

# **From Unemployment to Active Jobseeking: Changes and Continuities in Social Security Law in the United Kingdom**

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## **Introduction**

The notion that worklessness is immoral was inherent in the English Poor Law's tradition of setting the poor to work. While the causes of unemployment are no longer regarded as confined to or even primarily derived from personal moral failure – since structural factors to do with economic changes and the demand for labour, particularly diversely skilled labour, are acknowledged to be the principal causes – the idea that being in employment is a personal responsibility retains a continuing influence over social security provision for the unemployed. Indeed, it is reflected in the growing individualisation of the relationship between the state and unemployed citizen, as part of the managerialistic governance of welfare that places an emphasis on strict controls with contractual underpinnings.

This is certainly true of the principal benefit for those out of work in the UK today, the jobseeker's allowance (JSA). In essence JSA is a simple benefit, providing contribution-based entitlement during the first six months of unemployment and thereafter (or from the first day, if the insurance contribution record is inadequate) means-tested entitlement of unlimited duration. This benefit replaced unemployment benefit (UB) in 1996. Like UB and the benefits that preceded it, dating back to the National Insurance Act 1911, one of the principal conditions of entitlement is that of being "available for employment". Since 1989 claimants have also had to be "actively seeking employment", but there is a basic continuity in the principles of social security law relating to this area. However, over the past two decades the conditionality of this benefit has increased, in two main areas: first, in the requirements concerned with worksearch, some of which are now linked to specific government schemes for arranged work and training (under various "New Deal" programmes); and secondly, in the sanctions that must or may be applied to those who do not take up employment or participate in activation measures, which are underscored by the terms of an express agreement between jobseeker and government agency.

These developments are part of a broader “welfare to work” strategy that the UK Government has been pursuing over the past 10 years and which is now targeted not only at those claiming JSA but also those perceived to have a looser attachment to the labour market due to sickness, disability or family responsibilities. It is linked to a wider employment policy which is based around the aim of achieving an 80% employment rate – in other words, that 80% of the population of working age should be in employment and that the 20% who are not should made up exclusively of “those who have a good reason to be outside the labour market”, namely people who have retired early, have full-time caring responsibilities or who have a severe disability or illness that makes them incapable of work (HCWPC: paras 19 and 20). Since 1971, the social security system has also tried to incentivize the take-up of employment through the provision of means-tested in-work benefits or, since 1999, tax credits, so that the prospect of low wages does not deter people from moving from benefit to work.

This chapter examines the continuities and changes in social security law that have shaped the current system of benefits for the unemployed. It explains how the underlying ideologies and perceived social and economic imperatives have impacted upon the developing legal and policy framework. It highlights ways in which the policies that have been implemented, particularly in recent years, have interacted with long-standing principles within social security law, such as the notion of ‘voluntary unemployment’.

## **From Poor Relief to the ‘Labour Exchange’ and Unemployment Insurance**

Activation strategies have a long history in the UK. They can be traced back to the Elizabeth Poor Law, which adopted the principle of setting the poor to work as a condition for relief. As early as the Poor Relief Act 1576 there was a local duty to provide materials for the able-bodied poor to work (Fraser 1984, 32). The Poor Law Act of 1601 continued the principle of providing and requiring work for the able bodied within each parish, including children whose parents could not support them, while maintaining a harsh regime of accommodating the incapable poor in almshouses or “poor-houses” and sending those considered to be capable of work but unwilling to engage in it to “houses of correction”, a form of punishment. While it is not necessary to recount the history of the Poor Law, it is important to reflect on the underlying philosophy of self-support and the deterrence of idleness that underpinned it, since it has had a continuing influence on social security and is even reflected in many of the central provisions of the modern law.

The Poor Law still offered the principal form of poverty relief for the unemployed by the turn of the 20th Century, a time when unemployment was growing. In London, “distress committees” provided assistance to unemployed workers (Beveridge 1930). Bureaucratic control had been and remained a feature of the

Poor Law administration, but by registering and classifying the unemployed and investigating their circumstances the distress committees of early 20th Century London were perhaps a precursor to the strict administrative controls of later years. The distress committees were established under the Unemployed Workmen Act of 1905, a year which also marked the establishment of the Royal Commission on the Poor Law. When this Commission reported in 1909 there were Majority and Minority Reports. While they disagreed on the subject of how much state involvement in welfare provision was desirable or needed, the reports agreed on two fundamental mechanisms: the introduction of a national scheme of unemployment insurance and the establishment of labour exchanges, which were places where the unemployed could register their interest in employment and might be found work. The exchanges in fact preceded the unemployment insurance scheme, although they became inextricably linked. The Labour Exchanges Act 1909 gave the Board of Trade, a government ministry, a power to establish and maintain labour exchanges in locations where they were needed and empowered the making of regulations concerning the management of exchanges, which were later known as employment exchanges. The exchanges maintained separate registers for adult and juveniles. The numbers registering doubled once the unemployment insurance scheme which was introduced in 1912 under the National Insurance Act 1911 made registration for work at an exchange a necessary condition of entitlement for unemployment benefit (Gilbert 1966, 262). However, only unemployment from a limited number of prescribed trades was covered by the scheme (see below).

Two particular features of the scheme of unemployment benefit under the 1911 Act have come to represent continuities in this area of social security law. These elements were not only present in the unemployment insurance scheme, which was a contributory scheme, but were later to also become features of the principal social assistance scheme, known as unemployment assistance. The first of the features was a basic test as to whether or not continuing unemployment was preventable – a work-test condition. The second comprised a penalty for those whose unemployment was avoidable. Under the work test condition (in section 86(3) of the National Insurance Act 1911), the claimant could only secure entitlement to benefit if “capable of work but unable to obtain suitable employment”. The penalty comprised a period of disqualification for benefit of six weeks where the unemployment arose from “misconduct” or the claimant “voluntarily [left] his employment without just cause” (section 87).

These features of unemployment insurance, its contributory basis and the fact that the scheme was limited to particular trades such as sawmilling and shipbuilding where unemployment was cyclical and therefore largely short term, reflected the actuarial basis to the scheme. The work test and disqualification period helped to protect the collective insurance fund against unwarranted claims in the same way that avoidable losses (or losses capable of mitigation) would not be compensated (or fully compensated) under commercial insurance arrangements. The 1920s saw the gradual extension of the unemployment insurance scheme to cover more trades, provide benefit of longer duration and make provision for claimants’ dependants. In

addition, new schemes such as “extended benefit” were introduced for those who had exhausted their entitlement to unemployment benefit. Later, there was “transitional benefit” for people who could not meet all the contribution conditions (Fraser 1984, 187). Despite the increasing generosity of the unemployment insurance scheme, the conditions of entitlement remained tight and were intensified in response to continuing concern to avoid abuse.

