

STUDY

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SOCIAL PROTECTION OF MAINSTREAM AND MARGINAL EMPLOYMENT IN THE UK

Jacqueline O'Reilly, Christine Lewis

PREFACE

In many European countries, marginal part-time, (solo-)self-employment and secondary jobs have been increasing since the last decades. The question about the provision of social protection and labour legislation for these types of employment is the starting point for a project entitled “Hybrid working arrangements in Europe”, directed by the WSI. Germany, the UK, the Netherlands, Poland, Italy, Denmark and Austria comprise the group of countries selected in order to investigate “hybrid work” in the context of different welfare state regimes. The following paper by Jacqueline O'Reilly and Christine Lewis is one of the seven country studies giving a detailed description about labour law regulations and the national insurance systems for self-employed, secondary jobs and marginal part-time employment.

Karin Schulze Buschoff (WSI)

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1 Introduction

This research report addresses the common questionnaire¹ regarding ‘social protection of marginal part-time, self-employed and secondary jobs in the UK’ that is part of a project coordinated by WSI. It examines how forms of social protection in the UK affect different categories of employee, worker and self-employed. This looks at particular forms of marginal employment and how this is regulated in employment law and collective bargaining. The report concludes with indications for the future concerns of marginal employment in the UK in the context of recent recommendations that have been raised by the government commissioned Taylor Review of Modern Working Practices in the UK (RSA 2017).

2 Background trends in atypical employment in the UK

Our discussion of social protection needs to be set in the context of trends in mainstream and ‘atypical’ or marginal employment in the UK since the early 1990s. Full-time permanent employment is symbolic of the standard employment relationship, against which discussions of atypical work are juxtaposed. In the UK full-time employment has increased significantly from 19 million workers in 1992 to 23.7 million in 2018. There has also been a considerable increase in the proportion of women working full-time during the period 1992-2018: an increase from 6.4 to 8.8 million (Office for National Statistics 2018a).

Women hold just under 40% of all full-time jobs in the UK in 2018. However, there is concern about the quality of these jobs for both men and women in terms of wages and employment conditions, not just for those who are on ‘atypical’ employment contracts, but for those who work in full-time regular jobs, often referred to as standard employment (Allen 2017).

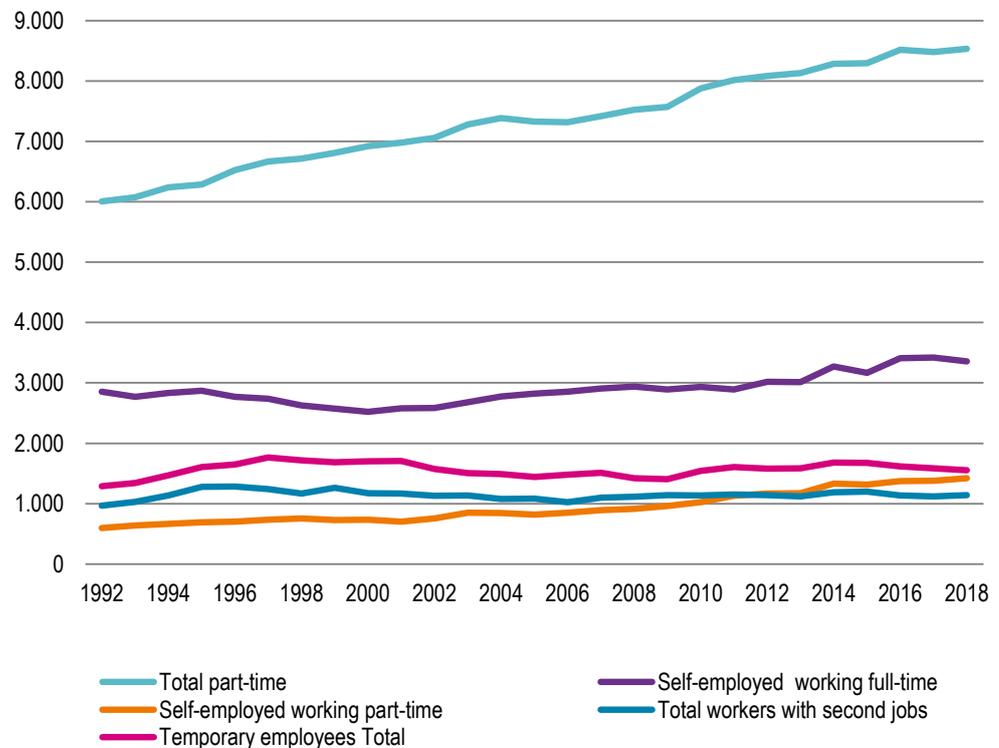
The most significant form of ‘atypical’ work in the UK is part-time work (Figure 1), although for a large proportion of British women it has become a typical trajectory especially around motherhood. Part-time work in the UK has increased from just over 6 million in 1992 to 8.5 million in 2018. It accounted for 23.4% of the entire labour force in 1992 and this increased to 26.5% in 2018. There is no definition of part-time work in the UK other than it involving fewer hours than full-time work, which is usually 35 hours a week or more (www.gov.uk). On average part-timers worked for 16.2 hours per week (Office for National Statistics 2018a), either through work-life balance choice or lack of full-time job opportunities. Those with caring responsibilities, predominantly women, may be dependent on the local labour market characterised by occupational segregation that has developed from

¹ A German-language questionnaire is used for the country studies Austria and Germany. For the country studies of the United Kingdom, the Netherlands, Italy, Denmark and Poland, the German-language questionnaire was translated into English.

a tradition of male bread-winning and secondary female employment in caring, cleaning, catering and retail.

One notable feature has been the increase in men working part-time that has risen from around 900,000 in 1992 to over 2.2 million in 2018. Men now account for 27% of the part-time work force today compared to less than 10% in the early 1990s. Nevertheless, nearly three quarters of all part-time jobs are still done by women. While the number of people in work in the UK has increased to 32.21 million, working time has decreased with average full-time hours at 31.9 and part-time at 16.1 hours (Office for National Statistics 2018b)

Figure 1 Trends in atypical employment in the UK, workforce aged 16-64, 1992-2018, ('000)



Source: ONS Labour Force Survey of households, file EMP01 SA, all people aged 16+; authors' compilation; part-time definition relies on respondents' self-classification 21st March 2018. Data is for March-May each year except for 2018, which is for Nov-Jan. Figures reported are in thousands ('000): 1,000 = 1 million.



The second largest component of atypical employment in the UK is self-employment on a full-time basis. Since the financial crisis of 2008 this form of work increased to a total of 4.7 million jobs in 2018. An increase in part-time self-employment has also become more evident over this period with 1.4 million part-time self-employed workers in the UK in 2018 compared to just under 600,000 in 1992. Overall self-employment represented nearly 15% of all employment in the UK in 2018, accounting for three in four net jobs (Grimshaw et al. 2016a: 18). The proportion of those with second jobs

has remained at just over 1 million workers since the early 1990s, with slightly more women than men reporting that they had two jobs (Office for National Statistics 2018a).

