

# Industrial Relations **United Kingdom: Developments in working life 2018**

[Working life in 2018 – Annual review](#)

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## **Political context affecting working life aspects**

The UK's pending exit from the European Union – due to take place on the 29<sup>th</sup> of March 2019 - is unsurprisingly dominating government efforts, attention and resources. This has two major implications for social dialogue practices involving the social partners. One is that - in a national context where there are few institutionalised fora for such activity and where the partners have repeatedly reported that such dialogue and consultation was never well-done – there is a little incentive for government to engage in such practice, let alone improve upon existing practice. If the UK is leaving the EU, the government will not feel bound by existing prescriptions and procedures. The other is that given the dominance of Brexit, in addition to the fact that the Government has no overall majority in Parliament (meaning difficulties in passing legislation), there has been little else on the domestic policy and legislative agenda, including employment and labour market policy (Helm, 2018).

## **Labour market reforms or major packages of working life regulations**

With this caveat in mind (i.e. little on the domestic and legislative agenda), some labour market reforms have been initiated. Moreover, some new legislation has been enacted. Forthcoming reforms include the Government's response to the Taylor Review of Modern Working Practices and its subsequent Good Work Plan, as well as the long-awaited Immigration White Paper. In August, the government cited its intention to largely retain existing workplace rights in the event of a 'no deal' Brexit.

Legislative changes implemented include the duty on organisations to publish the first gender pay gap reports, as well as executive pay gap reporting. In December 2018, the government also pledged to introduce a statutory code on workplace sexual harassment.

Further details of each measure will now be outlined, in chronological order.

### **7<sup>th</sup> February: Government response to the Taylor Review**

Matthew Taylor's report for the government, 'Good Work: the Taylor review of modern working practices' (UK Government, 2017), was published on 11 July 2017. The Government's response to the report, accepting all but one of Taylor's recommendations, was published in February 2018. It was accompanied by four Government consultations on how best to bring about the suggested reforms, divided into four separate categories: Employment status; Increasing transparency in the labour market; Agency workers; Enforcement of employment rights.

### **30<sup>th</sup> March: Gender Pay Gap Reporting: First Reports (public sector)**

Specified public authorities, including government departments, the armed forces, local authorities, the NHS and state schools, with 250 or more employees, were required to publish their first gender pay gap reports by this date, based on data gathered on 31 March 2017.

The same 'data snapshot' and reporting dates apply from now on under the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017, which are largely the same as those that apply to private and voluntary sector organisations of the same size.

### **31<sup>st</sup> March: Fit for Work assessment scheme ends**

The government announced the scrapping of the ‘Fit for work’ assessment scheme in December 2017. Launched three years previously, the scheme consisted of a free information service - providing advice on health, work, and managing sickness absence - and a free occupational health assessment service for employees who had reached, or were likely to reach, four weeks of sickness absence. Most referrals were expected to be made by GPs, but employers were also able to refer employees off sick for more than four weeks.

Employers, employees and GPs can still use the ‘Fit for work’ helpline, website and web chat service, but the assessment service closed in England and Wales on 31 March 2018, and in Scotland on 31 May 2018.

The closure, announced alongside a 10-year strategy paper for getting more disabled people into work called ‘Improving lives: the future of work, health and disability’ (DWP, 2018), is attributed to a low referral rate.

### **4<sup>th</sup> April: First gender pay gap reports (private sector)**

Private and voluntary sector employers in England, Wales and Scotland with at least 250 employees are required to publish information about the differences in pay between men and women in their workforce, based on a pay bill ‘snapshot’ date of 5 April 2017, under the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017. The first reports should have been published by 4 April 2018.

The Equality and Human Rights Commission launched a consultation which closed on 2 February 2018, on proposals to enforce the reporting requirements (see above).

### **6<sup>th</sup> April: Compensation Limits**

Tribunal compensation limits increased from 6 April 2018. The new rates are:

Limit on guaranteed payments – £28

Limit on a week’s pay – £508

Maximum basic award for unfair dismissal and statutory redundancy payment – £15,240

Minimum basic award for unfair dismissal – £6,203

Maximum compensatory award for unfair dismissal – £83,682

### **Executive pay gap reporting**

New regulations under the Companies Act 2006, made on 17 July 2018, require UK listed companies with more than 250 UK employees to report annually on the pay gap between their chief executive and their average UK worker, from 2020 onwards. Around 900 businesses will have to state, in their directors’ remuneration report, the pay gap between their CEO and a representative employee from the: 25th pay percentile; median pay band; 75th pay percentile. Companies can choose between three options for calculating the pay gap but must account for their choice in the report. They must also say, in their annual reports, what action they’ve taken to improve employee engagement and consultation.

