

# Retrogressive and Precarious? – (Legal) Protection of a Subsistence Minimum in the United Kingdom

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## I. Introduction

The United Kingdom (UK),<sup>1</sup> like many other advanced industrialized nations, has experienced significant social and economic change in the past 60 years.

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1 Social security is mostly a reserved matter in Great Britain (England, Scotland and Wales). However, the responsibility for certain benefits have been devolved to the Scottish Parliament. Any and all benefits not explicitly devolved by the Scotland Act 2016 continue to be reserved, which include means-tested benefits such as Universal Credit and the benefits and tax credits it is replacing. In Northern Ireland social

The UK's modern welfare<sup>2</sup> state was established gradually in the first half of the 20<sup>th</sup> century, based primarily on the contributory principle. Prior to the 20<sup>th</sup> Century, social security provision took the form of means-tested *Poor Law* provision, administered in local parishes and often delivered in workhouses. The provision of relief, as much a church and charitable duty as a state one, was geographically dispersed and, for the able-bodied poor, it was more concerned with discouraging uptake than facilitating access.<sup>3</sup>

This dynamic was transformed by a series of reforms between 1906 and 1948, when the state focus shifted to citizen welfare. According to *Marshall*, these 20th-century reforms established a social right of citizenship, which included a "right to welfare" ensuring that every member of society has the opportunity to live "the life of a civilized being in accordance with the standards prevailing" or at the very least, "a modicum of economic welfare and security".<sup>4</sup>

The National Insurance System, first introduced in 1912, was extended significantly as part of the post-Second World War welfare state, based on the model proposed by William Beveridge. In contrast to other European models of social security, Beveridge had advocated that social insurance should provide "flat-rate", rather than earnings-related, benefits, in exchange for the payment of "flat-rate" contributions. In Beveridge's opinion, this was the best approach to guarantee that the state provided a "basis minimum" while encouraging citizens to make further provisions for themselves through private insurance or savings.<sup>5</sup>

The *National Assistance Act 1948* imposed an explicit duty on the state "to assist persons in Great Britain who are without resources to meet their requirements, or whose resources [...] must be supplemented in order to meet their requirements".<sup>6</sup> The *Ministry of Social Security Act 1966* conferred a "right to benefit" upon "every person... whose resources are

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security is almost entirely devolved (or "transferred") and is the responsibility of the Department for Communities (aside from the HRMC benefits and tax credits). By long-standing convention, however, Northern Ireland maintains "parity" with social security, child maintenance and pension systems in Great Britain.

- 2 In this paper, the term "welfare" refers to the individual's ability to attain a minimum standard of living. Means-tested benefits for the relief of poverty, often described as 'welfare' are referred to by name or collectively as 'social assistance'.
- 3 S. Hardy, *Social Security Law in the United Kingdom* (3<sup>rd</sup> ed. Wolters Kluwer 2019), pp. 25 ff.
- 4 T. H. Marshall and T. Bottamore, *Citizenship and Social Class* (Pluto Press 1992), p. 8.
- 5 S. Hardy (n 3), p. 26.
- 6 *National Assistance Act 1948*, c29 s4.

insufficient to meet his requirements” and gave the *Supplementary Benefits Commission* (SBC) authority to provide “benefit [...] by way of a single payment to meet an exceptional need”.<sup>7</sup> The Act, for the first time, “framed the citizen’s claim for means-tested benefits as a legal entitlement” rather than something which was within the discretion of government.<sup>8</sup> Case law reinforced the fundamental principle that the state had a responsibility to ensure, by some means, that those lawfully residing in the United Kingdom could meet their needs by bridging any gap between the household’s available resources and its needs, although it was not necessarily required to do so by providing cash.<sup>9</sup>

However, this statutory duty to provide a subsistence minimum has been weakened by the political ideology of individual responsibility for welfare provision held by successive governments, and later exacerbated by austerity and post-pandemic provisions that restrict the financial and public resources available to those without independent means of support.<sup>10</sup> This ideology was driven by concerns about rising public spending and that benefits were leading to a “dependency culture”.<sup>11</sup> The statutory obligation, established in 1948 (see above) to provide a subsistence minimum began to be eroded with the exclusion of those on strike due to a labour dispute.<sup>12</sup> 1980 regulations primarily precluded strikers and their families from receiving supplementary benefits.<sup>13</sup> In *Donnison’s* analysis this was the point where the government broke with “a centuries old tradition that those who administer the poor laws must in last resort prevent people from starving, no matter what the cause of their plight.”<sup>14</sup> In subsequent years, the protection afforded by a subsistence minimum would be further

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7 *Ministry of Social Security Act 1966*, c20 s4, 7; *Supplementary Benefits Act 1976*, c71 s1, 3.

8 T. Buck, *The Social Fund: Law and Practice* (3<sup>rd</sup> ed. Sweet & Maxwell 2009), para.1.25.

9 *Supplementary Benefits Commission v Jull; Y v Supplementary Benefits Commission* [1981] AC 1025 at 1031 (Viscount Dilhorne); 1037 (Lord Salmon).

10 M. Simpson, G. McKeever, C. Fitzpatrick, ‘Legal Protection Against Destitution in the UK: the Case for a Right to a Subsistence Minimum’ *Modern Law Review* 86 (2022) 2, pp. 465-497, 495.

11 A. Le Sueur, ‘Constitutional Protection of Rights to Social Security in the United Kingdom’ *Queen Mary School of Law Legal Studies Research Paper* 108 (2012), p. 9.

12 *Ministry of Social Security Act 1966*, c20 s10.

13 *Supplementary Benefit (Trade Disputes and Recovery from Earnings) Regulations 1980*, S.I. 1980 No. 1641.

14 D. Donnison, ‘The Politics of Poverty’ (Blackwell Publishers 1982), p. 73.

eroded. A growing number of non-UK nationals were ineligible to receive income support, the successor to supplementary benefit, along with restrictions on access to paid employment and certain other benefits.<sup>15</sup> The *Social Fund*, which was introduced in 1986 and provided a discretionary system of loans and payments for one-off expenses, was abolished in 2012, with powers devolved to local authorities in England and regional legislatures in Scotland, Wales, and Northern Ireland – albeit without a legal obligation to replace the abolished national scheme or a ring-fenced budget.<sup>16</sup>

Since the mid-1990s, there has been a striking cross-party continuity of approach between governments (first Conservative, then, in succession, Labour, Coalition, and again Conservative), all of whom appear to have adopted the dominant ideology of conditionality, linking entitlement to social security benefits to an individual's behaviour.<sup>17</sup> Job seeking requirements having been progressively tightened and extended to ever more groups of out-of-work benefit claimants in successive reforms since the late 1990s.<sup>18</sup> However, "in-work-benefits" for low-income households were also promoted through the development of a large and complex system of tax credits administered by the UK Treasury, which combined the goals of encouraging people to move into low-paid employment and combating poverty, particularly among families with children.<sup>19</sup> By the time of the introduction of the tax credit policy in 1997, wage levels of the lowest percentile of the workforce had fallen to historically low levels; this was the result of deregulatory measures such as abolition of Wages Councils and the

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15 *Income Support (General) Regulations 1987*, S.I. 1987 No. 1967, reg 21; sch 7 para 17; *Asylum and Immigration Act 1996*, c49 ss 8-11: Migrants in the UK on visas, illegally or seeking asylum are usually ineligible for most social welfare benefits and public housing, referred to as having 'no recourse to public funds' (NRPF). A few categories of people, including those granted permission to remain in the UK for human rights reasons, can apply for a 'change of conditions' granting them recourse to public funds. A successful application requires evidence of destitution, child welfare concerns or exceptional financial circumstances.

16 See G. McKeever, C. Fitzpatrick, et al., *Independent Review of Discretionary Support* (Department for Communities 2022).

17 M. Adler, *Cruel, Inhuman or Degrading Treatment? Benefit Sanctions in the UK* (Palgrave Pivot 2018), p. 23.

18 D. Clegg, 'Convergence from below? The reform of minimum income protection in France and the UK' *Journal of International and Comparative Social Policy* 30 (2014) 2, pp. 147-164, 154 ff.

19 *Ibid.*, p. 149.

legislative neutralisation of trade unions during the years of Conservative government.<sup>20</sup>

The *Welfare Reform Act 2007* and its successor, the *Welfare Reform Act 2012*, reflect this prevailing ideology which has shaped a significant portion of welfare reform legislation in the last forty years. These acts have aimed to diminish the significance of national insurance benefits and simultaneously make them more challenging to access, by introducing stricter conditions for eligibility.

## II. Overview

### 1. Normative Background

The question, whether there is a right to a subsistence minimum or at least a recognized principle or concept of a subsistence minimum in UK law is not a straightforward question to answer.

#### a) Constitutional Norms Providing Protection of a Subsistence Minimum

The UK does not have a codified<sup>21</sup> constitution. Instead, the UK's constitutional system is one of Parliamentary Sovereignty, i.e. there is no higher order of constitutional law above ordinary legislation to limit Parliament or protect individual rights. Thus, in relation to social security the UK has an essentially "political" constitution<sup>22</sup> in which rights to social welfare benefits are exclusively creatures of statute and as such the product of legislative discretion. In this way they are always precarious and subject to policy change. Such changes can be rapid and extreme, given the fact that the UK's legislature is dominated by the political party that makes up the executive.<sup>23</sup>

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20 P. Larkin, 'Relationship between Employment Status and Scope of Social Security Protection: The United Kingdom Example', in: U. Becker and O. Chesalina (eds.), *Social Law 4.0* (Nomos 2021), pp. 117-146, 124.

21 i.e. enacted by a legislative body.

