



The Social Security (Lone Parents and Miscellaneous Amendments) Regulations 2008

Submission by the Child Poverty Action Group

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Summary of CPAG recommendations

CPAG is opposed to the introduction of these regulations which will require most lone parents whose youngest child is aged 12 from November 2008, (aged 10 from October 2009 and aged 7 from October 2010), and who are currently entitled to claim income support, to instead claim jobseekers allowance (JSA) and be subject to the jobseekers allowance regime. We do not accept that JSA provides, even with the proposed amendments, a suitably flexible and supportive regime for lone parents. The lack of universal provision of quality childcare creates an additional problem for lone parents who are required to be available for work. The amendments to the regulations do not resolve this. In addition the scheme involves a loss of access to full time education opportunities which were available for lone parents in receipt of income support. CPAG recommends that the proposals are dropped, or at least delayed until there is provision of universal childcare or that these should be subject to piloting to understand the implications for child poverty. This programme is contrary to the interests of lone parents and their children as CPAG has repeatedly pointed out in meetings with officials and ministers and in other submissions and briefings. The remaining recommendations, however, assume that the Government will proceed with the programme.

The scheme should be delayed until the government has in place a universal quality childcare scheme. The Government has indicated that 'universal childcare' will not in fact be available until 2015 but this scheme is predicated on the assumption that there will be childcare available. Despite the introduction of the Childcare Act 2006 there is clearly 'a significant mismatch at present between the supply of places and what parents need'¹. In addition wrap around care after school hours is particularly patchy. As a result lone parents may be under pressure to take work without adequate childcare and / or Job centre plus (JCP) staff will be required to take difficult decisions about whether suitable childcare exists, an area of expertise for which they are not trained.

Lone parents should retain the right to access full time education or training while on benefit . This is currently available to those in receipt of income support (IS). It is not sufficient merely to protect those who are currently on a full time course. The rules relating to those who are in part time education or training should be sufficiently flexible to allow lone parents to juggle this adequately with parental responsibilities and time for looking for work. If this means that lone parents cannot be expected to undertake full time work then this should be accepted.

Parents of disabled children in receipt of the lowest rate of DLA should continue to be entitled to income support. It is likely that both attendance at work and the capacity to be available for work will in practice be limited or interrupted if parents for example have a child with behavioural problems. If the Government is not prepared to accept that this group of lone parents should be exempted from the new scheme their inclusion should at least be delayed until suitable childcare provision is universally available for disabled children.

Until at least 2015 the decision of the parent on whether suitable and quality childcare is available for their child should be final. The JCP decision maker should not be allowed to overrule this decision.

¹ Work and Pensions Select Committee, 2008, 'The Best Start in life?' House of Commons

Large families should get more assistance with the cost of childcare. At present the childcare element of working tax credits provides 80% of the cost up to a specified limit of childcare for the first child, and 80% of a higher figure if there are two or more children. The system is weighted towards smaller families and there is no additional childcare payment for those whose children have disabilities. Additionally the provision of help via the tax credit system has not helped those whose work patterns are spasmodic or uncertain or who are unable to plan ahead. This is exacerbated by the uncertainty of childcare provision during school holidays and after school hours. A system of more flexible financial support is needed to provide adequate support for childcare costs. **Ideally CPAG would like the government to move towards a system of universal free childcare.**

No parent should be required to take work which will leave them worse off than before and this should be calculated to take account of the loss of any passported benefits, in particular free school meals. Although the underlying *raison d'être* of requiring lone parents to work is that they will be better off in work the Department for Work and Pensions (DWP) have recognised that this will not be the case for all lone parents. Hence the need to introduce a 'better off in work' credit payable only for a limited period to help bridge the gap but this ignores important expenses associated with work and the fact that lone parents would lose free school meals.

Free school meals should be extended to families with a parent in work. Many poor children are not currently eligible for free school meals and the loss of these undermines gains to work for lone parents. This additional provision would be particularly valuable to a family where there are four or more children and might reduce the need for a complex better off in work credit.

CPAG believes that no lone parent should be subject to a loss of benefit because there is doubt about their entitlement to JSA or they are sanctioned. The sanctions and penalty regime of JSA is extremely punitive and should not be applied to lone parents. Sanctioning families on low incomes worsens poverty and risks damaging children.

Hardship payments in the case of lone parents should not depend on making a claim for the payment or proving hardship. Payments should be made immediately when the lone parent ceases to be eligible for ordinary rate JSA. Delays will otherwise occur and the claimant will be receiving neither ordinary jobseekers allowance nor a hardship payment of jobseekers allowance.

The three day waiting rule which applies to jobseekers allowance should not apply to lone parents. This creates a gap in entitlement and delays access to jobseekers allowance. Any gaps in entitlement can create hardship and complex linking rules which mean that they do not apply in certain circumstances simply make the system more difficult to understand for those who move in and out of work.

Lone parents should be entirely exempted from the reasonable prospects test rather than in the limited circumstances proposed by the regulations. This test, which is an aspect of the labour market conditions, normally has to be satisfied to qualify for JSA. The amended rules create a complex interaction between regulations 8, 10 and 13 and mean that even where a parent is intended to be treated as exempt from the reasonable prospects test they could still be found not to have a reasonable prospect of obtaining work. This may happen where they have imposed restriction on grounds such as the terms and conditions of the work they will take or on the locality in which they will work. All that should be required of the lone parent is that they are

available for work 16 hours a week bearing in mind their caring responsibilities in that week. We propose the specific amendments required to the regulations in our detailed analysis of the regulations. This issue is important as a person who fails the reasonable prospects test is not eligible for jobseekers allowance.

