Major labour market changes and Policy implications for the improvement of fairness and equality focused on the labour market

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법제처

김효선

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1. The current labour market figures and the analysis in terms of employment rate, income and productivity of the UK
2. The latest UK labour market figures and analysis (October to December 2017)

The UK labour market has shown some sign of recovery in the employment-related indicators such as the number of employed or unemployed people and the unemployment rate. The number of people in work and the number of unemployed people both increased between July to September 2017 and October to December 2017, while the number of people aged from 16 to 64 economically inactive which means not working and not seeking or available to work decreased.[[1]](#footnote-1)

The number of people in work shows 32.15 million people, 88,000 more than for July to September 2017 and 321,000 more than for a year earlier, while the number of unemployed people (people not in work but seeking and available to work) was shown 1.47million, 46,000 more than for July to September 2017 but 123,000 fewer than for a year earlier. The employment rate (the proportion of people aged from 16 to 64 who were in work) was shown as 75.2%, higher than for a year earlier (74.6%). [[2]](#footnote-2)

It can be inferred that the UK labour market has been gradually improving due to some reasons judging from the recent employment-related statistics mentioned above. The increase in the employment rate for women over the last few years has partly attributed to ongoing changes to the State Pension age for women, resulting in fewer women retiring between the ages of 60 and 65.[[3]](#footnote-3) It should be noted that these employment-related statistics not only shows the quantified estimates of employment in a whole economy but also reflect some structural changes or qualitative implications.

It should be mentioned that the number of people in employment on ‘zero-hours contracts’ in their main job was 901,000, little changed compared with a year earlier.[[4]](#footnote-4) In addition, the latest estimates show that average weekly earnings for employees in the UK in nominal terms (that is, not adjusted for price inflation) increased by 2.5%, but in real terms (that is, adjusted for price inflation) fell by 0.3% compared with a year earlier.[[5]](#footnote-5) The regular pay increase in nominal terms by 2.5% between October to December 2016 and October to December 2017 is higher than the growth rate between September to November 2016 and September to November 2017 (2.3%).[[6]](#footnote-6)

Comparing the estimates for employees and self-employed people for October to December 2017 with those for a year earlier, it shows that employees increased by 344,000 to 27.16 million (84.5% of all people in work), while self-employed people decreased by 18,000 to 4.78 million (14.9% of all people in work).[[7]](#footnote-7)

The actual hours worked which measures the number of hours worked in the economy, reflect changes in the number of people in employment and the average hours worked by these people. Even with the increased number of people in employment, the number of hours worked in the economy decreased to 31.9 hours per week on average, fewer than for July to September 2017 and for a year earlier.[[8]](#footnote-8)

The workforce jobs which measures the number of filled jobs in the economy. Looking at the longer-term comparison, between June 1978 (when comparable records began) and September 2017, the proportion of jobs accounted for by the manufacturing and mining and quarrying sectors fell from 26.4% to 7.8%, while the proportion of jobs accounted for by the services sector increased from 63.2% to 83.4%.[[9]](#footnote-9)

In terms of labour disputes estimates connected with terms and conditions of employment, there were 9,000 working days lost from 16 stoppages and 5,000 people took strike action. These are recognized as the historically low figures when looking at the long-run monthly time series back to the 1930s. Since monthly records began in December 1931, the highest cumulative 12-month estimates for working days lost was 32.2 million for the 12 months to April 1980 and the lowest cumulative 12-month estimates for working days lost was 143,000 for the 12 months to March 2011.[[10]](#footnote-10) On the other hand, there were 276,000 working days lost from 79 stoppages and 33,000 people took strike action for the 12 months ending December 2017. While there were 232,000 working days lost in the private in private sector, there were 44,000 working days lost in the public sector, the lowest figure since records for public and private sector strikes began in 1996.[[11]](#footnote-11) In addition, vacancies are defined as positions for which employers are actively seeking to recruit outside their business or organization. There were 823,000 job vacancies for November 2017 to January 2018.[[12]](#footnote-12) This was 24,000 more than for August to October 2017, 70,000 more than for a year earlier and the highest figure since comparable records began in 2001. There were 730,000 job vacancies in the services sectors for November 2017 to January 2018, accounting for 88.7% of all vacancies. Looking at services in more detail, the sectors with the largest number of job vacancies were wholesaling, retailing and repair of motor vehicles (136,000) and human health and social work (130,000).[[13]](#footnote-13) There were 2.8 job vacancies per 100 filled employee jobs for November 2017 to January 2018. [[14]](#footnote-14)The industrial sector showing the largest vacancy rate was accommodation and food service activities (4.4 vacancies per 100 filled employee jobs) and the sector showing the smallest vacancy rate was public administration and defense (1.4 vacancies per 100 filled employee jobs).[[15]](#footnote-15)

On the other hand, it should also be acknowledged that the most figures or estimates illustrated above in the analysis are subject to some uncertainty which come from the methodology and the quality of the research. Most of the figures in this statistical analysis come from sampling surveys of households or businesses and the sampling is designed to represent a whole population and to be as accurate as possible, but results from sample surveys are always estimates, not precise figures. This means that they are subject to some uncertainty and this can impact on the interpretation of changes in the estimates especially for short-term comparisons.[[16]](#footnote-16)

1. Analysis of Income inequality in the UK based on related data

According to the statistics presented by the House of Commons Library in 2017, the inequality in household incomes in the UK has remained at a largely similar level since the early 1990s, but is shown higher than during the 1960s and 1970s.[[17]](#footnote-17) After the 2008 economic recession, there was a small reduction in income inequality (based on income before deducting housing costs) as higher income households saw a larger real terms fall in income than households at the bottom of the distribution.[[18]](#footnote-18) This can be explained by the sharp fall in real earnings after the recession, while benefits levels remained more stable. Measurement of income inequality is generally concerned with inequality in disposable incomes which is calculated after benefits and after direct taxes.[[19]](#footnote-19) Upon the tracking income inequality in the UK based on various indicators including the Gini coefficient or any other such as the ratio of incomes for individuals at different points on the household income distribution, and the share of total income going to different groups of households, a more complete picture of income inequality is obtained.[[20]](#footnote-20) For example, OECD figures suggest income inequality in the UK is higher than in most European countries but is lower than in the United States, based on the Gini coefficient for the disposable income adjusted for differences in household size and composition. Data published by Eurostat gives a slightly different picture, indicating income inequality in the UK is lower than in some other EU countries but is still higher than the EU average.[[21]](#footnote-21)Furthermore, there have been results out of the research demonstrating the positive relationship between economic inequality and poverty in the UK over recent decades, which is to show that income equality could have been a correlative factor which can aggravate the relative income poverty level in the UK over recent decades. According to the results out of the research investigated on the relationship between economic inequality and poverty in the UK using the Gini coefficient as a measure of income inequality, a positive correlation between income inequality and relative income poverty in the UK over recent decades can be clearly found. It was explained that relative poverty rates tend to be higher when income inequality is higher, and this suggests that increases in income inequality are associated with increases in relative income poverty rates.[[22]](#footnote-22) According to the OECD Income Inequality report published in 2015, the average income of the richest 10% is almost 10 times as large as for the poorest 10%. The OECD average is shown as 9.5, in France and Germany it is around 7 and in the US 16.[[23]](#footnote-23) Also in this report, the concern is that between 2005 and 2011 the average income of the poorest 10% in the UK fell 2% in real terms and while the average household income in the UK is slightly lower than in Germany and France, the average income of the bottom 10% in the UK is much lower.[[24]](#footnote-24) That is, the level of income inequality among the total population in the UK has been well above the OECD average in the last three decades. From a peak in 2000 and subsequent fall, it rose again since 2005. Recent data up to fiscal year 2012/13 suggests inequality has been constant since 2010.[[25]](#footnote-25) Furthermore, it shows that taxes and benefits reduce income inequality in the UK to the extent which is in line with the OECD average, but below other European countries such as France, Germany or the Nordics.[[26]](#footnote-26) The remarkable thing to mention is that changes in taxes and benefits combined have reduced household income on average in the UK since 2007.[[27]](#footnote-27) This report demonstrates that in particular, families earning around the average wage tended to gain, particularly due to the increase in the income tax basic allowance, however the impact on families in unemployment and with low earnings was dependent on the family composition in accordance with the composition of various tax and benefits systems in the UK. In the UK, it was analysed that the families without children tended to lose, mainly due to changes in housing benefits and families with children tended to gain through the rise in the child tax credit and it was revealed that the policy changes also reduced the income of higher earnings families due to the withdrawal of child benefit and higher social contributions.[[28]](#footnote-28)

1. New forms of Employment in the UK and the legal issues
2. The overview of flexible labour market

In recent years, most European countries including the UK have seen various social and economic developments, and particularly the need for increased flexibility by both employers and workers, also based on the broader use of advanced information and communication technologies (ICT) has been leading to the new emerging forms of employment. This development of new forms of employment has put forwarded EU labour policy issues such as the specific characteristics of those new forms of employment and their impacts on working conditions and the labour market and the policy implications. According to the research project conducted by the European Foundation for the Improvement of Living and Working Conditions (Eurofound) in 2013/2014,[[29]](#footnote-29) nine broad new employment forms were identified. New employment forms can be classed in two groups, which represent the new models of the employment relationship between employer and employee or client and workers, and new work patterns, that is new ways in which work is conducted.[[30]](#footnote-30) In relation to new employment relationships, it can be noticed that two new employment forms – employee sharing and job sharing – are emerging across Europe.[[31]](#footnote-31) Employee sharing can be defined that an individual worker is jointly hired by a group of employers (who are not clients of a traditional temporary work agency) and work on a rotating basis for the involved companies. On the other hand, job sharing is the new form of work in which single employer hires two or more workers to jointly fill a specific job.[[32]](#footnote-32) Another new form of employment relationship is shown as voucher-based work, in which the employment relationship and related payment is based on a voucher rather than an employment contract.[[33]](#footnote-33) Then in this case, the workers have a status somewhere between employees and self-employed in most cases.[[34]](#footnote-34)

In addition, the research mentioned above illustrated new work patterns such as interim management, casual work, ICT-based mobile work, crowd employment, portfolio work and collaborative employment.[[35]](#footnote-35) New work patterns and labour relations can be differentiated from traditional forms of employment so that their characteristics need to be scrutinized for adequately dealing with labour market issues. It explains in interim management, a worker is hired for a temporary period of time by an employer, often to conduct a specific project or solve a specific problem. In the labour relations of the interim management worker has employee status but not with a traditional fixed-term work arrangement.[[36]](#footnote-36) In the casual work the employer is not obliged to provide workers with work in regular basis but has the flexibility to call on them when needed.[[37]](#footnote-37) This research differentiated two types of this employment form. Intermittent work involves an employer arranging workers on a regular or irregular basis to conduct a specific task and this employment is characterized by a fixed-term period, which either involves fulfilling a task or completing a specific number of days’ work.[[38]](#footnote-38) On the other hand, on-call work involves a continuous employment relationship, but the employer has no obligation of calling the employees, and instead the option of calling the employee in when needed.[[39]](#footnote-39) There can be employment contracts that indicate the minimum and maximum number of working hours, as well as so-called zero-hours contracts that specify no minimum number of working hours, in which the employer is not obliged to ever call in the worker.[[40]](#footnote-40) ICT-based mobile work is said to refer to new work patterns characterized by the worker (whether employee or self-employed) operating from various possible locations, supported by modern technologies and various ICT devices which was the most commonly reported work pattern in the research mentioned above.[[41]](#footnote-41) Also crowd employment is characterized by not being place-bound like the ICT-based work.[[42]](#footnote-42) Similarly, portfolio work done by the self-employed refers to situations in which they work for a large number of clients, providing just small amounts of work for each of them.[[43]](#footnote-43) At last, new patterns of self-employment in the form of new collaborative models were found in a variety of countries. In addition, there are new cooperation patterns which go beyond traditional business partner relationships such as umbrella organisations, coworking and cooperatives.[[44]](#footnote-44)

1. New employment forms and the its impacts on labour market

Most new employment forms were shown to generally cover the whole economy and all occupations, even if in practice there could be specific sectors or occupations more relevant to certain forms of works.[[45]](#footnote-45) It should be noted that the implications of each form of employment could vary greatly from case to case, depending on the specific relations of employers and employees, their preferences and the bilateral agreements among them. However, some generalised characteristics could be derived of which forms of employment would be beneficial not only to employers but also to employees, and of which forms of employment can raise the concerns in regards with job security and workers protection. Regarding the positive effects on labour market, all of the new employment forms identified in the research mentioned above can be said to have potential positive effects on labour market integration of specific groups of workers.

The new employment forms such as job sharing, casual work and voucher-based work can be said to have positive impacts on labour market integration. First of all, job sharing, casual work and voucher-based work mainly relate to people who cannot or do not want to do a full-time job.[[46]](#footnote-46) New employment forms such as the casual work and crowd employment could offer more job opportunities to the market, giving job seekers access to work experience. In addition, flexible work form such as the employee sharing, ICT-based mobile work and crowd employment can be also beneficial for workers or job seekers in remote distance with limited job opportunities to fine their workplace.[[47]](#footnote-47) That is, most of emerging employment forms such as job sharing or ICT-based mobile work especially can be said to contribute to labour market innovation and provide job opportunities better suited to the specific needs of workers.[[48]](#footnote-48) Furthermore, there can be seen some positive effects of portfolio work, crowd employment and collaborative employment on labour market in that those new employment forms can encourage people to try out self-employment with less entrepreneurial risk.[[49]](#footnote-49) In recent years, various companies (e.g., IBM, BMW, Audi, McDonald’s, Otto, Henkel, Tchibo, Sennheiser, etc.) are showing a tendency to outsource diverse tasks to crowds from innovation such as ideas generation to marketing such as designing logos, advertising slogans and general support tasks such as execution of calculations.[[50]](#footnote-50) Numerous researchers identify great potential for companies in the opening up of internal business processes to the crowd,[[51]](#footnote-51) while others speak of ‘reaching a new evolutionary level in terms of business value creation’[[52]](#footnote-52) through use of the potential of the crowd. On the other hand, it should be noted that in many researches, the risks associated with crowd work, both for crowd workers (internal crowdsourcing) and companies, have been critically discussed. For example, some research result attracted our attention to the emergence of ‘digital sweatshops’, because the remuneration of crowd workers can sometimes be very low and is also insecure.[[53]](#footnote-53) Moreover, there could be risks for companies that internal knowledge can leave the company via crowdsourcing or that difficulties emerge in relation to the control of the work processes.[[54]](#footnote-54) That is, considerable amount of researches have found that some new employment forms have potential opportunities not only for employers but also for workers. On the other hand, it can also be argued that the effects of these new employment forms would be rather limited in the job creation.[[55]](#footnote-55) Among various new employment forms, employee sharing seems to have real job creation effect, while job sharing and interim management are said to contribute to job retention.[[56]](#footnote-56)Voucher-based work can have job creation effect, but it is also said to have potential to crowd out standard employment which is even more likely for casual work and crowd employment.[[57]](#footnote-57) The ICT-based mobile work can provide more advantages related to flexibility, autonomy and empowerment for employees, however there would be some side effects when employees could be faced with more intensified work pressure, high stress level, increased working time, the blurring of boundaries between work and private life and the outsourcing of traditional employer responsibilities (notably in the field of health and safety) to workers.[[58]](#footnote-58) The casual work mentioned above is characterized by low levels of job and income security, poor social protection, little access to HR measures and in many cases, dull or repetitive work.[[59]](#footnote-59) For this type of work, the high degree of flexibility could have more adverse impact on most of workers even if there might be a beneficial impact on some workers who prefer more flexible working arrangements. Most casual workers could be faced with more job insecurity and lack of predictability especially if they would not know when they would be called to work by employers. Therefore, it should be noted that most casual workers would concern the higher degree of job security or job stability more than job flexibility. The most concerned situation under these new forms of work can be mentioned the considerable lack of representation of workers which make it difficult for the workers to properly represent their interests. The lack of job security or the enhanced job flexibility can produce a rather fragmented workforce which make it far more difficult for the workers to take efficient collective measures by organizing their interests.[[60]](#footnote-60) For example, if casual work and voucher-based work forms would be widely accepted to the fragmented jobs associated with low income and limited social protection, the labour market segmentation would be enhanced.[[61]](#footnote-61) If certain groups of workers mainly take up those precarious jobs in labour market, social polarization could be another negative outcome.[[62]](#footnote-62) ICT-based mobile work can involve some unexpected danger which not everyone can keep track of new technological developments and may be left behind, possibly resulting in labour market segmentation.[[63]](#footnote-63) However, job sharing might diminish labour market segmentation, particularly in helping people with care responsibilities and ill health to enter or re-enter the labour market.[[64]](#footnote-64)

It can be said that new employment forms have some potential effects on European labour market by transforming established employment relationships and work patterns.[[65]](#footnote-65)Specifically, they can influence contractual relationships (including employer versus worker responsibilities), the general understanding of a ‘job’ (bundle of tasks versus fragmented task orientation), and the place and time of work.[[66]](#footnote-66) Therefore, it needs to be questioned whether there would be any need for intervention of government authority or social partners for some of the emerging employment forms. It can be mentioned that the challenges of these forms of work, such as low social protection and job and income insecurity, are more concerned with the general characteristics of the labour relations in the new employment forms such as self-employment or freelance work. Therefore, rather than focusing on specific operations of working, the major policy issue needs to focus more on how to transform current labour laws through legislation or application of the current laws. In some cases, it can be stated that the labour market is not properly prepared to support or allow the use of beneficial new employment forms.[[67]](#footnote-67) This lack of established regulation may be caused by cultural factors such as negative attitudes towards or low wage levels in part-time work especially in some eastern European Member States, which hinders the use of job sharing.[[68]](#footnote-68) Existing legislation mostly are based on traditional employment or service delivery contracts rather than seeking for a separate legal framework, which can limit the potential outcome of new employment forms.[[69]](#footnote-69) In addition, it can be said that there should be the legislative and regulatory framework not only for establishing a sound safety net for workers when some new employment forms but also for striking a balance between the flexibility needed by employers and the labour protection measures required by workers. Furthermore, the rules should be established clear and concise to make them easy to understand for employers, workers and their representatives and consultants.[[70]](#footnote-70) The stability of legislation and application should be secured because frequent legislative changes cause confusion and a feeling of insecurity among the target groups.[[71]](#footnote-71) It can be acknowledged that new forms of employment have been developed in labour market because they have some beneficial functions for employers to cope with fluctuations in demand, for which traditional permanent full-time employment is not an efficient solution, or they are sought by employees who want more flexibility for a better personal work-life balance.[[72]](#footnote-72) In this case where new employment forms have been used for their demands, some inherent concerns with working conditions and the labour market need to be dealt with through legislation or other forms of regulation.[[73]](#footnote-73) Furthermore, monitoring and control mechanisms also need to be developed or improved for reviewing new employment forms. Even if many trade unions have been known to set up special institutions where workers can report misuse of the system, labour inspectors do not generally focus on new employment forms, either due to lack of awareness or due to lack of resources.[[74]](#footnote-74)

1. New forms of employment and the policy of EU
2. New forms of employment and a dual policy of the EU

In addition to work forms associated with non-standard work per se, new forms of employment which showed a very high degree of flexibility of hiring and employment conditions have spread in variety of working areas especially since 2008. As mentioned above, while new work forms could have positive impacts on labour market to provide new opportunities for workers and employers beyond traditional model of the employment contract, it has also been acknowledged that some of those new forms could expose workers to a high degree of insecurity and precariousness rather than any compensating benefits. Some new work forms such as on-call work of the kind associated with ‘zero hours contracts’, have been criticised to expose workers to a high degree of insecurity and precariousness even though other forms of works such as labour pool arrangements found in several Member States, can provide new forms of risk sharing for workers. From the EU perspective, it can be analysed that the EU has followed a dual policy of encouraging diversity in employment contracting, while seeking to regulate so-called atypical or non-standard forms of work which have been considered to provide inferior protection to workers in comparison to the so-called Standard Employment Relationship (SER) of full-time, regular work. [[75]](#footnote-75)This dual approach of liberalization and protection of the EU policy has presumed to make a number of assumptions about the relationship between different forms of work.[[76]](#footnote-76) Firstly, it assumes alternatives to the SER are valid and legitimate based on the justification that some workers and employers may prefer the flexibility associated with non-standard forms.[[77]](#footnote-77) Second, the policy assumes that the SER is itself a valid form and merits some protection.[[78]](#footnote-78) This dualism can be said a possibility in that the current EU approach, while providing, in principle, a right to equal treatment which uses the SER as a benchmark, nevertheless falls short of providing full equality.[[79]](#footnote-79) That is, it may be hard that for a part-time worker to find a valid comparator engaged on full-time work.[[80]](#footnote-80) For example, this is the case reported in UK that national laws implementing the Directive tend to protect the right to transition from full-time work to part-time work but not to return to full-time work.[[81]](#footnote-81) The possible exclusion of zero hours contract workers from the Part-Time Work Directive is a potential problem, discussed in the Wippel case.[[82]](#footnote-82)

1. New forms of labour in the UK and the legal issues
2. Zero-hour contracts

Zero-hour contracts have become one of the most discussed employment law issues in the UK already since early 2013,[[83]](#footnote-83) with frequent reports about the use and abuse of such work arrangement.[[84]](#footnote-84) Political debate has been increasingly heated, from extensive debates in Parliament[[85]](#footnote-85) and a Private Member’s Bill[[86]](#footnote-86) to an official Government consultation aimed at maximizing ‘the opportunities of zero hours contracts while minimizing abuse and setting core standards that protect individuals’ [[87]](#footnote-87)and a promise in the Queen’s Speech 2014 to ‘improve the fairness of contracts for low paid workers’ [[88]](#footnote-88)by ‘strengthen[ing] UK Employment Law by […] cracking down on abuse in zero hours contracts’.[[89]](#footnote-89)

1. Legal matters surrounding zero-hours contracts

‘Zero hours contract’ is not a legal term but used to describe many different types of casual agreements between an employer and an individual. Generally, a zero hours contract is one in which the employer does not guarantee the individual worker any hours of work.[[90]](#footnote-90)The employer offers the individual work when it arises and the individual can either accept the work offered, or decide not to take up the offer of work on that occasion. Under the zero hours contract, regardless of the working hours actually offered, the employer must pay at least the National Minimum Wage.[[91]](#footnote-91) Zero-hours work can take form of not only the contract but also self-employed undertaking a zero hours type of work. The guideline published by the government stipulates that everyone employed on a zero hours contract is entitled to statutory employment rights without any exceptions.[[92]](#footnote-92) Also this guideline says that a person will benefit from the employment rights associated with their employment status and individuals on a zero hours contract will either have the employment status of a ’worker’ or an ‘employee’.[[93]](#footnote-93) Even if it can be said that under UK law there is a distinction drawn between a mere ‘worker’ and an ‘employee’, an employee having more legal rights than a worker,[[94]](#footnote-94) any individual on a zero hours contract who is a ‘worker’ will be entitled to at least the National Minimum Wage, paid annual leave, rest breaks and protection from discrimination.[[95]](#footnote-95) However, one of the major problems surrounding Zero-hours contract can be said that zero hours contract is not legally defined term with no unitary notion.[[96]](#footnote-96) As the Secretary of State for Business, Innovation and Skills, Dr. Vince Cable MP noted during a 2013 Opposition Day debate in Parliament about the definitional problems surrounding the Zero-hours contract, there is an issue about what the zero-hours contracts actually are, because they are not clearly defined and whole lot of contractual arrangements of enormous variances.[[97]](#footnote-97)

