

PERSPECTIVE

Arguing for the introduction of paid internships

Briefing Paper

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Executive Summary:

Perspectives are arguing for the introduction of paid internships, in helping to reinvigorate the young economy in helping to provide some much needed social mobility.

The paid internship would help young people and new people to employment to be paid the National Minimum Wage if they carry out a portion of the businesses work, under the careful management of a line manager.

Current and future research will examine how the law could be changed to reflect this approach, as well as the social and economic issues. This paper will assess how best to adopt these changes in practice.

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The views expressed within this paper are those of the author and should not be treated as Government policy.

Introduction:

“One in five of our young people are now out of work; the number of unemployed has risen again. We now confront youth unemployment of almost a million – the highest on record. That figure is a wake-up call to this government to get its act together.”¹

Internships – periods of supervised practical training and work experience - have often provided graduates with a route to employment in their chosen field. The Chartered Institute of Personnel and Development recently identified that 1 in 5 employers planned to hire interns during summer 2010, potentially offering a quarter of a million internship places². The Coalition Government have introduced measures to help graduates find work and tackle youth unemployment, such as the Graduate Talent Pool and a commitment to funding apprenticeships, yet regulations for internships remains an ambiguous area.

Several campaigns pressing for fair internships have emerged, addressing the issues of remuneration, the benefits available to interns and the introduction of a code of conduct for the treatment of interns. These campaigns emphasise the need for change in competitive sectors such as politics, the creative industries and the media.

This paper considers the definitions of an intern and internship; the scope of the current graduate market and the uptake of internships; the existing legislation and national minimum wage regulations. It pin-points the employment regulations adopted by other countries to identify best practice examples and highlights the concerns addressed by existing campaign groups. It concludes with key recommendations for changing employment policy in this area and some next steps to enable such reforms. It must however, be noted that this is an contemporary and ongoing policy topic – new sources of information are continuously emerging, as are new policy reform ideas in reaction to them.

¹ Byrne, L. Hansard 16 February 2011 Cited online at: <http://services.parliament.uk/hansard/Commons/bydate/20110216/mainchamberdebates/part005.html> (accessed 17/02/2011)

² Institute of Public Policy Research Lawton K. And Potter, D. (31 July 2010) *Why Interns Need a Fair Wage* Cited online at: <http://www.ippr.org/publicationsandreports/publication.asp?id=765> (accessed 24/02/11) p. 5

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1. Defining Internships:

“There is no standard definition of what constitutes an internship, no single internship programme even within particular industries and no one framework outlining what an internship should look like. Internships vary in length, content, intensity and quality and employers use internship programmes to meet different organisational needs.³”

Broadly, an intern is someone who works in a temporary position with an emphasis on on-the-job training. Interns are typically university students and graduates. Internships are designed to provide students with opportunities to gain experience in their chosen field and provide the employer with labour for (typically) low-level tasks, and also the prospect of interns returning to the company after completing their education.

Internships may be paid or unpaid, or partially paid in the form of expenses. Paid internships are common in professions such as medicine, science and engineering, law, business and accountancy sectors. Internships in non-profit organisations such as charities and think tanks are often unpaid. However, it is worth noting that different countries have different regulations regarding the remuneration of internships and the UK could learn from some best practice examples.

³ Ibid, p.4

2. Scope of the uptake of Internships:

Before identifying the legal protection for those taking up internships, attention should be brought to the scope of the sector. However, statistical coverage of internships is far from comprehensive. “Our understanding of who interns are, what they do and how much they are paid is hampered by a lack of robust data about interns and organisations offering internships.”⁴ Most of the information that is available comes from surveys of employers or graduates and is thus largely anecdotal in nature.

- *“The Chartered Institute of Personnel and Development (CIPD) estimates that more than one in five employers planned to hire interns between April and September 2010. This is the equivalent of 280,800 organisations across the UK, potentially offering a quarter of a million internship places over the summer. This is an increase from summer 2009, when just 13 per cent of employers surveyed by the CIPD planned to take on interns, suggesting that internship opportunities are growing again as the economy recovers from recession.”*⁵
- According to the Destinations of Leavers from Higher Education survey conducted by Higher Education Statistics Agency, 1.6% of those who graduated in 2008/09 were in voluntary or unpaid work six months after graduating.⁶
- A survey conducted by the Higher Education Careers Services Unit in 2008 and 2009 of graduates who took ‘creative’ subjects such as art, design and media in and graduated between 2002 and 2004 found that 742% reported some form of voluntary or unpaid work since graduation and 9% were doing voluntary work at the time of the survey. However, few were doing voluntary work as their only work activity. Instead voluntary/unpaid working was combined with other employment (permanent work, self-employment or temporary work) as a secondary activity.
- From an employer’s prospective, a recently published survey from December 2010 of large employers by High Fliers Research found that 22% were offering placements for recent graduates⁸ and according to a CBI survey of employers in February 2010, 30% of employers said they provided internships.⁹