The requirement to be available for 16 hours a week should be limited to working within school hours in order to limit the requirement on parents to use childcare. In many cases lone parents may opt to work outside of school hours but this has implications for accessing childcare and meeting the cost of childcare. The House of Commons Work and Pensions Committee have expressed concern about the cost to low income families of covering the charges for childcare during school holidays.

Lone parents should only be required to be available for interview for a job within seven days and to take up that job within four weeks. The amendments provide for this option but it is not automatic - the parent must make the case why they cannot be available more quickly (in accordance with the rules for other carers). This means that some lone parents will be able to respond more quickly but the flexibility should lie with the lone parent rather than depend on the way in which a concession is interpreted by the particular DM.

Lone parents should not be required to take casual work. The more a parent moves in and out of work with corresponding changes of financial support and with the requirement to make new claims, report changes of circumstances etc the more likely there is to be a mistake and a delay in the delivery of an award of either benefits or tax credits. The lone parent still has the option to take up such work if s/he chooses but it is not a condition of entitlement to JSA.

Extend the circumstances in which lone parents can restrict their availability without being subject to reasonable prospects test. At present this applies just to those with parenting orders or contracts but should be broadened. For example parents may be asked/ required to attend family therapy classes by social service departments and may as a result not be available for work.

Extend the circumstances and simplify the rules when lone parents will be 'treated as available for work' and so qualify for benefit. For example the right to be treated as available during the school holidays depends on the whether it would be reasonable for the claimant to make other arrangements for that child – that is find and pay for appropriate childcare. Where a child is excluded from school and is not receiving education the parent is also treated as available but only if other arrangements could not be made for the child. In these circumstances it would be simplest to remove the conditional nature of the provision - that is a lone parent would be treated automatically as available during the school holidays or if their child was excluded from school. The amendments omit a series of situations in which a child would be unable to attend school because it is closed eg because of industrial action, severe weather, fear of the spread of an infection and these situations should be included in the regulation. In addition it may be helpful to add a provision allowing for other circumstances which the Secretary of State considers appropriate which gives greater flexibility in law. Also, we think it would be simpler if the decision to treat a lone parent as available in the above circumstances did not depend on whether childcare or other arrangements for supervision of the child could be made.

A parent should be treated as available for at least eight weeks whenever there is a domestic emergency, death or serious illness in the family. The length should depend on the severity of the impact on the child and family and it should not be limited to four occasions a year as proposed.

Lone parents who undertake part time voluntary work should be allowed one week before an interview and four weeks before having to take up employment. The current amendment treats lone parents like other carers which the DWP have already accepted in general may not be appropriate (see our comments above). This appears to be an omission in this particular regulation.

Lone parents who are full time students and who sign on and are available for work during the summer vacation should be eligible for JSA. A couple where one is studying can qualify for JSA during the summer vacation. This is discriminatory and has the effect of denying lone parents on low incomes access to full time studies.

Lone parents should have a special 13 week permitted period during which time they would be free to look for all types of work and impose any type of restriction. The permitted period which allows the jobseeker to put restrictions on the work s/he takes and still be treated as available for work can only currently apply to those who have a 'usual occupation'. For many lone parents who have not worked recently due to childcare the normal 13 week permitted period would not be applicable.

The actively seeking work rules need to be amended to reflect the DWP proposed changes to the availability for work rules. There is a general mismatch between the availability and the actively seeking requirements.

The good cause provisions which will allow a lone parent to turn down a job need to be evaluated and revised, where necessary to take account of the particular problems of lone parents. Will a lone parent have good cause for turning down a job if their child is ill at the time it is offered or their child is about to start a six week school holiday but is not yet off school?

No lone parent should be expected to spend more than a maximum of one hour travelling between work and home on the days when they are working. The memorandum suggests that it will be policy to limit the time to one hour for the first 13 weeks of JSA and then to one and a half hours thereafter. However the regulations stipulate that only if the journey time is more than one and a half hours will the claimant have good cause for refusing a job. There should be a shorter time period allowed for lone parents in the actual regulation.

The travelling time to work includes, according to the memorandum, the time it takes to deliver or collect a child to school/childcare. This is not stipulated in the regulation and to protect lone parents should be included in the regulation. The fact that this will be included in guidance is not an adequate protection.

Where a parent considers there is no suitable, available childcare for their child this should be good cause for turning down a job. The provisions allow the decision maker (DM) to decide what is available and whether it is suitable. CPAG feels that if a parent's view is not accepted as final as we suggest then it must be for the DWP to show what is available and why it is suitable for that child and how it meets that child's needs. This is a view also expressed by the Work and Pensions

Committee. We are similarly concerned about the same provision in the new regulation dealing with leaving a job without just cause.

Where the cost of childcare makes a job uneconomic the lone parent should have good cause for turning down the job. Disproportionate cost may not only arise from the cost of the childcare itself but from the cost of travelling to the childcare. This is not included in the regulation. Again similar concerns apply to the interpretation in relation to just cause.

Just cause is not dealt with in sufficient detail in the new regulation and should be extended to cover issues other than childcare. The question of just cause may arise where a lone parent has a good reason for leaving a job. There are however many other reasons other than those issues relating to childcare which might provide just cause for leaving a job and this is currently decided on the basis of case law. CPAG believes that the regulation should be expanded accordingly (see detailed analysis).

General background issues

These regulations introduce the requirements for lone parents with a youngest child of 12 and going down to 7 by 2010 to claim JSA rather than IS and therefore be available for work. Only lone parents with children who are below the relevant ages and whose children are in receipt of middle or higher rate care disability allowance will be eligible to continue to claim income support.