It can also be recognized that the zero-hours work arrangement are not a new phenomenon and are called part of a much larger tendency toward numerical flexibility [which has been] particularly marked [since] the 1980s’.[[98]](#footnote-98) Litigation arising from the use of Zero-Hours Contracts to allow employers numerical flexibility and attempt to avoid the application of statutory protection can be traced back nearly forty years.[[99]](#footnote-99) In Mailway[[100]](#footnote-100), for example, the claimant postal packer ‘could and would only attend for work in accordance with the need expressed by the employers.’[[101]](#footnote-101) A study by Katherine Cave in the 1990s showed the already widespread use of ‘something that could be classified as zero hours contracts’;[[102]](#footnote-102) with a strong growth trend as an area where there has been abuse’[[103]](#footnote-103) continuing in the subsequent decade.[[104]](#footnote-104) Moreover, Zero-Hours Contracts were discussed in the academic literature,[[105]](#footnote-105) and even explicitly mentioned in New Labour’s 1998 White Paper on ‘Fairness at Work’,[[106]](#footnote-106) which was perhaps in response to one of the earliest examples of public controversy, when Burger King’s practice to pay staff only for time spent actually serving customers was exposed in the mid-1990s.[[107]](#footnote-107) Also then the government welcomed ‘views on whether further action should be taken to address the potential abuse of zero hours contracts and, if so, how to take this forward without undermining labour market flexibility.[[108]](#footnote-108) Even though the UK remains the most ‘notorious’[[109]](#footnote-109) user of such models, the use of such arrangements is not specific to the UK but to be observed from other Member States[[110]](#footnote-110) and at the EU level. The Court of Justice’s terminology, for example, is one of ‘working according to need, [where the employee] works under a contract which stipulates neither the weekly hours of work nor the manner in which working time is to be organized, but it leaves her the choice of whether to accept or refuse the work offered by ‘the employer]’.[[111]](#footnote-111) Furthermore, it needs to be noted that the Zero-Hours Contract label cannot be seen as representing a clear or overarching category or organizing principle of precarious work, or as somehow cleanly mapping onto received understandings of ‘atypical work’. There is a considerable degree of ‘heterogeneity of temporary work’[[112]](#footnote-112), illustrated in ‘an increasing number of terminologies for the ‘heterogeneity of temporary work’, apart from commonly used categories such as temporary work, part-time and self-employed work. Terms have been shown as ‘reservist’; ‘on-call’, and ‘as and when’ contracts; ‘regular casuals’; ‘key-time’ workers; ‘min-max’ and ‘zero-hours’ contracts’.[[113]](#footnote-113)

It can be said that the various categories of ‘atypical’ work can frequently overlap, for example where agency work incorporates a ‘zero-hours contract dimension’.[[114]](#footnote-114) As Kilner Brown J in Mailway suggested, the claimant’s Zero-hours arrangement there ‘in one sense […] was casual labour; in another sense it was part-time work.’[[115]](#footnote-115)Thus, zero-hours arrangements can be said to represent various degree of fragmentation of work – from reasonably regular and consistent employment to a spot-market in labour.[[116]](#footnote-116) That is, zero-hours arrangements could be said to represent wide range of possible employment, ranging from ‘well-paid secure, preferred choices’[[117]](#footnote-117) to ‘vulnerable’[[118]](#footnote-118) or ‘poor work’[[119]](#footnote-119), rather than forming a single or unitary category.

As mentioned above, there has been a frequent assumption that clear-cut definitions could be found for zero hours contracts. One example of an attempted definition of Zero-Hours Contracts can be found in a Private Member’s Bill introduced by Andy Sawford MP in the summer of 2013, with a view to making it ‘unlawful to issue a zero hours contract.’[[120]](#footnote-120) That Bill seeks to define such arrangements in its clause 3(1), identifying them through a combination of factors as follows:

A zero hours contract is a contract or arrangement for the provision of labour which falls to specify guaranteed working hours and has one or more of the following features-

1. It requires the worker to be available for work when there is no gurantee the worker will be needed;
2. It requires the worker to work exclusively for one employer;
3. A contract setting out the worker’s regular working hours has not been offered after the worker has been employed for 12 consecutive weeks.[[121]](#footnote-121)

In addition, official consultation document on the use and regulation of Zero-Hours arrangements, published by the government in December 2013, noted that ‘[t]here is no legal definition of a zero hours contract in domestic law’.[[122]](#footnote-122) But then it went on to generally define as ‘an employment contract in which the employer does not guarantee the individual any work, and the individual is not obliged to accept any work offered.’ [[123]](#footnote-123)Then the specific illustration of a zero hours contract was provided by means of a specific ‘example of a clause in a zero hours contract which does not guarantee a fixed number of hours work per week’: “The Company is under no obligation to provide work to you at any time and you are under no obligation to accept any work offered by the Company at any time.”[[124]](#footnote-124) It also says that such contracts are legal under domestic law where they are freely entered into, a zero hours contract is a legitimate form of contract between individual and employer.[[125]](#footnote-125)

As seen in these accounts, it can be problematic assumption that there would be any single unitary category of the Zero-Hours Contract. That is, it can be said that the assumption of the Zero-Hours Contract as a unitary category can hardly be sustainable in the face of widespread factual complexity.[[126]](#footnote-126)On the other hand, some academic commentators such as Ewing and Aileen McColgan that draw a distinction between Zero-Hours Contracts, in which ‘the employee promises to be ready and available for work, but the employer merely promises to pay for time actually worked according to the requirements of the employer’ and ‘arrangements for casual work’ where ‘again the employer does not promise to offer any work, but equally in this case the employee does not promise to be available when required.’[[127]](#footnote-127) Simon Deakin and Gillian Morris suggest that Zero-Hours Contracts encompass all cases ‘where the employer unequivocally refuses to commit itself in advance to make any given quantum of work available.’[[128]](#footnote-128)Mark Freedland and Nicola Kountouris refer to ‘work arrangements in which the worker is in a personal work relation with an employing entity […] for which there are no fixed or guaranteed hours of remunerated work, and these arrangements are variously described as ‘on-call’, ‘intermittent’, or ‘on-demand’ work, or sometimes referred to as ‘zero-hours contracts’.[[129]](#footnote-129)

Even a brief survey of fact patterns has suggested that there can be no clear divisions or watertight categories,[[130]](#footnote-130) which could be more understandable especially once the phenomenon is seen against the context of the ‘richness of non-legal accounts and analyses’,[[131]](#footnote-131) found for example in a recent report on Zero-Hours Contracts by the Resolution Foundation.[[132]](#footnote-132)

The lack of clarity and uniformity mentioned above can have a detrimental impact on the quality of the empirical evidence on work under Zero-Hours Contracts even if it cannot but to be admitted that ‘[t]he statistic provide the only way of finding out what is going on [with regards to such arrangements] in our economy.’[[133]](#footnote-133) That is, it should be mentioned that the number of people in employment on ‘zero-hours contracts’ in their main job calculated at 901,000 for the period from October to December 2017 as illustrated above, still has some possibility to represent a underestimation of the prevalence of Zero-Hours Contracts, as the existence of varied definitions makes it very difficult to gauge the actual prevalence of Zero-Hours work.

First of all, it can be deeply problematic that the empirical estimates of Zero-Hours workers depends upon survey respondents’ individual understating of the term Zero-Hours Contract, because the concept is neither be consistently defined over time, nor between the Labour Force Survey administered by the Office for National Statistics (ONS) and the survey respondents. The survey respondents are likely to exclude themselves from being recorded as working under a Zero-Hours Contract and will be recorded as employed under ‘none of these’ working arrangements.[[134]](#footnote-134) Also, it has been acknowledged that the ONS’ lack of clarity is likely to have hindered individuals from correctly identifying their working arrangements.[[135]](#footnote-135) The LFS is based upon the responses of individuals, who will often not have the significant information about, or understanding of, their contractual situation to provide reliable evidence in this regard.[[136]](#footnote-136) For example, as shown in an interview given to the Resolution Foundation, there was a further education lecturer in Bradford suggesting that he had no idea that he had signed a zero-hours contract and that when he had applied for the job it had been advertised a job with the work time of between three and twenty-one hours a week.[[137]](#footnote-137) In response to these difficulties, the ONS have begun to carry out a survey of businesses, who may be better placed to respond to questions about the contractual arrangements of their workers. [[138]](#footnote-138)And then the first results of this new methodology, released in the late spring of 2014, show a significant increase in the numbers of ‘Employee Contracts that do not Guarantee a Minimum Number of Hours’, as now being referred to in the broad category of Zero-Hours arrangements.[[139]](#footnote-139) However, it has been acknowledged that it can be still problematic to measure in empirical surveys because significant further analysis of the data collected should be required to present a clearer picture.[[140]](#footnote-140) To sum up, despite assuming public and regulatory perceptions, it can be said Zero-Hours contract does not reflect an overarching or consistent category of varied casual work forms and it makes it difficult to measure in empirical surveys, so that cannot easily be mapped onto the legal spectrum of contractual employment relationships.[[141]](#footnote-141)

1. A regulation of labour contractual relationship in the UK

Freedland and Kountouris have noted that there are major and continuing controversies in many European legal systems as to how [precarious work] arrangements fit into existing legal relational categories which are the outcomes of processes of legal normative characterization of personal work relations.[[142]](#footnote-142) Even if the government did not give Zero-Hours Contracts the status of legal term, the governments asserted in 2013 that they are legal under domestic law and if they freely entered into, a zero hours contract is a legitimate form of contract between individual and employer.[[143]](#footnote-143) However, when it comes to the heterogeneity of Zero-Hours Contracts, this clear statement can be faced with considerable challenges to be simply agreed without further controversies. The limitations of freedom of contract found in doctrines such as illegality can be applied as to judgement of legality of those arrangements. The arrangements do not involve contracts involving the commission of a legal wrong[[144]](#footnote-144), or contracts contrary to public policy.[[145]](#footnote-145) As mentioned above, it should be noted that they represent a wide spectrum of contracts, not a singular form of contract.

The legal institution of the contract is central to English employment law.[[146]](#footnote-146) While there has been the dramatic increase of legislative activity in the labour market since the second half of the twentieth century,[[147]](#footnote-147) contract has become the key legal relationship which confers an externally defined employment status on its parties.[[148]](#footnote-148) This role of contract as a gateway to statutory rights and duties is illustrated in the interpretative provisions of the Employment Rights Act 1996, which simply provide that ‘”employee” means an individual who has entered into or works under […] a contract of employment.’[[149]](#footnote-149) Thus, major parts of the British system of labour market regulation are set up to hinge on this status, the definition of which is left to the common law.[[150]](#footnote-150) The same is true for the more recent notion of the worker.[[151]](#footnote-151) Through more than a century, a considerable amount of case law and scholarship has built up to develop, adapt and refine a series of common law tests to determine on which side of the ‘binary divide’ or the more recent tri-partite scheme of employees, workers and the self-employment any given individual should fall.[[152]](#footnote-152) Zero-Hours arrangements can lead to a serious of different classifications and thus different degrees of statutory protection under the prevailing common law tests. In this case, certain cases could fall completely outside the scope of employment protective norms.[[153]](#footnote-153) The primary reason behind this is the role played by the requirement of mutuality of obligation.[[154]](#footnote-154) In Nethermere v Gardiner, Dillon LJ summarized earlier case law and suggested,

That there is one *sine quo non* which can firmly be identified as an essential of the existence of a contract of service and that is that there must be mutual obligations on the employer to provide work for the employee and on the employee to perform work for the employer. If such mutuality is not present, then either there is no contract at all or whatever contract there is must be a contract for services or something else, but not a contract of service.[[155]](#footnote-155) It is often assumed that the requirement of mutuality of obligation has become a significant hurdle in establishing such a relationship, either by denying a ‘global’ or ‘umbrella’ contract necessary to clear statutory temporal qualification thresholds, or by attacking the very classification of the work undertaken as employment due to the absence of future commitments.[[156]](#footnote-156) This is usually illustrated by reference to two leading cases, *O’Kelly* and *Carmichael*. In O’Kelly[[157]](#footnote-157), function waiters at the Grosvenor House Hotel employed under a rostering system as ‘regular casuals’ claimed for unfair dismissal due to their trade union membership and activities. Despite evidence that they had worked ‘virtually every week [...for] up to as much as 57’ hours, the Court of Appeal found that there was ‘no overall or umbrella contract’ of employment,[[158]](#footnote-158) and also suggested that even each individual wage or work bargain could not be a contract of service. In Carmichael, ‘casual as required’ tour guides in a power station attempted to assert their right to particulars of employment.[[159]](#footnote-159) Whilst the Court of Appeal had found them to be employees, the House of Lords upheld the industrial tribunal’s finding that the claimants’ ‘case “founder[ed] on the rock of absence of mutuality”’.[[160]](#footnote-160)Judging from major leading cases regarding the requirement of the mutuality of obligation, it seems a serious challenge to classification of Zero-Hours Contract arrangements as statutorily protected contracts of employment or service. However, there are some suggestions which support more concerned use of this concept than were directly mentioned in these cases. For example, Lord Hoffmann in Carmichael warned that ‘in a case in which the terms of the contract are based upon conduct and conversations as well as letters’ the Courts should not ignore evidence of the reality of what happened between the parties.[[161]](#footnote-161) In the more recent decision in Cotswold Development v Williams, Langstaff J (as he then was) expressed his concern that Tribunals may

Have misunderstood something further which characterizes the application of ‘mutuality of obligation’ in the sense of the wage/work bargain. That is that it does not deprive an overriding contract of such mutual obligations that the employee has the right to refuse work. Nor does it do so where the employer may exercise a choice to withhold work. The focus must be upon whether or not there is some obligation upon an individual to work and some obligation upon the other party to provide or pay for it.[[162]](#footnote-162) This subtle development of the mutuality of obligation criterion to a wide range of actual variation can be noticed in operation in the EAT’s decision in St Ives, which found that whilst the work had been characterized contractually as a Zero-Hours arrangement, there ‘were mutual obligations subsisting between the employer and the employee during periods when the employee, a casual worker, was not actually engaged on any particular shift’.[[163]](#footnote-163) This seemed to be mainly due to the tribunal’s findings of a long and well-established regular work pattern, with the employer on one occasion even taking disciplinary action against the casual worker’s violation of that pattern.[[164]](#footnote-164) As Elias J (as he then was) noted, ‘a course of dealing, even in circumstances where the casual is entitled to refuse any particular shift, may in principle be capable of giving rise to mutual legal obligations in the periods when no work is provided.’[[165]](#footnote-165) That is, it is entirely possible that an individual working under a Zero-Hours Contract can be classified as an employee under section 230 ERA even through an application of the mutuality of obligation text for employment status.[[166]](#footnote-166) It should be noted, however, that such an outcome would be heavily dependent on the precise facts of each individual case and furthermore and somewhat counter-intuitively, be dependent on level of precarity in any one work setting: the less stable or secure the arrangement, the higher the chance that it would fall to be classified as a contract of employment.[[167]](#footnote-167)

On the other hand, where a Zero-Hours Contract worker is found not to be working under a contract of employment, it can be said a secondary gateway into (a smaller set of) basic employment rights remains. Statutory employment law has reacted to the increasing heterogeneity of work through a proliferation of additional categories,[[168]](#footnote-168) including notably the worker concept in the sense of section 230(3) ERA, introduced in order to broaden the scope of basic labour standards.[[169]](#footnote-169) The leading dicta on the interpretation of this status can be found in Byrne Bros v Baird,[[170]](#footnote-170) a decision in the context of the Working Time Regulations 1998.[[171]](#footnote-171) Recorder Underhill QC suggested that the difference between the statuses of employee and worker was to be understood as one of degree, not kind:

Drawing the distinction in any particular case will involve all or most of the same considerations as arise in drawing the distinction between a contract of service and a contract for services - but with the boundary pushed further in the putative worker’s favour. […] Cases which failed to reach the mark necessary to quality for protection as employees might nevertheless do so as workers.[[172]](#footnote-172)

As reviewed above, it can be said that mutuality of obligation will obstruct all the claimants working under Zero-Hours Contracts from seeking to depend on their statutory rights. Even those not found to be working under a contract of employment will often be able to have recourse to at least the set of rights protected under a worker’s contract.[[173]](#footnote-173) More than this, there is a case where employers have begun to react to the changing legal landscape of worker protection,[[174]](#footnote-174) and insert explicit ‘no mutual obligations’ clauses into standard form contracts with Zero-Hours workers. This appeared for a while to be able successfully to deny any employment status, because ‘[s]o long as a document is clearly detailed, drafted and the worker sings freely […] it seem[ed] unlikely that employee status can be successfully asserted by the worker.’[[175]](#footnote-175) However, today this kind of technique may no longer be successful, especially in the case of Zero-Hours clauses. In Autoclenz, the Supreme Court addressed the issue of such explicit clauses (including ‘no-mutuality’ terms), and suggested that in case of any deviation in practice from a written Zero-Hours clauses, effect could be given to the parties’ ‘actual legal obligations’.[[176]](#footnote-176) This was in large part due to the realisation of the relational inequality inherent in ‘the relative bargaining power of the parties’[[177]](#footnote-177), which will be particularly obvious in the sort of precarious work arrangements such as Zero-Hours works. As Bogg has noted, ‘[w]here there is other relevant evidence that the ‘real agreement’ differed from the signed contract, for example the subsequent conduct of the parties, the court will evaluate that evidence and determine what was agreed.’[[178]](#footnote-178) This approach can be shown in the recent decision of the EAT in *Pulse Healthcare*, in which a preliminary question as to Zero-Hours Contract workers’ employment status was raised in the context of the transfer of an undertaking. The claimant care workers had provided intensive medical support under a ‘Zero-Hours Contract Agreement’ which ‘the Employment Judge was […] entirely justified in saying […] did not reflect the true agreement between the parties’[[179]](#footnote-179) The work arrangement in question was from the outset or had over time become one in which the parties are subject to some degree of continuing mutual obligation with regard to the provision of work and the doing of work as offered.

1. The overview of current labour policy structure of the UK and the development history for the fair and equal regulation of labour market
2. A brief history of labour law development in the UK for the fairness and equality of labour market
3. The ends or purposes of labour law in the UK since 1960s onwards

In the UK, it has been analysed that although high level of legislative activism started from the mid-1960s and continued to illustrate itself from the 1970s to the 1990s, that activity is very significant one since the New Labour administration came to power in 1997 under the Prime Ministership of Mr Tony Blair, both in absolute terms and in proportion to that of the earlier period as a whole.[[180]](#footnote-180) This story of labour legislation and public policy from the 1960s onwards can be viewed as one of changing polical judgments as to what was desirable or sustainable balance of the bargaining power between employers and workers, and a generally increasing resort to legislative intervention in order to reflect those changes in outlook.[[181]](#footnote-181) It can be said those shifts of perception, especially as they occurred from the mid-1960s onwards, generated what could be regarded as different ways of correcting inequality of power in employment relations.[[182]](#footnote-182) One mode was to consist of using labour legislation to moderate the collective bargaining power of trade unions, while supplementing the protections of individual workers. The policy of Labour governments in the later 1960s and 1970s was known to operate in this mode.[[183]](#footnote-183) On the other hand, the other consisted more straightforward way of re-balancing the equilibrium of power in employment relations in favour of management.[[184]](#footnote-184) The Conservative administration of 1970 to 1974 is known to have moved decisively into the latter mode, a retrospective view would rather regard it as poised between the two modes.[[185]](#footnote-185) It was generally agreed at the time, and is still perceived to be the case, that the Conservative governments of the 1980s opted decisively for the latter mode in that they regarded the correction of inequality of bargaining power in employment relations consisted absolutely of reducing the power of trade unions.[[186]](#footnote-186) However, it has been stated that the re-conceiving of the ends or purposes of labour law which occurred during the 1980s went further than this, in a sense transcending the ups and downs of the see-saw of correction of inequalities of bargaining power between management and workers, and amounting to a more fundamental re-casting of the function of labour legislation and its role in the public policy of governments.[[187]](#footnote-187) At last, that is to say that labour law began to move out of the zone of ‘social law’ and worker protection, and became part of a larger and rather different vision of labour market regulation in the interests of a free market economy.[[188]](#footnote-188) From that perspective, labour law and the regulation of employment relations can be viewed, in a much more pronounced and overt way than they had previously been, as instrumental to the securing and maintaining of a political equilibrium constructed around the key notions of full employment, carefully controlled inflation, taxation and social security expenditure, and financially efficient provision of public services.[[189]](#footnote-189)

1. The overview of policy consideration developed by the Labour administration since 1997 (‘New Labour’) and the shifts in priorities

It can be said that while the reduction of the power of trade unions was undoubtedly an important pre-occupation of government since the 1980s, that formed only part of a lager political enterprise of ‘restructuring the labour economy’ which, as we put it, ‘gradually focused upon the notion of a market economy as the ideal for industrial society’.[[190]](#footnote-190) In the development of that theme, a number of elements of regulation of employment relations and of the labour market can be noted no less important parts of the picture than the reduction of trade union power.[[191]](#footnote-191) A number of elements have been noticed including re-structuring of pay bargaining, and of the individual employment relationship in such a way as to recognise and establish a functional relationship between the ‘removal of rigidities’ and the promotion of full employment. In addition, as part of the creation of a new and marketized approach to the provision of public services and the discharge of the functions and responsibilities of government, the re-designing of the governmental approach to occupational pension provision and social security and vocational training provision more generally were noted in the development of labour law policy sector in the 1980s.[[192]](#footnote-192) As the principle policy document of the New Labour administration for the legislation relating both to individual rights at work and to collective representation at work, the White Paper of May 1998, Fairness at Work represented a significance not only of settling the old or traditional conflicts surrounding labour law, but also for active engagement in a more broadly based kind of labour market regulation.[[193]](#footnote-193) It declares that ‘Britain needs a flexible and efficient labour market in which enterprise can flourish, companies can grow and wealth can be created’;[[194]](#footnote-194) the pursuit of this objective is identified strongly with the combating of high unemployment and extensive social exclusion;[[195]](#footnote-195) and it is asserted that ‘For those in work, the Government has two key objectives for the labour market; efficiency and fairness’, these being seen as ‘wholly compatible’ objectives in the sense that ‘It is perfectly possible to have a modern, flexible and efficient labour market which is both a vital engine for economic growth and business output and a means for people to find well-paid and satisfying jobs.[[196]](#footnote-196) The White Paper further elaborates the key terms:

The keys to securing efficiency and fairness are employability and flexibility. Employability means ensuring that people are well prepared, trained and supported, both initially as they enter the labour market, and throughout their working lives. Flexibility means businesses being able to adapt quickly to changing demand, technology and competition. By enabling business success, flexibility promotes employment and prosperity.[[197]](#footnote-197)

And then it confirms its objectives of embodying the regulation of employment relations within a wider set of economic and social interests.

