



House of Commons

Work and Pensions and Business,
Energy and Industrial Strategy
Committees

**A framework for modern
employment: Government
response to the Second Report
of the Work and Pensions
Committee and First Report
of the Business, Energy and
Industrial Strategy Committee
of Session 2017–19**

*Seventh Special Report of the Work and Pensions
Committee*

*Eighth Special Report of the Business, Energy and
Industrial Strategy Committee*

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Work and Pensions Committee

The Work and Pensions Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Work and Pensions and its associated public bodies.

Current membership

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Business, Energy and Industrial Strategy Committee

The Business, Energy and Industrial Strategy Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Business, Energy and Industrial Strategy.

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Publication

Committee reports are published on the Committees' websites at www.parliament.uk/beis and www.parliament.uk/workpencom and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Parliament website.

Work and Pensions Committee staff

The current staff of the Committee are Adam Mellows-Facer (Clerk), Katy Stout (Second Clerk), Libby McEnhill (Committee Specialist), Rod McInnes (Committee Specialist), Tom Tyson (Committee Specialist), Jessica Bridges-Palmer (Senior Media and Policy Officer), Esther Goosey (Senior Committee Assistant), Michelle Garratty (Committee Assistant) and Ellen Watson (Assistant Policy Analyst).

Business, Energy and Industrial Strategy Committee staff

The current staff of the Committee are Chris Shaw (Clerk), Ben Sneddon (Second Clerk), Jeanne Delebarre (Assistant Clerk), Ian Cruse, and Becky Mawhood (Committee Specialists), James McQuade (Senior Committee Assistant), Jonathan Olivier Wright (Committee Assistant) and Gary Calder (Media Officer).

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Seventh Special Report of the Work and Pensions Committee and Eighth Special Report of the Business, Energy and Industrial Strategy Committee

The Work and Pensions and Business, Energy and Industrial Strategy Committees' report to the House on [A framework for modern employment](#) (HC 352) was published on 20 November 2017 as the Second Report of the Work and Pensions Committee and the First Report of the Business, Energy and Industrial Strategy Committee of Session 2017–19. The Government's response was received on 27 March 2018 and is appended to this report. In the Government response, the Committee's recommendations appear in **bold text** and the Government's responses appear in plain text.

Appendix 1: Letter from Secretary of State for Business, Energy & Industrial Strategy, 27 March 2018

I wrote to you on 7 February alerting you to publication of the Government's response to the Taylor Review of Modern Working Practices. Our response acknowledged the joint BEIS and DWP Committees' earlier report and the way in which its recommendations informed a number of the actions that the Government now intends to take forward. We also met to discuss these issues on 21 February and I am now enclosing a formal response to the BEIS and DWP Committees' recommendations. I look forward to working with you on these issues over the coming months.

The joint report said that responsible businesses have nothing to fear from the proposed legislative approach and even stand to benefit from the 'level playing field' that your approach seeks to create. Government agrees wholeheartedly that exploitation of workers should not be a competitive advantage and poor practices by unscrupulous employers risk undercutting the vast majority of businesses that do treat their workers well.

The Government response to the Taylor Review and the draft legislation you published are very much aligned.

The work of the Review, together with the work of the BEIS and DWP Committees, provided the Government with a solid basis on which to act. The Government would welcome your continued input and engagement through the consultation period to explore these issues further. The Government also welcomes any further views or evidence that the Committees might wish to provide to us to help shape our thinking.

I think it would be beneficial to arrange a further meeting between us after the consultations have closed and BEIS officials have assessed responses received, for us to provide you with an update on next steps.

Thank you for your contribution to the debate on how the Government create a labour market that works for everyone. I look forward to working with you and the other members of both Committees on these and other matters during the year ahead.

The Rt Hon Greg Clark MP

Appendix 2: Government response

Introduction

The Government warmly welcomes the Business, Energy and Industrial Strategy Committee and Work and Pensions Committee joint report – *A framework for modern employment*.

As the Committees said, it is difficult for the average worker to understand what category of employment status they fall into unless they have extensive knowledge of case law and that there is a need for increased clarity on status. The Government agrees with the Committees' assertions that workers better need to understand their employment status, employment rights entitlements and the enforcement should be improved, with the Government playing a bigger role for the most vulnerable workers.