Rates of temporary employment in the UK have traditionally been much lower than in other parts of Europe and this has not changed significantly since the early 1990s with just over 1.4 million temporary workers accounting for nearly 6% of all employment. However, there is other non-permanent employment, such as fixed-term and agency working, and there has been a significant rise in the use of zero-hour contracts (ZHC) (Adams et al. 2015).

The trend in atypical working accelerated after the 2008 financial crisis, with one in seven workers now in self-employment; 800,000 agency workers and 900,000 on ZHCs. Between 2006 and 2012, the share of new hires on fixed term contracts increased from 22.1% to 75% (International Labour Organization, 2016, 57). It has been suggested that these trends may have stabilised as 97% of new job growth has been in full-time employment (Clarke, 2017).

3 Distinctive characteristics of the UK system of social protection

Some distinctive characteristics of the UK system of social protection include: low level contributions and means tested benefits; in work benefits; employer-provided benefits and universal health care.

The **first** of relatively low-level contribution-based benefits and the importance of household means tested benefits is a key feature of the UK system. For example, housing benefit is paid to those claiming both contribution and non-contribution-based benefits.

A **second** important characteristic is the role of in-work benefits in the form of tax credits that became particularly important under the New Labour government (1997-2010).

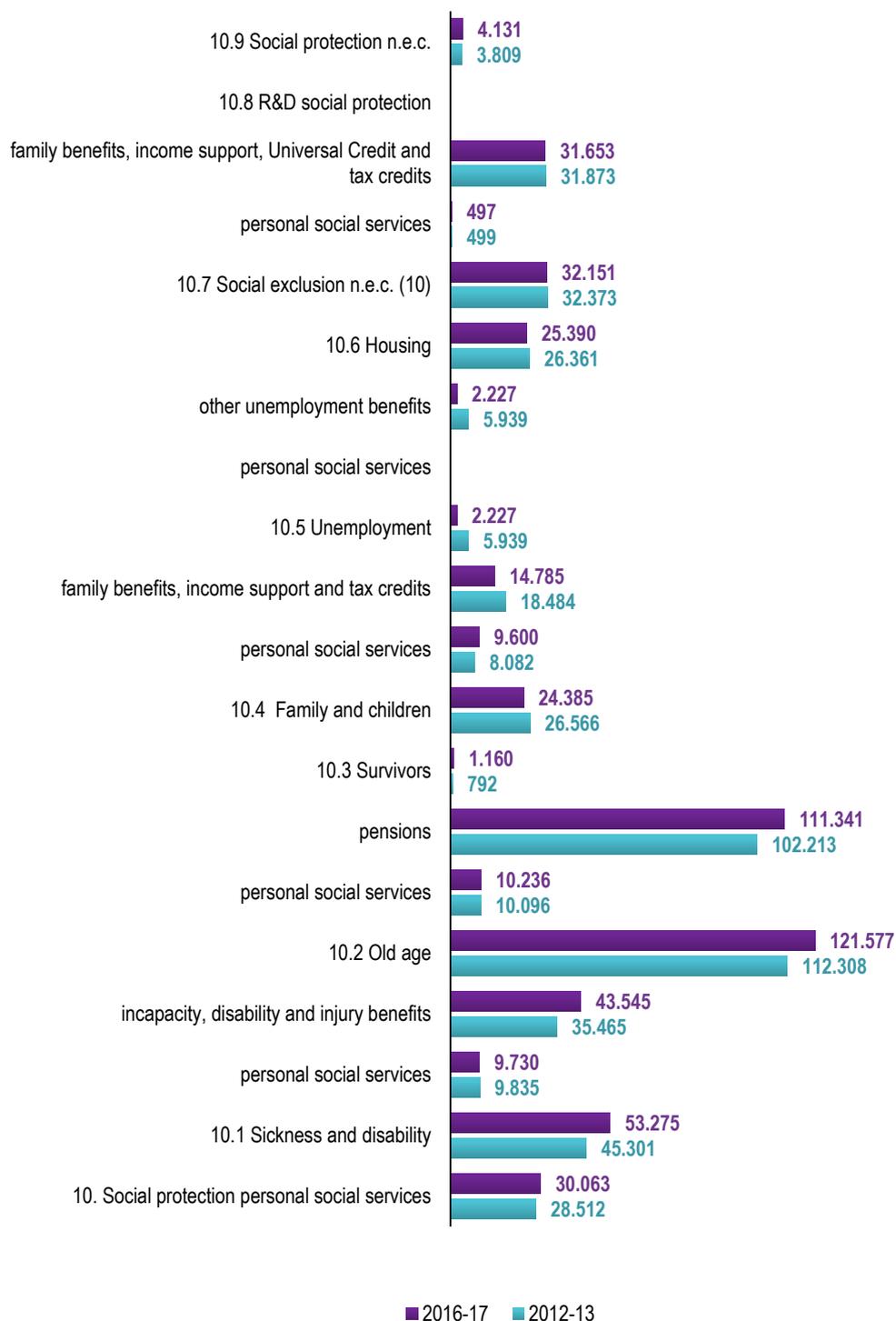
A **third** characteristic is employer-provided benefits, in particular pensions, that supplement the relatively low provision from state (Grimshaw et al. 2016a: 48-49).

Fourth, healthcare is provided through the National Health Service as a universal entitlement based on residency status rather than social contributions.

Welfare expenditure statistics give a general indication of the direction of national policy (Figure 2). In the financial year 2016-17, the UK government spent £264 billion on welfare accounting for 34% of all government spending. The largest proportion of welfare spending is on pensions (42%), Family benefits, income support and tax credits (18%), Incapacity, disability and injury benefits (16%), Personal social services and other benefits (13%);

Housing benefits (10%) and Unemployment benefits (1%) (see Pedaci et al. (2017:7) for a comparison of relative spending levels in other European countries).

Figure 2 Social Protection Spending in the UK 2012-17 (£ million)



Source: ONS (2018) authors' calculations based on ONS data
<https://www.ons.gov.uk/economy/governmentpublicsectorandtaxes/publicsectorfinance/articles/howisthewelfarebudgetspent/2016-03-16> (accessed 29th March 2018)

Social protection policies in the UK are aimed at, “*reducing poverty and wealth gaps through the national minimum wage, means-tested benefits, payments such as working tax credits to low earners and assistance with child care, pensions, payments in kind such as free prescriptions, and the provision of services such as local authority (LA) home-care help*” (Macrory, 2010, 1). They have developed as a mixture of out-of-work and increasingly in-work regulations and benefits. There is a long-standing relationship in the UK between benefits and low pay where the main recipients of these benefits are often employed in marginal and atypical employment. The aim of in-work benefits effectively acts as an incentive to accept low paid work, with benefits providing a top-up income.

