decided to uphold the penalty decision (in whole or in part), and

(b) the Secretary of State decides that subsection (7), (8) or (9) of section 1 or subsection (12) of section 1 so far as it relates to those subsections may be relevant to the tribunal's decision,

the Secretary of State must make a decision superseding the tribunal's decision.

(5) In making a superseding decision under subsection (4), the Secretary of State must disregard subsections (7) to (9) of section 1 and subsection (12) of section 1 so far as it relates to those subsections.

(6) Section 10(1)(b) of the Social Security Act 1998 (power of the Secretary of State to supersede a tribunal decision) does not apply in a case where subsection (4) applies.

(7) A superseding decision made under subsection (4) is to be treated for all purposes as if it were a superseding decision made under section 10 of the Social Security Act 1998.

(8) Subsection (9) applies where, after this section has come into force, a court or tribunal is considering—

(a) the appeal mentioned in subsection (1)(b),

(b) an appeal against a revised decision made under section 9 of the Social Security Act 1998 by virtue of subsection (2), or

(c) an appeal against a superseding decision made under subsection (4).

(9) In considering the appeal, the court or tribunal must disregard subsections (7) to (9) of section 1 and subsection (12) of section 1 so far as it relates to those subsections.

(10) A revised decision made by virtue of subsection (2) and a superseding decision made under subsection (4) are to be treated as having effect from the date on which the penalty decision had effect (other than for the purposes of any rule as to the time allowed for bringing an appeal).

(11) In this section—

"the Mandatory Work Activity Scheme Regulations" has the same meaning as in section 1;

"court" has the same meaning as in section 1A; and

"tribunal" has the same meaning as in section 1A."