



**Social Security Advisory Committee
Occasional Paper No. 4**

**Patterns of employment, benefit eligibility
and the rights and responsibilities agenda**

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This paper was produced in support of advice offered to the Secretary of State in accordance with the Committee's remit (s 170(i) (a) of the SSA 1992 refers). The original text was sent to Ministers in November 2007 and is now being given wider distribution. We are grateful for the assistance of our Research and Policy Specialist, Dr Anna Bee, who prepared the paper for us, and to Departmental officials who provided factual information. However, the views expressed and any conclusions reached in the paper are solely the responsibility of the Committee.

Patterns of employment, benefit eligibility and the rights and responsibilities agenda

Introduction

- 1 This Occasional Paper was originally inspired by a specific example of the effects of the interaction of 'seasonal' work and the benefits system. In 2005, we became aware of problems in Lincolnshire, where Jobcentre Plus customers who had taken 'seasonal' employment – mainly in leisure, tourism and agriculture – were refused benefits – and, thereby, National Insurance credits – when their employment ended. Instead of being able to claim benefits when work was scarce in the winter months, claimants were deemed to be in continuous employment and so unable to claim. This resulted in some significant, negative impacts on would-be claimants and the local community. The official response to the situation, and a Minister's answer to a Parliamentary question, suggested that the Lincolnshire cases had wider significance for the relationship between benefits and forms of temporary employment.
- 2 The Lincolnshire case study prompted us to consider more widely the links between what the government has been saying about the characteristics of those customers who make repeated claims to benefit and the centrality of the rights and responsibilities agenda, and the fact that much of the work available to benefit leavers is short-term, insecure and relatively low-paid. While our starting point is the part played by traditional 'seasonal' employment, of the sort we encountered in Lincolnshire, we also look at the relationship between the benefits system and the dominance of what the Trades Union Congress (TUC) refers to as 'vulnerable' employment more generally¹, which we have observed, in at least some areas of the UK.
- 3 The recent Department for Work and Pensions (DWP) Green Paper (*In work, better off*²) proposed ambitious plans to increase the employment rate to 80 per cent and bring those at some distance from the labour market into employment. It set out a reinforced commitment to the rights and responsibilities agenda, whereby claimants are provided with increased support and are therefore expected to do more to find employment. The paper also considered the issue of retention and the engagement of employers to provide sustainable work that 'pays'. However, there is a risk that ex-claimants may be forced to enter the labour market in a marginalised and vulnerable position. This paper makes the case for ensuring that the benefits system is designed to support welfare to work objectives and that claimants who take up 'seasonal' and other temporary work are not penalised for doing so.
- 4 The Paper also illustrates the impact of a mismatch between eligibility criteria for benefits and Tax Credits. The income-related benefits that are the responsibility of the DWP and the Working Tax Credit (WTC) that is the responsibility of HM Revenue & Customs (HMRC) do not employ the same definitions of 'recognised cycles of working' which govern the treatment

¹ TUC Commission on Vulnerable Employment, <http://www.vulnerableworkers.org.uk>

² Department for Work and Pensions, (2007) *In work, better off: Next steps to full employment*, Cm 7130.

of 'seasonal' work. The result is that customers can find themselves excluded from both 'out of work' and 'in work' benefits. There is also a link between the remunerative work rules and the National Minimum Wage (NMW). In making the assumption that people who had worked for a few months in a year at the NMW were still in work over the winter months, the Department effectively allowed people to work for less than the NMW, when they were actually in work.

The Jobseeker's Allowance Remunerative Work rules and eligibility for benefits

- 5 In terms of whether someone is eligible for Jobseeker's Allowance (JSA), a basic question is whether they are in remunerative, full-time employment (16 or more hours per week). If they are not in remunerative full-time employment they will have entitlement to JSA (providing the other conditions of entitlement are met). However, the fact that someone is not actually working does not mean that they will be treated for benefit purposes as 'not in remunerative employment'. If the claimant has a 'recognisable cycle of work' that includes periods in/out of work that are clearly identifiable, the JSA Decision Maker (DM) may determine that they should be treated as being in remunerative employment.
- 6 When the JSA regulations were introduced, they included the 'Remunerative Work' rules. These are set out in section 51 of the 1996 JSA Regulations, see Annex A. The policy that underpins these rules is that an individual who has a well-developed cycle of working, and whose hours over the cycle as a whole average out at 16 or more hours per week, should be deemed to be in continuous employment. The regulations were apparently designed to prevent people who have regular cycles of work, e.g. oil rig workers who are relatively highly paid for relatively short periods of activity, from claiming unemployment benefits when not at work.
- 7 When deciding whether someone is in remunerative work, DWP guidance states that a recognisable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle, and a cycle may include periods when no work is done. The guidance continues that a cycle may apply to casual workers where no employment contract exists. In this case, a cycle may be established after one or two years where a claimant is employed on a casual basis for an average of at least 16 hours per week. Although there is no contract for re-employment, there is an assumption that the claimant has a recognised cycle of work and so the remunerative work rules apply. In a 2001 test case, it was ruled (by the House of Lords) that if a claimant has a cycle of work, then they are regarded as being in work throughout that cycle, including periods of non-work³.
- 8 However, from what we have observed of local practice around the UK, it would appear that these rules have not been applied consistently. In a number of areas where minimum wage work that is nominally 'seasonal' is prevalent, i.e. it is linked to the main holiday periods and/or produce harvesting times, we have not found the rules being applied. Coincidentally, these are often also areas where permanent, well-paid work is in short supply. It would appear to have been recognised that enforcing the rules would have the effect of deterring people from taking

³ House of Lords (R(IS) 15/01 Banks).

whatever employment is available and generating the sorts of problems that we encountered in Lincolnshire.