The Unemployment Insurance Act 1920 embodied the notion of availability for work, which remains a condition of entitlement today. The above-mentioned work test condition became, under the 1920 Act (section 7(1)(iii)), one of being “capable of *and available for* work, but unable to obtain suitable employment” (emphasis added). However, the disqualification period in respect of voluntary employment ceased to be a fixed period of six weeks. Instead an element of officer discretion was introduced: it became “six weeks or such shorter period being not less than one week...” (section 8(2)). The work test condition was further tightened up just one year later when the proportionment of benefits to contributions – which it was assumed would prevent abuse, as “the malingerer... could only cheat himself since unnecessary claims would reduce entitlement to benefit when it was really needed” (Fraser 1984, p 187) – was abandoned. Thus the Unemployment Insurance Act 1921 provided that “No person shall be entitled to benefit... unless he proves that he is... genuinely seeking whole-time employment but unable to obtain such employment” (section 3(3)). Therefore mere availability for work was insufficient. The claimant now had to be “genuinely seeking” it and had the onus of proving that he or she was doing so. A further amendment, made by Unemployment Insurance (No 2) Act 1924 (section 3) confirmed two separate conditions related to this work test: first, the claimant had to be “capable of and available for work” and, secondly, had to be “genuinely seeking work but unable to obtain suitable employment”.

Significant numbers of claims were refused as a consequence of the more onerous conditions from 1921. According to Fraser (1984, 188), in the period from March 1921 to March 1930, three million claims were turned down for failure to meet the “genuinely seeking work” condition. There is an interesting contrast with the less strict work test condition that was attached to “extended benefit” (the benefit for those who had exhausted their entitlement to unemployment benefit) when entitlement to it was made of unlimited duration in 1924. The claimant was entitled to the extended benefit if, among other things, “he is making *every reasonable effort* to obtain employment suited to his capacities and is willing to accept such employment” (Unemployment Insurance (No 2) Act 1924, section 1(3)(d), emphasis added). Extended benefit was later replaced via the Unemployment Insurance Act 1927 by a means-tested and discretionary benefit known as “transitional benefit”, noted above, which later became “transitional payment”. It was replaced in 1934 by “unemployment assistance” – the forerunner of successive means-tested assistance schemes: “(national) assistance” (1948-66), “supplementary benefit” (1966-87) and the two current schemes, “income support” (1987-) and “income-based jobseeker’s allowance” (1996-date).

The “genuinely seeking work” condition of entitlement to unemployment benefit was abolished under section 6 of the Unemployment Insurance Act 1930. It had been considered to be well nigh impossible to prove “genuineness” (Lundy 2000, 302). Such a test was not to reappear until nearly 60 years later (below). The 1930 Act also increased basic rates of benefit and has been viewed as the most generous of the unemployment insurance measures before economic slump and mass unemployment forced the Government into cutting benefits and tightening conditions of entitlement, leading to some one million claimants being excluded from entitlement (Davison 1938, 8, 15; see Harris 2000, 81-82). Nonetheless, the 1930 Act introduced some further work test conditions which are still with us today. Indeed, today’s social security lawyers in the UK would instantly recognise the terminology employed in section 4 of the Act. This provided for disqualification from benefit “for a period of six weeks or for such shorter period and from such date as may be determined by a court of referees or the umpire” where the claimant: (i) had “without good cause” refused or failed to apply for a vacancy notified to him by an employment exchange or other recognised agency; or (ii) had

*“without good cause refused or failed to carry out any written directions given to him by an officer of an employment exchange with a view to assisting him to find suitable employment (being directions which were reasonable having regard both to both the circumstances of the claimant and to the means of obtaining that employment usually adopted in the district...)”.*

These tighter conditions remained despite the extensions to provision that occurred as national economic conditions improved.

The Poor Law idea of “setting the poor on work” was not adopted. But although there was no inter-war equivalent of the New Deal programmes introduced by the post-1997 Labour Government, there were industrial transference schemes under which unemployed workers were in effect compelled to move from areas of labour surplus into those where work was available (Harris 2000, 80-81). Under the Unemployment Insurance Acts of 1920 and 1930, juveniles could be required to attend a course at an instruction centre or face disqualification from benefit. Subsequently, in exploring ways in which work incentives might be maintained, William Beveridge proposed not only the maintenance of a gap between basic benefits and wages, but also the discouragement of idleness through benefit sanctions, which were already a feature of the unemployment insurance scheme, and requirements to attend courses of training as a condition of receipt of benefit. The Beveridge Report, which formed the blueprint for the UK’s welfare state which was developed after the second world war, argued that safeguards were needed in case “men... settle down to” life on benefits; it proposed attendance at a work or training centre for six months (Beveridge 1942, para 131), although in the event this reform was not implemented because it was considered impracticable.

However, both the work test that was attached to the basic conditions of entitlement and the six weeks’ maximum disqualification continued on into the National Insurance Act 1946 that embodied the social insurance reforms proposed in

the Beveridge Report. As the insurance and assistance schemes evolved, these features were present within both of them. There was a requirement on the claimant to register as available for work, a requirement that did not for example apply to women caring for a child or persons who were physically or mentally incapable of work. This is important, as the same basic work test conditions applied to all unemployed claimants apart from those exempt from them. Insurance benefits declined in importance particularly by the 1960s and 1970s (Wikeley 1989) because they were not sufficiently up-rated and because unemployment became more long term and increasing numbers of young people who had no insurance contributions claimed benefit on leaving school. These factors led to an increasing demand for means-tested (and non-contributory) assistance, known by then as supplementary benefit, and a much reduced demand and qualification for insurance-based unemployment benefit.

So we can see that in the period from the National Insurance Act 1911 until the Unemployment Act 1934 the basic framework was established and that despite some changes, including the extension of the maximum disqualification period, its features represent an important continuity in social security law. However, although unemployment in the UK in January 2008 stood at exactly the same level as in 1935, at 1.6 million (Ministry of Labour Gazette, December 1935, 480; <http://www.statistics.gov.uk/cci/nugget.asp?id=12> (accessed 26 March 2008)), those claiming benefit today face much tougher work test conditions, linked to significant administrative controls. So, moving on from the continuities, what transitions have occurred, and why?

## **Tightening the screw – the Conservatives' reforms post-1979**

By the 1980s there was perceived to be crisis in the welfare state in the UK. The benefit system had become unsustainably expensive, overly complex and condemned for stifling individual endeavour. These problems were anathema to a Government committed to monetarist economic policy and a neo-liberal approach to state welfare. According to the Conservative Government's policy document (Green Paper) on social security reform in 1985, social security had "lost its way" (HM Government 1985, Vol 1, para 1). The Conservatives, who had been returned to power in 1979, instituted a review of the social security system. However, it was principally concerned with means-tested benefit, especially supplementary benefit and housing benefits, which were the most complex and expensive to administer. Essentially the basic general conditions of entitlement to unemployment benefit were not affected by the proposed changes that resulted from this review. However, the Social Security Act 1986 effected an increase in the maximum period of disqualification for 'voluntary' unemployment and related matters (above) from six to 13 weeks. The Secretary of State for Social Security was also given a power by the Act to increase this period using delegated legislation. It was not long before the power was exercised. In 1988 the maximum disqualification period was extended

to 26 weeks, where it remains. However, the Secretary of State had and continued to have (Social Security Act 1989, section 12(2), Jobseeker's Act 1995, section 19(3)) no power to increase it beyond 26 weeks, it can only be reduced unless Parliament votes otherwise. There was, however, no tightening up in the basic availability for work condition, save for the introduction of limitations which claimants were permitted to place on their availability (see Wikeley 2002, p 341). These limitations were greatly increased once JSA was introduced in 1996/97 (see below).

