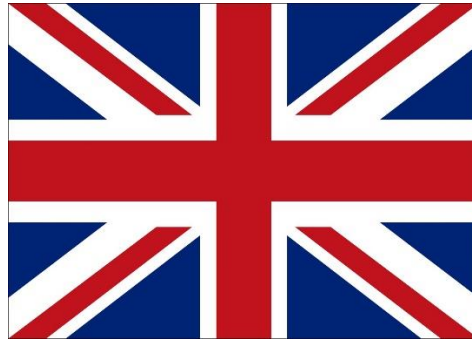


UK National Report



EU Directive 2019/1152 Transparent and predicable working conditions

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I

1. Describe what kind of casual or precarious working exists in your country (for example zero-hour contract; platform workers or on demand) and how widespread it is.

Within an era of digitalisation, the ways in which individuals conduct their work has subsequently changed. These changes to the labour market have enabled flexible working arrangements to become more prevalent.¹ Whilst this can be seen as beneficial, the various forms of precarious work that individuals enter into are insecure.²

New forms of business models have subsequently arisen due to the technological advancements that have adapted the labour market.³ For instance, over the past two decades atypical work has become more prevalent.⁴ Atypical working arrangements include non-standard forms of work such as agency work, part-time work and zero-hour contracts.⁵ Whilst the main feature of atypical work is flexibility and casual working schedules, due to the changes in the labour market, these features are common within typical forms of employment.⁶ For instance, full-time employment has become increasingly casual.⁷

Additionally, precarious work can include typical forms of employment, such as worker or employee. The work is nevertheless precarious as a result of the working arrangements, for instance, employers typically have a great amount of flexibility and are not obliged to provide workers with a set number of hours or any work at all.⁸

Zero-hour contracts are another form of atypical work in the UK. Under this working arrangement, individuals are not guaranteed a fixed number of hours per working week, they are typically called upon to work when needed.⁹ This working arrangement again highlights the amount of uncertainty and possible financial detriment that employees suffer, compared to the benefits that employers' experience. In 2020, over 1 million people described themselves as being on zero hour contract¹⁰.

Relatedly, the Gig Economy, which has created a supply and demand business organisation,¹¹ has given rise to the new form of platform workers. Platform workers are not a new phenomenon¹² but the increase of this form of work is noticeable. The Gig economy is described as a system whereby

¹ Bedharowicz Bartłomiej, 'Delivering on the European Pillar of Social Rights: The New Directive on Transparent and Predictable Working Conditions in the European Union' (2019) 48(4) Industrial Law Journal 604, 605.

² *ibid.*

³ A. Todoli-Signes, 'The Gig Economy: employee, self-employed or the need for a special employment regulation?' (2017) 23(2) Transfer 193-205 194.

⁴ H. Xavier Jara Tamayo & A. Tumino, 'Atypical Work and Unemployment Protection In Europe' (2020) Journal of Common Market Studies 1, 2.

⁵ *ibid.*

⁶ *n* 4.

⁷ *n* 4.

⁸ H. Collins, K. Ewing & A. McColgan, *Labour Law* (2nd edition, Cambridge University Press 2019) 249.

⁹ Directive (EU) 2019/1152 of The European Parliament and of The Council on Transparent and Predictable Working Conditions in the European Union [12].

¹⁰ Office of National Statistics, EMP17: People in employment on zero hours contracts, 15 December 2020, <<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts>>

¹¹ *n* 3.

¹² *n* 8, 241.

Apps provide customers with an individual who will perform the specific task.¹³ A fee is charged by the platform, who then takes a percentage of this fee, and the remaining amount is paid to the worker.¹⁴ Due to the nature of platform work, the Courts have identified individuals working under these arrangements as self-employed,¹⁵ whilst other Courts have recognised them as workers.¹⁶ This issue still remains a point of contention and shall be discussed in further detail below.

Subsequently, as technology plays a crucial role in every aspect of each other's lives, it can be deduced that precarious work in the UK is very widespread. For instance, there are platform apps catering for a myriad of services, such as food, travel, and laundry.¹⁷ A recent journalistic piece highlights the prominence of precarious work in the UK, in which it states that the GMB Union has found that a third of the UK workforce, or 10 million individuals are in precarious working arrangements.¹⁸ More specifically, the Taylor Review (2017) stipulated that one fifth of people working under zero-hour contracts in the UK are those in full-time education.¹⁹ This figure is significant considering that the Office of National Statistics published in 2016 that '1 in every 3 people, aged 18 to 24 [were] in full-time education.'²⁰ Conversely, the Taylor Review (2017) highlighted that there are limitations to the empirical data on the levels of precarious work in the UK as there is a general lack of data on the prevalence of specific forms of precarious or atypical work.²¹

2. Which type of legal relationship exist in your national law ("employee", "worker", self-employed, other)? Explain whether these national categories fit with the definition of worker given by the Court of the European Union (see preamble 8 of the Directive). Can you name typical instances of precarious working in which the type of work contract has been questioned and/or created conflicts (eg zero hour contract, platform worker)?

UK Employment Status Legal Definitions

By virtue of the UK's employment law, only employees and workers are afforded rights. However, the classification of these statuses has been widely criticised as ambiguous, counterproductive, and

¹³ *ibid.*

¹⁴ n 8.

¹⁵ *Independent Workers Union of Great Britain v Central Arbitration Committee* [2018] EWHC 1939 (Admin).

¹⁶ *Uber v Aslam* [2018] EWCA Civ 2748.

¹⁷ n 3, 195.

¹⁸ S Butler, 'Nearly 10 Million Britons are in Insecure Work, Says Union,' *The Guardian* (5 June 2017)

<<https://www.theguardian.com/business/2017/jun/05/nearly-10-million-britons-are-in-insecure-work-says-union>> Accessed 23 January 2021.

¹⁹ Good Work, 'Opportunities to Progress,' *The Taylor Review of Modern Working Practices* (11 July 2017)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf> Accessed 18 January 2021 94.

²⁰ Office of National Statistics, 'How Has the Student Population Changed?,' *The Office of National Statistics* (20 September 2016)

<<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/livebirths/articles/howhasthestudentpopulationchanged/2016-09-20>> Accessed 24 January 2021.

²¹ Good Work, 'Evolution of the Labour Market,' *The Taylor Review of Modern Working Practices* (11 July 2017)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf> Accessed 18 January 2021 24.

confusing.²² Those who are employees have access to the full suite of employment rights, such as unfair dismissal protections.