22 A. Le Sueur (n 11), p. 2.

23 Ibid.

This is subject to two caveats arising originally from the processes of European integration: EU law (at least as far as it has been retained<sup>24</sup> as domestic law at the end of the Brexit transition period) and the European Convention on Human Rights (ECHR). Both of these sources provide a framework of constraints on policy and law that can be regarded as “constitutional” in effect, even though they emanate from supranational bodies and they have had impacts on policy and law-making on social security.<sup>25</sup>

There is therefore no clearly expressed constitutional obligation of the state to ensure a subsistence minimum. The law and a potential state obligation is defined through legislation, common law<sup>26</sup> and/or international legal instruments. These can each play a role in identifying a minimum standard of living, but with variable degrees of precision and enforceability – and always subject to the ability of the legislature to set its own social floor.<sup>27</sup>

Various pieces of domestic legislation exist that in some fashion define a subsistence minimum. What they usually refer to in this context is “protection from destitution”: A legal definition of “destitution” can be found in immigration as well as social security legislation: For example under the *Immigration and Asylum Act 1999* the Home Secretary is subject to a duty to protect asylum seekers from destitution. “Destitution” is thereby defined as lacking “adequate accommodation or any means of obtaining it” or inability to “meet … other essential living needs”.<sup>28</sup> Also, social security law provides a concept of “hardship”, which broadly equates to the definition of “destitution” in immigration and asylum legislation in that it refers to the inability to “meet [one’s] immediate and most basic and essential needs” These essential needs are listed as : accommodation, heating, food and hygiene.<sup>29</sup> The law therefore recognizes destitution as a phenomenon, however, it only establishes a right to protection from destitution in the

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<sup>24</sup> Retained EU Law is a category of domestic law created at the end of the Brexit transition period, consisting of EU-derived domestic legislation and retained directly applicable EU legislation (such as EU regulations) as well as directly effective rights in EU treaties that was preserved by the European Union (Withdrawal) Act 2018.

<sup>25</sup> A. Le Sueur (n 11), pp. 10 ff.

<sup>26</sup> i.e. the interpretation of law by judges in individual cases.

<sup>27</sup> M. Simpson, G. McKeever, C. Fitzpatrick (n 10), p. 465.

<sup>28</sup> *Immigration and Asylum Act 1999*, c33, s95; *Asylum Support Regulations 2000*, SI 2000/704.

<sup>29</sup> *Universal Credit Regulations 2013* no 376 reg 116; *Jobseeker’s Allowance Regulations 1996* no 207 part ix.

very specific circumstances the legislation refers to.<sup>30</sup> These definitions have, however, not been recognized by the courts as a universal destitution threshold. For example, the Court of Appeal did not recognise the standard set by the immigration and asylum legislation as a destitution threshold for the purposes of assessing the adequacy of social security benefits.<sup>31</sup>

There are some indications in the case law that the common law principle of “the law of humanity”<sup>32</sup> provides protection against destitution where there is a threat to family life or a risk of degrading treatment. If such a right exists however, it can be, due to the principle of Parliamentary Sovereignty, overridden by statute.<sup>33</sup>

The UK is signatory to social right treaties such as the European Social Charter (ESC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, they have not been incorporated into UK law, and so they act as persuasive rather than binding interpretation of the law.<sup>34</sup> Thus, violation of social rights – including the right to social security – are neither subject to ex-ante constraints nor to ex-post challenges in the UK.

The key test for the UK courts therefore remains, whether European Convention on Human Rights (ECHR) rights are affected. The ECHR clearly has domestic force. Most of its component rights have been incorporated into UK law through the *Human Rights Act 1998* (HRA 1998). This requires courts to interpret national legislation “so far as possible” to be in accordance with Convention rights.<sup>35</sup> As a last resort, the courts may make a “declaration of incompatibility”<sup>36</sup> about a provision in an Act of Parliament, which does, however, not affect the continuing validity of the

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30 For more details, see M. Simpson, G. McKeever, C. Fitzpatrick (n 10), p. 470 ff.

31 *R (on the application of SG) v Secretary of State for Work and Pensions* [2014] EWCA Civ 156; [2014] HRLR 10 at [101-105]).

32 The principle of the “law of humanity” was defined in *R v Inhabitants of Eastbourne* (1803) 4 East 103,107, where Lord Ellenborough famously proposed that ‘the law of humanity, which is anterior to all positive laws, obliges us to afford [people] relief, to save them from starving.

33 M. Simpson, G. McKeever, C. Fitzpatrick (n 10), pp. 474 ff.

34 M. Simpson, ‘Assessing the Compliance of the UK Social Security System with the State’s Obligations Under the European Social Charter’ *Human Rights Law Review* 18 (2018)4, pp. 745-769, 749.

35 *Human Rights Act 1998*, s 3.

36 *Human Rights Act 1998*, s 4.

provision but is a clear signal to government that amending legislation ought to be introduced in Parliament to remedy the situation.<sup>37</sup>

However, unlike the social rights treaties mentioned above, the ECHR contains no provision that can be interpreted as providing an explicit right to a subsistence minimum. Also, the European Court of Human Rights (ECtHR) has traditionally been reluctant to read specific social entitlements into the Convention rights.<sup>38</sup>

Nevertheless, it has been suggested that some doctrinal progress has been made towards using the ECHR as a vehicle for some degree of social rights protection, driven largely by the UK courts<sup>39</sup>. However, looking at the UK case law, the ECHR has not been interpreted as requiring the protection of a subsistence minimum in all circumstances. Rather, the consequences of the most extreme manifestations of destitution may in some circumstances include the violation of certain rights within the ECHR. Correspondingly, these rights can then carry an implicit obligation on the state to provide a subsistence minimum in some circumstances.<sup>40</sup>

The ECHR rights primarily relied on in case law in this context are: inhuman and degrading treatment (Art. 3 ECHR) and respect for family life (Art. 8 ECHR). The judgment in *W* suggests both the courts and the Government now treat it as uncontroversial that inhuman and/or degrading treatment, which is prohibited by article 3 ECHR, can result from “lack of resources.”<sup>41</sup> In *Limbuela*<sup>42</sup>, the House of Lords held that the Secretary of State’s discretion to support failed or late asylum seekers has to be exercised in respect of an individual’s ECHR rights. Also, the UK judiciary may be slightly more receptive than the Strasbourg courts to the

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37 A. Le Sueur (n 11), p. 11.

38 A. Williams, ‘The European Convention on Human Rights, the EU and the UK: Confronting a Heresy’ European Journal of International Law 24 (2013) 4, p.1157, 1187; D. Kagiaros, ‘Vulnerability as a Path to a “Social Minimum”? An analysis of ECtHR jurisprudence’, in: T. Kotkas, I. Leijten and F. Pennings (eds.), *Specifying and Securing a Social Minimum in the Battle Against Poverty* (Hart Publishing 2019), p. 246.

39 C. O’Cinneide, ‘A Modest Proposal: Destitution, State Responsibility and the European Convention on Human Rights’ European Human Rights Law Review (2008) 5, pp. 583-605, 584.

40 M. Simpson, G. McKeever, C. Fitzpatrick (n 10), p. 479.

41 *R (on the application of W) v Secretary of State for the Home Department* [2020] EWHC 1299 (admin); [2020] 1 WLR 4420 at [60] (Bean LJ and Chamberlain J).

42 *R (Adam and Limbuela) v Secretary of State for the Home Department* [2015] UKHL 66.

possibility of a positive right to a minimum – or minimal – income under article 8 ECHR, at least where the welfare of children is at stake.<sup>43</sup> However, the threshold interpretations for violation of these rights has been set very high so that they offer protection against destitution only to a very limited extent.<sup>44</sup>

Also, with the case law in this area clearly dominated by immigration and asylum cases there is no evidence of the courts requiring a similar state obligation where social security benefits are concerned. Whether, for example, benefit sanctions could constitute a violation of Art. 3 ECHR has not been tested in the courts. Claimants whose income is reduced for non-compliance with benefit conditions can seek a hardship payment, but these are contingent on compliance with set conditions and inability to access familial support.<sup>45</sup>

In sum, the UK currently recognises no absolute legal obligation to provide a subsistence minimum. In particular, there is no right to a home or to financial assistance to achieve a given standard of living.

b) Institutional Arrangements for the Constitutional Protection of a Subsistence Minimum

aa) Parliamentary Scrutiny

With the UK constitutional system being essentially “political”, Parliament plays an important role in protecting constitutional norms against the misuse of ministerial power or the enactment of legislation that contravenes constitutional norms. This happens mainly through the work of committees, such as the *House of Commons’s Select Committee on the Department of Work and Pensions* or the *Joint Committee on Human Rights (JCHR)*.<sup>46</sup>

The latter examines proposed government legislation to assess risks of potential violations of human rights norms: “[...] individuals enjoy a minimum right to social security which supports an adequate standard of

43 *Anufrijeva v Southwark LBC* [2003] EWCA Civ 1406; [2004] 2 WLR 603 at [43] (Lord Woolf CJ); *R (on the application of JS) v Secretary of State for Work and Pensions* [2013] EWHC 3350 (QB); [2014] PTSR 23 at [66] (Elias LJ).

44 M. Simpson, G. McKeever, C. Fitzpatrick (n 10), p. 480.

45 *Universal Credit Regulations 2013* no 376 reg 116; *Jobseeker’s Allowance Regulations* no 207 reg 140.

46 A. Le Sueur (n 11), pp. 17 ff.

living.[...] In the light of the Government's view that it is principally for Parliamentarians to secure compliance with the right to social security and the right to an adequate standard of living, we consider that it is important that Parliamentarians subject the Government's analysis of these provisions to close scrutiny for compliance with these minimum standards.”<sup>47</sup> In 2011 for example, the *JCHR* made a series of criticisms of the *Welfare Reform Bill*. It stated, *inter alia*, that “there is a risk that the conditionality and sanction provisions in the Bill might in some circumstances lead to destitution, such as would amount to inhuman or degrading treatment contrary to Article 3 ECHR if the individual concerned was genuinely incapable of work”.<sup>48</sup>

However, the Government is not required to follow the committees' recommendations. Also, Committee impact is complex, and may often be indirect, making it difficult to assess.<sup>49</sup>

#### bb) Judicial Control

There is a continuing debate about whether British courts should have greater powers to enforce human rights norms on social security and other social rights. One view is that Britain's “unwritten” constitution currently provides insufficient judicial control over fundamental rights and freedoms. The contrary view is that for courts to have any greater powers to adjudicate on broadly defined positive social rights would undermine Parliamentary Sovereignty and that the executive and legislative branches of government are better placed to deal with complex matters like economic and social rights that involve competing priorities and the allocation of scarce resources.<sup>50</sup> Former Supreme Court Judge Lord Sumption has argued against excessive judicial activism in the name of social justice, stating that Parliament was really the only place where these issues could be

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47 UK Parliament (2009), *Welfare Reform Bill. Conclusions and Recommendations*, para.1.13, <<https://publications.parliament.uk/pa/jt200809/jtselect/jtrights/78/7807.htm>>, accessed 21.3.2025.

48 *JCHR*, 21<sup>st</sup> Report of 2010-2012, HL 233/HC 1704, para.1.45, <<https://publications.parliament.uk/pa/jt201012/jtselect/jtrights/233/233.pdf>> accessed 21.3.2025.

49 M. Russel and M. Benton, *Selective Influence: The Policy Impact of House of Commons Select Committees* (The Constitution Unit 2011).