- 9 The next section of the paper explores the situation in Lincolnshire in 2005/2006, the following section examines the implications of the Commissioner's decision in the case of three Lincolnshire claimants who had been denied benefit and the final section explores the wider issues associated with the interaction of the benefits system and patterns of temporary/'seasonal' work.

Summary of the Lincolnshire case

- 10 The case of Lincolnshire highlights how a specific interpretation of one of the central elements of the JSA regulations can have a significant, negative impact on would-be claimants. Lincolnshire is the fourth largest county, in area, in England with Skegness as its largest coastal town. The Lincolnshire coast experiences large fluctuations in claimant unemployment with approximately double the claimant count in winter compared with summer. As in similar parts of the country, the main employment is in the tourist sector, agriculture, horticulture and the public sector. Until autumn 2005 in Lincolnshire, people were accustomed to taking the work that was available during the summer season, usually working for the minimum wage and then claiming benefit when work was in short supply over the winter months. However, from autumn 2005 the remunerative work rules were applied to these 'seasonal' workers and so many of those who had worked temporarily for two or more years were subsequently denied JSA.
- 11 The decision to apply the rules to all 'seasonal' workers was made as a result of a specific complaint. A complaint was made that one individual (who worked overseas in the winter months) had been disallowed benefit when other 'seasonal' workers in the area had received it. In response, local Jobcentre Plus DMs began to apply the Remunerative Work rules to all cases of 'seasonal' work where there had been periods of work in at least the two previous years.
- 12 Once the remunerative work rules were applied in this way, 'seasonal' workers, e.g. hotel workers, holiday camp employees and 'seasonal' staff at the local council, were deemed to be in 'continuous' employment and were therefore denied access to JSA and IS. This had an impact upon claims for Housing Benefit (HB) and Council Tax Benefit (CTB). As a result, claimants were also denied access to hardship payments and crisis loans. Somewhat ironically, because they had been issued with a P45 and were not considered to be 'in work' by HMRC, they were not entitled to claim WTC.
- 13 The situation in Lincolnshire was first brought to our attention by a SSAC Member's visit to Lincoln Jobcentre Plus in 2005. Soon afterwards researchers at Sheffield Hallam University published a paper prepared for the Lincolnshire Coastal Action Zone.⁴ The report considered the impacts of this interpretation of the remunerative work rules on claimants, employers and local stakeholders. The report cited effects on claimants, including exceptional hardship and distress to people refused benefits over the winter months. Many people found themselves

⁴ Beatty, C., Fothergill, S., Powell, R and Wilson, I. (2006) '*Coastal Proofing the Benefits System*' A report to Lincolnshire Coastal Action Zone.

with no source of income and this led to consequences that included increased levels of crime, mental ill-health, homelessness and hunger. SSAC Members undertook a follow-up visit to the District in autumn 2006 and heard that the situation had led to perverse consequences, such as an increase in claims for Incapacity Benefit (IB), people who had found 'seasonal' work though the New Deal being left with no work and no income at all, and a deteriorating relationship between Jobcentre Plus staff and customers.

- 14 In February 2006, two local MPs, Mark Simmonds and Henry Bellingham raised the question of remunerative work rules in the House. The Minister stated:⁵

'In Lincolnshire, the remunerative work rules for 'seasonal' workers were incorrectly applied prior to June 2005 – Decision Makers are now applying the legislation correctly... The rules laid down for 'seasonal' work are clear. The Act states that where there is a cycle of work consisting of one year or more that qualifies as 'seasonal' work, and if the weekly average of hours worked over the cycle is 16 or more, there is no entitlement to JSA. Those have been the rules since 1995, and those are the rules still enacted.'

(see Annex B for further details)

- 15 The Minister also stated that the rules were being applied correctly in Lincolnshire during the latter half of 2005 and early 2006. Local Jobcentre Plus staff reported in 2006 that they knew of similar cases in north Norfolk and parts of Scotland where 'seasonal' workers, and others with a 'pattern of employment', were being refused JSA but that many other areas were not applying the rules in the same way. SSAC Members have explored this issue on visits and are aware that there is a lack of coherent interpretation across Jobcentre Plus Districts. For example, 'seasonal' workers in coastal towns in the north east and south west appear to have consistently received JSA in the low season.

- 16 The Minister's response to the Parliamentary Question also highlights some of the wider issues about how those at the margins of the labour market are perceived. He stated that⁶:

'It is worth pointing out that the benefits system is not intended to subsidise employers, who expect their 'seasonal' workers to return but are not offering any retainer in the meantime. 'Seasonal' workers need to accept that they might need to look for other work at other times of the year.'

- 17 The Minister's statement suggests that people are simply not looking for local work opportunities in the low season and that they would be able to move in search of work elsewhere. He also singled out a particular group of employers who use temporary and casual labour as seeking a subsidy from the benefits system. Anecdotally, we are aware that many A8 nationals take 'seasonal' work in Lincolnshire and appear willing to move around the region – and indeed, the country – to take up work opportunities as and when they arise. However, the local population may be less able to move regularly because of ties to family, housing, children's schools etc.