The new regulations come in to force on 1 January 2019.

### **23<sup>rd</sup> August: Workplace rights in a ‘no-deal Brexit’**

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Government guidance, published on this date, confirms there will be no overall changes to workplace rights in the event of a ‘no deal’ Brexit (BEIS, 2018). The technical notices specify that rights derived from EU law – such as annual paid leave and other working time rights, family friendly rights, protection from discrimination, harassment and victimisation, and from less favourable treatment for agency, part-time and fixed-term workers – will continue to apply after 29 March 2019. There are only two areas of change specified: employees working for a UK employer outside of the UK may not be protected in the event of their employer becoming insolvent, and no new requests may be made to set up a European Works Council in the UK after that date.

### **18<sup>th</sup> December: Government publishes its ‘Good Work Plan’**

On the 18<sup>th</sup> of December, the Government published its Good Work Plan (UK Government, 2018), which builds on its earlier response to the Taylor Review of Modern Working Practices of July 2017. The Review had looked at issues such as the implications of new forms of work, the rise of digital platforms and the impacts of new working models, making 53 recommendations. The Plan sets out what the Government describes as “ambitious” proposals for employment law reform, together with feedback from the four recent consultations on employment status, transparency, agency workers and enforcement.

The Government states that it has accepted the vast majority of the Taylor Review recommendations and proposes legislative changes “to ensure that workers can access fair and decent work, that both employers and workers have the clarity they need to understand their employment relationship and that the enforcement system is fair and fit for purpose”.

Included amongst the planned reforms are the composition of detailed proposals to align the employment status tests used in the employment law and tax contexts; legislation to improve the clarity of employment status tests to tackle the problem of businesses misclassifying their staff; providing all workers with the right to request a more stable contract after 26 weeks on a non-fixed pattern; the repeal of the “Swedish Derogation” which currently allows agency workers to be paid less than if they were directly hired provided they have a contract of employment with the agency and are paid between assignments; an increase in state enforcement protections for agency workers when they have pay withheld or unclear deductions made by an umbrella company; legislation to ban employers from making deductions from staff tips; an increase in the maximum level of penalty that the Employment Tribunal can impose in instances of aggravating conduct by employers from £5,000 to £20,000; and the bringing forward of proposals in early 2019 for a new, single labour market enforcement agency.

### **18th December: Code of practice on sexual harassment**

The government stated on this date its intention to introduce a new statutory code of practice on dealing with workplace sexual harassment, which would include what actions employers

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need to take to prevent it and how staff can report it. The code, which will be developed by the Equality and Human Rights Commission, was among a package of 12 measures designed to tackle sexual harassment at work. They included consultations on:

- strengthening the law with regard to non-disclosure agreements
- introducing a new legal duty for employers to prevent sexual harassment (including from third parties)
- protecting interns and volunteers from all forms of discrimination
- extending the three-month time limit for bringing a discrimination claim.

### **19th December: Immigration White Paper**

The government published its long awaited white paper on immigration arrangements that will apply when free movement of EU workers ends following Brexit.

The proposals for a new skills-based immigration system, that will apply both to EU migrants and those from elsewhere, follow the recommendations of the Migration Advisory Committee and include:

- removing the annual cap on the number of work visas that can be issued
- widening the skills threshold to include migrants with A-level equivalent qualifications
- ending the labour market test for employers wishing to sponsor a worker.

The government is to consult on what would be an appropriate salary threshold (currently £30,000 a year) for the skilled migrant route. There is also to be a new 12-month temporary work visa for workers of any skill level.

### **Social partners' views and reactions on changes in governments and working life policies**

Although there has been no new government, the ongoing Brexit discussions – and the potential impact of Brexit on future jobs and employment regulation in future - are a salient discussion point here. Prior to the referendum in 2016, the CBI had warned that a vote to leave would result in the loss of 950,000 jobs across the UK economy. The CBI has argued since that work would be moved out of the UK and jobs lost, unless the government finalised a Brexit withdrawal agreement by December (*The Independent*, 2018). The CBI also published survey evidence in April 2018, reporting that the majority of UK firms were in favour of retaining of retaining EU legislation on employment rights, as the cost of changing regulations 'outweighs any economic benefits and would reduce access to the European market' (CBI, 2018).