⁴ Ibid, p.5

⁵ Ibid p.6

⁶ Higher Education Statistics Agency (2011) [Destination of Leavers from Higher Education](#)

⁷ Higher Education Careers Services Unit, [Graduate Market Trends](#), Autumn 2010, page 10, section 1.2.4

⁸ High Fliers Research, [Graduate Market Report 2011](#), Jan 2011, p. 29

⁹CBI, [Ready to Grow: Business priorities for education and skills](#), May 2010, p.37

- A Chartered Institute for Personnel and Development (CIPD) survey of employers in 2010 found that 78% of employers agreed with the statement that internships are beneficial to interns in the long run, with only 1% disagreeing. 76% of organisations agreed with the statement that internships can be used as a way to test potential new staff.¹⁰
- A Chartered Institute for Personnel and Development (CIPD) survey of mainly large employers in 2010 found that, among those who employ interns:¹¹
 - ❖ 49% of employers said they pay interns the National Minimum Wage
 - ❖ 18% of employers said they did not pay interns a salary but covered their travel costs
 - ❖ 3% of employers said they did not pay interns a salary or cover travel expenses

The Milburn Report:

The report on social mobility conducted by Alan Milburn, published in July 2009,¹² used research in 2004 by the University of Manchester which found that around 80% of employers said they had employed former interns (please note that this indicates that 80% of firms hired at least one former intern and not that 80% of interns get hired). In addition, 69% of work placement students were offered graduate jobs once they graduated.¹³

The Milburn Report looked at “inequalities in internship opportunities” and concluded that¹⁴ Opportunities to undertake internships are not fairly distributed. You are less likely to be able to do an internship if:

- You lack the means to work for free (socio-economic factors)
- You lack the means to travel or live near to the internship (geographic factors)
- You come from a background in which a professional internship is never considered or discussed (information factors).

¹⁰ CIPD, *Learning and Talent Development: Annual Survey Report 2010*, p. 9-10

¹¹ Ibid p. 10

¹² Panel on Fair Access to the Professions, *Unleashing Aspiration*, July 2009, p. 101, figure 7a

¹³ University of Manchester and UMIST Careers Service, *Work Experience Recruitment Survey 2004*; Also see the Prospects website, [The value of work experience](#)

¹⁴ Panel on Fair Access to the Professions, *Unleashing Aspiration*, July 2009, p. 101

It also cited evidence from the National Union of Journalists', who campaign for fair internships, which stated that research conducted in 2002 "indicated that under 10% of new entrants came from working-class backgrounds, with just 3% coming from homes headed by semi-skilled or unskilled workers." The full Milburn Report is available [here](#).

3. Legal Classification:

With so many employers agreeing to take on interns, it is important that their place within the company is defined. The statutory definition of a worker is found in various pieces of legislation, such as:

- [Trade Union and Labour Relations \(Consolidation\) Act 1992 Section 296](#)
- [Employment Rights Act 1996 Section 230](#)
- [The Working Time Regulations 1998 regulation 2](#)
- [National Minimum Wage Act 1998 Section 54\(3\)](#)

The most helpful explanation of the different classifications is from the Department for Business, Innovation and Skills. However, as they state, there is no existing formal classification of an intern par-se:

“For national minimum wage purposes there are no special rules in respect of interns. Whether or not someone is entitled to be paid the national minimum wage depends on whether they are a “worker” under national minimum wage legislation. If they are a “worker” they are entitled to be paid at least the national minimum wage unless a specific exemption applies.¹⁵”

The sub-definitions of volunteer workers are detailed below.

Voluntary workers

Volunteers (who provide their time and effort completely freely) need not be paid the national minimum wage because they do not have any contractual arrangement and therefore are not classed as workers. But some people who consider themselves “volunteers” could still potentially count as “workers” because they receive some sort of payment or benefit in kind. These workers need not be paid the national minimum wage if:

- They work for a charity, voluntary organisation, charity shop, school, hospital or similar body; and they receive only reasonable expenses, relevant training and/or subsistence (but not money for subsistence). Regular payments are likely to give the

¹⁵ BIS Internships and the National Minimum Wage Frequently Asked Questions Cited online at: [http://ww2.prospects.ac.uk/downloads/documents/Graduate%20Talent%20Pool%20\(DIUS\)/QandA-InternshipsAndNMW.pdf](http://ww2.prospects.ac.uk/downloads/documents/Graduate%20Talent%20Pool%20(DIUS)/QandA-InternshipsAndNMW.pdf)

volunteer the right to the national minimum wage. However, a genuine “honorary” in the form of a gift with no obligation and of a reasonable amount is not likely to give the volunteer the right to the national minimum wage; or

- They are placed by a charity or similar body with another charity or similar body and they also receive money for subsistence: for example, voluntary workers who have been placed with a hospital or charitable care home by a charity which specialises in such placements, and who are provided with some money to cover living expenses.