There are more than 40 different allowances and payment schemes (Hood and Norris Keiller, 2016, 12), seven of which are means-tested welfare benefits and in-work credits. Six of these will be subsumed in a universal credit system to be fully implemented by 2022. The introduction of Universal Credit (UC) is seen as the biggest reform of the benefit system since 1945 (ibid, 82).

In this report we focus on the gaps in social protection that vary between different employment statuses of those in work. Rather than providing a separate analysis for mainstream and marginal workers we show how the entitlement to different forms of social protection are often based on hours worked, employee status as an employee, a worker, or being self-employed, and their National Insurance classification.

3.1 Definitions of ‘employment’ and ‘self-employment’

Levels of social protection are heavily determined by employment status and contributions to National Insurance. In the UK employment status differentiates between a worker; an employee; the self-employed and contractors; directors; and office-holders; each term dictating rights and responsibilities in employment relationships under the law. It is the employer’s duty to establish the employment status of those who work for or with them.

Here we focus on the worker, employee and those in self-employment; how they map to employment rights and benefits and why employment definitions are controversial in the ‘gig economy’, characterised by less secure or inferior contracts (Neufeind et al. 2018). Legislation that provides employment and social protection can have a differing effect in the devolved nations of the UK, applying to all or only some of the countries in particular instances. For simplicity, we report on regulations determined by the UK Government that apply to England and others, rather than Northern Ireland, Scotland or Wales only.

There are significant differences between those who are in permanent employment and enjoy occupation-based protection and those who are unem-

ployed, underemployed or in precarious work. This will be discussed after outlining the three main legally recognised status groups in employment in the UK.

A Worker

A Worker can have a contract (not necessarily written) that involves money or a benefit of some kind, and an obligation to turn up for work that must be supplied by the employer for as long as promised. Workers are entitled to the statutory minimum wage, working time rights under regulation² (paid holidays, rest breaks, 48-hour maximum working week), and are protected against unlawful deductions from pay, discrimination, and penalty for part-time working and whistleblowing.

Workers (depending on qualifying weeks worked and earning thresholds) may be entitled to statutory sick pay, maternity, paternity, shared parental and adoption rights, automatic enrolment in a pension scheme, protection under Health and Safety law, the right to union membership and representation at disciplinary and grievance hearing. According to the government website Gov.UK,³ someone is likely to be a worker if most of these apply:

- they occasionally do work for a specific business;
- the business does not have to offer them work and they do not have to accept it;
- their contract with the business uses terms like ‘casual’, ‘freelance’, ‘zero hours’, ‘as required’ or something similar;
- the business’s terms and conditions were agreed- either verbally or in writing;
- they are under the supervision or control of a manager or director;
- they cannot send someone else to do their work;
- the business deducts tax and National Insurance contributions from their wages;
- the business provides materials, tools or equipment they need to do the work.

An employee

An employee, with additional protection, does not have the legal right to a written contract of employment, but must be given a written statement setting out their pay and working conditions within two months of starting work. The statement will use terms such as ‘employer’ and ‘employee’, verifying the employment status, which will also be evident in the working requirements, such as hours and location, and details of entitlements such as redundancy.

² Working Time Regulations 1998

³ <https://www.gov.uk/employment-status/overview>

Employees have the same employment rights as workers, but are entitled to statutory maternity, paternity and adoption leave as well as pay. Employers are also required to provide minimum notice periods, accept requests for flexible working, time off for emergencies and make redundancy payments. Some rights include a minimum period of continuous employment.

The self-employed

The self-employed are not generally covered by the same employment legislation as they are classed as running their own business, with responsibility for its success or failure. If income is sufficiently low, a self-employed person can apply for some employment support. The rights and responsibilities of self-employed workers are prescribed by their contract with clients, although there is still a level of health and safety and anti-discrimination protection, which will be discussed later.

The distinction between self-employment and worker status, and therefore entitlement to paid leave and the national minimum wage has been challenged in the courts recently.⁴ One in 10 people in a survey were judged to be in bogus self-employment, which could represent 460,000 people in the labour market (Citizens Advice, 2015). Often in low paid jobs, they are not able to afford their own social protection.

Government research emphasised that self-employment covers a variety of personal situations and is sometimes a second source of income. Its survey findings suggested that 63% of those interviewed had moved from employment to self-employment (sometimes encouraged by their employer); one third were worse off and wanted to return to employment to be financially better off and more secure (Department for Business, Innovation & Skills, 2016, 20).

Even when HM Revenue and Customs regard a person as self-employed for taxation purposes, employment tribunals can decide that they should be classed as a worker. High profile legal cases have followed as more employers seek flexible working arrangements with reduced liability to pay social contributions. The legal tests of an employment relationship rely on contractual obligation and the degree of control between the parties. Case law on employment relationships that has involved overturning previous rulings and problematic decisions has been identified (Bowery, 2013).⁵ This has led to the conclusion that, *“There is a perception that the existing classifications have become too rigid to deal effectively with the growth of non-standard forms of employment”* (Burchell, 1999, 1).

⁴ Pimlico Plumbers Ltd and another v Smith EAT/0495/12; Aslam and others v Uber BV and others (2017) IRLR4 ET27/282017

⁵ Autocentz Limited v. Belcher and others (2011); Drake v. Ipsos Mori UK Limited (2012); White and Todd v. Troutbeck S A (2013); Stringfellows' Restaurants limited v. Quashie (2012).

The Government has recently announced its intention to take forward legislative change to give clearer tests of employment status and to extend the requirement to provide a written statement of terms and conditions to workers (Department for Business, Energy and Industrial Strategy, 2018, 68). It will also consider replacing ‘worker’ with ‘dependent contractor’ status as recommended by the Taylor review of modern working practices, which identified the need to distinguish between workers employed in new ways such as online services and genuine self-employment (RSA, 2017, 9).

The relationship between employment status and social protection

Differences in contract status determine levels of national insurance contributions and eligibility for social protection.⁶ Entitlement to social protection depends on the level of benefits paid and the continuity of contributions to national insurance. There are four ‘classes’ of national insurance contributions. The NI class depends on employment status and earnings, and whether a contributor has had any gaps in their NI contribution record, for example through unemployment, low pay, or parental leave. (Table 1).

Earnings thresholds affect the level of contribution paid. In 2017-18 the Lower Earnings Limit (LEL) was £113 a week where employees were exempt from paying National Insurance Class 1 contributions. Self-employed Class 2 people do not accumulate credit so they are not entitled to unemployment benefits; they may be eligible for Class 3 if they are a parent or carer. Employers contribute 13.8% towards National Insurance for those above the Secondary Threshold earning £157+ a week in 2017-18; they make no contributions for those below the Upper Secondary Threshold (i.e. those earning more than £866 per week).