⁵ Hansard, 6 February 2006, Column 594.

⁶ Hansard, 6 February 2006, Column 595.

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- 18 A report by the Communities and Local Government Select Committee highlighted some of the issues of (un)employment and benefit receipt in coastal towns. Evidence supplied by DWP showed that the level of 'seasonal' employment in coastal towns was more than double that found in non-coastal towns (15 per cent compared with six per cent)⁷. The report noted that DWP appeared to have had little awareness of the continuing levels of 'seasonal' employment within coastal towns and the policy implications of this 'seasonality'. At the same time, as we note below, around the UK there are many employers engaged in a range of manufacturing and service industries who rely heavily on short-term contract, temporary and casual workers, who may work for the same employer for several extended periods over the years in patterns of employment that are not dissimilar to those of 'seasonal' workers. We suspect that in a flexible employment market, where employers are keen to minimise their costs, there is likely to be as much if not more 'cyclical' work of this nature than there is traditional 'seasonal' employment.

The Commissioner's decision in the case of Lincolnshire 'seasonal' workers

- 19 Between September 2005 and August 2006, the Remunerative Work rules were applied by DWP DMs to 492 cases in Lincolnshire. Of these: in 285 cases, the customer was found not to be in remunerative work or the pattern of working was not established; in 207 cases the customers were found to be in remunerative work, and therefore benefit was disallowed. Of these cases, 60 had appealed the decision and a number have been heard by a Commissioner.
- 20 In December 2006, a Social Security Commissioner gave his decision in the cases of three different individuals (with 'seasonal' working patterns) who had been denied JSA because of 'remunerative work' rules⁸. The three individuals had all worked for several months, usually between March and October, in at least two previous years before making their benefit claims at the end of the season. None had a continuing relationship with their employer over the winter months or any guarantee they would find work in the spring. The cases had been heard at a tribunal and the decision had been taken that the claimants should not have been denied JSA when 'wholly out of work after their summer employments terminated'. The DWP appeal centred on the fact that the claimants had worked for at least an average of 16 hours per week over a period of 52 weeks. The Commissioner rejected the appeal and upheld the Tribunal's decision. He stated that:

'In each of these cases the question is whether an unemployed person unable to find work, though actively seeking it, throughout the winter months of the year has nevertheless to be treated (artificially, and contrary to the fact) as in "remunerative employment" during those months, by virtue of having been able to get casual summer employment in that and one or more previous years.'

⁷ House of Commons, Communities and Local Government Committee, (2007) *Coastal Towns, Second Report of Session 2006-2007*, HC 351.

⁸ Commissioner's File: CJSA 1390/06 (heard with CJSA 1398/06 and 1403/06).

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- 21 The Commissioner rejected the Department's argument about averaging hours over a period when a claimant is both in work and out of work. He concluded that Regulation 51(2) was concerned with the calculation of a numerical average of hours **at** work over a period when a person continues to be **in** work. He rejected the assertion that a cycle of work could be identified within an arbitrarily defined period of 52 weeks and concluded that the position of people engaged in intermittent, 'seasonal' work is different to that of a person continuing in employment under a 'one week on, one week off' basis. The Commissioner confirmed the Tribunal's decision that the claimants were not in remunerative work for the purposes of JSA after their 'seasonal' work had finished.
- 22 The Department responded to the decision and declared that it was confined to findings of fact and not matters of law and that there were no plans to review the regulations⁹. We are of the opinion that the decision does deal with matters of law to the extent that facts in other cases are equivalent to those in this case. In other circumstances, such as term time employment or an absolute agreement of re-employment when the 'seasonal' work recommences, may mean that the decision in 1390/2006 does not apply. Although the Department has no current plans to review the regulations, it revised the guidance on 'seasonal' workers to ensure that DWP DMs were aware that a history of re-employment should not necessarily lead to an expectation of future employment. In Lincolnshire, cases where 'seasonal' workers had been denied benefit were to be reviewed. Since the decision, the remunerative work rules have not been applied in a way that denies 'seasonal' workers benefit in the winter months. Those claimants who appealed the decision to deny benefit have had their cases reviewed and backdated benefit paid. However, these changes cannot compensate people for the hardship they experienced over the winter months when they were denied benefit and, without a review of the regulations, it is possible that a 'Lincolnshire' case may emerge in the future.
- 23 The mismatch of definitions of 'cycles of employment' in income-related benefits and tax credits is not dealt with in the Departmental response to the Lincolnshire case. If the rules with respect to income-related benefits were being applied correctly in Lincolnshire, then claimants should have been eligible for Tax Credits as they were in remunerative employment. However HMRC rules with regard to cycles of employment and the fact that the claimants had received their P45s, meant that they were not eligible for tax credits. The Low Incomes Tax Reform Group (LITRG) provided evidence to the Work & Pensions Committee inquiry on Simplifying the UK Benefit System of the need for much closer working between the DWP and HMRC. The issue of different treatments of 'seasonal' workers between the two Departments was highlighted and LITRG has confirmed that the matter was independently drawn to the attention of officials of both Departments in 2006.

⁹ Letter to SSAC – 22 February 2007.