There was a return to the idea that the law should place some onus on the claimant not merely to indicate availability for work but also a sincere intention to obtain it. Previously, as noted above, claimants had had to show they were "genuinely seeking work". Under the Social Security Act 1989 (section 10) that condition was effectively reintroduced through a requirement to be "actively seeking employed earner's employment". The Act also enabled the "steps which a person is required to take in any week if he is to be regarded as actively seeking employed earner's employment in that week" (section 10) to be prescribed by regulations. Concerns were, however, expressed that the new condition was demeaning, since those who remained unemployed despite seeking work would regularly be confronted with their own demoralising sense of failure (Buck 1989). They were also considered to be harsh given the paucity of job opportunities, the extent of unemployment at the time and the unreliability of the evidence cited by the Government to confirm that claimants in general made inadequate efforts in the search for a job (Wikeley 1989).

In 1990, when Parliament was debating a new Social Security Bill, an unsuccessful attempt was made by an opposition MP to have the "actively seeking" work condition abolished, on the grounds that it was unfair and was designed to depress wage levels by forcing the unemployed to accept low paid work (House of Commons Debates, 3 April 1990, col 1086), a charge which in fact is less potent today in view of the introduction of the minimum wage in the late 1990s. It was reported that in the first seven weeks after the implementation of the Social Security Act 1989, 700 unemployment claimants per week were being given written warnings about their job-seeking activities and nearly 600 of them "subsequently had their benefit suspended when their claims were referred to adjudication officers" (col.1088). The Government confirmed that between 9 October 1989 and 26 January 1990, 11,400 claimants were issued with warning letters for failing to seek work actively, and that there was "a rising trend in the number of claimants warned about inadequate job search" (col 1093, Mrs G Shephard MP, Under-Secretary of State). Approximately 15% of the claimants who were warned had to be referred to adjudication officers for consideration of disallowance (col.1093).

By this stage the Government could point to the development of training and employment assistance programmes, both for adults and specifically for young people (Harris 1989). Among these was the Youth Training Scheme (YTS). Young people leaving school and finding themselves unable to secure employment did not have the contributions record to enable them to qualify for unemployment benefit, but they could qualify for means-tested supplementary benefit. However, if they

unreasonably refused or failed to avail themselves of a training place on the YTS they faced a 40% reduction in their weekly benefit. In the nine months from December 1983-September 1984 over 10,000 young people were subjected to this reduction on the grounds of non-participation in the YTS (House of Commons Debates, Vol 69, cols 165-166, 4 December 1984). The Government went one important stage further in the Social Security Act 1988, when it raised the minimum age of entitlement to social security for most claimants from 16 to 18 (see Harris 1988).

For older people there was the Employment Training programme, which paid an allowance marginally higher than the relevant rate of benefit. Under the Social Security Act 1975 (section 20) those who refused to participate in training approved for the claimant by the Secretary of State faced benefit disqualification. Eventually training was covered by a number of separate disqualification grounds, introduced by the Employment Act 1988 (section 27), and later consolidated in 1992 legislation (Social Security Contributions and Benefits Act 1992, s 28), related to failing to apply for or take up a training place, voluntarily leaving a training place or losing one's place due to misconduct. In most cases there was a defence of having "good cause" for the action or inaction in question. As with the employment-related grounds of disqualification, those who claimed basic assistance (which from 1987 changed from supplementary benefit to "income support") during the period of disqualification were also subjected to a reduction in the rate of this benefit. The reduction, amounting to 40% of the personal allowance element of the benefit, ensured that the disqualification had "a financial bite" (Mesher and Wood 1995, p 126).

So, by the early 1990s there was in place a detailed and wide-ranging statutory regime for the enforcement of worksearch and availability for work. There was once again a test to be satisfied of being actively engaged in the search for employment, although as Lundy points out, it had already been held that the basic test of availability for work implied "some active step by the [claimant] to draw attention to his availability" (Commissioner's Decision R(U)5/80, para 14, cited in Lundy 2000, n.60). Although some of disqualification grounds required an absence of "good cause" – for example, for failing to apply for a position notified to the claimant – the factors that should be taken into account in determining "good cause" were tightly defined by the regulations, as amended in 1989; a person could not, for example, normally claim that travel to work time constituted good cause unless it was more than one hour each way (Social Security (Unemployment, Sick-ness etc) Regulations 1983 (SI 1983/1598), reg 12E). Disqualification could now be imposed for up to 26 weeks and the grounds on which it could be instituted had been extended to include participation in training programmes.

## The Jobseekers Act 1995 and activation

The most recent legislative reform of real significance occurred in 1996 with the introduction of jobseeker's allowance (JSA) under the Jobseekers Act (JA) 1995.

The current framework is still based around this Act. JSA combines two separate schemes: (1) Contribution-based JSA (CBJSA), which replaced unemployment benefit; and (2) Income-based JSA (IBJSA), which replaced income support (but only for those who are required to be available for work) and which, like income support, is a means-tested benefit. Approximately 80% of the people entitled to JSA received IBJSA, since individual entitlement to CBJSA runs for only six months and once it is exhausted a claimant will in effect be forced to seek entitlement to IBJSA, as will a person who does not meet the contributions requirement for CBJSA.

As Lundy explains, “JSA was introduced with the express intention of reinforcing the link between the receipt of social security and the search for work” (Lundy 2000, 291). The notion of an obligation to work that underpins JSA may be in furtherance of traditional values, religious and moral, attached to the work ethic. But it also has a strong contractarian association in the context of social security and with the reciprocal obligations of citizenship. The latter are reflected in the long-standing principle of universal insurance but have been given additional emphasis by government in recent years as political justifications for making welfare entitlement increasingly conditional, particularly at a time when levels of unemployment had begun to fall and the availability of work increased.

In 1994 the Government set out its proposals for JSA, stating three main aims to the new benefit (Department for Employment/DSS 1994). First, JSA would “improve the operation of the labour market by helping people in their search for work, while ensuring that they understand and fulfil the conditions for receipt of benefit”. Secondly, it would result in a better deal for taxpayers, since it would offer “streamlined administration, closer targeting on those who need financial support and a regime which more effectively helps people back into work”. Thirdly, it would provide a better service to claimants by virtue of there being a “clearer, more consistent benefit structure, and by better service delivery”. What was contemplated was a more active, managed process of ensuring that the unemployed retained a firm attachment to the labour market. This meant a shift in the balance between state and individual responsibility. Claimants would only enjoy a maximum period on contribution based benefit of just six months rather than 12, a change which reflected a further diminution of the insurance principle (Buck 1996). There would also be increased pressure to engage in the search for work or to participate in activities which enhance the prospects of securing full-time employment. The new measures included a requirement to enter into a “jobseeker’s agreement” with the relevant government agency, currently called “Jobcentre Plus”. There would be an even wider range of sanctions for non-cooperation or non-compliance.