Section 230(1) of the ERA 1996 stipulates that an employee is an individual who has a contract of employment.²³ Further, this contract of employment is defined as a contract of service which can be express or implied.²⁴ The Act does not provide any further information as to what constitutes a contract of service.²⁵ The judiciary therefore has a wide discretion in determining whether someone has a contract of service.²⁶ The irreducible minimum test has been largely accepted as the test that will establish employee status, under which there must be mutuality of obligation, personal service and control.²⁷ These requirements have also undergone slight but nevertheless important changes due to changes in the labour market, and the rise in casual employment relationships.

The requirement of mutuality of obligation concerns working in return for remuneration,²⁸ and a promise of future services.²⁹ Regarding personal service, the position has altered in relation to the presence of a substitution clause. Now, a substitution clause will not necessarily defeat a finding of personal service if there are conditions attached to the autonomous right to substitute.³⁰

The statutory definition of worker status has caused some controversy. It is governed by s.230(3) of the ERA, under which an individual will be a worker if they have a contract of employment³¹ or an express or implied contract whereby they undertake work personally to an individual who is not their customer or client.³² It is evident upon reading this definition that the requirements are akin to those of an employee, thus this has proved problematic in determining an individual's status with sufficient certainty.³³ The Courts have however formulated certain requirements which give rise to worker status, these include integration and contractual nexus³⁴ and personal service.

The rights afforded to worker status are a basic set of protections, for instance whilst workers are protected by the National Minimum Wage Act 1998 and Regulations 1999, they do not have unfair dismissal protections.

Individuals who are self-employed have been defined as independent contractors.³⁵ The self-employed are those who operate their own business, are free to work as they please and are not under the supervision of a higher authority.³⁶ There can be some protection for self employed when it comes to equality law and health and safety.

²² Good Work, 'Clarity in the Law,' *The Taylor Review of Modern Working Practices* (11 July 2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf> Accessed 18 January 2021 34.

²³ Employment Rights Act 1996, s 230(1) (ERA 1996).

²⁴ ERA 1996, s 230(2).

²⁵ n 22, 33.

²⁶ *ibid.*

²⁷ n 8, 207.

²⁸ *Varnish v British Cycling Federation* [2020] UKEAT 0022/20 LA [139].

²⁹ *O'Kelly v Trusthouse Forte Plc* [1983] ICR 728 (CA).

³⁰ *Autoclenz v Belcher* [2011] IRLR 820 (SC).

³¹ ERA 1996, s 230(3)(a).

³² ERA 1996, s 230(3)(b).

³³ n 22, 33.

³⁴ *Hospital Medical Group Ltd v Westwood* [2012] EWCA Civ 1005.

³⁵ n 8, 200.

³⁶ *ibid.*

With regards to the precarious working arrangements in the UK, they are not specifically referred to in the legislation. Thus, they often do not fit within the ambit of employee or worker.³⁷ Individuals in precarious working arrangements, such as platform workers are typically defined in their contracts as self-employed due to their apparent freedoms and discretions.³⁸ However, in practice, such workers have been falsely classified as self-employed. Subsequently, these discrepancies in relation to an individual's true status has created a vast amount of litigation.

'Worker' status at EU level and UK law

The Court of Justice of the European Union (CJEU) has highlighted that individuals who may be self-employed at national level, may nevertheless fall within the scope of worker at EU level if their status classification is false.³⁹ In the case of *B v Yodel Delivery Network Ltd*, the Court referred to workers as individuals who, 'for a certain period of time, perform services for and under the direction of another in return for which he receives remuneration'.⁴⁰ Additionally, the Court notes that those who are the recipients of the specific task must not be clients or customers of the workers.⁴¹ This definition confirms the Courts previous definition of worker as provided for in *Lawrie-Blum v Land Baden-Wurttemberg*.⁴²

Preamble 8 of Directive 2019/1152 on Transparent and Predictable Working Conditions in the European Union, makes specific reference to the status of precarious workers.⁴³ This is a notable difference to the statutory definitions of worker and employee in the UK. It provides that on demand, intermittent, platform, and atypical workers can be protected by the Directive in the instance of sham or bogus self-employment classifications.⁴⁴ The Directive has explicitly stated that those who have been falsely declared self-employed by their employer will be provided with the protections governed by the Directive and will have an employment status.⁴⁵

In the UK, no such legislative reference has been made with regards to sham self-employment classifications. Thusly, whilst the CoJEU's definition of worker is akin to the UK definition, in that an individual must perform work personally and work under the authority of another, a worker in the UK must work under a contract of employment,⁴⁶ or a contract where they perform work personally.⁴⁷ Despite these difficulties, the UK legislation has not been amended, thus it has not widened the ambit of the concept of a worker or employee so as to include atypical and precarious workers.

As in the aforementioned, precarious workers are typically defined as self-employed. Whilst some workers are genuinely self-employed, there have been instances where employers will purposely formulate their worker's contract in such a way, so as to preclude them from having access to employment rights.⁴⁸ Accordingly, it has been imputed that the flexibility provided by precarious

³⁷ n 3, 197.

³⁸ *ibid.*

³⁹ Case C-692/19 *B v Yodel Delivery Network Ltd* [2020] EU:C:2020:288.

⁴⁰ *ibid.*, [29].

⁴¹ *ibid.*

⁴² Case C-66/85 *Lawrie-Blum v Land Baden-Wurttemberg* [1986] ECR 2121 EU:C:1986:284.

⁴³ n 9.

⁴⁴ n 9, Preamble 8.

⁴⁵ *ibid.*

⁴⁶ ERA 1996, s 230(3)(a).

⁴⁷ ERA 1996, s 230(3)(b).

⁴⁸ n 8.

work lies mostly with the employer or business rather than those performing the work.⁴⁹ As a result of the uncertainty and the ambiguity pertained in relation to the true employment status of precarious workers, this area has been heavily litigated upon. Whilst the judiciary has attempted to provide guidance on this area, the subsequent decisions has led to further confusion and inconsistency.⁵⁰

Employment Status Litigation: some issues

Individuals who work under zero-hour contracts have also come before the Courts to enquire about their employment status to access rights such as the Working Time Regulations 1998 and the National Minimum Wage Act 1998. Interestingly, the Taylor Review (2017) noted that those working under zero-hour contracts were living in poverty, largely due to the no guarantee of hours or work and the absence of a national minimum wage.⁵¹ Subsequently, cases are brought against their employers alleging that the reality of their employment relations do not reflect their alleged self-employment.