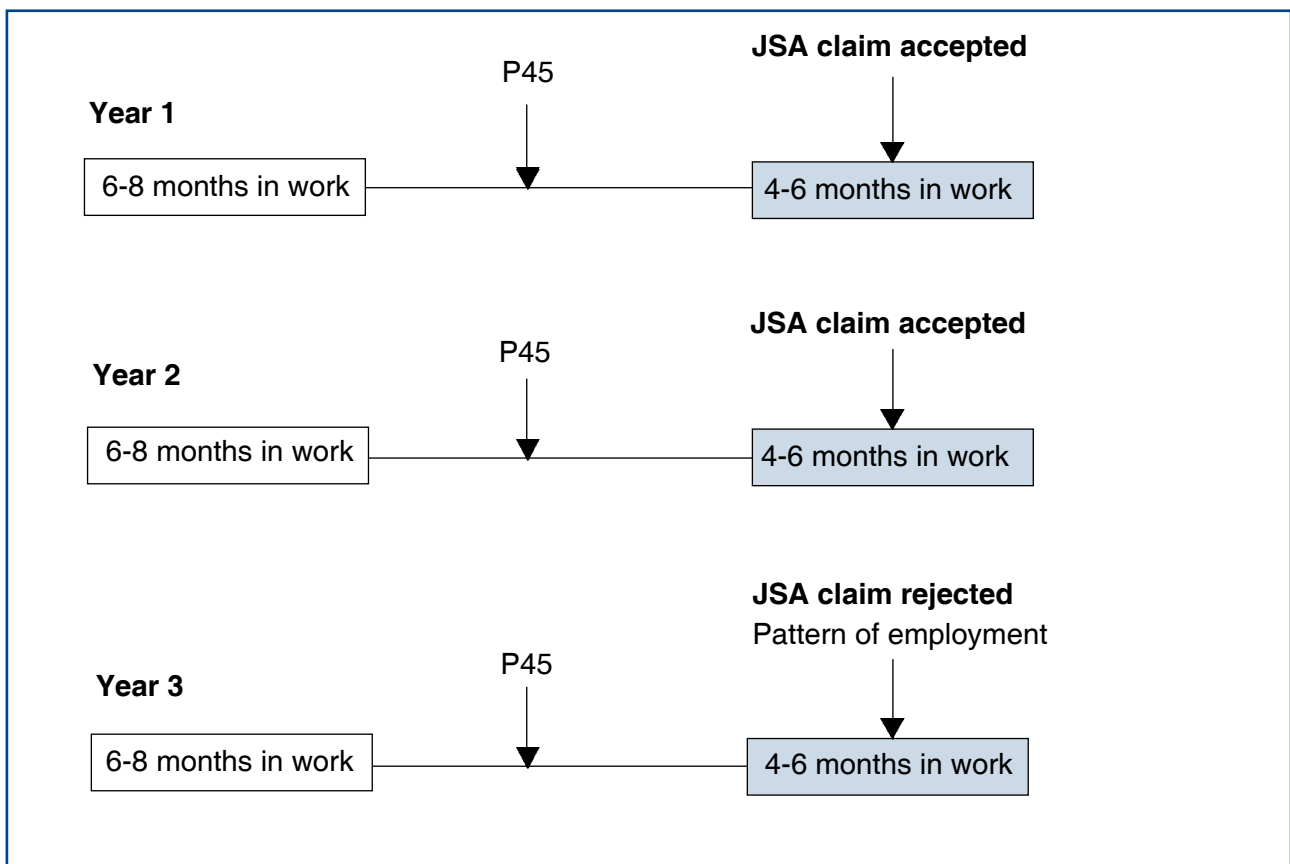
Other examples

- 24 The case of Lincolnshire also has ramifications for other areas and other employment sectors. Other workers with temporary employment (including 'seasonal' workers in other sectors) may find the relationship between work and benefit receipt complex. The JSA regulations, and their varying interpretations, have implications for many people who experience short-term and insecure employment. Indeed, it is not just claimants from coastal towns with high levels of 'seasonal' employment who have been affected by the interpretation of the remunerative work rules to identify a 'pattern of work'. An east of Scotland Citizens' Advice Bureau (CAB) reported a number of examples, including a client who had been employed on temporary contracts with a local factory at various times between 1999 and 2005. Her last eight-month contract had ended and she had been refused JSA on the grounds that she had established a pattern of work and, if her hours were averaged over a year, the weekly amount exceeded the limit for JSA eligibility. She had no guarantee of employment and no savings. A similar case had emerged with regard to a man who had worked on a golf course between March and October for a number of years and had been refused JSA on the grounds that he was still employed, even though he had no guarantee that he would return to work at the golf course.
- 25 Another east of Scotland CAB reported the case of a client who had been employed by a cleaning company on two short-term contracts. He worked from mid-January to mid-February and then again from early March until late April. The client had been refused JSA following his second period of work, on the grounds that he had an on-going contract of employment. He received his P45 on each occasion and was only employed during these two periods¹⁰. In this case, the pattern of work had not been developed over a number of years so we can only assume that the refusal was based on an assumed on-going contract of employment – a contract that did not exist¹¹. Discussions with Citizens Advice Scotland in April 2007 revealed that there had been no more recent cases of the rules applied in this way. The problem appears to have been isolated to a few areas and for a relatively short period of time (late 2005/early 2006).
- 26 However, while the specific interpretation of the remunerative work rules would appear to have been suspended, the precedent has been set for individuals (whether in Lincolnshire or elsewhere) with a 'pattern of employment' consisting of temporary work in two or more years to be denied benefit. Figure 1 illustrates what could be described as a typical 'seasonal' worker employment pattern that was identified by DMs in Lincolnshire (and a few other places) as the basis for denial of benefit. In these cases the cycle was assumed to develop over an arbitrary 52 week period, rather than the period when someone was in work.

