

Zero Hours Contracts ReWAGE Policy Brief

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This ReWAGE policy brief reviews the existing evidence base of a range of dimensions concerning the legal and workplace practices associated with zero hours contracts (ZHCs). It begins with a short description of prevalence of ZHCs. It then reviews the evidence base on ZHC and, drawing on that evidence, offers policy considerations.

Examining the data on one-sided flexibility, pay insecurity, worker ability to assert their rights and worker health and wellbeing, it suggests that policy development needs to consider:

- Legislation to increase worker security and reduce employer non-compliance strategies
- Encouraging good practice amongst employers
- Improving firm-level management practices
- Modernising labour enforcement
- Improving data collection and analysis
- Creating a single ministry for employment

Introduction

Zero hours contracts (ZHCs) are not grounded in a single piece of legislation. Rather they are an outcome of long term, cross-party commitment to labour market flexibility, a perceived demand for flexibility from employers and individuals, and gaps in current employment protection. Policy solutions will need to be multi-faceted in their ambition, requiring legislative and enforcement considerations plus encouragement of good practice amongst employers and discouragement or prevention of employer anti-compliance strategies. Addressing ZHCs would also align with the general direction of travel for policy aiming to improve job quality not only at the UK level but also amongst devolved nations and (English) regions.¹

This policy brief reviews a range of dimensions concerning the legal and workplace practices associated with ZHCs. Other adjacent concerns need also to be taken into account alongside the considerations visited in this paper. These include the definitions of status in relation to taxation and its alignment with employment. And also the welfare benefit implications of changing status and amending the legal position of

¹ HM Government (2018) Good Work Plan, London: HM Government, <https://www.gov.uk/government/publications/good-work-plan/good-work-plan>; Fair Work Commission (2019) Fair Work Wales, <https://gov.wales/sites/default/files/publications/2019-05/fair-work-wales.pdf>; Fair Work Convention (2016) Fair Work Framework 2016, www.fairworkconvention.scot; Dickinson, P. (2022) Review of Employment Charters in the English Mayoral Combined Authorities, ReWAGE, <https://warwick.ac.uk/fac/soc/ier/rewage/publications>.

workers and employees. These matters are covered in the UK Government's Taylor Review and subsequent Good Work Plan.²

The policy brief reviews the evidence base on ZHC. Drawing on that evidence, it then offers policy considerations. It begins with a short description of ZHC prevalence.

ZHC prevalence

There is currently no robust data available to estimate the prevalence of ZHCs. There are two reasons. First, there are definitional problems³ compounded by a lack of understanding of ZHCs by both employers and workers.⁴ Second, the evidence base is variable in terms of what types of data is collected. As a consequence, ZHC working is sometimes inferred from data focused on precarious and non-standard employment, over which there are also many parallel concerns.

As to the first point, there is no formal legal definition of ZHCs. Their main features are that employers do not guarantee hours of work to the worker, workers agree to be potentially available for work, and are paid only for the work carried out. The power lies with the employer to identify the worker as an employee, worker (or self-employed). The inclusion of 'exclusivity clauses' (where a worker was obliged to agree to work for just one employer) in ZHCs was banned in 2014 (under the Small Business and Enterprise Act). The ban was later extended to other low paid workers under the Unenforceability and Redress Regulations 2022.

In 2022, the Office for National Statistics (ONS) estimated around 4% of people in employment were on ZHCs (approx. 1.2m individuals), with a relatively steady increase over the previous two decades.⁵

² Respectively, Taylor, M., Marsh, G., Nicol, D. and Broadbent, P. (2017) Good Work: The Taylor Review of Modern Working Practices. <https://www.gov.uk/government/publications/good-workthe-taylor-review-of-modern-working-practices>; HM Government (2018) *ibid*.

³ Rönblad, T., Grönholm, E., Jonsson, J., Koranyi, I., Orellana, C., Kreshpaj, B., Chen, L., Stockfelt, L., Bodin, T. Scand, J., (2019) Precarious employment and mental health: a systematic review and meta-analysis of longitudinal studies *Work Environ Health* 45(5):429-443.

