Industrial relations

United Kingdom: Developments in working life 2017

*Developments in working life in Europe: EurWORK annual review 2017*
Political context affecting working life aspects

With regard to how the UK’s political context has affected aspects of working life, this has been heavily dominated by the Brexit process and negotiations and has been since the ‘vote to leave’ in June of last year. This huge issue seemingly overshadows other domestic policy. However, employment rights are featuring in the political debate over Brexit (see below). The Prime Minister’s decision to call a snap election in April has also led to further political upheaval (see below for details). The PM justified her decision to call an election on the basis that she sought a stronger mandate for her approach to the Brexit process. However, the election ended in a hung Parliament, where no Party has an overall majority. Although the Conservative Party lost thirteen seats, it did receive 42.4% of the vote share and thus formed a new government, through agreement with the Democratic Unionist Party. However, the election result not only weakened the Government, but also the Prime Minister personally. This has meant that plans for worker representatives on company boards and a comprehensive reform of employment legislation so as to improve protections for insecure workers and those in the gig economy have not proceeded.

Social partners reactions following changes in governments

On the 29th of March, the Prime Minister, Theresa May, called a snap general election for the 8th of June. She had believed that she would have a landslide victory, given the low opinion poll ratings of the Labour Party (the major opposition) at that time. However – following a disastrous Conservative campaign - the election ended in a hung Parliament, where no Party has an overall majority. Thus, in this context, characterised by a weakened Government and Prime Minister and also heavily influenced by the Brexit process (which is said to be dominating to the detriment of any other domestic policies/legislative programmes), there have been no changes to employment legislation or policy. The Prime Minister’s earlier plans to have worker directors on company boards as part of sweeping reforms to corporate governance structures, launched as part of her leadership campaign, have been greatly diluted and there is to be no mandatory compulsion. On her appointment as PM, May had also commissioned the Taylor Review into Modern Working Practices (Taylor, 2017), following revelations of poor working conditions in companies including Sports Direct, ASOS and Amazon, as well as growing concerns around the lack of basic employment rights endured by many working in the ‘gig economy.’ The report (Taylor, 2017) was published in July, with the Government pledging to respond on the issue of new legislation on modern working practices by the end of 2017. However, the response was long-delayed and there were growing concern that reforms to boost workers’ rights could face parliamentary opposition from the rightwing of the Conservative party. The Government’s response was finally published on the 8th of February, to strong criticism from the Labour Party and trade unions. There had been hope the government would bring employment law into line with the judgments of several employment tribunals that have ruled in favour of gig economy workers (including for Uber and City Sprint). These judgements had found they are workers and not self-employed and so should enjoy paid holiday, the minimum wage and other rights (see below). However, citing the complexity of the issue, the government only said it would launch “a detailed consultation examining options, including new legislation, to make it easier for both the workforce and businesses to understand whether someone is an employee, worker or self-employed. The Government also pledged to consider repealing the Swedish Derogation, which allows temporary agencies to avoid their equal pay obligations; said it would ask the low pay commission to consider a higher minimum wage for people on zero-hours contracts; consider a right for zero-hours agency workers to request a fixed-hours contract and consider larger fines for companies that are repeat offenders at using people in bogus self-employment.
The future of employment rights has been an important one within the Brexit debate. The Prime Minister has re-affirmed her commitment to retain EU employment protections, post-Brexit. However, the Opposition Labour Party and the TUC continue to seek more concrete guarantees. There have been ongoing concerns over the Government’s proposed EU Withdrawal Bill. This will repeal the 1972 European Communities Act but at the same time, ensure that all extant EU legislation, including that on employment rights, will be transposed into domestic law on the day of Brexit. However, the Bill will also create the necessary powers for MPs to change these laws once Britain has left the EU and there are concerns over so-called Henry VIII clauses. These would give the Government powers to repeal legislation – including employment and equality laws - without parliamentary approval. On this point, the TUC argues that the Withdrawal Bill proposals fall short of the PM’s pledge to protect EU-derived workers’ rights, pointing out that the long-term protection of rights is not guaranteed. The TUC also highlights that as the Bill will end the jurisdiction of the European Court of Justice, the UK Supreme Court could have the power to overturn key ECJ decisions over workers’ rights, without the need to secure Parliamentary approval. Thus, the TUC and the Labour Party continue to call for the inclusion of clauses guaranteeing that the long-term protection of employment and equality laws and that in future, ministers be able to only change EU-derived workers’ rights through primary legislation with full debate. The Bill reached Committee Stage in the House of Commons on the 14th of November, finishing this process on the 20th of December. However, the Labour Party’s attempts to prevent the Government from using the Henry VIII powers to amend, repeal or modify employment and equality rights was defeated by twelve votes. The Government did concede that ministers be required to “make a statement before the House in the presentation of any Brexit-related primary or secondary legislation on whether and how it is consistent with the Equality Act 2010.”