Example 2: Voluntary workers

1. A member of a charity who helps out from time to time at jumble sales for no pay and under no obligation is not entitled to the national minimum wage. He does not have any form of contract and does not count as a “worker”.
2. A worker for a community group who has set hours and is paid a wage is entitled to the national minimum wage. He fits the definition of a worker and whether the employer in such cases is a charity or voluntary organisation is irrelevant.
3. A volunteer worker in a hostel with charitable status who receives free accommodation and food as well as expenses for any travel undertaken as part of the job, but who does not receive any monetary payments, is not entitled to the national minimum wage.
4. The volunteer who works in a hostel but who receives cash payments such as a regular wage is likely to be entitled to the national minimum wage¹⁶.

Genuine volunteers are not meant to be covered by the requirement to pay the NMW. The *National Minimum Wage Act* achieves this partly by its definition of a “worker”. Section 1(2) states that a person qualifies for the NMW if he or she:

(a) is a worker; (b) is working, or ordinarily works, in the United Kingdom under his contract; and (c) has ceased to be of compulsory school age.

¹⁶ A detailed guide to the national minimum wage, DTI, October 2004, pp. 18-19

Section 54(3) defines a “worker”:

In this Act “worker” (except in the phrases “agency worker” and “home worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

- a contract of employment; or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker's contract shall be construed accordingly.

Many volunteers would not work under a contract of employment or a contract to perform personally any work or services for another party to the contract. Those who do not have a written contract of employment may, nevertheless, have entered into an oral agreement to perform certain services.

For a contract to exist the general rule is that there must be agreement (offer and acceptance), consideration and an intention to enter into a legal relationship. Staff who are not paid a salary have, nevertheless probably agreed to perform certain services (eg opening the mail, answering the phone, manning the office) and the “employer” has probably offered some form of “consideration” (experience, access to the market and perhaps some minor expenses).

The general working context and the elements of mutual obligation characteristic of a particular employment may show an intention to create legal relations. Ultimately, the applicability of the legislation would be a matter for the tribunal to decide.

If the “volunteer” is under an obligation to work, then they are, in fact, a “worker” and entitled to the NMW. Common sense would suggest that if someone is doing a “job” with set hours and tasks they are under an obligation to work. If they fail to turn up or to carry out

their allotted duties, the employer would need to find someone else to do the work.

Perhaps if the “volunteer” were genuinely supernumerary and the employer did not care whether he came in or not, there would be no obligation to work and, therefore, no obligation to pay the NMW.

Section 44 of the Act deals specifically with voluntary workers. It excludes from the scope of the NMW any worker “employed by a charity, a voluntary organisation, an associated fund-raising body or a statutory body” if he or she receives:

(a) no monetary payments of any description, or no monetary payments except in respect of expenses (i) actually incurred in the performance of his duties; or (ii) reasonably estimated as likely to be or to have been so incurred; and

(b) no benefits in kind of any description, or no benefits in kind other than the provision of some or all of his subsistence or of such accommodation as is reasonable in the circumstances of the employment.

The DTI issued a Consultation Document on *Draft National Minimum Wage Regulations* in September 1998. Annex 4 of the Consultation Document explains who is and who is not covered by the NMW and indicates that the provisions are tightly drawn. On the question of voluntary workers it had this to say:

Volunteers and voluntary workers

Most volunteers will automatically be excluded from the Act because they are not covered by the definition of “worker”, due to the absence of any intention to enter into legal relations and the resulting absence of any contract.

However, some volunteers who receive expenses, benefits in kind, and/or subsistence

payments might in certain circumstances be regarded as workers under a contract making them "workers". Section 44 of the Act provides an exit for such "voluntary workers" so that if they receive a very limited range of expenses, benefits in kind, and/or subsistence payments they will be excluded from the NMW, provided that certain conditions are met. Workers who are working on a voluntary basis for a charity, a voluntary organisation, an associated fund-raising body (e.g. a charity shop) or a statutory body (e.g. a school or hospital) do not qualify for the NMW if they do not receive: any payment other than a payment in respect of expenses actually incurred in their voluntary work, or expenses reasonably estimated as likely to be incurred or to have been incurred; and any benefits in kind other than the provision of reasonable subsistence or accommodation (this would cover, for example, food and accommodation provided for those voluntary workers helping at youth hostels); and a monetary payment of subsistence, except where the voluntary worker has been placed with the host employer by a charity, and the host is itself a charity, voluntary organisation, associated fund-raising body or statutory body. (This would cover e.g. voluntary workers placed by a central volunteering organisation with schools, hospitals and voluntary organisations, often away from home.)