To support both employability and flexibility we need a labour market culture and a legislative framework which together promote economic growth, enhance competitiveness, encourage entrepreneurship and foster job creation.[[198]](#footnote-198)

It was observed the various ways in which that approach to labour legislation was linked up with a similar set of approaches to a number of other kinds of social and economic regulation bearing upon employment relations and the functioning of the labour market.[[199]](#footnote-199) This was well shown by the way in which, in the sphere of taxation and social security provision, a review initiated by the Treasury and published at the end of 1997 announced, in a manner very comparable with that of *Fairness at Work*, the institution of a new agenda which was essentially one of active labour market regulation.[[200]](#footnote-200) There was an administration directed from the ‘twin peaks’ of the Cabinet Office and the Treasury by both the Prime Minister and the Chancellor, Mr Gordon Brown.[[201]](#footnote-201) The most significant and over-arching policy initiative of the first New Labour government can be identified the Comprehensive Spending Review initiated by the Treasury and launched within a month of the government’s coming into power.[[202]](#footnote-202) This review was to lay the policy foundations for a whole governmental programme of control of public spending and of inflation and taxation, intended to provide the basis for full employment and economic prosperity, and generally regarded as remarkably successful in achieving those ends over the space of a number of years.[[203]](#footnote-203) Between this programmatic approach and the enterprise of re-structuring the economy identified as the backdrop to the labour market regulation of Conservative government in late 1980s and at the beginning of the 1990s, it can be said there were evident resonances.[[204]](#footnote-204) Moreover, the notion of a chain of political or social contracts was recognizable in the policy discourse of that time and that notion would secure the necessary set of commitments to this programme, culminating in an overtly contractual and consumerist vision of the relations between citizens, government, and the agencies of public service provision.[[205]](#footnote-205) This notion is clearly visible in the new design for social security provision which was generated by the Comprehensive Spending Review, and which was proposed by the Green Paper of March 1998*, A new Ambition for Our Country-A New Contract for Welfare*.[[206]](#footnote-206) It should be stressed that, by contrast with the approach to economic re-structuring taken place in the later 1980s, this policy framework was a design for increasing social investment in public services and the relief of poverty rather than reducing it, however the political contract which both approaches had more or less in common was clearly articulated by the Prime Minister in his Foreword to the Comprehensive Spending Review White Paper of July 1998 when, speaking of the government’s intentions to increase expenditure on key public services.[[207]](#footnote-207) In that White Paper, he declared the main principle of the contract like belows;

… because money for education and health has been so hard won, there is an obligation on those spending that money to do so wisely in pursuit of agreed and ambitious targets. That is why we insist on a new principle for funding public services: ‘money for modernisation’. ‘Money for modernisation’ is a contract. It says we will invest more money but that money comes with strings attached. In return for investment there must be reform.[[208]](#footnote-208)

It is observed that the New Labour administration created a particular meaningful policy framework in terms of labour market regulation.[[209]](#footnote-209) As illustrated above, the main task of the New Labour administration in the employment sphere was to ensure and maintain the existence of a flexible and adaptable labour market and showed a vision about how that could best be achieved which was not very dissimilar from that of those immediate predecessors, but was perhaps a somewhat more sophisticated one.[[210]](#footnote-210) This was based on the recognition that ‘the labour market’ was an entity or a conception which was not only complex but also undergoing various mutations, largely associated with the transitions from a predominantly manufacturing economy to an economy predominantly producing services, and from an economy in which the public and private sectors were quite strongly separated to one in which they were elaborately inter-twined.[[211]](#footnote-211) That is, the New Labour administration seems especially to have realized that new divisions or aspects or formations of the labour market for the securing of a flexible and adaptable labour market required regulatory reinforcement at rather different points and in rather different ways from those of earlier regulatory practice in the employment sphere.[[212]](#footnote-212) In earlier phases it had been appropriate to regard employing enterprises as creating or operating within two quite sharply differentiated kinds of labour market, one being internal and the other external. An employing enterprise would operate an ‘internal labour market’ when it drew primarily on its own workforce to meet demands for enhancement of technical and managerial capacity, and would tend to limit its recourse to the ‘external labour market’ to special situations of occasional demand.[[213]](#footnote-213) In the recent and current phase, employing enterprises have mixed and mingled their drawings upon internal and external labour markets to the point where there is no sharp distinction between the two typologies.[[214]](#footnote-214) This labour market blurred differentiation consisted in an exponential expansion of various patterns of outsourcing or contracting out of labour provision and this increasingly often extended to the core functions and the management of the employing enterprise itself.[[215]](#footnote-215) The New Labour administration perceived it as a matter of the utmost importance to maximise the ability of employing enterprises to shift into and out of intermediate and external labour markets, and to have free recourse to this emerging market in the management of labour.[[216]](#footnote-216) The many of their regulatory decisions or interventions in the employment sphere were specifically directed to protecting these particular and often novel forms of labour market freedom and adaptability for employing enterprises.[[217]](#footnote-217)

1. The major trends and factors affecting on the formation and implementation of public policy with regard to labour legislation

Among all those which could be identified as significant, there will actually be more important factors in the shaping of public policy in theoretical or practical level. It has been generally agreed that the most obvious general trends in the evolution of personal work relations during this period consisted in the continued progression towards, first, ‘non-standard’ forms of employment, and secondly, at least until the end of the 1990s, de-collectivisation in the sense of the reduction of the significance of collective bargaining and, to that extent, the individualization of work relations.[[218]](#footnote-218) There is a widespread agreement among both social science analysts and legal analysts that there were important shifts in that direction during this period and the view of legal analysts are important here because the categories of ‘non-standard forms of employment’ are to quite some extent in their custody.[[219]](#footnote-219) There is a general consensus that there was during this period growth in the size of the sections of the workforce, and the proportions of the total workforce, who were engaged in part-time, temporary, agency, and casual employment.[[220]](#footnote-220) However, it is true that there is considerable uncertainty, and even disagreement, about the nature and extent of those shifts, and as to how much they might cause an inexorable and overwhelming transformation of employment practice and structures; earlier depictions to the latter effect have been the subject of recent skepticism.[[221]](#footnote-221) In addition, this importance of a trend, earlier regarded as a central one, away from individual employment relationships towards those of self-employment seem to be more doubtful though the precise statistical assessment is rather controversial.[[222]](#footnote-222)Specifically, the ESRC Furute of Work Research Programme in 2003 says that in the UK, findings from recent national surveys show there is no rapid increase in self-employment. Self-employment grew rapidly from 5 to 11 percent of total employment between 1979 and 1984, but at present it stands at 7 percent.[[223]](#footnote-223) However, a different statistical assessment of 11% for 2001 is given in a fact-sheet issued from the same source.[[224]](#footnote-224) That discrepancy may be analysed to be attributable to the significant difficulty of drawing that particular category distinction.[[225]](#footnote-225) More generally, the debate as to whether and how far these evolutions represent the systemic erosion of standard forms of employment remains a difficult and unsatisfactory work of assessment, if only because of the extent to which those phenomena occur in complex patterns of coincidence with each other.[[226]](#footnote-226) Furthermore, it should be pointed out that in a sense we may miss the point and central significance of those phenomena by analyzing them within an analytical framework of de-standardisation of employment or work relationships and then over-unifying or unduly homogenizing those phenomena which may occur in a very varied economic and occupational contexts.[[227]](#footnote-227) That is, it may well be a misleading to draw descriptive unification of the two situations as ones of de-standardised employment when the situation comes to a senior managerial employee who becomes a part-time consultant to his or her employing enterprise and the other situation of a manual employee working on an ‘on-demand’ basis.[[228]](#footnote-228) In addition, it can be pointed that the idea of de-standardisation of personal work relations may exaggerate the distinctiveness of the phenomena of ‘de-standardisation’ from other parallel shifts and changes occurring within the supposedly ‘standard’ employment relationship.[[229]](#footnote-229) It can be suggested to view the phenomena of ‘de-standardisation’ as being aspects of a larger, looser category of ways in which personal work relations may undergo re-structuring, typically on the initiative of the employing enterprise. In this regard, the phenomena of ‘de-standardisation’ constitute aspects of a strong and somewhat accelerating general dynamic of re-structuring of personal work relations but they are certainly not the only aspects and may not even be the most important ones.[[230]](#footnote-230) Thus, other major kinds of re-structuring of personal work relations may occur even fully within the compass of the full-time, long-term employment relationship.[[231]](#footnote-231)

An employment relationship or a set of employment relationships may be re-structured and fully re-specified without necessarily being de-standardised.[[232]](#footnote-232) While the general goal of cost-efficiency has been pursued by means of a very wide variety of strategies and tactics in the organization of forms and structures of production and of use of manpower, alongside de-standardisation of personal work relations, two other main part of factors can be mentioned.[[233]](#footnote-233) The re-organising of working-time, job specification and payment systems within ‘standard’ employment relationships.[[234]](#footnote-234) The other concerns the re-organisation of employing enterprises, which might consist of either external re-structuring or internal re-structuring.[[235]](#footnote-235) Here, external re-structuring consists of the re-arrangement of ownership or control of the employing enterprise or the total or, partial contracting out, contractual sharing, or delegation to agencies, of its employing functions.[[236]](#footnote-236) Internal re-structuring consists of re-distributing or re-grouping managerial responsibility for employment functions within the employing enterprise.[[237]](#footnote-237) It should be noted that either of these sets of strategies are not a new or novelty during this period but have a continuous history at least from the 1960s onwards if not before, however each of these two sets of strategies seems to have been deployed more intensively and extensively, and in increasingly elaborate forms, in the course of the period during that of the Conservative administration of Mr John Major[[238]](#footnote-238) and the subsequent New Labour governments of Mr Tony Blair[[239]](#footnote-239). For example, so far as internal re-structuring which can be referred to job re-organisation is concerned, more and more sophisticated systems of performance management, appraisal, pecuniary and non-pecuniary incentives, and methods of arranging and remunerating working time have been introduced.[[240]](#footnote-240) With regard to the evolution of external re-structuring, it has been noted that the development of more complex organizational forms-such as cross-organisation networking partnerships, alliances, use of external agencies for core as well as peripheral activities, multi-employer sites and the blurring of the public/private sector divide-has implications for both a legal and the socially constituted nature of the employment relationship.[[241]](#footnote-241) There is also evidence of similar elaboration of internal employment structures within many employing enterprises and corporate groups, involving many variants on a theme of creation and re-organisation of internal agencies or profit centres or units or divisions of accounting and accountability.[[242]](#footnote-242) The other trend in personal work relations during the time would be that of de-collectivisation or de-unionisation.[[243]](#footnote-243) The de-collectivisation or de-unionisation has been well-documented and carefully analysis through its evolutions in the 1980s, its continuation in the 1990s, and its halting or even partial reversal from the end of the 1990s, but the analysis has been significantly shaped by its commitment to a concept or paradigm of ‘individualisation’ as the counterpart or outcome of de-collectivisation.[[244]](#footnote-244) In terms of labour relations, it can be noted that this paradigm of ‘individualisation’ inevitably induces a consciousness that the purpose of effect of de-unionisation is to make way for personal work relations which are more than previously varied between one worker and another even within a single employing enterprise.[[245]](#footnote-245) On the other hand, some analysts put forward that de-collectivisation is certainly not inimical, and may even be conducive, to the evolution of contracts of employment as standard form contracts, in the sense of *contrats d’adhésion*, which means highly specified and formalized contracts proposed by management which workers may accept or reject, but the terms of which are not open to negotiation.[[246]](#footnote-246) It could also be analysed that the centrally significant effect of de-collectivisation is to increase the freedom of the employing enterprise, both in a procedural a substantive sense, to engage in re-organisation of personal work relations, that is to say, to engage in either job re-structuring or institutional re-structuring or both.[[247]](#footnote-247) That is, the overall effect of de-collectivisation is to facilitate and contribute to a trend towards frequent and often fundamental re-contracting of personal work relations-a dynamic which can be identified as that of ‘managerial flexibility’ or ‘managerial adaptability’.[[248]](#footnote-248) The concept of managerial flexibility describes the capacity of, and the tendency for, employing enterprises to engage in job re-structuring and institutional re-structuring.[[249]](#footnote-249) The pursuit or exercise of managerial flexibility may take the form of, or result in, frequent or even continuous re-contracting of personal work relationships. In a state of managerial flexibility, the articulation and introduction of new contractual structures or frameworks will tend to be a unilateral management activity, even though the settling of detailed tariffs of terms and conditions within those frameworks may be a matter for collective bargaining or consultation, and the locating of particular workers within those structures or frameworks may be a matter for individual negotiation or discussion.[[250]](#footnote-250)That is, this re-contracting may be partly on a uniform basis across a whole group of workers, but partly individuated which could be considered as the re-constituting of the internal labour market and the re-locating of it with regard to the external labour market.[[251]](#footnote-251) Even though it may be difficult to assess how far this state of managerial flexibility was realized during the period of those governments, the pursuit of managerial flexibility has been considered as an inherent and perpetual pursuing goal of managements in the conduct of industrial relations or employment relations over a long period of time.[[252]](#footnote-252) However, there were significant factors which could have considerable effects on the development and deployment of managerial flexibility during the period as same with the de-standardisation and de-unionisation. This factor was the strong tendency of the economy to evolve towards service industries and occupations away from manufacturing industries and occupations.[[253]](#footnote-253) In general, the processes and mechanisms of service provision seem more susceptible to, and dependent upon, rapid adaptability of personal work relations than those of the production of physical goods.[[254]](#footnote-254) Moreover, the intensification and increasing professionalization of personnel management, re-conceptualised as human resource management can be also said as another important factors for the development of the managerial adaptability.[[255]](#footnote-255)As mentioned above, managerial flexibility is continuously pursuing goal in the management of employing enterprises and it cannot be estimated how far there was a change of kind in favour of managerial flexibility as a mode of, or approach to, the conduct of personal work relations during the period, it should be noted that the managerial flexibility became a guiding ideal for public policy during the period perhaps for labour legislation in general but certainly for the aspects of legislation and regulation of personal work relations.[[256]](#footnote-256) It can be said this ideal was discerned in a rather general and negative sense during the Major administration as way of dictating a continuation of the policies of de-regulation of the previous Thatcher administration, and an increasingly persistent resistance to European Community social policy legislation.[[257]](#footnote-257) However, the Blair administration after the election of 1997 was to pursue the goal of managerial flexibility in personal work relations in a somewhat more positive and nuanced way.[[258]](#footnote-258) It was noticed that this ideal supported strongly the programmatic policy pursuit both at rhetorical and practical levels in the early years after 1997 and both in the manner of engagement with EU social law and policy and in the development of domestic legislative policy.[[259]](#footnote-259) Through the subsequent years, an initial New Labour consensus around the public policy of personal work relations tended to dissolve**.[[260]](#footnote-260)** This erosion of consensus was shown rather significantly with regard to the politics of personal work relations in the public sector because it required a great deal of positive public reformist activity to pursue the politics of personal work relations in relation to the public sector while thegoal of managerial flexibility could be pursued without a great deal of legislative or normative activity with regard to the private sector.[[261]](#footnote-261)

1. Regulation of personal work relations under the Major administration, 1990-97

The administration of Mr John Major began with the resignation of Mrs Margaret Thatcher as Prime Minister in November 1990 and was renewed by his victory in the General Election of 1992, and then lasted until his defeat by New Labour in 1997. The administration of Mr John Major could be regarded as merely an interval between the governments which preceded and then followed it specifically in terms of the evaluation of the significance of this administration for the law of personal work relation.[[262]](#footnote-262)

However, it can be stated that this administration is of no small importance with its legislation and measures in relation to personal work relations and the politics surrounding them and instead it can be seen as a bridge between Thatcherism and Blairism in a more positive and significant sense.[[263]](#footnote-263) During this period, the rhetoric of government policy was dominated by the theme of de-regulation and the pursuit of de-regulation policy intimately bound up with the tempering of EC legislation.[[264]](#footnote-264) In fact, it can be seen that the policy of de-regulation became largely identified with the politics of resistance to EC social legislation and with the minimal implementation of such EC social legislation when could not be completely resisted.[[265]](#footnote-265) That is, the politics of de-regulation were focused on standing still in the face of the onward march of EC social policy.[[266]](#footnote-266) This politics of de-regulation was illustrated through on-going political incidents which came with the refusal of the UK government to participate in the adoption of the European Community Charter of Fundamental Social Rights of Workers in December 1989, and the negotiation of an agreement upon the terms of the Treaty of Maastricht completed in December 1991.[[267]](#footnote-267) This agreement was aimed for an arrangement whereby the UK would not be bound by the provisions having been proposed as the so-called Social Chapter of that Treaty, but by reason of the British opt-out from those provisions, taking the form of a Protocol agreed between and applying between the remaining eleven Member States.[[268]](#footnote-268) So far as the law of personal work relations were concerned, the making of the latter agreement arguably could be said the crucial event of the Major administration, both because it represented the moment at which the Prime Minister decisively took up his stance with regard to that body of law, and because of the practical outcomes which resulted from it.[[269]](#footnote-269) If the Social Chapter had been embodied in the Treaty itself, the enactment which would have been made by all twelve Member States. The enactment in fact made by the other eleven in the Social Policy Protocol was to create a new and expanded framework or set of competences for social policy legislation to be approved by qualified majority voting rather than by unanimous voting in the Council of Ministers, and was also to commit the Community to giving effect by means of Directives to agreements made between the European Social Partners, that is to say, the organisations representing employers and workers at European level, under the EC Social Dialogue arrangements.[[270]](#footnote-270) Mr Major regarded it as an achievement of the first importance to have ensured that the United Kingdom would not be subject to Community legislation enacted under this process.[[271]](#footnote-271) Even though it can be hard to say how much social policy legislation was enacted under the Social Dialogue process which was instituted by the Protocol, therefore affecting the other eleven member states but not the UK, the only such legislation during the period of the Major administration was the Parental Leave Directive of 1996.[[272]](#footnote-272) The more important respect in which the British opt-out seems to have affected the course of legislative history is in relation to the regulation of working time. By the time of the negotiation of the Masstricht Treaty, the UK government was already leading a long struggle either to resist or to water down proposals for a Directive on working time.[[273]](#footnote-273) It seems highly likely that, if the Treaty had included the Social Chapter, the European Commission would strongly have wished to invoke the enhanced legislative competence, which it would have conferred, to secure the enactment by qualified majority voting of such a Directive in a way which would have been binding upon all the Member States.[[274]](#footnote-274)

The European Commission, in the very different legislative environment of the British opt-out, chose to pursue the more contentious and insecure route of reliance on the capacity to legislate by qualified majority voting which had been created by the Single European Act of 1986 for ‘measures relating to the improvement in particular of the working environment to protect the health and safety of workers’, rather than settling for a Working Time Directive enacted under the Protocol and therefore not applying to the UK.[[275]](#footnote-275) Thus the aim was to secure legislation which would bind all the Member States including the UK, and no doubt the Commission hoped to have achieved this both with the Working Time Directive of 1993[[276]](#footnote-276) and the Young Workers Directive of 1994[[277]](#footnote-277). The response of the UK government was triply intransigent; having first sought to water down the proposals for the Working Time Directive, it brought an action before the European Court of Justice for the annulment of the Directive, arguing that the legal base for it was defective, and when that action failed[[278]](#footnote-278) it conducted a desultory and grudging implementation exercise[[279]](#footnote-279), letting the implementation date[[280]](#footnote-280) pass without having legislated, and maintaining a negative stance which became associated with the rhetoric of ‘no gold-plating’. So matters continued until, and stood at, the time the government went out of office in 1997.[[281]](#footnote-281) The legislation enacted during this administration can be said to occur by way or reluctant response to external pressures and the legislative exercise were carried out in a fairly minimalist way and requirements to enhance the protections for workers were subjected to a process of liberalising dilution.[[282]](#footnote-282) The exception which proves this rule is that, where the government did see the opportunity to pursue a positive agenda of re-structuring personal work relations, especially in the public sector, it did it so with real enthusiasm.[[283]](#footnote-283) To be more specific, under the Mayor administration, in the field of basic labour standards and general worker protection regulation, it can be said that there were two major sets of measures, one contained in the Trade Union Reform and Employment Rights Act 1993 (TURERA 1993) and the other in the Pensions Act 1995 (PA 1995). In Part Ⅰ of TURERA, in the field of collective labour law, which gave effect to various policies which the government strongly wished to pursue, and for Part Ⅲ which administered the final quietus to the system of sectoral minimum wage arrangements administered by Wages Councils, already greatly diminished by various abolitions or curtailments of powers during the previous administration.[[284]](#footnote-284) It can be acknowledged that Part Ⅱ of the Act represented a significant set of enhancements of worker protections.[[285]](#footnote-285) It can be explained through the fact that despite the British opt-out from the Social Chapter as mentioned above, it can be seen there was a considerable accumulation of obligations to complete or repair the implementation of EC Directives which were binding upon the UK.[[286]](#footnote-286) Although it was not always very apparent from the terms in which the Secretary of State for Employment, Gillian Shepherd, presented this part of the Bill,[[287]](#footnote-287) it can be said that to have represented an implementation, and in fact on the whole a fairly minimal implementation, of a number of such Directives, rather than a set of initiatives for worker protection on the part of the UK government.[[288]](#footnote-288) Thus, the Pregnant Workers Directive of 1992 was implemented to the extent that a right to a minimum of fourteen weeks’ maternity leave was introduced, irrespective of the hours and length of service of the worker, but no provision requiring that to be paid leave was made at that stage, while progressive best practice by then might have been to make such provision.[[289]](#footnote-289) In addition, it can be similarly acknowledged that the Information about Conditions of Employment Directive of 1991[[290]](#footnote-290) was implemented by enhancement of existing provision for employment particulars and for itemized pay statements,[[291]](#footnote-291) but the opportunity was not taken to adopt a comprehensive and transparent approach to information about terms and conditions of employment.[[292]](#footnote-292) On the other hand, as far as individual worker protection is concerned, there were some measures remarkably cautious at the collective level. Thus the implementation of the Health and Safety Framework Directive of 1989 was taken further[[293]](#footnote-293) by the provision of special employment protection, in terms both of unfair dismissal rights and rights not to suffer detriment, for workers who in various senses raise or pursue health and safety concerns in the workplace.[[294]](#footnote-294) That is, a general unfair dismissal protection was at the same time conferred upon employees dismissed for asserting any of an extensive list of statutory employment rights from the beginning of their employment.[[295]](#footnote-295) But it was contentious that the Directive remained less than fully implemented at the collective level in that the health and safety consultation rights required by the Directive remained confined to representatives appointed by recognized trade unions.[[296]](#footnote-296) If the provisions of TURERA 1993 seem to typify the approach of a government strongly committed to minimizing the impact of worker-protective legislation upon managerial flexibility, this can be said to be reinforced by the other main item of such legislation enacted during the Major administration, that is the Pensions Act 1995.[[297]](#footnote-297) The Pensions Act of 1995 can be seen as the attempted reconciliation of a number of different pressures which exerted themselves upon the Major administration with relation to the regulation of occupational pension schemes. Firstly, there was the pressure exerted by public outrage at the raiding of the funds of the Mirror Group occupational pension scheme by the Proprietor of the Mirror Group corporation, the notorious Robert Maxwell. This pressure was to improve the legal protection of the entitlements and expectations of occupational pension scheme members against fraudulent or dishonest management of such scheme.[[298]](#footnote-298)Secondly, there was the pressure exerted by EC law to equalise the terms and conditions of occupational pension schemes as between men and women, having resulted from the fundamentally important decision of the European Court of Justice in the Barber[[299]](#footnote-299) case that the equal pay principle of EC law[[300]](#footnote-300) extended prospectively to occupational pension scheme provision.[[301]](#footnote-301) Thirdly, there was a long-term need to enable both state and private occupational pension provision to cope with the enhanced demand resulting from the accelerating increase in life expectancy.[[302]](#footnote-302) As a result of these pressures which exerted themselves most strongly upon the government, the robust measures to strengthen the protection of the entitlements and specific legitimate expectations of pension scheme members having been proposed by the Review Committee but those measures did not seek to reform occupational pension scheme provision in any more fundamental respect, no doubt regarding such reform as a matter of high policy for the government rather than for them.[[303]](#footnote-303) From this starting point, the government put forward legislation which, as ultimately enacted in the shape of the Pensions Act 1995, combined a cautious implementation of the scheme-member-protective regime proposed by the Review Committee, and a response to immediate and longer-term pressures for equalization of pension provision between men and women, with various moves which would enable state provision to be gradually limited while continuing the underlying liberalization of the regime for private occupational pension provision.[[304]](#footnote-304) Even though the measures for member protection and gender equalisation in the management of occupational pension schemes were considered important, it is the tendencies towards de-regulation, liberalisation and the general downgrading or relaxation of pension expectations which require attention for their continuing significance.[[305]](#footnote-305) That is, the downgrading[[306]](#footnote-306) of the previous requirements for guaranteed minimum pension provision as a condition for contracting out of the State Earnings-Related Pension Scheme illustrated a kicking away of one of the props which supported the structure of final-salary-related fixed pension benefits, and the introduction[[307]](#footnote-307)of the new Guaranteed Minimum Funding Requirement for occupational pension schemes did not in any real sense provide an equivalent guarantee. Also again, the gender equalization of the state pension age consisted of a downward adjustment to women’s state pension entitlement- the staged postponement of that entitlement from the age of 60 to that of 65, rather than an upward adjustment from the age of that of men, or a convergence upwards and downwards of women’s and men’s state pension ages. That is, there were measures which further encouraged saving for retirement via personal pension provision on the more speculative and less protective money-purchase basis rather than via occupational scheme-based provision on the basis of defined benefits related to final salary.[[308]](#footnote-308) Richard Nobles concluded like that;