⁴ CIPD (2022) Zero-hours contracts: evolution and current status. London: Chartered Institute of Personnel Development https://www.cipd.org/globalassets/media/knowledge/knowledge-hub/reports/zero-hours-contracts-report-aug-2022_tcm18-110465.pdf; CIPD (2013) Zero-hours contracts: myth and realities. London: CIPD, https://www.cipd.org/globalassets/media/knowledge/knowledge-hub/reports/zero-hours-contracts_2013-myth-reality_tcm18-10710.pdf.

⁵ ONS (2023) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts>; The basis for estimates changed in 2020. The impact of this change was considered by ONS to be small. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/changestohowweestimatethenumberofpeopleinemploymentonzerohourscontracts/2021-02-08>.

Growth of atypical contractual arrangements, including ZHCs, has been variously attributed to employer desire for cost minimisation in part responding to successive economic recessions, greater outsourcing of public sector work resulting in downward pressures on terms and conditions of employment, a reduction in union density and collective bargaining powers, technological advances facilitating scheduling and as a 'buffer' reaction to the increase in National Minimum Wages rates⁶. The most notable rise in ZHCs occurred over 2012-13, attributed by some to an increase in public awareness, parliamentary debate and media coverage of ZHCs.⁷

There are variations in use of ZHCs by industry. In mid-2023 the greatest prevalence was in accommodation and food (29%), health and social care (18%) and education (12%).⁸ ZHC 'workers' are more likely to be in low and fluctuating pay, and under employed, to be women, black women, in full time education and be younger or older ages.⁹ There is some variation in use of ZHCs across the UK, with incidence of workers is higher in the South East (168,000) and Yorkshire and Humber having the highest percentage of workers on zero hours contracts (4.4%) compared with UK average (3.6%).¹⁰

The worry is that the labour market experience of certain types of workers is more likely to feature ZHCs and their use is potentially discriminatory given the indicators of

⁶ Datta, N., Giupponi, G. and Machin, S. (2019) Zero-hours contracts and labour market policy, *Economic Policy*, 34(99), 369-427; McBride, J. and Smith, A. (2021) 'I feel like I'm in poverty. I don't do much outside of work other than survive': In-work poverty and multiple employment in the UK, *Economic and Industrial Democracy*, 43(3), 1440-1466 ; Rubery, J. and Grimshaw, D., (2014) New forms of employment Zero hours contracts – Casual work - UK – briefing paper, unpublished, available from author; Rubery, J., Grimshaw, D., Hebson, G. and Ugarte, S.M. (2015) "It's All About Time": Time as Contested Terrain in the Management and Experience of Domiciliary Care Work in Special Issue: *Human Resource Management in Health Care and Elderly Care*, England 54(5), 753-772; Smith, A. and McBride, J. (2022) 'It was doing my head in': Low-paid multiple employment and zero hours work, *British Journal of Industrial Relations*, 61(1), 3-23.

⁷ Adams, A. and Prassl, J. (2018) Zero Hours Work in the United Kingdom, ILO, Geneva; Cominetti, N., Costa, R., Datta, N. and Odamtten, F. (2022) Low Pay Britain: Low pay and insecurity in the UK labour market, London: Resolution Foundation; Farina E., Green, C. and McVicar, D. (2020), Zero hours contracts and their growth, *British Journal of Industrial Relations*, 58(3), 507-53; Koumenta, M. and Williams, M. (2018) An Anatomy of zero-hours contracts in the UK, *Industrial Relations Journal*, 50:1, 20-40; Richardson, J. (2023) Precarious pay and uncertain hours: Insecure work in the UK Labour Market, Living Wage Foundation.