Regarding the draft Withdrawal Agreement (since resoundingly rejected by Parliamentary vote on the 15<sup>th</sup> of January), the CBI had supported the proposed deal, viewing this as the best way to avoid a damaging no-deal. It identified the two major benefits of the agreement as being the avoidance of a cliff-edge exit and in it paving the way for a long-term trade deal.

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On the side of labour, the TUC has consistently argued for a ‘jobs and rights-first Brexit’, with the following objectives. Firstly, the retention of all workers’ rights that have emanated from the EU as well as ensuring that UK workers get the same rights as workers in the future. Secondly, the prevention of a ‘job-destroying’ no-deal Brexit; the TUC is trying to ensure that a final Brexit deal offers tariff-free, barrier-free, frictionless trade with the rest of Europe. Third, the TUC wants the rights of EU citizens working in the UK and those of UK citizens working abroad to be guaranteed.

More recently, the trade unions have since been unanimous in their condemnation of the proposed withdrawal agreement. For example, the TUC’s General Secretary accused the government of failing to achieve a Brexit deal that delivers for working people, describing the Agreement as a ‘blindfold Brexit’, which fails to guarantee jobs or rights at work into the future. They have criticised the Withdrawal Agreement on a number of grounds, mainly for its ambiguity around how any agreement on rights between the EU and UK will be enforced; because future rights will no longer apply and because the only employment rights commitments that cover any future relationship with the EU are in the draft – and non-binding - Political Declaration. The TUC have thus called for the Prime Minister to secure an extension of Article 50 so that an alternative plan can be created.

## **Developments in industrial relations 2018**

### **Changes affecting the national-level actors and institutions in 2018**

#### *Actors*

There were no changes.

#### *Representativeness*

No changes. The issue of representativeness is largely unregulated in the UK. Formal ‘representativeness’ criteria for trade unions and employer bodies are generally not used. Representation is conducted largely on a voluntary basis, and is most commonly conducted at the workplace level.

#### *Institutions*

On the 10<sup>th</sup> March 2018, regulations published under Section 15 of the Trade Union Act 2016 came into force - the Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2017. These apply to ‘check off’ arrangements i.e. the deduction of union subscriptions from a worker’s pay. Section 15 of the Act permits public sector employers to provide “check off” only if their workers have the option to pay union subscriptions by other means; and, also, arrangements have been made to make reasonable payments to the employer for making the deductions.

Public authorities encompassed are (a) any department of the Government of the UK; (b) the Scottish ministers and (c) any of the 191 public authorities listed in the schedule. This schedule comprises local authorities, the NHS, maintained schools and other educational institutions, police staff and 147 “other bodies”.

## **Changes affecting the sectoral and company level social dialogue 2018**

There were no changes.

### *Innovation in collective bargaining*

It should be noted that collective agreements, as they are predominantly concluded at workplace or company level, are not in the public domain and thus, it is difficult to obtain information about substantive issues and the content of such agreements. Internet searches have not uncovered information pertaining to any such innovations.

## National social dialogue in 2018 – Scope and Contribution

It should be noted that there are no real institutionalised social dialogue fora in the UK. Owing to the UK voluntarist tradition, policy concertation has been uncommon and there are currently few formal mechanisms or forums for tripartite concertation in the country. The main social partners – the CBI and TUC – may occasionally issue joint statements (e.g. in concerns over Brexit). They may be directly consulted by government on an informal basis, and also respond to government consultations, on an individual basis.