A similar indication of the restricted application of the volunteer exemption comes from the Hansard debates on the NMW. Ian McCartney, the Minister responsible for the NMW legislation, explained the purpose of this provision during the debate at report stage:¹⁷

The main point is that the Bill will apply only to workers, and that none of its clauses will apply to volunteers. Our judgment is that the vast majority who do volunteering work of one sort or another will not be affected in any way by the Bill, because they are not workers. That is what we want to achieve.

The definition of "worker" in clause 52 is quite wide, although no wider than the definition used for the purposes of provisions on unauthorised deductions in the Employment Rights Act 1996, which originated in the Wages Act 1986. Because of that, some genuine volunteers-- although, we think, only a small proportion--might work under arrangements that would amount to a worker's contract. It is precisely those people--the Bill calls them "voluntary workers"--who are included accidentally, and whom we want to exclude through the "exit" of

¹⁷ HC Deb 9 March 1998, cc 23-24

clause 42.

The effects of new clause 1, differs from the original clause 42. The overall effect is to broaden slightly the definition of "voluntary worker" to reflect the reality of volunteering. Subsection (1) broadens the range of bodies for which a voluntary worker may work while still falling within the exemption from the national minimum wage. It will now include not only charities and voluntary organisations, as before, but any "associated fund-raising body"--that is, a body separate from a charity or voluntary organisation but whose profits go to that organisation, such as a body running a charity's shops--and any "statutory body". Therefore, volunteers who work for charity shops, schools and hospitals, as well as for charities and voluntary organisations, and who happen to be workers, will be exempted from the national minimum wage.

The range of bodies covers volunteering in the whole statutory sector, but it does not cover volunteering in non-charitable commercial enterprises. To include that would undermine the Bill, and would go against the principle that volunteering should be for social good rather than being a form of cheap labour for commercial profit.

Even though these classifications exist, it has been acknowledged that is often difficult to place an intern within them.

"It is impossible to say categorically that all interns are workers or that all interns with a particular kind of contract or arrangement within an organisation are definitely workers. The only way to know for certain is for an intern to take their case to an employment tribunal and the outcome would apply to that specific case."¹⁸

There are several legal cases of note that illustrate the difficulties that arise due to the ambiguity of defining interns. Below are the details of five cases.

¹⁸ Institute of Public Policy Research Lawton K. And Potter, D. (31 July 2010) *'Why Interns Need a Fair Wage'* Cited online at: <http://www.ippr.org/publicationsandreports/publication.asp?id=765> (accessed 24/02/11)

Vetta v. London Dream Motion Pictures (1999)

In November 2009, Reading Employment Tribunals ruled that someone employed on an expenses-only basis is still entitled to the National Minimum Wage if they can show they are a 'worker'. Nicola Vetta was taken on as an assistant in the Art Department of London Dream Motion Pictures Ltd after she responded to a job advertisement offering an expenses-only internship. The Tribunal ruled that the nature of Ms Vetta's role at LDMP meant that she could be defined as a worker and therefore was eligible to the NMW, regardless of the existence of an employment contract or the wording of the job advertisement¹⁹.

Armitage v Relate [1994] ET/43538/94

The tribunal concluded that there was clearly sufficient mutuality of obligations for there to be a contract of employment on the following grounds:

- Relate's unpaid counsellors were required to sign a service agreement under which they would be provided with training, work facilities and support, and agreed to work for a minimum number of hours and abide by Relate's conditions.
- Holiday timing had to be agreed with Relate.
- The counsellors would have to repay some of the training costs if they left before completing 600 hours of counselling.
-

Uttley v St John Ambulance EAT/635/98

Ms Uttley was found to be a volunteer for St John Ambulance without a contract of employment because there was no mutuality of obligation. Her work included weekly meetings, maintaining her training, supervising other members and attending public events where first aid was provided by St John Ambulance. Whilst her expenses were reimbursed she was not legally bound to do any of the activities she undertook to do and no action could have been brought against her if she failed to do them.

Two cases held soon after the passing of the National Minimum Wage Act have looked at the definition of 'worker' as defined by the Act. Both indicate that tribunals may interpret the

¹⁹ Ibid P.9

legislation widely. These are *Bain v Post Office Counters* [1999] and *Edmunds v Lawson* [1999].