Labour market reforms or major packages of working life regulations

In April 2017, provisions of the Trade Union Act came into force, as did the Apprenticeship Levy and the requirement for Gender Pay Gap reporting. However, these were legislated for under the previous Cameron administration. There has been some easing of the public sector pay cap, at least for some groups of workers, following mounting pressure.
Developments in industrial relations 2017

Changes affecting the national-level actors and institutions of industrial relations and social dialogue in 2017

Owing to the voluntarist tradition in the UK, policy concertation has been uncommon and there are currently few formal mechanisms or forums for tripartite concertation in the country. In the 1970s, formalised dialogue between the government, employers and trade unions grew in importance. However, the successive Thatcher governments, first elected in 1979, sought to eradicate any forms of corporatism. Since then, tripartism or corporatism has not been reintroduced on a comprehensive or formalised basis. Indeed, the social partners report that even the limited tripartite engagement that existed before the election of the Coalition Conservative and Liberal Democrat government in 2010 has reduced since this time, and particularly so since the Referendum vote to leave the EU in June 2016.

Representativeness

In 2017, there were no major changes to the way in which representativeness of social partners is regulated or assessed. Given the voluntarist context prevailing in the UK and the lack of formalised criteria of representativeness, this lacks applicability herein.

Actors

There have been no mergers of peak-level organisations this year, nor any admission of organisations to national-level social dialogue (this is not applicable in the UK context). The latest official statistics (May 2017) demonstrated a continued decline in trade union membership and union density over 2016. Approximately 6.2 million employees in the UK were trade union members in 2016, a 4.2% decrease from 2015 (275,000 members). This was the largest annual fall recorded since the series began in 1995. This can be partly attributed to the increasing numbers in the UK workforce between 2015 and 2016, with union membership not keeping pace with employment growth. It can also be explained in part through the ongoing contraction of public sector employment (there is significantly higher union density in the public sector). Concomitantly, the proportion of employees who were trade union members fell to 23.5% in 2016, from 24.7% in 2015 (the lowest rate of trade union membership recorded since 1995). Data on the numbers of employers being organised are notoriously hard to come by in the UK context and as such, there are no developments to report on this matter.

Institutions

There have been no major legislative or institutional changes to the main social dialogue institutions: this does not apply in the voluntarist UK context.

Changes in the social dialogue processes

The social partners report reduced tripartite engagement since the election of the Coalition Conservative/ Liberal Democrat government in 2010 and thereafter, with the election of a majority Conservative Government in 2015 and following the vote to leave the European Union. This was confirmed in recent interviews with representatives from both the TUC and CBI, conducted under the auspices of the Eurofound review into social partner involvement in the European Semester. The representatives of both the CBI and TUC reported that consultation in general had reduced in 2015, in the run-up to the general election and that this continued thereafter, with the referendum campaigning. In the 2017 interview, the same TUC representative reported that consultation had severely diminished since the Brexit vote.
National social dialogue in 2017 – Scope and Contribution

Main social dialogue topics and outcomes in 2017
Please note – as above, the UK does not have formal institutions for social dialogue, aside from involvement of the main social partners in a limited number of tripartite agencies. However, both employer organisations and trade unions respond to relevant consultations and may release statements and position papers on salient matters.