I have already made a commitment in the Industrial Strategy, published in November 2017, to take responsibility for quality of work. The Government Response to the Taylor Review of Modern Working Practices, published on 7 February alongside four consultations, sets out a firm commitment for Government to take forward and act upon a package of measures designed to:

- Drive forward the change required to ensure that creating quality work is given equal priority by Government to the quantity of work;
- Address concerns that abuses in the UK labour market mean that it is not currently a level playing field and commit to take action to stop unscrupulous employers from undercutting those who play by the rules;
- Bring greater clarity to determination of status for individuals and employers by taking action, for the first time in over two decades, in this complex area;
- Enforce more basic employment rights on behalf of the most vulnerable workers, helping to ensure that people get the holiday and sick pay they are entitled to;
- Ensure employers who repeatedly flout the law and game the system by ignoring tribunal rulings are more harshly sanctioned and publically named;
- Strengthening the rights of workers, agency workers and those who work atypically by, for example, offering the right to request a stable contract, regardless of contracted hours.

These reforms will ensure employment law and practices keep pace with modern ways of working created by rapid technological change whilst ensuring the Government strikes the right balance between labour market flexibility and worker protections. They also fulfil the Prime Minister's commitment to not only protect, but also enhance, workers' rights.

The Government found your draft Bill extremely helpful when considering the Government response to the Review and it has given us a good basis to work from. But in some areas, the size, scale and extent of the problem of poor employer practices and exploitation requires us to gather more evidence and consult on the best way to implement the recommendations before finalising some of the detail.

You will see that the Government is bringing forward detailed proposals for consultation, for example extending the right to a written statement to all workers, and making it a ‘day one’ automatic right, and a firm commitment to extending the permitted break in continuous service to benefit atypical workers by allowing them to accrue employment rights over time. This demonstrates the intention to take action and a firm commitment to legislate in the future.

As Matthew Taylor rightly said in evidence to the Committees, the biggest issue is the definition of employment status and this is a complex area, but that does not mean that just because something is difficult the Government should not tackle it head on. His view, and ours, is that the current rules can fail to provide the clarity and certainty that individuals and businesses need, and the Government is firmly committed to taking action to address this. The Government will continue to refer to your draft Bill as this work gets taken forward.

The Taylor Review generated a wide debate and engagement from a cross-section of business, academics, unions and wider society. The work of the Review, together with the work of the BEIS and W&P Committees, provided the Government with a solid basis on which to act. The Government would welcome your continued input and engagement through the consultation period to explore these issues further. The Government would also like to invite the Committees to provide us with any further views or evidence that would help shape our thinking. The Government will keep you updated through the consultation period and will provide you with an update on progress, which will set out a series of actions the Government will take forward later this year, after the consultations have closed and are analysed.

Clarity in Primary Legislation

Recommendation 1

We recommend the Government legislates to introduce greater clarity on definitions of employment status. This legislation should emphasise the importance of control and supervision of workers by a company, rather than a narrow focus on substitution, in distinguishing between workers and the genuine self-employed. (Page 9, para 10).

The Government shares the BEIS and W&P Committees’ view that that for some people the current employment status framework does not provide the certainty and clarity that they need.

The Government agrees that this needs to be addressed, is committed to taking action in this area and is currently consulting on the best way to achieve this, including seeking detailed views and further input, but any potential changes will need to be considered carefully. It is for this reason that the Government has published the consultation authored jointly by BEIS, HM Treasury, and HM Revenue and Customs exploring the options for reforming employment status for both employment rights and tax in order to achieve greater clarity and certainty.

The Government would welcome the BEIS and W&P Committees’ views and contribution to this work.

Worker by default

Recommendation 2

We recommend the Government legislate to implement a worker by default model, as set out in Part 2 of the draft Bill. This would apply to companies who have a self-employed workforce above a certain size defined in secondary legislation. (Page 11, para 15).

The Government believes that the work it is doing on looking at clarification of employment status and, rights, along with actions to make redress easier and faster, will address the understandable concerns that prompted the Committees to make this recommendation. The Government set out in its response that it would return to the question of the burden of proof in Tribunal hearings at a later date, should this not be the case.

Non-guaranteed hours

Recommendation 3

We recommend that the Government work with the Low Pay Commission to pilot, for workers who work non-contracted hours, a pay premium on the National Minimum Wage and National Living Wage. The Low Pay Commission should be responsible for identifying suitable companies to be included in this pilot, based on workforce size and turnover. (Page 12, para 21).