JSA is a complex benefit, made the more so by a legal structure based largely on secondary legislation that is subject to frequent amendment. Although the Labour Government post 1997 has developed a new programme of activities designed to provide a welfare-to-work pathway, notably the various New Deal programmes offering work experience and/or a programme of training or edu-

tion (such as the New Deal for Young People, New Deal 25 Plus and New Deal for Lone Parents), it has not significantly altered the basic architecture of the JSA scheme. It should be borne in mind that because of the attempt to individualise and personalise the relationship between the claimant and the advisory team in the jobcentre, it is important to judge the system with particular reference to the way that the process is managed on the ground. For example, in 2005 the Department for Work and Pensions (DWP) introduced a series of pilots involving quite different regimes affecting those claiming JSA who had entered the so-called “gateway” when they have to attend the jobcentre every fortnight for a “jobsearch review”. This process of attendance is still known by its traditional name of “signing on”. Under the pilots, some claimants were able to sign on by telephone. Others were excused signing on for the first 7 or 13 weeks but were telephoned at random to discuss their worksearch activities. Some fortnightly reviews were conducted in groups. Piloting of this kind is complemented by a constant process of review and evaluation, designed to maximise efficiencies while retaining adequate controls. The evaluation of this particular pilot turned out to be mostly inconclusive but recommended against a national roll-out of the 13 week and telephone signing on arrangements, since they were less effective at getting people into work. Moreover, it was found that the extra benefit payments that were required were “likely to be greater than the administrative savings” (Middlemas 2006, para 10.7).

### **The structure of JSA**

One of the fundamental aims of the JA 1995 was to establish a single benefit for the unemployed. However, it is basically two different benefits albeit within a common framework and a joint name. As noted above, there are two types of JSA:

1. Contribution-based JSA. This is payable for a maximum of 182 days (six months). Entitlement is dependent upon (among other things) having paid or been credited with sufficient national insurance contributions (per section 2 of the Act).
2. Income-based JSA. This is payable to persons who do not meet the contribution conditions for CBJSA or who have exhausted their entitlement to it, provided, in either case, that they satisfy a mean test.

The detail of the JSA scheme, including the rate at which weekly JSA is to be paid,<sup>1</sup> is set out in secondary legislation, in the Jobseeker's Allowance Regulations 1996 (SI 1996/207), as amended (the JSA Regs).

## General conditions of entitlement

The general conditions of entitlement for both types of JSA are (JS Act, section 1(2)-(2D)), all of which must be satisfied, reflect the purpose of this benefit as a means of support for those who are not in work but who nevertheless would be expected to have an attachment to the labour market by virtue of their age, physical or mental capacity for work and the fact that they are not engaged in full-time education. The conditions require the claimant to demonstrate that attachment to the labour market through, for example, an active engagement in the search for work. The conditions, all of which must be satisfied, are that the claimant is: in Great Britain; under pensionable age; "available for employment"; "actively seeking employment"; signed up to an extant jobseeker's agreement; capable of work; not engaged, nor his or her partner engaged, in "remunerative work" (defined as 16 hours per week on average, or 24 hours per week in the case of the claimant's partner); not receiving relevant education (basically non-advanced full-time education); and meets the relevant contribution conditions for CBJSA or the income based conditions for IBJSA.

The JSA scheme retains the minimum age of entitlement of 18. However, the regulations (regs 57-61) prescribe exceptional cases when a young person (aged 16 or 17) may nonetheless be eligible for JSA. In addition, a 16 or 17 year old who is not entitled to JSA and is registered for training but not being provided with any may be awarded a "severe hardship payment", under section 16 of the 1995 Act. However, even that may be revoked if the young person rejects a reasonable training opportunity or job vacancy or interview or opportunity to apply. Severe hardship JSA can also be reduced by 40% of the personal allowance element of the benefit in some circumstances, such as where the young person has given up a place on a training scheme or has failed to attend the scheme or has lost their place on it through misconduct (JS Act, section 17; JSA Regs 1996, reg.63).

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<sup>1</sup> The current rates of weekly benefit (until April 2009) of CBJSA are

Aged under 18 £47.95

Aged 18-24 £47.95

Aged 25 or over £60.50

– minus deductions:

£1 per £1 for amounts of occupational or personal pension in excess of £50 per week; £1 per £1 for the claimant's earnings (subject to prescribed disregards).

The calculation of IBJSA entitlement, on the other hand, is very complex due to it being a means tested-benefit with separate and very detailed income and capital limits and calculation rules. The basic rates of personal allowance are the same as for CBJSA, but claimants may be entitled to various premiums in respect of disability or other factors, which will increase entitlement (JSA Regs, regs 82-86D). There are separate rates for couples.

## The availability and job search conditions

### *Available for employment*

The basic test of availability per se, which has remained the same for over 30 years, is that the claimant must be “willing and able to take up immediately any employed earner’s employment” (JS Act 1995, section 6(1)). This requirement of immediacy is strict, although there are limited exceptions: for example, it is sufficient for a person who has caring responsibilities to be willing and able to take up employment within 48 hours; and in the case of a person engaged in volunteer work the take-up time is extended to one week, provided he or she is prepared to attend for interview for employment within 48 hours (JSA regs 1996, reg.5). The employment that the claimant must be willing and able to take up must be of at least 40 hours per week. The claimant can limit the amount that is acceptable to a set amount of 40 *or more* hours provided his or her “pattern of availability” affords him or her reasonable prospects of securing such employment (JSA Regs, regs 6 and 7). The claimant must also be available for work on all days during the benefit week; unavailability on one day (even if he or she nevertheless remains available for more than 40 hours in total in that week) means loss of a week’s benefit. Normally there is no provision to award JSA for part only of week (Commissioner’s Decision R(JSA)3/01, para 4).

The claimant has in fact long been permitted to set some restrictions on the kinds and place of work he or she is willing to accept, while remaining “available for work”. There is what has become known as a “reasonable restrictions test”, which is tightly regulated and less flexible than in the past (see JS Act 1995, section 6(2) and (3), JSA Regs, regs. 7, 8, 9 and 13). In addition to the limited right to restrict availability to 40 hours or more per week, mentioned above, a claimant may limit his availability with reference to the nature or terms of conditions of employment (including the rate of pay) or the locality of the work, provided he can show he or she has “reasonable prospects of securing employment notwithstanding those restrictions” and other prescribed restrictions on his availability. However, any allowed restrictions related to pay will cease to have effect once the claimant has been in receipt of JSA for six months. The claimant may also restrict the nature of the employment he or she is willing to undertake with reference to a sincerely held religious belief/conscientious objection “provided he can show reasonable prospects of securing employment notwithstanding those restrictions”. A claimant may also set restrictions which are “reasonable in the light of his physical or mental condition”. In some circumstances a claimant who is a carer is permitted to restrict his or her total hours of work availability to an amount below 40 in any week, again subject to the same “reasonable prospects of employment” condition. The law sets out the factors to be taken into account in assessing whether a person has “reasonable prospects of securing employment”, which it will have been seen is a condition

linked to several of the permitted restrictions.<sup>2</sup> The onus lies with the claimant to show, for this purpose, that he or she has reasonable prospects (JSA Regs, reg.10).

For a short period at the start of the claim the claimant may in any event be permitted to restrict his or her availability to his or her usual employment, work that pays no less than the amount he or she is accustomed to receive from work, or both. Those restrictions may only be set for a limited period of not less than one week nor more than 13 weeks; the actual permitted length will be determined with reference to a range of factors essentially designed to reflect any specialism and the degree of experience – such as the nature of his or her usual occupation, the claimant's skills, the length of training for the occupation, the length of time he or she worked in such employment and the time that has elapsed since he or she worked in it (JS Act 1995, section 6(5) and JSA regs 1996, reg.16). Thus a qualified accountant who becomes unemployed after 20 years may be granted a longer period in which to restrict his or her availability to that job than an unskilled former shop assistant with no training would be permitted to confine his or her availability to shop work.