<table>
<thead>
<tr>
<th>Themes</th>
<th>Description of issue</th>
<th>Code(s)-interaction</th>
<th>Type of Interaction</th>
<th>Code(s)-Outcome</th>
<th>Outcome</th>
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<tbody>
<tr>
<td>General labour market topics</td>
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<tr>
<td>Benefits (unemployment, sickness schemes, minimum income)</td>
<td>The roll-out of the Universal Credit benefit (which replaces extant multiple benefits with one payment) has been problematic and has caused hardship for many recipients.</td>
<td>8</td>
<td>8</td>
<td>7</td>
<td>The Government did cut the original seven-week wait for payment to four weeks, following mounting pressure from back-bencher MPs.</td>
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<tr>
<td>Working life related themes</td>
<td></td>
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<tr>
<td>Working time regulations</td>
<td>Potential post-Brexit scrapping of the Working Time Directive.</td>
<td>8</td>
<td>8</td>
<td>7</td>
<td>The trade unions continue to push for employment rights to be protected following Brexit.</td>
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<tr>
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<tr>
<td>Terms and conditions of employment, including different forms of contracts</td>
<td>The Taylor Review into Modern Working Practices was commissioned by the Government in October 2017, amid growing concerns around the lack of basic employment rights endured by people working in the gig economy. Both the CBI and TUC submitted responses to the consultation and also reacted to the report’s recommendations in July.</td>
<td>6</td>
<td>Business groups and trade unions submitted written responses to the consultation and also published responses to the Report’s recommendations in July. The social partners also responded to the Government’s long-awaited response, published in February 2018.</td>
<td>7</td>
<td>The Government’s response to the Taylor Review (2017) can be seen as lacking in rigour, with a number of pledges to merely consult further on fundamental issues such as reforming the UK’s employment status framework, and pledging to consider repeal of the Swedish Derogation. Some ‘quick wins’ e.g. allowing workers (in addition to employees) to have a written statement of their T&amp;Cs from day one were committed to.</td>
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<td>The Business, Energy and Industrial Strategy Select Committee has conducted an enquiry into the “Future world of work and rights of workers”, with considerable discussion of ways of clarifying or, indeed, challenging the (mis)categorisation of workers in new forms of precarious work, including online platforms and the gig</td>
<td>The Select Committees were responding to growing concerns around precarious work and the proliferation of bogus self-employment, particularly in the gig economy. This ties in with the Taylor Review recommendations.</td>
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<td>The Select Committees were responding to growing concerns around precarious work and the proliferation of bogus self-employment, particularly in the gig economy. This ties in with the Taylor Review recommendations.</td>
<td>7</td>
<td>The Government included its response to the recommendations of the Select Committees in its response to the Taylor Review on the 8th of February. It has pledged to launch further consultation into the employment status framework, but with the caveat that the UK retains its ‘flexible’ labour market.</td>
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United Kingdom: Developments in working life 2017

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</tr>
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<tr>
<td>Economy. At the same time, the Work and Pensions Committee investigated self-employment and the gig economy, with a particular focus upon how the benefits system might be tailored to fit growing numbers of ‘self-employed’.</td>
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</table>

No major social dialogue debates were held on the following themes: Skills, training and employability; Taxation and non-wage related labour costs; Job creation, reduction of unemployment, active labour market policies, labour market participation of different groups; Pension reforms; Wage setting systems, including the setting of minimum wages (but excluding the ‘regular’ annual debates about the determination of the level of the new minimum wage); Health, safety and well-being at work; Work-life balance related themes, incl. family leaves.

Note:
Codes for ‘Type of interaction’: 1 - Tripartite debate; 2 - Tripartite negotiation; 3 - Formal consultation of both social partners; 4 - Formal consultation of trade unions; 5 - Formal consultation of employers organisations; 6 - Bipartite debate; 7 - Bipartite formal negotiations; 8 - Lobbying from at least one side; 9 – Type of interaction unknown.

Codes for ‘Outcome as per 1.1. 2018’: 1 - Unilateral decision by government; 2 - Legislation passed; 3 - Legislation prepared (in legislative process, not concluded); 4 - Tripartite agreement or joint position reached; 5 - Bipartite agreement reached; 6 - Joint opinion of social partners reached; 7 - Issue not closed, ongoing exchange; 8 - Issue dropped, no concrete outcome, no further exchange; 9 – Outcome unknown, none of these types.
Selected major social dialogue debates

The findings of the Taylor Review into Modern Working Practices were published in July 2017. The CBI welcomed the proposed retention of the three-part employment status framework, the commitment to build upon the flexible labour market and the endorsement of responsible corporate governance. It would approve some ‘well-targeted’ legislative changes, such as the establishment of a fast-track tribunal process over employment status and a right to request fixed hours for those on ZHCs. However, it cited concerns over rewriting employment status tests, the abolition of the Swedish Derogation and changes to the application of the minimum wage.