⁸ For example, Bessa et al. (2013) estimated that over 50% of domiciliary carers were on ZHCs, Bessa, I., Forde, C., Moore, S. and Stuart, M. (2013) The National Minimum Wage, earnings and hours in the domiciliary care sector. University of Leeds and Low Pay Commission, https://www.researchgate.net/profile/Mark-Stuart-3/publication/259574414_The_National_Minimum_Wage_Earnings_and_Hours_in_the_Domiciliary_Care_Sector/links/00b7d52caa84be30ef000000/The-National-Minimum-Wage-Earnings-and-Hours-in-the-Domiciliary-Care-Sector.pdf; Rubery and Grimshaw (2014, op. cit.) estimated that 69% of domiciliary care providers used ZHCs.

⁹ Farina et al. (2020) op. cit.; ONS (2023) op. cit.; TUC (2023) <https://www.tuc.org.uk/news/bme-women-nearly-three-times-likely-be-zero-hours-contracts-white-men>.

¹⁰ ONS (2023) op.cit.

the profile of ZHC workers set out above. Certainly, ZHC experience can damage individuals' perceptions of future labour market security and lessen commitment to work.¹¹

The evidence base on ZHCs

Whilst prevalence is important, it provides no insight on employer practice in their use or the policy dilemmas. The evidence base sheds light on these issues.

Evidence is both qualitative and quantitative, focusing on managers and workers, and includes studies on different industries and sectors, with a significant body of research on workers' 'lived experience' of ZHCs.¹²

Mutuality or 'one sided flexibility' – the core concern

The core concern is whether ZHCs are of mutual benefit to the employer and worker or are used in a way that is unfair, disproportionately advantaging employers at the expense of workers – so called 'one sided flexibility'.¹³

The success of the 'British model of flexibility' in the labour market is widely cited amongst government and government commissioned work¹⁴ as a basis for the continuation of flexibility in individual contractual arrangements. The same evidence is also invoked as a barrier to an outright ban on ZHCs. Furthermore, exploration of one-sided flexibility has identified 'genuine examples of two-sided flexibility, and industries and businesses where flexible working arrangements suited the needs of both workers and employers'.¹⁵

By contrast, other evidence finds inappropriate use of contracts by employers which result in the advantages being weighted exclusively in favour of the employer. Moreover, questions are raised about employer use of them to purportedly to manage demand fluctuations. Whilst an industry such as hospitality may face peaks and troughs in demand or seasonality factors, work in other industries now characterised by use of ZHCs, such as social care and to a lesser extent education, is not seasonal

¹¹ Rydzik, A. and Bal, P. M. (2023) The age of insecurity: Insecure young workers in insecure jobs facing an insecure future. *Human Resource Management Journal*, 1–18. <https://doi.org/10.1111/1748-8583.12490>.

¹² The evidence base on social, including domiciliary, care workers on ZHCs is notably prevalent and potentially needs independent consideration.

¹³ Taylor et al. (2017) op. cit.

¹⁴ E.g. CBI (2018) Good Work is Flexible and Fair. <https://www.cbi.org.uk/articles/cbis-response-to-the-governments-consultation-on-the-taylor-review/>;

Department of Business, Energy and Industrial Strategy (2019) Good Work Plan: Consultation on measures to address one-sided flexibility https://assets.publishing.service.gov.uk/media/5d3079c1e5274a14f5b2a28a/Good_Work_Plan_one_sided_flexibility-consultation_.pdf; LPC (2018) op.cit; Taylor et al. (2017) op. cit.