### ***Actively seeking employment***

A person will be classed as actively seeking employment in any week “if he takes in that week such steps as he can reasonably be expected to have to take in order to have the best prospects of securing employment” (JS Act 1995, s 7(1), JSA Regs, reg.18). But the claimant will have to take *more than two such steps* in any week unless taking fewer two steps is reasonable for that person to do that week. The expected steps might include oral or written job applications; seeking information on the availability of employment from job ads, employment agencies and employers; getting specialist advice; drawing up a curriculum vitae; and seeking a reference or testimonial from previous employer. Various factors must be taken into account in determining what would be reasonable steps for the particular claimant to be expected to take. Some relate to claimant him or herself, such as his or her skills, qualifications and abilities and physical or mental qualifications; some relate to his or her actions in trying to secure work, such as the steps taken in the previous week and their effectiveness; and others relate to the availability or location of any vacancies.

The law is so concerned to prevent possible abuse of the system that it stipulates that steps taken are to be ignored where the claimant, while taking them, “acted in a violent or abusive manner”; or he or she spoiled a job application; or “by his behaviour or appearance... otherwise undermined his prospects of securing the employment in question” (see Wikeley 1996). The claimant will, however, be excused this conduct if “the circumstances were due to reasons beyond [his or her] control”.

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<sup>2</sup> JSA regs, Reg.10(2). They include the claimant's skills, qualifications and experience; the type and number of vacancies within daily travelling distance from his or her home; the length of time he or she has been unemployed; the job applications which he or she has made and their outcome; and his or her willingness to move home to obtain employment.

### ***Attendance, information and evidence***

The above provisions are reinforced by administrative controls exerted via a power to require the claimant to attend at a place and at such time as an officer may specify, and to provide information and evidence “as to his circumstances, his availability for employment and the extent to which he is actively seeking employment” (JS Act 1995, section 8). The officer/adviser may notify time and place of attendance, and may require a claimant to provide a signed declaration as to his or her availability and active search for work (JSA Regs, regs 23, 23A and 24). The attendance requirement is capable of strict enforcement (see regs 25 and 26), as entitlement to benefit will normally cease if the claimant fails to attend on the day specified in the notification, or at the stipulated time, or if the claimant fails to provide a signed declaration that he or she has been available for or actively seeking employment.

These are strict conditions, clearly designed to ensure that claimants conform to the expected pattern of behaviour in return for benefit. The agency seems to apply the attendance condition particularly firmly: in 2005-06, for example, there were 154,800 referrals to a “Sanctions Decision Maker” in such cases and in 74% of them (115,050) a benefit sanction (a reduction of the personal allowance element of the benefit, by 20%) was applied (HCPAC 2007). The sanction is not to be applied, however, where the claimant shows that there was “good cause” for the failure (regs.27-30), provided he or she shows it within 5 days of the failure to comply. A range of factors may be considered in determining whether there was good cause. Inadequate notification by Jobcentre Plus is specifically identified as one of them.

### ***The jobseeker’s agreement***

As noted above, one of the primary conditions of entitlement to JSA is entry into a jobseeker’s agreement. This is “[a]n agreement which is entered into by a claimant and an employment officer and which complies with the prescribed requirements in force at the time when the agreement is made...” (JS Act 1995, section 9(1)). It must be in writing and signed by both parties, and it can be varied by agreement (sections 9(3) and 10). The contractual element reflected in the notion of “agreement” implies mutuality and voluntariness, but the jobseeker’s agreement is very one-sided. As Lundy (2000, 304) argues, “The official’s hand which shakes on this agreement is truly a hand of velvet masking a fist of steel, since failure to sign up to the agreement will result in the claimant being denied benefit”. Entry into an agreement can, in this regard, be seen as part of the process of “responsibilization”, involving state governance of behaviour intended to make people behave as “responsible” citizens (Ican and Basok 2004, 130-133). In that sense, it epitomises the attempt under both the Conservative and now the Labour Government to rebalance rights and responsibilities by placing a greater emphasis on the latter (Lister 2003; Lund 2008).

The required contents of the agreement are specified by regulations. They include the claimant’s name; the stated hours of availability; any agreed restrictions

on availability; the type of employment sought by claimant; the action the claimant will take to seek employment and to improve his/her prospects of finding employment; the start and finish dates of any permitted period during which the claimant does not have to be available for up to 40 hours per week; and a statement of the claimant's rights to challenge a determination or direction by the Secretary of State.<sup>3</sup>

### **Sanctions**

As we have seen, sanctions have long been a feature of this area of social security law. They were originally designed to prevent abuse of the system and to protect the insurance fund from unjustified claims. While these remain part of the continuing justification for them, their intensification under JSA, and therefore the tighter control of behaviour that they impose, signifies a greater intolerance of any shortfall in the claimant's commitment to the labour market and a concern to further the state's interest in minimising public reliance on the benefits system and to re-emphasise the responsibility of citizens to support themselves through work. As a review of social security sanctions by the Social Security Advisory Committee says, one of the main objectives of JSA sanctions is to "induce individuals to act in accordance with their job-search responsibilities as part of the 'rights and responsibilities' agenda" (SSAC 2006: 54).

One of the major features of the sanctions regime, as shown in Michael Adler's paper in this collection, is that there is a significant element of officer (or office) discretion in many cases. The SSAC has highlighted the inconsistencies in the administration of sanctions, in terms of the "significant differences" between district offices in the numbers of sanctions imposed (or in referral of cases for possible sanctioning). As the SSAC states, the discrepancies result in "inequity, as where a claimant lives may determine whether they are sanctioned" (SSAC 2006: 69)

In addition to the sanctions of discretionary (variable) length, which represent a continuity with the old unemployment benefit rules, there are now sanctions related to the worksearch conditions that are primarily of fixed length. Tables 1 and 2 in the Appendix contain statistics on the number of referrals for a sanctions decision and the number of fixed period and discretionary length sanctions imposed between 2000 and 2006. It will be seen that while only one quarter of referrals in discretionary length sanction cases result in the imposition of a sanction, the rate of sanctioning is twice as high in fixed term cases. The statistics also reveal a decline in the numbers of referrals and sanctions. However, discretionary length sanctions fell much more sharply than fixed term sanctions (and, in fact, at a much steeper rate

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<sup>3</sup> Under JS Act 1995, s 9(6), the officer must, if asked to do so by the claimant, refer the proposed JS agreement to the Secretary of State for him to determine whether, (i) if the claimant complies with the agreement and its terms he would satisfy the statutory requirement to be available for or actively seeking employment, or (ii) it is reasonable to expect the claimant to have to comply with the agreement. On such a reference, the Secretary of State is to give such directions regarding the terms of the agreement as he considers appropriate: section 9(7).

than the fall in jobseeker numbers). From representing nearly 75% of all sanction cases in 2002, the proportion of cases that were discretionary length cases fell to around 67% in 2006.

In the case of either type of sanction the period of sanction eats into the 182 day period of entitlement. This is because JSA *entitlement* continues during the sanction period, even if payment does not. In addition, as noted earlier, claimants can have their claim for benefit disallowed for failure to attend a regular interview with the personal adviser at Jobcentre Plus.

