

## Introduction – written by Sarah Glenister, IER

**Taylor Review** - The Taylor Review was published in July 2017. Its objective was to review the suitability of employment law for the modern "gig economy" and recommend changes where appropriate. Among the most key of its recommendations was the replacing of "worker" status with "dependent contractor" status, with the option to opt-out of the minimum wage by accepting lower paid work. The government has yet to respond to the proposals and as parliament is now preoccupied by Brexit, it may now be delayed.

However, Taylor's recommendations were largely carried forward by a new **draft Bill on workers' rights** published by the BEIS and DWP committees as a result of their joint inquiry into the gig economy. The Bill was published as part of a larger report and has not been read in parliament, but is intended to influence future legislation. Key proposals in the Bill include:

- Default "worker" status, so that the onus is on companies like Uber to prove their workers are self-employed rather than on workers to prove themselves employed.
- A higher minimum wage for people on zero-hour contracts or otherwise not offered guaranteed work
- Tougher penalties on employers when they are brought back to tribunal repeatedly for similar cases - this is intended to stop employers from taking a "wait and see" approach to tribunal decisions. Because employment law is enforced individually, companies do not have to extend the decision of the court to the rest of their workforce. So when one Uber driver is found to be a "worker", the court can only obligate the company to provide that individual with workers' rights, even if thousands of others are on the same contracts. For this reason, many companies willingly continue breaches of employment law if there is a low risk that individual workers will take them to tribunal to enforce their rights. This recommendation would mean that every time the tribunal needs to hear about the same issue within the same organisation, the penalties doled out can get higher.
- Despite underlining the key role of workers' voice in preventing exploitation, the Bill and surrounding report barely mentions trade unions.

Another Bill, **The Workers' Definition and Rights Bill**, has also been brought forth, this time from SNP MP Chris Stephens, which effectively abolishes zero-hour contracts except where there is an agreement with a trade union regarding flexible work. Stephens worked with the IER to draft the Bill and it is backed by the General Council of the Scottish TUC. It recommends.

- The right to fixed and regular weekly hours for every worker
- The requirement for managers to provide decent notice for shifts as well as full payment to workers whose shifts get cancelled short notice
- A duty toward workers' rights for the principal employer (head of supply chain) if the company responsible for outsourced duties absconds or fails

But the government itself is largely distracted by the **Brexit** process, which so far has thrown up several risks to workers' rights.

- Cabinet ministers have supported the abolition of the Working Time Directive
- The Trade Bill - part of Brexit legislation - includes a clause which would allow the government to break with Retained EU Law in order to negotiate for new trade deals, which it is believed may include the Equality Act 2010 and the Modern Slavery Act. These laws would then become essentially useless.
- The government has supported the withdrawal from The EU Charter of Fundamental Rights on Human Rights, which protects the right to collective bargaining among many others.
- Workers' rights could be undermined during their transfer from EU to UK law under new powers that allow the government to make changes to EU law without a vote in parliament.
- Unless workers' rights are written into primary legislation, EU case law could be overturned when re-challenged in UK courts.
- Senior govt officials have already looked into the possibility of joining free trade deal the Trans-Pacific Partnership, which many fear would mean the dilution of workers' rights.

The **Trade Union Act 2016** came into place last year, but a section of it has already been overturned in Wales, which has passed the Trade Union (Wales) Act to prevent the legislation coming into effect where it affects public service worker's in Wales. This includes the new 40% support threshold on industrial ballots for public sector workers, the restriction on check-off, the requirement to publish facility time data, and the reserved power for the Minister to cut facility time. Westminster had said they would challenge the legality of the Welsh Act if they dared to pass it, but have since decided not to take the matter to the Supreme Court.

In equality, **gender pay gap reporting** has begun, but after the government decided to introduce zero sanctions to noncompliant businesses, the take up has been slow and only 4% of eligible companies have released their reports so far.

In case law, the most major success was **Unison's win against tribunal fees** which will now see the government pay back £32 million in refunds to those who were charged to uphold their workers' rights. It remains to be seen what implications there will be for case law, and how tribunals will deal with those who were barred from access by the illegal fees.