Theme	Description	Social dialogue interaction	Social dialogue outcome and/or output
<b><i>Employment - Impact of Brexit</i></b>	The ongoing Brexit discussions - and the potential impact of Brexit on future jobs and employment levels - may be of relevance here. Prior to the referendum in 2016, the CBI had warned that a vote to leave would result in the loss of 950,000 jobs across the UK economy. The CBI has often articulated its belief that work would be moved out of the UK and jobs lost, unless the government finalised a Brexit withdrawal agreement by December (The Independent, 2018). More recently, the CBI has argued that a no-deal Brexit will have profound economic consequences with GDP shrinking by up to 8%, putting thousands of jobs at risk (The Guardian, 2018). This followed warnings by the car industry as to the negative impact of a no-deal Brexit and its potential for large-scale job losses.	Both bodies have issued statements, made high-level speeches and have published research findings on the subject. The TUC has also consistently warned of the impact of a no-deal Brexit on employment levels. In September, it published its report, 'How are we doing? The impact of Brexit at industry-level' (TUC, 2018). Part of the analysis focuses on the potential loss of jobs and economic activity as a result of reduced trade with the EU. The study found that four sectors stand out: business administration, professional and technical services (670,000 jobs at risk), manufacturing (447,000 jobs at risk); transport and storage (250,000 jobs at risk) and finance. Khan, S. (2018) 'Jobs will be lost if Brexit deal not reached by December, business leader warns,' The Independent, 21 October. O'Carroll, L. (2018) 'No-deal Brexit would put thousands of UK jobs at risk, CBI warns.' The Guardian, 10 January.	As yet, no finalised outcome. There is, in effect, a constitutional crisis. The Prime Minister has failed to secure the backing of Parliament for the draft Withdrawal Agreement and thus, it appears that the UK may leave the EU with no deal on the 29th of March.

Theme	Description	Social dialogue interaction	Social dialogue outcome and/or output
<p><b><i>Skills, training and employability - Apprenticeship levy</i></b></p>	<p>The CBI has been vocal in its criticism of the Government's skill system reforms, principally the Apprenticeship Levy. It has reported that programmes such as the levy have 'alienated' firms and has accused successive governments of adopting a 'short-term approach to tackling the UK's skills shortages. The CBI has argued that 28 separate policy reforms in the past 30 years has led to confusion and failed to deliver on what was needed to improve skills. In its 2018 Education and Skills Annual Report (based on responses from 28,000 businesses), it stated that there has been a drop in the number of firms offering apprenticeships (from 81% in 2017 to 75% in 2018). It also found that two-thirds of respondent firms are 'deeply concerned' as to there being sufficient numbers of qualified people to fill vacancies. The TUC has not published on the subject of the apprenticeship levy or skills system this year, following detailed discussion of the levy at the end of 2017.</p>	<p>The CBI continues to lobby for cessation or reform of the apprenticeship levy.</p>	<p>The levy is a mandatory requirement on business, thus legislation has already been passed. However, the CBI continues to lobby and press for change. Ongoing; please see discussion of skills and migration below.</p>
<p><b><i>Benefits - Social security reform</i></b></p>	<p>Universal Credit is the Government's major social security reform programme. It brings together most of the means-tested benefits and tax credits for people of working age and is simplifying them into one benefit. Eventually, around seven million people are set to be on the new benefit - including half of all families with children. It has dominated policy-making for five years and thus far, has only been rolled out in trial areas for new claimants or those whose circumstances have changed. However, in the areas where it's been rolled out already, it's been plagued by problems that are pushing more people into poverty, including pushing more people to foodbanks, increasing rent arrears and causing problem debt. Transfer onto UC is not automatic and the onus is on claimants. It is a complex application process and moreover, there is a risk that existing benefits will be stopped prior to transfer to the new system. Moreover, existing claimants have to wait a minimum of five weeks for their first UC payment. With a fifth of adults in the UK having less than £100 in savings (NAO, 2018), many claimants won't have enough money to get through this five-week period. Despite these issues, the government is planning to plough on with the transfer of around 3 million existing benefit claimants onto UC from January 2019. The TUC (2018) has called for the rollout to be halted and for UC to be scrapped. The CBI has not published a position. National Audit Office (2018) 'Tackling Problem Debt.' TUC</p>	<p>The TUC continues to highlight the problems of the 'managed migration' process and calls for the scheme to be scrapped.</p>	<p>Unilateral government decision, continues with roll-out, although has made some minor modifications following negative publicity.</p>

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Theme	Description	Social dialogue interaction	Social dialogue outcome and/or output
	(2018) 'Universal Credit is driving workers into poverty - stop and scrap it now.' 12 October.		
<b><i>Wage setting - Higher wages demanded</i></b>	The stagnation of real wage levels over the past ten years continues to be highlighted by the trade union movement. In December, a TUC study reported that wages are still worth a third less in some parts of the country than a decade ago. The TUC research found that the average worker has lost £11,800 in real earnings since 2008. TUC (2018) Real wages still down over £100 a week in some parts of the North West, TUC analysis reveals.	Continued focus by the TUC through statements, press releases and publication of research.	This is not really a subject of dialogue. The TUC continues to raise the issue and calls for a 'real' Living Wage' to be implemented, as part of its proposals for boosting wage levels. The CBI was opposed to the introduction of the Living Wage. It has not commented on wage levels per se.
<b><i>Working time - regulation post-Brexit</i></b>	The trade union movement continues to raise concerns over the possible scrapping of the Working Time Regulations (and other EU-derived employment protections) as a result of the implementation of Brexit. The CBI published survey findings on employer desire to maintain EU-derived employment rights following Brexit.	Issuing of statements, press releases and publication of research findings.	Still ongoing and much uncertainty about the 'deal' that will be struck, if indeed, one is.