¹⁰ Citizens Advice Scotland briefing note, 2005.

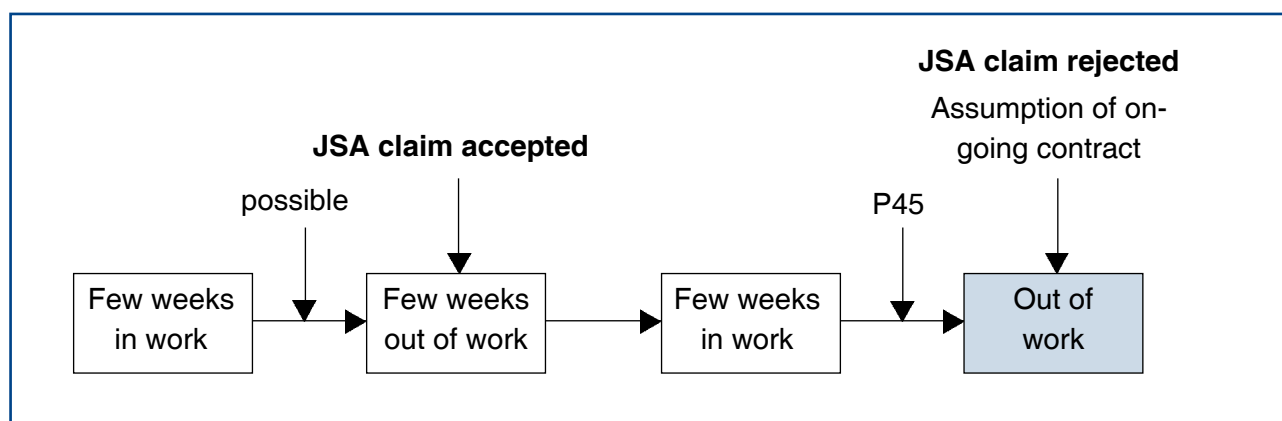
¹¹ There are other areas affected by a 'seasonal' pattern of employment both within the UK and overseas. For example, cruise ship jobs such as cabin stewards and pool attendants have contracts that last between four and twelve months. Many of these jobs advertise priority re-employment but they do not offer guarantees.

Figure 1 – ‘Seasonal’ pattern of employment



27 The rules have also been applied to individuals who have experienced an intermittent ‘pattern of employment’ over a relatively short period of time (see CAB example above). In this case the decision is taken to deny benefit as the person is assumed to have an on-going contract of employment. This is the case even when the person has received their P45 after each period of employment and has no guarantee of returning to the same employer, see Figure 2 at paragraph 24. However, such people may be entitled to a four week run-on of Working Tax Credit if they were receiving it at the date of employment termination. This run-on itself will affect the JSA claim and may eliminate it. Temporary, ‘Seasonal’ and Insecure Work and the ‘Rights and Responsibilities Agenda’

Figure 2 – ‘Intermittent’ pattern of employment



Temporary, ‘seasonal’ and insecure work and the ‘rights and responsibilities agenda’

- 28 The previous sections have looked at specific case studies of the interaction of different forms of temporary work and the benefits (and Tax Credits) system. In this section we explore some of the wider evidence on temporary, insecure work and its relationship with the current ‘rights and responsibilities’ agenda. The recent Green Paper (In Work, Better Off) reconfirmed a further strengthening of the rights and responsibilities agenda, raising expectations of what jobseekers should do to find work¹². However, it may be difficult for the unemployed to find stable, long-term employment in an increasingly flexible labour market and they may need the security of claiming benefits when a period of ‘temporary’ work (in all its various forms) comes to an end. Any interpretation of the remunerative work rules that effectively penalises those in unstable employment will be likely to have perverse consequences on work incentives.
- 29 In terms of the discussion about the remunerative work rules it is worth considering briefly that many JSA recipients have fairly recently claimed benefit and that many of the jobs they enter are temporary, low-skilled and insecure. Much of the evidence points to the fact that those who are in temporary work would, in reality, rather be in permanent work¹³.
- 30 Administrative data show that in 2006 nearly a half of men and a third of women making a new claim to JSA were last claiming less than six months ago¹⁴. The pattern has stayed relatively constant over the last decade (see Figure 3). Entry-level jobs tend to be dominated by expanding high turnover sectors, e.g. retail, that largely offer less skilled manual jobs when compared with the stock of all jobs. Compared with all jobs, entry-level jobs are five times more likely to be temporary and 50 per cent more likely to be part-time¹⁵. In November 2006, of a total of 297,350 job vacancies notified to Jobcentre Plus, over 82,000 (28 per cent)

¹² Department for Work and Pensions, (2007) *In work, better off: Next steps to full employment*, Cm 7130.