50 M. Adler (n 17), p. 112.

decided on collectively.<sup>51</sup> This was echoed by the JCHR: [...] we recognise that the democratic branches (Government and Parliament) must retain the responsibility for economic and social policy, in which the courts lack expertise and have limited institutional competence or authority. It would not be constitutionally appropriate, in our view, for example, for the courts to decide whether a particular standard of living was “adequate” [...]. Such questions are quite literally non-justiciable: there are no legal standards which make them capable of resolution by a court.”<sup>52</sup> Thus, capacity of the courts to block or inhibit welfare reforms has been very limited.

## 2. Social Benefits

### a) General Structure of the Social Benefit System

Structurally, the UK’s social benefit system provides an income safety net for all its citizens, i.e. ensuring that citizens will receive an income enabling them to survive, at least at a subsistence level.<sup>53</sup> The system provides contributory and means-tested benefits as well as benefits which are neither means-tested nor contributory (sometimes referred to as “categorical” benefits).

The so-called “categorical” benefits, which do not depend upon contribution records or the resources of the recipient, are generally paid to certain categories of people deemed to require or deserve additional financial support. Examples include: *Child Benefit*<sup>54</sup> (paid to households with children); *Attendance Allowance* (for people above State Pension age); *Disability Living Allowance* (to help with the extra costs of care and mobility for disabled children under the age of 16); *Personal Independence Payment* (intended to help people of working age with extra costs of disabilities and health

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51 Lord Sumption, *The Limits of Law, The 27<sup>th</sup> Sultan Azlan Shah Lecture*, Kuala Lumpur, 20 November 2013.

52 JCHR, 29<sup>th</sup> Report of 2007-08, A Bill of Rights for the UK?, HL 165-I/ HC 150-I, chapter 5, p. 52, <<https://publications.parliament.uk/pa/jt200708/jtselect/jtrights/16/165i.pdf>> accessed 21.3.2025.

53 D. Hirsch, ‘After a Decade of Austerity, does the UK have an Income Safety Net worth its Name?’ *Social Policy Review* 32 (2020), p. 211.

54 Since 2013, the *High Income Child Benefit Charge (HICBC)* provides for *Child Benefit* to be clawed back through the tax system from families where the highest earner has an income above GBP 50,000. The *HICBC* is collected through self-assessment. Individuals who are liable to pay it are required to file an annual tax return if they do not already do so. See *Finance Act 2012*, s 8 and sch1.

conditions) and *Carer's Allowance* (paid to full-time carers of people with disabilities or health conditions receiving certain extra costs benefits).

Means-tested (also referred to as “income-related” or “social assistance” benefits) are only paid to people who have limited income and capital. *Pension Credit*, which was introduced in October 2003, is the main means-tested benefit for pensioners, replacing pensioner Income Support. For people who reached state pension age before 6 April 2016 it has two elements: the *Guarantee Credit* and the *Savings Credit*.<sup>55</sup> Savings Credit was removed for people reaching *State Pension* age from 6 April 2016, when the *new State Pension (nSP)* was introduced. The rationale was, *inter alia*, to “simplify means-tested support and help to ensure Pension Credit is re-focused on providing a safety net targeted at the poorest and most vulnerable.”<sup>56</sup> Since 2013, *Universal Credit (UC)* is the only means-tested benefit for new claimants of working age, gradually replacing six existing means-tested benefits and in-work tax credits (including Working Tax Credit) for working-age households.<sup>57</sup>

Contributory benefits (sometimes referred to as “social insurance”) are funded centrally through the National Insurance Fund by contributions from workers and employers, and in some years with a supplement from the Treasury. The most significant contributory benefit in the UK – accounting for expenditure of almost GBP 100 billion a year – is the *State*

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55 *State Pension Credit Act 2002*, s 2-3; *State Pension Credit Regulations 2002* (SI 2002/1792). Guarantee Credit provides financial help for people aged over the “qualifying age” for Pension Credit (linked to the State Pension age) whose income is below a set amount. Savings Credit is an extra amount for people aged 65 or over, who have made some provision for their retirement (such as savings, or a second pension).

56 Department for Work and Pensions, *The Single Tier Pension – A Simple Foundation for Saving*, Cm 8528, January 2013, chapter 2, para 40 < [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/181229/single-tier-pension.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/181229/single-tier-pension.pdf) > accessed 21.3.2025.

57 UC replaces six former means-tested ‘legacy’ benefits and tax credits: *Income-based Job Seeker’s Allowance* (an unemployment benefit available to people looking or preparing for work), *Income Support* (a benefit for certain groups of people not expected to look for work, including carers and lone parents with younger children), *Income-related Employment and Support Allowance* (an income-replacement benefit for people whose capability for work is affected by disability or ill health), *Housing Benefit* (a benefit to help people on low incomes and in rented accommodation pay their housing costs), *Working Tax Credit* (a benefit paid by HMR to low income households who are in work,) and *Child Tax Credit* (a benefit paid to lower income families with children). The abolition is contained in the *Welfare Reform Act 2012*, s 33. Since the caseload rollout of UC is not yet complete, individuals and families continue to receive these benefits, although their numbers are declining.

*Pension*. The main contributory benefits for people of working age are<sup>58</sup>: “New Style” Employment and Support Allowance (ESA), “New Style” Job-seeker’s Allowance (JSA)<sup>59</sup> and the Bereavement Support Payment.<sup>60</sup>

Despite being the founding basis of the modern social security system in the UK, contributory benefits for people of working age have gradually become less important. Beveridge’s vision of a mainly insurance-based welfare system was never fully realised, for various reasons. Benefit rates were never set at full subsistence levels and so could not provide enough income protection. And some of Beveridge’s assumptions have been eroded over time, including reliance on a largely male workforce acting as breadwinners. Also, from the 1970s, other forms of social security, including in-work benefits, tax credits, and non-contributory, non-means-tested disability and carer benefits (see above), have also crowded out contributory benefits for people of working age.<sup>61</sup>

The same, however, has not happened in pension-age provision, where the contributory *State Pension* accounts for over four fifths of social security support. This has happened because, in contrast to working-age

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58 For further information see F. Hobson, S. Kennedy and A. Mackley ‘An Introduction to Social Security in the UK’ Briefing Paper no CBP 9535 (1 June 2022), p. 15 < <https://researchbriefings.files.parliament.uk/documents/CBP-9535/CBP-9535.pdf>> accessed 21.3.2025.

59 *Income-based Job Seeker’s Allowance* and *income-related Employment and Support Allowance* (ESA) have been replaced by UC. However, it is still possible to submit a new claim for *contribution-based JSA* and *contributory ESA* for those claimants who have made sufficient national insurance contributions in the last two years before the claim. When these are paid under the UC system, the DWP refers to them as *new-style JSA* and *new style ESA*. The rules are the same that apply in the UC system (e.g. rules on overpayments, claimant responsibilities and sanctions). However, unlike UC, *new style JSA* may be claimed even if the claimant or their household have more than GBP 16,000 in savings. See *Welfare Reform Act 2012* (Commencement No. 11 and Transitional and Transitory Provisions and Commencement No. 9 and Transitional and Transitory Provisions (Amendment)) Order 2013, SI 2013/1511. For further information see P. Larkin (n 20), p. 126.

60 Since their introduction in 2017, *Bereavement Support Payments* have comprised an initial lump sum payment of GBP 3,500 for those with dependent children, followed by 18 monthly payments of GBP 350; and a lump-sum payment of GBP 2500 plus 18 monthly payments of GBP 100 for those without children.

61 Spending on contributory benefits currently accounts for around 9% of social security expenditure on working-age adults and children (£8 billion in 2019/20). For further information, see A. Mackley and R. McInnes, ‘Contributory benefits and social insurance in the UK’ (House of Commons Library Insight 2020) < <https://commonslibrary.parliament.uk/contributory-benefits-and-social-insurance-in-the-uk/>> accessed 21.3.2025.

contributory benefits, the real value of the State Pension has significantly increased since the 1970s. More favourable treatment of the basic *State Pension* compared to the *Unemployment Benefit* (and its successor, the *Jobseeker's Allowance*) over the past 50 years has meant that the former is paid at more than twice the rate (GBP 221.20 a week in 2024/25) of the latter (GBP 90.50 a week), despite having been at the same level until 1973.<sup>62</sup> Policies such as the voluntary *National Insurance Contributions* also allow the vast majority of people of pension age to qualify for contributory benefits – nearly all pensioners (97%) are in receipt of the *State Pension*.<sup>63</sup> *Pension Credit* – the means-tested benefit designed to top-up pensioner incomes (see above) – plays a much less significant role, and has declined as a proportion of social security support for people of pension age.<sup>64</sup>

Be that as it may, for people of working age, the post-war insurance system has been gradually superseded (although not completely replaced) by means-tested benefits, culminating in the introduction of *Universal Credit* from 2013.

b) Universal Credit (UC)

aa) General Introduction

UC has been available in every part of the UK since December 2018 and is now the only option for any working-age individual or family wishing to apply for a means-tested benefit.

In March 2020, 3 million people were on UC. Numbers rose substantially during the coronavirus crisis, reaching 5.8 million people by the end of 2020 and staying fairly steady up to August 2021. As of 12 August 2021, there were 5.9 million people on Universal Credit in Great Britain.<sup>65</sup>

While the Coalition Government argued that UC would be the most significant welfare reform since the Beveridge Report and the post-Second World War Labour Government's reforms, it does not in fact begin from

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62 F. Hobson, S. Kennedy and A. Mackley (n 58), pp. 6 and 16.