Bain v Post Office Counters (1999)

Mrs Bains, a sub-postmistress, claimed that under the terms of the Act she was a worker, and therefore entitled to the Minimum Wage. Though Mrs Bains was not an employee – rather her contract was a contract for services – she argued that her contract did fall within the definition of ‘worker’ as defined by the Act. The Respondents argued that as her services were not ‘personal’ (as defined by Section 54(3)(b)) she was not a ‘worker’ and not entitled to the Minimum Wage. However, the tribunal disagreed with the Respondent, stating that many of Mrs Bain’s duties and responsibilities would be virtually impossible to fulfil without a fair degree of personal input. For example, her contract stipulated that she had a duty to ensure that transactions were carried out accurately, with reasonable steps to prevent fraud, that documentation was properly completed and timeously dispatched, and any losses incurred by her assistants were to be discharged by the applicant. She was also expected to undertake training sessions in putting the customer first. Her claim was found to have fitted into the definition of worker in accordance with section 54(3)(b) and she therefore won her case.

Edmunds v Lawson (1999)

Ms Edmunds, a pupil barrister, was also successful in her claim. A pupillage was held to be an apprenticeship. The Respondents claimed that Ms Edmunds was there as a volunteer and her twelve month pupillage was purely educational, but the court disagreed. It was held that the claimant (Ms Edmunds had sought a declaration from the Queens Bench Division of the High Court) was a ‘worker’ under section 54(3)(a) under a contract of apprenticeship.

The Low Pay Commission will shortly publish a new report, which will include statistics on this issue.

“The Low Pay Commission has received evidence from a number of trades unions and campaign organizations that suggests that employers in certain industries are regularly advertising unpaid internships that appear to break minimum wage rules (Low Pay Commission 2010). The Commission concludes that there is evidence to indicate that, ‘there is systematic abuse of interns, with a growing number of people undertaking “work” but excluded from the minimum wage’ (ibid:110).²⁰”

²⁰ Ibid

Further, the position for interns on the rights under the Working Time Regulations 1998 (WTR) regarding holiday pay, rest breaks and weekly working hours is more complex since the regulations state that anyone who is receiving relevant training is entitled to protection under the WTR. This applies even if the interns do not satisfy the definition of 'worker'.

4. The National Minimum Wage

There are different levels of NMW, depending on age and whether you are an apprentice.

The current rates are:

1. £5.93 - the main rate for workers aged 21 and over
2. £4.92 - the 18-20 rate
3. £3.64 - the 16-17 rate for workers above school leaving age but under 18
4. £2.50 - the apprentice rate, for apprentices under 19 or 19 or over and in the first year of their apprenticeship

5. The London Living Wage:

As of 9th June 2010, the London Living Wage is £7.85. This is the hourly rate of pay that GLA Economics calculate each year, taking into account the higher cost of living in the capital and the rate of inflation, which is needed to be paid to someone to allow them an acceptable standard of living above the poverty threshold. It is defined by GLA Economics as “a wage that achieves an adequate level of warmth and shelter, a healthy palatable diet, social integration and avoidance of chronic stress for earners and their dependents.”²¹ The report can be found on the GLA Economics [website](#).

²¹ http://www.london.gov.uk/media/press_releases_mayoral/mayor-increases-london-living-wage-four-international-employers-sign

6. Benefits:

At present, there are no special rules within Jobseeker's Allowance (JSA) for claimants doing unpaid work experience. Unless they can be treated as engaged in voluntary work (i.e. work undertaken for a non-profit making organisation), it may be very difficult or impossible for someone on work experience to remain entitled to JSA. This is because they must continue to satisfy the conditions for entitlement for JSA while on their placement, i.e. availability for work, actively seeking work, and so on. Having said that, claimants may be able to undertake work experience placements arranged by Jobcentre Plus, for example as part of a New Deal programme. The Labour Government also set up a special internship programme for graduates. However, the general situation is that, where people have arranged work experience placements themselves, the benefit rules as they currently stand can be a problem.

As part of the coalition Government's "Get Britain Working" programme, the Department for Work and Pensions is amending the JSA regulations to allow claimants to participate in work experience for up to eight weeks. This will be available to 18-21-year-olds from later this month, and in April DWP will consider initial take-up of this option with a view to extending it to all JSA claimants from June 2011.²²

The following PQ from July 2009 outlines the current rules:

Work Experience

Mr. Burstow: To ask the Secretary of State for Work and Pensions if she will give job centres the discretion to vary the time and day on which a person is required to sign on to allow them to undertake an internship; and if she will make a statement. [288586]

Jim Knight: A customer claiming jobseeker's allowance is normally expected to attend (sign) each fortnight on their benefit week ending date, which is determined by their national insurance number. In circumstances where a customer cannot attend on their normal benefit week ending date, Jobcentres already have the discretion to allocate a different attendance day.