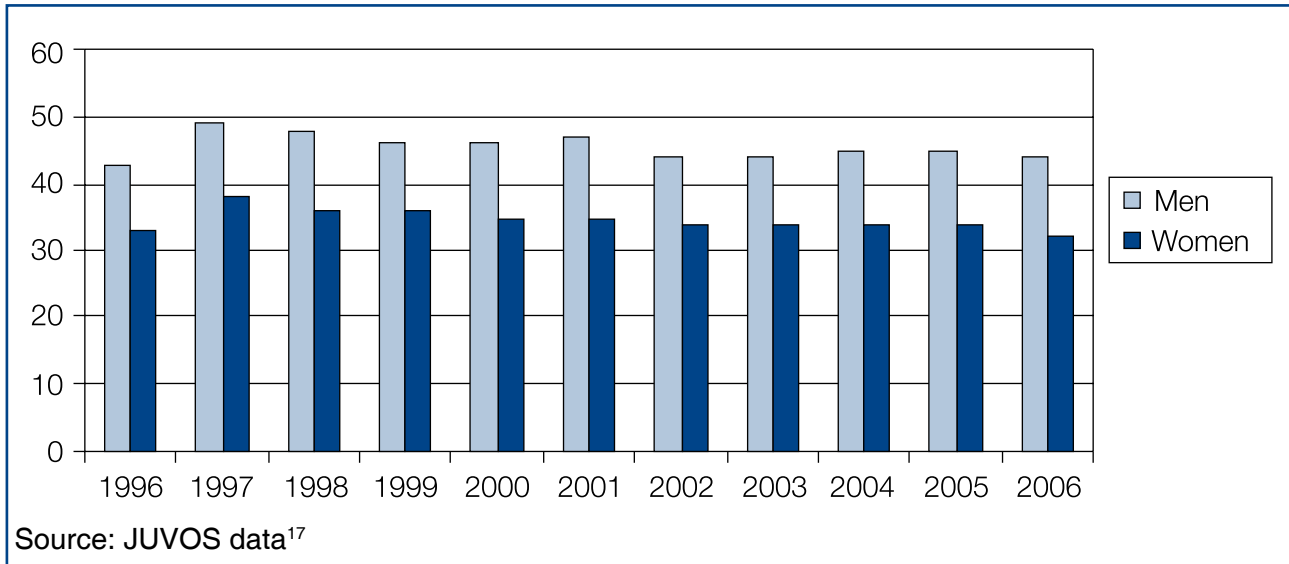
¹³ Carpenter H. (2006) *Repeat Jobseeker’s Allowance spells*, DWP Research Report No 394.

¹⁴ JUVOS cohort, first quarter of each year.
Quoted in <http://www.poverty.org.uk/33/index.shtml>

¹⁵ Kellard, K, Walker, R., Ashworth, K., Howard, M. and Liu, W. C. (2001) *Staying in work: Thinking about a new policy agenda*, DfEE Research Report No 264.

were temporary vacancies (although this may show a 'seasonal' influence with an increase in Christmas vacancies). In February 2007, temporary vacancies made up 23 per cent of total vacancies notified and, in May 2007, the figure was 25 per cent¹⁶. Overall, it would appear that approximately one quarter of vacancies notified to Jobcentre Plus are temporary.

Figure 3 – Percentage of new JSA claims made within six months of previous claim



- 31 Temporary work may act as a stepping-stone to permanent employment but a survey of those with experience of temporary work found only limited evidence that this was happening¹⁸. The same study found that nearly three-quarters of respondents (73 per cent of 607 respondents) said that they would rather have a permanent job and that the main reasons they had taken up temporary employment were a lack of suitable permanent work and lack of available permanent work.
- 32 These findings are echoed by data from the 2006 Labour Force Survey that showed that a significant minority of temporary workers could not find a permanent job. Twenty eight per cent of male temporary workers and 22 per cent of female temporary workers could not find a permanent job. A slightly higher percentage of female temporary workers stated that they did not want a permanent job, which may reflect the gendered nature of temporary and part-time work, and women's preferences for more flexible forms of working.

¹⁶ DWP Tabulation Tool.

¹⁷ JUVOS cohort, first quarter of each year.

Quoted in <http://www.poverty.org.uk/33/index.shtml>

¹⁸ Tremlett, N and Collins D (1999) Temporary Employment in Great Britain, DfEE Research Report No 100.

Table 1 – Reason for temporary working – 2006

		Reason for temporary working (percentage of temporary workers)			
	Total temporary workers (thousands, seasonally adjusted)	Could not find permanent job	Did not want permanent job	Had a contract with period of training	Some other reason
All	1,454	25.0	28.7	7.4	38.8
Men	647	28.1	26.6	7.8	37.5
Women	806	22.5	30.4	7.2	40.0

Source: Labour Market Trends, December 2006, Vol. 114, No 12. Data for April-June 2006

- 33 DWP research from 2006 suggests that the proportion of JSA claimants who had a permanent job was far lower than amongst the labour force as a whole. The report is based on a quantitative survey of 2,725 repeat JSA claimants and raises some important issues about the nature of work at the margins of the labour market and the prevalence of temporary and insecure employment¹⁹. The research showed that there was little evidence that the movement between benefit and temporary work was due to personal choice. Instead, the findings indicate that respondents were unable to find sustained employment rather than choosing to avoid it. Of those respondents who had ever left a job, 33 per cent reported that their last job had ended because it was temporary (the most common reason for leaving last job), 16 per cent reported that they were made redundant and ten per cent reported that they had been sacked/dismitted.
- 34 Previous research has emphasised the relatively vulnerable position of the unemployed when entering work. A study of young men who had experienced a period of long-term unemployment found that previously they usually worked in a variety of low-skilled jobs and that the jobs ended as a result of changes in labour demand, rather than because of employers' dissatisfaction with their work. The authors suggested that 'employment insecurity tended not to reflect negative attitudes on the part of the young men or necessarily a lack of skills: it was almost entirely a consequence of the 'flexible' nature of low-skilled employment in modern Britain'²⁰. Analysis of youth (un)employment in the UK suggests that young people churn between benefits and entry level jobs partly in response to a welfare to work agenda that serves the short-term needs of employers in the more casualised job sectors²¹.
- 35 Temporary work is a reason for recycling in itself: once the job comes to an end, the individual often returns to benefit before starting their next job. This pattern of temporary work prevents individuals from gaining sustained employment, and from obtaining the benefits that accompany