Table 1 National Insurance classes to differentiate between employees and the self-employed

National Insurance class	Who pays
Class 1	Employees earning more than £157 a week and under State Pension age – payments are automatically deducted by the employer. Employers make a contribution of 13.8% of the wage earned.
Class 1A or 1B	Employers pay 13.8% directly on their employee’s expenses or benefits
Class 2	Self-employed people – do not pay if they earn less than £6,025 a year (but they can choose to pay voluntary contributions)
Class 3	Voluntary contributions – can be paid to fill or avoid gaps in their National Insurance record
Class 4	Self-employed people earning profits over £8,164 a year

Source: <https://www.gov.uk/national-insurance/national-insurance-classes>(accessed 20th March 2018)



⁶<https://www.gov.uk/government/publications/rates-and-allowances-national-insurance-contributions/rates-and-allowances-national-insurance-contributions>

3.2 The risk of becoming unemployed

Job Seekers Allowance (JSA) is one of the main policies to provide social protection against unemployment in the UK. JSA is available to people over the age of 18 who are not in full-time education, whose parents are not in receipt of Child Benefit, they are available and actively seeking work, or who work on average less than 16 hours a week, or have a partner who works less than 24 hours a week on average. Parents who are studying at University can claim during the summer holidays. Entitlement is based on citizenship or having being in the UK for at least three months before claiming.

There are two types of JSA depending on an individual's contributions to National Insurance. The first is a 'new style' JSA being implemented in areas operating Universal Credit (UC). The second is a contribution-based JSA dependent on having paid enough Class 1 National Insurance contributions in the previous two tax years. Applicants, as individuals or as couples, need to sign a claimant commitment when applying at the Jobcentre Plus, specifying what they will do to look for work and how many hours a week they will spend looking for work; if claimants do not comply their JSA can be stopped.

The introduction of Universal Credit (UC) will eventually replace JSA along with five other benefits: Child Tax Credit, Housing Benefit, Income Support (the safety net benefit), income related Employment and Support Allowance, and Working Tax Credit. UC was introduced in 2013 and is being rolled out in stages across the country, although it has encountered a number of technological obstacles in the implementation phases.⁷

The main aim of this policy is to remove the hours threshold for in-work credits and to integrate in-work and out-of-work benefits as claimants working arrangements change. Benefit levels vary by age category and whether claimants live as a couple.

Grimshaw et al. (2016a) argue that: "In the original design the incentives to work were high for main breadwinners but low for second income earners; the announced rise in the national minimum wage from April 2016 marginally increases incentives for second income earners but they still lose 65% of every pound earned until UC is reduced to zero."

The impact of Universal Credit on atypical employment will be to remove the hours thresholds so that there are more opportunities to work short hours and to top up their income with benefits. This could be seen as encouraging the use of zero hour contracts (ZHC) where the hours of work are not guaranteed at 16 hours a week or more. This may encourage employers to reduce guaranteed hours as those workers on low wages who

⁷ http://www.legislation.gov.uk/ukdsi/2013/9780111531938/pdfs/ukdsiem_9780111531938_en.pdf last accessed 17th May 2016.

will be eligible for top ups through UC. To discourage this the claimant commitment requires applicants to seek work that pays equivalent to the national minimum wage of 35 hours per week. Employers are not obliged to offer more hours or to keep the job open if the claimant finds another job which makes them less flexible for their current one. Grimshaw at al. (2016a: 51) suggest that many single parents and second income earners may be reluctant to look for longer hours as they are subject to very high claw back on their UC benefits, in particular since reforms from July 2015; this may result in an reduction of available labour and an increase in very short hours working.

Migrants from European Economic Area (EEA) without the right to reside as a jobseeker have to wait three months before they can make a claim and that claim can only last 91 days. Since 2014 EEA nationals are not entitled to housing benefit. For those who become unemployed while working in the UK their entitlement to claim is limited to 6 months. Rights to claim benefits require proof of workers status, which means that they have been earning above primary threshold for national insurance at £157 pounds a week (2017-18).

Table 2 JSA payments by age and relationship status

Age	JSA weekly amount
Up to 24	up to £57.90
25 or over	up to £73.10
Couples (both aged over 18)	up to £114.85

Source: <https://www.gov.uk/jobseekers-allowance> (accessed 29th March 2018)

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3.3 The risk of sickness, accidents at work and long-term disability

Statutory Sick Pay (SSP)

SSP covers the risk of sickness or accidents at work. The rate an employer pays an employee for each day they are off work due to illness (the daily rate) depends on the number of 'qualifying days' (QDs) they work each week.⁸ The levels of SSP for 2017-18 are outlined in Table 3 and will be paid if an employee is off work for four or more days consecutively for a maximum period of 28 weeks. Above and beyond the statutory payment is dependent on an occupational scheme being in place.

⁸ <https://www.gov.uk/guidance/rates-and-thresholds-for-employers-2017-to-2018>

Table 3 Statutory Sick Pay daily rates for employers

Daily rates	Number of QDs in week	1 day to pay	2 days to pay	3 days to pay	4 days to pay	5 days to pay	6 days to pay	7 days to pay
£12.77	7	£12.77	£25.53	£38.30	£51.06	£63.83	£76.59	£89.35
£14.90	6	£14.90	£29.79	£44.68	£59.57	£74.46	£89.35	
£17.87	5	£17.87	£35.74	£53.61	£71.48	£89.35		
£22.34	4	£22.34	£44.68	£67.02	£89.35			
£29.79	3	£29.79	£59.57	£89.35				
£44.6750	2	£44.68	£89.35					
£89.35	1	£89.35						

Source: <https://www.gov.uk/guidance/rates-and-thresholds-for-employers-2017-to-2018> (accessed 29th March 2018)



Employers only pay SSP if they pay Class 1 National Insurance contributions for their employee (or would do if not for their age or the employees level of earnings); an employee was sick for 4 or more days in a row (including non-working days); and the employee has told the employer they are sick within the time limit specified in their contract, or within 7 days if this is not specified. This entitlement to SSP is only applicable to NI Class 1 employees and does not cover the self-employed who need to provide their own private insurance if they want to protect against this risk. There are different entitlements for Agricultural workers in England Scotland.⁹

Industrial Injuries Disablement Benefit (IIDB)

IIDB come into force for employees who become ill or are disabled because of an accident or disease either, at work or on an approved employment-training scheme or course. The amount received depends on individual circumstances. A 'medical advisor' assesses the level of disability on a scale of 1 to 100%. The government provides guidance to the weekly amount an employee can receive (Table 4). If they subsequently require a carer for at least 35 hours a week to look after them they can claim a Carer's Allowance¹⁰ of £62.70 per week (2017-18).

⁹ <https://www.gov.uk/agricultural-sick-pay>

¹⁰ <https://www.gov.uk/carers-allowance>

Table 4 Government guidance on Industrial Injuries Disablement Benefit (IIDB)

Assessed level of disablement	Weekly amount
100%	£169.70
90%	£152.73
80%	£135.76
70%	£118.79
60%	£101.82
50%	£84.85
40%	£67.88
30%	£50.91
20%	£33.94

Source: <https://www.gov.uk/industrial-injuries-disablement-benefit/what-youll-get> (accessed 29th March 2018)

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Long-term sickness and disability: Employment and Support Allowance (ESA)

When an employee's entitlement to SSP ends they can apply for Employment and Support Allowance (ESA) for people who have limited capability for work. This is replacing the previous Incapacity Benefit (IB) and Severe Disablement Allowance (SDA).