Where a person in receipt of jobseeker's allowance wants to undertake an internship and continue to receive jobseeker's allowance, they must comply with the conditions of entitlement. These conditions require the jobseeker not to be in remunerative work, and to be actively seeking and available for work of at least 40 hours per week. Jobseekers engaged in full-time work experience/internships will not usually be able to satisfy these conditions.

²² HC Deb 15 December 2010 c806w

Additionally, jobseekers may be considered to be in remunerative work if the activities they do are for, on average, 16 hours or more per week and equivalent to that being undertaken by a paid employee. In such cases, regardless of whether they receive pay for the work they are doing, they would have no entitlement to jobseeker's allowance.

Changes are underway that will see graduates who have left university this year and are still unemployed after six months, being able to undertake an internship for up to 13 weeks and remain on benefits. This group will move off jobseeker's allowance and onto a training allowance and will not be required to attend every fortnight as a condition of payment.²³

To be entitled to Jobseeker's Allowance, a person must, among other things:

- be **available for work** for at least 40 hours a week. Claimants may be able to restrict their availability for work to certain times, so long as they retain reasonable prospects of employment.
- be **actively seeking work**. The claimant must be able to demonstrate this by undertaking a certain number of 'steps' each week, such as preparing a CV, applying for jobs, or registering with an employment agency.
- enter into a **Jobseeker's Agreement** with Jobcentre Plus . The Agreement sets out the claimant's agreed availability, including any restrictions on their availability for work; the steps the claimant intends to take to look for work; and the range of help to be provided by Jobcentre Plus to help the claimant find work.
- Not be in **remunerative work**. This is work done for payment, or in expectation of payment, for 16 hours or more a week.

A JSA claimant undertaking work experience placement must still satisfy these requirements during their placement. As the PQ states, people engaged in full-time work experience/internships are unlikely to be able to do so. A further potential problem is that a person doing unpaid work may, for benefits purposes, be *treated* as having earnings even if they do not actually receive anything. The [Jobseeker's Allowance Regulations 1996](#) also provide that, for benefit purposes, a person may be treated as having earnings they do not actually have ('notional earnings'). Regulation 105(13) of the *Jobseeker's Allowance Regulations* provides that where-

- A claimant performs a service for another person; and
- That person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

²³ HC Deb 21 July 2009 cc1337-1338w

the Secretary of State can treat the claimant as possessing such earnings (if any) as is reasonable for that employment, unless the claimant satisfies him that the means of the person are ‘insufficient for him to pay or to pay more for the service’.

JSA claimants on New Deal programmes may be able to undertake work experience placements arranged by Jobcentre Plus without losing their benefit. For the duration of the placement, support is however in the form of a ‘Training Allowance’ – paid at the same rate as JSA – in recognition of the fact that they cannot be expected to meet the ordinary JSA labour market conditions.

In addition, in 2009 the Labour Government announced a ‘national internship scheme’ for graduates. The scheme – ‘[Graduate Talent Pool](#)’ – is open to all 2008, 2009 and 2010 graduates from UK universities. Those who graduated in 2009 and who have been claiming JSA for six months or more may be eligible for a [Training Allowance](#) while undertaking an internship advertised through the Graduate Talent Pool. A Training Allowance will only be payable if the work is unpaid, or pays expenses for travel or childcare costs only; involves at least 16 hours activity a week; and lasts up to 13 weeks. Recipients must spend 20 per cent of their time during the internship looking for paid work and, if offered a paid job, are expected to leave the internship.

Forthcoming changes to the JSA rules

In November 2010 the DWP submitted draft regulations amending the JSA regime in relation to work experience to the independent Social Security Advisory Committee (SSAC) for consultation. The draft *Social Security (Work Experience) Regulations 2011* are intended to give younger claimants a “greater insight into the world of work through work experience”.²⁴ The following extract from the DWP’s memorandum for the SSAC gives an overview:

Social Security (Work Experience) Regulations 2010

Work Experience will be introduced on 24 January 2011 and will form part of a wider menu of additional support options that can be used by Jobcentre Plus to help benefit claimants into work, prior to their eligibility for referral to the Work Programme.

Focused on young people aged 18-21 and who are first time jobseekers and/or are farthest away from the labour market, the Work Experience programme will be in place for 2 years, and will offer work experience placements of

²⁴ [DWP Memorandum for the SSAC](#)

between 2 and 8 weeks with businesses of any type or size. Customers will be eligible to participate, on a voluntary basis, in the Work Experience programme from the 13-week point of their claim. From 30 May 2011 these regulations will direct that once a placement has been agreed attendance will become mandatory, and apart from a one-week probationary period will be subject to sanction for non-attendance. Customers will be subject to full JSA conditionality while on the Work Experience programme.