In *Harpur Trust v Brazel* [2019], it was argued that zero-hour contracts prevent mutuality being established, thus, the individual could not have a contract of work or employment.⁵² The claimant was working under a permanent zero-hour contract, thus the contract was ongoing for several years.⁵³ Therefore, although the work was intermittent, the Court concluded that mutuality of obligation was present as the contract illustrated a commitment by the employer to provide work and the employee to accept it.⁵⁴ Subsequently, the individual was not self-employed and was therefore entitled to the requisite holiday pay as governed by the Working Time Regulations 1998.⁵⁵

The Taylor Review (2017) in addressing zero-hour contracts stipulated that employers 'should be more forward thinking in their scheduling'⁵⁶ rather than constantly employing a workforce that are working under zero-hour contracts. The Review emphasises that the Government must prevent the possibility of flexibility being abused by employers.⁵⁷ It is recommended that the Low Pay Commission should implement a higher national minimum wage for individuals working under zero-hour contracts.⁵⁸ However, this has not been pursued and individuals continue to be vulnerable to exploitation when working under these contracts.

Correspondingly, cases have been initiated concerning bogus self-employment with regards to platform workers. Platform workers are not, like zero-hour contracts, included within statutory employment protections. Whilst the Courts in interpreting worker and employee status in these cases have attempted to align the law with the ever-evolving labour market⁵⁹, the judgments have caused further controversies and unfortunate outcomes. However, the Court of Appeals judgment in

⁴⁹ Good Work, 'One-Sided Flexibility,' *The Taylor Review of Modern Working Practices* (11 July 2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf> Accessed 18 January 2021 43.

⁵⁰ n 22.

⁵¹ n 49.

⁵² *Harpur Trust v Brazel* [2019] EWCA Civ 1402.

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ *ibid.*

⁵⁶ n 49.

⁵⁷ *ibid* and n 39.

⁵⁸ *ibid.*

⁵⁹ n 22, 29.

Uber BV v Aslam [2018], offered a glimmer of hope in reaffirming that the claimants were workers for the purposes of section 230(b) ERA 1996, and had access to the national minimum wage.⁶⁰ The Court and previous Tribunals were concerned with the ways in which Uber constructed their contracts so as to prevent itself from having any employer responsibility.⁶¹ The platform even argued that if there were an employer, it would be the customer.⁶² The Court followed the line of enquiry in *Autoclenz v Belcher* by analysing the reality of the employment relationship.⁶³ In reality, to ensure a high quality when services are provided, Uber provided customers with the opportunity to review their driver.⁶⁴ If the driver received negative reviews the individual would no longer be able to access the app.⁶⁵ Additionally, tips were not allowed, and Uber would receive between 10% to 20% of the total fee charged.⁶⁶ Subsequently, individuals are provided a small fee for their services. These circumstances ultimately gave rise to worker status, as the workers were economically dependent on these platforms.

Conversely, where the contract contains a substitution clause, both the domestic Courts have departed from the stance adopted in worker status cases in relation to the definition of workers in cases of trade union membership. In *Independent Workers Union of Great Britain v Rooffoods Ltd (t/a Deliveroo)*, the claimants brought a claim as individuals working for Deliveroo were denied collective bargaining rights contained in the Trade Union and Labour Relations (Consolidation) Act (TULRCA) 1992.⁶⁷ It was held that as the contract contained a substitution clause, there was no personal performance of work.⁶⁸ The individuals concerned did not satisfy the definition of a worker as provided for in section 296(1) of TULRCA 1992, therefore, the trade union could not apply for the statutory recognition procedure necessary to bargain collectively.⁶⁹ The Union appealed claiming that Article 11 of the ECHR Freedom of Association had been contravened, but lost. The case is currently before the Court of Appeal and has caused a great amount of controversy, as it shows how inserting a substitution clause in a contract can remove the employee or worker label.

The CoJEU in *B v Yodel Delivery Network Ltd* [2020] adopted a similar stance to the judgment above.⁷⁰ The worker in question was a delivery driver who worked exclusively for Yodel.⁷¹ Their contract specified that they were self-employed and it also included a substitution clause.⁷² However, this clause was arguably not unfettered, as the substitute had to have the same skills as a Yodel courier.⁷³ Moreover, if the substitute omitted from doing all deliveries or did not act in accordance with the platforms standards, the worker would be liable for this.⁷⁴ However, the

⁶⁰ n 16.

⁶¹ *ibid.*

⁶² *ibid.*

⁶³ *Autoclenz v Belcher* [2011] IRLR 820 (SC) cited in *Uber v Aslam* [2018] EWCA Civ 2748.

⁶⁴ *Uber.*

⁶⁵ *ibid.*

⁶⁶ *ibid.*

⁶⁷ *Independent Workers Union of Great Britain v Rooffoods Limited (t/a Deliveroo)* [2017] 11 WLUK 313.

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ n 39.

⁷¹ *ibid.*

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ *ibid.*

contract stipulated that Yodel is not their exclusive platform.⁷⁵ The Court thus noted that the claimant had a large amount of freedom concerning their working schedule.⁷⁶ Regarding the conditions attached to the substitution clause, it was held that these were merely necessary standards and thus, the worker still had a wide discretion in determining who they could choose to substitute.⁷⁷

Subsequently, in the UK a vast majority of platform workers and other precarious workers fall outside the ambit of worker and employee status and the rights afforded to them. The ‘new forms of control’⁷⁸ that these new business models hold over their workers are not sufficiently regulated in the UK.⁷⁹ Employers use precarious working arrangements far too frequently, instead focusing on the economic benefits to the detriment of their workers.⁸⁰ Additionally, as evidenced in the above, the UK legislation does not ‘meet the needs of a modern labour market.’⁸¹

II

3. The Directive requires in articles 4 and 5 that specific information are provided to the workers within a specific period of time. To what extent does your national law already comply with those requirements?

If the employer does not provide the relevant information or not on time, what are the remedies available to the worker or other actors? Would the workers described in question 1 qualify to receive this information?