63 Ibid., p. 17.

64 Ibid.

65 A. Mackley, R. McInnes et al., 'Opposition Day Debate: Universal Credit and Working Tax Credit' Debate Pack no 2021/0138, House of Commons Library (15 September 2021), p. 3 <<https://researchbriefings.files.parliament.uk/documents/CDP-2021-0138/CDP-2021-0138.pdf>> accessed 21.3.2025.

a completely blank sheet.<sup>66</sup> Several features were adopted or adapted from former systems, and many of the policy's aims were familiar from previous rounds of reform: *UC* continues the provision of in-work benefits to supplement the income of low-wage families which had been expanding since the 1970s through the introduction of tax credits under the last Labour Governments.<sup>67</sup> For the most part, *UC* does not expand support to or withdraw support from, any large group of people<sup>68</sup> nor does it completely transform the amount of support most of its claimants receive.<sup>69</sup>

Instead of fundamentally changing the aims of social security, the introduction of a single benefit is designed to help the Government meet some long-held policy goals. The main aim of *UC* is to end the historical problem of the 'poverty trap' in the United Kingdom by ensuring that it is more financially rewarding for low-paid households to engage with the labour market than to receive benefits.<sup>70</sup> In conjunction with the introduction of the *National Living Wage* in 2016<sup>71</sup> (which replaced the *National Minimum Wage* for citizens over the age of 25) the Government anticipated that *UC*, with its considerably lower claw back rates when recipients' number of working hours and wages rise, would lead to both an alleviation of poverty among low-paid families and individuals and an increase in the number of UK citizens accepting lower-paid positions in the labour market.<sup>72</sup>

Like the legacy benefits and tax credits that it is replacing<sup>73</sup>, *UC* is available to those who are in work but on low incomes, as well as those who

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66 F. Hobson, 'Universal Credit: Ten Years of Changes to Benefit Claims and Payments' Briefing Paper no 9109, House of Commons Library (16 July 2021), pp. 5 and 7 < <https://researchbriefings.files.parliament.uk/documents/CBP-9109/CBP-9109.pdf> > accessed 21.3.2025.

67 P. Larkin (n 20), p. 124.

68 There are some exceptions. The design of the *UC* single taper rate means that some relatively higher earners are eligible who would not have received support under legacy benefits, and current tax credit claimants with savings above GBP 16.000 will not be eligible for *UC*.

69 The calculation of awards is different – some elements in legacy benefits are different or not replicated in *UC*, capital rules apply whereas tax credits are unaffected by savings and a new single taper rate means that benefits interact with earnings differently.

70 P. Larkin, 'Universal Credit, `Positive Citizenship` and the Working Poor: Squaring the Eternal Circle?' The Modern Law Review 81 (2018)1, pp. 114-131, 116.

71 The National Living Wage entitles workers aged over 23 to pay of GBP 10.42 per hour < <https://www.gov.uk/government/publications/the-national-minimum-wage-in-2023/the-national-minimum-wage-in-2023> > accessed 21.3.2025.

72 P. Larkin (n 70), p. 116.

73 See above at n 57.

are unemployed or whose health conditions or disabilities as well as caring responsibilities affect their capability to work.<sup>74</sup> As such, *UC* harmonizes systems of social support and social assistance. The six legacy benefits being phased out and replaced by *UC* since 2013 serve different groups of low-income households with different needs. Where a household was eligible for more than one legacy benefit, each was claimed and paid separately.<sup>75</sup> Legacy benefits were therefore criticized by the incoming Coalition Government for their complexity and for creating poor work incentives for some groups.<sup>76</sup>

#### bb) Basic Structure

*UC* is designed to reduce this complexity by requiring claimants apply for just one benefit, providing all the information required to decide what support they are entitled to.<sup>77</sup> Unlike the legacy benefits it is replacing, *UC* is claimed online by default.<sup>78</sup> Stakeholders welcomed the opening up of a digital channel to claim benefits where paper-based forms had previously been the norm. However, concerns were expressed about vulnerable claimants' access to the system, particularly disabled citizens and those with poor literacy skills.<sup>79</sup>

*UC* can be awarded to single persons and couples jointly, both in and out of work.<sup>80</sup> *UC* is paid at standardized basic individual and couple rates (standard allowance), differentiated for the over- and under-25s, with addi-

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74 P. Larkin (n 70), p. 116.

75 For a brief outline of how each of the legacy benefits or tax credits was claimed and paid, see F. Hobson (n 66), Section 2.

76 Department for Work and Pensions, '21<sup>st</sup> Century Welfare' (July 2020), pp. 13-16 < [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/181139/21st-century-welfare\\_1\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/181139/21st-century-welfare_1_.pdf) > accessed 21.3.2025.

77 F. Hobson (n 66), p. 13.

78 *The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013*, SI 2013/380, as amended, reg 8.

79 See: Work and Pension Committee, 'Universal Credit implementation: meeting the needs of vulnerable claimants' (12 November 2012) < <https://publications.parliament.uk/pa/cm201213/cmselect/cmworpen/576/57603.htm> > accessed 21.3.2025.

80 *Welfare Reform Act 2012*, ss 1(2)(a) and (b).

tional payments for those with dependent children, disabilities, childcare costs and caring responsibilities.<sup>81</sup>

It is paid monthly in arrears, following a monthly assessment of income.<sup>82</sup> This is supposed to reflect the labour market reality where some 75% of the population now receive their earnings monthly and in arrears.<sup>83</sup> This is, however, problematic for UC claimants who are paid on non-month cycles such as non-standard contract workers as their earning in each calendar month may vary which will lead to fluctuating UC payments and subsequent household budgeting challenges.<sup>84</sup>

There is also a processing period of up to seven days before people can claim. With the benefit paid monthly in arrears, this results in an in-built wait of five weeks<sup>85</sup> before claimants can first be paid – three times as long as under the old system.<sup>86</sup> From the early stages of UC rollout, the wait for the first payment has been controversial, with MPs and campaigners arguing that it causes financial difficulties for claimants: “The rollout of full service Universal Credit [...] has been associated with increases in rent arrears, problem debt and foodbank use.”<sup>87</sup> As a result, changes were made,

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81 *Welfare Reform Act 2012*, ss 1 (3) (a) – (d). The detailed rules on claims for UC are contained in the *Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013*, SI 2013/380 and *Welfare Reform Act 2012*, ss 3 and 4.

82 *Department for Work and Pensions*, ‘Universal Credit: different earning patterns and your payments (payment cycles)’ (13 March 2019) <<https://www.gov.uk/guidance/universal-credit-and-earnings>> accessed 21.3.2025.

83 DWP, ‘Universal Credit: welfare that works’ (11 November 2010), p. 34 <<https://www.gov.uk/government/publications/universal-credit-welfare-that-works>> accessed 21.3.2025.

84 J. Tucker and D. Norris, *Rough Justice: Problems with monthly assessment of pay and circumstances in universal credit, and what can be done about them* (Child Poverty Action Group 2018), p. 3. See also the court decisions in *Secretary of State for Work and Pensions v Johnson & Others* [2020] EWCA Civ 778; *R (Pantellerisco and Others) v SSWP* [2020] EWHC 1944 (Admin.).

85 Before February 2018, there were an additional seven ‘waiting days’ after the claim was made and before the first assessment period began. This is what was meant when people refer to the then ‘six-week wait’.

86 See M. Adler (n 17), p. 35. Legacy benefits are paid to different frequencies – weekly, fortnightly, four-weekly, or monthly – meaning that separate payments might be made at different times, often sooner than five weeks from the registration of the claim.

87 *Work and Pensions Committee*, ‘Universal Credit: The Six Week Wait. First Report of Session 2017-19’ (25 October 2017), para. 6 <<https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/336/336.pdf>> accessed 21.3.2025.

such as making advances more accessible with larger amounts available and longer repayment periods as well as introducing so-called benefit ‘run-ons’ allowing people moving from legacy benefits to UC to continue to receive these benefits for a period at the beginning of their UC claim.<sup>88</sup>

The claimant must be at least 18 years old, be below pension age, be in Great Britain, not receiving full-time education<sup>89</sup> and has accepted a relevant claimant commitment with the Department for Work and Pension (DWP).<sup>90</sup>

Like tax credits, *UC* can also be claimed by the self-employed: this is subject to them being deemed “gainfully self-employed”<sup>91</sup>; a process which involves potential claimants undertaking a “Gateway Interview” carried out by Jobcentre Plus Work Coaches who often lack specialist knowledge in assessing small business plans and activity for viability.<sup>92</sup>

### cc) Calculation and Deductions

The amount of an award of *UC* consists of the “maximum amount” less “the amounts to be deducted”.<sup>93</sup>

The current standard monthly allowance for a single person of 25 years and over is GBP 393.45 (GBP 617.70 for couples of 25 and over). The maximum amount is the total of the *standard allowance*<sup>94</sup> plus additional components for specific household circumstances such as disability, childcare or caring responsibilities. Allowances are also added for housing costs for both tenants and owner-occupiers.<sup>95</sup> There is, for example, a child element, by which an amount is allowed for each child or qualifying young person for whom a person is “responsible”, normally for the first and second child

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88 F. Hobson (n 66), p. 26.

89 Claimants cannot usually get Universal Credit if they are studying full-time, although some exceptions are provided, for instance for claimants who are studying and are responsible for a child, see Department for Work and Pensions, ‘Guidance Universal Credit and Students’ <<https://www.gov.uk/guidance/universal-credit-and-students#studying-full-time>> accessed 21.3.2025.

90 *Welfare Reform Act 2012*, s 4.

91 Defined in Regulation 64 of the *Universal Credit Regulations 2013*, SI 2013/376.

92 P. Larkin (n 20), p. 137.

93 *Welfare Reform Act 2012*, s 8(1).

94 See Government UK, ‘Universal Credit: What you’ll get’ <<https://www.gov.uk/universal-credit/what-youll-get>> accessed 21.3.2025.

95 *Universal Credit Regulations 2013*, reg 36.

only.<sup>96</sup> UC also includes a childcare costs element covering up to 85% of childcare costs, with the maximum amount payable being GBP 1014.63 a month for one child, or GBP 1739.37.15 a month for two or more children.<sup>97</sup> To be eligible for the childcare costs element, claimants must meet the work condition and the childcare costs condition, i.e. the costs must be incurred to allow the claimant to take up or continue paid work. There is no minimum working hours requirement. In addition, there is a housing costs element to UC (which mainly replaces housing benefit), designed to meet the cost of household rent or mortgage interest payments.<sup>98</sup> Housing benefit claimants and UC claimants who receive the housing cost element in the private rented sector have their rent support capped by *Local Housing Allowance (LHA)* rates, which depend on the location of the property in the UK. On 1st April 2020, *LHA* rates were increased to match the 30<sup>th</sup> percentile of market rents. Previously, *LHA* rates had been frozen since April 2016.<sup>99</sup>

Once the maximum amount is ascertained, the amounts to be deducted have to be calculated. This includes all the claimant's (or claimants combined) unearned income, and 55 % of the earned income, or, if the claimant is responsible for a child, or is deemed to have incapacity for work, all of their income above the *work allowance* (so-called *taper cut*).<sup>100</sup> It allows for much higher earnings disregards than under other means-tested benefits such as *IS* or *ESA* and thus is believed to enhance the financial incentives for families and certain individuals to engage with the labour market.