The regulations only have direct adverse impact on those who are lone parents because a couple with a child where one of the couple claims JSA will receive the couple rate of JSA even if the partner does not seek work. A different rule applies to couples without children who are described in law as joint claim couples and who are both required to be available for work to qualify for JSA. The position of the couple with the child appears to be unchanged except that the slightly more flexible rules that apply to lone parents will also apply to a member of a couple with a child. For example if the member of the couple who is signing on is offered a job, he could argue he has good cause to turn down the job on the grounds that there is inadequate childcare available. Our comments are made in the light of their impact on lone parents.

CPAG is opposed to these changes for a variety of reasons. The decision to introduce this programme at this point is at odds with other government policies including the abolition of child poverty and undermined by the lack of a universal quality childcare service.

The DWP five year strategy stressed that Government policy would continue to be based on an 'incremental evidence based approach, piloting wherever possible'. It categorically stated that the government would not introduce 'an unrestricted requirement to search for work'.² Lone parents would not be moved from income support on to job seekers allowance – an approach at the time the Government stated was 'expensive, unfair and ineffectual'. We do not understand why therefore the Government has done a complete U turn and one which we agree is unfair and ineffectual.

² Department for Work and Pensions, 2005, Department for Work and Pensions Five year Strategy, para 69

There is abundant evidence that the support system required through an expanded childcare service and extended schools and the provision of wrap around care is not in place and, in fact, the government did not commit itself to provide this fully until 2015. It is therefore in our view irresponsible and counter productive to introduce these new requirements at this stage. Information about childcare provision and wrap around care in local areas must now be provided via the Children's Information Service (CIS) as from April 2006 as a result of the introduction of the Childcare Act 2006. However the information about and the level and type of childcare available appears to vary considerably by area. A brief look at some CIS sites shows detailed provision in some areas and other where very little provision was obviously available. In a survey of CIS findings organised by the Day Care Trust in 2008 it was reported that just over a quarter of local CIS reported insufficient provision for children aged 5-11, nearly half reported insufficient provision for children aged over 12.

The government's stated intention is to provide provision via extended schools – wrap around childcare on a school site between 8 am and 6 pm all year round by 2010 [as quoted in the objectives set out in Every Child Matters]. In addition a wide variety of clubs and activities are intended to provide support for children (although some of these will not constitute recognised childcare and parents of children attending would not be eligible for childcare tax credits for this purpose). However that provision is not yet in place and parents should not at this stage therefore have to justify that there is no suitable childcare available.

The changes remove opportunities from lone parents which in fact increase their chances of being in better-paid and sustainable employment by reducing access to higher levels of education. For those who have not had a chance to undertake more advanced courses this is an important advantage for lone parents which is now to be removed. The scope and levels of training courses allowed under New Deal and related programmes are low, usually NVQ level 2 and under the new Flexible New Deal (FND), when introduced in 2009, will provide courses up to the equivalent of A level (NVQ level 3). The end result of the changes will be to trap lone parents into a position where for many the only option will be low paid work. Lone parents will also, because of limited childcare provision, in many cases be forced to keep to limited hours of work. If parents have low qualifications and can only work limited hours they are likely to become part of a workforce that is poor in work.

Lone parents will potentially be subject to greatest sanctions. Although claimants will be able to apply for hardship payments of JSA this is paid at 60% of the normal rate of JSA, a greater sanction than under IS. This seems inconsistent with policies aimed at achieving a reduction in child poverty.

There appears to be little recognition of the role of the lone parent in providing direct care for their child, which is at odds with Government's concern about youth crime and social disorder and its stress on the importance good parenting. It will not be easy for some lone parents to juggle the demands of work with providing direct care, such as getting children to and from school or childcare or both where there is more than one child. For many parents much of this will usually have to be done on public transport. Lone parents may end up time poor as well as income poor as a result of this policy. Researchers have reported that there are concerns that 'welfare to work programmes have negative effects on adolescents' and that 'adolescent children of parents enrolled in welfare to work programmes showed increased behavioural problems and lower academic achievement'. Those who had younger siblings

'experienced increased rates of school drop out, school suspensions ...and poorer school performance.'³

Parents with disabled children who are in receipt of the lowest rate care of Disability Living Allowance (DLA) will also be required to participate in the programme. CPAG has serious concerns that the revised rules take insufficient account of the demands on those parents of the needs of disabled children.

The approach to reform of the JSA regulations

In consultations prior to the introduction of the proposed regulations much was made of the need for the JSA regime to be flexible to deal with the needs of lone parents. Despite the proposed amendments the rules still fail to deal with the day-to-day demands of lone parents that may make availability for work extremely difficult.

A more flexible scheme has been provided at the expense of more complex rules, for example lone parents will have to show that they do not have access to suitable childcare to be treated as available for work or that they need four weeks rather than seven days in order to take up a job. Because flexibility has been achieved at the expense of clear cut rules, how lone parents fare may depend on the ability of the parent to argue their case and the extent of their knowledge. The outcome will also depend on the skill and competence of the staff at JCP to advise on the options. The scheme increases the emphasis on the use of judgement by JCP staff to decide whether a particular situation or argument is reasonable. If judgment is to be used and there are no objective criteria which guide that judgement there is a danger that the scheme becomes one in which access to the benefit is in effect discretionary. Consistency in delivery will be lost.

Flexibility has also been achieved at the expense of simplicity which is not helpful to claimants and which appears to contradict current intentions of the government to simplify rules. The alternative would have been to create a clear set of more flexible conditions applicable to all lone parents who have to be available for work. However because the rules must apply to all parents with caring responsibilities the scope for recognising the special position and responsibilities of the lone parent is lost.