¹⁵ LPC (2018) op. cit.

and likely to have regular and steady demand for labour.¹⁶ Where ZHC workers are in receipt of regular hours, the indication is that these contractual arrangements are potentially exploitative with, to date, no right to switch to a contract specifying regular work.¹⁷

Overall, the UK Government commissioned LPC report concurred with the Taylor Review's conclusion 'that one-sided flexibility is a problem ... the misuse by some employers of flexible working arrangements creates unpredictability, insecurity of income and a reluctance among some workers to assert basic employment rights'.¹⁸

From a worker perspective, the evidence base has pointed to a degree of support for the flexibility that ZHCs bring – again a factor used by policy commentators in rejecting an outright ban. Widely cited is a 2022 CIPD survey which reports high levels of 'satisfaction' among ZHC workers welcoming availability of ad hoc work (e.g. students) and those seeking greater flexibility in balancing work and home life.¹⁹ By contrast, other studies conclude that sections of ZHC workers report 'constrained choice' where they have no job alternatives, limited access to part-time working that fits with caring responsibilities, little or no additional financial or social support or because their industry has become dominated by ZHCs (care being widely cited).²⁰ A survey by the Centre for Economic Performance found that half of ZHC workers wanted more hours.²¹ Rather than signifying a support for greater work life balance, employer use of ZHCs signifies a 'retreat from organisational responsibility to provide jobs that facilitate WLB or reasonable adjustment, as well as any 'business case for diversity'.²²

Pay Insecurity

Pay insecurity associated with ZHCs' unpredictable and fragmented working hours is a cause for concern. The lack of guaranteed hours is objectively problematic, with pay insecurity compounded by low pay, unpredictability in income (related to consequent benefits criteria), inappropriate withholding of pay or holidays, unlawful use of 'rolled up holiday pay' and underpayment of NMW.²³

¹⁶ Rubery and Grimshaw (2014) op.cit.

¹⁷ Note the forthcoming right for eligible workers to request a predictable contract under the Workers (Predictable Terms and Conditions) Act <https://www.gov.uk/government/news/millions-get-more-power-over-working-hours-thanks-to-new-law>

¹⁸ LPC (2018) op. cit.

¹⁹ CIPD (2013) op. cit., though more recently CIPD (2022) op. cit. states that a 'significant minority' of ZHCs workers do not welcome this form of working.

²⁰ Datta et al. (2018) op. cit.; Moore, S., Tailby, S., Antunes, B. and Newsome, K. (2018) 'Fits and fancies': the Taylor Review, the construction of preference and labour market segmentation, *Industrial Relations Journal* 49(5-6), 403-419.

²¹ Datta et al (2018) op. cit.

²² Moore et al. (2018) op. cit.

²³ E.g. LPC (2018) op. cit.; Rubery and Grimshaw (2014) op. cit.; Smith and McBride (2020) op. cit.

Extensive research has reported the impact of ‘on call’ contracts with short/no notice cancellation of shifts adding to insecurity and resulting in the occurrence of ‘unremunerated labour’, where individuals make themselves available for work, but are not offered hours²⁴ and that lost shifts in themselves generate further costs to individuals for instance in travel and childcare.²⁵

In his 2018 letter to the UK Government, Bryan Sanderson, Chair of the Low Pay Commission, noted the scale of challenges associated with one-sided flexibility with ‘seven per cent of employees (1.7 million individuals) were very anxious that their working hours could change unexpectedly. Insecure hours were associated with a range of other negative phenomena: anxiety about unfair treatment, lower pay and greater anxiety about downgrading’.²⁶

In these circumstances, several studies reference ZHC workers having more than one job to make ends meet, often taking on other, equally fragmented roles and, as such, the use of these contracts sustains in-work poverty.²⁷

Ability to assert rights

The principal mechanism for asserting rights in the UK is via the Employment Tribunal system. However, published Quarterly Employment Tribunal and Employment Appeal Tribunal statistics produced by His Majesty’s Courts and Tribunals Service do not provide information on demographics of claimants brought to the system. Whilst Acas evaluations of its statutory conciliation services in tribunal claims cover demographics, they do not address employment status. It is therefore not possible to identify the extent to which ZHCs workers formally exercise their rights by bringing claims to the tribunal system under relevant jurisdictions.

There seems to be three significant barriers to these workers asserting their rights. First and chief is the question of employment status and the ambiguity over whether those on ZHCs are employed under terms akin to employees, workers or the self-employed, and therefore the different employment rights each type accrues.²⁸ This

²⁴ Smith and McBride (2022) op. cit.; Rubery and Grimshaw (2014) op. cit.