Following article (4) of the directive, member states must ensure that employers provide workers with specific information regarding ‘essential aspects’ of their employment. Such information includes: the ‘identities of the parties’ to the contract, the ‘date of commencement of the employment relationship’, and details of ‘formal requirements and notice periods’ that are to be observed by the employer and the worker. Subsequently, article (5) provides certain timeframes under which this information is to be delivered; important matters that have immediate effect on the worker should be provided within a period from the worker’s ‘first working day’ to the ‘seventh calendar day’, and other information must be given within ‘one month of the worker’s first working day’. The above provisions are supplemented by article (3), which explains that information pursuant to this directive must be given in some form of writing that is accessible to the worker⁸².

Considering the extent to which the UK already complies with these requirements, the national law does observe the EU directive, by way of requiring employers to provide employees and workers with

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ *ibid.*

⁷⁸ n 3, 198.

⁷⁹ *ibid.*

⁸⁰ n 49.

⁸¹ n 22, 33.

⁸² EUR-Lex, ‘Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union’

a ‘written statement of particulars’. This is a duty imposed on employers to supply employees and workers with a statement containing the principal terms and conditions applicable to their contract of employment, which is important in providing individuals with clarity as to the exact nature of their employment relationship.⁸³

This requirement is entrenched in section 1 of the Employment Rights Act 1996⁸⁴ and came into force as a result of EC Directive 91/533, which has now been repealed in place of Directive 2019/115. Both directives aim to provide employees and workers with improved protection in the workplace to avoid uncertainty about their terms of work, and to create ‘greater transparency and competitiveness’ in the labour market⁸⁵. Examples of the information that an employer must provide include the ‘names of the employer and employee, ‘the date when the employment began’, and specific details regarding an employee’s entitlement to benefits such as ‘holiday pay’⁸⁶. Many employers satisfy the requirement of supplying a written statement of particulars by providing employees with a written contract of employment, requiring them to sign a document that serves both purposes. In practice, this has allowed employees to discover details of the terms of their employment at much earlier stages of their work, giving them ample opportunity to negotiate about any particular aspects of their role at the time the contract was entered into.⁸⁷

The written statement of particulars does not have the same legal effect as an individual’s contract of employment, because the contract is a document that is supposedly agreed upon by both parties to the employment relationship, with the employee signing the contract to confirm this mutual understanding. Contrastingly, a written statement of particulars is usually a document construed as being handed to the employee or worker, so it merely offers persuasive evidence of an employer’s view of the governing terms of the employment relationship, and is not legally binding. Echoing the pronouncement in *System Floors (UK) Ltd v Daniel*,⁸⁸ a written statement of particulars provides ‘very strong prima facie evidence of what were the terms of the contract between the parties’, but it does not constitute a ‘written contract between them’, nor does it operate as ‘conclusive evidence’ of the employment relationship.⁸⁹

Until recent reforms developed by the Good Work Plan in April 2020⁹⁰, UK law provided a relatively ‘weak and ineffective’ means for achieving the directive’s objectives, which prevented employees and workers from being well-informed of their employment relations⁹¹. This resulted in two primary limitations; firstly, the written statements did not have to be provided by the employer until two months after the commencement of the individual’s employment, which did not help potential employees or workers make an informed decision about whether or not to accept their appointment. This issue has now been rectified, and as per the Employment Rights (Employment Particulars and

⁸³ Department for Business, Energy and Industrial Strategy, *Good Work: the Taylor Review of Modern Working Practices* July 2017, Chapter 5.

⁸⁴ ERA 1996.

⁸⁵ European Commission, ‘Employment, Social Affairs & Inclusion: Working Conditions’ < <https://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=202> > accessed 18/01/2021.

⁸⁶ ERA 1996, s1 (3) (4).

⁸⁷ Collins, Ewing & McColgan, *Labour Law (Law in Context)* (2nd Edition, Cambridge University Press 2019).

⁸⁸ [1982] ICR 54 (EAT).

⁸⁹ Ibid.

⁹⁰ Industrial Strategy, *Good Work Plan* (Cm 9755, 2018) (Good Work Plan) < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/766167/good-work-plan-command-paper.pdf > accessed 22/01/2021.

⁹¹ Collins, Ewing & McColgan

Paid Annual Leave) (Amendment) Regulations 2018⁹², employers must provide written particulars on the first day of an individual's employment.

The second limitation is that prior to April 2020, the right to a written statement applied only to individuals with employee status and whose employment was to last for one month or more. The extension of the right means that employers must now provide written statements to all workers, not just employees, which has allowed for the possibility of member states 'rigidly policing the national definition of a worker'.⁹³ This duty also extends to casual workers and zero hours workers, and the right to a written statement now applies to all fixed-term workers, regardless of the length of their contract. Individuals who identify as self-employed are not entitled to a written statement of employment terms, thus they are outside of the scope of protection of the directive.

Overall, such changes were introduced to widen the scope of the section 1 duty to cover all individuals who work under a 'contract of employment or any other contract to do or perform personally any work or services for another party to the contract... whose status is not that of a client or customer',⁹⁴ as well as to provide more certainty to individuals so that they have a better understanding of their employment terms and relationship with their employer.

Article 5 (2) of the EU directive allows member states to develop templates and models for the documents containing the relevant information to be given to employees and workers. Accordingly, employers in the UK are permitted to use other incorporated documents, such as collective agreements and staff handbooks, in order to provide workers and employees with more details of the terms of their employment. As per section 2 (2) and (3) of the ERA 1996, employers are not required to provide employees with copies of such information, but they merely have a duty to ensure that employees and workers have a 'reasonable opportunity' of reading those documents during the course of their employment, or the documents must be made 'reasonably accessible' in some other way⁹⁵. Since a written statement of particulars can only be properly understood by reference to these other documents, this makes it quite difficult to satisfy the requirement under the directive, as national law permits employers to merely make reference to such documents without having to formally include them within the written statement. However, only certain restricted information can be provided in secondary documents. Following section 2(2) and (3), such information can only be those listed in section 1 (4)(d) (i) to (iii) (j) and (l), which includes entitlement to holidays, training and other information relating to an individual's incapacity for work due to sickness or injury. This information must be given no later than two months after the beginning of an individual's employment, even where the employment ends before that date.⁹⁶ Analysing the results of the 'Workplace Employment Relations Survey 1998,' it was found that in around 93% of establishments with ten or more employees, employers do provide their employees with essential information

⁹² Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 SI 1378.