The realisation that there were potential issues of discrimination because the partner of a person who is claiming JSA would not be subject to the same rules as the lone parent unless the rules covering couples were changed has meant that the amended jobseeker allowance regulations are now worded with reference to *parents with caring responsibilities* for a child. There is however not a real uniformity of treatment between couples and lone parents because the partner of the JSA claimant who has a child does not have to be available for work but has to attend the work focused interview only.

The explanatory memorandum places great emphasis on the importance of the content of the jobseeker's agreement and points out that this will be tailored to the specific circumstances of each jobseeker and it is in the agreement that a parent's availability for work will be recorded and any special circumstances around childcare taken into account. This may indeed happen but it will not necessarily protect the lone parent from the rigours of the operation of the JSA regulations. A social security commissioner in CJSJA/1814/2007 ruled that it is the content of the availability and

³ J Millar and M Evans (eds) Lone parents and employment: International comparisons of what works (published by the Centre for the Analysis of Social Policy Dec 2003

actively seeking work regulations that are key to deciding whether a person is available and actively seeking work. He found:

‘where it is alleged that a claimant is not actively seeking work the questions to be asked flow not from the job seeker’s agreement but from s.7 (1) [of the Act] and regulation 18(1)’.

It is therefore important that the necessary flexibility be built into the regulations dealing with availability for and actively seeking work. This is not the case at present. The claimant cannot depend on a sympathetically worded jobseekers agreement. For instance, the good cause provisions which allow a claimant to turn down a formal offer of a job are set out in regulations. It is the content of the regulations describing good cause which are crucial and not the terms of the jobseeker’s agreement.

Organisations concerned with the welfare of lone parents and their children who met with the DWP in advance of the publication of these regulations expressed great concern about the application of the normal sanction rules that result in benefit being terminated. A claimant can apply for a hardship payment – payment is not automatic and there can be delays and if the payment is made it is at a level where the single rate of JSA is reduced by 40%. In contrast a penalty applied to income support is only set at 20%. CPAG is critical of any deduction being applied to a benefit. It will unfortunately be all too likely that parents will fall foul of some of the JSA requirements and may be ‘threatened’ with a loss of benefit. When deciding whether this deduction of 40% is reasonable account should be taken of other deductions already being made. Of necessity a parent may then be forced to use the income designed for children on more general needs.

Detailed analysis of the regulations

We concentrate on the changes to the jobseekers allowance (JSA) regulations - the remainder of the changes being largely consequential and procedural. Our references are to the JSA regulations as amended by the Social Security (Lone Parents and Miscellaneous Amendments) regulations 2008.

Regulation 5: Requirement to be available for employment immediately – exceptions

This condition is already modified for carers who must be willing and able to take up employment, not immediately but on being given one week’s notice and be able to attend an interview in connection with employment if given 48 hours notice.

Most lone parents will be treated in the same way but where a lone parent can show that s/he reasonably needs a longer period then s/he will be allowed four weeks before taking up work and a week before attending an interview. The onus here is on the claimant to argue their case assuming they have been told of the option by the Personal Adviser (PA) or an outside adviser. The danger is that this will become a condition operated very differently according to office or within one office by different advisers. If there is to be additional judgement involved there should be clear objective guidance about the situations to be taken into account.

CPAG recommends that the more generous time periods set out in the new para (1A) are applied *automatically* to lone parents. This would make it simpler to operate and all parties would know what the conditions were.

Regulation 17: Requirement to take casual work

An amendment to regulation 17 requires lone parents who have been laid off to take up casual work either under the timetable allowed for carers in general or the more flexible period allowed for some parents caring for children. CPAG believes that the longer period should apply automatically. This does not of course mean that the individual parent cannot choose to act more quickly but it means that they are not obliged to do so. If childcare was provided by the employer at the previous place of work then there would be the need to find new childcare provision or childcare provision suitable to new hours of work, a change that might not be easily found or arranged (see general commentary on childcare issues).

Moreover, CPAG disagrees that lone parents should be required to take casual work. Stability of income is extremely important to those responsible for children and lone parents in particular. It seems to CPAG unreasonable to ask a lone parent to take up employment that might only last a short time and without the employer having to give notice to the employee. To qualify for working tax credit (WTC) a claimant is required to take on work which will last at least four weeks. If there is no guarantee that the employment will last this long then this should be good cause for not taking the employment and the regulation should be amended to this effect.

Regulations 7, 8, 10 and 13: Reasonable prospects of employment and availability for work

These provisions encompass a number of regulations – regulations 7 to 10 inclusive and regulation 13.

A person who places certain types of restrictions on his/her availability for work relating to hours (lone parents are anyway allowed to restrict hours under these rules); nature; terms and conditions; location; or religious belief or conscience, must nevertheless show that s/he *has reasonable prospects of securing employment*. (our emphasis). It is this test that will be particularly difficult for lone parents to satisfy and the amendments to regulation 13 are not sufficient in CPAG's view to protect lone parents from the rigours of this test.

The decision as to whether a person has reasonable prospects takes into account the general restrictions allowed by regulation 7 and 8 (hours, nature of work, terms and conditions, location of the work plus some additional restrictions allowed in certain cases, as set out in paras (2) and (4) of regulation 13. Regulation 13(2) deals with religious and conscientious considerations, (4) with the right of a person with caring responsibilities to restrict their hours to less than 40 but be available for at least 16 hours a week. Additionally regulation 13(4) requires the person to be available for as many hours as his caring responsibilities allow and have reasonable prospects of employment. Generally lone parents will have to satisfy the test of reasonable prospects despite the need to limit the hours of work to 16, the location, terms and conditions and perhaps the type of work they can take. The reasonable prospects test is disapplied only if the employment officer decides 'that due to the type and number of employment vacancies within daily travelling distance of the person's home he would not satisfy the reasonable prospects test'.