²⁵ Richardson (2023) op. cit.

²⁶

https://assets.publishing.service.gov.uk/media/5c1770f040f0b60c2c1c7958/Letter_from_Bryan_Sanderson_regarding_one-sided_flexibility.pdf citing Felstead, A., Gallie, D., Green, F., and Henseke, G. (2018) First Findings from the Skills and Employment Survey 2017, University of Cardiff.
https://www.cardiff.ac.uk/_data/assets/pdf_file/0011/1309457/6_Insecurity_Minireport_Final.pdf.

²⁷ Rubery and Grimshaw (2014) op. cit.; McBride and Smith (2021) op. cit.; Smith and McBride (2022) op. cit.

²⁸ Broadly speaking, employees, have the full range of statutory employment rights; workers, have a more limited set of basic rights, such as the National Minimum Wage (NMW) and holiday pay; the self-employed, are largely not covered by employment rights legislation.

ambiguity is compounded by the changing status that an individual may have working simultaneously across different employers.²⁹ More importantly, in UK law, status is not determined by what is written in the contract but by how the contract works in practice³⁰ – a factor which both allows for employer obfuscation of responsibilities, and promotes worker confusion and loss of power. In situations where contracts are challenged, the rights to which individuals are entitled can only be determined by the tribunals making it problematic for those advising employees to give definitive advice to individuals on their rights. Furthermore, case law may not always provide clarity for the future, given the multiplicity of factors that influence individual determinations. Beyond the specifics of ZHCs, the question of employment status has been the subject of government reviews, with some consensus on the need for a revised single status merging employees and workers.

Second is low awareness amongst employers and employees of their nature of ZHC and associated entitlements.³¹ Evidence from Acas found many individuals calling its national helpline were not aware of their contractual status until a problem occurred (e.g. repeated loss of shifts, access to maternity leave, questions on holiday pay). Only by talking to Acas advisers did the nature of their contract become clear.³²

The third hits at the heart of the insecurity associated with ZHCs: the inability of ZHC workers to raising concerns or questioning their contractual status due to fear of repercussions by their employer, most notably having work reduced or withdrawn – (zeroing down).³³ The banning of exclusivity clauses has provided one regulatory solution to perceived misuse of ZHCs but the imbalance in the contractual relationship means that, in reality ‘effective exclusivity’ is likely to remain a feature of ZHC working.³⁴

²⁹ McBride and Smith (2021) op. cit.

³⁰ Rubery and Grimshaw (2014) op. cit.

³¹ CIPD (2013) op. cit.

³² Acas (2014) Give and Take? Unravelling the true nature of zero hours contracts, Acas Policy Discussion Paper.

<https://webarchive.nationalarchives.gov.uk/ukgwa/20210104114239/https://archive.acas.org.uk/media/3995>.

³³ House of Commons Briefing Zero Hours Contracts, House of Commons Briefing (2018) <https://researchbriefings.files.parliament.uk/documents/SN06553/SN06553.pdf>; McBride and Smith (2021) op. cit.; Moore and Newsome (2017) op. cit.

³⁴ Acas (2014) op. cit.

ZHCs and Health/Wellbeing

There is extensive research on the negative association between worker mental and physical health and forms of precarious employment.³⁵ Research focused specifically on ZHCs and using LFS self-reported health measures concluded that the ‘extreme precarity’ of ZHCs (compared with other atypical contracts) means that ZHC workers are 50% more likely to report mental ill health than equivalent workers in permanent jobs.³⁶ Similarly, a study of a cohort of 25-year-olds ZHC workers in the UK found that mental health problems were more common than among other age groups.³⁷ Other findings differ however, with ZHC workers being more likely to report that work had a positive impact on their physical and mental health, a finding explained by some of these workers being less likely to face excessive work-loads and work pressure.³⁸