The key changes required to the Jobseeker's Allowance Regulations are:

- The introduction of Work Experience as an employment programme under section 19(5) of the Jobseeker's Act 1995. This states that Jobseeker's Allowance can be removed for an appropriate period if a customer has, without good cause, refused to accept a place on a training scheme or employment programme when offered; given up a place on such a scheme or programme; failed to attend a scheme or programme once a place has been confirmed; or has lost a place on a scheme or programme through misconduct.
- Amending Jobseeker's Allowance 1996 Regulation 19 (1) inserting a new paragraph (2ZA) to ensure that customers undertaking Work Experience will not be able to rely on one of the "treating" provisions currently in place for employment programmes; in this instance are not treated as actively seeking employment.

The regulations have not yet been laid.

7. Country Comparisons:

The International Labour Organization '[Global Employment Trends of Youth](#)', published in August 2010, analyses the impact of the global economic crisis on youth and outlines various initiatives and schemes set out in other states to help graduates into work.

Bahrain

- Retraining, income support and work experience (internship/traineeship) to enhance the employability of educated unemployed (university graduates).

Canada:

- \$3.5 million allocated to support graduate internships (industrial R&D). Additional funds to help youth find summer jobs through training (\$55 million over two years) and introduction of bonus payment for completion of apprenticeships.
- \$20 million of new public-service subsidized jobs programme targeted at Aboriginal people and youth. \$20 million to for non-profit sector for summer jobs for students and \$15 million for internships in the non-profit sector.

China:

- Financial incentives for private companies to recruit more graduates. Subsidized internship programmes for university graduates (Hong Kong, China). Government small guaranteed loans were increased to RMB50,000 for those starting a business after graduation. Hiring companies eligible for tax breaks and loans.

Korea:

- Extension of existing state-supported Youth Internship Programme until the end of 2010. Increase in vocational training programmes.
- New wage subsidies for SMEs for hiring interns on regular contracts at conclusion of internship.
- Youth Action Plan: keeping youth longer in education (16 million euros), agreements with 30 regions (153 million euros), intensive support and guidance (10 million euros), extra jobs, learn-work posts, internships and charity work (25 million euros), opportunities for vulnerable youth (40 million euros).

Pakistan:

- Programmes to enhance the employability of educated post-graduates through internships have been initiated. Internship programme for educated youth: 30,000 youth to be provided jobs in government departments for one year.

Poland:

- Financial support for engaging youth in internships. There is an interesting report from the Polish Embassy, "First Job" which is annexed to this briefing paper, as it is a very relevant case study.

8. The Graduate Talent Pool:

The Graduate Talent Pool is a partnership between Government and employers, designed to help new and recent graduates gain work experience. Many opportunities have been advertised on this website, but not all of the opportunities are paid – so unpaid and others on an expenses only basis. In a recent press release, BIS stated that on the [Graduate Talent Pool Website](#) there are “nearly 1,855 internships available, over half of which are paid.”²⁵

A report evaluating the Graduate Talent Pool was by BIS and is available to view [here](#).

²⁵ BIS press release, “[David Willets comments on High Fliers report](#)”, 18 Jan 2011

9. Current Campaigns:

There are a number of existing groups campaigning for and raising awareness of fair internships. These include:

- **Internocracy:** A youth-led social enterprise passionate about changing the culture of internships for the better in the UK.
- **Intern Aware:** A campaign focusing on promoting fair access to the internship system
- **Ed Milliband:** As part of his leadership campaign, Ed Milliband pledged to promote fair internships. He is linked with the campaign group Intern Aware.
- **National Union of Journalists:** The National Union of Journalists are strong advocates for change for the treatment of interns. In 2007, they published a paper 'Work experience exploiting the dream' and have since published a [work experience survey](#).
- **Federation of Small Businesses:**
The Federation of Small Businesses recommends a Graduate Internship Scheme to bring graduates and small businesses together to create work experience, create jobs and help small businesses innovate.

National Internship Fair:

This autumn there will be a national internship fair, aimed at recent graduates and students in their final year of study.

10. Recommendations:

It is vital for businesses to grow. Therefore the government needs to ensure that it maintains flexibility and avoids imposing new regulations on a business. If businesses are free from regulation, they are less likely to be discouraged from taking on volunteers and interns as for work experience placements. Therefore the recommendations need to not only ensure that interns are treated fairly within the workplace, but foster support for businesses and incentivise them to do so. If an intern is given the right support, they can offer the business a return on the investment that they made.