The Recruitment and Employment Confederation similarly warned against scrapping the Swedish Derogation, whilst a Chamber of Commerce spokesperson cautioned against the ‘unintended consequences’ that might arise from changes such as wage premiums for uncertain working hours.’

A number of trade unions expressed concerns as to the Review’s failure to tackle many significant issues. The TUC, whilst welcoming some of the proposals, said: “This is not the game-changer needed to end insecurity and exploitation.” Unite said the Review had ‘spectacularly failed to deliver on its pledges, with similar criticisms made by the CWU, PCS and GMB unions.

The Government was very slow to publish its response, with this finally emerging on the 8th of February. Herein, the Government pledged to launch a further detailed consultation into the employment status framework – one of the most crucial issues examined. This has led to widespread criticism. It also stated its intention to examine the extent of abuse of the ‘Swedish Derogation’ and to provide agency workers and those on zero hours contracts with the ‘right to request’ more predictable hours.

The response also encompassed the Government’s reaction to the findings of the two select committees, given the commonality with much of the Taylor Review recommendations.

Major social dialogue debate 2
Not applicable in the UK context

Unilateral government actions – without social dialogue

The Brexit process is absolutely dominant in governmental agenda, to the exclusion of other domestic policy, including in the sphere of the labour market/employment. The TUC has repeatedly called for greater protection of employment rights when the UK leaves the EU and has vociferously argued/campaigned against the inclusion of Henry VIII powers in the EU Withdrawal Bill (see above). The Bill reached Committee Stage in the House of Commons on the 14th of November, finishing this process on the 20th of December. However, the Labour Party’s attempts to prevent the Government from using the Henry VIII powers to amend, repeal or modify employment and equality rights was defeated by twelve votes. The Government did concede that ministers be required to “make a statement before the House in the presentation of any Brexit-related primary or secondary legislation on whether and how it is consistent with the Equality Act 2010.” The Bill will now pass through the House of
Lords before returning to the Commons – it is thus currently unclear whether the Lords will recommend amendments.

**Changes affecting the sectoral and company level social dialogue 2017**

There were no major changes in the legislation or institutions affecting collective bargaining and social dialogue at sector-level and company-level. The Trade Union Act, which came into force in March 2017 (please see below), places restrictions primarily on industrial action and picketing. Over time, these may weaken perceptions of union efficacy in securing workplace improvements and ultimately lead to further erosion of collective bargaining, consultation and information at company and sector level.

*Innovation in collective bargaining*

No major innovations made in collective bargaining.

**Collective labour disputes in 2017**

The controversial Trade Union Act came into force on the 1st of March 2017. This Act was introduced under the leadership of David Cameron in 2015. The Act introduced restrictive changes to strike ballots, industrial action and picketing (as well as creating reserve powers for future curbs on facility time; placed additional constraints on unions’ political funds and increased the Certification Officer’s (CO) powers).

There are new rules on the content to be included on the ballot paper and the provision of information on that ballot. The required notice that unions must give to employers of impending action is now fourteen days. The authorisation for industrial action given by a “Yes” vote now has an expiry date. After six months from the date of the ballot (or up to nine months if agreed by union and employer) unions will have to re-ballot members to stage further action. There are now new turnout thresholds. There is a fifty per cent turnout requirement for all ballots. So whereas in the past, a “Yes” vote by a majority of those union members returning ballots was sufficient to authorise industrial action, at least 50% of all those entitled to vote must now do so for any resulting action to be authorised. In ‘important public services’ (including health, transport, education, border security and fire), even more stringent thresholds will apply. Under the new requirements 40% of all those entitled to vote must vote “Yes” to authorise any industrial action.

Regarding picketing, it is now a requirement for a union to appoint a supervisor to oversee any picketing for picketing to qualify for protection. This will apply to picketing where notification is given to the employer from 1 March. The appointed picket supervisor must be an official, or member of the union who is familiar with the picketing code of practice; take appropriate steps to tell the police their name, contact information, picket locations (or the union may provide this information); be provided with a letter stating that the picketing is approved by the union, which must be shown to the employer on request; be present where the picketing is taking place, or be able to attend at short notice; and wear something identifying them as the picket supervisor (such as a badge or armband).