There are three types of ESA: a 'new style' ESA for those entitled to UC; an income-related ESA that is gradually being replaced by Universal Credit (UC) and is means tested but not taxable; a contributory ESA that is not means tested and is taxable for those who have paid sufficient NI contributions.¹¹ New style and contributory ESA lasts for 365 days for those who are in a work-related activity group, i.e. they are been assisted to find work within a year; there is no time limit for those in a support group where they are not expected to be able to find work, or if they are in receiving income-related ESA.

For those under 25 they receive £57.90 a week, and those over 25 receive £73.10 a week, for the first 13 weeks before their assessment into a work-related activity group where they will receive £73.10 a week, and those in a support group who will receive £109.65 a week (2017-18).¹² There are some further additional payments that can be requested for those with enhanced or severe disabilities. Sanctions are applied to those in the work-related activity group if they fail to attend interviews and perform work search activities.

¹¹ <https://www.gov.uk/employment-support-allowance/types-of-esa>

¹² <https://www.gov.uk/employment-support-allowance/what-youll-get>

Work Capability Assessment (WCA)

ESA applicants must submit to a Work Capability Assessment (WCA) to distinguish between applicants who will receive an advisor to help them find work, and those who in the support group who are not required to have regular interviews to help them find work.

These assessments have generated considerable public controversy vividly illustrated in the Ken Loach film 'I, Daniel Blake' (2016). Half of the applicants who were turned down for ESA have successfully appealed against their initial negative assessment (Kennedy et al. 2017). In more extreme cases medical research suggests that this has had a significantly negative effect on mental health of claimants associated with an increase in suicides, self-reported mental health problems and an increased use of antidepressants. Barr et al (2016:1) suggest, "*This policy may have had serious adverse consequences for mental health in England, which could outweigh any benefits that arise from moving people off disability benefits.*"

Similar criticisms have also been levied at the Personal independence Payment (PIP) assessments. PIP¹³ replaced Disability Living Allowance (DLA) in 2013 for people who have difficulties with daily living and mobility that will continue for at least 9 months (or 6 months for those who are terminally ill). It provides between £22 to £141.10 per week (2017-18), depending on needs assessment. Additional requests can be made for a Carer's Allowance if someone is responsible for helping the disabled person for up to 35 hours a week. For those who can work they can also apply for Working Tax Credits up to £3000 per annum, or £4290 if they have a particularly severe disability.

In January 2018 3.4 million people had registered for PIP, of which 1.7 million claims were successful (DWP 2018). The most commonly recorded disabling condition is 'Psychiatric disorder' which includes 'Mixed anxiety and depressive disorders' and 'Mood disorders' (35%) followed by 'Musculoskeletal disease' which includes 'Osteoarthritis' (21%).

The implementation of these new policies and associated assessment procedures has been subject to a high level of public debates and parliamentary scrutiny (Kennedy et al. 2017). The tendency has been to distinguish between different levels of disability to move these people off the benefits system, but the way this has been implemented is seen as extremely punitive; there is very little discussion of how employment could be adapted to make it easier for some disabled people to participate more, instead they are subject to a punishing round of assessments, which are overwhelming contested, and if successful then obliged to spend the following year finding

¹³ <https://www.gov.uk/pip>

employment that will be equivalent to working 35 hours a week at the minimum wage.

3.4 The risks associated with becoming a parent

A considerable body of academic research has identified the penalties and risks associated with parenthood, in particular for mothers in terms of the detrimental effects on pay and careers. As in a number of other European countries there has been an improvement of the conditions associated with maternity pay in the UK since the early 1990s and the introduction of paternity leave and shared parental leave for biological and adoptive parents. Nevertheless, recent attention given to persistent gender pay gaps in the UK and critical assessments of the limitation of these achievements have led the European Parliament to suggest more needs to be done to recognise wider caring responsibilities and to do more to integrate men (Milotay 2018). Against this background, we present a brief summary of what are described as complex entitlements in the UK, carried in both equality and employment rights legislation (RSA, 2017, 96).

All pregnant women in the UK are entitled to protection from discrimination and 52 weeks of maternity leave, although are only entitled to return to the same job in the first 26 weeks; thereafter a 'similar' job can be offered. We provide a short summary of existing policies and benefit levels in the UK, beginning with statutory maternity, paternity, adoption and shared parental leave for employees (Table 5).

Leave and pay entitlements apply mostly to employees, although some are dependent on length of service and pay levels. Those classed as workers or self-employed are more likely to receive Maternity Allowance through local employment JobCentre Plus. It is paid at three levels: £145.18 (or 90% of average weekly earnings, whichever is less) for 39 weeks; £27 a week for 39 weeks or £27 a week for 14 weeks, depending on a number of eligibility criteria. Those who are ineligible for either maternity pay or allowance may be entitled to income support if a lone parent and 11 weeks away from due date of birth. The Government acknowledged the Taylor review evidence of widespread pregnancy and maternity discrimination and accepted its recommendation to review the regulations and introduce measures to improve transparency of entitlement and combat discrimination (Department for Business, Energy and Industrial Strategy, 2018,74).

Table 5 Statutory maternity, paternity, adoption and shared parental pay

Type of payment or recovery	2018 to 2019 rate
Statutory Maternity Pay (SMP) weekly rate for first six weeks	90% of the employee's average weekly earnings
SMP weekly rate for next 33 weeks	£145.18 or 90% of the employee's average weekly earnings, whichever is lower The next 13 weeks of entitled leave is unpaid
Statutory Paternity Pay (SPP) weekly rate	£145.18 or 90% of the employee's average weekly earnings, whichever is lower
Statutory Adoption Pay (SAP) weekly rate for first six weeks	90% of employee's average weekly earnings
SAP weekly rate for next 33 weeks	£145.18 or 90% of the employee's average weekly earnings, whichever is lower
Statutory Shared Parental Pay (ShPP) – up to 18 weeks	£145.18 or 90% of the employee's average weekly earnings, whichever is lower
SMP/SPP/ShPP/SAP proportion of your payments you can recover from HMRC	92% if your total Class 1 National Insurance (both employee and employer contributions) is above £45,000 for the previous tax year
Some employers make additional pay- ments, usually under collective agree- ment, at their own cost	103% if your total Class 1 National Insur- ance for the previous tax year is £45,000 or lower

Source: <https://www.gov.uk/guidance/rates-and-thresholds-for-employers-2018-to-2019>

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3.5 The risks of becoming older

The introduction of pensions in the UK came about through the 1908 Old Age Pensions Act that provided five shillings a week to those over 70 whose annual income did not exceed £31 10s (£31.50). This was followed by a series of liberal reforms culminating in the 1911 National Insurance Act and the implementation of a system of social security, unemployment and health insurance. Universal coverage of social security was introduced through subsequent reforms to the National Insurance Act 1946.