Because of the interaction between the different regulations it would nevertheless be possible for a lone parent, who has the reasonable prospects test disapplied because of the type and number of employment vacancies within daily travelling distance issue, to fall foul of the same test on other grounds – because additional restrictions have been made for different reasons!

It is therefore not clear how this specific exclusion made under regulations 13 (4) (6) and (7) which depends on the individual judgement of the officer concerned will protect the lone parent from the operation of the reasonable prospects test when applied to restrictions made under regulation 8 and regulation 13(2).

The decision as to whether there are reasonable prospects is made under regulation 10 which in turn refers to regulation 8 and to regulation 13 (2) and (4). Given the particular circumstances of lone parents it is inevitable that they must restrict their availability both under regulation 8 and under regulation 13.

CPAG believes that certain changes to the regulations are required so that a failure to satisfy the reasonable prospects test does not deny lone parents benefit when the restrictions they have made are quite reasonable. CPAG therefore recommends the following changes are made which would both simplify the rules and leave less judgement in the hands of officials. It would have the effect of abolishing the reasonable prospects test for lone parents although they would still be required to be available to work 16 hours a week:

- Delete the reference to regulation 13 (4) in regulation 10 under which decisions about reasonable prospects are made.
- Delete the clause in para (4) of regulation 13 which makes reasonable prospects of securing employment a condition carers must meet whether they are responsible for caring for adults(disabled or elderly) or parents caring for children. This would remove the necessity for the additional paras (6) and (7) which require the exercise of further discretion by staff in cases concerning some lone parents.
- Add an additional provision to regulation 10 excluding those with caring responsibilities from the reasonable prospects test.

The DWP have expressed the view in the memorandum (para 4.7) that a general provision which treated lone parents more favourably than others in relation to the reasonable prospects test and more along the lines of the provisions for disabled workers would be discriminatory. However the scheme as currently conceived already creates a two tier system for those with children in so far as the partner of a person claiming JSA with responsibility for a child is in a more favourable situation than a lone parent. The couple member only has to attend a work focused interview.

Regulation 8: Restrictions relating to terms and conditions of employment

A provision allowing any lone parent to restrict their terms and conditions so that they cannot be required to take nil hours contracts should be introduced. These contracts can result in workers receiving no pay in a particular week and in effect undermine minimum wage provisions and mean that income from work would be extremely unstable and would arguably remove their entitlement to WTC.

Regulation 13: Parenting orders and other situations in which lone parents can restrict their availability for work

A further amendment to regulation 13 (a new para (3A)) deals with parents subject to a parenting order or contract (made under Crime and Disorder Act 1998 and Anti-Social Behaviour Act 2003 respectively). Lone parents are allowed to restrict their availability in any way *providing* the restrictions are reasonable in the light of terms of the order or contract (our emphasis). CPAG is concerned about the capacity of JCP staff to exercise judgements about a completely different area of law and about which

there will have been at least only limited advice, guidance and training. (Where this condition applies the lone parent is not subject to the reasonable prospects test).

There may however be other circumstances in which parents are similarly restricted by caring duties although they may not be the result of a legal order. For example a social worker may recommend or advise a parent to follow a particular course of action which would restrict availability such as attending parenting classes or going for family therapy. There may also be cases of disputed residence and certain duties may be imposed on the parent before a decision is made. There is therefore a need to expand this provision so that it encompasses lone parents in analogous circumstances even if not the subject of a legal order. It may be appropriate to add 'and in such other analogous circumstances as the Secretary of State allows'.

Regulation 14: Treated as available

The circumstances when a person is treated as available have been extended to cover:

- A parent with caring responsibilities during school holidays and other similar vacations (undefined), and
- A parent looking after a child who is excluded from school and who is not receiving education.

However in both cases the provisions are subject to the test that it would be unreasonable for the parent to make other caring arrangements.

Being treated as available and thus eligible for benefit during school holidays thus depends on whether the DWP official decides that there is suitable childcare available to the parent. Only if there is no suitable childcare is the parent treated as available during the school holidays. This puts the onus on claimants to argue that the childcare is unsuitable or not easily accessible or too expensive.

This provision also means that an untrained official from the DWP is required for example to make a decision about whether a possibly emotionally damaged child who has been excluded from school should be subject to other caring arrangements. CPAG believes that this is totally unacceptable. This is a situation in which professional judgement relevant to the child's needs is required and this is not available in the JCP. If alternative arrangements are in fact made then the parent can be available unless as part of these arrangements the parent is required to spend part of the time with the child. A decision about availability should be made on the facts of the case and whether the parent is actually available. Otherwise the parent should be treated as available and benefit paid on that basis.

It would be simpler if the parent in either of the above circumstances was automatically treated as available. This would allow decisions to be made more speedily and would not depend on making difficult decisions about suitable childcare being available. This would also make it easier for both sides to understand.

Further amendments are made to regulation 14 to deal with death, domestic emergencies etc under a new para (2ZA). The period for which a person is treated as available after death, serious illness, or a domestic emergency has been extended in the case of a parent with caring responsibilities from one week to eight weeks. This appears to be a recognition that it is not simply a matter of the time required to deal with the emergency / special circumstances but that the rules must take account that

children may be affected and that their capacity to deal with the particular circumstances may take some time and care. The eight week timescale also reflects the provision relating to those adults who are temporarily caring for children who are already allowed an eight week period in which they do not have to be available for work but are treated as available.

However, this rule is restricted to a maximum of four such periods in a year. We cannot see the logic in having such a restriction. If a family is unfortunate enough to experience such crises on more than four occasions then the same reasoning behind the 8 week rule should apply on each occasion. Where a parent or sibling dies we suggest that no maximum limit should be imposed.