⁹³ Bednarowicz, Barthlomiej, 'Delivering on the European Pillar of Social Rights: The New Directive on Transparent and Predictable Working Conditions in the European Union' (2019) 48 ILJ

⁹⁴ ERA 1996, s230 (3).

⁹⁵ ERA 1996, s6 (a) (b).

⁹⁶ ERA 1996, s4 (b).

regarding their terms of employment as required by legislation, either on appointment of the employee, or shortly afterwards.⁹⁷

If an employer does not provide the relevant information to an employee or worker, or fails to do so on time, a remedy can be obtained under section 38 of the Employment Act 2002⁹⁸. This provision states that the employment tribunal will make an award of the 'minimum amount to be paid by the employer to the worker' if the tribunal finds 'favour with the worker's circumstances' and the employer is in 'breach of his duty' to provide a written statement of particulars required by section 1 of the ERA 1996. Consequently, the employer will be ordered to pay the employee two weeks' pay, (subject to the statutory cap on a weeks' pay). If the court finds it 'just and equitable' in all the circumstances, then they have the discretion to award individuals a higher value of monetary compensation; this equates to four weeks' pay, again subject to the statutory cap. If the court find there are exceptional circumstances under which it would be unjust and inequitable to make an award against the employer, then none will be made. However, asserting a stand-alone claim that the employer failed to provide a written statement of employment particulars or provided one that failed to adhere to the legislative requirements will not afford financial compensation to an employee or worker; the employee can only refer to a tribunal to determine what particulars ought to have been included or referred to in the statement. Once the tribunal has determined this, the statement will be deemed to have been given to the employee by the employer in accordance with the tribunal's decision.

III

4. Does your national law (statutes or collective agreements) have rules on probation? If yes, what are they and is there a maximum?

Is it possible to deviate from that by collective agreement or individual contracts? (see article 8 of the Directive)

Following section 1(6)(a) and (b) of the ERA 1996, a probation period can be understood as a period specified in the contract of employment or other worker's contract between a worker and employer that commences at the beginning of the employment, and is intended to enable the employer to assess the worker's suitability for employment. It is a trial phase of employment, during which an individual's employment is subject to them satisfactorily completing certain job requirements. Therefore, probation is a contractual issue in the UK rather than one regulated by statute. Since it can be quite difficult for employers to acquire all the necessary information in advance about an employee's capability and motivation for a particular role, probation periods allows employers to assess a potential employee's suitability of a role after having given them first-hand experience working for the company or organisation; simultaneously, this allows the employee to decide whether or not they like the nature of the work involved in their employment.

⁹⁷ W. Brown, S. Deakin, D. Nash and S. Oxenbridge, *The Employment Contract: From Collective Procedures to Individual Rights* (Cambridge: ESRC Centre for Business Research, Working Paper 171, 2000).

⁹⁸ Employment Act (EA) 2002.

Probation periods bestow upon employers the ‘explicit contractual right’ to terminate an employee’s contract of employment if they deem them to be unfit for a position.⁹⁹ However, it is not an absolute right, since employers would still have to comply with statute on provisions concerning unfair dismissal rights; an employee has the right not to be unfairly dismissed by their employer¹⁰⁰. Article 8 of the EU directive imposes a mandatory limit of six months on probation periods; moreover, in the case of fixed-term employment relationships, member states must ensure that the length of the probationary period is ‘proportionate to the expected duration’ of the contract and the specific ‘nature of the work’. Nevertheless, subsection (3) of the article does allow employers, on an exceptional basis, to insist on longer probationary periods where such extensions are ‘justified by the nature of the employment’ in question, or in the best interests of the worker. Thus, the directive affords a certain level of flexibility on employers when it comes to determining the duration and purpose of probationary periods.

On the other hand, in the UK, there is no set law determining the particular length of a probationary period, meaning that there is no maximum unlike the directive; rather, it is at the discretion of individual employers and dependent on the common practices of each organisation. However, under section 1(ga) of the ERA 1996, employers must give employees and workers details about the specific conditions and duration of any probation period. The most common period for probation in the UK is ten to twelve weeks, although employers may provide longer periods for jobs that require higher skillsets and for employees who work for larger firms. Accordingly, employers ascertain the length of a probation period by having regard to a variety of different factors specific to the employee’s job description, and there is a general expectation that employers will be reasonable when coming up with a decision. Typically, a probation period in the UK lasts no longer than six months, and if an employee is moving into a new post internally, the period is around three months. It is possible for employers to extend or deviate from an employee’s probation period, but any such changes must be communicated with the employee and also contained within their individual contract of employment; there must be a specific term in the contract which stipulates that the employer can extend a probation and explains the circumstances in which they can do so. Again, there is so specific law limiting the extension of probation periods, but an employer is required to set out the terms of the extension in writing.¹⁰¹

5. Are there rules in your national law preventing employees from having more than one job in the context of precarious work? If yes, on what grounds? (see article 9 of the Directive)

A major problem facing such individuals undertaking precarious work is presented by the fact that if an employer does not promise any particular level of work, then an individual’s income may vary from week to week, and may in fact be zero in some weeks, making such a relationship difficult for an individual to manage financially¹⁰². One such response to this reality is for an individual to supplement their income by secondary employment, however such action may be met by an employer who may include a so called ‘exclusivity clause’ in the party’s contractual agreement

⁹⁹ Collins, Ewing & McColgan.

¹⁰⁰ ERA 1996, s94 (1).

¹⁰¹ First Practice Management, ‘Everything you need to know about Probationary Periods’, < <https://www.firstpracticemanagement.co.uk/blog/posts/everything-you-need-to-know-about-probationary-periods/> > accessed 26/01/2021.

¹⁰² ACL Davies, *Employment Law* (Pearson Education Limited 2015), 121.

which stipulates that an individual must offer their services exclusively to that employer and may not work elsewhere¹⁰³.