This is an Act in which pension policy is structured by the government’s perceptions of what cannot be afforded; taxpayers in the next century cannot afford the levels of state pensions previously promised and private pension providers (especially employers) cannot afford to pay significantly more towards private pensions that they do at present. These perceptions represent a severe constraint on pensions policy. The state is not only unable to offer adequate state pensions, but it cannot coerce the private sector into offering secure and adequate private provision [emphasis added].[[309]](#footnote-309)

Behind a rhetorical façade of enhancement of protection, fairness, and freedom of choice for workers, with regard to the provision of retirement pensions, this legislation actually continued the gradual draw back of the state from the direct and indirect responsibilities for pension provision assumed by earlier administrations, upon which the government had commenced in the 1980s.[[310]](#footnote-310)

Just as seen that the Major administration showed marked caution in approaching towards the demands for the development of basic labour standards, so it was also suspicious of negative effects on managerial flexibility so far as the recognition of human and equality rights was concerned. [[311]](#footnote-311)The major illustration of this tendency is to be found in the history and content of the Disability Discrimination Act 1995. It has been argued that although this act represented a very important advance in the recognition of equality rights, it was limited in several significant respects by comparison with what the campaigners had hoped to achieve.[[312]](#footnote-312) In the employment field, the Act made it unlawful for employers to discriminate against disabled persons employed by them or against applicants for employment with them,[[313]](#footnote-313) and also introduced a duty upon employers to make reasonable adjustment to their arrangements or their premises to prevent substantial disadvantage to disabled persons.[[314]](#footnote-314) Even though these were recognized very remarkable measures which was exceptional in the history of the Major administration in that it had been introduced without or ahead of requirements to legislate imposed by or under EC law,[[315]](#footnote-315) the governmental resistance to the strong domestic political pressure during this period managed to provide a narrower approach to the definition of disability discrimination than had been pursued by the activists, one which confined the concept to the more restrictive medical construction of disability rather than the more broadly based social construction of that concept.[[316]](#footnote-316) The more crucial matter is that the employment provisions of the Act were not to apply to those working in the police force, the prison service, or in the military or fire-fighting services,[[317]](#footnote-317) or those working for small businesses employing fewer than twenty employees.[[318]](#footnote-318) This latter exclusion which was highly controversial at the time was justified by spokesmen for the government partly by the general rhetoric of minimizing burdens upon businesses, especially small ones, and partly by drawing a spurious analogy with the corresponding exemption from the quota system for disabled workers which had been instituted by the Disabled Persons (Employment) Act 1944.[[319]](#footnote-319) A further criticism was identified to have pointed to the failure of the 1995 Act fully to give effect to the then recently adopted UN Standard Rules on Equalisation of Opportunities for Persons with Disabilities.[[320]](#footnote-320) Even though that UN Rules can be regarded as too aspirational a standard of evaluation in the present context, it could be still agreed that there was considerable evidence of foot-dragging on the part of the government in the course of this episode in the development of human and equality rights in the workplace.[[321]](#footnote-321) In addition, it can be generally stated that the position of government during the Major administration was a defensive and reactive rather than a protective with regard to the employment legislation to non-standard employment.[[322]](#footnote-322) This approach was shown through the enactment in 1995 of regulations[[323]](#footnote-323) to abolish the total or partial exclusions of part-time workers from a wide range of statutory employment rights, which was a single episode of legislative adaptation to non-standard employment which took place during that administration.[[324]](#footnote-324) Specifically, many of the central statutory rights of employees, such as those relating to redundancy payments and to unfair dismissal, had been subject to a total exclusion of those working for less than 8 hours per week, and to a partial exclusion of those working for between 8 and 16 hours per week whereby their qualifying period for continuous contractual employment was five years, whereas the qualifying period for those working for 16 hours or more per week was at that time two years.[[325]](#footnote-325) The government having been unwilling to respond to the demands for abolition of these differentiations between part-time and full-time work as being discriminatory against women- demands made because women constituted an overwhelming majority of the part-time work force- the Equal Opportunities Commission challenged this regime in litigation, alleging that it involved violation of Article 119 (now Article 141) of the EC Treaty or the Equal Treatment Directive.[[326]](#footnote-326) The initial reaction of the government when the challenge was upheld in the House of Lords was nevertheless to refuse, or at least to postpone, alteration of the legislation.[[327]](#footnote-327) Even if the government eventually decided to bring forward legislation, the measure having taken further improvement than had been immediately necessitated by the judgement in the EOC case, it can be probably said that the government tried to concentrate their energy on their continuing and successful resistance to the enactment of further EU legislation about the equalization of the situation of part-time workers with that of full-time workers, rather than promoting to go beyond the requirements of EU law in a worker-protective direction.[[328]](#footnote-328) As a reaction to the decision, the government eventually abolished both the total exclusion of under-8-hour employees and the partial exclusion of 8-16-hour employees, even though it was only the latter partial exclusion which had been the subject of the challenge and the decision of the court.[[329]](#footnote-329)

As mentioned above, the Major administration sought to secure managerial adaptability in those areas or aspects of legislative activity, in the sphere of personal work relations by the essentially negative means of total or partial resistance to various pressures including both external-European and domestic ones for the enhancement of the rights and protections of workers. But it can be said that the Major administration was engaged in a more positive construction of managerial adaptability. The major part of this positive construction process can be sad that of public service reform.[[330]](#footnote-330) A good example can be provided by the well-known ‘Ullswater amendment’ which was added to the provisions of TURERA 1993 at a late stage of its passage through Parliament[[331]](#footnote-331) in order, to fend off an apparent illegality which the Court of Appeal seemed to have attached[[332]](#footnote-332)to the then very current and growing practice of offering inducements to workers to move out of the protection of collective bargaining in the determination of their terms and conditions of employment and into what would be in that particular sense, ‘individual’ or ‘personal’ contracts of employment.[[333]](#footnote-333) This seems to go beyond what was needed in order simply to ensure the legality of the particular practice referred to above, and it seems likely that this measure was deliberately asserting and legitimating a more widely conceived managerial freedom, which is in fact the freedom to change and adapt personal work relations in any way which commended itself to the employer.[[334]](#footnote-334) It can be this was true with the Deregulation and Contracting Out Act 1994. Part Ⅰ of the Act, on Deregulation, its aim and effect was mentioned to pursue further the programme of deregulation of the Thatcher administration, invoking the same often crude rhetoric of ‘reducing burdens on business’ and ‘cutting red tape’[[335]](#footnote-335), even making the former terminology into a legislative term of art. The principal aim and effect of Part Ⅰ was to enable deregulatory repeals or amendments of primary legislation to be effected by ministerial orders, a transfer of legislative power from Parliament to government often characterized as a ‘Henry Ⅷ clause’[[336]](#footnote-336). It was clearly intended that this power might be used with regard to employment legislation even though in the event this seems to have happened in only one[[337]](#footnote-337) of about fifty instances where this power was invoked. But although that power was scarcely used in the employment area, Part Ⅰ itself contained some significant deregulatory measures affecting employment, of which the most important was the conferment of a specific power to repeal certain occupational health and safety legislation,[[338]](#footnote-338) the curtailment of existing legislation concerning unfair dismissal consisting of selection for redundancy,[[339]](#footnote-339) and the replacement of the system of licensing for employment agencies by a less intense regulation by prohibition orders.[[340]](#footnote-340) In addition, the government was engaged not only in deregulation but also in the construction of a particular approach to managerial freedom and adaptability in personal work relations in bringing forward this legislation.[[341]](#footnote-341) The immediate purpose and effect of Part Ⅱ was to facilitate the contracting out of central government functions, essentially by ensuring that a broad set of such functions could be delegated to private contractors by ministerial order.[[342]](#footnote-342) Even though it was suggested that the notions of de-collectivisation and de-standardisation of personal work relations play a contributory part in the idea of managerial adaptability, the crucial element in the idea of managerial adaptability was identified as consisting of a well-developed capacity and readiness for the frequent re-structuring of personal work relations, whether with regard to the institutional structure of the employing enterprise, or with regard to the contractual and managerial framework of relations with particular workers.[[343]](#footnote-343) It can be noticed that there is a contrast between the ways in which governments during and since 1990s have pursued that goal. While governments did not perceive the need positively to impose their notion of managerial adaptability with regard to personal work relations the private sector, they generally took the view that the best examples of managerial adaptability were being generated spontaneously from within the private sector of personal work relations, so that the role of government was to encourage and facilitate that best practice rather than to exact it in any coercive way.[[344]](#footnote-344) On the other hand, with regard to personal work relations in the public sector, governments strongly perceived the necessity to raise the issue and insist upon the maximizing of managerial adaptability, and increasingly intended to use their power of organization of public sector activity in order to impose their own particular constructs of managerial adaptability.[[345]](#footnote-345) The Major administration received a very specific inheritance from the previous Thatcher administration.[[346]](#footnote-346) In the course of the 1980s, there was an extensive re-structuring of the public employment sector consisting of the transferring the provision of many services both primary or ancillary into the private sector, whether by means of privatization of enterprises or by means of contracting out of activities through processes of competitive tendering.[[347]](#footnote-347) During the Major administration continued that process, the most ambitious case of privatization , that of British Rail [[348]](#footnote-348)was realized, and the Private Finance Initiative began to foster a new practice of long-term contracting out to the private sector the building and running of various public service facilities such as hospitals, prions, and road bridges.[[349]](#footnote-349) That is to say, the Major administration believed that managerial adaptability, and therefore the continuing efficiency of use of public resources in providing public services, could best be achieved by means of reforms which were in the nature of controlled de-centralisation, or partial disintegration, of managerial organization into a hierarchy or network of units of service provision, between which contract-like and market-like relations would prevail.[[350]](#footnote-350) As mentioned above, the Major administration succeeded the process of reform policies which had begun in the latter years of Thatcher administration. One of the most exemplified case would be the known as the Nest Steps programme, consisting of breaking up the departmental organization of the Civil Service into a complex of departments on the one hand and, on the other hand, distinct agencies of public service which stood in contract-like relations with their parent departments,[[351]](#footnote-351) provided with some degree of managerial autonomy but constrained by objectives, targets, and procedures having been set and pursued and varied as necessary by the departments. This Next Steps programme named after the title of the policy document by which it was launched,[[352]](#footnote-352) was initiated by the Thatcher administration and continued into the Major administration. The significant evolution in this programme of reform during the Major administration, indeed the stamp which Mr Major personally put upon it, consisted in its transformation into the form and discourse of the ‘Citizen’s Charter’, an initiative launched by the Prime Minister in the Citizen’s Charter White Paper of July 1991.[[353]](#footnote-353) It can be said that in terms of the implications and effects for the law and governance of personal work relations in public service provision were quite significant.[[354]](#footnote-354) One important legislative outcome of the Citizen’s Charter, in the field of the law relating to industrial action, was the introduction of a new ‘citizen’s right of action’ for an individual to seek an order restraining industrial action, which, as originally proposed in the Citizen’s Charter White Paper, would have been directed at unlawful industrial action ‘affecting the services covered by the Citizen’s Charter’ but was, as eventually enacted in 1993[[355]](#footnote-355), capable of being sought against a wider range of industrial action threatening to prevent or delay the supply of or reduce the quality of goods or services supplied to the individual making the claim. The more far-reaching impact was shown in the capacity of the Citizen’s Charter initiative to concentrate the programme of reform of public services upon the local delivery of those services, and thus upon the organization of personal work relations between the public service workers immediately engaged upon interaction with the users of public services and those who managed their work.[[356]](#footnote-356) The demand for managerial adaptability was focused upon the partly de-centralised management and conduct of units of service delivery.[[357]](#footnote-357) In addition, that demand was strongly realized by the imposition of objectives and standards upon the work of local service delivery through which those at the higher levels of government and management could claim to be reflecting and vindicating the expectations of the citizen-users of the services and thus the citizenry in general.[[358]](#footnote-358) Furthermore, this discourse of vindication of the interests of citizens also legitimated an emphasis upon the incentivisation of workers and managers to serve those interests, and upon the importance of rewarding them as individuals, and as units of organization, according to the degree of success with which they did so. This approach was discerned in the section on ‘Delivering Quality’ and more particularly in the passage on ‘Pay and Performance’ in the Citizen’s Charter White Paper where it was said that ‘Pay systems in the public sector need to make a regular and direct link between a person’s contribution to the standards of service provided and his or her reward.[[359]](#footnote-359) The Treasury issued early in 1992 the highly significant White Paper Competing for Quality,[[360]](#footnote-360) that made proposals for the extension of competition in the public sector by means of further contracting out and market testing. The Citizen’s Charter initiative was to progress beyond its co-optation of the Next Steps programme, and to take its particular approach to the organization and running of public services right into the heart of the Civil Service. This was accomplished by the White Paper The Civil Service Continuity and Change,[[361]](#footnote-361) where it was announced that ‘The Government believes that delegation of further management flexibility is the key to improved performance, within the framework of clear standards of service and output targets under the Citizen’s Charter and continued tight control of the costs of running the Civil Service.’[[362]](#footnote-362) The major practical outcome of this White Paper was a set of moves towards placing members of the Senior Civil Service on formal written contracts of employment, and into a more flexible pay system with pay ranges within which progress of individuals would be linked to their performance.[[363]](#footnote-363)

1. Regulation of personal work relations under the Blair administration, 1997-2001

The focal point for the identification of the policy discourse is the White Paper Fairness at Work, presented by the Department of Trade and Industry in May 1998,[[364]](#footnote-364) in which the government set out its approach to, and programme for, employment law in the ensuing years. That policy document was known to largely set out the particular measures which were taken or debated during that period of government.[[365]](#footnote-365) In addition, there are two other policy documents which should be regarded as representing significant components in the policy framework for the regulation of personal work relations during this period.[[366]](#footnote-366) One of these, the Department of Trade and Industry White Paper, *Our Competitive Future: Building the Knowledge Driven Economy*,[[367]](#footnote-367) provides some significant insights into the objectives of the government of the day for the direction of the development of personal work relations in general, while the other, the Prime Minister’s White Paper, *Modernising Government,[[368]](#footnote-368)* indicates the government’s ambitions for their development in the particular public service provision sphere. The *Competitive Future* White Paper articulates the government’s ideal or objective for the development of personal work relations.[[369]](#footnote-369) This was realized by Hugh Collins and elaborated by him in a highly perceptive article published in 2001.[[370]](#footnote-370) He explains how the government had embarked upon an enterprise of ‘regulating the employment relation for competitiveness’ and pursued to carry out that function by fostering ‘flexible work relations’ which is closely corresponding to the objective identified as that of ‘managerial adaptability’.[[371]](#footnote-371) He was concerned and made considerable achievement by offering a normative exposition of a coherent theory of ‘regulation for competitiveness’ and of ‘flexible work relations’, rather than identifying in full detail the government’s own notion of its regulatory aims.[[372]](#footnote-372) The new policy document presents a more specific model of managerial adaptability in personal relations than the previous government’s presentation had done.[[373]](#footnote-373) Specifically, the associated Analytical Report[[374]](#footnote-374) articulates the idea of a highly entrepreneurial, but at the same time intensively managed, approach to personal work relations, as indeed to the running of corporate enterprises in general. This approach especially emphasized factors such as the importance of the development of information technology as an instrument of management of personal work relations as well as of production, and the need for the construction of workers as managers, highly incentivized on an individual basis and attuned to rapid and constant innovation.[[375]](#footnote-375) A design for the law of personal work relations in the UK emerged from *Fairness at Work* where a space was created and cleared for legislative action.[[376]](#footnote-376) The Prime Minister’s Foreword which was considered a tour de force of draftsmanship in this regard, described a path between two extremes of excessive regulation and insufficient regulation, the former being represented by the collective labour legislation of the 1970s by which industrial action and trade union restrictive practices were over-protected, and the later by the withdrawal or absence of even minimal protections for workers in some areas as the result of the policies of governments towards individual employment legislation in the 1980s and 1990s.[[377]](#footnote-377) In a simple summary, the Prime Minister declared that:

The White Paper steers a way between the absence of minimum standards of protection at the workplace, and a return to the laws of the past. It is based on the rights of the individual, whether exercised on their own or with others, as a matter of their choice. It matches rights and responsibilities. It seeks to draw a line under the issue of industrial relations law.[[378]](#footnote-378)

During its first term of office the Bair administration perceived itself as having real freedom of manoeuvre in its development of the legislation and public policy of personal work relations. This freedom of manoeuvre would be exercised in four overlapping ways: first, to introduce a new body of minimum standards for some basic terms and conditions of employment;[[379]](#footnote-379) secondly, to accept and give effect to an obligation to move back into the mainstream of European Union social and employment policy formation and to implement the relevant Directives;[[380]](#footnote-380) thirdly, to introduce family-friendly provisions conferring greater rights upon workers in favour of their fuller engagement with the responsibilities of parenthood and family life;[[381]](#footnote-381) and, fourthly and finally, to respond to certain other specific domestic demands for the enhancement of workers’ rights and protections, as for example in relation to ‘whistle blowing’ by them.[[382]](#footnote-382) While Fairness at Work detailed the set of directions which the new government intended to exercise the freedom of manoeuvre, it also defined the sense which was assigned to the notion of ‘fairness’ in the White Paper. That notion of fairness was closely linked to that of maintaining the competitiveness of British commerce and industry,[[383]](#footnote-383) and it means that the legislative programme for personal work relations should be carried out with a prior carefulness not to jeopardise the gains in managerial flexibility which had been achieved by Conservative governments since 1979.[[384]](#footnote-384)