During the 1990s a number of statutory reforms to pensions were implemented through the Social Security Contributions and Benefits Act 1992, the Superannuation and other Funds Act 1992, the Pension Schemes Act 1993 and a Pensions Act 1995.

More recent reforms followed in 2004 the Pensions Act and the implementation of Pensions Regulator relaxing the stringency of minimum funding requirements of pensions and insuring protection for insolvent businesses. The 2007 Pensions Act aligned and increased retirement ages with the subsequent 2008 Pensions Act establishing automatic enrolment for occupational pensions along with the introduction of *National Employment Savings Trust* (NEST). NEST is available to all employers who want to use it and has been designed to complement existing pension provision. Particularly aimed at eligible jobholders on moderate to low incomes, who do not have access to a good-quality workplace pension (Forth and Stokes 2014). More recently the 2011 Pensions Act increased the state pension age to 66 for both men and women.

Pensions in the UK fall into three types: State pensions, occupational pensions, and personal pensions.

State pensions

Basic Pension: A new state pension was introduced in April 2016 for men born after 1951 and women born after 1953. Entitlement is based on at least 10 qualifying years of National Insurance contributions. The new full state pension is £159.55 per week (2017-18). Individuals are no longer able to contract out of paying these contributions. Contributions to an additional state pension requires 35 qualifying years or to have made voluntary contributions to National Insurance.

Additional pensions are only available to employees who have made National Insurance contributions and do not include the self-employed. These were voluntary schemes that are being replaced with the implementation of a flat rate pension; individuals no longer have the right to contract out where these exist.

Occupational pensions

Employees are automatically enrolled into occupational pensions provided by employers since 2012. These can be distinguished between defined benefit and defined contribution pensions.

Defined benefit pensions are often based on the final salary and the number of years of service with the employer. These are being seen as increasingly unaffordable due to increases in life expectancy and reduction in interest rates.

Defined contribution pensions are becoming more common as employers closedown defined benefit pensions. Define contributions are based on regular payments from both the employer and employee. The final pension depends on how much has been accumulated in the fund, interest rates and projected mortality rates at that time the individual retires.

Individual/personal pensions

These became popular in the 1980s when pension reforms liberalised the market. These include *Stakeholder Pensions* with relatively low-level charges that can be offered by employers. *Group Personal Pensions Plans* provided by an employer to allow employee access to a personal pension plan run by a single provider rates negotiated by the employer and provider, with employer contributions to the plan. *Self-Invested Personal Pensions* are government approved personal pension schemes allowing individuals to make their own investment decisions from a full range of investments approved by Her Majesty's Revenue and Customs (HMRC). Pensions credit is available as a top-up benefit if retired income is below £163 (single person) or £248 (for couples) weekly.

Table 6 Bereavement Allowance

Age at husband, wife or civil partner's death	Maximum weekly rate
45 years old	£34.11
46 years old	£42.07
47 years old	£50.03
48 years old	£57.99
49 years old	£65.95
50 years old	£73.91
51 years old	£81.86
52 years old	£89.82
53 years old	£97.78
54 years old	£105.74
55 years old to State Pension age	£113.70

Source: <https://www.gov.uk/bereavement-allowance/what-youll-get>

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Bereavement Allowance (previously Widow's Pension) is available to those who lost a husband, wife or civil partner before 6 April 2017, they were 45 or over when their partner died, they are under the state pension age and then late partner paid national insurance contributions or died as a result of industrial accident or disease. This allowance is not available to those who are bringing up children, for which they can claim a *Widowed Parents Allowance*.¹⁴ Bereavement Allowance is not available to those who remarry, who were divorced before their partner died, were over state pension age when their partner died, or are in prison. Bereavement Allowance is available up to 52 weeks from the death of the partner and depends on the overall level of the partner's contribution to National Insurance, the recipient's age the time of their death and whether they are on any other forms of benefits (Table 6).

Current debates on automatic pension enrolment

Drawing on data from the Department of Work and Pensions funded *Employers' Pension Provision survey 2015*, Harris and Large (2016) argue that millions of people in the UK are not saving enough for retirement, despite a range of statutory regulations to encourage private pension savings. Employers are required to automatically involve eligible workers into a qualifying workplace pension scheme and make minimum contribution. Eligible workers need to be at least 22 years old and under the state pension age, earn over £10,000 pounds per year in 2016-17, working the UK and do not currently participate in a workplace pension scheme. The minimum contributions are 2% of the band of workers earnings of which 1% comes from an employer contribution. This will rise to 8% in April 2019 of which at least 3% has come from employer. The implementation of this automatic enrolment is being conducted in stages between 2012 and 2018, depending on the size of the organisation with smaller firms being expected to implement this by 2018.

Before the introduction of automatic enrolment there had been long-term decline in the number of people enrolled in pensions, particularly in the private sector. Between 2004 to 2012 this rate fell from 63% to a low of 55% of employees enrolled in a pension scheme. The introduction of automatic enrolment will increase participation rates to 70% of all eligible employees. By 2018 the Department of Work and Pensions (DWP) estimate that 9 million workers will be included.

Some of the key findings from the 2015 *Employers' Pension Provision survey* suggest that participation in workplace pensions has more than doubled. Employer awareness has also increased, although 55% of employers had yet to implement this enrolment. Employers setting up new schemes

¹⁴ <https://www.gov.uk/widowed-parents-allowance>

were more likely to use NEST, the National Employment Savings Trust, especially amongst small and micro employers.

Those who had implemented a scheme faced increased costs that they planned to absorb by reducing profits or other overheads. Those who had yet to implement a pension scheme said they were most likely to absorb increased costs by reducing profits, increasing prices or having lower wage increases.

Harris and Large (2016) point out that at the time of the Survey in 2015 only a minority of employers (25%) offered a workplace pension provision although this had increased by six percentage points since the 2013 survey was conducted. This gives an example of the extent of poor pension coverage beyond that offered by the basic state pension in the UK.

Grimshaw et al. (2016a) argue that although there is evidence of a gradual increase in coverage as a result of recent automatic enrolment legislation introduced in the *Pensions Act 2008*, major gaps in provision remain, especially amongst small firms. Even large firms complain that pension provision is too costly.

4 Social protection and marginal employment

4.1 Defining marginal employment

There is no legal definition of marginal work in the UK, but the term can be used literally to describe those who are atypical and not in mainstream employment, but also on the margins of social protection entitlement (Figure 1).

Employment may be short hour, intermittent, insecure, low paid and short on social protection. Sometimes described as precarious, it may involve variable hours, fixed-term or zero-hour contracts and bogus self-employment, with resulting impoverishment. Across employing establishments in the UK, more than 40% employ some workers for less than 15 hours a week. (International Labour Organization, 2016, 82). We have referred to trends in UK social protection and marginal or atypical work. While some may choose a more flexible way of working without financial consequence, those associated with marginality are likely to be low paid and struggling.