Also, the DWP has the power to make direct deductions from benefit payments to pay certain debts and costs owed by claimants, for example due to a benefit overpayment or loan. Welfare rights groups have argued that these deductions are creating hardship. In response, the Government

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96 *Universal Credit Regulations 2013*, reg 35. The current extra amount for a first child is GBP 333.33 (born before 6 April 2017) or GBP 269.58 (born on or after 6 April 2017) and GBP 287.97 for a second child and any other eligible children. See Government UK, 'Universal Credit: What you'll get' <<https://www.gov.uk/universal-credit/what-youll-get>> accessed 21.3.2025.

97 See Government UK, 'Universal Credit: What you'll get' <<https://www.gov.uk/universal-credit/what-youll-get>> accessed 21.3.2025.

98 *Welfare Reform Act 2012*, s 11 and *Universal Credit Regulations 2013* regs 25 and 26, and sch 1 to 5.

99 W. Wilson and F. Hobson, 'Housing Costs in Universal Credit' Briefing Paper no 6547, House of Commons Library (18 August 2021) <<https://researchbriefings.files.parliament.uk/documents/SN06547/SN06547.pdf>> accessed 21.3.2025.

100 *Welfare Reform Act 2012*, s 8(3) and *Universal Credit Regulations 2013*, reg 22.

has introduced reforms including reducing the cap on the total amount that can be deducted each month, and increased the period of time claimants have to repay advance payments. Currently, the maximum amount deducted cannot usually exceed 25% of the standard allowance, which was reduced from 40% in October 2019.<sup>101</sup> They argue, however, that deductions help claimants to manage their finances, and that a balance has to be found between helping people out of debt and affordability. Various think tanks and other stakeholders have reported findings about the proportion of UC (and other benefits) claimants subject to deductions: The *Trussell Trust* found, for example, in a report published in November 2019 that 40% of people who had been referred to their food banks said that their benefit income was subject to deductions.<sup>102</sup> A *Joseph Rowntree Foundation* report on destitution published in December 2020 found that half of people surveyed experiencing destitution were claiming or had applied for UC, and that debt deductions were a key driver of destitution.<sup>103</sup>

Self-employed claimants are subject to the “*Minimum Income Floor*” (*MIF*) which assumes they are making a certain minimum of monthly income.<sup>104</sup> For the majority of claimants the *MIF* is the equivalent of a full-time worker’s (which equals 35 hours weekly) wage on the national living wage. For the first year of business new self-employed persons are exempt from the *MIF* (“Start-up Period”). The rationale for the *MIF* given by the DWP was to “encourage individuals to increase their earnings through developing their self-employment” and to address “[...] flaws in legacy benefits which allowed self-employed claimants to receive state support while declaring low or zero earnings”.<sup>105</sup>

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101 Department for Work and Pensions, ‘Advice for Decision Making Chapter D2: Third Party deductions UC, JSA&ESA’ (18 June 2021) <<https://assets.publishing.service.gov.uk/media/64a6b13cc531eb000c64ffa6/admd2.pdf>> accessed 21.3.2025.

102 The Trussell Trust, ‘State of Hunger: A study of poverty and food insecurity in the UK’ (November 2019), p. 70 <<https://www.stateofhunger.org/wp-content/uploads/2019/11/State-of-Hunger-Report-November2019-Digital.pdf>> accessed 21.3.2025.

103 Joseph Rowntree Foundation, ‘Destitution in the UK 2020’ (December 2020) <<https://www.jrf.org.uk/deep-poverty-and-destitution/destitution-in-the-uk-2020>> accessed 21.3.2025.

104 *Universal Credit Regulations 2013*, SI 2013/376, reg 62.

105 P. Larkin (n 20), p. 138.

c) Localism

Another prominent characteristic of the social security reforms was the emergence of *localism*, whereby responsibility for the administration of some of the new measures was devolved to local governmental authorities (*Local Authorities*). The prominent characteristic of this phenomenon was to tie austerity measures to the grant of discretionary authority to Local Authorities in the distribution of “last resort benefits” to those impacted by restrictive measures, yet still deserving of heightened protection.<sup>106</sup>

One example are *Discretionary Housing Payment (DHPs)*, payments made at the discretion of the local authority to help people with rent. To be eligible, the person must be in receipt of some *Housing Benefit* or housing cost element in their *UC*. Intention is to give short-term assistance whilst a person seeks a longer-term solution. It is generally paid to those affected by the benefit cap or those who receive reduced *Housing Benefit* due to the size of their current house. Local authorities each set their own criteria for eligibility and awards.<sup>107</sup>

Local authorities are also responsible for administering *Housing Benefit* and, since April 2013, their own *Council Tax reductions schemes*. Following the abolition of the discretionary *Social Fund* in 2013, local authorities in England are also responsible for local welfare assistance schemes in place of Crisis Loans and Community Care Grants (national schemes exist in Scotland and Wales).<sup>108</sup>

*Localism* has proven controversial. Far from compensating the effects of austerity measures, the policy move has been viewed by many as merely an astute move on the part of the central government whereby they pass the burden of their harshest consequences onto *Local Authorities*.<sup>109</sup> One might argue, indeed, that it is reminiscent of the localism of the old *Poor Laws* which saw uneven and inadequate responses to what had become a national

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106 J. Meers, ‘The Localism- and Austerity-Hybrid: The Case of Discretionary Housing Payments’ (21 October 2015) <<https://ukconstitutionallaw.org/2015/10/21/jed-meers-the-localism-and-austerity-hybrid-the-case-of-discretionary-housing-payments/>> accessed 21.3.2025.

107 Z. Hays, F. Hobson, ‘Discretionary Housing Payments’ Briefing Paper no CBP 06899, House of Commons Library (20 August 2020), p. 3 <<https://researchbriefings.files.parliament.uk/documents/SN06899/SN06899.pdf>> accessed 21.3.2025.

108 F. Hobson, S. Kennedy and A. Mackley (n 58), p. 9.

109 Ibid.

and unified welfare problem.<sup>110</sup> In any event, many of the legal challenges regarding the UK's new welfare rules have revolved around the meaning, scope, and use of such local discretion.<sup>111</sup>

b) Devolution

Recent devolution of some social security powers to Scotland<sup>112</sup> has altered the structure of welfare provision in the UK. The *Scotland Act 2016* gives the *Scottish Parliament* and *Government* powers over benefits falling within certain categories, including extra-cost disability, industrial injuries and carer benefits, as well as the power to top-up reserved benefits and create other new social security benefits.<sup>113</sup>

The *Scottish Parliament* is introducing a suite of new devolved benefits: mostly direct replacements for *Department for Work and Pensions* benefits, including extra-costs disability benefits such as the *Personal Independence Payment* (replaced by the *Adult Disability Payment* from 2022); but also benefits which do not have a direct equivalent in the UK, such as the *Scottish Child Payment* – a weekly payment for low-income families with children.<sup>114</sup>

Any and all benefits not explicitly devolved by the *Scotland Act 2016* continue to be reserved, which include: means-tested benefits such as *Universal Credit* and the benefits and tax credits it is replacing; contributory benefits for people of working age, such as the *New Style Jobseeker's Allowance*; retirement age benefits such as the *State Pension*; HMRC benefits such as the *Child Benefit* and *Guardian's Allowance*. This amounts to over 80% of social security expenditure in Scotland.<sup>115</sup> UC therefore remains a reserved benefit, but under *Universal Credit Scottish Choices*, the *Scottish Government* has used powers conferred by the *Scotland Act 2016* to change payment arrangements *Scotland for UC* (UC being paid twice a month rather than monthly) and to vary the housing cost element for rented

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<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> See n 1.

<sup>113</sup> F. Hobson, S. Kennedy and A. Mackley (n 58), p. 7.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid., p. 26.

accommodation (having the UC housing element paid directly to their landlords).<sup>116</sup>

### III. Analysis

#### 1. Benefit Rates and their Adaptation

##### a) Benefit Rates

Today's benefit levels in the UK are not the result of any regular, systematic assessment of minimum needs, instead they have emerged from successive rounds of welfare reform since the Second World War and, above all, political choices made at periodic benefit upratings, compounding over time.<sup>117</sup>

*William Beveridge* intended his proposed benefit rates to be "sufficient without further resources to provide the minimum income needed for subsistence in all normal cases".<sup>118</sup> The proposed rates were informed by a pre-war *Ministry of Labour* survey based on the expenditure of working-class households by poverty researcher *Seebohm Rowntree*, but the minimum budgets only included amounts necessary for the maintenance of mere physical subsistence. *Rowntree* himself had, by the late 1930s, proposed a more generous "human needs" scale based on social as well as physical needs.<sup>119</sup> Slightly adapted in the *National Assistance Act 1948*, Beveridge's recommendations formed the benchmark for the means-tested safety net that later transformed into *Supplementary Benefit* and then *IS*.<sup>120</sup>

In the 1960s civil servants undertook two internal reviews of the adequacy of means-tested *National Assistance* benefit rates in recognition of the lack of an evidence base for policymaking. The reviews concluded that rates for adults in particular could not provide for a satisfactory standard of

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116 Ibid., p. 27.

117 F. Hobson, S. Kennedy and A. Mackley, 'How Benefit Levels are Set' Briefing Paper no CBP 9498, House of Commons Library (14 April 2022), p. 5 < <https://researchbriefings.files.parliament.uk/documents/CBP-9498/CBP-9498.pdf> > accessed 21.3.2025.

118 W. Beveridge, 'Social Insurance and Allied Services' (1942), para 307 < <https://pmc.ncbi.nlm.nih.gov/articles/PMC2560775/pdf/10916922.pdf> > accessed 21.3.2025.

119 B. Rowntree, *The Human Needs of Labour* (Thomas Nelson and Sons 1937).

120 D. Hirsch (n 53), p. 213.

living. The reviews were not published and resulted in minimal change. All administrations since then have rejected the idea of setting benefits based on an objective assessment of needs.<sup>121</sup> The 1997-2010 Labour Government significantly increased the amount of benefit many households received, particularly those with children, through the introduction of tax credits and the *Minimum Income Guarantee* (later subsumed within Pension Credit).<sup>122</sup> However, they also rejected proposals to link benefit levels to estimates of minimum needs, arguing there was no objective way to determine what constituted a minimum acceptable income.<sup>123</sup>

Despite successive governments rejecting such an approach<sup>124</sup>, independent researchers have attempted to determine *Minimum Income Standards*. The most recent example of this is the project undertaken by the *Centre for Research in Social Policy (CRSP)* at Loughborough University, founded by the *Joseph Rowntree Foundation*, which has published “*Minimum Income Standards for the UK*” reports since 2008. The process combines expert knowledge with in-depth consultation with members of the public, to determine the level of income needed for a minimum acceptable standard of living in the UK in different households.<sup>125</sup> The analysis suggests there is a significant – and growing- shortfall between minimum safety net benefits for non-working households and the amount deemed necessary for a minimum acceptable standard of living.