¹⁹ Carpenter H. (2006) *Repeat Jobseeker's Allowance Spells*, DWP Research Report No 394.

²⁰ Furlong, A and Cartmel, F, (2004) *Vulnerable young men in fragile labour markets: Employment, unemployment and the search for long-term security*, JRF Research report.

²¹ Worth, S. (2005) Beating the 'churning' trap in the youth labour market, *Work Employment and Society*, Vol 19(2): 403-414.

permanent jobs. The repeat JSA claims survey identified two scenarios for temporary work: the first where the individual's working background and barriers to work restricted them to temporary, low skilled work; and the second where despite having better employment prospects, the individual has become stuck in a cycle of temporary work. The JSA regime for repeat claimants, works for the majority of claimants in terms of initially finding work but is much less successful in supporting them to find sustainable work²².

- 36 It will be difficult to reconcile the rhetoric of the 'rights and responsibilities' agenda and the 'something for something' contract with the need for claimants to find secure work in an increasingly flexible labour market. A flexible labour market may be positive for many employers, especially those with fluctuating labour needs, but it can also trap employees in cycles of unstable work. The Department is working towards helping people stay in work and progress. The early results from the Employment Retention and Advancement (ERA) demonstration project illustrate that providing on-going, in-work support and financial incentives to remain in work can increase the earnings for ND25+ customers and lone parents (although the effects were more positive for the lone parents)²³. Through programmes such as ERA, there is a focus on helping people to stay in work. This will be especially important as lone parents are moved onto the JSA regime, since they typically experience poorer retention rates than other customer groups.
- 37 The Freud review proposed that private and voluntary contractors should be paid to help people stay in work for several years, with funds being generated from the resulting benefit savings. This aim may be difficult to achieve, given the nature of the labour market and the types of jobs claimants more typically enter but should certainly encourage contractors to work to keep people in jobs that are more sustainable than the current 13-week measure. However, the long-term outcome payments proposed in the Freud review now appear to be unlikely in the near future. In any event, it will be essential for contractors to be able to give holistic advice concerning the implications of Tax Credits (including the childcare element), National Insurance Contributions and Income Tax if the 'better-off calculation' is to be demonstrated to the benefit claimant.
- 38 The Lincolnshire (and Scottish) cases illustrate the importance of a clear interpretation of regulations in a complex and changing labour market. The government should ensure that those taking temporary, 'seasonal' work should not be penalised when they need to rely on the benefit system when out of work. Most JSA claimants would rather be in long-term sustainable employment and yet the evidence suggests that many are, in fact, unable to find this type of employment. The regulations should be reviewed and clarified to ensure that administrative interpretation does not lead to low-paid workers in insecure, 'seasonal' jobs being incentivised either to remain unemployed or to move to 'inactive' benefits.

²² Carpenter H. (2006) *Repeat Jobseeker's Allowance Spells*, DWP Research Report No 394.

²³ Dorsett, R. *et.al.* (2007) *Implementation and first year impacts of the UK Employment Retention and Advancement (ERA) demonstration*, DWP Research Report No 412.

SSAC recommendations

39 We have three recommendations:

- 1) First we recommend a review of the remunerative work rules to ensure that they are applied consistently and fairly. DWP appears to be failing to consider the many permutations of vulnerable employment and has not analysed the effects that the current rules can/do have, not just on individuals, but also on the effectiveness of its employment programmes. While the review is underway, DWP should ensure that the regulations are interpreted uniformly at a national level. If, as the Department has asserted, the rules were being applied correctly in Lincolnshire then they should be applied coherently across all Districts and address all the permutations of 'seasonal', temporary and casual work that may occur. If they were not being applied correctly in Lincolnshire, then the Department should look very carefully at why they were applied in this way and how they can assure claimants and staff that something similar will not occur again. The Commissioner's decision should be applied nationally as it is not uniquely applicable to Lincolnshire. There will always be a need for 'seasonal' workers and the system needs to be able to distinguish between 'seasonal' work 'proper' and periodic patterns of work such as that experienced by oil-rig workers.
- 2) Second, we recommend that the review should be undertaken in conjunction with HMRC, so that the approach for both benefits and tax credits is coherent. The eligibility rules for benefits and tax credits need to be aligned so the rules for 'seasonal' workers do not categorise them as being in work for the purposes of benefit eligibility but out of work for tax credit eligibility. The outcome of the review would ideally ensure that employers cannot unreasonably use the benefits system to subsidise their employees when they are unable to offer employment. The review should also ensure that employers that are unable to pay wages throughout the year and employees who are limited to 'seasonal' work are not penalised.
- 3) Our third recommendation involves ensuring that the benefits system does not penalise claimants who lose their jobs because of the transitory nature of such employment. The question arises as to what extent the current JSA regime (and one that is likely to further emphasise the responsibility aspect of the State/claimant contract) supports claimants to find sustainable work. The recent Green Paper highlighted the importance of employment retention and it will be interesting to see how far its proposals lead to better long-term outcomes for claimants. DWP can play a role in ensuring that the jobs that are on offer to claimants offer some form of stability and progression but it is also reliant on employers to help retain employees, even in our modern flexible employment market.