1. Basic labour standards and general worker protection

During the first New Labour government, there were three principle legislative cases in terms of enhancement of basic labour standards and workers’ protections, that is, the national minimum wage legislation of 1998-99, the working time legislation also of 1998-99, and the individual employment legislation of 1999, mainly contained in the Employment Relations Act of that year.[[385]](#footnote-385) These measures have been considered to represent the high-water mark of New Labour progressiveness in the partial re-regulation of personal work relations, but in each case that progressiveness was tempered by cautiousness in the close texture of the legislation.[[386]](#footnote-386) The National Minimum Wage legislation has to be considered as a package composed of the 1998 Act and two sets of Regulations enacted in 1999.[[387]](#footnote-387) The area of national minimum wages has been considered one of those in which the government could most convincingly claim to be taking a very different and ore progressive approach to the development of basic labour standards than its predecessors.[[388]](#footnote-388)Whereas the Major administration dismantled the system for setting minimum wages on an industrial sectoral basis by Wages Councils, the new government brought forward a uniform and nearly universal minimum wage throughout the labour market which would extend beyond the category of ‘employees’ to the wider category of ‘workers’.[[389]](#footnote-389) According to the Bob Simpson who has produced the most authoritative academic commentaries upon the National Minimum Wage legislation,[[390]](#footnote-390) the introduction of the national minimum wage legislation would be acknowledged the most radical and far-reaching reform of employment rights made by the 1997 Labour government.[[391]](#footnote-391) This almost complete universality of this intervention into the labour market was in a real sense counter-balanced by its relatively low intensity, denoted in particular by the cautious approach to the actual setting of the National Minimum Wage[[392]](#footnote-392) having been reached between the government and the Low Pay Commission, and by the decisions to apply a lower ‘development’ wage to workers between the ages of 18 and 22 and certain other workers between 22 and 26 and to impose no minimum wage for workers below the age of 18.[[393]](#footnote-393) However, it can be argued that the level at which the National Minimum Wage legislation intervened in the whole wage-setting process was such a low one as to demonstrate that the government’s concern in introducing this mechanism was, not so much to tackle a problem perceived as one of unconscionably low pay at the lowest existing grades of personal work relations, as rather to encourage the development of a more inclusive labour market without thereby enormously increasing the cost, to the state social security system, of guaranteeing subsistence wages for the workers newly drawn into that market.[[394]](#footnote-394) The balance between the competing political pressures upon the New Labour government for re-regulation on the one hand and, on the other hand, for the preservation of the strong version of managerial adaptability which had been hard-won by the previous administration, was held rather differently, as compared with the way in which minimum wages were re-introduced, when it came to the other main area in which progressive intentions were announced by *Fairness at Work* with regard to individual employment law, that of the regulation of working time.[[395]](#footnote-395) In 1997 the New Labour government immediately exercised the electoral mandate which it had acquired to re-engage with European Union social policy by accepting the enlargement of Community competence in that area which had been effected for the other eleven Member States, by the Social Policy Protocol accompanying the Maastricht Treaty in 1991, and which was now extended to the United Kingdom in the very slightly modified form[[396]](#footnote-396) in which it merged from the Treaty of Amsterdam in 1997.[[397]](#footnote-397) Within the particular environment where the Conservative opposition maintained the fierce attack upon the legislation, the government was placed to take advantage of the softening of the Working Time Directive which the previous government had helped to effect as that Directive went through the Community’s political process, so that the version of the Directive which was enacted in the Working Time Regulations of 1998 was one which carefully took up all the opportunities which the Directive afforded for derogation by collective agreement,[[398]](#footnote-398) or individual agreement[[399]](#footnote-399), from the basic labour standards which it imposed. Of the two central labour standards[[400]](#footnote-400) which the Directive required of Member States- the weekly working time limit for an average of 48 hours, and the entitlement to a minimum period of paid annual leave- while the latter was not derogable by agreement of any kind, the former was allowed by the Directive to be the subject of derogation by individual agreement.[[401]](#footnote-401) By taking up [[402]](#footnote-402)the option for derogation from the 48 hours standard by individual agreement, the Regulations advocated what might have been predicted to be, and certainly turned out to be, a relatively lightly prescriptive regulation of weekly working time, mainly because of the ease with which employing enterprises are in practice able to obtain waivers of the 48 hours maximum from individual workers or applicants to become workers.[[403]](#footnote-403) The result of major empirical study published in 2003 concluded that the use of individual opt-outs was a principal reason for the failure of the Directie thus far to have had much impact on an ingrained culture of working long hours in the UK.[[404]](#footnote-404)As mentioned above, the first Blair government established the main platform of measured re-regulation of personal work relations by enacting the National Minimum Wage and Working Time legislation. Among a number of other measures taken in the course of 1999, which were two particular sub-sets, one concerned with the extension or improvement of unfair dismissal rights and the other with the extension or improvement of the maternity and parental rights of workers.[[405]](#footnote-405) It can be said that the same combination of progressiveness with caution and of re-engagement with EC social policy with deference to Euro-sceptic sensibilities as encountered in the context of the ground-breaking legislation of 1998.[[406]](#footnote-406) The cautious and tightly controlled advancement of the New government’s progressive approach to the development of basic labour standards and workers’ protections was also demonstrated by the enactment of the Maternity and Parental Leave etc Regulations 1999[[407]](#footnote-407) which was mandated to be legislated to implement the Parental Leave Directive of 1996[[408]](#footnote-408). Although this measure was progressive and family-friendly measure both in improving the current maternity leave regime and in introducing parental leave for the first time, when taken together with the provisions on the same subject in the Employment Relations Act 1999[[409]](#footnote-409) itself, it caused disappointment among the proponents of family-friendly policies[[410]](#footnote-410) by setting the period of leave at the minimum allowed by the Directive[[411]](#footnote-411), and by failing to require that any part of the leave should be paid leave.

b. Recognition of human and equality rights in personal work relations

The tendency of the first Blair government to pursue an ostensibly progressive but nevertheless increasingly cautious approach to the expansion of workers’ protections was also remarked with regard to the recognition of human and equality rights in personal work relations.[[412]](#footnote-412) There were the set of relevant measures during this period including the Human Rights Act 1998, the Public Interest Disclosure Act 1998 and a group of measures specifically affecting privacy in and in relation to the workplace. Even though the proposal for a Human Rights Act, which would render the principal Articles of the European Convention of Human Rights directly justiciable in the British courts, was of significant potential importance in terms of personal work relations regulation, there is little sign that the government wished to maximise that impact either in substantive or presentational terms.[[413]](#footnote-413) Neither *Fairness at Work* nor the Home Office White Paper *Rights Brought Home[[414]](#footnote-414)*, which introduced and consulted about the Human Rights Bill, did express any such aspiration. In addition, it cannot be regarded unfair to assert that part of the agenda of ‘bringing rights home’ was to ensure that those rights could be developed by the British judiciary in a more controlled and locally contextual way than by the European Court of Human Rights, and that the government would have welcomed that prospect of judicial moderation and self-restraint not least in the sphere of personal work relations.[[415]](#footnote-415) In addition, the Private Member’s Bill enacted as the Public Interest Disclosure Act 1998 which protects ‘whistle blowers’, namely the workers who denounce illegality or malpractice in their employing enterprises, was promoted not by any simple or general impulse to enhance the fundamental rights of workers, but rather by the sense that it was necessary to do so in the particular regard in order that workers would be incentivized to act, or at least not be deterred from acting, in pursuit of a general public interest in the disclosure of corporate misconduct.[[416]](#footnote-416) This specially protected category within the law of unfair dismissal and of detriment inflicted upon workers by employing them was created in the context of rather special reasons and a rather unusual alliance of interest around.[[417]](#footnote-417) For a government, this legislation was, for those special reasons, relatively readily reconcilable with its underlying aspiration of maintaining managerial adaptability because this measure could be considered as making a particularly positive contribution to the quality and efficiency of enterprise management which justified the rigidity which it might be seen as imposing upon managerial disciplinary powers to protect corporate confidentiality.[[418]](#footnote-418) It can be said that while the balance of interests was rather differently perceived by the government in the matter of legislative protection of the privacy of workers in the workplace and in relation to their employment more in general, the concern to maintain managerial adaptability in an untrammeled state was a more persistent one.[[419]](#footnote-419) As elaborated above, the most prominent developments in terms of human and equality rights in personal work relations during this period would be the incorporation of ECHR Article 8 (on respect for private and family life) into UK law by the Human Rights Act 1998, and the implementation in the UK of the Data Protection Directive of 1993 [[420]](#footnote-420)by the Data Protection Act of 1998. However, there have been arguments with regard to the privacy law in relation to employment. Specialist commentators such as John Craig argued that the features of UK legal and political culture which have precluded the emergence of a body of privacy law in relation to employment will continue to make the UK a “divergent”, as opposed to “convergent” jurisdiction [with other countries evolving such a body of law]’.[[421]](#footnote-421) Moreover, in subsequent writings of Gillian Morris and Hazel Oliver, it was demonstrated in different ways the extent to which the UK legislation had left the protection of workers’ privacy vulnerable to waiver by the individual worker, or to reduction or constriction by the way in which personal work contracts are framed by employing enterprises.[[422]](#footnote-422) Furthermore, it could be argued that the government’s particular vision of managerial adaptability would induce a special concern to ensure that employing enterprises would retain a full capacity to take advantage of advances in information technology in maximizing their capacity to monitor, and so more efficiently manage the performance of their workers.[[423]](#footnote-423) This was manifested in the legislation which implemented the EC Directive of 1997 regarding the processing of personal data and the protection of privacy in the telecommunications sector.[[424]](#footnote-424) This implementation was effected by the Regulation of Investigatory Powers Act 2000[[425]](#footnote-425), which were strongly and positively protective of managerial practices of electronic monitoring and surveillance, both in public and in private employment.[[426]](#footnote-426)

c. Modifying legislation to non-standard employment

The first Blair government seems to have begun with a real enthusiasm for the enlargement of the personal scope of its major worker-protective measures especially with regard to the National Minimum Wage Act and the Working Time Regulations of 1998 in that those legislations were applied to ‘workers’ rather than to the ‘employees’ to whom the generality of the existing worker-protective legislation applied, with the significant exception of the employment provisions of the legislation relating to sex, race, and disability discrimination, where the very inclusive category of ‘employed persons’ was applicable.[[427]](#footnote-427) The category of ‘workers’ was an intermediate one, apparently intended to bring in nominally self-employed workers who were in fact semi-dependent upon employing enterprises, while still excluding the ‘genuinely self-employed’.[[428]](#footnote-428) This can explain what was clearly a free choice on the part of the legislators in the case of the National Minimum Wage Act, and was not, even in the case of the Working Time Regulations, a decision which was clearly mandated by the Directives which they were intended to implement.[[429]](#footnote-429) In *Fairness at Work*, these extensions in personal scope were elaborated as a first step to ‘combine flexibility with fairness in the labour market’ by ‘reflecting in employment legislation greater flexibility in both working patterns and contracts’.[[430]](#footnote-430) Also the intention was expressed to ‘consult on the idea of legislation enabling [the Government] similarly to extend the coverage of some or all existing employment rights by regulation’.[[431]](#footnote-431) Such powers of variation of the personal scope of existing employment legislation by governmental regulation were indeed pursued, and were conferred by the Employment Relations Act 1999,[[432]](#footnote-432) but the driving force seems to have been lost for this particular kind of extension of employment law, so that those powers was known to have not been exercised even by the end of the second term in government of the Blair administration.[[433]](#footnote-433) Even a hardening of an anti-regulatory impulse seems to have occurred in the course of the implementation in the UK of the Part-time Work Directive of 1997,[[434]](#footnote-434) a product of the Social Dialogue process of Community legislation. It was the first of what it was hoped might be a series of such Directives creating equality or parity rights with ‘standard workers’ for all the main types of ‘non-standard workers’.[[435]](#footnote-435) In the course of consultations by the DTI about the implementation of the Directive in the UK, a very considerable attenuation seems to have taken place with regard to no less favourable treatment which was conferred upon part-time workers.[[436]](#footnote-436) In the implementing Regulations, as finally enacted, an apparent earlier intention to confine the Regulations to ‘employees’ was replaced by a decision to extend them to the whole larger category of ‘workers’.[[437]](#footnote-437) However, in a move which more than counter-balanced that extension, a provision was introduced [[438]](#footnote-438)which severely fragmented this larger category[[439]](#footnote-439) and limited the comparators who could be invoked by particular types of part-time workers within the category.[[440]](#footnote-440) At that time, the programme of modification of the law of personal work relations in favour of non-standard workers are thought to have failed so as to protect the government’s particular vision of managerial adaptability.[[441]](#footnote-441)

1. The second phase of the Blair administration, from 2001 onwards

As mentioned above, during the first Blair administration, the crucial policy direction of public policy in the sphere of individual employment law was mainly the realization of the plan laid out in the White Paper Fairness at Work, for the achievements of a socially progressive but not excessively re-regulatory closure upon what had been a deep conflict between extremes of legislative policy in this area.[[442]](#footnote-442) During the second phase of the Blair administration, rather a significant difference was distinguished in the way in which that public policy discourse was structured compared to that of the first phase. In the first period in the Blair administration, it has been shown that the public policy discourse for the law of personal work relations, was essentially framed by the White Paper *Fairness at Work* and behind it there was a larger discourse regarding the competitiveness of the labour economy and of enterprise management which is still fairly closely connected with the traditional one of seeking a durable legislative settlement of the conflict between management and labour.[[443]](#footnote-443) On the other hand, in the second phase, the administration moved on from this kind of framework for the regulation of personal relations into a state where the policy discourse was constructed in a different and more diffuse form. In fact, it was the fact that whereas in its first phase, the government had pursued to bring together a number of different policy lines in the Fairness at Work White Paper, in the second phase the approach to this policy discourse was much less unificatory.[[444]](#footnote-444) That is, a number of different lines of policy were developed in a number of different areas or policy contexts in the second government without any single second-term manifesto for the regulation of personal work relations.[[445]](#footnote-445) A comprehensive policy paper published by Ms Patricia Hewitt as Secretary of State for Trade and Industry in July 2002 which illustrated a general overview of employment policy was entitled *Full and Fulfilling Employment: Creating the Labour Market of the Future[[446]](#footnote-446).* It was put forward from the discourse of employment policy, and was in the genre of the various European Employment Strategy policy pronouncements which stressed the importance of combining the promotion of full employment with the securing of good quality employment.[[447]](#footnote-447) However, it could be interestingly mentioned that this paper never seems to have attained the status of an official policy document or a departmental policy pronouncement.[[448]](#footnote-448) Below that level of generality, there were several more specific policy documents coming from different and particular policy contexts. In 2000, Mr Stephen Byers as Secretary of State for Trade and Industry had published a Green Paper on family-friendly policies, *Work and Parents- Competitiveness and Choice[[449]](#footnote-449).* In July 2001, Mr Alan Johnson as Minister for Employment and the Regions introduced a consultation document, *Routes to Resolution: Improving Dispute Resolution in Britain[[450]](#footnote-450)* which developed a strategy for dispute resolution within the workplace rather than by litigation before employment tribunals. In July 2002, the Department of Trade and Industry published a Discussion Paper entitled *High Performance Workplaces: the role of employee involvement in a modern economy[[451]](#footnote-451).* This set forth a discourse about ‘partnership’ in the workplace which proclaimed a partly individualized approach to personal work relations in ‘modern, high performance workplaces’.[[452]](#footnote-452) During the second phase of the Blair government, the agenda of reform of public services became even more central and important to the regulation of personal work relations than it had been in the first one. The White Paper *Modernising Government* which was published during the first government, became one of the foundational policy documents for the second term in government. The policies which it articulated were reiterated and further specified in a document published in March 2002 by the then newly formed Prime Minister’s Office of Public Service Reform, entitled *Reforming out public services; principles into practice*.[[453]](#footnote-453) It was suggested that this policy pronouncements during this second period showed a very great implications indeed.[[454]](#footnote-454) These different policy initiatives and policy documents can be grouped in such a way as to identify two main policy strands, namely first, a socially progressive one, increasingly strongly identified with notions of inclusion in employment and ‘family-friendliness’ and secondly, an approach seeking to maximise financial efficiency and cost-effectiveness, or competitiveness, both in the management of public and private sector personal work relations and in the methodology of its regulation by the state.[[455]](#footnote-455)

1. Basic labour standards and general worker protection

During the second phase of the Blair administration, in terms of basic labour standards and general worker protection, the Employment Act 2002 was one key piece of legislation. In 2004, there was further remarkable legislation in this area, both the Pensions Act and the Gangmasters (Licensing) Act of that year. As the most remarkable legislation, the Employment Act of 2002 represented an elaborate package of measures, almost entirely in the sphere of individual rather than collective employment law, and those measures include ones which fall within the subject area of recognizing equality rights[[456]](#footnote-456) and modifying legislation to non-standard employment[[457]](#footnote-457). It can be divided into three sets of measures within the Act which concerns basic labour standards and general worker protection; first those in Part 1 concerning maternity, paternity, and adoption, secondly, those in Parts 2 and 3 concerning tribunal reform and dispute resolution and finally those in part 4 concerning ‘flexible working’.[[458]](#footnote-458) While the first of these sets of measures shows the high-water mark of the government’s family-friendly, worker-protective approach, and while the second of these represents the other extreme of business-protective de-regulation, the third set of measures in very interestingly poised between those two extremes.[[459]](#footnote-459)

First of all, ‘family-friendly’ measures which went above and beyond what was required by the previously implemented Parental Leave Directive[[460]](#footnote-460), consisted essentially of, first, the introduction of paternity leave[[461]](#footnote-461) and statutory paternity pay[[462]](#footnote-462); secondly, the introduction of adoption leave[[463]](#footnote-463)and statutory adoption pay[[464]](#footnote-464); and thirdly, the simplification and improvement of existing provision for maternity leave and statutory maternity pay[[465]](#footnote-465). These measures served the objectives identified in the Green Paper *Work and Parents- Competitiveness and Choice* of ‘improving choice for parents and enhancing competitive for business by keeping women’s skills and knowledge in the economy and maintaining their attachment to the labour market… enabling business to benefit from a greater contribution from the workforce, maximizing the contribution that working parents are able to make to their employers, safeguarding the health and welfare of the mother and child before and after birth, and improving the quality of family life’.[[466]](#footnote-466) Here, it can be acknowledged that a mixture of objectives which may in certain respects be divergent ones so that there may be a tension between labour-market inclusion for the benefit of the economy as a whole, and worker-protection for those workers who are parents or parents-to-be.[[467]](#footnote-467) Specifically, it has been suggested that there was a radical contrast between the improvement of the rights and protections for worker-parents intended and effected by that part of the Act, and the detraction from the rights of workers as a whole resulted from Parts 2 and 3 of the Act which represented a set of de-regulatory aims and outcomes partly concealed in the language of ‘tribunal reform’ and ‘dispute resolution’.[[468]](#footnote-468) On the other hand, the measures contained in Parts 2 and 3 began from the policy document *Routes to Resolution* having been issued in July 2001, and from a discourse about the greater regulatory efficiency of either workplace dispute resolution or informal arbitration, as compared with litigation before employment tribunals, as methods of processing or adjudicating issues about the rights and protections of workers.[[469]](#footnote-469) Lord McCarthy in the House of Lords, famously denounced Parts 2 and 3 as the ‘manky meat’ of the Bill sandwiched between the more innocuous and ‘family friendly’ Parts 1 and 4.[[470]](#footnote-470) Bob Hepple and Gillian Morris provided their opinion that:

Parts 2 and 3 of the Employment Act 2002 signify a moment of crisis as the UK, in common with seeral other European countries, tries to limit the cost of [individual employment] rights. The British response is essentially to attempt to privatise enforcement through management controlled procedures in preference to independent public tribunals.[[471]](#footnote-471) Through this legislation, the New Labour administration was using procedural rather than substantive measures to limit the impact of unfair dismissal legislation upon managerial flexibility which they had in common with their recent Conservative predecessors, even if the precise means chosen were different.[[472]](#footnote-472) A third set of provisions in the Employment Act 2002 concerned ‘Flexible Working’ in Part 4.[[473]](#footnote-473) These measures can be thought especially significant because they were enhanced between the two extremes of worker protectiveness and business friendliness, but with an inclination towards the latter direction in a way which was characterized as typical for this second phase of the Blair administration and which might be identified as ‘light regulation’.[[474]](#footnote-474) The typical features of this ‘light regulation’ have been suggested such as the one generated by a specific political event or the need to comply with an EU obligation, rather than the result generated out of a general policy initiative.[[475]](#footnote-475) In addition, the response to such demands is realized in terms of process regulation rather than in terms of hard substantive rights, namely process regulation and the fine tuning of which is implemented by ministerial order rather than by primary legislation.[[476]](#footnote-476) With the engagement of this light regulation mentioned above, the government could best realise and maintain its preferred version of management adaptability in personal work relations.[[477]](#footnote-477) This form of light regulation was devised in the context where the government felt particularly acute demand for provision for ‘flexible working’ to help working parents to combine work with the discharge of their parental responsibilities.[[478]](#footnote-478) There were important reasons for keeping this regulation light. [[479]](#footnote-479)In general, the government was increasingly keen to be seen to be listening to the business community in its development of ‘family-friendly’ policies, and the representatives of that community, generally adept at warning of the disastrous consequences of enhancement of worker-protective legislation, were especially eloquent with regard to anything which involved ceding control of the way in which working time was arranged and structured, such as might be involved in giving working parents rights to demand that they be accorded flexible working hours or ‘flexi-time’.[[480]](#footnote-480) The central notion was that of conferring upon employees with parental responsibilities a right to apply to their employer for a change in working time arrangements for the purpose of caring for a child,[[481]](#footnote-481) and an obligation upon the employer to process the application by holding a meeting with the employee to discuss the application, by giving a written decision stating grounds for refusal, and by providing an appeal against refusal[[482]](#footnote-482); and the employer is allowed to refuse the request only where ‘he considers that one or more of [a set of listed grounds] applies’.[[483]](#footnote-483) The set of grounds for refusal was widely drawn, and capable of extension by ministerial regulation.[[484]](#footnote-484) Mainly, in the supporting Procedural Requirements Regulations, it is provided that ‘where the decision is to refuse the application, [the notice of decision shall] state which of the [statutorily specified] grounds for refusal are considered by the employer to apply [and] contain a sufficient explanation as to why those grounds apply. . .’.[[485]](#footnote-485) The Department of Trade and Industry provides in its guide to these provisions that the legislation has ensured that ‘An employer may only refuse a request where there is a recognized business ground for doing so’, however, the legislation falls short of requiring objective justification for refusal, and defines the grounds for refusal in conspicuously permissive terms, including generalities such as ‘the burden of additional costs’ and ‘detrimental impact on quality’.[[486]](#footnote-486) Even though this ‘light regulation’ approach cannot be said to be shown in every item of legislation in this second phase, it can be argued that there are sets of measures on either side of this centrist and somewhat employer-leaning path.[[487]](#footnote-487) In addition, as one of important manifestation of ‘light regulation’ consisted of minimal compliance with EU legislative obligations which was to become a more prominent phenomenon, almost to the point of resemblance with the stance of the Major administration in its latter days.[[488]](#footnote-488) It became increasingly clear that for New Labour almost as much as for the Conservatives, the European Social Model was one from which the British government wanted to distance itself.[[489]](#footnote-489) A good example can be found in the field of regulation of working time. During this second phase, the government minimally but duly implemented the Working Time Directive of 2000,[[490]](#footnote-490) which extended the application of the original Working Time Directive of 1993 to certain sectors and activities previously excluded from its scope in which various parts of the EU working time regime were now applied for the first time more extensively than before to junior or trainee hospital doctors, road transport workers, crew members on board civil aircraft, and workers in the armed forces or emergency services.[[491]](#footnote-491) However, throughout this period, the British government maintained a determined insistence on the preservation of the individual opt-out from the 48 hour maximum working week, and was a major successful contributor to the resistance to proposals from the European Commission to improve the effectiveness of EU working time regulation.[[492]](#footnote-492) One more example of light regulation in the second phase could be regarded the Pensions Act 2004 and other concerning occupational pension provision. There are real non-re-regulatory or even marginally de-regulatory aspects of the 2004 Act which make it more than slightly comparable with the Act of 1995.[[493]](#footnote-493) It can be thought that the term of ‘de-regulation’ refers to legislation and policy which resiles from earlier measures for the protection of workers in general and also ‘light regulation’ as consisting of measures and policies targeting at securing reasonably orderly and consensual governance of personal work relations without restricting the freedom of action of enterprise management in fundamental ways in favour of the protection of workers.[[494]](#footnote-494) To maintain that particular equilibrium, which can be best conceived of as a balance between excessive regulation and insufficient regulation is elusive goal for governments to achieve and maintain.[[495]](#footnote-495) Also in order to do so, they frequently are required to engage in very intensive legislative activity, and they need an immense amount of compliance activity on the part of the managers of enterprises to provide assurance that these delicate normative structures are being suitably operated.[[496]](#footnote-496) As there was a strong and widespread political perception of the existence of a ‘pension crisis’ throught this second phase of the New Labour administration, the responsive strategy of the second New Labour government was tentatively articulated in a Green Paper of December 2002 and confirmed in a White Paper of June 2003, both promoted under the banner of ‘simplicity, security and choice’.[[497]](#footnote-497) The 2004 Act created a new Pension Protection Fund to provide compensation to pension scheme members where their employing enterprise becomes insolvent and their pension scheme is underfunded.[[498]](#footnote-498) With the measures which represent the main elements of ‘heavy regulation’ such as the creation of a new Pension Protection Fund and a Financial Assistance Scheme to provide compensation to pension scheme members where their employing enterprise becomes insolvent and their pension scheme is underfunded, [[499]](#footnote-499)the rest of this legislation consists quite largely of lightly regulatory, and even at times de-regulatory interventions consisting of the creation of the new office of Pensions Regulator, an elaborately re-invented replacement for the Occupational Pensions Regulatory Authority (OPRA) into a newly innovated Statutory Funding Objective, to be supervised by the Pensions Regulator.[[500]](#footnote-500) The main Simplicity and choice White Paper, under the rubric of ‘Making pension provision easier for employers’[[501]](#footnote-501), makes it clear enough that this was intended to be a more ‘flexible’ set of requirements,[[502]](#footnote-502) supervised by a correspondingly more ‘flexible’ regulator.[[503]](#footnote-503) The 2004 Act mainly continued the occupational pensions system in its movement along a path upon which it had been launched in the later 1980s and promoted in the earlier 1990s.[[504]](#footnote-504) The key detriment of that path could be indicated as the shift away from defined benefit final salary pension provision towards defined contribution money purchase pension schemes. It can be analysed that it was the key role of the 2004 Act as well as of the 1995 Act, to design the overall regulatory system for occupational pension provision, so as to protect and incentivize the dynamic towards money purchase pension provision, and ultimately money purchase from financial service providers rather than from pension funds run by or attached to employing enterprises.[[505]](#footnote-505) It has been indicated in many ways that the design of the legislative package of 2004-5 was shaped and realised by an ideological and political vision of the worker as the consumer of financial services in a free market of saving opportunities, rather than as the protected subject of labour law in retirement as well as in work.[[506]](#footnote-506) The government published in May 2006 a White Paper *Security in retirement: towards a new pensions system[[507]](#footnote-507),* enhanced about the term of ‘affordability’ [[508]](#footnote-508)and also the ways in which they support two central themes of our present work, namely the strength of the commitment on the part of the New Labour administration to ‘light regulation’, and to ‘promoting work’ in the sense of channeling state welfare provision through the maximizing of employment.[[509]](#footnote-509) The important part of the government’s strategy of ‘promoting work’ is that of creating the right conditions and incentives for the extension of the duration of working life in keeping with the increase in the longevity of the population.[[510]](#footnote-510) This White Paper represented a real future significance in terms of the idea and politics of ‘promoting work’ and also a vivid illustration of the growing pre-occupation of the New Labour administration with ‘light regulation’.[[511]](#footnote-511) The Executive Summary of the White Paper concludes its resume of the government’s intentions with such a classic way of ‘light regulation’ quoting that they will streamline the regulatory environment by reducing burdens on schemes by bringing forward legislation to allow schemes to convert Guaranteed Minimum Pension rights into scheme benefits, introducing a rolling deregulatory review of pensions legislation, in light of the Pensions Act 2004, piloting a Pensions Law Rewrite Project and re-examining the existing regulatory landscape.[[512]](#footnote-512) Furthermore, they continued that any such simplification will be aimed at easing the regulatory burden on employers who provide good occupational pensions. Occupational pensions and other measures in the government’s proposed agenda will be taken forward with regard to the Government’s wider agenda to promote better regulation and reduce the administrative burdens on business.[[513]](#footnote-513)