In terms of those with multiple jobs, there are about 1.1 million people working multiple jobs in the UK, which has been a stable estimate of 3.5% to 4% of the labour force for the last 10 years. This is likely to be a gross underestimate as it is hard to gather information on hidden or precarious employment.

Nearly 10 years on from its Commission on Vulnerable Employment, the TUC re-evaluated worker vulnerability and report that wage decline since the global financial crisis of 2008 has been greater in the UK than any developed country, except Greece (Trades Union Congress, 2016b, 4). It describes an increase of 2.6 million in the number of people in the labour market, but also the prevalence of low-paid, low security jobs. The TUC report identifies changes in the last decade: 1.5 million less people with maternity and paternity rights (a rise of 700,000); a 10% drop in income for the self-employed (1.7 million of them earning 60% of the median annual income); and 500,000 people who do not qualify for statutory sick pay or pension enrolment (earning below the qualifying threshold) (ibid, 7).

There are many forms of work that elude statistical collection, such as sub-10 hour per week jobs and activity in the shadow economy, which has been estimated at 10% of UK GDP (Schneider and Williams, 2013). The most usual 'cash-in-hand' work in trades, small business, house maintenance and childcare. Grandparents remain the most common source of informal child care in the UK. In 2008, where the mother was in work, 36 per cent of couples and 33 per cent of lone mothers relied on grandparents to provide informal childcare (Macrory, 2010, 1). The shadow economy is hard to define or measure and provides no social protection.

For marginal workers entitlement to social protection against the risk of becoming unemployed, or in cases of sickness, accidents at work and long-term disability, becoming a parent or entitlement to pension benefits depends on the National Insurance classifications outlined above.

4.2 Other types of atypical employment

Zero-Hour Contracts (ZHCs)

The growing use of Zero-Hour Contracts (ZHCs) in the UK has increased in visibility and has been called a label that, "serves as no more than a convenient shorthand for masking the explosive growth of precarious work for a highly fragmented workforce" (Adams et al, 2015, 1). The Office for National Statistics (2017a) has described a rising use of this contract type, stating that there is no single definition of a ZHC, but describing it as a contract without guaranteed hours in a given week. Zero-hour working has been described as arrangements by which "people agree to be available for work as and when required, but have no guaranteed hours or times of work ...provid[ing] employers with a pool of people who are 'on-call' and can be used when the need arises" (Schmid and Wagner, 2016).

It is reported that at December 2016, 905,000 people in the UK (2.8% of all those in employment) were on a ZHC as their main job; a 13% rise on the previous year. It is found that the majority of ZHC workers are female

(52%), part-time (65%), and averaging 25 hours in a working week. A significant proportion are aged 16-24 (33%) and 18% are in full-time education.

Nearly one-third would like an increase of hours in their job. In an employer body survey, it was found that 33% of ZHC respondents could not get a job with fixed hours (UKCES, 2013). Many people on zero-hour contracts do not receive a written statement of their particular pay and conditions, either because they work for an employer in short stints or their employer treats them as if they are not employees and not entitled to them.

Following the Taylor review, the Government has recently agreed to extend the definition of break in service from one week to one month, consult on a 52-week reference period for the calculation of paid leave, and to ask the UK's Low Pay Commission to consider introducing a higher National Minimum Wage for workers with no guaranteed working hours. A right to request guaranteed hours for those who employed for at least 12 months will also be introduced (Department for Business, Energy and Industrial Strategy, 2018,68).

'Gig' Economy workers

There have been other developments in the labour market, which have increased atypical working. Online or platform-based working creates an outsourced 'human cloud' of labour (RSA, 2017). This is associated with the 'gig' economy, a phrase coined at the height of the global financial crisis when part-time, casual jobs increased with unemployment (Hook, 2015). It is now characterised by technological developments, involving those who buy and sell labour using apps downloaded to a mobile device. Limitations in the reach of the UK's Labour Force Survey makes data collection on this type of working difficult, but it has been estimated that the gig economy represents about 4% of the labour market (RSA, 2017, 25). The Government has recently agreed to examine how working time regulations could be applied to those in the gig economy (Department for Business, Energy and Industrial Strategy, 2018,70).

The distinction between self-employment and worker status, and therefore entitlement to paid leave and the national minimum wage from an employer has risen up the social protection agenda with challenges in the UK courts.¹⁵ One in 10 people in a survey were judged to be in bogus self-employment, which could represent 460,000 people in the labour market (Citizens Advice, 2015). This employment practice is largely industry-based. A study in the 2010s demonstrated that disguised self-employment was heavy in the construction industry accounting for 54% of all workers (International Labour Organization, 2016, 105): small teams of construction workers frequently register themselves as self-employed for time specific

¹⁵ Pimlico Plumbers Ltd and another v Smith EAT/0495/12; Aslam and others v Uber BV and others (2017) IRLR4 ET27/282017

contracts with large construction companies, even if this contract is their only source of employment, and their self-employment provision of labour is repeatedly offered to the same organisation, their labour status remains as self-employed rather than directly employed by the larger firm. Often in low paid jobs, those classified as self-employed may not be able to afford their own social protection, or the responsibility for this coverage is left up to themselves rather than the main construction company employing their services. This may also apply to 'independent contractors, who now make up 3% of workers (International Labour Organization, 2016, 101).

Agency Workers and Term time working

Agency working is an established form of third-party employment that is protected by the Agency Workers Regulations 2010, whereby after a 12-week period in a particular job, workers should be treated no less favourably. Employment status is sometimes confused when agency workers are deemed to be contractors. The Government has recently agreed that agency workers should be able to request a direct contract if they have worked with the same hirer for 12 months (Department for Business, Energy and Industrial Strategy, 2018, 77).

There are other atypical ways of working that may be chosen for enhanced flexibility, but may also involuntary. An example of this is term-time only working in which an employee sacrifices salary to take extended leave in the school holidays. In April-June 2015, there were 1,382,000 term-time only workers in the UK, of whom 1,149,000 were women. This represented nearly 19% of recorded flexible working (Office for National Statistics, 2016). The largest group of term-time workers is support staff in the education sector, mostly schools. In England, this comprises 387,900 teaching assistants; 450,900 non-classroom support staff and 47,800 additional third-party staff, for example, working for contractors (Department for Education, 2017, 4). In term-time contracts, the number of weeks that are paid, for example, are locally-determined and vary across the country.

5 Employment Legislation and collective bargaining

Employment law does not apply to self-employed people, although they are still covered by health and safety and discrimination elements. There is no collective bargaining other than in industries like media and entertainment where a trade union presence establishes 'rates for the job' and offers representation and organization.