Annex A

Relevant extract from Statutory Instrument 1996 No. 207 – The Jobseeker's Allowance Regulations 1996

Remunerative work

51.—(1) For the purposes of the Act "remunerative work" means-

- (a) in the case of the claimant, work in which he is engaged or, where his hours of work fluctuate, is engaged on average, for not less than 16 hours per week; and
- (b) in the case of any partner of the claimant, work in which he is engaged or, where his hours of work fluctuate, is engaged on average, for not less than 24 hours per week;

and for those purposes, work is work for which payment is made or which is done in expectation of payment.

(2) For the purposes of paragraph (1), the number of hours in which the claimant or his partner is engaged in work shall be determined—

- (a) where no recognisable cycle has been established in respect of a person's work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which he is expected to work in a week;
- (b) where the number of hours for which he is engaged fluctuate, by reference to the average of hours worked over—
 - (i) if there is a recognisable cycle of work, and sub-paragraph (c) does not apply, the period of one complete cycle (including, where the cycle involves periods in which the person does not work, those periods but disregarding any other absences);
 - (ii) in any other case, the period of five weeks immediately before the date of claim or the date of review, or such other length of time as may, in the particular case, enable the person's average hours of work to be determined more accurately;
- (c) where the person works at a school or other educational establishment or at some other place of employment and the cycle of work consists of one year but with school holidays or similar vacations during which he does no work, by disregarding those periods and any other periods in which he is not required to work.

Persons treated as engaged in remunerative work

52.—(1) Except in the case of a person on maternity leave or absent from work through illness, a person shall be treated as engaged in remunerative work during any period for which he is absent from work referred to in regulation 51(1) (remunerative work) where the absence is either without good cause or by reason of a recognised, customary or other holiday....

(3) A person who was, or was treated as being, engaged in remunerative work and in respect of that work earnings to which regulation 98(1)(b) and (d) (earnings of employed earners) applies are paid, shall be treated as engaged in remunerative work for the period for which those earnings are taken into account in accordance with Part VIII.

Annex B

‘Seasonal’ workers ***(Hansard, 6 February 2006, 48333)***

14. **Mark Simmonds (Boston and Skegness) (Con):** If he will make a statement on how jobseeker's allowance is applied to ‘seasonal’ workers. [48333]

The Parliamentary Under-Secretary of State for Work and Pensions (Mr. James Plaskitt): The arrangements are set out in the Jobseekers Act 1995. Entitlement to jobseeker's allowance depends on the nature of the employment arrangements and whether it is reasonable to assume that there is a continuing pattern of re-employment. For ‘seasonal’ workers, where the average hours worked over the cycle is 16 or more, the claimant is not entitled to JSA.

Mark Simmonds: The Minister will be aware of the immense problems caused, particularly in Skegness, by the unannounced recent implementation of regulation 91, which relates to the jobseeker's allowance. That is causing significant hardship to ‘seasonal’ workers, all of whom anticipated being able to claim benefit in the winter months, as they have done in previous years. That change in Government policy has led to people being evicted from their homes, people having to pawn their possessions, and people fainting through hunger in the Skegness benefits office. This matter requires the Minister's urgent attention. Will he assure me and my suffering constituents that he and his civil servants will look into it with the utmost urgency?

Mr. Plaskitt: I have looked into the particular circumstances. In Lincolnshire, the remunerative work rules for ‘seasonal’ workers were incorrectly applied prior to June 2005. I can assure the hon. Gentleman that there has been no policy change. The problem has been in deciding a condition of entitlement—namely, whether the customers in question are in remunerative work. Decision makers are now applying the legislation correctly. I can assure the hon. Gentleman that no action has been taken against customers who received JSA when the rules for ‘seasonal’ workers were applied incorrectly and that no one has been asked to repay any benefit paid.

Mr. Henry Bellingham (North-West Norfolk) (Con): Is the Minister aware that ‘seasonal’ workers in my constituency who work at the sugar beet factory at Wisington, in the fishing industry, or in food processing, and who have tried to find jobs out of season but have been unable to do so, have in the past always been able to claim benefit? They are most concerned about the fact that they have had no warning whatsoever and have therefore been unable to plan their lives and make other arrangements. What does the Minister say to those constituents of mine, who are in a real dilemma?

Mr. Plaskitt: There has been no change. The rules were set down in clause 1(2)(e) of the 1995 Act, if the hon. Gentleman would like to take a look. The rules laid down for ‘seasonal’ work are clear. The Act states that where there is a cycle of work consisting of one year or more that qualifies as ‘seasonal’ work, and if the weekly average of hours worked over the cycle is 16 or more, there is no entitlement to JSA. Those have been the rules since 1995, and those are the rules still enacted.

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It is worth pointing out that the benefits system is not intended to subsidise employers, who expect their 'seasonal' workers to return but are not offering any retainer in the meantime. 'seasonal' workers need to accept that they might need to look for other work at other times of the year.