Theme	Description	Social dialogue interaction	Social dialogue outcome and/or output
<b><i>Other aspects of working life - Post-Brexit Immigration</i></b>	Both bodies produced responses to the recommendations of the Migration Advisory Committee, published in September. The MAC recommendations formed the basis of the subsequent Government White Paper on Post-Brexit Immigration, published in December. UK Government (2018) 'The UK's Future Skills-based Immigration System.'	Both bodies submitted responses to the original consultation, as well as to the ensuing recommendations. Both have campaigned and lobbied around the issue.	Ongoing debate, campaigning and lobbying.
<b><i>Terms and conditions of employment - Good work plan</i></b>	The Government published its Good Work Plan in December, which sets out its proposals for meeting the recommendations made by the Taylor Review of Modern Working Practices in 2017. Both the TUC and CBI had made submissions to the Taylor Review itself, the government response that followed and the four government consultations that subsequently ensued. Both bodies have since published positions on the Plan itself.	Both have released statements and posted responses on their websites, after submitting responses to the consultations. Both bodies will continue to campaign and lobby.	Both bodies will continue to campaign and lobby, in efforts to shape future legislation, The TUC will continue to campaign for a strengthening of rights.
<b><i>Health, safety and well-being at work - Mental health</i></b>	<p>Both the CBI and TUC are lobbying around the need for measures to improve mental health in the workplace. The TUC has increased its calls for all employers to take active steps to tackle work-related stress and its underlying causes. To this end, it has produced a Mental health and the workplace booklet and an eNote on mental health, as well as continuing to research mental health in the workplace.</p> <p>The CBI has focused on the loss of working days as a result of mental ill-health and stress, and in September, it published research findings and a report on mental health in the workplace. This is entitled Front of mind (CBI, 2018) and is a good practice guide for mental health. It has also called on the government to ensure that health insurance remains accessible to employees, arguing that the Government should avoid any further increases in the Insurance Premium Tax rate for this Parliament. The CBI also calls for the government to assess how health-related benefits such as health insurance can support health &amp; wellbeing in the workplace and alleviate pressures on the NHS.</p>	Campaigning and lobbying around the issue; releasing statements and position papers, as well as publishing research findings.	Both bodies will continue to campaign and lobby on the issue.

No major social dialogue debates were held on the following themes: Pension reforms; Taxation and non-wage related labour costs; Work-life balance.

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## **Selected major social dialogue debates**

### *The Migration Advisory Committee proposals*

Both the CBI and TUC have campaigned around the issue of post-Brexit immigration and both produced responses to the MAC recommendations, which went on to form the basis of the Government's recently published White Paper. The new system will end free movement and proposes a single, skills-based system instead.

The TUC responded stating that the MAC report recommendations endorsed several TUC policies on migration, in particular its calls for:

- The cap for non-EU skilled workers (Tier 2 in the government Points Based System) to be abolished
- Pay to be increased in the care sector to address labour shortages
- The government to look into mechanisms to increase pay in the agriculture sector to address labour shortages
- No regional variations in the immigration policy

However the TUC voiced concerns about other elements of the report, notably the fact it:

- Doesn't engage with the context of Brexit negotiations
- Advocates a more restrictive migration policy that prioritises 'high skill' migration that could increase risk of workers in 'low skill' jobs becoming undocumented and exploited
- Fails to recommend measures to prevent exploitation of migrant workers
- Calls for salary thresholds for all migrants in Tier 2. This would make it more difficult to fill roles that are currently facing shortages
- Calls for retention of the Immigration Skills Charge. While the TUC believes there should be more employer investment in skills, having a special levy on recruitment of migrants risks increasing the general stigma around migration.