### b) Adaptation of Benefit Rates

To prevent inflation from reducing their purchasing power, most benefits are usually increased – *uprated* – each year, following a review carried out in the preceding Autumn to determine whether they have retained their value relative to either prices or earnings.

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121 J. Veit-Wilson, ‘The National Assistance Board and the ‘Rediscovery’ of Poverty’, in: H. Fawcett and R. Lowe (eds.), *Welfare Policy in Britain. The Road from 1945* (Palgrave Macmillan 1999), pp. 116-157.

122 J. Hills, ‘Labour’s Record on Cash Transfers, Poverty, Inequality and the Lifecycle 1997-2010’ CASE paper 175 (2013).

123 See for example HC Deb 23 February 1998 cl19w.

124 Ministers in the current Government argue that MIS budgets include items that many people would not consider to be necessities.

125 The most recent report: A. Davis, J. Stone, et al., ‘A Minimum Income Standard for the United Kingdom in 2022’ (September 2022) < <https://www.jrf.org.uk/a-minimum-income-standard-for-the-united-kingdom-in-2022> > accessed 21.3.2025.

The practice of increasing benefits regularly in line with prices or earnings was first put on a statutory basis in the 1970s<sup>126</sup> and has evolved since then. Before this, benefits had generally been increased at irregular intervals by a series of Acts.<sup>127</sup> Working-age benefits have generally been increased in line with prices, while *State Pensions* have received more favourable treatment with additional uprating guarantees – most recently with the “triple lock”, which ensures an increase in line with inflation, earnings or 2.5% annually.<sup>128</sup> Different measures of prices have also been used.

Current practice is to uprate benefits by reference to year-to-September inflation figures (since 2011, the *Consumer Price Index*), and annual earnings growth measured between May and July, in uprating orders coming into force the following April. The explanation successive governments have given for this is that it takes several months to apply uprating through the various systems through which benefits operate.<sup>129</sup>

Although the effect of the upratings in most individual years is undramatic, uprating decisions and rules compound, and have over time had a dramatic impact on the level and shape of benefit provision afforded by the social security system.

Also, not all benefits are uprated each year. Over the past decade, a series of below inflation increases and freezes were applied to working-age benefits. In 2012 the link between inflation and working-age benefit uprating was broken and replaced by three years of fixed-rate 1 per cent increases and then by a four-year freeze. Thus, between April 2012 and April 2019 benefits rose 3 per cent in total, while the *Consumer Price Index (CPI)* rose by a cumulative 13 per cent. If *IS/JSA* were assumed to exactly provide subsistence in 2012, they therefore fell 10 per cent short of doing so by 2019.<sup>130</sup>

In addition, some benefits are not uprated annually, and have therefore fallen (sometimes substantially) over time. These include *Winter Fuel Pay-*

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126 *Social Security Act 1973*, s 39 (as enacted).

127 For example the *National Insurance Act 1974*.

128 In the *Social Security (Up-rating of Benefits) Act 2021*, the earnings element of the “triple lock” was suspended for the 2022/23 tax year. As a result, the State Pension increased by 3.1% in April 2022.

129 F. Hobson, S. Kennedy and A. Mackley (n 117), p. 6.

130 D. Hirsch (n 53), p. 213.

ments<sup>131</sup> and the *Christmas Bonus*<sup>132</sup> available to certain claimants, which has remained at GBP 10 since 1972.<sup>133</sup>

The adequacy of UK benefits rates over the last few years has been subject to more intensified debate. In particular, the economic consequences of the coronavirus pandemic and the rise in the cost of living in 2021 and 2022, following a period of real-terms cuts to the level of many working-age benefits, have prompted debate about whether current benefit rates provide adequate support.

The economic impact of the coronavirus pandemic prompted the Government to increase the standard living allowance of *UC* and the basic element of *Working Tax Credit* temporarily by GBP 1,000 in the 2020/21 financial year.<sup>134</sup> This was interpreted by some think tanks as a tacit admission that benefit levels are too low. The *Joseph Roundtree Foundation* noted, for example, that before the uplift was introduced, the main rate of out-of-work social security support had been at its lowest level in real terms since 1990, and its lowest ever as a proportion of average wages.<sup>135</sup> Nevertheless, the Government said its focus was on “supporting people back into work and supporting those already employed to progress in their careers.”<sup>136</sup> The

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131 The Winter Fuel Payment is a tax-free annual payment to help older people pay their winter heating bills. Most payments are made automatically between November and December to individuals who get the State Pension or certain other benefits. It is not uprated annually with inflation. The ‘standard rates for winter 2021/22’ were GBP 2000 per eligible household where the oldest person is under 80, and GBP 300 for households with someone aged 80 or over.

132 The Christmas Bonus is a one-off, tax-free GBP 10 payment made before Christmas, paid automatically to people who get certain working-age and pensioner benefits, normally in the first full week of December.

133 F. Hobson, S. Kennedy and A. Mackley (n 117), p. 6.

134 HM Treasury, ‘The Chancellor Rishi Sunak Provides an Updated Statement on Coronavirus’ (20 March 2020) <<https://www.gov.uk/government/speeches/the-chancellor-rishi-sunak-provides-an-updated-statement-on-coronavirus>> accessed 21.3.2025.

135 L. Bannister, ‘#KeepTheLifeline: Urging the Government Not to Cut Universal Credit’ (23 July 2021) <<https://www.jrf.org.uk/social-security/keepthelifeline-urging-the-government-not-to-cut-universal-credit>> accessed 21.3.2025.

136 Social Justice and Social Security Committee, ‘Letter from the Secretary of Work and Pensions to Stephen Timms’ (5 August 2021) <<https://www.parliament.scot/charities-and-committees/committees/current-and-previous-committees/session-6-social-justice-and-social-security-committee/correspondence/2021/letter-about-the-universal-credit-uplift-from-the-secretary-of-state-for-work-and-pensions>> accessed 21.3.2025.

uplift was subsequently withdrawn from the beginning of October 2021<sup>137</sup>, although the generosity of UC for in-work claimants was improved from 24 November 2022 with the reduction of the UC taper rate to 55% and the increase in work allowances by GBP 500 a year.<sup>138</sup> The *Resolution Foundation* calculated the combination of this and the withdrawal of the uplift would result in 73% of families on UC in 2022/23 being worse off, with 27% better off.<sup>139</sup>

Campaigners have also questioned uprating practices in light of the current cost of living squeeze – basing the benefit uprating for 2022/23 on a year-to-September 2021 inflation measure does not account for subsequent price rises. In early 2022, inflation reached its highest recorded level since 1992. In March 2022, consumer prices as measured by the *Consumer Price Index (CPI)* were 7% higher than the year before, and are forecast to rise still further, whereas in April 2022 inflation-linked benefits and tax credits rose by 3.1%.<sup>140</sup> The Universal Credit standard allowances have increased by 6.7% from April 2024, in line with the Consumer Prices Index (CPI) rate of inflation in September 2023.<sup>141</sup> The Government has not increased benefits beyond regular inflation linked uprating, but has introduced other temporary measures such as additional funding for the *Household Support Fund* which enables local authorities in England to make discretionary payments to people most in need to help towards the rising cost of food and utilities.<sup>142</sup> It has been allocated funding in tranches since October 2021. The latest allocation of GBP 1 billion (including allocations for devolved

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137 For further information, see A. Mackley, R. McInnes, et al, ‘Universal Credit and Working Tax Credits’ Debate Pack no 2021/0138, House of Commons Library (15 September 2021) <<https://researchbriefings.files.parliament.uk/documents/CDP-2021-0138/CDP-2021-0138.pdf>> accessed 21.3.2025.

138 E. Kirk-Wade, ‘Reducing the Universal Credit Taper Rate and the Effect on Incomes’ (1 February 2022) <<https://commonslibrary.parliament.uk/reducing-the-universal-credit-taper-rate-and-the-effect-on-incomes/>> accessed 21.3.2025.

139 M. Brewer, K. Handscomb and L. Try, ‘Taper Cut. Analysis of the Autumn Budget Changes to Universal Credit’ (6 November 2021) <<https://www.resolutionfoundation.org/app/uploads/2021/11/Taper-cut.pdf>> accessed 21.3.2025.

140 F. Hobson, S. Kennedy and A. Mackley (n 58), p. 7.

141 E. Kirk-Wade, R. Harker, ‘Benefits uprating 2024/25’ Briefing Paper no 9680, House of Commons Library (30 November 2023) <<https://researchbriefings.files.parliament.uk/documents/CBP-9872/CBP-9872.pdf>> accessed 21.3.2025.

142 Department for Work and Pensions, ‘Household Support Fund: Final guidance for County Councils and Unitary Authorities in England’ (11 November 2021) <<https://www.gov.uk/government/publications/household-support-fund-guidance-for-local-councils>> accessed 21.3.2025.

governments to use as they see fit) for the 2023/24 financial year was announced alongside the 2023/24 *Cost of Living Payments*. One-off *Cost of Living Payments* for recipients of certain benefits were first announced in May 2022 and were paid in the second half of that year. In the November 2022 *Autumn Statement*, a further package of *Cost of Living Payments* was announced, to be paid over the course of the 2023/24 financial year.<sup>143</sup>

### c) The Benefit Cap

All welfare benefit recipients and their family are, since 2013, subject to a legislative *benefit cap* which limits the maximum amount in benefits a household can receive per year, with certain exceptions. Originally set at GBP 26,000 per household, the benefit cap was reduced in autumn 2016 to GBP 20,000 for families (or GBP 23,000 in London due to higher living costs).<sup>144</sup> In April 2023, it was increased for the first time since its introduction—by 10.1%, matching the inflation-linked rise in social security benefits.<sup>145</sup> The *Coalition Government* argued that the benefit cap would increase incentives to work: “Our reforms are creating an alternative to life on benefits and already we are seeing an increasing number of people changing their circumstances so they are no longer subject to the cap.”<sup>146</sup> There is no statutory duty to uprate the benefits cap. However, Section 96A of the *Welfare Reform Act 2012* requires that the Government “must at least once in each Parliament review the [levels of the cap] to determine whether it is appropriate to increase or decrease any one or more of those sums.” The *benefit cap* has been subject to legal challenge on the grounds that it infringed provisions of international human rights law, but in two major

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143 F. Hobson, S. Kennedy and A. Mackley (n 58), p. 7.