Trade union membership and coverage by collective bargaining has been in decline in the UK since the 1980s, mirrored by increasing labour market flexibility. The Government published a trade union statistical bulletin for 2016, which showed an annual fall of 4.2% to around 6.2 million trade un-

ion members in the UK; the largest fall since the series began in 1995 (Department for Business, Energy and Industrial Strategy, 2017, 5). The trade union wage gap, defined as the percentage difference in average gross hourly earnings of union members compared with non-members, was 14.5% in 2016 in the public sector, down from 16.1% in 2015. The private sector gap was 7.6% in 2016, down only slightly from 7.7% in 2015 (ibid, 15). Trade union membership decline reflects the fact that collective bargaining is now only present in 26.3% of workplaces (ibid, 36). In 1984, 62% of manual workers had their wages set through collective bargaining. Just six years later, the figure had fallen to 48%, with bargaining for white-collar staff dropping from 54% to 43% in the same period (Taylor, 1994). By 2010, it has been estimated that only 23% of the workforce were covered by collective bargaining in the UK (Ewing and Hendy, 2013, 2).

As well as the trade union wage gap and impact on other conditions of service, those least likely to be unionised are also most likely to be uninformed about their legal entitlements in the workplace. As the TUC suggest, “Across the UK, awareness of employment rights is low. The lowest-paid workers, and those who are already facing disadvantage and discrimination in the labour market, are the least likely to know about their employment rights” (Trades Union Congress, 2007).

Health and safety protection and anti-discrimination law cover most working environments, but without representation, individuals may be ignorant of their rights or feel powerless to seek their enforcement. This was evidenced in the Taylor review which heard from many who described having no say in the way that their work impacted negatively on their well-being (RSA, 2017, 15).

In the Government’s response, it agreed to consult on current employee engagement regulations and to work with social partners on improving representation, especially for those in low-paid and casual employment. There was also a commitment to a tougher enforcement process, with sanctions for non-compliance ((Department for Business, Energy and Industrial Strategy, 2018,71).

Representation gaps have widened significantly with de-industrialisation, privatisation, de-recognition, fragmentation and localism, and legislation to curb trade union activity, changed the landscape of wage determination. Wage councils and industry boards have disappeared, and monolithic national bargaining machinery in the public sector has been replaced by review bodies or bargaining machinery with reduced scope. The national books of conditions of service for different sectors have thinned, moved towards flexibility and transferred responsibility for some agreements to workplace level where there is not always the union capacity to negotiate.

6 Evaluation

6.1 Groups not adequately covered by the UK system of social protection

Levels of social protection in the UK are stratified because of the need for continuous service and minimum earnings. The strongest social protection is afforded to full-time permanent employees, with the gap widening through part-time work to precarious employment and unemployment.

Grimshaw et al. (2016a and b) discuss social protection in relation to an analytical framework of four 'protective gaps'. They distinguish between employment right gaps, social protection and integration gaps, representation gaps and enforcement gaps.

Employment rights in the UK are described as weak compared to European standards, with limited scope for upgrading. Cost-driven subcontracting is said to be responsible for protection dilution along the supply chain and loop-holes in regulations and 'grey' area working are identified.

The social protection and integration system is characterized by relatively low-level contribution-based benefits, a high use of means-testing and significant use of in-work benefits. Family support policies are low by European norms, with complex eligibility requirements. Public pensions and mandatory private pensions (2015 rules) are only 22% of average earnings.

On representation gaps, it is noted that 6 out of 7 private sector workers have no representation and that migrant, temporary and low-paid workers are particularly underrepresented.

Evidence on social protection enforcement suggests that it is highly variable, with enforcement bodies having a narrow remit (Grimshaw et al. 2016a, 6-8).

Women, increasingly young people, and migrants experience the weakest forms of social protection. Women dominate particular occupations, such as school support staff: teaching assistants (91.4%) and other support staff (82.2%) (Department for Education, 2017, 4). Most are categorised as in part-time work: teaching assistants (85.1%), auxiliary staff, like caterers and cleaners (92.6%) and other staff (56.6%). Term-time contracts in schools not only involve a reduction in pay, but also pro-rata conditions of service and confusion over entitlements such as annual leave¹⁶ and redundancy pay¹⁷, which have led to legal challenge. Term-time workers on continuous contracts became ineligible for unemployment benefits during unpaid

¹⁶ Shanks and others v. Hesley Hall Ltd 2001 (3105171/00)

¹⁷ Gilbert and others Employment Appeal Tribunal 2002 (EAT/674/00)

weeks. After various cases, appeals and contradictory judgments, ‘Stafford and Banks’ was taken to the Law Lords in 2001¹⁸. One Lord questioned how the reduced school salary kept people out of poverty and although concluding that school staff are not jobseekers under social security law, it was established that they were eligible for working tax credits, averaged over the calendar year.

The UK system of social protection involves a complex web of regulations and benefits that lead to confusion and impedes take-up. Lack of transparency and weak enforcement hits vulnerable workers the most. More than 10 years ago, it was estimated that two million workers, primarily women, disable people and migrant workers were in “precarious work that places people at risk of continuing poverty and injustice resulting from an imbalance of power in the employer-worker relationship” (Trades Union Congress, 2007, 3). Vulnerable employment can but does not always involve illegal treatment, but widens pay gaps and entrenches inequality. Part-time workers and the self-employed are much more likely to suffer in-work poverty. The UK Office for National Statistics (2015b) estimated that 46% of people living in poverty in 2012/13 were in working families.

6.2 Strengths and weaknesses of the UK system of social protection

The trend towards a more ‘flexible’ workforce began 30 years ago and employment that is described as non-standard or atypical is widespread in the UK, although the distinction is weaker than in more regulated labour markets (Edwards, 2006, 1). We have identified zero-hour working, the gig economy and bogus self-employment as significant new ways of working in the UK that are poorly covered by social protection. This is in part due to the lines between the employment status of employees, workers, and the self-employed becoming blurred as has their access to employment rights and social protection.

Concern with these developments in civil society led to the government commissioning a study known as the Taylor Review on modern working practices to help develop a national strategy for atypical working. The report describes flexible working as the “British way” and presents 53 recommendations to improve its protections (RSA, 2017, 110-111; Department for Business, Energy and Industrial Strategy, 2018).

Unsurprisingly, transition out of poverty was found to rely on an increase in working hours and even more by higher hourly earnings. Progress has been slow to strengthen social protection where it is most needed. There has been growing awareness that working ways have changed and that non-standard work requires new forms of protection. The Taylor Review and the Government’s response and commitments are recognition of how

¹⁸ Chief Adjudication officer v Stafford and Banks (2001) UKHL 33

the changing contours of the UK labour market are vulnerable to legal loopholes in enforcing employment legislation and social protection; but how reforms will be implemented and with what effect remains to be seen in the context of a politically fragmented landscape.

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Autoren:

Jacqueline O'Reilly J.O-Reilly@sussex.ac.uk
Christine Lewis

Dr. Karin Schulze Buschhoff
Hans-Böckler-Straße 39
40476 Düsseldorf
Karin-schulze-buschhoff@boeckler.de