The TUC states that it will continue to engage with the MAC and government to address concerns about the report/subsequent White Paper and will press for a migration policy that promotes equal treatment and rights for all workers, combined with significantly increased investment in skills training and public services

The CBI responded by stating that the MAC recommendations omit a critical issue by not advocating that migration should be part of trade negotiations, starting with the EU. The CBI argues that there should be preferential access for countries with which the UK has trade deals with. The CBI also agrees with the proposal to scrap the Tier 2 cap but condemns the retention of the £30,000 salary threshold. It also disagrees with plans outlined for low-skilled workers, which it describes as inadequate and with the potential to exacerbate labour shortages.



### *The Government's Good Work Plan*

On the 18<sup>th</sup> of December, the Government published its Good Work Plan, which builds on its earlier response to the Taylor Review of Modern Working Practices of July 2017. The Review had looked at issues such as the implications of new forms of work, the rise of digital platforms and the impacts of new working models, making 53 recommendations. The Plan sets out what the Government describes as “ambitious” proposals for employment law reform, together with feedback from the four recent consultations on employment status, transparency, agency workers and enforcement. The Government stated that it has accepted the vast majority of the Taylor Review recommendations and proposes legislative changes “to ensure that workers can access fair and decent work, that both employers and workers have the clarity they need to understand their employment relationships, and that the enforcement system is fair and fit for purpose”.

Included amongst the planned reforms are the composition of detailed proposals to align the employment status tests used in the employment law and tax contexts; legislation to improve the clarity of employment status tests to tackle the problem of businesses misclassifying their staff; providing all workers with the right to request a more stable contract after 26 weeks on a non-fixed pattern; the repeal of the “Swedish Derogation” which currently allows agency workers to be paid less than if they were directly hired provided they have a contract of employment with the agency and are paid between assignments; an increase in state enforcement protections for agency workers when they have pay withheld or unclear deductions made by an umbrella company; legislation to ban employers from making deductions from staff tips; an increase in the maximum level of penalty that the Employment Tribunal can impose in instances of aggravating conduct by employers from £5,000 to £20,000; and the bringing forward of proposals in early 2019 for a new, single labour market enforcement agency.

The TUC had lobbied for the ending of the Swedish Derogation but had also wanted the Government to go further by banning zero-hours contracts; to crack down on bogus self-employment and ensure workers enjoy the same employment rights as employees; allowing trade unions to access workplaces in order to represent and organise vulnerable workers and; a large increase in powers and resources for enforcement. The CBI's (2018) initial response was to state that there is a strong business case for the Good Work Agenda and that it is important in securing employee engagement. It said the new right to request more stable patterns of working but does not wish to see new legislation amending employment status tests. It also said that the scrapping of the Swedish Derogation should be phased in. It also rejected the plan to name and shame employers who do not pay employment tribunal awards.

### **Unilateral government actions – without social dialogue**

There are little formal and institutionalised social dialogue and policy concertation in the UK and thus, most of the governments actions can be seen as unilateral in this sense. Open consultations on issues/potential legislation are run and both social partners will produce submissions. They also continue to campaign and lobby around issues, in efforts to influence government action and policy/legislative outcomes.

## **Collective labour disputes in 2018**

### **Changes in the regulation of collective labour disputes**

No changes in the regulation of collective labour disputes in 2018.

### **Selected major labour disputes of national significance**

On the 22<sup>nd</sup> February, university lecturers began strike action as part of dispute over proposed changes to their pension scheme (Adams, 2018). The first wave of strike action escalated over fourteen strike days, between the 22<sup>nd</sup> of February and the 20<sup>th</sup> of March, taking place at sixty-five universities across the UK. This was the longest-ever strike in UK higher-education history.

An estimated 42,000 staff went on strike, with 575,000 teaching hours being lost. As of 28 March 2018, more than a million students were estimated to have been affected, with 126,000 students signing petitions calling for fee refunds. However, students also occupied campus buildings in support of striking staff at more than a dozen universities.

Moreover, major industrial action has been ongoing on the UK's national railway network since April 2016 (most recently, on the Northern network in December 2018), due to controversy surrounding the planned introduction of driver-only operation (DOO) by several train operating companies, abolishing the role of the train guard in operating passenger train doors (this role could be performed by train drivers themselves). Later strikes also included industrial disputes over pay rates, planned redundancies and working hours as factors.

Opponents of DOO claim that the scheme is unsafe to passengers as drivers may not have as good a visibility of the train doors as guards do. Opponents of DOO also claim that the scheme could lead to hundreds of job losses to train guards, although several train operating companies have denied this, stating that guards will be redeployed to an otherwise equivalent role, which is to be retained, on-board.