The Government recognises that the issue of one-sided flexibility can cause real issues for working people and their families. Flexible working arrangements can be beneficial both for workers and employers. However, it is not right that businesses transfer the business risk to the individual resulting in individuals having a job, but no security of income.

The Government wants to find ways to tackle this issue which retain the flexibility that many people find so valuable and avoid placing unnecessary burdens on business. That is why the Government will ask the Low Pay Commission in their next remit to consider the impacts of introducing a higher National Minimum Wage rate for hours that are not guaranteed as part of the contract, as well any alternative policies which address the same issue. Officials in BEIS are also investigating alternative means to tackle this issue alongside that work.

Continuous Service

Recommendation 4

We recommend that the Government extend the time allowance for a break in service while still accruing employment rights for continuous service from one week to one month. (Page 13, para 25).

The Government shares both Committees' view, accepts this recommendation and is committed to extending the qualifying period beyond one week. This will benefit individuals working in non-traditional employment. The Government is consulting on the length to which the break in service should be extended to ensure that even those who

work atypically are able to accrue rights over time. The Government will also be exploring whether further factors should be considered as exemptions for this legislation. Regardless of whether we make any changes to the exemptions, the Government will provide new and clearer guidance to help clarify the law to ensure workers are clear of their rights.

Employment Tribunals

Recommendation 5

We recommend that the Government creates an obligation on employment tribunals to consider the increased use of higher, punitive fines and costs orders if an employer has already lost a similar case. We further recommend that the Government takes steps to enable greater use of class actions in disputes over wages, status and working time. (page 15, para 31).

Government has already acted on your recommendation on higher fines and, where there has been an aggravated breach of employment law, an employment tribunal will be able to award a penalty of up to £20,000 per worker. The current maximum penalty of £5,000 does not always reflect the higher value awards and is lower than the current penalty for non-payment of National Minimum Wage, so the Government has committed to amending the legislation as soon as practicable to quadruple the award.

The Government agrees that creating a fair and transparent framework will act as a deterrent. The Government wholeheartedly agrees that strong action should be taken against employers who repeatedly ignore both their responsibilities and the decisions of employment tribunals. Exploitation of workers cannot be allowed to become a competitive advantage and the Government cannot allow good businesses to be undercut by those who ignore court rulings.

When an employment tribunal has reached a judgement based on facts which are the same as the facts relating to other workers in the organisation, the employer should update their contracts and employment relationships accordingly, unless there is a good justification for not doing so.

Our consultation will consider in detail how these recommendations can be implemented. This will allow us to reach a final decision on, for example, the circumstances in which a 'repeat offence' would be judged to have been committed.

Alongside these measures, the Government will start enforcing sick and holiday pay on behalf of the most vulnerable workers for the first time, which will mean that fewer of these workers will have to take their employer to a tribunal to secure these basic rights.

Flexibility and the National Minimum Wage

Recommendation 6

We recommend the Government rules out introducing any legislation that would undermine the National Minimum Wage/National Living Wage. (Page 17, para 36).

The Government wholeheartedly accept this recommendation. It should be clear that the Government has no plans to legislate to undermine the minimum wage and is, in fact, taking further enforcement action to ensure that the right to National Minimum Wage for workers who are currently carrying out unpaid internships is enforced.

But the Government recognises that modern business models are changing employment practices and that innovations which lead to work being offered in small, discrete packages through digital platforms can raise questions about how the NMW and NLW apply. It is important that those in the gig economy who are workers are equally protected by the NMW and NLW so, as part of the Employment Status consultation which was published alongside the Government Response to the Review, the Government is gathering further information and input on how definitions of “time worked” might apply to those working through platforms for the calculation of the NMW and NLW.

Entitlement to a written statement of employment particulars

Recommendation 7

We recommend that the Government extends the duty of employers to provide a clearly written statement of employment conditions to cover workers, as well as employees. We further recommend that this right apply from day one of a new job, with the statement to be provided within seven days. This change should be made by secondary legislation under s23 (4)-(5) of the Employment Relations Act 1999. (page 18, para 40).

The Government agrees with the BEIS and W&P Committees and believes that everyone in work should have essential information about the working relationship they have entered into and it is important that individuals and employers know what their rights and responsibilities are throughout the working relationship. If workers do not know their rights they cannot assert them.