Furthermore, in the area of basic labour standards and worker protection, some further legislative examples of the ‘light regulation’ can be illustrated. One of the examples concerned the abuses and malpractices occurring in the course of the employment of labourers by gangmasters. The regulatory response to those abuses and malpractices could be thought as a matter of adaptation to a particular kind of non-standard employment, namely that of employment by intermediaries or subcontractors in this particular sector of the economy. Also this was a problem that had been exacerbated during the Major administration when the Deregulation and Contracting Out Act 1994 had abolished the previously existing system for the licensing of employment agencies, [[514]](#footnote-514)which had been applicable at least to some forms of employment by gangmasters.[[515]](#footnote-515) The Gangmasters (Licensing) Act 2004 implemented a radical form of regulation of the gravely abusive employment practices by creating an offence of entering into arrangements with unlicensed gangmasters as immediate employers or labour providers, upon enterprises such as major retailers further along the chain of commerce in the products which were harvested by means of this system of employment. [[516]](#footnote-516)The Act provided outline enabling legislation rather than that of an actual executive measure by including so much delegation of its implementation to ministerial regulations.[[517]](#footnote-517) The government has certainly seemed minded to use those delegated powers to alleviate the impact of this legislation, so much so as to engender a suspicion that they might ideally prefer to limit its impact to cockle-picking in the particular part of Morecambe Bay where the terrible incident of February 2004 occurred.[[518]](#footnote-518) The implementation or non-implementation of this legislation was delegated not to the Department of Trade and Industry, but rather to the Department for Environment Food and Rural Affairs (DEFRA) so as to mark out its intention of rigid confinement to the sphere of agricultural harvesting and shellfish gathering.[[519]](#footnote-519) The system of criminal sanctions against unlicensed operation by gangmasters came into effect at last after the end of the second term in government of the New Labour administration, and even then was to do so on a severely restricted basis, excluding in particular the employment of workers in any subsequent part of the process of food production or provision other than its original harvesting. To reduce any remaining fear caused by this heavy regulation,[[520]](#footnote-520) the DEFRA Minister Mr Jim Knight announced in March 2006 to offer the reassurance that they are planning to review the system after one year to ensure it is working effectively and especially keen to manage it not to become an excessive burden for small businesses.[[521]](#footnote-521)

1. Recognition of human and equality rights in personal work relations

As for its immediate predecessors, many of the difficult choices confronting a government with that essentially ambivalent approach were necessitated by EU initiatives and developments in EU law.[[522]](#footnote-522) In parallel with the enactment in 2000 of the Race Directive[[523]](#footnote-523) promoted in an enlarging Community, also in response to the public exposure of the extent of the problem of institutional racism in the police service,[[524]](#footnote-524) the government had brought forward the proposals for the legislation which issued forth in the Race Relations Amendment Act 2000, which extended the Race Relations Act 1976 to cover policing and immigration functions and the employment of police officers[[525]](#footnote-525), [[526]](#footnote-526)and which imposed a set of legal duties on public authorities to work towards the elimination of unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups.[[527]](#footnote-527) In the latter respect, similar initiatives were later taken with regard to disability discrimination and to sex discrimination, eventually giving rise to parallel or similar provisions with respect to the former in the Disability Discrimination Act 2005[[528]](#footnote-528), and in the Equality Act 2006 with respect to the latter.[[529]](#footnote-529) Even if the New Labour administration can be acknowledged to have made quite positive outcomes as illustrated above, it was evident that they felt deep misgivings at the prospect of the inclusion of a set of economic and social rights in addition to the less controversial list of civil and political rights, and at the possibility that this Charter might be enacted in a legally binding form.[[530]](#footnote-530) The UK government did much during the discussion of the proposals to ensure that when the Charter was proclaimed by the Member States at the Nice European Council in December 2000,[[531]](#footnote-531) it took a form in which it was no legally binding and created no new rights for workers in any concrete sense.[[532]](#footnote-532) In addition, the UK government played a comparably cautious and at times negative role in the subsequent phase in which the Convention on the Future of Europe formulated proposals for the embodiment of the Charter in the new Treaty intended to become the Constitution of the European Union.[[533]](#footnote-533) It can be mentioned that the second New Labour government showed a comparable contrast between the responses to different aspects of the so-called Employment Framework Directive of 2000[[534]](#footnote-534), which complemented the inclusionary initiative taken by the Race Directive of the same year by providing a framework for extending employment discrimination law to a set of grounds not previously addressed by EU law, those of disability, religion or belief, sexual orientation, and age.[[535]](#footnote-535) So far as disability discrimination was concerned, the UK was in substantially compliance with the Directives by implementing the Disability Discrimination Act 1995.[[536]](#footnote-536) On the other hand, the contrast in the UK government’s approach is shown between religion or belief and sexual orientation on the one hand, and age discrimination on the other. While with regard to the former, the government were content to enact what is thought as a reasonably complete set of implementing measures, the government was much less positive with regard to age discrimination.[[537]](#footnote-537) The Directive itself was framed in terms which recognized that this was going to be a rather difficult matter for the Member States so that they were allowed to request a deferment of the obligation to implement for up to three years, hence until October 2006,[[538]](#footnote-538) and a broad substantive derogation enabled them to provide that ‘differences of treatment on grounds of age shall not constitute discrimination if, within the context of national law, they are justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.’[[539]](#footnote-539) Further, it was provided that such differences might include the setting of age-related conditions for access to employment and vocational training for young people and older workers in order to promote their vocational integration, the fixing of minimum conditions of age, experience, or seniority, and the fixing of maximum ages of recruitment based on the training requirements of the post in question.[[540]](#footnote-540) While many member states were content simply to replicate the terms of the Directive in their national legislation even with the risk that important issues would remain unresolved,[[541]](#footnote-541) the UK government was concerned to achieve a more complete worked-out set of measures to avoid what could be caused as a serious threat to managerial adaptability which it had pursued. That is, it means that this threat to managerial adaptability was considered potentially much more serious than any other causes posed by the requirements to legislate against discrimination on the other grounds addressed by the Directive.[[542]](#footnote-542) The most difficult issue was that of retirement age.[[543]](#footnote-543) At initial stage, the response to the conflicting interests of government, business and workers was the imposition of a long period of stasis, namely a process of consultation about proposed age equality legislation initiated in 2001,[[544]](#footnote-544)and originally expected to be finalized in legislation in 2004, but it was not until April 2006 that the Employment Equality (Age) Regulations were finally made, to come into effect at the very last moment permissible under the Directive, in October 2006.[[545]](#footnote-545) Throughout this long period of consultation, there was a legislative strategy produced which as far as possible alleviated the regulation of the power of enterprise management to impose its chosen retirement age upon workers, while seeking to usher in a more than previously flexible approach to determining the time of retirement in individual cases.[[546]](#footnote-546) Thus, that strategy was implemented by means of a compete modification of the way in which the law of unfair dismissal was applied to the retirement of workers.[[547]](#footnote-547) This new statutory regime for retirement stipulated two new conceptual and legislative devices, the first of which was the notion of a default retirement age of 65, and the second of which was the idea of a right to request working beyond retirement date. The significance of the default retirement age of 65 was that the imposition by an employer of a mandatory retirement age of less than 65 would require objective justification, whereas a requirement to retire at or over the age of 65 would not require such justification.[[548]](#footnote-548) While safeguarding the power of the employing enterprise to maintain a retirement age of 65, the legislation goes on to provide employees with a countervailing right to request a continuation of their employment beyond their retirement date.[[549]](#footnote-549) However, this is primarily a right to a process of requesting and having that request considered, rather than a right to the substance of that which is requested, and whereas in the case of the right to request flexible working it is stipulated that a refusal must demonstrably fall within a prescribed list of grounds,[[550]](#footnote-550) there seems to be no such substantive restriction upon a refusal to accept the request to continue working after the employee’s retirement date.[[551]](#footnote-551) In addition, there seem to be no restrictions upon the grounds for rejection of the appeal which the employing enterprise is obliged to provide.[[552]](#footnote-552) It has been argued this is a normative vacuum in that it is highly unusual for such a duty to be framed in such purely procedural terms and further this regulatory black hole was not even filled with an informal code of practice produced by the Advisory, Conciliation and Arbitration Service (ACAS)[[553]](#footnote-553).

1. Modifying legislation to non-standard employment

During the second phase of the New Labour administration, there were two legislative issues which can illustrate a story of reaction or resistance to EU legislation or proposals for legislation with regard to the modification of the law of personal work relations to non-standard employment, the first concerned with the regulation of fixed-term work, and the second with the regulation of temporary agency work.[[554]](#footnote-554) In the regulation of the relationship between part-time work and full-time work, initiated by the Framework Agreement and Directive on Part-time work, was projected by the European Commission and the parties to the EU Social Dialogue as the first step in a sequence of measures which would comprehensively regulate the relationship between standard and non-standard forms of employment. [[555]](#footnote-555)And then the next step was the conclusion in 1999 of the Agreement on Fixed-term Work and the making of the Fixed-term Work Directive[[556]](#footnote-556) to give effect to that agreement. The Agreement and Directive had two main specific purposes, the first being to set up a measure of parity or equivalence between the terms and conditions of part-time work and those of full-time work,[[557]](#footnote-557) and the second being to control the use by employers of successive fixed-term employment contracts or relationships as an abusive alternative measure to the making of open-ended or permanent work contracts or relationships.[[558]](#footnote-558) The implementation in the UK of the Fixed-term Work Directive confirmed the tendency towards caution which had begun to manifest itself in the response to the Part-time Work Directive during the first New Labour government[[559]](#footnote-559). Aileen McColgan acknowledged in her review the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 as representing the UK ‘adopting its by now standard minimalist approach to transposition’, not only going no further than required by the Directive, but arguably even failing adequately to transpose it.[[560]](#footnote-560) The government, clearly having intention upon devising a ‘light regulation’ version of the fixed-term parity principle, in much the same way as it had sought a restricted version of the part-time parity principle, on this occasion chose to do so mainly by restricting its scope, indeed the scope of the Regulations as a whole, to ‘employees’[[561]](#footnote-561) rather than to the larger category of ‘workers’, the category which it had been judged appropriate to adopt in order to give effect to the Part-time Work Directive,[[562]](#footnote-562) cast in almost identical terms to those of the Fixed-term Work Directive with regard to its personal scope.[[563]](#footnote-563) This is known to mark a turning point away from the enterprise of enlargement of the personal scope of employment legislation upon which the New Labour administration had embarked in its first term of government.[[564]](#footnote-564) As to the second main principle of the legislation, the controlling of the abusive use of successive fixed-term contracts, which the Regulations chose to implement by converting a successive fixed-term contract into a permanent one[[565]](#footnote-565) in the absence of objective justification for casting it in fixed-term form[[566]](#footnote-566), a relatively tight constraint upon its transposition from the Directive was realized by confining this conversion effect to employment of a minimum of four years’ continuous duration.[[567]](#footnote-567) It has been argued that with regard to that temporary agency workers, the government’s favor for ‘light regulation’ and the maintenance of managerial adaptability must be judged to have reached the heights of negativity in the face both of EU regulatory initiatives and domestic pressures for worker-protective legislation.[[568]](#footnote-568) The situation and regulatory needs of temporary agency workers had been a long-standing preoccupation of the European Commission, from the perspectives both of Social Policy and of the European Employment Strategy, and it had been clear from the mid-1990s onwards that its aspirations for the regulation of non-standard employment, expressed in the initiatives leading to the Part-time Work and Fixed-term Work Directives, would not be fully realized until those Directives had been complemented by a further one on Temporary Agency Work.[[569]](#footnote-569) The central concern of the Commission was to establish a parity principle between temporary agency workers and their directly and more permanently employed counterparts, but in March 2002, the Commission sidestepped clearly irresoluble disagreement about this matter between the Social Partners to the European Social Dialogue by presenting its own proposal for a Temporary Agency Workers Directive.[[570]](#footnote-570) Furthermore, there was an additional local regulatory problem from 2001 onwards, and that was the British courts were having real difficulty, or showing real unwillingness in constructing or accepting the existence of contracts of employment within triangular personal work relationships between temporary agency workers, employment agencies, and end-user clients, with a resultant denial to those workers of most of the key statutory employment rights which were conditioned upon the existence of a continuous contractual employment relationship.[[571]](#footnote-571) Late in 2003, a set of Regulations was made for the reform of the regal regime governing the conduct of employment agencies[[572]](#footnote-572), which the government claimed would enhance the protection of agency workers.[[573]](#footnote-573) However, these Regulations were mainly concerned with issues which were rather marginal or equivocal with regard to the protection of workers, such as restricting the imposition of ‘temp-to-per fees’[[574]](#footnote-574), and were not at all concerned with the central worker protection issues of parity with directly employed and more permanent workers or contractual employment status.[[575]](#footnote-575) It can be considered significant disjunctions between the regulatory concerns of the legal regime for employment agencies and the mainstream preoccupations of employment law because the New Labour administration was not prepared to recognise the extent to which the regulatory needs had been transformed in the succeeding thirty years by the enormously increased and increasing use which was being made of the temporary agency form of employment[[576]](#footnote-576). The proposals for the Temporary Agency Workers Directive ultimately received what seemed to be their quietus at the hands of a ‘Better regulation for growth and jobs’ initiative of the European Commission and this conclusion was reached during and with the encouragement of the British Presidency of the EU in September 2005, when the proposals were in effect set aside for re-consideration at some unspecified future time.[[577]](#footnote-577) Furthermore, in the realm of the reform of public services and of personal work relations with the institutions of public service, a set of strongly normative intentions for the reforms was implemented and realized on quite a grand scale during this second phase of the Blair administration.[[578]](#footnote-578) There was a set of intentions for imposing a certain mode or style of personal work relations within the public service sector of the labour economy which those in government regarded as the key to what they perceived as the success and efficiency of enterprise management in the private sector, especially in the private services sector.[[579]](#footnote-579) The style of personal work relations was constructed around a certain notion or practice which may be identified as that of *individually contractualised performance management and pay* which may strongly associated with a notion of the structural adaptability and reform of enterprise management.[[580]](#footnote-580) The plans for performance management and for a performance-related pay system were considered the central concept for the creation and implementation of the ‘Agenda for Change’ in the National Health Service.[[581]](#footnote-581) There was a enormous process of organizational re-contracting was constructed, the process of creating an ‘internal market’ for healthcare within and around the National Health Service.[[582]](#footnote-582) The process had many various aspects including the re-contracting of personal work relations between the NHS and its doctors, especially the general practitioners, and it is sufficient to consider the ‘Agenda for Change’ as a very large-scale and paradigmatic example of the ‘modernisation’ of a public service pay system according to the notions of performance management and performance-related incentives which were at the heart of the whole New Labour initiative to ‘modernise’ public service personal work relations.[[583]](#footnote-583)

1. Policy consideration for the fairness and equality focused on labour market issues

As overviewed above, in its productivity and equality terms the economic output of the UK has been shown in slight recovery based on the employment related index published around the end of 2017. In addition, the striking point is that the number of people in employment on ‘zero-hours contracts’ in their main job was little changed compared with a previous year. Moreover, the real terms earnings for employees decreased compared with a previous year. The most remarkable feature is that the UK has shown the historically low which means the stability of labour relations sector when it comes to the decreased working days lost and the frequency of the labour strike actions. The results of the surveys are the estimates which came from sampling surveys of households or businesses and this can impact on the interpretation of the variances in estimates. On the other hand, there have been negative reports on the levels of income inequality in the UK. In terms of income inequality, the UK has remained at a largely similar level since the early 1990s. Also Compared to the income inequality level of other European countries such as France and Germany also below the OECD average. On the other hand, in the labour market, in recent years, most European countries including the UK have seen various social and economic developments and particularly the need for increased flexibility by both employers and workers. ICT has played a leading role to create the new emerging forms of employment.

This new driving force has been putting forward EU labour policy issues such as the specific characteristics of those new forms of employment and their impacts on working conditions and the labour market in a whole and also the whole economy.

While some forms of new employments can bring a positive effect, other forms of new employment would raise the concerns in regards with job security and workers protection. Some concerns arise with regard to the emergence of crowd work environment including ‘digital sweatshops’ and the leave of internal knowledge via crowdsourcing. According to the results out of related research, some new employment forms have potential opportunities not only for employers but also for workers. On the other hand, it can also be argued that the effects of these new employment forms would be rather limited in the job creation. While some forms of new employments can bring a positive effect, other forms of new employment would raise the concerns in regards with job security and workers protection. For example, some concerns have been raised with regard to the emergence of crowd work environment including ‘digital sweatshops’ and the leave of internal knowledge via crowdsourcing.

Some new employment forms have potential opportunities not only for employers but also for workers. On the other hand, it can also be argued not only that the effects of these new employment forms would be rather limited in the job creation but also that those new forms of work can generate the concern of job security or job stability more than jot flexibility. It can be said that new employment forms have some potential effects on labour market by transforming established employment relationships and work patterns. They can influence contractual relationships (including employer versus worker responsibilities), the general understanding of a ‘job’ (bundle of tasks versus fragmented task orientation), and the place and time of work. Thus, the individual characteristics and the effects on the labour market of those new forms of work should be firstly analysed and then should be reviewed whether any intervention of government authority or social partners are needed to regulate those forms. On the other hand,

In most new forms of work, the workers have a status somewhere between employees and self-employed in most cases. To implement those new forms of works to be properly regulated within the scope of labour law, the government authority needs to not only tighten the implementation within the current regulations but also reform the current legislation into a new flexible work form which can reflect the new work and labour relations distinguished from traditional rigid contract-based work form.

As what have been overviewed, the UK has developed its own labour policy through its history. Even during the second phase of the New Labour administration from 2001 onwards, the government showed resistance to EU legislation or proposals for legislation with regard to the modification of the law of personal work relations to non-standard employment such as the regulation of fixed-term work and the regulation of temporary agency work. The caution the UK government had shown was the same with the government’s response to the Part-time Work directive. Even in the Labour administration, the UK government adopted ‘light regulation’ and ‘minimalist’ approach when they came to the labour market regulation. This was mainly government aiming for the maintenance of managerial adaptability and flexibility rather than promoting equality and protection of workers in the face both of EU regulatory initiatives and domestic pressures for worker-protective legislation. When it comes to the labour legislation, any reform measures should be designed based on the balanced interests having adjusted between conflicting interests mainly between the business and the workers based on the recognition of the social economic role of labour and labour market. Furthermore, for the proper implementation, the consistency of the institution and organization should be maintained and also other policy measures such as tax and benefit system should be devised to encourage the labour inclusion to the market and the improvement of income inequality.