Following the UK governments consultation on Zero Hours employment contracts (“ZHC”) in 2013¹⁰⁴, which highlighted exclusivity clauses as an area of these contracts which may be misused to exploit individuals and fundamentally undermine the choice and flexibility that they purport to permit¹⁰⁵, legislation was introduced in the UK from 26 May 2015 by s153 Small Business, Enterprise and Employment Act 2015 which, in inserting a new s27A into the Employment Rights Act 1996 (“ERA”), made any provision of a ZHC unenforceable against a worker if it prohibits the individual from doing work or performing services under another contract¹⁰⁶ or prohibits the individual from secondary employment without their employers consent¹⁰⁷. The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 (“ETZHC Regulations”)¹⁰⁸ were further introduced pursuant to section 27B ERA, to provide those workers working under a ZHC with protection from being subjected to any detriment by an employer for breaching an unenforceable provision of a ZHC under section 27A(3) ERA¹⁰⁹, with such a right enforceable by the right of an individual working under a ZHC to bring a complaint to an Employment Tribunal¹¹⁰. Should an individual working under a ZHC be classed as an ‘employee’, rather than a ‘worker’, the ETZHC Regulations further provide protection in regarding any dismissal made by an employer for the reason of an individual breaching an unenforceable provision of a ZHC under section 27A(3) ERA¹¹¹ as automatically unfair for the purposes of Part X ERA.

6. When workers have fluctuating hours, is there a time limit whereby they should be made aware of their shifts or working hours? If this is not done, is the employee allowed to refuse to work or entitled to compensation? (see article 10 of the Directive)

The stereotypical contract of employment demonstrates a relationship whereby the employer bears the risk; entitling an employee to his or her wages provided that the relevant employee is ready and willing to work, even if the employer does not direct the employee to perform any work due to a shortfall¹¹². However, the approach of the on-demand contract is somewhat antithetical, with the employer shifting the risk back onto the worker by expressly providing that the worker will only be paid for the hours worked when their services are required, as unilaterally dictated by the employer, and not for a regular number of hours¹¹³. From an economic perspective therefore, such contractual arrangements provide for the ultimate form of flexible working for an employer, whereby the employer declines to stipulate or guarantee any set amount of working hours, but requires the individual to be available and ready to undertake such work as is offered, even at the

¹⁰³ Ibid.

¹⁰⁴ Department for Business, Innovation & Skills, ‘Consultation: Zero hours employment Contracts’ (19 December 2013)

<<https://www.gov.uk/government/consultations/zero-hours-employment-contracts>> last accessed 26 January 2021.

¹⁰⁵ Ibid, 13.

¹⁰⁶ s27(3)(a)

¹⁰⁷ s27(3)(b)

¹⁰⁸ SI 2015/2021.

¹⁰⁹ Regulation 2(2).

¹¹⁰ Regulation 3(1).

¹¹¹ Regulation (2)(1).

¹¹² Hugh Collins, K.D. Ewing and Aileen McColgan, *Labour Law* (2nd edn, CUP 2019), 264.

¹¹³ Ibid.

shortest of notice¹¹⁴, potentially leading to an abusive contractual relationship whereby such individuals may be left hanging around their place of work waiting for work, but not actually working and therefore not earning any money, without the contractual or statutory recourse to compensation¹¹⁵.

However, in light of the concerns raised particularly with such on-demand contractual relationships, the previous UK government commissioned the Taylor Review which, as reported in 2017, considered ways in which statutory coverage could be improved to tackle such exploitative practices¹¹⁶. Here, recommendation was made that workers employed under such on-demand contractual relationships should have a right to be able to make informed decisions about the work that they do, to plan around it, and to be paid compensation for shifts cancelled by employers at short notice¹¹⁷. Further consideration has also been given to a range of penalties designed to punish employers who schedule work at late notice, or who offer work only to cancel it at the last minute¹¹⁸. However, to date, any such legislation has unfortunately not been introduced, meaning that in reality, an individual working under an on-demand contract has the recourse to protection only through the non-enforceability of an exclusion clause in his or her contract with the relevant employer, and then the subsequent undertaking of secondary employment in order to sustain their livelihood.

7. If your country allows on demand contract, is there legislation which specifically tries to avoid abuse of this form of casual working (such as limitation on the use and duration of on demand contract or presumption that there is an employee relationship / contract of employment)?(see article 11 of the Directive)

The UK permits on-demand contract, as seen through the use of Zero Hours Contracts (“ZHC’s”); itself describing this employment relationship as one in which the employer does not guarantee an individual any hours of work, instead offering an individual work when it arises, and whereby that individual can then either accept the work offered to them or decide not to take up the offer of work on that occasion¹¹⁹. Whilst this relationship is reflective of the UK’s national strive towards a flexible labour market¹²⁰, establishing a position whereby the demand for an employer’s services can be met with the exact labour requirement to fulfil such demand (notably in sectors of the

¹¹⁴ Ian Smith, Aaron Baker and Owen Warnock, *Smith & Woods Employment Law* (14th edn, OUP 2019), 66.

¹¹⁵ Collins, Ewing and McColgan, 264.

¹¹⁶ Matthew Taylor, ‘Good work: the Taylor review of modern working practices’ (11 July 2017)

<<https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>> last accessed 27 January 2019; Smith, Baker and Warnock, 82-83.

¹¹⁷ Taylor Report, 43, 54.

¹¹⁸ Ibid, 44.

¹¹⁹ Department for Business, Energy & Industrial Strategy, ‘Zero hours contracts: guidance for employers’ (15 October 2015) <<https://www.gov.uk/government/publications/zero-hours-contracts-guidance-for-employers/zero-hours-contracts-guidance-for-employers>> last accessed 26 January 2021.

¹²⁰ Department for Business, Innovation & Skills, ‘Employment Law 2013: Progress on Reform’ (14 March 2013), 7 <<https://www.gov.uk/government/publications/employment-law-2013-progress-on-reform>> last accessed 26 January 2021.

economy where such demand fluctuates or is seasonal), in reality it is a relationship which is generally open to abuse by a willing employer¹²¹.