144 *Welfare Reform Act 2012*, ss 95-96 and *Benefit Cap (Housing Benefit) Regulations 2012*, SI 2012/2994 and the *Benefit Cap (Housing Benefit and Universal Credit) (Amendment) Regulations 2016*, SI 2016/909.

145 S. Kennedy, ‘Benefit Cap’ (14. June 2023) <<https://commonslibrary.parliament.uk/benefit-cap/>> accessed 21-3-2025.

146 Lord Freud, Minister of Welfare Reform, cited in BBC News, ‘Thousands’ Hit by Government Benefit Cap Now in Work’ (6 February 2014) <<https://www.bbc.com/news/business-26065080>> accessed 21.3.2025.

decisions the Supreme Court ruled that the relevant human rights law had not been breached.<sup>147</sup>

#### d) Capital Rules

For most working-age means-tested benefits, capital (savings, investments, property, land, and other assets) above a lower limit of GBP 6000 results in inferred *tariff income*, where GBP 1 of income per week is assumed for every additional GBP 250 of capital, reducing the level of benefit paid. Where a household has more than an upper limit of GBP 16.000 in capital, they will not be eligible for means-tested support.<sup>148</sup> The capital limits for means-tested benefits are not uprated annually or at any other interval laid out in statute. Instead, they have been increased on an ad hoc basis since they were first introduced in the 1930s. The last time they were updated was in 2006 when the lower capital limit was increased from GBP 3000 to GBP 6000, and the upper capital limit from GBP 8000 to GBP 16.000.<sup>149</sup>

#### e) The Two-Child Limit

UC awards can include additional amounts for each child or “qualifying young person” in education up to the age of 19 in a claimant’s household.<sup>150</sup>

As part of a series of measures announced in the Budget after the 2015 General Election to make savings in the welfare system, a *two-child limit* was imposed on these additional amounts.<sup>151</sup> The policy was designed both to reduce the cost of the benefit system and to ensure households on

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147 R (SG and Others) v Secretary of State for Work and Pensions [2015] UKSC 16 and R (DA & Ors) v Secretary of State for Work and Pensions [2019] UKSC 21.

148 S. Kennedy, ‘How Savings Can Affect Benefits’ (23 June 2020) <<https://commonslibrary.parliament.uk/how-savings-can-affect-benefits/>> accessed 21.3.2025.

149 F. Hobson, S. Kennedy and A. Mackley (n 58), p. 31.

150 See above n 96.

151 For more on this see F. Hobson, ‘The Aims of Ten Years of Welfare Reform (2010-2020)’ Briefing Paper no 9090, House of Commons Library (18 December 2020), section 3 <<https://researchbriefings.files.parliament.uk/documents/CBP-9090/CBP-9090.pdf>> accessed 21.3.2025.

means-tested benefits would “face the same financial choices about having children as those supporting themselves solely through work.”<sup>152</sup>

With some exceptions, households with a third or subsequent child born from 6 April 2017 claiming *Universal Credit* or *Child Tax Credit* no longer receive additional amounts for these children. Exceptions are made for some claimants who did not choose to have a third or subsequent child, for example due to multiple births or non-consensual conception, and to encourage adoption where children might otherwise be looked after by a local authority.<sup>153</sup>

The policy only applies to children born from 6 April 2017, so not all families with a third or subsequent child claiming *Universal Credit* will be affected until the mid-2030s. In April 2021, 317,500 (38%) of the 836,020 families with three or more children claiming *Universal Credit* or *Child Tax Credit* were affected.<sup>154</sup>

Relative poverty among larger families with three or more children, which has been rising since 2013, has continued to increase since April 2017.<sup>155</sup> The *Resolution Foundation* estimates that nearly half of families with three or more children were in relative poverty in 2021/22, up from a third in 2012/13.<sup>156</sup>

A challenge to the lawfulness of the two-child policy was brought by two single mothers and their children, arguing that it unlawfully discriminates against certain groups, in breach of the European Convention on Human Rights (ECHR). Following an earlier unsuccessful appeal of the policy to the Court of Appeal<sup>157</sup>, the case was unanimously dismissed by the Supreme

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152 HM Treasury, ‘Summer Budget 2015’ (8 July 2015), para 1.245 <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/443232/50325\\_Summer\\_Budget\\_15\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/443232/50325_Summer_Budget_15_Web_Accessible.pdf)> accessed 21.3.2025.

153 *Welfare Reform Act 2012*, s. 10 as amended by s. 14 of the *Welfare Reform and Work Act 2016*. Regulation 24 and Schedule 12 of the *Universal Credit Regulations 2013*, SI 2013/376 (as amended) contain the detailed provisions.

154 HMRC, ‘Child and Working Tax Credits Statistics: Provisional Awards- April 2021’ (23 June 2021) <<https://www.gov.uk/government/statistics/child-and-working-tax-credits-statistics-provisional-awards-april-2021>> accessed 21.3.2025.

155 K. Stewart, A. Reeves and R. Patrick, ‘A Time of Need: Exploring the Changing Poverty Risk Facing Larger Families in the UK’ CASE 224 (July 2021), pp. 29-30 <<https://sticerd.lse.ac.uk/dps/case/cp/casepaper224.pdf>> accessed 21.3.2025.

156 A. Corlett and L. Try, ‘The Living Standards Outlook 2022’ (8 March 2022), figure 21 <<https://www.resolutionfoundation.org/publications/the-living-standards-outlook-2022/>> accessed 21.3.2025.

157 R (SC & Ors) v Secretary of State for Work and Pensions & Ors [2019] EWCA Civ 615 (16 April 2019).

Court in July 2021.<sup>158</sup> The Court held that the question of whether Parliament had made the right choice could not be answered by any process of legal reasoning. There was no basis, consistent with the separation of powers, on which the Court could overturn Parliament's judgment that the two-child limit was an appropriate means of achieving its aims.

#### f) Bedroom Tax

The 2010 Coalition Government used powers contained in the *Welfare Reform Act 2012* to provide that, since 1 April 2013, working age social tenants in receipt of *Housing Benefit* or the housing element of UC experience a reduction in their benefit entitlement if they live in housing that is deemed too large for their needs, usually defined in terms of excess bedrooms.<sup>159</sup> Affected tenants face a reduction in their eligible rent for Housing Benefit purposes of 14% for one additional (spare) bedroom and 25% where there are two or more additional (spare) bedrooms. Restrictions on entitlement to Housing Benefit based on the size of accommodation occupied have applied to claimants living in privately rented housing since 1989.<sup>160</sup>

The policy is highly controversial. Legal challenges have concerned whether disabled children and adult couples should be required to share a bedroom<sup>161</sup> and the question of whether very small rooms<sup>162</sup> and “panic” rooms<sup>163</sup> should be treated as bedrooms.

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158 R (SC, CB and 8 children) v Secretary of State for Work and Pensions and others [2021] UKSC 26.

159 *Housing Benefit (Amendment) Regulations 2012* (SI 2012/3040); *Housing Benefit and Universal Credit (Size Criteria) (Miscellaneous Amendments) Regulations 2013* (SI 2013/2828).

160 *Rent Officers (Additional Function) Order 1989*, sch 3.

161 See for example *MA & Ors, R (on the application of) v Secretary for Work & Pensions* [2016] UKSC 58.

162 See for example *M v Secretary of State for Work & Pensions* (2017) UKUT 443 (AAC).

163 Case of *J.D. and A. v United Kingdom* (Applications No. 32949/17 and 34614/17), (24 October 2019).

## 2. Conditionality and Sanctions

Although in the UK, welfare-to-work schemes and their underlying principles are not a new phenomenon, the *Welfare Reform Act 2012* adopted a particularly punitive regime.<sup>164</sup> The Act extended work-related requirements to certain groups, including single parents with younger children.<sup>165</sup> The biggest change is the application of conditionality up to a specified earnings threshold, i.e. for the first time conditionality applies to those who are already employed but are on a low income. This *in-work conditionality* is likely to create strong incentives for people to enter low hours work, further blurring the line between independence and state support. The Act also increased the length of sanctions for certain groups and introduced the concept of escalating sanctions, with longer sanction periods for second and third sanctionable failures within a 12-month-period.<sup>166</sup> The conditionality and sanction regimes for *JA, ESA and UC* claimants are now broadly aligned.<sup>167</sup>

Claimants are placed in one of four conditionality groups ranging from full to no conditionality, depending on their individual capabilities and circumstances: (1) No Work-Related Requirements; (2) Work Focused interview only; (3) Work Preparation; (4) All Work-Related Requirements. For example, the primary caregiver of a child under the age of one has no work-related requirements. As the child grows, these requirements gradually increase, transitioning to work-focused interviews and work preparation activities until the child reaches the age of three.<sup>168</sup> The group having all work-related requirements comprises job seekers, namely individuals able and willing immediately to take up paid work,<sup>169</sup> and those doing some work (but not earning enough to take them above their individual

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164 V. Mantouvalou, 'Welfare-to-Work, Structural Injustice and Human Rights' *Modern Law Review* 929 (2020)83, pp. 929-954, 933.

165 S. Kennedy, F. Hobson, et al, 'Department of Work and Pensions Policy on Benefit Pensions' *Debate Pack No CDP 0230*, House of Commons Library (12 December 2022), p. 5 < <https://researchbriefings.files.parliament.uk/documents/CDP-2022-0230/CDP-2022-0230.pdf> > accessed 21.3.2025.

166 *Ibid.*

167 *Ibid.*, p. 3.

168 UK Government, 'Universal Credit and your claimant commitment' (12 February 2025) < <https://www.gov.uk/government/publications/universal-credit-and-your-claimant-commitment-quick-guide/universal-credit-and-your-claimant-commitment> > accessed 21.3.2025.

169 *Welfare Reform Act 2012*, s. 18.

or household *Conditionality Earnings Threshold, CET*<sup>170</sup>) and who do not fall into one of the categories of person covered by other conditionality groups.<sup>171</sup> Claimants placed in this group will have to “do all [they] can to find a job or earn more. This includes looking for jobs, applying for jobs and going to interviews”<sup>172</sup> A person’s work-related requirements are set out in their *Claimants Commitment*<sup>173</sup> – a “record of the responsibilities that [they] have accepted in return for receiving Universal Credit, and the consequences of not meeting them”<sup>174</sup>.