Amend Section 44 of the National Minimum Wage Act (1998)

The first step is to clearly define what an intern is. Understanding the classification of an intern is a minefield. Without such a definition, it is hard for businesses to work out the legal rights and wrongs. In some cases, this has led to interns being taken advantage of and in other cases, interns have taken firms to employment tribunals, the outcomes of which have been decided on a case by case basis. A tri-lateral approach:

- Firstly, an intern is not explicitly covered in the National Minimum Wage Act. The Section of the Act could for example, include a sub definition to section 54 of the Act to ensure a volunteer worker or intern is clearly defined.
- Further, an amendment could be made to include the length of time someone has to work for an employer before being classified as a paid intern. For example a volunteer on work experience for three weeks does not have to be paid, but if they work for the company for more than four weeks (ie a pro-rata salaried period) or more, they should be paid.
- Thirdly, interns should be paid if they have significant professional responsibilities to fulfil, for example if they are accountable and responsible for delivering 50% of the responsibilities in the job description, with close

managerial support for the remainder. A clause such as this would prevent for businesses from taking advantage of interns.

On 1st January 2011, a scheme for naming employers that breach national minimum wage legislation introduced. Those found to be in breach of legislation will be given three months to address the problem.

Incentivise employers:

The employment of interns also needs to be attractive to employers. There are two possible ways of doing this:

- Any firm that takes on a percentage (for example 3%) of the work force as interns should get a tax-break.
- A standard could be introduced, along similar lines of Investor in People, such as an III – Investor In Interns –charter mark, as an indication of their commitment to growing new talent.

Adopt a code of practice for graduate internships across the board

This idea has been advocated by organisations such as the Chartered Institute of Personnel and Development, Skillset, who have developed a Code of Practice for Graduate Internships in the Creative Industries and the Federation of Small Businesses. The National Union of Journalists has also produced guidelines. “The National Union of Journalists is the first organization to work with Journalism students to produce best practice guidelines for the treatment of those on work experience.²⁶”

Pay interns working in London the London Living Wage

Whilst the Government have created initiatives to help graduates find employment, such as the Graduate Talent Pool, there is still more that could be done to ensure that they are fair

²⁶ National Union of Journalists

and support the idea that everyone should have access to the career path they have chosen to follow:

“Interns working at ippr are paid the London Living Wage...and receive holiday and sick pay, and a contract of employment. Vacancies are widely advertised and there is a standard recruitment process in place. Internships normally last between three and six months and tasks include desk-based research, and helping to organise events and research interviews. Interns are also able to attend relevant internal and external meetings.

Ippr’s primary motivation for paying interns was to make sure the opportunity was available to people who cannot rely on financial support from their parents. Paying interns the London Living Wage (which is significantly below the salary paid to junior researchers at ippr) strikes a balance between paying a fair wage and recognizing that most interns have little prior experience and will require more supervision than other staff.²⁷”

²⁷ Institute of Public Policy Research Lawton K. And Potter, D. (31 July 2010) *‘Why Interns Need a Fair Wage’* Cited online at: <http://www.ippr.org/publicationsandreports/publication.asp?id=765> (accessed 24/02/11) P. 5

11: Next Steps:

- Establish a working group. Consultations could then be made on the different issues raised in this report engage youth support for the proposed changes.
- Table an EDM proposing a change to the classification of, and regulations to protect interns. (Although Parliamentary Private Secretaries and Ministers cannot sponsor or sign them, they are a good way to galvanize awareness of an issue.) The form to do so is available [here](#).
- Organise an event, such a roundtable and reception in order for the existing campaign groups to discuss the issues and proposals for change. This could include M.P.s who have expressed an interest in the issue (ie by signing the EDM), researchers from think tanks and relevant trade organisations, such as the Chartered Institute of Personnel and Development
- Present a Private Members Bill. Information on how to do so is available [here](#).

12. Conclusion:

With youth unemployment at a record high and legal protection of interns being decided by an individual case by case basis, there is ground for change. Further, although this issue has been addressed by campaign groups, there is scope to provide them with a platform for bringing together their policy ideas.

Following the completion of this briefing paper, two further briefings will be researched – one examining the existing laws in place and the second to review how businesses can be incentivised to employ interns.

13. Further Reading:

1. Institute of Public Policy Research Lawton K. And Potter, D. (31 July 2010) '*Why Interns Need a Fair Wage*' Cited online at: <http://www.ippr.org/publicationsandreports/publication.asp?id=765>
2. The Chartered Institute of Personnel at Development: '*Internships: to pay or not to pay?*' Cited online at: <http://www.cipd.co.uk/publicpolicy/internships-to-pay-or-not-pay0610>
3. Panel on Fair Access to the Professions, (July 2009) *Unleashing Aspiration*,