The Government therefore accept this recommendation and will extend the right to written particulars to all workers. The Government is consulting on how best to achieve this and what information this statement should include, alongside additional measures which will increase transparency across a range of employment rights.

Lowering the Information and Consultation of Employees (ICE) threshold

Recommendation 8

We recommend that people on worker contracts, as well as employees, be counted towards the 50 workers needed before a company is covered by the ICE regulations. We also recommend the threshold for implementation of the regulations be reduced from 10% to 2% of the workforce. This would require amending secondary legislation under s42 of the Employment Relations Act 2004. (page 20, para 45).

The Government accept that worker voice is a key principle against which to assess job quality and have already set out in the Industrial Strategy the aspects of a job that Government believes are foundational:

- overall worker satisfaction;
- good pay;
- participation and progression;
- wellbeing,
- safety and security;
- and voice and autonomy.

The Government is consulting on extending the regulation and reducing the threshold as both the BEIS and W&P Committees and the Modern of Working Practices Review recommended. The Government will also be engaging with experts and interested parties to consider how those people who work in disparate workforces, the self-employed and those who work through apps come together and engage with their employers to represent themselves using technology. Government would welcome your input into these discussions.

Ending the Swedish Derogation

Recommendation 9

We recommend the Government amends the Agency Worker Regulations 2010 to remove the opt-out for equal pay. We further recommend that the Employment Agency Standards Inspectorate be given the powers and resources it needs to enforce the remainder of those regulations. (page 21, para 51).

The Government does not support or condone the use of ‘pay between assignments’ contracts to circumvent equal pay entitlements. If abuse is limited, state enforcement may be the answer – potentially through extending the remit of the Employment Agency Standards Inspectorate’s to cover the Agency Worker Regulations as suggested. However, if abuse is more widespread, the Government’s initial view is that it would be more appropriate to repeal the derogation.

The Government are seeking both evidence of the scale of abuse and views on the correct approach through the consultation process.

Deterrence

Recommendation 10

We recommend that the Government brings forward stronger and more deterrent penalties, including punitive fines, for repeat or serious breaches of employment legislation, and expand “naming and shaming” to all non-accidental breaches of employment rights by businesses and supply chains. (page 23, para 59).

Alongside the action that I have already set out in our response to your **Recommendation 5**, the Government is consulting on proposed reform and improvement of the enforcement processes to help workers who need to enforce an award through the courts. This, alongside the naming scheme for unpaid employment tribunal awards and quadrupling the aggravated breach penalty limit to £20,000, will provide an effective package of measures to improve payment rates and deter employers from exploiting their workers.

Proactive enforcement

Recommendation 11

We recommend that the Government provides the Director of Labour Market Enforcement and the main enforcement agencies with the resources necessary to undertake both reactive and proactive roles, including deep-dives into industrial sectors and geographic areas, and supply-chain wide enforcement actions. Where extra resources are needed, they should be funded through higher fines on noncompliant organisations. We also recommend that the Government sets out, in response to this report, how it intends the powers and resources of the Director of Labour Market Enforcement will develop over the next five years. (Page 24, para 65).

Government recognises and accepts that appropriate resource must be allocated to enforcement activity and, while the Government agrees with the principle of this recommendation, it is for the Director of Labour Market Enforcement to reflect on and guide the level of future resources in his strategy and annual reports.

In several areas of the response to the Committees' report, the Government is considering increasing the role of state enforcement of employment rights. The Government will, of course, in finalising the detail of that enforcement, review the resourcing levels that will be appropriate alongside considering carefully the recommendations of the forthcoming strategy from the Director of Labour Market Enforcement. Likewise, the Government will continue to assess whether these changes to the powers and roles of the enforcement agencies have any implications for the role and powers of the Director of Labour Market Enforcement.

Currently, the position of the Director is clear. As set out in legislation under the Immigration Act 2016, the Director is required to produce an annual strategy with an assessment of non-compliance in the labour market and provide direction for how labour market enforcement should be exercised for the year ahead. The Director also leads an information hub and sets the strategic priorities for the three main enforcement bodies to ensure that enforcement efforts are coordinated and targeted. The Government will continue to review this to ensure that role remains appropriate, given other changes we make to state enforcement.

I would like to thank you, once again, for your contribution and look forward to discussing this with both Committees further, once the consultations have closed and before Government formally responds to them.