There are important omissions in this regulation. Nowhere in the regulations is there a reference to circumstances in which a child may be unable to attend school because it is closed – eg because of severe weather, industrial action by staff, health reasons if there was fear of the spread of infection. These circumstances should be included in regulation 14, as should a child being too ill to attend school or childcare.

Regulation 11 and 12: Part time students and volunteers

When deciding availability for work in any particular week the DM must ignore the pattern of part time study as long as the student is willing and able to reorganise his/her hours of study so as to be able to start work within a seven days or four week timetable. The regulation only applies if the person has restricted his hours of availability for example because s/he is person with caring responsibilities or is a parent under a parenting order. How far lone parents would be able to comply with the conditions in this regulation is hard to see. It requires the ability to juggle a number of different activities including studying, looking for work, providing actual care for his/her child/ren, arranging childcare, changing both study hours and childcare to fit in with a formal offer of a job.

Regulation 12 is amended to refer to regulation 13 (3A) but makes no reference to regulation 5 (1A). A lone parent who does voluntary work must according to this regulation be required to take up employment within 7 days notice of the job being notified and be available for interview within 48 hours. We assume the lack of reference to the more flexible one month and seven days alternative in regulation 5 is an omission.

CPAG believes a different approach is needed for lone parents in recognition of their multiple responsibilities and the need to provide opportunities and experience in the world of work.

Regulation 15: Full time students

This has not been amended and there is no provision for a lone parent who is a student and who signs on during the summer vacation to obtain JSA. This is a discriminatory provision. Lone parents who study full-time and who are available for work during the vacation should be eligible for JSA otherwise the lack of financial support during the summer vacation could undermine the capacity of the lone parent to take on full time education. This is the one group of lone parents with children for whom in this context only casual work may be appropriate. Obviously it will depend on the available childcare.

Regulation 16: Treated as available during 13 weeks permitted period.

This allows claimants who have a 'usual' occupation to look for the same type of work they had before and at a similar rate of pay. They are treated as available even if there is little chance of their obtaining employment. This is an option not available to lone parents without a work history. CPAG recommends that lone parents should be credited with a period of 13 weeks in which they are given complete flexibility to look for work or study or both and be treated as available and not subject to the rigours of the JSA regime. The sole requirement would be to sign on and be available for work at a maximum of 16 hours a week but they would be able to turn down employment that did not interest them or did not fit with their other childcare needs.

Actively seeking work

Regulation 18: Steps to be taken by persons actively seeking employment

This provision has not been altered. CPAG recommends that sub para (3) is amended to take account of needs of childcare that arise in that week.

Regulation 19: Circumstances in which a person is to be treated as actively seeking employment

The following categories should be added :

- A person who is subject to a parenting order /contract or in analogous circumstances as in regulation 13(3A)
- A parent with caring responsibilities during the school holidays (Regulation 14 (1) as amended and ideally without any reference to being subject to the finding childcare)
- A parent with caring responsibilities whose child is unable to attend school because of an exclusion order
- A parent with caring responsibilities whose child is unable to attend school because the school is closed etc (see CPAG's proposed amendments to regulation 14 to which this regulation would refer.

Overall there is a mismatch between the provisions relating to availability and those relating to actively seeking work.

Sanctions: good cause, just cause and misconduct

CPAG believes that the amendment to regulation 72 (good cause for failing to take up a job), the new regulation 73A relating to just cause when giving up work are both inadequate. We agree that childcare is an important issue but the regulations give too much power to the DWP to decide whether childcare is available and if so whether it is suitable. The cost of childcare which affects whether work becomes uneconomic derives from a range of causes – costs of care, inadequate support via the childcare element of working tax credit (only two children's care is covered up to 80% and there is no additional support for a third or fourth child). Also of importance is the suitability of the tax credit regime to provide the childcare support. For many parents it is not appropriate and they need access to informal childcare and this is not financially supported. Finally costs may be increased because of the cost of travelling to the childcare provisions particularly in London and larger cities and rural

areas. All of these are reasons why the cost of childcare may be prohibitive and make work uneconomic particularly if combined with other costs.

Regulation 72: Good cause

This covers good cause for failing to carry out a jobseeker's direction (s.19 (5) (a), for refusing to take up the formal offer of employment (s.19 (6) (c)) and for neglecting to take up the chance of employment .

When deciding whether there is good cause in the above circumstances the DM must take into account whether childcare costs were or would be disproportionate when compared with likely pay as a result of taking a job or when compared with income when carrying out a jobseeker's direction. The wording of the regulation is imprecise and does not take into account that for a person in work the tax credit childcare element only meets 80% of the costs for the first and second child and no additional amount for larger families. Once this scheme is in operation for those with a youngest child aged 7 or 8 it is likely that many who move into full time work could have high childcare costs as two or more children may require a variety of childcare, particularly if they work in London or work unsocial hours. There is also no guarantee in the regulations relating to availability for work that a parent will be able to impose a requirement that his/her hours of work must conform broadly to school hours thus reducing the likely costs of childcare .The regulation also requires the official to take account of availability of childcare and if available whether it is unsuitable given the particular needs of the child. However in this context it appears that the DM will decide what is available and whether it is suitable. The regulation requires an additional caveat that where a parent has stated there is no suitable or available childcare, the DM must give reasons for a decision in which s/he disagrees with the parent's view. It will not be sufficient to quote that suitable childcare services as listed by the Children's Information Services (in each local authority) are available in that area. The DM will need to show why in each case the childcare is suitable for that child. It is important that it is not made too easy for the JCP to override the opinions of the parents on the suitability of the childcare. However we would prefer the decision of the parent to be final until childcare services are comprehensive. The deadline for achieving a full service including wrap around care is not until 2015. It would also make decision making simpler.