1. Up to 2,000 British Airways (BA) cabin crew engaged in strike action for much of July and August, as part of a pay dispute and subsequently in protest against alleged discrimination by BA against these workers, through the withdrawal of bonuses and
removal of staff travel concessions, on the basis of a blacklist of strikers. After 60
days of action, the cabin crews’ union, Unite, resumed negotiations.

2. The Government secured a High Court injunction in February which prevented prison
officers taking industrial action on the 1st of March (prison officers are prohibited
from taking industrial action by the Criminal Justice and Public Order Act 1994). The
Prison Officers’ Association (POA) had asked members in England and Wales to
withdraw from ‘voluntary tasks’ on the 1st of March 2017, in protest over pay,
pensions and surging levels of violence in prisons. These ‘voluntary tasks’ include
suicide prevention, first aid, control and restraint, and hostage negotiation, which the
POA argued were not industrial action or a breach of discipline. The planned action
on the 1st followed a ‘day of protest’ on the 15th of November 2016 (when the
Government also secured an emergency injunction against the action) and a number
of incidents of unofficial action in 2016, in protest over the ‘unprecedented levels of
violence and life-changing injuries to staff and prisoners’, as a result of chronic
under-staffing across prisons. On the 12th of September, after months of pressure, the
Government announced that the 1% public sector pay cap (in place across the whole
of the public sector) will be lifted for prison officers (and police) this year. Prison
officers are to receive an average 1.7% rise.

3. On the issue of the public sector pay cap, prior to the build-up to the
announcement on the 12th of September as to pay for prison officers and police, the
growing pressure on government culminated in a day of pointed criticisms, strike
calls and demonstrations around Parliament on the 6th of September, including a
protest in Westminster by thousands of nurses against a 14% real-terms cut in wages
over the past seven years (this followed a poll of 50,000 members of the Royal
College of Nursing over pay, where 80% confirmed they were prepared to go on
strike if the cap was not lifted). Later that week, at the TUC Conference, four
affiliate unions tabled motions calling for nationally coordinated action, and the PCS
also announced that its civil service members were to be balloted for strikes over their
pay, whilst the general secretary of the largest union, Unite, warned that co-ordinated
action from workers across the public sector was “very likely and very much on the
cards.” The Labour Government also announced on the 10th that it was preparing to
force a vote on the pay cap in parliament on Wednesday the 13th.

The Government chose not to contest the motion: this would have risked an embarrassing
defeat as the Government’s allies in the Democratic Unionist Party had indicated that
they would vote with the opposition on the matter. Following the announcement on the
12th, the Chancellor committed in his Autumn Statement on the 22nd of November to
ending the 1% pay cap for nurses, midwives and paramedics. Extra funding for this is to
be provided, but on the condition that any deal increases productivity within the NHS and
is “justified on recruitment and retention grounds.” No actual pay rise was detailed; this
will be determined by the relevant pay review body.

Working time 2017

There were no major changes in the regulation of working time in 2017.

In December, a number of newspapers highlighted how eleven pro-Brexit Conservative MPs
(four of whom are currently prominent Cabinet members) are pushing for the Working Time
Directive to be scrapped following Brexit. When questioned on the matter, the PM refused to explicitly rule this out.

Health and well-being at work 2017

Physical working environment

In the UK, discussions of health and well-being in the workplace must be contextualised by recognition of the sheer scale of funding cuts, and concomitant reductions in enforcement activity, enacted by government since 2010 under the auspices its ‘red tape challenge.’

Figures obtained by the Unite union in May 2017, via a Freedom of Information (FOI) request, reveal that since 2010 there has been a 25 per cent reduction in the number of Health and Safety Executive (HSE) inspectors. In 2010 there were 1,311 frontline inspectors; by 31 December 2016, that number had reduced to just 980. By the end of this parliament, the HSE’s funding will have been cut to nearly half (a 46 per cent reduction) of what it was in 2010.

