



Social Security (Administration) (Reasonable Excuse – Participation Payments) Determination 2018

I, KERRI HARTLAND, Secretary of the Department of Jobs and Small Business, make the following determination.

Dated 7 June 2018

K Hartland

KERRI HARTLAND
Secretary of the Department of Jobs and Small Business

Contents

1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Definitions	1
5 Matters to be taken into account in deciding whether a person has a reasonable excuse.....	2
6 Matters not to be taken into account in deciding whether a person has a reasonable excuse.....	2

1 Name

This instrument is the *Social Security (Administration) (Reasonable Excuse – Participation Payments) Determination 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2018.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsections 42AI(1), 42AI(3), 42U(1) and 42U(3) of the Act.

4 Definitions

Note: Some of the expressions used in this instrument are defined in the Act or in the *Social Security Act 1991*, including the following:

- (a) declared program participant;
- (b) Employment Department; and
- (c) participation payment.

In this instrument:

Act means the *Social Security (Administration) Act 1999*.

failure means a failure referred to in subsections 42AI(1), 42AI(3), 42U(1) and 42U(3) of the Act.

demerit means a record on the Employment Department's Information Technology System that the person has committed a mutual obligation failure without a valid reason.

5 Matters to be taken into account in deciding whether a person has a reasonable excuse

- (1) For subsections 42AI(1) and 42U(1) of the Act, the matters set out in subsection (2) are matters that the Secretary must take into account in deciding whether a person has a reasonable excuse for committing a failure.
- (2) The matters are:
 - (a) the person did not have access to safe, secure and adequate housing, or was using emergency accommodation or a refuge, at the time of the failure;
 - (b) the literacy and language skills of the person;
Example for paragraph (b):
If the person is unable to comprehend a requirement or an instruction, despite the requirement or instruction being delivered in a form that the person is most likely to comprehend.
 - (c) an illness, injury, impairment or disability of the person;
 - (d) a cognitive, neurological, psychiatric or psychological impairment or mental illness of the person;
 - (e) a drug or alcohol dependency of the person;
 - (f) unforeseen family or caring responsibilities of the person;
 - (g) the person was subjected to criminal violence (including domestic violence and sexual assault);
 - (h) the person was adversely affected by the death of an immediate family member or close relative;
 - (i) the person was undertaking paid work at the time of the failure;
 - (j) the person was attending a job interview at the time of the failure.
- (3) Without limiting paragraph (2)(a), a person is taken not to have access to safe, secure and adequate housing if:
 - (a) the housing to which the person has access:
 - (i) damages, or is likely to damage, the person's health; or
 - (ii) threatens or is likely to threaten the person's safety; or
 - (iii) does not provide the person with access to a reasonable level of personal amenities or support that housing normally affords; or
 - (b) in the circumstances, the adequacy, safety, security or affordability of the housing to which the person has access is adversely affected or may be adversely affected; or
 - (c) the person does not have a right to remain, or a reasonable expectation of being able to remain, in the housing to which the person has access.

6 Matters not to be taken into account in deciding whether a person has a reasonable excuse

- (1) Despite section 5, for subsection 42AI(3) of the Act, the matters set out in subsections (3) and (4) are matters the Secretary must not take into account in deciding whether the person has a reasonable excuse for committing a failure.

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- (2) Despite section 5, for subsection 42U(3) of the Act, the matter set out in subsection (3) is a matter the Secretary must not take into account in deciding whether the person has a reasonable excuse for committing a failure.

Matter did not directly prevent person from meeting requirement

- (3) For the purposes of subsections (1) and (2), the matter is any matter if the Secretary is not satisfied that the matter directly prevented the person from meeting the requirement that was the subject of the failure at the relevant time that the failure occurred.

Drug or alcohol misuse or dependency used for a previous failure

- (4) For the purposes of subsection (1), the matter is a drug or alcohol misuse or dependency of the person if:
- (a) the person previously committed a failure on or after 1 July 2018 (the ***previous failure***);
 - (b) due to a drug or alcohol misuse or dependency of the person:
 - (i) the previous failure did not result in a demerit; or
 - (ii) the Secretary decided that the person had a reasonable excuse for the previous failure;
 - (c) as a result of the previous failure, the person was referred to treatment to address the drug or alcohol misuse or dependency; and
 - (d) the person refused or failed to participate in the treatment;
- unless one of the following applies:
- (e) the treatment was not available or appropriate for the person;
 - (f) the person was genuinely unable to participate in the treatment;
 - (g) the person agreed to participate in the treatment but, despite taking all reasonable steps to commence the treatment, the treatment did not commence; or
 - (h) before the person was referred to the treatment, the person had:
 - (i) completed the same type of treatment as the treatment they were referred to; or
 - (ii) completed treatment that was substantially similar to the treatment they were referred to;
- and, in the opinion of an appropriately qualified medical professional, the person would not benefit from further treatment of the same kind as the type of treatment already completed by the person.