The sanctions are identified in the JS Act 1995, sections 19-20B. It will be seen that in some cases a sanction may not be imposed because the claimant had a “good cause” for acting as he or she did. It is a matter of judgment for the relevant official as to whether a person had “good cause”, but the JSA Regulations prescribe factors that should be taken into account for the purposes of determining this question.<sup>4</sup>

### ***Sanction of discretionary (or variable) length***

A sanction of *discretionary length* may be applied where the claimant has lost his or her employment due to misconduct; or voluntarily left it “without just cause”; or where without “good cause” he or she failed to apply for or accept a vacancy notified by the jobcentre or in any event “neglected to avail himself of a reasonable opportunity of employment”. The period of sanction must be set at between one week and 26 weeks. The precise length of the period in an individual case is to be determined by the Secretary of State – in practice, an official acting on his/her behalf. There is some limited guidance in the regulations as to particular matters that should be taken into account in determining the length of the sanction. For example, account should be taken of “any mitigating circumstances of physical or mental stress” connected with the employment which the claimant has left or neglects to pursue (JSA Regs, reg.70) Otherwise there is a need to refer to the substantial body of case law that has developed over the years in which these various sanction grounds have been in operation, particularly those relating to misconduct and voluntarily leaving without just cause. The case law confirms, for example, that a person who came close to establishing justification for leaving voluntarily may expect a short period of sanction (see Wikeley 2002, ch 9).

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<sup>4</sup> For example, a claimant would have good cause for non-participation in a training programme if he or she has a condition or personal circumstance such that participation would be detrimental to his/her health; or where non-participation resulted from religious or conscientious objection; or if caring responsibilities make it unreasonable to participate: JSA Regs, reg.73. Other factors may also be taken into account in determining whether or not there was good cause. In the case of a claimant’s failing or refusing to take up a particular job or to comply with a jobseeker’s direction, the above mentioned factors are among those which should be taken into account by the officer, but they do not automatically give rise to good cause: see reg.72. Other factors to be taken into account include excessive travelling time and the disproportionality of expenses incurred by the claimant in undertaking the job or complying with the jobseeker’s direction.

### ***Sanctions of prescribed length***

The sanctions of *prescribed length* apply where there is a failure/refusal, without good cause to carry out any jobseeker's direction which was reasonable in his circumstances or to participate in (or attend or remain on) a training scheme or employment programme (such as under one of the New Deal programmes) notified to him or her; or has lost his or her place on such a scheme through misconduct (note there is no "good cause" excuse here). The statute empowers the length of the prescribed length of the sanction to be somewhere between one to 26 weeks. The sanction for refusal or failure to carry out a jobseeker's direction is a fixed period of *two weeks*. If there is a further breach within 12 months of the first, the sanction is *four weeks*. If the sanction is applied for a failure to take up or apply for a training scheme or employment programme or for the circumstances in ground (c), the sanction is a fixed period of *two weeks*. Again, if there is a further breach within 12 months of the first, the sanction is *four weeks* (reg.69). However, it is *26 weeks* if the failure etc relates to an act or omission in respect of one of the specified New Deal options or in relation to the Intense Activity Period (for 25-49 year olds, lasting 52 weeks) and in either case there have been two or more sanctions for such a failure in relation to these options by the claimant, the most recent being within the previous 12 months.

### ***Hardship***

A claimant may be entitled to some JSA notwithstanding disqualification under the above provisions, but it can be made payable at a reduced rate or for a prescribed period. In essence, the claimant will have to show that he or a member of his household will suffer *hardship* during the period of the sanction. The regulations prescribe when a person is in hardship (for example, a woman is pregnant, or person has a long term medical condition restricting functional capacity, or a person is caring for another who is receiving disability benefits) and the date from which a payment is to be made (JSA Regs, regs 140-141). If the claimant is entitled under these hardship rules, his or her benefit is reduced by 40% of the personal allowance for a single person or by 20% if the claimant or any member of his/her family is either pregnant or seriously ill (regs 145 and 146A-H).

### ***The impact and effectiveness of sanctions***

Although there is constant evaluation of welfare-to-work policies such as Pathways to Work and the role of the advisers working in Jobcentre Plus who deal with job-seekers, there has until recently been no attempt to review the operation of the benefit sanctions and the traditional structures which still underpin the statutory regime governing benefits for the unemployed. However, in the 2004 the Government promised a review of the JSA sanctions for non-compliance "to ensure that the penalties for failure to carry out responsibilities are timely, fair, practical and

effective" (Chancellor of the Exchequer 2004, para 4.31). In 2006 the Department for Work and Pensions published two reports based on research into the benefit sanctions. One of the reports, by Joyce and Whiting (2006), is based on research into the effects of sanctioning regime operated by Jobcentre Plus on lone parents, in connection with failure to attend work-focused interviews (WFIs). These are regular claimant interviews with an adviser, intended to explore routes into work and review progress; a lone parent on income support would be required to attend such an interview when the youngest or only child reaches the age of five years and three months. At the time of Joyce and Whiting's report the interviews were annual, but from 30 April 2007 they have become six-monthly and will be extended to lone parents with children under five from 28 April 2008.<sup>5</sup> The report relates to means-tested income support entitlement. A lone parent can qualify for this benefit (to which jobsearch and availability conditions per se are not attached) while they still have a child under the age of 14, although this age is set to fall (see below). The other report (by Peters and Joyce 2006) reviews JSA sanctions, based on a sample of over 3,000 interviewees.

Joyce and Whiting found that claimants generally understood the principle behind the sanctioning regime but not the specific details of the amount by which their income support would be reduced or the length of the period for which their reduction in benefit would run. Claimants tended to have negative feelings about the invitation to attend a WFI. Some felt they were being coerced and would be forced into taking a job when they attended rather than having the opportunity to discuss career options. Some had difficulties attending because they had health problems or there were childcare difficulties. There were, however, some who welcomed the opportunity to discuss their options. There was evidence that sanctions had caused hardship, since many claimants had already been struggling on the rate of benefit they received. The reported that their children often lost out, as pocket money or treats were denied. Some had become indebted to friends or family, who would need to be repaid out of future benefit. Stress and anxiety had been exacerbated.

The researchers considered possible changes that could be made to the sanctioning policy and process in the light of suggestions from claimants and Jobcentre Plus advisers. There was a view that sanctions should be considered a last resort and that claimants should be given a "second chance" before they were applied. Another option could be to reduce the rate of the sanction from 20% to less or to abolish sanctions altogether and instead provide an incentive of additional benefit for attendance.

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<sup>5</sup> The Social Security (Work-focused Interviews for Lone Parents) Amendment Regulations 2007 (SI No 1034/2007). Note that those living in an area in which one of the New Deal welfare-to-work programmes operates, namely the New Deal Plus for Lone Parents, who have been continuously entitled to income support for at least 12 months and whose youngest child is aged 11-13 could be required to undergo a work-focused interview every 13 weeks.

The JSA research by Peters and Joyce was based on a much bigger sample than the lone parents research and incorporated significant quantitative as well as qualitative elements. The research found that there were no significant differences between sanctioned and non-sanctioned claimants in terms of gender, ethnicity or illness/disability, or on the basis of their qualifications, literacy or numeracy. But sanctioned claimants tended to be younger. This was attributable to young claimants' more relaxed attitude towards sanctions, which was possibly due to the fact that they tended to live with parents who could provide some financial support. Claimants to whom sanctions were applied were also more likely to have a learning difficulty, particularly those who were sanctioned over participation in the New Deal programme.

