



# Key takeaways from the Government's "Good Work Plan"

## Government proposes new employment laws to reflect a changing labour market

Following Matthew Taylor's 2017 review of [Modern Working Practices](#), the UK Government has provided further detail on its plans to reform and "future proof" the areas of domestic employment law which it perceives as unfit for purpose in the context of a rapidly changing labour market.

Published on 17 December 2018, the [Good Work Plan](#) contains numerous commitments to legislative change. These are, broadly speaking, centred around 5 key aims:

- clarifying the applicable tests for determining **employment status**, to enable individuals to better ascertain their rights and obligations;
- tackling the perceived **unfairness** caused by "one-sided flexibility" on the part of employers, particularly in respect of those who work on a casual or variable basis;
- enhancing the **transparency** of and mandatory detail within terms of engagement;
- seeking to specifically protect **Agency Workers** against comparatively low pay and opaque working arrangements; and
- strengthening certain powers to **enforce** employment rights and judicial orders against infringing employers.

Despite its creditable aims, the Good Work Plan is vaguely drafted and provides very little detail on timelines and nuances associated with a number of the Government's proposals.

Action on the burning issue of employment status in the context of the gig economy – which continues to dominate commentary and case law in this practice area – has effectively been parked pending the completion of further "independent research", for example.

Whilst the vast majority of the government's proposals will require organisations to hold fire on

concrete action whilst the Government finalises the detail (which is also advisable in the current, unpredictable political climate), organisations should begin preparing for some of the headline changes. A number of the reforms are scheduled to come into effect from April 2020, with [legislation](#) already finalised in respect of the proposals to: (i) expand the duty to provide written particulars of employment; and (ii) lengthen the reference period for calculating holiday pay for those with variable remuneration.

We have summarised the key "takeaways" from the Good Work Plan below:

### 1. Employment status

The government has committed to:

- legislate to improve the clarity of the tests applicable when determining employment status, which have developed organically through case law to date;
- shift the main focus of status determination onto the factual level of "employer" control within the relationship, rather than notional rights of substitution (which may not be exercised in practice);
- align status frameworks for the purposes of ascertaining employment rights and obligations under tax legislation to ensure differences between these regimes are reduced to an absolute minimum; and
- improve publicly available online guidance on the issue, including an online "tool", to enable individuals to more easily make their own assessments.

### 2. Transparency of Rights and Responsibilities

The provision of an "initial statement of employment particulars", which is required to set out a number of the basic terms of an individual's engagement, will:

- become a "day-one" right for both employees and workers (it currently only needs to be provided to employees, within two months of their commencement date); and

- need to contain additional, more granular categories of information including further details as to paid leave (including maternity/paternity entitlements), the duration and conditions of any probationary period, all elements of remuneration and the specific days/times on which workers are required to work.

The Government will also launch an awareness campaign, aimed at both individuals and employers, to ensure greater widespread understanding of paid holiday entitlements. In this regard, they will:

- introduce an updated online holiday entitlement calculator, including a potential holiday pay calculator;
- extend the reference period applicable to holiday pay calculations (when determining a "week's pay" for those with variable remuneration) under existing legislation from 12 to 52 weeks, to mitigate the impact of seasonal variations on productivity; and
- implement new state enforcement mechanisms to pursue underpayments of holiday pay on behalf of the most vulnerable workers.

### 3. Fair and Decent Work

The Government acknowledges that the overarching ambition of Matthew Taylor's recommendations was that all work should be fair, decent and of "high quality". In addition to the above mentioned proposals, further reforms are planned to tackle perceived "one-sided flexibility" on the part of employers. These include:

- a new right for employees and workers (including zero-hours workers) who work variable hours to request a "more predictable and stable" contract containing a more fixed working pattern, after 26 weeks of service with a given employer;
- an extension to the gap between assignments which is required to "break" continuous service from 1 week to 4 weeks, to better protect continuity for casual and/or intermittent workers;
- a reduction in the threshold of agreement required amongst employees to implement collective information and consultation arrangements within an organisation from 10% to 2% of employees (subject always to agreement from a minimum of 15 employees), to improve employee voice within the workplace; and
- a statutory ban on employers making deductions from discretionary staff tips.

### 4. Agency Workers

The Good Work Plan also calls out Agency Workers as a specific category of individuals who currently enjoy insufficient protection. To minimise the extent to which this model of engagement is able to "transfer all the risk" to agency workers, the Government proposes to:

- legislate to repeal the so called "Swedish derogation", by which organisations can currently opt out of their overarching obligation to pay Agency Workers equally in comparison to

their permanent counterparts, by engaging them on contracts which meet certain statutory requirements and guarantee a minimum level of pay between assignments; and

- require organisations to provide Agency Workers with prescribed information at the start of an arrangement in the form of a "Key Facts" sheet, to help them make informed choices about the type of work they accept. This will be the responsibility of Employment Businesses (i.e. generally the agency), and will make the provision of granular information on fees and deductions mandatory, as well including detail on the entity which is ultimately responsible for payment. Guidance on the required format will be finalised in due course.

### 5. Enforcement Issues

Finally, the Government seeks to address concerns regarding inherent unfairness and inefficiency within the current mechanisms by which employment rights are enforced, such as the Employment Tribunal system and other methods of state enforcement. In this regard, it plans to:

- introduce a "name and shame" scheme for employers which fail to comply with Employment Tribunal orders, as an additional deterrent to non-payment;
- legislate to increase the maximum level of (further) penalty that Employment Tribunals can impose in instances of "aggravated" breaches of the law to £20,000 (from the current £5,000 ceiling);
- require Employment Tribunals to consider the use of additional sanctions where they find that offending employers have lost a previous case on broadly comparable facts; and
- publish proposals in early 2019 for a new single labour market enforcement agency, which will operate as a single point of contact to help: (i) promote workers' understanding of and access to their employment rights; and (ii) support employers with the compliance challenges they face.

For more information on the Good Work Plan, or any of its specific proposals, please feel free to contact us directly.

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