The main problem faced by individuals working under such on-demand contracts is that their employment status is uncertain¹²². However, as there is no specific statutory intervention which tries to avoid an employer's abuse of a ZHC in the UK, protection is therefore individually enforceable on the facts of the specific relationship, applying the ordinary principles of the law¹²³. Whilst when an individual is at work, it is strongly arguable that they are in fact an 'employee', and therefore entitled to the full protection of UK employment law, in practice however, it is unlikely that someone working under a ZHC would be able to establish 'employee' status over the long term, as the employer does not promise any particular level of work, and as such there is no 'mutuality of obligations'¹²⁴. This test, as established in *O'Kelly v Trusthouse Forte plc*¹²⁵, looks at whether the course of dealings between the parties demonstrates sufficient such mutuality for there to be an overall employment relationship¹²⁶; on the facts denying casual waiters the ability to prove 'employee' status due to the lack of obligation on the employer to offer work, or on the waiters to undertake the work if offered. Whilst this approach has been criticized for creating an ability for the employer to evade employment rights¹²⁷, the test was subsequently approved in *Carmichael v National Power plc*¹²⁸, whereby 'mutuality of obligations' was determined by the House of Lords (now Supreme Court in the UK) to be an "irreducible minimum" to the establishment of a contract of employment¹²⁹ and used to deny 'employee' status. Whilst possible remedies to this principle have evolved to cover instances where on demand contract is being misused, particularly by the finding of 'umbrella' or 'global contracts' by the Employment Tribunal, as demonstrated in *St Ives Plymouth Ltd v Haggerty*¹³⁰ where whilst the relationship was contractually casual, an overall contract of employee status had evolved over the whole period due to the conduct of the parties, fundamentally this is a fact-specific issue in the face of the overarching rule¹³¹.

Where an individual works under an on-demand contract and cannot prove 'employee' status, there is a fallback question as to whether they may be able to establish the lesser 'worker' status in order to qualify for limited protection, such as the national minimum wage¹³² and rights provided under the Working Time Regulations 1998¹³³ (which transposed the EU's Working Time Directive¹³⁴)¹³⁵; a much-debated issue for such individuals working under an on-demand ZHC in the

¹²¹ Smith, Baker and Warnock, 66.

¹²² Davies, 121.

¹²³ Smith, Baker and Warnock 67.

¹²⁴ Ibid.

¹²⁵ [1983] 3 All ER 456 (CA).

¹²⁶ Smith, Baker and Warnock 44.

¹²⁷ Ewan McGaughey, 'Uber, the Taylor Review, Mutuality and the Duty Not to Misrepresent Employment Status' (2019) 48 Industrial Law Journal 186.

¹²⁸ [2000] IRLR 43 (HL)

¹²⁹ Ibid 44.

¹³⁰ UKEAT/0107/08.

¹³¹ Smith, Baker and Warnock, 61-63.

¹³² See National Minimum Wage Act 1998.

¹³³ SI 1998 No. 1833.

¹³⁴ Directive 2003/88/EC (OJ 2003 L299/9).

¹³⁵ Smith, Baker and Warnock, 67.

so-called 'gig economy'. Here, digital platforms present themselves, not as the employer, but instead as a platform which puts workers in touch with customers, charging a fee for this a service. As such, these platforms permit workers to have a succession of one-off jobs with no guarantee of any future work, instead relying on the customer to facilitate several managerial functions of which would usually constitute the standard employment relationship, including the determination of hours of work and performance management activity through the leaving of reviews on respective mobile phone apps¹³⁶.

Such a relationship presents two main challenges. Firstly, the workers providing such platform-based services generally possess the stereotypical features of a genuine individual contractor due to being in business on their own and being in control of their own hours of work, and therefore appear likely to fall out of scope of the entirety of employment law protection, and secondly, the platform may contest that it is even an 'employer'¹³⁷. Whilst some advancements can be seen in *Uber BV v Aslam*¹³⁸, where the Employment Appeal Tribunal rejected both of these arguments in holding that it was open to the Employment Tribunal to follow the power sanctioned by the Supreme Court in *Autoclenz v Belcher*¹³⁹ to look behind the contractual documentation and into the reality of the relationship and find that the Claimant Uber taxi drivers were indeed 'workers' because the true nature of the relationship was not that as set out in the contract¹⁴⁰, the difficulties in this area are demonstrated in *Independent Workers' Union of Great Britain v Rooffoods Ltd t/a Deliveroo*¹⁴¹. Here, a trade union could not seek statutory recognition for collective bargaining purposes on behalf of Deliveroo delivery riders as a substitution clause in the contract which negated the necessary elements of personal service meant that the riders could not be considered 'workers' for the purposes of the Trade Union and Labour Relations (Consolidation) Act 1992¹⁴².

The only legislation in the UK to avoid abuse of the on-demand contract has therefore been limited to the unenforceability of on exclusivity clauses pursuant to s27A ERA, and the protection from detriment and dismissal by an employer for breaching an unenforceable provision of a ZHC under the ETZHC Regulations. However, there is no limit to the use of such contracts and nor is there a presumption of a contract of employment. The decision as to employee/worker/self-employed status is subject to the terms of the individual contract, and if challenged, is done so on an individual basis, with a decision made based upon the specific factual matrix.

8. Do the rules on probation, having more than one job, time limit for changing working hours and avoid abuse of on demand contracts address the core problems of the atypical workers?

The legislation against exclusivity clauses does not address the more core problems of atypical workers¹⁴³. Firstly, it applies only to zero hours contracts defined as contracts of employment or as

¹³⁶ Collins, Ewing and McColgan, 240-241.

¹³⁷ Ibid, 241.

¹³⁸ [2018] IRLR 98.

¹³⁹ [2011] ICR 1157.

¹⁴⁰ Smith, Baker and Warnock, 67-68.

¹⁴¹ [2018] IRLR 911.

¹⁴² Smith, Baker and Warnock, 68.

¹⁴³ Davies (n1), 122.

worker contracts. However, as demonstrated, those working particularly within the 'gig economy' have uncertain employment status and may well fall out of the scope of employment law protection in its entirety; the law in its current form therefore does not protect those most vulnerable individuals from exploitation¹⁴⁴. Secondly, and most pertinently, the law fails to address the wider problems associated with such on-demand contract, particularly the requirement of establishing 'mutuality of obligations'¹⁴⁵. The argument that such precarious workers who are working without a binding contract are less subordinated than those in permanent jobs due to the inherent flexibility of such a relationship is a fallacy; in practice these individuals are especially vulnerable to exploitative conditions of employment via an impermeant contract that still presents a reality of control by the employer¹⁴⁶. Finally, the failure of the law to deal with any time limit for changing working hours means that an employer does not need to ban an individual from taking other work, for the individuals own availability will act as a detriment to being able to accept work when it is offered by the employer¹⁴⁷.

Whilst the Taylor Review¹⁴⁸ has recommended a clearer legislative approach to employment status, alongside renaming 'workers' as 'dependent contractors' to better distinguish 'employee' and 'worker' status and their attributable rights¹⁴⁹, it should be seen as a missed opportunity¹⁵⁰, for the legislation still does not accurately define the contractual relationship of those working under on demand contracts, leaving the questions of status to common law tests which unfortunately reflect the bargaining power of the employer.