Systematic and meta-analyses are more conflicting. Persistent precarious employment is found to be associated with poorer outcomes in respect of self-reported mental health such that insecure work presents a ‘considerable risk factor’.³⁹ However, a meta-analysis drawing on international datasets on ‘precarious employment’ found ‘moderate’ and ‘low’ quality evidence of a link with mental health, though argued the need for further research on single forms of precarious work.⁴⁰ Studies have also found an association between ZHC and increased likelihood of disability in older age.⁴¹

³⁵ E.g. Balogh, R., Harris, J., Toro, C. and Warhurst, C. (2023 forthcoming) The case for creating healthy jobs: A review of the evidence; Evidence Paper, ReWAGE/Deloitte; Keely, T. (2021) *Zeroed Down: The Effects of Zero Hours Contracts on Mental Health and The Mechanisms Behind Them*. Discussion Papers in Economics and Finance, 21(3), 1-48; Quinlan, M., Mayhew, C. and Bohle, P. (2001) The global expansion of precarious employment, work disorganization, and consequences for occupational health: a review of recent research. *International Journal of Health Services*, 31, 335-414; Virtanen, M., Kivimäki, M., Joensuu, M., Virtanen, P., Elovainio, M. and Vahtera, J. (2005) Temporary employment and health: a review. *International Journal of Epidemiology*, 34(3), 610–622; Wood, A. and Burchell, B. (2014) Zero hour contracts as a source of job insecurity amongst low paid hourly workers. In Individual in the Labour Market Research Group. Individual in the Labour Market Research Group, Cambridge University.

³⁶ Farina, E., Green, C. and McVicar, D. (2023) Zero hours contracts and self-reported (mental) health in the UK, *British Journal of Industrial Relations*, <https://doi.org/10.1111/bjir.12773>.

³⁷ Henderson, M. (2019) The quarter-life crisis? Precarious labour market status and mental health among 25-year-olds in England. *Longitudinal and Life Course Studies* 10(2), 259-276.

³⁸ CIPD (2022) op. cit.

³⁹ Pulford, A., Thapa, A., Thomson, R. M., Guilding, A., Green, M. J., Leyland, A., Popham, F. and Katikireddi, S. V. (2022) Does persistent precarious employment affect health outcomes among working age adults? A systematic review and meta-analysis, *Epidemiol Community Health* 76, 909-917; see also Davis, M. E. and Hoyt, P. (2020) A longitudinal study of piece rate and health: evidence and implications for workers in the US gig economy, *Public Health*, 180, 1-9.

⁴⁰ Rönnblad et al (2019) op.cit.

⁴¹ Patel, M., Waynforth, D. (2022) Influences of zero hour contracts and disability – Analysis of the 1970 British Cohort Study, *SSM - Population Health*, 19, 101182; Farina et al (2023) op.cit.

Policy considerations

Policy considerations around ZHCs need to take on board much wider considerations about the overall balance in the labour market, how flexibility can be achieved whilst maintaining appropriate levels of security, income and fairness from an equality perspective.

On the basis of evidence collated, we set out below broad areas of policy considerations in relation to the future of ZHCs though in many instances the same considerations apply to other flexible or atypical contracts. Policy solutions to the challenges of ZHCs will vary. Some legislative change is needed as is encouragement of good practice amongst employers and prevention of poor practice.

Legislation to increase worker security and reduce employer non-compliance strategies

The complexity of the current three forms of status creates uncertainty and potential for abuse. The dependency on the tribunal system for definitive clarification on worker status is unsatisfactory. Further simplification is needed, with reconsideration of the potential for a single status covering workers and employees. This change will require consideration of status and entitlements for ZHC workers between assignments.