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157. O’Kelly v Trusthouse Forte Plc [1984] QB 90 (CA). [↑](#footnote-ref-157)
158. O’Kelly v Trusthouse Forte Plc [1984] QB 90 (CA). 101B; 124H. [↑](#footnote-ref-158)
159. Carmichael v National Power Plc [1999] UKHL 47, [1999] 1 WLR 2045 (L Irvine LC; who, as Alexander Irvine QC, had appeared for the employer in O’Kelly). [↑](#footnote-ref-159)
160. Carmichael v National Power Plc [1999] UKHL 47, [1999] 1 WLR 2042. The right to particulars of employment at that time was set out in s 1(1) of the Employment Protection (Consolidation) Act 1978. [↑](#footnote-ref-160)
161. Carmichael v National Power Plc [1999] UKHL 47, [1999] 1 WLR 2050G. [↑](#footnote-ref-161)
162. Cotswolds Developments Construction Ltd v Williams [2006] IRLR 181 (EAT) [55]. [↑](#footnote-ref-162)
163. St Ives Plymouth Ltd v Mrs D Haggerty [2008] WL 2148113 [1], [33]. [↑](#footnote-ref-163)
164. St Ives Plymouth Ltd v Mrs D Haggerty [2008] WL 2148113 [9]. [↑](#footnote-ref-164)
165. St Ives Plymouth Ltd v Mrs D Haggerty [2008] WL 2148113 [26]. [↑](#footnote-ref-165)
166. Dr. Abi Adams, Prof. Mark Freedland, Prof. Jeremias Prassl, The “Zero-Hours Contract”: Regulating casual work, or legitimating precarity?, March 2015, European Labour Law Network(ELLN) (Working Paper No. 5. p. 16. [↑](#footnote-ref-166)
167. Dr. Abi Adams, Prof. Mark Freedland, Prof. Jeremias Prassl, The “Zero-Hours Contract”: Regulating casual work, or legitimating precarity?, March 2015, European Labour Law Network(ELLN) (Working Paper No. 5. p. 16. [↑](#footnote-ref-167)
168. For an extended discussion of employment status in English law, see J Prassl, ‘Employee Shareholder “Status”: Dismantling the Contract of Employment’ (2013) 42 ILJ 307, 326ff, on which parts of the present discussion draw. [↑](#footnote-ref-168)
169. Workers are there defined as those working (a) under a contract of employment or (b) any other contract […] whereby the individual undertakes to do or perform personally any or work or services for another party to the contract […]. [↑](#footnote-ref-169)
170. Byrne Bros (Formwork) Ltd v Bard and others [2002] ICR 667 (EAT). This case was approved in its basic approach by the Court of Appeal in Redrow Homes (Yorkshire) Ltd v Wright [2004] EWCA Civ 469, [2004] ICR 1126 (though with some reservations as regards the overall purposiveness of the approach to be taken: [21]). [↑](#footnote-ref-170)
171. Working Time Regulations 1998, SI 1998/1833. The worker definition can be found in reg 2(1). [↑](#footnote-ref-171)
172. Byrne Bros (Formwork) Ltd v Bard and others [2002] ICR 667 (EAT). [17]. [↑](#footnote-ref-172)
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195. Para 2.11. [↑](#footnote-ref-195)
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238. Mr Major’s administration ran from Nov 1990 when Margaret Thatcher resigned from being Prime Minister, through the General Election of May 1992 until the General Election of May 1997. [↑](#footnote-ref-238)
239. From May 1997 to May 2001, from May 2001 to May 2005, and from May 2005 to June 2010. [↑](#footnote-ref-239)
240. Those developments are shown by the papers in G White and J Druker (eds), Reward Management-A Critical Text (London and New York: Routledge, 2000). [↑](#footnote-ref-240)
241. J Rubery, J Earnshaw, M Marchington, F L Cooke, and S Vincent, ‘Changing Organisational Forms and the Employment Relationship’ (2002) 39 Journal of Management Studies 645-672 at 645. [↑](#footnote-ref-241)
242. See, generally, M Marchington, D Grimshaw, J Rubery, and H Willmott, Fragmenting Work-Blurring Organisational Boundaries and Disordering Hierarchies (Oxford:OUP, 2005). [↑](#footnote-ref-242)
243. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 20. [↑](#footnote-ref-243)
244. Compare, for instance, W Brown, S Deakin, M Hudson, C Pratten, and P Ryan, The Individualisation of the Employment Contract in Britain (London: DTI Employment Relations Resesarch Series, 1998); T Colling, ‘Managing without Unions: The Sources and Limitations of Individualism’, chapter 14 of P Edwards (ed), Industrial Relations Theory and Practice (2nd edn, Oxford: Blackwell Publishing, 2003). [↑](#footnote-ref-244)
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246. See for instance H Collins, ‘Legal Responses to the Standard Form Contract of Employment’ (March 2007) 36 issue 1, International Law Journal. [↑](#footnote-ref-246)
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248. The idea of managerial flexibility or adaptability as here articulated has some similarity to, and is in some measure inspired by, the notion of ‘flexible employment’ as outlined in H Collins, ‘Regulating the Employment Relations for Competitiveness’ (2001) 30 ILJ 17-47 especially at 25-31, though it will also be apparent that there are differences in emphasis and focus. [↑](#footnote-ref-248)
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251. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 21-22. [↑](#footnote-ref-251)
252. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 22. [↑](#footnote-ref-252)
253. Some useful detail of the extent of this shift is provided by N Millward, A Bryson and J Forth, All Change at Work?, P.18-23. [↑](#footnote-ref-253)
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256. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 22. [↑](#footnote-ref-256)
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259. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 23. [↑](#footnote-ref-259)
260. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 23. [↑](#footnote-ref-260)
261. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 23. [↑](#footnote-ref-261)
262. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 24. [↑](#footnote-ref-262)
263. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 24. [↑](#footnote-ref-263)
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265. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 24. [↑](#footnote-ref-265)
266. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 25. [↑](#footnote-ref-266)
267. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 25. [↑](#footnote-ref-267)
268. The full details are set out in 1992/1993 Cm 1934 Foreign and Commonwealth Office: Treaty on European Union including the Protocols and Final Act with Declarations (Maastricht, 1992). [↑](#footnote-ref-268)
269. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 25. [↑](#footnote-ref-269)
270. See, for a full explanation and critique: Barry Fitzpatrick, ‘Community Social Law after Maastricht’(1992) 21 ILJ 199; Catherine Barnard, EC Employment Law (Chichester: John Wiley, 1995) 2.28-2.26 (the original edition of that work providing an important contemporary account of a situation which had changed by the time of the later editions). [↑](#footnote-ref-270)
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273. A useful account is provided by Gwyneth Pitt and John Fairhurst, Blackstone’s Guide to Working Time (London; Blackstone Press, 1998) at 1-8. [↑](#footnote-ref-273)
274. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 26. [↑](#footnote-ref-274)
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276. Council Directive 93/104/EC (OJ 1993 L307/18) (‘Working Time Directive’). [↑](#footnote-ref-276)
277. Council Directive 94/33/EC (OJ 1994 J216/12). [↑](#footnote-ref-277)
278. UK v Council of the European Union (Case C-84/94) [1996] ECR I-5755. [↑](#footnote-ref-278)
279. Compare the Consultation Document on Measures to Implement Provisions of the EC Directive on the Organisation of Working Time (DTI, December 1996). [↑](#footnote-ref-279)
280. 23 November 1996. [↑](#footnote-ref-280)
281. The sequence of events is very usefully described by Pitt and Fairhurst in their Blackstone’s Guide (Gwyneth Pitt and John Fairhurst, Blackstone’s Guide to Working Time, London: Blackstone Press, 1998) [↑](#footnote-ref-281)
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284. See Labour Legislation and Public Policy, 542-545. [↑](#footnote-ref-284)
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286. As mentioned and detailed by Keith Ewing, in ‘Swimming with the Tide: Employment Protection and the Implementation of European Labor Law’ (1993) 22 ILJ 165. [↑](#footnote-ref-286)
287. Hansard, HC (series 6) vol 214, cols 168ff(17 November 1992). [↑](#footnote-ref-287)
288. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 28. [↑](#footnote-ref-288)
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290. Council Directive 91/533/EEC (OJ 1991L288/32). [↑](#footnote-ref-290)
291. TURERA 1993, ss 26-27. [↑](#footnote-ref-291)
292. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 28. [↑](#footnote-ref-292)
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294. TURERA 1993, s 28 and Sch 5. [↑](#footnote-ref-294)
295. TURERA 1993, s 29. [↑](#footnote-ref-295)
296. Compare Keith Ewing, in ‘Swimming with the Tide: Employment Protection and the Implementation of European Labor Law’ (1993) at 170-171. [↑](#footnote-ref-296)
297. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 29. [↑](#footnote-ref-297)
298. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 30. [↑](#footnote-ref-298)
299. Barber v Guardian Royal Exchange Assurance Group Case C-262/88 [1990] IRLR 240. [↑](#footnote-ref-299)
300. As enacted in ECT art 119 (now art 141). [↑](#footnote-ref-300)
301. This is a very simplified summary of a complex position of which a very useful fuller discussion is provided by S Deakin and G Morris, Labour Law (4th edn, Oxford: Hart Publishing, 2005) at s 6.96. [↑](#footnote-ref-301)
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303. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 30-31. [↑](#footnote-ref-303)
304. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 31. [↑](#footnote-ref-304)
305. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 31. [↑](#footnote-ref-305)
306. Section 136; for a full explanation see R Nobles, ‘Pensions Act 1995’(1996) 59 MLR 241 at 247-249. [↑](#footnote-ref-306)
307. Under the provisions of section 56 of the At, see R Nobles, ‘Pensions Act 1995’(1996) 59 MLR 241 at 252-254. [↑](#footnote-ref-307)
308. Under the provisions of section 138 of the Act, see R Nobles, ‘Pensions Act 1995’(1996) 59 MLR 241 at 249-250 [↑](#footnote-ref-308)
309. R Nobles, ‘Pensions Act 1995’(1996) 59 MLR 241 at 259-260. [↑](#footnote-ref-309)
310. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 32. [↑](#footnote-ref-310)
311. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 32. [↑](#footnote-ref-311)
312. Very useful historical details, upon which this passage draws, is provided by G Thomas’s Annotations to the Disability Discrimination Act 1995, Current Law Statues 1995/50 especially at 50-3-50-5. [↑](#footnote-ref-312)
313. Sections 4-5 of the 1995 Act. [↑](#footnote-ref-313)
314. Section 6 of the 1995 Act. This provision is linked to those of sections 4-5; as B Doyle neatly put it, ‘Section 6 is the keystone to the employment provision in the DDA. It attempts to create a virtuous circle. An employer discriminates if it unjustifiably fails to comply with the duty to make reasonable adjustments (s 5(2)). Such a failure can only be justified for a reason which is material and substantial (s 5(4)).’ B Doyle, ‘Disabled Workers’ Rights, the Disability Discrimination Act and the UN Standard Rules’ (1996) 25 ILJ 1 at 8. [↑](#footnote-ref-314)
315. S Deakin and G Morris, in Labour Law (4th edn, Oxford: Hart Publishing 2005) at 714, go so far as to credit the 1995 Act with providing inspiration for the incorporation of a prohibition upon disability discrimination into the EC Framework Directive on Discrimination in Employment 2000/78/EC, ch 4. [↑](#footnote-ref-315)
316. This contrast is explained by B Doyle, ‘Disabled Workers’ Rights, the Disability Discrimination Act and the UN Standard Rules’ (1996) 25 ILJ 1 at 11-12. [↑](#footnote-ref-316)
317. Section 64(5)-(8) of the 1995 Act. [↑](#footnote-ref-317)
318. Section 7 of the 1995 Act. This exclusion was reduced from twenty to fifteen, then entirely repealed from October 2004 by SI 2003/1673 in compliance with Directive 2000/78/EC. [↑](#footnote-ref-318)
319. Section 64(5)-(8) of the 1995 Act. [↑](#footnote-ref-319)
320. This contrast is explained by B Doyle, ‘Disabled Workers’ Rights, the Disability Discrimination Act and the UN Standard Rules’ (1996) 25 ILJ 1 at 13-14. [↑](#footnote-ref-320)
321. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 34. [↑](#footnote-ref-321)
322. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 34. [↑](#footnote-ref-322)
323. The Employment Protection (Part-time Employees) Regulations 1995, SI 1995/31. [↑](#footnote-ref-323)
324. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 34. [↑](#footnote-ref-324)
325. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 34. [↑](#footnote-ref-325)
326. 76/2007/EC (since amended and re-cast as the Equal Opportunities and Equal Treatment Directive 2006/54/EC (OJ 2006 L204/23, 26 July 2006)). [↑](#footnote-ref-326)
327. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 35. [↑](#footnote-ref-327)
328. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 35. [↑](#footnote-ref-328)
329. Compare A McColgan, ‘The Employment Protetion (Part-time Employees) Regulations 1995 SI 1995 No. 31’ (1996) 25 ILJ 43; C Kilpatrick and M R Freedland, ‘The United Kingdom: How is EU Governance Transformative?’ in S Sciarra, P L Davies, and M R Freedland (eds), Employment Policy and the Regulation of Part-time Work in the European Union (Cambridge: Cambridge University Press, 2004) at 315-316. [↑](#footnote-ref-329)
330. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 35. [↑](#footnote-ref-330)
331. Useful detail of the unusual process of enactment is provided by G Thomas, ‘Annotations to Trade Union Reform and Employment Rights Act 1993’ [1993] Current Law Statutes 19 at 19-31. [↑](#footnote-ref-331)
332. By their later overturned decision in Associated Newspapers Ltd v Wilson: Associated British Ports v Palmer [1994] ICR 97. [↑](#footnote-ref-332)
333. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 36. [↑](#footnote-ref-333)
334. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 36. [↑](#footnote-ref-334)
335. In January 1994 the Deregulation Unit of the DTI (which Mr Michael Heseltine was the Secretary of State) issued a policy document under the title Deregulation: Cutting Red Tape, and a more general set of Proposals for Reform was issued by the seven Deregulation Task Forces. [↑](#footnote-ref-335)
336. The House of Lords Select Committee on the Scrutiny of Delegated Powers defined a Henry Ⅷ clause as, ‘a provision in a bill which enables primary legislation to be amended or repealed by subordinate legislation with or without further Parliamentary scrutiny’ (HLP 57 1992/93). The clauses were so named from the Statute of Proclamations 1539, which gave Henry Ⅷ power to legislate by proclamation. [↑](#footnote-ref-336)
337. The Deregulation (Employment in Bars) Orders 1997 (SI 1997/957) permitted people aged under 18 on approved apprenticeship schemes to serve in bars. [↑](#footnote-ref-337)
338. Section 37 of the Act, the subject of a very critical note by K Williams, ‘Deregulating Occupational Health and Safety’ (1995) 24 ILJ 133. [↑](#footnote-ref-338)
339. Section 36- significantly, this removed the right to complain of selection for dismissal as unfair on the ground of contravention of ‘customary arrangement or agreed procedure’-which referred in practice to collectively bargained arrangements or procedures. [↑](#footnote-ref-339)
340. Section 35 of the Employment Agencies Act 1973. [↑](#footnote-ref-340)
341. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 37. [↑](#footnote-ref-341)
342. The technicalities of public law which were involved are the subject of a note by M R Freedland, ‘Privatising Carltona: PartⅡ of the Deregulation and Contracting Out Act 1994’ [1995] Public Law 21. [↑](#footnote-ref-342)
343. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 38. [↑](#footnote-ref-343)
344. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 38. [↑](#footnote-ref-344)
345. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 38. [↑](#footnote-ref-345)
346. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 38. [↑](#footnote-ref-346)
347. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 38. [↑](#footnote-ref-347)
348. This privatization was effected by and under the provisions of the Railways Act 1993. [↑](#footnote-ref-348)
349. For an account of the origins and history of this initiative in the early 1990s, see M R Freedland, ‘Public Law and Private Finance’ [1998] Public Law 288 at 290-291. [↑](#footnote-ref-349)
350. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 39. [↑](#footnote-ref-350)
351. These relations were mediated through ‘Framework Agreements’; for a discussion of their status and significance, see M R Freedland, ‘Government by Contract and Public Law’ [1994] Public Law 86 at 88-90. [↑](#footnote-ref-351)
352. Efficiency Unit, Improving Management in Government: the Next Steps-Report to the Prime Minister (London: HMSO, May 1988). [↑](#footnote-ref-352)
353. The Citizen’s Charter-Raising the Standard Cm 1599 (London: HMSO, July 1991). [↑](#footnote-ref-353)
354. For a discussion of the implications, for the law and practice of personal work relations, of the appeal at that period to the right and expectations of citizens in relation to public services in Europe at large, see M R Freedland and S Sciarra (eds), Public Services and Citizenship in European Law- Public and Labour Law Perspectives (Oxford: Clarendon Press, 1998), especially M R Freedland at 23-26 on ‘Labour Law, the Public-service sector, and Citizenship’. [↑](#footnote-ref-354)
355. By Section 22 of TURERA 1993, inserting new s 235A into TULRECA 1992. [↑](#footnote-ref-355)
356. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 40. [↑](#footnote-ref-356)
357. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 41. [↑](#footnote-ref-357)
358. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 41. [↑](#footnote-ref-358)
359. The Citizen’s Charter-Raising the Standard Cm 1599 (London: HMSO, July 1991). [↑](#footnote-ref-359)
360. Competing for Quality: buying better public services Cm 1730 (London: HMSO, November 1991). [↑](#footnote-ref-360)
361. The Civil Service: Continuity and Change Cm 2627 (London: HMSO, July 1994). [↑](#footnote-ref-361)
362. At para 1.4. [↑](#footnote-ref-362)
363. As announced at para 1.5. For details of the process of introduction to the Senior Civil Service of formal written contracts, with provision in some cases for performance related-pay, see M R Freedland, ‘Contracting the Senior Civil Service- a Transparent Exercise?’ [1995] Public Law 225. [↑](#footnote-ref-363)
364. Cm 3968 (London: TSO, May 1998). [↑](#footnote-ref-364)
365. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 44. [↑](#footnote-ref-365)
366. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 44. [↑](#footnote-ref-366)
367. Cm476 (London: TSO, December 1998). [↑](#footnote-ref-367)
368. Cm 4310 (London: TSO, March 1999). [↑](#footnote-ref-368)
369. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 44. [↑](#footnote-ref-369)
370. H Collins, ‘Regulating the Employment Relation for Competitiveness’ (2001) 30 ILJ 17. Compare also his ‘Is there a Third Way in Labour Law?’ in J Conaghan, R Fischl, and K Klare, Labour Law in an Era of Globlisation (Oxford: OUP, 2001). [↑](#footnote-ref-370)
371. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 44. [↑](#footnote-ref-371)
372. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 44. [↑](#footnote-ref-372)
373. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 45. [↑](#footnote-ref-373)
374. Published by the Department of Trade and Industry (DTI) as a supporting document to the White Paper; see http://www.dti.gov.uk/comp/competitive/. [↑](#footnote-ref-374)
375. See especially paras 1.15-1.18 and 4.11-4.14 (Enterprise and Innovation). [↑](#footnote-ref-375)
376. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 45. [↑](#footnote-ref-376)
377. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 45-46. [↑](#footnote-ref-377)
378. Fairness at Work, Foreword, para 2. [↑](#footnote-ref-378)
379. Fairness at Work, Foreword, para 3.2. [↑](#footnote-ref-379)
380. Fairness at Work, Foreword, para 1.10. [↑](#footnote-ref-380)
381. Fairness at Work, Foreword, Chapter 5. [↑](#footnote-ref-381)
382. Fairness at Work, Foreword, para 3.3-3.13. [↑](#footnote-ref-382)
383. Fairness at Work, Foreword, para 1.11. [↑](#footnote-ref-383)
384. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 46. [↑](#footnote-ref-384)
385. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 46. [↑](#footnote-ref-385)
386. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 47. [↑](#footnote-ref-386)
387. The National Minimum Wage Act (Amendment) Regulations 1999, SI 1999/583, and the National Minimum Wage Regulations 1999, SI 1999/584. [↑](#footnote-ref-387)
388. As Mrs Margaret Beckett, then Secretary of State for Trade and Industry, was not slow to do in the Second Reading Debate on the Bill in the House of Commons: Hansard, HC (series 6) vol 303, col 162 et seq (16 December 1997). [↑](#footnote-ref-388)
389. Section 1 of the Act, workers to be paid at least the national minimum wage, section 54 defining the term ‘worker’. [↑](#footnote-ref-389)
390. B Simpson, ‘A Milestone in the Legal Regulation of Pay: The National Minimum Wage Act 1998’ (1999) 28 ILJ 1; ‘Implementing the National Minimum Wage-The 1999 Regulations’ (1999) 28 ILJ 171; ‘The National Minimum Wage Five Years On: Reflections on Some General Issues’ (2004) 33 ILJ 22. [↑](#footnote-ref-390)
391. B Simpson, ‘A Milestone in the Legal Regulation of Pay: The National Minimum Wage Act 1998’ (1999) 28 ILJ 1 at 1. [↑](#footnote-ref-391)
392. The initial main rate, from April 1999, was £3.60 per hour and it had risen to £5.35 by October 2006 and then the current rate from April 2018 is £7.83 for workers aged 25 and over. [↑](#footnote-ref-392)
393. Provisions to impose or enable these exclusions or modifications of the main National Minimum Wage were made in general terms by the 1998 Act and specifically by the 1999 Regulations. The rate initially set for workers between 18 and 22 was £3, which had risen to £4.45 by October 2006. The requirement to set minimum wage rates for young workers was extended to workers of 16 or more by Regulations made in 2004 (SI 2004/1930), at which point an hourly minimum of £3 was set for workers between 16 and 18. [↑](#footnote-ref-393)
394. Compare B Simpson, ‘A Milestone in the Legal Regulation of Pay: The National Minimum Wage Act 1998’ (1999) 28 ILJ 1 at 2-3. [↑](#footnote-ref-394)
395. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 49. [↑](#footnote-ref-395)
396. See C Barnard, ‘The United Kingdom, the “Social Chapter”, and the Amsterdam Treaty’ (1998) 27 ILJ 275-282. [↑](#footnote-ref-396)
397. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 49. [↑](#footnote-ref-397)
398. Working Time Directive, Art 17. [↑](#footnote-ref-398)
399. Working Time Directive, Art 18(1)(b)(ⅰ), with respect to the maximum weekly working time (the 48 hour work) provision of Art 6; conditions and safeguards are thereby placed upon this capacity for derogation, including that Member States invoking it shall take the necessary measures to ensure that no worker is subjected to any detriment by his employer because he is not willing to give his agreement to work for more than 48 hours per week. [↑](#footnote-ref-399)
400. Further very important provisions were made for limits and controls on night work (Working Time Directive, Arts 8-11; Working Time Regulations, Regs 6-7) and for daily rest and rest breaks and weekly rest periods (Working Time Directive, Arts 3-5; Working Time Regulations, Regs 10-12). [↑](#footnote-ref-400)
401. Working Time Directive, Art 18(1)(b)(ⅰ), with respect to the maximum weekly working time (the 48 hour work) provision of Art 6; conditions and safeguards are thereby placed upon this capacity for derogation, including that Member States invoking it shall take the necessary measures to ensure that no worker is subjected to any detriment by his employer because he is not willing to give his agreement to work for more than 48 hours per week. [↑](#footnote-ref-401)