The strikes started on 26 April 2016, initially on Govia Thameslink Railways and Southern trains, and have since spread to eight more rail franchises across the country. The strikes were led initially the National Union of Rail, Maritime and Transport Workers (RMT), joined by the Associated Society of Locomotive Engineers and Firement (ASLEF) in November 2016, followed by the Transport Salaried Staffs Association (TSSA) union in January 2018.

## **Working time 2018**

### **Changes in the regulation of working time 2018**

#### *Legislation on working time duration or organisation*

No changes.

#### *Collective bargaining outcomes on working time duration or organisation*

As collective bargaining occurs at workplace or company-level, and such agreements are rarely in the public domain, there is little data to report here. The Labour Research Department's 2018 Pay Survey, which takes into account 1,062 settlements that came into force between 1 August 2017 and 31 July 2018, working and non-working time (including the working week, paid leave, overtime, sick pay and so on) were addressed in 12% of settlements, the same proportion as in the last three pay rounds.

#### *Major debates concerning working time duration or organisation*

The trade union movement continues to raise concerns over the possible scrapping of the Working Time Regulations – and other EU-derived employment protections – as a result of the implementation of Brexit (TUC, 2018).

## **Health and well-being at work 2018**

### *Physical working environment*

In July, the Government issued draft regulations, designed to ensure that European Union-derived health and safety protections will continue in domestic law after the UK leaves the EU. These are the *Health and Safety (Amendment) (EU Exit) Regulations 2018*. The government has said that, in the case of some protections, technical amendments to existing legislation will be required to ensure effective operation.

The regulations, which have been made under powers in Section 8 of the EU (Withdrawal) Act 2018 (EUWA), will amend 11 sets of regulations and one directly acting EU regulation and include changes to the Control of Major Accident Hazards Regulations 2015; the Control of Substances Hazardous to Health Regulations 2002; the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015; and the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995.

The Department for Work and Pensions laid the draft statutory instrument before parliamentary scrutiny committees in July 2018 as part of the “parliamentary sifting mechanism” contained in the EUWA.

The EUWA gives government ministers the power to decide whether the regulations to ensure legal provisions based on EU law continue to be effective once the UK leaves are “affirmative” instruments, which would require a parliamentary debate. Ministers can also decide if they should be “negative” instruments, which would mean they can come into force without any debate.

The “parliamentary sift”, which ended on the 11<sup>th</sup> of October, allowed the Joint Committee on Statutory Instruments and the Committees on the UK’s exit from the European Union to recommend that a proposed negative instrument should be upgraded to an affirmative instrument.

One of the most significant amendments is to the Control of Major Accident Hazards Regulations 2015. Regulations 17 and 20(1) require specified information to be made available to other member states where they could be impacted by a major accident. Although this will no longer apply from exit day, the UK would still be under an international obligation to share certain information around potential transboundary effects of major accidents through being party to the UNECE Transboundary Effects of Industrial Accidents Convention (TEIA).

Another key amendment relates to regulation 26(3) which places a duty on the competent authority to provide the European Commission (EC) with specified information about major accidents, which meet the criteria in schedule 5, within a specific timeframe. The government proposes that this requirement should be removed. It argues that under the UK’s membership of the Organisation for Economic Co-operation and Development and as a party to the UNECE TEA Convention, the UK would share information for lessons learned and international best practice purposes using the EC’s database.

Amendments to the Control of Substances Hazardous to Health Regulations 2002 include allowing the Health and Safety Executive (HSE) to make exemptions, by a certificate in writing, from the prohibitions imposed on the import of certain substances and articles from outside the European Economic Area. Currently, exemptions are only permitted by article 9 of Directive 98/24/EC, which sets out the circumstances for granting exemptions and the information provided by the employer making the request.

In the offshore sector, regulation 32 of the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015, requires the exchange of knowledge, information and experience between the competent authority – the UK Health and Safety Executive – and authorities in other member states and through the European Union Offshore Oil and Gas Authorities Group (EUOAG). The proposed amendments would include removing the competent authority’s duty to share information with other member states and the EUOAG from exit day.