Other legislative requirements include:

- A right to minimum work periods set out in employment contracts and written statements.
- A right to a 'reasonable' amount of notice and full compensation in the event of shift cancellations, including 'extra' hours offered outside of guaranteed hours.⁴²
- A right to switch to a contract which reflects normal hours worked with an associated qualification and reference periods. Both can be informed by existing evidence on patterns and variability of hours in ZHCs and, where viable and logical, harmonise with other legal requirements to minimise confusion.⁴³
- A right to accompaniment in meetings discussing changes to individual contracts.
- Promoting compliance with law via costs and penalties at tribunal for any new legislative requirements and introduce detriment to protect workers.

⁴³ Normally 17 weeks for calculating average weekly hours under the Working Time Directive; the 52-week period for calculating statutory holiday pay extended (2020) from 12 weeks to better reflect work patterns of casual and shift workers. <https://www.gov.uk/government/publications/calculating-holiday-pay-for-workers-without-fixed-hours-or-pay>.

A statutory code should be introduced setting out legislative changes. This code could be developed by the UK Government or by Acas under the custodianship of its tripartite Council.

Legislative changes should align with existing and forthcoming relevant legislation including: requirements for a written statement of employment particulars for employees and workers; the forthcoming right for eligible workers to request a predictable contract under the Workers (Predictable Terms and Conditions) Act; and the forthcoming right for employees to request flexible working from day one (Employment Rights Act 1996).⁴⁴

Encouraging good practice amongst employers

Good practice advice in this area should cover:

- The importance of considering all forms of flexible working arrangements (not just ZHCs).
- Transparency of status, available work patterns and handling of changes in work availability, and all aspects of remuneration and compensation.
- Guidance on estimating notice periods for shift changes (beyond any statutory requirement).
- Guidance on the positive management of flexible workers, including responsibilities under 'duty of care' in respect of physical and mental health.
- Best practice on the management of conflict.
- Other measures to promote fair treatment of workers and the avoidance of discriminatory practices.
- The value of employee consultation (with unions where present) in setting/reviewing terms and conditions, standards and policies.

Modernising labour enforcement

It is likely that changes in legislative approaches will have minimum impact until the UK labour enforcement regime is strengthened. This need is pressing for those in insecure work who are the less likely to feel able to assert their rights either inside the workplace or outside in the tribunal system.

There is no generalist labour inspectorate in the UK as in other parts of Europe.⁴⁵ Instead, there are number of single function inspectorates e.g. for the minimum wage

⁴⁴ Acas is currently consulting on a draft statutory code of practice on handling requests for a predictable contract and finalising a new statutory code on the handling requests for flexible working. <https://www.acas.org.uk/about-us/acas-consultations>.

⁴⁵ https://www.ilo.org/global/topics/safety-and-health-at-work/country-profiles/europe/united-kingdom/WCMS_112675/lang--en/index.htm; <https://www.etui.org/topics/health-safety-working-conditions/hesamag/labour-inspection-a-public-service-in-crisis/labour-inspection-and-health-and-safety-in-the-eu-2016>.

(HMRC), the licencing of ‘gangmasters’ (GLA), employment agencies (EASI), equality and discrimination (EHRC) and health and safety (HSE). At least seven enforcement bodies exist with responsibilities related to employment and the labour market.⁴⁶ In the main these inspectorates are reactive to intelligence and direct approaches and lack a broader proactive remit. In recent years, these inspectorate arrangements have been reviewed, with the creation in 2017 of the Office for the Director of Labour Market Enforcement to promote ‘more joint working and information sharing’ across agencies and to ‘improve enforcement outcomes’. The 2018 UK Government’s Good Work Plan⁴⁷ committed to the creation of a single enforcement agency (SEA) as part of its forthcoming Employment Bill, though this Bill did not materialise.

The SEA proposition was received positively by stakeholders for its potential to improve data sharing and intelligence, increase the number of inspectors and increase advice and support. There were concerns that a single body would lead to a reduction of specialist expertise and an overall reduction rather than enhancement in resourcing. It would therefore need adequate resourcing to be effective.