402. Working Time Regulations, Reg 5. Reg 31 confers a right upon workers not to suffer detriment for refusal to make such an agreement; but it is notable that this protection does not extend to applicants for work, and possibly arguable that Working Time Directive, Art 18, properly interpreted, requires applicants for work to be included in the protection. [↑](#footnote-ref-402)
403. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 50. [↑](#footnote-ref-403)
404. C Barnard, S Deakin, and R Hobbs, ‘Opting Out of the 48-hour Week: Employer Necessity or Individual Choice? An Empirical Study of the Operation of Article 18 (1)(b) of the Working Time Directive in the UK’ (2003) 32 ILJ 223. [↑](#footnote-ref-404)
405. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 50 -51. [↑](#footnote-ref-405)
406. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 51. [↑](#footnote-ref-406)
407. SI 1999/3312. [↑](#footnote-ref-407)
408. Council Directive 96/34/EC (OJ L145/4, 19 June 1996), implementing the Framework Agreement on Parental Leave of 1995. [↑](#footnote-ref-408)
409. Section 7 and Part Ⅰ of Schedule 4 provided a new framework for maternity and parental leave, within which the Regulations enacted detailed provisions. In addition, in what is generally regarded as a straightforward, or marginally generous to employees, implementation of the relevant provisions of the Directive, section 8 and Schedule 4 Part Ⅱ (creating [↑](#footnote-ref-409)
410. Compare the detailed critique offered by A McColgan, ‘Family Friendly FROLICS? The Maternity and Parental Leae etc Regulations 1999’ (2000) 29 ILJ 125. [↑](#footnote-ref-410)
411. The minimum period of maternity leave for which the Regulations provided was eighteen weeks, also the minimum stipulated by the Directive. [↑](#footnote-ref-411)
412. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 53. [↑](#footnote-ref-412)
413. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 53. [↑](#footnote-ref-413)
414. Rights Brought Home: The Human Rights Bill Cm 3782 (London: TSO, October 1997). [↑](#footnote-ref-414)
415. If so, they might have regarded their aspirations as having been realized by the relatively cautious way in which the Convention rights were admitted into the law of unfair dismissal by the Court of Appeal in X v Y [2004] IRLF 625. [↑](#footnote-ref-415)
416. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 54. [↑](#footnote-ref-416)
417. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 54. [↑](#footnote-ref-417)
418. This set of arguments, as applied in the particular context of protection of ‘whistle blowing’, is very usefully presented and analysed by L Vickers, Freedom of Speech and Employment (Oxford: OUP, 2002) at pp 29-36. [↑](#footnote-ref-418)
419. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 54. [↑](#footnote-ref-419)
420. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L281/31, 23 November 1995). [↑](#footnote-ref-420)
421. J D R Craig, Privacy in Employment Law (Oxford and Portland Oregon: Hart Publishing, 1999) at p 238. [↑](#footnote-ref-421)
422. G Morris, ‘Fundamental Rights: Exclusion by Agreement?’ (2001) 30 ILJ 49 especially at 61-65; H Oliver, ‘E-mail and Internet Monitoring in the Workplace; Information Privacy and Contracting-Out’ (2002) 31 ILJ 321, especially at 330-334. [↑](#footnote-ref-422)
423. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 55. [↑](#footnote-ref-423)
424. Council Directive 97/66/EC (OJ L24/1 30 January 1998). [↑](#footnote-ref-424)
425. The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, SI 2000/2699. [↑](#footnote-ref-425)
426. This argument is set out and developed more fully by M R Freedland, ‘Privacy, Employment and the Human Rights Act 1998’ in K Ziegler (ed), Privacy and Human Rights in the European Union (Oxford and Portland, Oregon: Hart Publishing) [↑](#footnote-ref-426)
427. Sex Discrimination Act 1975 (hereafter, SDA), s 82(1) defines employment as being ‘under a contract of service or of apprenticeship or a contract personally to execute any work or labour’; similarly Race Relations Act 1976 (hereafter RRA), s 78(1), Equal Pay Act 1970s 1(6)(a), and Disability Discrimination Act 1995 (DDA) s 68(1). [↑](#footnote-ref-427)
428. See, for a more detailed discussion, P L Davies and M R Freedland, ‘Employees, Workers and the Autonomy of Labour Law’ in H Collins, P Davies, and R Rideout (eds), Legal Regulation of the Employment Relation (London: Kluwer, 2000) [↑](#footnote-ref-428)
429. The Working Time Directive used the term ‘worker’ throughout without defining or elaborating upon it; the Young Workers Directive, Art 2.1 stated that the Directive applied to ‘any person under 18 years of age having an employment contract or an employment relationship defined by the law in force in a Member State and/or governed by the law in force in a Member State’. [↑](#footnote-ref-429)
430. Fairness at Work, Cm 3968, para 3.17. (London: TSO, May 1998). [↑](#footnote-ref-430)
431. Fairness at Work, Cm 3968, para 3.18. (London: TSO, May 1998). [↑](#footnote-ref-431)
432. Section 23. A very useful account of contemporary views about the extend and appropriate use of those powers is provided by S Deakin and G Morris, Labour Law (4th edn, Oxford: Hart Publishing, 2005) at 3.72. [↑](#footnote-ref-432)
433. A Discussion Document on this question was published by the Department of Trade and Industry of a Summary of Responses to the Employment Status Review in March 2006 (URN 06/1050). [↑](#footnote-ref-433)
434. Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by Union of Industrial and Employers’ Confederations of Europe, European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest, and the European Trade Union Confederation (OJ 1998 L014/9, 20 January 1998). [↑](#footnote-ref-434)
435. This Directive was in fact followed in 1999 by the Fixed-term Work Directive but further proposals for a Temporary (Agency) Workers Directive continued to prove unsuccessful throughout the first and second Blair governments. [↑](#footnote-ref-435)
436. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 57. [↑](#footnote-ref-436)
437. See DTI News Release P/2000/305 of 3 May 2000, ‘More People to Reap Benefits of Working Part-time’ – Mr Stephen Byers, Secretary of State for Trade and Industry. [↑](#footnote-ref-437)
438. SI 2000/1551, Reg 2(3)-(4). [↑](#footnote-ref-438)
439. Into the sub-categories of: ‘(a) employees employed under a contract that is neither for a fixed term nor a contract of apprenticeship; (b) employees employed under a contract for a fixed term that is not a contract of apprenticeship; (c) employees employed under a contract of apprenticeship; (d) workers who are neither employees nor employed under a contract for a fixed term; (e) workers who are not employees but are employed under a contract for a fixed term, (f) any other description of work that it is reasonable for the employer to treat differently from other workers on the ground that workers of that description have a different type of contract’. This Regulation originally included a distinction between fixed-term workers and other workers, but that distinction was removed by SI 2002/2035, Reg 2(a). [↑](#footnote-ref-439)
440. This provision is analysed and criticized in detail by A McColgan, ‘Missing the Point? The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 SI 2000 No 1551’ (2000) 29 ILJ 260 at 263-264, C Kilpatrick and M R Freedland, ‘The United Kingdom: How is EU Governance Transformative? In Sciarra, P L Davies, and M R Freedland (eds), Employment Policy and the Regulation of Part-time Work in the European Union (Cambridge: Cambridge University Press, 2004) at 322-328. [↑](#footnote-ref-440)
441. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 58. [↑](#footnote-ref-441)
442. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 60. [↑](#footnote-ref-442)
443. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 60. [↑](#footnote-ref-443)
444. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 61. [↑](#footnote-ref-444)
445. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 61. [↑](#footnote-ref-445)
446. Department of Trade and Industry 11 July 2002 URN 02/1051. [↑](#footnote-ref-446)
447. Compare D Ashinagbor, The European Employment Strategy (Oxford: OUP, 2005) at chapter 4 and especially pp 178-185 for a detailed critique of the main policy documents in which the strategy was presented. [↑](#footnote-ref-447)
448. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 61. [↑](#footnote-ref-448)
449. Cm 5005 (London: TSO, December 2000). [↑](#footnote-ref-449)
450. Department of Trade and Industry, July 2001. [↑](#footnote-ref-450)
451. Department of Trade and Industry, 11 July 2002, URN 02/917. [↑](#footnote-ref-451)
452. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 62. [↑](#footnote-ref-452)
453. London: Office of Public Service Reform, 2002. [↑](#footnote-ref-453)
454. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 62. [↑](#footnote-ref-454)
455. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 62. [↑](#footnote-ref-455)
456. Section 42- Equal pay questionnaires. [↑](#footnote-ref-456)
457. Section 41- Amendment of the power to confer rights on individuals; section 45-fixed-term work. [↑](#footnote-ref-457)
458. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 63. [↑](#footnote-ref-458)
459. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 63. [↑](#footnote-ref-459)
460. Council Directive 96/34/EC (OJ L145/4, 19 June 1996), implementing the Framework Agreement on Parental Leave of 1995. [↑](#footnote-ref-460)
461. Section 1 and Regulations SI 2002/2788-the entitlement given was to two weeks’ leave. [↑](#footnote-ref-461)
462. Section 2 and Regulations SI 2002/2822-again, for two weeks. [↑](#footnote-ref-462)
463. Section 3 and Regulations SI 2002/2788- the entitlement given was to 26 weeks’ ordinary adoption leave, with the possibility of up to 26 weeks’ additional leave; this corresponded to the entitlement to maternity leave. [↑](#footnote-ref-463)
464. Section 4 and Regulations SI 2002/2822-for up to 26 weeks, again corresponding to maternity pay. [↑](#footnote-ref-464)
465. Section 17-18, extending both leave and pay from 18 weeks to 26 weeks. [↑](#footnote-ref-465)
466. Cm 5005 (London: TSO, December 2000) para 1.15. [↑](#footnote-ref-466)
467. See a very useful discussion of this point by H Collins in J Conaghan and K Rittich (eds), Labour Law, Work and Family: Critical and Comparative Perspectives (Oxford: OUP, 2005) at 112-115. [↑](#footnote-ref-467)
468. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 64. [↑](#footnote-ref-468)
469. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 64-65. [↑](#footnote-ref-469)
470. Hansard, HL (series 6) vol 631, col 1369 (26 February 2002). [↑](#footnote-ref-470)
471. B Hepple and G Morris, ‘The Employment Act 2002 and the Crisis of Individual Employment Rights’ (2002) 31 ILJ 245, Abstract. [↑](#footnote-ref-471)
472. Compare Labour Legislation and Public Policy at 555-558, and B Hepple, ‘The Fall and Rise of Unfair Dismissal’, chapter 2 of W McCarthy (ed), Legal Intervention in Industrial Relations; Gains and Losses (Oxford: Blackwell Publishing, 1992). [↑](#footnote-ref-472)
473. The provisions are those of section 47, which inserts a new Part 8A on Flexible Working into the Employment Rights Act 1996. [↑](#footnote-ref-473)
474. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 67. [↑](#footnote-ref-474)
475. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 67. [↑](#footnote-ref-475)
476. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 67. [↑](#footnote-ref-476)
477. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 68. [↑](#footnote-ref-477)
478. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 68. [↑](#footnote-ref-478)
479. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 68. [↑](#footnote-ref-479)
480. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 68. [↑](#footnote-ref-480)
481. New ERA, s 80F. For the subsequent extension to include a wider set of family carers, Section 12 of the 2006 Act, amending new s 80F of the ERA 1996. [↑](#footnote-ref-481)
482. S 80G. [↑](#footnote-ref-482)
483. S 80G(1)(b). [↑](#footnote-ref-483)
484. S 80G(1)(b)(i)-(ⅳ) [↑](#footnote-ref-484)
485. The Flexible Working (Procedural Requirement) Regulations 2002, SI 2002/3207, Reg 5(b)(ⅱ) [↑](#footnote-ref-485)
486. New ERA, s 80G(1)(b)(ⅰ), (ⅴ). [↑](#footnote-ref-486)
487. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 70. [↑](#footnote-ref-487)
488. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 70. [↑](#footnote-ref-488)
489. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 70. [↑](#footnote-ref-489)
490. Council Directive 2000/34/EC (OJ 2000 L195/41, 1 August 2000). [↑](#footnote-ref-490)
491. This is a summary statement of the effect of the Working Time (Amendment) Regulations 2003, SI 2003/1684. [↑](#footnote-ref-491)
492. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 70. [↑](#footnote-ref-492)
493. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 71. [↑](#footnote-ref-493)
494. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 71. [↑](#footnote-ref-494)
495. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 71. [↑](#footnote-ref-495)
496. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 71. [↑](#footnote-ref-496)
497. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 73. [↑](#footnote-ref-497)
498. Pension Act 2004, ss 173-181. [↑](#footnote-ref-498)
499. Pension Act 2004, ss 173-181. [↑](#footnote-ref-499)
500. Pensions Act 2004, ss 221-233. [↑](#footnote-ref-500)
501. Cm 5835, chapter 3. [↑](#footnote-ref-501)
502. Para 3.4. ‘Our proposals will allow schemes greater flexibility to match their investment strategy to the profile of their members.’ [↑](#footnote-ref-502)
503. Para 2.22 ‘Greater flexibility and proportionality will benefit both those the Pensions Regulatory seeks to protect and those who provide and administer work-based pension schemes.’ [↑](#footnote-ref-503)
504. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 75. [↑](#footnote-ref-504)
505. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 75. [↑](#footnote-ref-505)
506. This is a rhetoric which infused much of the White Paper as Simplicity, security and choice: Working and saving for retirement-Action on occupational pensions (Cm 5835) especially chapter 4: ‘Choice for all-planning for retirement’. [↑](#footnote-ref-506)
507. Department of Work and Pensions, Cm 6841 (London: TSO, May 2006). [↑](#footnote-ref-507)
508. As, for example, in the Prime Minister’s Foreword, and the Foreword of Mr John Hutton as Secretary of State for Work and Pensions. Contemporary political reportage strongly suggests that such caveats were insisted upon by the Chancellor of the Exchequer, Mr Gordon Brown. [↑](#footnote-ref-508)
509. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 77. [↑](#footnote-ref-509)
510. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 77. [↑](#footnote-ref-510)
511. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 77. [↑](#footnote-ref-511)
512. Para 41. [↑](#footnote-ref-512)
513. Para 41. [↑](#footnote-ref-513)
514. Section 35 and Schedule 10 of the 1994 Act, repealing Employment Agencies Act 1973, ss 1-3. [↑](#footnote-ref-514)
515. See very useful annotation to the Gangmasters (Licensing) Act 2004 by R Fortson, [2004] Current Law Statues 2004/11 at 2004/11/1. [↑](#footnote-ref-515)
516. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 79. [↑](#footnote-ref-516)
517. Section 25-Regulations, rules and orders. [↑](#footnote-ref-517)
518. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 79. [↑](#footnote-ref-518)
519. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 79. [↑](#footnote-ref-519)
520. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 79-80. [↑](#footnote-ref-520)
521. DEFRA News Release 107/06; see: http://wwwdefra.gov.uk/news/2006/060313c.htm [↑](#footnote-ref-521)
522. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 81-82. [↑](#footnote-ref-522)
523. Council Directive 2000/43/EC (2000 OJ L180/22, 19 July 2000). [↑](#footnote-ref-523)
524. The Stephen Lawrence Inquiry: Report Of An Inquiry By Sir William Macpherson, Cm 4262-Ⅰ (London: TSO, February 1999). [↑](#footnote-ref-524)
525. Race Relations Amendment Act 2000, s 1, inserting ss 19B-19F into the 1976 Act. [↑](#footnote-ref-525)
526. Race Relations Amendment Act 2000, s 1, inserting ss 19B-19F into the 1976 Act. [↑](#footnote-ref-526)
527. Section 2 of the 2000 Act replaces section 71 of the 1976 Act, which imposed a general duty on local authorities to promote race equality, with sections 71-71E which provide for all specified public authorities to promote race equality. [↑](#footnote-ref-527)
528. Disability Discrimination Act 2005, ss 1-3, implementing proposals canvassed in the consultation document Towards Inclusion-Civil Rights for Disabled People-Government Response to the Disability Rights Taskforce (DfES, March 2001). [↑](#footnote-ref-528)
529. Equality Act 2006, s 84, inserting into the Sex Discrimination Act 1975 a new s 75A (‘Public Authorities: General Statutory Duty’). [↑](#footnote-ref-529)
530. The proposals as they stood in 2000, and the arguments for and against them in their various formulations, were described by S Fredman, C McCrudden, and M R Freedland in ‘An E.U. Charter of Fundamental Rights’ [2000] Public Law 178. [↑](#footnote-ref-530)
531. The Charter was promulgated as a ‘Solemn Proclamation’ (2000/C 364/01- OJ C3641/1/ 18 December 2000) [↑](#footnote-ref-531)
532. See, B Hepple, ‘The EU Charter of Fundamental Rights’ (2001) 30 ILJ 225. [↑](#footnote-ref-532)
533. B Bercusson, ‘Episodes on the Path Towards the European Social Model’, chapter 8 of Hepple QC (Oxford and Portland, Oregon: Hart Publishing, 2004). [↑](#footnote-ref-533)
534. Council Directives 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L303/16, 2 December 2000). [↑](#footnote-ref-534)
535. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 83. [↑](#footnote-ref-535)
536. Any outstanding issues could be regarded as having been addressed by the Disability Discrimination Act 1995 (Amendment) Regulations 2003, SI 2003/1673. [↑](#footnote-ref-536)
537. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 84. [↑](#footnote-ref-537)
538. Article 18; this was a facility which the UK invoked. [↑](#footnote-ref-538)
539. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 84. [↑](#footnote-ref-539)
540. Article 6. [↑](#footnote-ref-540)
541. Details of national implementation are accessible via the website of the European Commission DG for Employment, Social Affairs, and Equal Opportunities at http://ec.europa.eu/employment\_social/fundamental\_rights/pubst\_en.htm. [↑](#footnote-ref-541)
542. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 85. [↑](#footnote-ref-542)
543. A valuable survey of the complete set of issues is provided by S Fredman and S Spencer (eds), Age as an Equality Issue: Legal and Policy Perspectives (Oxford and Portland, Oregon: Hart Publishing, 2003). [↑](#footnote-ref-543)
544. By the publication by the DTI in December 2001 of the consultation document Towards Equality and Diversity; this was followed by three further consultation document: Equality and Diversity-The Way Ahead in October 2002, Equality and Diversity- Age Matters in July 2003, and Equality and Diversity-Coming of Age in July 2005. [↑](#footnote-ref-544)
545. The Employment Equality (Age) Regulations 2006, SI 2006/1031. In September 2006 the Department of Work and Pensions announced a two-month deferment of the provisions of the Regulations relating to pensions. [↑](#footnote-ref-545)
546. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 86. [↑](#footnote-ref-546)
547. A useful account of the legislative methodology is provided by the Explanatory Memorandum to the Employment Equality (Age) Regulations 2006 which the DTI provided for the Joint Committee on Statutory Instruments. [↑](#footnote-ref-547)
548. This is a summary of the effect of reg 30 and Sch 8, para 23 inserting new Employment Rights Act 1996, ss 98ZA-98ZF. [↑](#footnote-ref-548)
549. Reg 47 and Sch 6. [↑](#footnote-ref-549)
550. S 80G(1)(b)(ⅰ)-(ⅸ) [↑](#footnote-ref-550)
551. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 86. [↑](#footnote-ref-551)
552. 2006 Regulations, Sch 6, para 8. [↑](#footnote-ref-552)
553. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 86. [↑](#footnote-ref-553)
554. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 87. [↑](#footnote-ref-554)
555. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 87. [↑](#footnote-ref-555)
556. Council Directive of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE, and CEEP 99/70/ec (OJ 2000 L175/175, 10 July 1999. [↑](#footnote-ref-556)
557. Agreement, cl 4. [↑](#footnote-ref-557)
558. Agreement, cl 5. [↑](#footnote-ref-558)
559. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 87. [↑](#footnote-ref-559)
560. A McColgan, ‘The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002: Fiddling While Rome Burns?’ (2003) 32 ILJ 194 at 195. [↑](#footnote-ref-560)
561. Regs 1 and 2, defining ‘fixed-term employee’, and deploying the notion of the ‘comparable permanent employee’. [↑](#footnote-ref-561)
562. See the Department of Trade and Industry News Release P/2000/305 of 3 May 2000, ‘More People to Reap Benefits of Working Part-time’- Mr Stephen Byers, Secretary of State for Trade and Industry. [↑](#footnote-ref-562)
563. Part-time Work Agreement, cl 2.1: ‘This agreement applies to part-time workers who have an employment contract or employment relationship as defined by the law, collective agreement or practice in force in each Member State.’ [↑](#footnote-ref-563)
564. Another symptom of this loss of interest was the failure to follow up on the review of employment status initiated by the DTI in 2002 to consider possible use of the extending powers conferred by the Employment Relations Act 1999, s 23. [↑](#footnote-ref-564)
565. Reg 8 (Successive fixed-term contracts) [↑](#footnote-ref-565)
566. Reg 8(2)(b). [↑](#footnote-ref-566)
567. Reg 8(2)(a). [↑](#footnote-ref-567)
568. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 88. [↑](#footnote-ref-568)
569. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 88-89. [↑](#footnote-ref-569)
570. COM (2002) 149, 20 March 2002. For the full history, see L Zappala in ‘The Temporary Agency Workers’ Directive: An Impossible Political Agreement?’ (2003) 32 ILJ 310. [↑](#footnote-ref-570)
571. See M Freedland, The Personal Employment Contract (Oxford: OUP, 2003) at 43-45. [↑](#footnote-ref-571)
572. The Conduct of Employment Agencies and Employment Businesses Regulations 2003, SI 2003/3319. [↑](#footnote-ref-572)
573. For instance, in the presentation for approval of the draft Regulations to the House of Lords by Lord Sainsbury of Turville, Hansard, HL (series 5) vol 655, col 1331 (18 December 2003): ‘The Government’s main objective in putting forward these draft regulations is to safeguard the rights of work-seekers, the interest of hirers and employers and the needs of the private recruitment industry.’ [↑](#footnote-ref-573)
574. Reg 10. The complexity of the debate about whether it is in the interests of temporary agency workers to restrict ‘temp-to-perm fees’ is indicated by the ambivalence of the treatment of this issue in the proposals for a ‘Temporary Agency Workers Directive: see L Zappala in ‘Temporary Agency Worker’s Directive: An Impossible Political Agreement?’ (2003) 32 ILJ 310. At 313-314. [↑](#footnote-ref-574)
575. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 90. [↑](#footnote-ref-575)
576. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 90. [↑](#footnote-ref-576)
577. European Commission Memo/05/340 on Better Regulation, 27 September 2005; DG Enterprise Communication’, ‘Outcome of the screening of legislative proposals pending before the Legislator’, COM(2005) 462 final (27 September 2005) at p.4. [↑](#footnote-ref-577)
578. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p. 91. [↑](#footnote-ref-578)
579. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p.91. [↑](#footnote-ref-579)
580. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p.91. [↑](#footnote-ref-580)
581. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p.98. [↑](#footnote-ref-581)
582. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p.99. [↑](#footnote-ref-582)
583. Paul Davies and Mark Freedland, TOWARDS A FLEXIBLE LABOUR MARKET, Oxford University Press, 2007, p.99. [↑](#footnote-ref-583)