The cost of travelling to childcare may also render work uneconomic. This should be recognised in the regulations.

New regulation 73A: Just cause

This relates to sections 19(6)(b) and 20A(2)(e)

Section 19(6) (b) applies where a claimant has left work voluntarily and section 20A (2) (e) applies to couples.

CPAG welcomes the fact that the DWP has now created a regulation to deal with the concept of 'just cause' which to date has been decided by case law and therefore has not had to take into account the questions that are relevant to a lone parent or a parent with child responsibilities. The new regulation does not however go far enough, dealing almost exclusively with childcare questions. We therefore feel that lone parents will still not be protected in certain circumstances.

In particular it does not cover the range of situations covered by regulation 72 dealing with good cause for refusing a job. All these situations should be

incorporated into the just cause provision if the lone parent's situation is to be fully protected. The absence of the alternative adult in the household who can help out in an emergency, who can share the caring and parental responsibilities are why it is particularly difficult to frame provisions which insist that lone parents work. Nevertheless the regulations must be drafted so as to recognise the limitations that affect a lone parent's capacity to work.

CPAG would suggest that the regulation should be restructured as follows to include:

- What matters must be treated as just cause,
- What matters must be taken into account when deciding whether there is just cause.

Matters that must be treated as just cause should include:

- the lack of suitable good quality and affordable childcare or disproportionate cost making work uneconomic
- circumstances recognised as giving a claimant good cause for failing to take up employment (existing regulation 72)
- circumstances which enable a claimant to be treated as available for work for the purposes of the availability for work test, and circumstances when a claimant does not have to be available for work
- any other circumstances which the Secretary of State considers appropriate. (This gives some flexibility to the officer to take account of particular difficulties faced by a lone parent and which are not covered by the provision elsewhere.)

The circumstances listed under regulation 72 (good cause) and new provisions where a parent is treated as available or is not required to be available should therefore be added to this part of the regulation. For example if a lone parent is subject to a parenting order they may, depending on the terms of the order, be required to attend classes at certain times and not be able to keep to their normal hours of work. This may mean they have to leave work voluntarily but although under case law they are likely to be treated as having just cause for leaving the job it is not certain that they will be.

What matters should be taken into account when deciding whether there is just cause.

These could usefully cover a range of issues established by case law but reworked into the regulation (see below). In addition a final matter to be taken into account when deciding whether there was just cause would be any analogous circumstances or circumstances which the Secretary of State considers appropriate. (Again this last provision allows some flexibility to reflect the fact that case law has not had to deal with the particular responsibilities of lone parents).

Existing caselaw

Existing caselaw on just cause covers a range of issues but they may only partly provide protection for lone parents. They include:

Poor working conditions (but only if there is an actual breach of minimum working conditions)

Personal and domestic reasons but these are not automatic. Thus a person *may* have just cause for leaving work (our emphasis) to look after a sick relative. A parent whose child is sick may wish to be at home to care for that child but without the specific inclusion in the new regulation giving them this right the parent could be treated as not having just cause for leaving the job. Personal or domestic reasons can be used to justify leaving a job because a partner has taken a job elsewhere but it is not possible to read across from this the need to give a job because of the need to be near a child's new school for example. According to case law the circumstances must be very pressing or urgent to justify leaving a job before looking for alternative employment. A person might help their case if they have tried without success for example to negotiate different hours of work with the employer to resolve a problem. However a lone parent may need to take quick action and this will mean she may have to leave the job or will lose the job because of 'misconduct' – see below. Most lone parents when choosing between the demands of work and the needs of their child will give the latter priority. CPAG assumes that the Government would support that and this should be reflected in the regulations.

Changes of terms and conditions. Where an employer makes changes to these but it does not amount to ending the contract of employment it *may* count as just cause. However the employee to satisfy the just cause case law would be required to use any grievance procedure first. Where demands are made on a lone parent to increase their hours because the next person on the shift has not arrived on a particular day and this happens regularly, this could create problems for the lone parent juggling work and care responsibilities but would not necessarily count as just cause for leaving a job.

The case law thus fails to take adequate account of the need of the lone parent to act quickly to deal with a change of circumstance or domestic emergency, a child's illness and need for additional care, and if necessary to leave a job virtually without notice. Before leaving a job an employee is normally expected to attempt to find alternative employment and this may not be a practical requirement of lone parents in certain circumstances.

The new regulation needs to be expanded to deal with some of the above issues more sympathetically where the interests of a child are involved.

Regulation 73A proposals on childcare and just cause

The new regulation defines those circumstances relating to childcare issues when a lone parent will be treated as having just cause for leaving employment voluntarily.

The regulation takes a similar approach to regulation 72 (good cause) and concentrates on availability and suitability of childcare and the cost of that childcare.

Our criticisms are the same as those we have outlined in relation to good cause.

Costs and childcare

Reasons that have no relation to the actual employment or childcare provision may still have important consequences which will affect the lone parent's ability to continue to work. For example where a lone parent is employed in a rural area and there is a change or reduction to local bus services this may render continued employment impossible. As exists in good cause there are a range of issues that must be taken into account when deciding whether there is good cause for not taking up work and similar circumstances will justify giving up work.

Sacked for misconduct

Section 19 of the JSA Act the legislation also allows for a sanction to be applied where a claimant is sacked for misconduct. This has the affect of delaying payment of jobseekers allowance even if entitlement is established. However the new regulations contain no reference to this provision so lone parents will depend on the operation of case law and this may not protect lone parents sufficiently. It is likely that some incidences of misconduct could arise where there is a conflict between parental responsibilities and duties to the employer.