In addition to the EU Exit Amendment Regs, other developments include the Ionising Radiation Regulations 2017 which came into effect on 1 Jan 2018. These relate to any organisations that use X-ray equipment, such as hospitals and dental or veterinary practices, and cover how employers should notify the Health and Safety Executive (HSE) that they work with ionising radiation, as well as introducing much stricter annual exposure limits for employees.

New PPE regulation changes will be enforceable from April 2018 placing greater onus on importers, distributors and retailers, who will share the responsibility for providing safe and effective products with manufacturers. This should mean that fewer lower specification and/or counterfeit goods enter the market, which can only be a good thing when it comes to ensuring the health and safety of UK workers.

In February, the Supreme Court ruling in *HM Inspector of Health and Safety v Chevron North Sea Ltd* offered clarity on how businesses respond to prohibition notices. The decision means organisations can now launch an appeal against a notice if they are confident they can gather the evidence needed to show that there is no serious risk of personal injury, even if this evidence is not available at the time the appeal against the notice is issued. Filing an appeal means a postponement in the posting of the prohibition notice on the HSE's public database pending the outcome of the appeal.

### *Psychosocial working environment*

In November, a number of UK employers called on the government to place mental health on the same level as physical first aid in employment and health and safety legislation. In an open letter sent on the 17<sup>th</sup> of November, a number of UK business leaders called on Prime Minister Theresa May to prioritise manifesto pledges to update legislation and act on mental health in the workplace. The changes mean that under health and safety law, employers would have to provide appropriate training to help employees deal with mental ill-health. Workplaces would also be required to make provision for mental as well as physical first aid. Moreover, if the manifesto pledge was enacted in full, the Equality Act would be changed so as to recognise “episodic and fluctuating” mental health conditions.

## **Employment status 2018**

On the 18<sup>th</sup> of December, the Government published its ‘Good Work Plan’, which builds on its earlier response to the Taylor Review of Modern Working Practices of July 2017. The Review had looked at issues such as the implications of new forms of work, the rise of digital platforms and the impacts of new working models, making 53 recommendations; of which, the Government claims to have mostly accepted. The Plan thus sets out what the Government describes as “ambitious” proposals for employment law reform, together with feedback from the four recent consultations on employment status, transparency, agency workers and enforcement.

### *‘Standard’ employment contracts*

In the Good Work Plan, the government has set out its intention to create detailed proposals to align the employment status tests used in the employment law and tax contexts as well as legislation to improve the clarity of employment status tests to tackle the problem of businesses misclassifying their staff.

### *Self-employed*

As above - the government has set out its intention to create detailed proposals to align the employment status tests used in the employment law and tax contexts as well as legislation to improve the clarity of employment status tests to tackle the problem of businesses misclassifying their staff.

The Government has also run a consultation on IR35 tax rules in the private sector. IR35 is a tax legislation that is designed to combat tax avoidance by workers supplying their services to clients via an intermediary body, such as a limited company, but who would be an employee if the intermediary was not used. Such workers are called ‘disguised employees’ by Her

Majesty's Revenue and Customs (HMRC). If caught by IR35, they have to pay income tax and National Insurance Contributions (NICs) as if they were employed.

In April 2017, IR35 'off-payroll' rules were applied to contractors working in the public sector. This effectively means that clients, not contractors themselves, are responsible for operating the IR35 rules. On the 18<sup>th</sup> of May 2018, HMRC published a consultation document – to assess the viability of expanding the legislation to the entire private sector. The deadline for responses closed on Friday 10th August. New legislation could be in place as early as April 2019.

### *Fixed term contracts*

The Good Work Plan sets out the Government's intention to provide all workers with the right to request a more stable contract after 26 weeks on a non-fixed pattern.

### *Temporary agency workers*

The Good Work Plan sets out the Government's intention to provide all workers with the right to request a more stable contract after 26 weeks on a non-fixed pattern. Moreover, it states the Government's intention to scrap the Swedish Derogation. This allows agency workers to be paid less than if they were directly hired, provided they have a contract of employment with the agency and are paid between assignments. The Good Work Plan also sets out proposals for an increase in state enforcement protections for agency workers when they have pay withheld or unclear deductions made by an umbrella company.

### *Posted workers*

No change.

### *Seasonal workers*

The Good Work Plan sets out the Government's intention to provide all workers with the right to request a more stable contract after 26 weeks on a non-fixed pattern.

### *Zero-hour contracts*

The Good Work Plan sets out the Government's intention to provide all workers with the right to request a more stable contract after 26 weeks on a non-fixed pattern.

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