For some claimants their *conditionality threshold* may be lowered in accordance with their personal circumstances on a case-by-case basis. E.g., while lone parents as well as couples with young children will be subject to conditionality arrangements, they will be permitted a certain level of flexibility in their engagement with the labour market, e.g. seeking employment compatible with their caring requirements.<sup>175</sup>

Non-compliance with UC requirements incurs the second harshest sanctions in the world<sup>176</sup>, with 100% reductions in benefits for each day the sanction is in place for those failing to comply with any work preparation requirement until the time of compliance, and a minimum full suspension of benefits of three months (or longer for “repeat offences”) for some so-called serious failures, including to accept a job offer or even to apply for a job.<sup>177</sup> Depending on their duration, sanctions are classified as low, medium or high level. The lowest level applies to claimants who miss a meeting with their job coach, who will be sanctioned until they attend

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170 The CET is calculated on an individual basis by multiplying the National Minimum Wage (NMW) or National Living Wage (NLW) by the hours a claimant would normally be expected to undertake work related activity up to a maximum of 35.

171 S. Kennedy, F. Hobson, et al (n 165), p. 7.

172 UK Government, ‘Universal Credit: detailed information for claimants’ (12 February 2025) <<https://www.gov.uk/government/publications/universal-credit-and-you/draft-uc-and-you>> accessed 21.3.2025.

173 *Welfare Reform Act 2012*, s 4 (1)(e).

174 *Welfare Reform Act 2012*, s 14.

175 *Welfare Reform Act 2012*, ss 19-25 and *Universal Credit Regulations 2013*, regs 89-91.

176 The US has the harshest sanctions in the world. See H. Immervoll and C. Knotz, ‘How demanding are activation requirements for jobseekers’, OECD Social, Employment and Migration Working Papers 215 (July 2018), p. 47, <[https://www.oecd.org/en/publications/how-demanding-are-activation-requirements-for-jobseekers\\_2bdfecca-en.html](https://www.oecd.org/en/publications/how-demanding-are-activation-requirements-for-jobseekers_2bdfecca-en.html)> accessed 21.3.2025.

177 *Welfare Reform Act 2012*, ss 26(2) (a) (b) and (c). The sanctions are substantiated by the *Universal Credit Regulations 2013*.

the next meeting.<sup>178</sup> When a sanction is imposed, only the standard basic amounts for adults are affected, not amounts payable for other reasons (e.g. children, housing costs). In *UC*, this is usually the full amount of the standard allowance for a single person, or half the standard allowance if it is a couple claim.<sup>179</sup>

Sanctioned claimants may be able to receive so-called *hardship payments*, paid at 60% of normal entitlement, if they are in a financially “vulnerable group”. They must demonstrate that they have “no cash in hand” and payments will only be made to those who cannot meet their most basic and essential needs (e.g. accommodation, heating, food or hygiene).<sup>180</sup> Although vulnerable claimants can apply immediately, most claimants are not allowed to apply for the first two weeks after the sanction is imposed and the Department for Work and Pensions has itself acknowledged that the two weeks wait will often damage the claimant’s health.<sup>181</sup> Under *UC*, hardship payments are not paid automatically, and claimants may need to justify their need for them on an ongoing basis. Hardship payments take the form of a loan, as *UC* claimants will also usually<sup>182</sup> have to repay any payments they receive by deductions from their ongoing *UC* award.<sup>183</sup>

All work-related requirements for benefit claimants were suspended in response to the coronavirus pandemic at the end of March 2020. From 1 July 2020, the Department for Work and Pensions began to reintroduce conditionality and sanctioning on a phased basis. Statistics show the number of sanctions imposed has increased rapidly since then.<sup>184</sup> At August

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178 K. Harrison, ‘The Sanctions Spiral: The Unequal Impact and Hardship Caused By Sanctions in Universal Credit’ Citizens’ Advice (July 2023), p. 4 <[https://assets.ctfassets.net/mfz4nbgura3g/3BHkqTaFYS4XMj7sBsJWsJ/d5df7a015adc3b59781dfb97dd4e07ba/Sanctions\\_20report.pdf](https://assets.ctfassets.net/mfz4nbgura3g/3BHkqTaFYS4XMj7sBsJWsJ/d5df7a015adc3b59781dfb97dd4e07ba/Sanctions_20report.pdf)> accessed 21.3.2025.

179 S. Kennedy, F. Hobson, et al (n 165), p. 3.

180 M. Adler, ‘Do Benefit Sanctions Have a Future?’ *Journal of Social Security Law* 1 (2024), pp 15-31, 26.

181 M. Adler (n 17), p. 46.

182 The DWP has a discretion to waive recoverable hardship payments, see M. Adler (n 180).

183 P. Larkin, ‘Universal Credit: Route To “Virtuous” Citizenship or Engine of Dependency’ *Journal of Social Security Law* 2 (2024), p. 151; Department for Work and Pensions, ‘Recoverable Hardship Payments – Guidance’ <<https://www.parliament.uk/globalassets/documents/commons-committees/work-and-pensions/benefit-sanctions/annex-5-recoverable-hardship-guidance.pdf>> accessed 21.3.2025.

184 M. Adler (n 180), pp. 24-25.

2022, 6.4% of UC claimants subject to conditionality had a benefit sanction – more than twice the pre-pandemic rate.<sup>185</sup>

In the last decade, a large amount of research has been conducted or commissioned, and various reports published, about different aspects of the benefit sanctions regime. In a report in 2018, the *Work and Pensions Committee* said that the evidence on the role of sanctions in achieving the goal of motivating people to take steps to move closer to work was “patchy” and required further research. The Committee also noted that sanctions, when applied inappropriately, can have a profoundly negative effect on people’s financial and personal wellbeing. It found that some claimant groups – such as single parents and people with health conditions or disabilities – are disproportionately affected by sanctions.<sup>186</sup> Further research shows that sanctions create a “cycle of financial difficulty”<sup>187</sup> and have a counterproductive effect on the search for work.<sup>188</sup> Transportation costs are a major barrier, with no financial support available. Many struggle to afford travel to their Jobcentre, leading to sanctions that further reduce income and make future appointments even harder to attend.<sup>189</sup>

#### IV. Conclusions

In the UK, with an essentially “political” constitution, the executive has considerable freedom to develop policy and law on welfare benefits. Concerning the protection of a (right to) a subsistence minimum, supranational obligations deriving from EU law and the ECHR do not provide sufficient constraints on policy and law. The creation of stronger judicial controls as part of a redesign of the British constitution, called for by some academics and politicians, seems unlikely to be realized in the foreseeable future.<sup>190</sup>

The *Beveridge Report*, which laid the foundations of the British welfare state, regarded the main aim of social security as being the prevention of poverty which was referred to as “the abolition of want”. The development

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<sup>185</sup> S. Kennedy, F. Hobson, et al (n 165), p. 4.

<sup>186</sup> House of Commons Work and Pensions Committee, ‘Benefit Sanctions – Nineteenth Report of Session 2017-19’ (31 October 2018) <<https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/955/955.pdf>> accessed 21.3.2025.

<sup>187</sup> K. Harrison (n 178), p. 17.

<sup>188</sup> P. Larkin (n 183), p. 151.

<sup>189</sup> K. Harrison (n 178), pp. 24-25.

<sup>190</sup> A. Le Sueur (n 11), p. 2.

of eligibility and entitlement conditions and benefit sanctions in the UK reflect a shift away from this approach, towards an approach in which the main function of social security is to “activate” unemployed people and get them back into work. The shift has involved the integration of social security policies and employment policies which were formerly relatively autonomous policy areas.<sup>191</sup>

Since the late 1990s there has been a relative consensus in British politics over the goals and principles, if not all the details, of welfare reform for people of working age. British minimum income policies for working-age people have long been focused on promoting work through make work pay and labour market activation measures. Means-tested benefits have thus played a crucial role in social protection for British people of working age for many decades now. The old Poor Law principle of “less eligibility”, i.e. ensuring that the differential between benefit levels and wages is sufficient to provide adequate incentives to work, has never been far from the centre of public debate.<sup>192</sup> Also, what counts as a “safety net” has no systematic relationship with actual living costs or need, whether at subsistence or other level. Also, since the 1990s some more “deserving” groups have seen their entitlements rise faster than others, so that a child, a working adult and a pensioner have entitlements today whose respective levels vary dramatically relative to their needs.<sup>193</sup> Moreover, throughout the 2010s, a growing range of claimants have not been able to access the level of disposable income implied by standard entitlement rates through the capping of benefits according to a household’s circumstances e.g. the number of children or level of housing costs.<sup>194</sup>

In addition, particular households or groups are excluded from a basic level of support relating to “holes” in the safety net which are growing in size and number. Household that fail conditionality rules or where the administration of the system fails to provide income in a timely way: e.g with UC new claimants spend time waiting for payment. Emergency hardship payments have been cut back and are not always available and conditionality has been imposed in a more draconian way.<sup>195</sup> There are indications

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191 P. Larkin, ‘Incapacity, the Labour Market and Social Security: Coercion into “Positive Citizenship”’ *Modern Law Review* 74 (2011)3, pp. 385-409.

192 D. Clegg (n 18), p. 149.

193 D. Hirsch (n 53), p. 212.

194 Ibid.

195 Ibid.

that UC has not significantly changed claimant attitudes toward workforce participation, and concerns remain about the UK's tight labour market. Research also suggests that the approach taken by DWP work coaches hinders claimants' ability to enter work, highlighting the need for greater investment in education, skills training, and labour market reforms.<sup>196</sup>

Concluding, one could say that there are definite signs that the establishment of a comprehensive welfare state and a certain guarantee of a minimum subsistence level which had advanced throughout the greater part of the 20<sup>th</sup> century, has been eroded by a series of social security reforms, with local, discretionary and charitable welfare again playing a significant role for the support of the "undeserving" and unemployed poor. Dramatic growth in food bank use is the best publicised example of this tendency<sup>197</sup>, but also the increased reliance on discretionary support systems such as the *Discretionary Housing Payments*.<sup>198</sup>

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196 P. Larkin (n 183), pp. 140-145 and 155-157.

197 See for example A. Jitendra, E. Thorogood and M. Hadfield-Spoor, *Early Warnings: Universal Credit and Foodbanks* (Trussell Trust 2017); R. Loopstra and D. Lalor, *Financial Insecurity, Food Insecurity, and Disability: The Profile of People Receiving Emergency Food Assistance from the Trussell Trust Foodbank Network in Britain* (Trussell Trust 2017).

198 C. Fitzpatrick, G. McKeever and M. Simpson, 'Conditionality, discretion and TH Marshall's "right to welfare" *Journal of Social Welfare and Family Law* 41 (2019)4, pp. 445-462.