Case law has established a number of circumstances in which a person may be treated as sacked for reasons of misconduct. The following are examples which could adversely impact on a lone parent juggling responsibilities for a child with duties to an employer:

- Misconduct may not be the sole reason for the loss of the job but must be a contributory factor.
- It does not have to be deliberate or intentional; may consist of a serious degree of carelessness but a person who acts on a genuine misunderstanding is not guilty of misconduct.
- Persistent absenteeism without permission.
- Unauthorised absence through ill health and /or domestic circumstances when coupled with failure to tell the employer.
- Refusal to obey a reasonable instruction in line with claimant's contract of employment (eg. refusal to work overtime) can be held to be misconduct. However a person can refuse to do work where it is not contractually stipulated.

In the above list of circumstances parents with a sick child and without immediate access to a phone might not be able to satisfy the condition that they must have permission to be absent or they may have failed to tell the employer. Concern about the child could also mean that the parent does not tell the employer at the time of the absence. Where there are domestic problems or other worries a person may not be able to keep up to their normal standards of work and could be found to have acted carelessly for example. The fact that many lone parents will have low incomes and may have no land line access to phones but rely instead on mobiles could also create problems if there is no allowance left to use.

Regulation 140: Hardship payments of jobseekers allowance

Regulation 140 of the jobseeker allowance regulations is amended so that a *person in hardship* includes a lone parent who is responsible for a child or young person where that young person would suffer hardship. This is important as this enables hardship payments to be paid from an earlier date and a person is more likely to qualify.

The major problems are that the lone parent must:

- Make an application for the payment – will the PA advise the claimant accordingly?
- The payment is only made if the dependent child would suffer hardship

- Hardship means 'severe suffering or privation' - 'meaning a lack of the necessities of life'. When deciding whether hardship exists the DWP should take into account whether a person in the family qualifies for a disability premium or disability element of child tax credit, the resources available to the claimant including income from benefits that are normally disregarded such as DLA and any savings below £6000 and whether there is a *substantial risk* that either the lone parent or children would go without food, clothes, heating and accommodation if a hardship payment was not made or whether these would be available but at considerably reduced levels. The last factor effectively extends the test of hardship to the lone parent.

It seems strange to justify the introduction of a new scheme in which parents with children will have to show that they will effectively be in severe hardship before they can get a hardship payment whilst also having a policy of combating child poverty. Hardship payments are made at 60% of the ordinary rate of JSA – that is £36.30 at current adult benefit rates, a much lower rate than the amount of benefit paid when a penalty had been applied to income support.

A hardship payment may be made where:

- From the start of a claim if awaiting a decision on whether the person satisfies the labour market conditions – availability etc. The lone parent should be paid until there is a decision on the labour market conditions from the date at which a decision maker decides they are a lone parent and thus in a vulnerable group or from the day after the three day waiting period – whichever is later. A payment can be made to a person in the vulnerable group category before the date on which the person makes a hardship statement but if the decision maker believes that the person has experienced hardship before this then a payment can be made earlier.
- A person does not satisfy the labour market conditions and cannot get ordinary rate JSA. A hardship payment is paid indefinitely from the day that it is decided that the lone parent does not satisfy the labour market conditions – availability for work, actively seeking work and having a current job seekers agreement. It has to be claimed.
- If JSA is suspended because there is doubt about entitlement. Where this happens as soon as the decision to suspend benefit is made a hardship payment can be made. It has to be claimed.
- If the person has been sanctioned. A hardship payment is payable from the date of the sanction. It must be claimed.

CPAG recommendations on hardship payments and the JSA sanction regime

The payment should be automatic and not depend on the claimant making an application. It is farcical to create a series of barriers to obtain a living allowance which is a just £36.30 a week. The simpler the process the more likely that the lone parent will get the allowance. To make it subject to a substantial hardship test is also inconsistent with the government's objective of abolishing child poverty. If an award is only made once the claimant has made a claim then those that are unaware of the payments will go without this support or it will be paid late once the official has had a chance to advise the claimant of their potential entitlement.

The Work and Pensions Select Committee⁴ has also expressed concern about the impact of sanctions and the fact that this can leave the claimant with no benefit at all unless a hardship payment is made. We agree that the review of the hardship provisions and the rules relating to sanctions should take account of the children's interests and we do not believe that the current system does.

The explanatory memorandum refers to the review of the hardship regime which began in March 2008. However the outcome will not be produced until the summer, too late for these considerations. The memorandum emphasises the fact that the hardship regime should be seen in the context of the greater flexibility built into the JSA regime for lone parents but in reality this so called flexibility is minimal and relates broadly to issues relating to childcare provision and very specific conditions where it is obvious that a lone parent cannot be available for work because of other commitments.

The memorandum suggests that there should be no break in payment of benefit to the lone parent. But this ignores the fact that parents must make the claim for a hardship payment, that officials must make decisions about hardship and must decide whether the person is someone for example who does not satisfy the labour market decisions. If decisions are delayed because staff are overworked or many cases arise at one particular time then there will be a gap in payment and claimants will in fact be living on the income designed for their children. It would be helpful if there was a commitment if the system does proceed for no hardship payment to be delayed by more than two days beyond the day of entitlement and that the DWP must then start payment.

About CPAG

CPAG promotes action for the prevention and relief of poverty among children and families with children. To achieve this, CPAG aims to raise awareness of the causes, extent, nature and impact of poverty, and strategies for its eradication and prevention; bring about positive policy changes for families with children in poverty; and enable those eligible for income maintenance to have access to their full entitlement. If you are not already supporting us, please consider making a donation, or ask for details of our membership schemes, training courses and publications.

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⁴ Work and Pensions Select Committee, 2008, The Best Start in Life? House of Commons