Most claimants reported some understanding of the rules on claiming JSA. Among the others, those with literacy problems or who were of non-white ethnicity or new claimants had the least understanding. Generally the acquisition of knowledge appeared to be linked to the level of experience of the jobcentre. Those who were sanctioned for "voluntarily leaving" their employment tended to have low levels of knowledge. Typically, there was an erroneous view that sanctions only applied to persons who worked while claiming benefit. As with the lone parents research, claimants lacked a detailed knowledge of how sanctions operated. Only 2% of those questioned identified "voluntary leaving without just cause" as a sanction ground.

The research found that challenging a sanction would not generally be contemplated. Those subjected to a sanction would probably not ask for a reconsideration or bring an appeal, a tendency that is perhaps reflected in the very low number of appeals on sanctions coming before tribunals. Reasons for not appealing varied, although some respondents simply lacked awareness of the right to appeal or thought the appeal process would be overly complicated, drawn out or likely to end in failure. In some cases claimants had been discouraged from appealing by their adviser or had found a job.

It is interesting that the supposed deterrent effect of sanctions, for example in relation to voluntarily leaving one's employment, is not borne out by the views expressed by claimants, a majority of whom either did not know they would be sanctioned or did not feel that it could have been avoided. However, once they had experienced a sanction, many claimants seemed to be concerned to avoid one in the future. DWP statistics cited in the report show that of those sanctioned, 73% had only been sanctioned once, although the paucity of second or subsequent sanctions might partly be attributable to the take-up of employment. It is also interesting that a substantial majority of claimants, even those who had experienced a sanction, agreed with the *principle* of sanctioning for those who did not comply with the conditions attached to claiming JSA, although they were much less likely to think that it was fair to sanction *them*. Some Jobcentre Plus advisers said that sanctions "could have a destructive effect on the relationship and rapport between advisers and their customers which might inhibit their ability to work effectively with customers in the future". Needless to say, this research also found that sanctions had a

significant impact on claimants' finances and strained family relationships and friendships.

The research also asked claimants whether they would prefer a regime of "fixed fines" rather than sanctions. The Government appears keen to explore their viability. Overall, the responses seem to have indicated a slightly greater concern about fixed fines than sanctions; the former were perhaps more likely than sanctions to influence behaviour. The SSAC has suggested that if fines replaced the current sanctions regime it would have the advantage of a reduced financial impact on claimants (SSAC 2006: 69).

Overall, the JSA research concluded that the sanctions regime was "broadly effective" and did influence behaviour to some extent, but was not as well understood as it could be. The researchers conclude that, among other things, the major policy challenge is to raise awareness levels and detailed understanding of the processes among claimants, perhaps through simplification of the system. The SSAC has similarly recommended improved communication "at all stages of the sanctions process" (SSAC 2006: 68). It has also suggested that because the sanction for voluntarily leaving employment is not well understood by claimants, and therefore has a reduced disincentive effect, one possible reform that should be considered is easement so that a sanction would only be imposed on the second or subsequent occasion that a person left a job voluntarily (SSAC 2006: 69); information could be given on the first occasion that would serve as notice and a warning.

## Forthcoming reforms: an "active" benefits system

Jobseekers will face a more intensive regime of activation under forthcoming reforms. The DWP talks of "raising expectations of what a jobseeker should contribute" (DWP 2007a: 49). There will be more clearly defined stages in the administration of the regime facing a jobseeker. They will start with a widening of jobsearch expectations after three months on benefit. After six months there would be entry to a "Gateway" stage, with a formal review of the jobseeker's agreement, the drawing up of a back-to-work plan involving mandatory "agreed" activities – with sanctions for failure to comply – and a skills "health check" with the offer of any necessary training. After 12 months, the claimant would be referred to a specialist return-to-work provider. The provider would be paid by results to find work for the claimant. What is particularly interesting and also controversial about that stage is the potential involvement in the JSA regime of voluntary and private sector providers (as recommended by Freud 2007), and thus harnessing of the profit motive. The Secretary of State for Work and Pensions has recently argued that "[w]e should not be ideological about who provides the service, we should just work out who is best at providing it" (quoted in Webster 2008). The DWP has published a "Commissioning Strategy" in respect of this provision (DWP 2008a), which is indicative of its potential spread within the benefits system. Those still not in work after these stages have been completed would be required to undertake work experience (DWP

2007a), which the Government has recently indicated would be for a minimum of four weeks.

As Dorsal (2008) has recently pointed out, there has been and remains a crucial dualist feature of the UK's social security system: those required to maintain an attachment to the labour market and (since 1989) be actively engaged in the search for employment are distinguished from those of working age but not expected to seek work because they are caring for young children (as lone parents) or whose mental or physical condition makes them incapable of work (see also Rahilly's chapter in this collection). In some cases claimants can cross the boundary between the two categories (Kemp and Davidson 2007). With the numbers in receipt of incapacity benefit reaching over 2.5 million (as compared with approximately 800,000 receiving JSA as at February 2008) and the arguments that with the extension of in-work benefits and other support (including after-school childcare) the exemption of all non-working lone parents with children under 16 from work-search requirements seen by government as increasingly less justifiable, there is growing pressure to shift the boundary so that more claimants are subjected to a JSA-type regime.

In the case of people on incapacity benefit (or incapacity credits for people receiving income support), despite the trumpeted success of the Pathways to Work programme for encouraging and supporting people back into work the Government has embarked on a restructuring of benefits in order to place a particular emphasis on the possibility of working rather than on incapacity for work. The idea is to reduce by at least one million the numbers who receive benefit on the basis of incapacity for work (Rahilly 2006). The new benefit, entitled Employment and Support Allowance – which, according to the familiar rhetoric, is being “built on the principle of rights and responsibilities” and will involve the claimant’s participation in WFIIs and signing up to an action plan, with sanctions for default (DWP 2006) – will be introduced in October 2008, under the Welfare Reform Act 2007. The regime will be tougher than many incapacity benefit claimants currently face, particularly because many claimants will be required to undertake a “work-related activity”. It is estimated that as a consequence there will be approximately 20,000 additional appeals per annum made to the appeal tribunal, 14,000 of which will result in a hearing (DWP 2008b). There are also fears that if Jobcentre Plus offices are set job-entry targets the degree of tension between the enabling and enforcing roles of personal advisers, which has been falling (Knight *et al* 2005), may increase.

Meanwhile, changes to the position of lone parents are being introduced and the regime for those claiming JSA is being further intensified. Despite an improving employment rate for this group, which has risen from 44.7% in 1997s to 57.2% in 2007 (Chancellor of the Exchequer 2007), the DWP has set an objective of increasing this rate to 70% by 2010, which would mean that a further 300,000 lone parents enter employment (HCWPC 2007: para 226). The Government has endorsed a recommendation of the independent review it commissioned on the welfare-to-work strategy, by David Freud, that lone parents of children younger than 16 should be expected to seek work if they are to continue to receive out of work benefits. Freud

recommended that lone parents should only enjoy their current exemption until the child is 12 years old and that they should be required to participate in regular WFIIs (Freud 2007). Part of the rationale is that their benefit position was out of line with that in states such as France, Germany and the Netherlands, where a work test may be applied once the lone parent's child reaches the age of three (or five in the case of the Netherlands). It was also considered to be inconsistent with the intended position that many other claimants in the UK would face once the Employment and Support Allowance (above) is introduced. The Government has endorsed Freud's recommendation and proposes to implement progressively, starting in October 2008. From October 2009 it will be extended to lone parents whose child is aged 10. From 2010 the exemption will not apply where the child is aged 7 and over (DWP 2007a and 2007b).