IV

9. Can temporary, on demand or casual workers request a transfer to a more secure or permanent form of working? If yes, what are the conditions and types of contracts available?

According to the directive workers should be given the option to be provided with a more secure and reliable employment contract, as a key objective of the Directive is to encourage predictability within employment.¹⁵¹ Further, under Article 35 Member States should make sure that suitable actions are implemented, to ensure that any form of abuse can be prevented where possible.¹⁵²

Recital 35 presents examples of how member states should enforce measures, to avoid unpredictability for workers.¹⁵³ 'Such measures could take the form of limitations to the use and duration of such contracts'. Additionally, the rebuttable presumption of an existent employment contract or alternatively an employment arrangement with a guaranteed number of paid hours.¹⁵⁴

¹⁴⁴ Ibid; see Collins, Ewing and McColgan, 242.

¹⁴⁵ Ibid, 121.

¹⁴⁶ Collins, Ewing and McColgan, 225.

¹⁴⁷ Davies, 122.

¹⁴⁸ See Taylor Review.

¹⁴⁹ Ibid 35.

¹⁵⁰ Katie Bales and Alan Bogg, "Voice' and 'Choice' in Modern Working Practices: Problems With the Taylor Review' (2018)

47 Industrial Law Journal 46, 75.

¹⁵¹ Transparent and Predictable Working Conditions Directive 2019, Recital 36

¹⁵² Ibid

¹⁵³ Transparent and Predictable Working Conditions Directive 2019, Recital 35

¹⁵⁴ Ibid

Additionally, workers with six months of employment have the right to 'request' to transfer to a more secure and certain form of working schedule.¹⁵⁵ This demonstrates how workers with less security like those with zero hour, on demand and temporary contracts can transition to a more permanent role, thus more transparent and predictable as the directive aims to be.

In the UK, temporary, on demand and casuals do not currently have a right to request a transfer to a more secure or permanent form of working. This is only possible if an individual is under a fixed term contract under the Fixed Term Employees Regulation.¹⁵⁶ So far, the UK has not provided this type of protection for the kind of workers considered by the Directive.

However, a new right to request a more predictable working arrangement after 26 weeks of service was being proposed by the government following the Taylor Review¹⁵⁷. This is being envisaged in a suite of reforms considered by the current government under the Employment Bill 2019. This new proposed right is 'aimed at those engaged under contracts with variable and unpredictable hours, such as zero-hours employees'¹⁵⁸. This was the subject of a [2019 consultation](#)¹⁵⁹, for which the government response has not yet been published.

10. What changes do you anticipate from your national legislator in order to comply with the Directive?

The Transparent and Predictable Directive is required to be implemented by Member States, by August 2022. Therefore, the UK would need to consider whether the provisions of the directive that are not already implemented to be reflected in UK employment legislation. Yet, the substantial issue remains that the United Kingdom (UK) has now left the EU and the transposition deadline is after the UK have exited. This indicates that the UK (United Kingdom) would no longer be required to comply with (EU) law, as the UK has now left the EU.

However, the UK does already cover some rights that are included in the directive, as the rights are mentioned in the Employment Rights Act. The Directive indicates that employees have the right to be informed of their rights and obligations of the working relationship at the start of employment.¹⁶⁰ This has been covered in answer three.

Moreover, the Taylor Review was a national effort to perceive how employment law can protect workers that are not safeguarded under UK employment law, such as on demand workers.¹⁶¹ This included assessing employment quality and observing whether job security and predictability of

¹⁵⁵ Bartłomiej Bednarowicz, 'Delivering On The European Pillar Of Social Rights: The New Directive On Transparent And Predictable Working Conditions In The European Union' (2019) 48 Industrial Law Journal 619

¹⁵⁶ The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002

¹⁵⁷ Department of Business, Energy and Industrial Strategy, 'Good Work Plan' (2018) 10

¹⁵⁸ The Gazette, *Employment Law : what to expect in 2021* <<https://www.thegazette.co.uk/all-notices/content/103851>>

¹⁵⁹ *Good Work Plan: one-sided flexibility - addressing unfair flexible working practices* <<https://www.gov.uk/government/consultations/good-work-plan-one-sided-flexibility-addressing-unfair-flexible-working-practices>>

¹⁶⁰ Transparent and Predictable Working Conditions Directive 2019, Art. 4 and recital 23

¹⁶¹ Department for Business, Energy & Industrial Strategy, 'Good Work: The Taylor Review Of Modern Working Practices' (2017)

working hours for zero-hour contracts was possible.¹⁶² Therefore, the Taylor Review was beneficial, as it presented the gaps in the current employment law.

Nevertheless, the UK employment law does not currently reflect proposals made by the Directive. Firstly, current employment law in the UK has not included the employer needing to state the number of guaranteed paid hours and the days which workers could be required to work.¹⁶³ The legislation also does not consider the ban on probation exceeding six months and compensation for assignments that are cancelled after a reasonable deadline.¹⁶⁴

Furthermore, the employment law in the UK does not consider how if the employers use on demand or similar contracts, they must presume an employment contract with a minimum number of paid hours.¹⁶⁵ Therefore, the UK does not represent all of the provisions suggested by the directive.

Yet, the Taylor Review did illustrate support for consideration of guaranteed pay and hours, transparency and zero-hour contracts¹⁶⁶. Additionally, the Good Work Plan did make suggestions in how to implement the Taylor Review for example recommendations to introduce the right to reasonable notice of work schedule and compensation for shift cancellation.¹⁶⁷ Therefore, the Good Work Plan did consider some aspects that have not been implemented by the directive.¹⁶⁸

Therefore, some of the provisions contained in the directive have not been contemplated by UK employment law however there is an employment bill that will be put before Parliament. This bill will include measures to inform employees about rights, a new right to a more predictable and stable contract after 26 weeks of service (as discussed above).

¹⁶² Ibid

¹⁶³ Transparent and Predictable Working Conditions Directive 2019

¹⁶⁴ Ibid

¹⁶⁵ Ibid

¹⁶⁶ The Taylor Review 'Of Modern Working Practices' (2017)

¹⁶⁷ Department of Business, Energy, and Industrial Strategy, 'Good Work Plan' (2018)

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