The potential for a stronger enforcement regime is relevant to ZHCs and employer abuse of individuals. In light of the evidence in this brief, the following points need to be considered:

- Increasing the capacity of HSE inspectors nationally and locally, and upskilling inspectors to address psycho-social hazards in notice to improve orders.
- Increasing advice and information for workers and employers on all matters covered by existing inspectorates.
- Including other legislative developments e.g. around guaranteed hours into the enforcement regime.
- Renewing a focus on compliance as well as enforcement. The work of the independent statutory Workplace Relations Commission in Ireland (created 2015) is instructive here. Its remit contains provisions to offer a compliance notice for improvement, prior to the issue of a fixed notice penalty and in a majority of cases prosecution is avoided.⁴⁸

⁴⁶ Department for Business, Energy & Industrial Strategy (BEIS)/Home Office (2019) Good Work Plan. London: BEIS.

⁴⁷ HM Government (2018) op.cit.; HM Government (2021), Establishing a new single enforcement body for employment rights Government response; <https://assets.publishing.service.gov.uk/media/60be1b47e90e0743a210de29/single-enforcement-body-consultation-govt-response.pdf>.

⁴⁸ In 2022, 1763 employers were found to have contraventions. However, the majority cooperated with the WRC and became compliant, resulting in only 89 prosecutions, https://www.workplacelrelations.ie/en/publications_forms/corporate_matters/annual_reports_reviews/annual-report.

Improving management practices

The legislative and enforcement regimes provide an important framework for the protection of individuals and for establishing the responsibilities of employers, as well as an incentive for the latter to adopt a positive approach. Improvements will also depend on employers' knowledge and motivations.

Training: Manager and in particular line manager training may not be sensitive to the management challenges associated with ZHC workers. Training providers should be encouraged to review the content of training, advice and guidance to consider whether it is fit for purpose for the management of ZHC (and other NSE) workers.

Campaigns: The potential for advice providers and the enforcement bodies to expand and evaluate sector targeted campaigns should be explored.

Corporate reporting: A requirement for boards to report their companies' proportion of workers on flexible contracts, including ZHCs, and within their supply chains and procurement practices; and also report on ZHCs in the context of gender pay reporting and any new pay reporting requirements. Companies do not need to have a statutory requirement to make these reports.

Other policy points

It is vital to improve the monitoring of ZHCs within ONS data series. In addition, measures of both worker and contractual status should be encouraged in other publicly funded national periodic surveys e.g. in the UK Employment and Skills Survey and any redesigned Workplace Employment Relations Survey (WERS). There is also a gap in the evidence base on access to justice for ZHCs workers in relation to reported tribunal statistics. A new study in the Survey of Tribunal Application series would be a valuable start to filling this evidence gap. The more general point is that that a better evidence base and understanding of that evidence base is needed. Establishing a single new 'Employment Research and Analysis Unit' or similar within government would help here, with the ReWAGE⁴⁹ expert group providing a potential model of how existing employment research can be marshalled and synthesised for use by government.

There should be a departmental home for this unit. As with enforcement, the UK has fragmented responsibility amongst government departments for employment. Currently three departments – DB&T, DWP and DfE – have responsibility for different aspects of employment. Generally, a joined up, coordinated approach to employment would be beneficial⁵⁰. Responsibility for reporting on ZHCs would then fall to this new, single ministry of employment, and it would be the obvious department to which the new SEA would report.

⁴⁹ <https://warwick.ac.uk/fac/soc/ier/rewage/>

⁵⁰ Warhurst, C. and Knox, A. (2022) 'Manifesto for a new Quality of Working Life', *Human Relations*, 75(2): 304-321.

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About ReWAGE

ReWAGE is an independent expert advisory group modelled on SAGE, which supports government's strategic response to the recovery and renewal of work and employment in the UK as it tackles the impact of Covid-19.

Its recommendations cover: the maintenance and creation of jobs, improving the quality of jobs, ensuring that the workforce has the right skills to access those jobs, and access to training and jobs is available to all. Its scope covers employers, employees and the self-employed.

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