The independent statutory advisory body, the Social Security Advisory Committee (SSAC), has concerns about the fact that lone parents "will simply be transferred onto the current JSA regime with its relatively intensive work-focused conditionality" (SSAC 2007: para 3.3). There is in fact evidence that increasing the conditionality of benefits may be less successful in maximising jobsearch, take-up and retention of employment among lone parents than intensifying the involvement of personal advisers and providing a more active encouragement to participate in work-related programmes such as the New Deal for Lone Parents (HCWPC 2007; DWP 2006). Indeed, support for lone parents making the transition to work has been introduced, such as a £250 job grant for those entering work after 26 weeks or more on income support and a discretion for personal advisers to extend the payment of benefit for up to four weeks after a lone parent starts work and is waiting for their first salary payment. Lone parents are also going to be offered a financial incentive to undertake an activity which helps to prepare them for entry into the labour market, in the form of a "Work Related Activity Premium" (DWP 2007a: 44).

Improvements to the system of means-tested tax credits, a form of support paid to people on low incomes in work, have also been recommended as particularly useful in the realization of these goals for lone parents. There is considered to be a need to increase their flexibility and to reduce the likelihood and impact of the overpayment of credits, which is a feature of the system's method of (in effect) recalculating entitlement at the end of the fiscal and benefits year (Millar 2008). The House of Commons Work and Pensions Committee has found in its recent inquiry that more flexibility in the JSA regime is needed to facilitate a pattern of work that is consistent with the burden of family responsibilities that lone parents have to discharge; there were "real concerns that JSA conditionality cannot be adapted to reflect the complex realities of lone parents' lives" (HCWPC 2008: paras 227-235). However, the Government has argued that there is already flexibility in terms of the work pattern lone parents may be expected to follow in the light of their particular circumstances, but it plans to increase the discretion available to advisers (DWP 2007b: 41-42). Another constant barrier to employment among lone parents is the unaffordability or unavailability of suitable childcare. There is a childcare tax credit to meet some or all of the cost, but the DWP has had to acknowledge that that does

not guarantee that affordable childcare will be available to all claimants. The House of Commons Work and Pensions Committee has recently argued that “[c]onditionality should be linked to the availability of childcare and before and after school care” (HCWPC 2008: para 252). The Government, while committing itself to improve childcare provision, has undertaken to avoid penalizing a claimant who either fails to take up or leaves a job because of the unavailability of appropriate and affordable childcare (DWP 2007b: 35); the Work and Pension Committee says that the burden of proof to show that childcare is available to a claimant should rest with the DWP, not the claimant (HCWPC 2008: para 252).

## Conclusion

The aim of this review of the development of the legal structure surrounding the principal benefit concerned with unemployment has been to show the continuities and changes and how they have shaped both the form and operation of this benefit. The intensification of the activation policy that the post-1995 system in particular represents and which has included, since the start of Labour’s administration in 1997, a range of welfare-to-work policies and programmes – principally the various New Deal schemes targeted at different groups and offering, variously, a period of work experience, training or education – is not merely a response to particular economic or social pressures. While it might be assumed, for example, that a greater concentration on measures to increase employability by ensuring participation in training or employment experience means that it has become more difficult for citizens of working age to find work, that is only partially true, in that while particular skills may be in greater demand now, there is nonetheless a fairly high overall demand for labour, certainly compared with earlier years. But at the same time, the greater opportunities for employment have given political justification to the imposition of a greater squeeze on the unemployed through the benefits system, a system that the Government is trying to turn into an “active” one under which those not in employment are moved away from being “passive recipients of benefit” (or, as stated in the same document, “recipients of passive benefits”!) to become “participants” or “jobseekers” who are “actively seeking and preparing for work” (DWP 2007b: 10 and 103). However, as Dostal (2008: 34, 35) points out, while trying to convey the impression that it is significantly tightening up the benefit regime, the Government’s “actual policy change has been limited in scope and has mostly focused on the renaming of existing policy instruments such as the interview regime between Jobcentre staff and their clients”, while “the policing of the system in terms of benefit sanctions has remained similar to that operating in the pre-Labour and pre-New Deal period”.

The continuities in the law illustrate Clasen’s point that the developments in social security policies are not merely a response to social, economic and political pressures, but also national traditions and institutional structures (Clasen 1994). There is a long tradition of penalising those deemed to be workshy through reduc-

tions in benefit or disqualification from entitlement. The recent reviews of the operation of the sanctions regime suggest that traditions may sometimes need displacement not merely in pursuit of ideological goals but for reasons of practicality and, more importantly, fairness (see White and Cooke 2007). Moreover, on the basis that there is an economic case for benefit conditionality as reflected in the JSA regime, there must also be concern that, as a witness to the HCWPC's recent inquiry commented, JSA has "possibly the most out-of-date set of entitlement rules in the whole benefits system, much of it unchanged since 1911 and not designed for the modern economy" (HCWPC 2008: Minutes of Evidence, Q153).

## Appendix

### STATISTICS ON J.S.A. BENEFIT SANCTIONS, GREAT BRITAIN, 2000-2006

(Source: House of Commons Written Answers, 12 March 2007, cols 165W-166W)

Note: figures are rounded to the nearest 10.

Table 1: Fixed Length Sanctions		
Quarter ending, in which decision was made	Number of referrals	Number of referrals which resulted in a sanction
April-May 2000	11,120	5,650
August 2000	16,610	8,380
November 2000	17,930	8,470
February 2001	17,140	8,330
May 2001	17,890	8,620
August 2001	17,790	8,380
November 2001	17,160	7,790
February 2002	15,250	7,040
May 2002	18,480	8,530
August 2002	18,480	8,630
November 2002	17,550	8,250
February 2003	15,540	7,660
May 2003	16,590	8,250
August 2003	16,890	8,530
November 2003	15,900	7,760
February 2004	14,340	7,010
May 2004	14,470	7,170
August 2004	15,390	7,580
November 2004	15,430	7,530
February 2005	13,840	7,020
May 2005	15,120	7,680
August 2005	14,500	7,520
November 2005	13,590	7,040
February 2006	13,310	6,960
May 2006	15,700	8,340
August 2006	17,020	8,750

Table 2: Discretionary period (variable length) sanctions		
Quarter ending, in which decision was made	Number of referrals	Number of referrals which resulted in a sanction
April-May 2000	75,350	18,090
August 2000	124,530	29,070
November 2000	127,780	28,480
February 2001	117,740	28,320
May 2001	117,160	29,140
August 2001	122,310	29,990
November 2001	113,330	28,230
February 2002	102,750	26,230
May 2002	114,480	29,700
August 2002	114,580	30,080
November 2002	121,200	31,290
February 2003	106,920	28,480
May 2003	95,710	26,520
August 2003	88,410	24,500
November 2003	89,840	23,890
February 2004	87,120	23,340
May 2004	84,470	23,200
August 2004	82,340	22,120
November 2004	83,000	21,320
February 2005	74,130	19,690
May 2005	76,000	20,620
August 2005	71,590	19,190
November 2005	68,770	17,950
February 2006	61,630	16,000
May 2006	64,370	16,080
August 2006	59,790	14,730

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