Following the Grenfell Tower fire tragedy in June, more than 800 organisations and individuals signed an open letter to the UK Prime Minister, Theresa May, challenging the ‘arbitrary’ deregulation of health and safety, both in general and in relation to occupational safety and health. Sent on the 21st of June, the letter calls for a shift in politicians’ attitudes towards health and safety regulation and fire risk management. An original list of 70 signatories included the Institution of Occupational Safety and Health (IOSH), the Royal Society for the Prevention of Accidents (RoSPA), the British Safety Council, the TUC, Unite and the Chartered Institute of Environmental Health (CIEH). Within days, this had grown to over 800 signatories.

Psychosocial working environment

There is a general and increasing focus on employee mental health and wellbeing per se. As highlighted above, the policy debate is focused on this general area and there has been an intensified focus in recent years, beginning with the Coalition Government (2010 to 2015) and taken up by the current government as a leading policy area.

As part of this, the Government announced earlier this year that the Equalities Act would be reformed so as to further protect against prevent workplace discrimination towards employees suffering from mental ill health. Currently, employees are only protected from discrimination if their condition is continuous for 12 months (i.e. conditions that have a duration of under 12 months are not considered to be a disability, thus the sufferer is not protected by the legislation). However, as problems like depression, anxiety and bipolar disorder are often intermittent, the law will be reformed so as to reflect this.

Employment status 2017

<table>
<thead>
<tr>
<th>Type of contracts</th>
<th>Changes made during 2017</th>
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</thead>
<tbody>
<tr>
<td>‘Standard’ employment contracts</td>
<td>No major changes made during 2017</td>
</tr>
<tr>
<td>Self-employed</td>
<td>There have been a number of successful legal challenges to</td>
</tr>
</tbody>
</table>

Disclaimer: This working paper has not been subject to the full Eurofound evaluation, editorial and publication process.
employment status, made by ‘gig economy’ workers designated as ‘self-employed’ by the platform companies they work for. Following the GMB’s employment tribunal win for Uber drivers in 2016, two other cases have subsequently secured similar rulings. In March, an appeal by Pimlico Plumbers (PP) was dismissed, and a former ‘contractor’, Gary Smith, was confirmed in the courts as having the employment status of ‘worker.’ Further, the Independent Workers Union of Great Britain (IWGB) has won a similar tribunal case against courier firm, Citysprint. Citysprint had classified couriers as independent contractors, denying workers basic rights. Conversely however, another case brought by the IWGB, representing Deliveroo couriers working in Camden was unsuccessful. The IGWB had lodged a statutory recognition claim with the Central Arbitration Committee. For that case to proceed, the CAC had first to decide that the drivers were workers, as opposed to ‘independent contractors’ as claimed by the company. However, the CAC deemed that the couriers were not workers.

It should also be noted that the Taylor Review rejected calls to replace the current three-tier system of employment status (employee, worker, self-employed) with a binary distinction between employee and self-employed. However, it suggests that clearer distinction be made between the three, proposing a new definition of ‘worker’ or ‘dependent contractor,’ with this resting almost exclusively on how much control the company exerts over the person (‘dependent contractors’ would have greater rights). The Review proposes amendments to existing legislation, so that it definitively states the tests for employment status. However, to reiterate, the Government has yet to respond.

<table>
<thead>
<tr>
<th>Fixed term contracts</th>
<th>No major changes made during 2017</th>
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<tr>
<td>Temporary agency workers</td>
<td>None (although please note that the Taylor Review into Modern Working Practices (2017) has called for a scrapping of the ‘Swedish Derogation’, which in the UK context, allows employers to avoid equal pay provisions; the Government finally published its response on the 8th of February. Herein, the Government pledges to launch a consultation into the extent of abuse around the Swedish Derogation and to establish greater transparency round payment and hours for agency workers. It also states its intention to creation a right to request a permanent contract after a 12 month assignment at a hiring firm).</td>
</tr>
<tr>
<td>Posted workers/Seasonal workers/Zero-hour contracts</td>
<td>No major changes made during 2017</td>
</tr>
</tbody>
</table>
### References

The European Foundation for the Improvement of Living and Working Conditions (Eurofound) is a tripartite European Union Agency, whose role is to provide knowledge in the area of social, employment and work-related policies. Eurofound was established in 1975 by Council Regulation (EEC) No. 1365/75, to contribute to the planning and design of better living and working conditions in Europe.