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# Resolution Foundation

## REPORT

# Atypical approaches

*Options to support workers with insecure incomes*

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January 2019

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Any errors remain the authors' own.

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# Executive Summary

## Growth in atypical work has led to calls for action

The UK's employment rate continues to reach record highs. But while the majority of jobs added in recent years have been full-time employee roles, much attention has rightly been paid to less standard arrangements. Zero-hours contracts (ZHCs), self-employment and the gig economy have been the cause of much concern over the past decade, along with short-hour contracts, part-time employment, temporary positions and agency work.

Different aspects of these non-standard working patterns have sparked debate, with questions over whether the rights such workers are entitled to are being consistently upheld. But perhaps the most discussed consideration, particularly in relation to ZHCs, is the lack of certainty around income. While the way in which such contracts are managed varies widely across the economy, the defining feature of ZHCs is that an employer does not guarantee any minimum amount of work or wages. This shifts risk from the employer to the worker, potentially allowing an employer to offer or cancel shifts at late notice, penalise a worker for refusing such work and use the potential of additional hours as a management tool.

This potential imbalance was noted by the Taylor Review of modern employment practices, commissioned by the government in 2016 to evaluate how the world of work had changed and what responses were needed. A recurring theme in the Review was that while flexibility is one of the strengths of the UK's labour market, in some employer-worker relationships this flexibility looks one-sided.

The Taylor Review made a number of recommendations to improve the fairness and quality of work, including a right for those on ZHCs to request a fixed-hours contract. But the Review also explored another policy: a wage premium for non-guaranteed hours (NGHs). This was intended to address the issue of insecure income that can arise from a reliance on work with no or a low number of hours guaranteed each week. Placing a premium on NGHs would therefore act as an incentive to employers to offer more hours on a

guaranteed basis or, at a minimum, compensate employees working NGHs for the added risk they bear.

Other studies being conducted by and for the Low Pay Commission explore the potential design and impact of this policy proposal in more depth. But along with that research, the government's response to the Taylor Review also requested that the Low Pay Commission explore alternatives, with a focus on how other countries seek to achieve that goal of preserving flexibility but limiting one-sidedness, particularly in relation to NGHs. Here, we explore the extent to which these issues have emerged outside the UK, and the policy responses to them, examining the effectiveness of these responses and considering what lessons UK policy makers should learn.

### **While definitions and experiences vary, non-standard work has become more common since the financial crisis in many countries**

The UK is far from the only country debating the appropriate response to such forms of work. The share of employees in involuntary part-time and temporary work remains elevated compared to the pre-crisis period in many economies. This is particularly true among those worst affected in the years following 2007-08, with Italy and Greece witnessing significant increases in insecure work.

Economic events over the past decade, however, do not explain all of the differences between countries. The strength of unions, the effectiveness of enforcement and the health of the wider economy are all tightly linked to whether or not insecure work has risen, as well as to the responses to it. Some countries, with Spain being one example, have moved to reduce employment regulation as a way of raising employment rates. In others, including the UK, labour market flexibility was already high, turning public discussion towards what additional protections are required. Elsewhere, with Belgium one notable example, the presence of trade unions and collective bargaining have meant that insecure work has not increased greatly, though unemployment rates for those with low skills remain comparatively high.

### **Restrictions on non-guaranteed hours are the most used tools to prevent income insecurity but raising the cost of such work also features**

With these varying backgrounds, countries have unsurprisingly differed in their responses to concerns about one-sided flexibility and income insecurity. Our review of approaches found that the most commonly used mechanism was legislation regulating NGHs. In some countries, pre-existing law has prevented ZHCs or similar contracts from becoming more common. Further

regulation has been added even in countries with relatively tight restrictions. In France, for example, part-time contracts must now provide a minimum of 24 hours per week, a change that was introduced in 2014. Spanish law limits the number of NGHs – effectively overtime hours – that can be done by an individual, while in Norway, a maximum of 15 per cent of a firm's employees can be on fixed-term contracts.

But many countries with apparently strict limits on NGHs do make exceptions. In France, reduced hours can be requested by workers; collectively bargained agreements can exclude some firms and employees; and students aged under 26 and agency workers are not included.

Some countries focus on avoiding the least desirable elements of such working patterns for employees, with dialogue between worker and employer emphasised. In Germany, this takes the form of minimum shift notification periods applying to 'on-call contracts'. Workers in New Zealand are specifically protected from detrimental treatment if they refuse to work NGHs. Estimates of the number of shifts or typical hours expected have to be provided to employees with flexible working patterns in San Francisco and Seattle.

Another category of response, and that most closely related to the Taylor Review suggestion, is raising the cost of using NGHs. In Australia, a system of 'casual loading' applies, in which those working on a casual basis receive a premium on top of the agreed pay level for that role. A premium for overtime is common in many countries, with, for example, the premium linked to an employee's base rate in Austria, while in Newfoundland and Labrador in Canada it is tied to the minimum wage. In New Zealand, workers who are obliged to work NGHs are entitled to receive compensation. Some jurisdictions echo the approach discussed above by focusing on the least desirable aspects of such contracts, with New York City having introduced a law that means some workers receive 'call-in' pay for unscheduled or cancelled shifts.

### **While a range of policies are in place, the response from employers is not easy to predict with enforcement a key variable**

The aim of the policy suggested by the Taylor Review was to reduce insecurity and one-sided flexibility. Our review of other countries suggests that there are different potential routes. What is less clear, however, is whether one approach is more effective than another, taking into account the impact on employees, employers and the wider health of the labour market. The design of policies is clearly an important consideration, with, for example, a high premium on NGHs likely to lead to a more noticeable response from

employers than a smaller one, or a policy that only affects a minority of workers.

In countries with bans on contracts offering no or few guaranteed hours, there is evidence that some employers switch to using other forms of insecure employment, such as agency workers or self-employment. The extent of enforcement clearly matters too. Taking Australia as an example, though its overall system is complex, the casual loading noted above is set at 25 per cent on top of the base wage. Analysis of pay data, however, suggests that the premium is not strongly visible, with the lowest-paid workers experiencing the smallest uplift. The same proviso applies even to 'softer' restrictions intended to improve the experience of being on a ZHC or short-hours contract. The advance notice of shifts in Germany is not widely adhered to for those in 'mini-jobs', with a survey of such workers reporting that most are informed of their hours at very short notice.

### **Whichever steps are taken next in the UK, a clear sense of the aims and a commitment to enforcement and monitoring will boost the odds of success**

Our research has underlined that income insecurity and one-sided flexibility have emerged as more salient issues across the world. And though detailed evidence on the precise impacts of such policies is often lacking, it is clear that some countries have acted to minimise either the existence of insecure work or the negative consequences.

This does not imply, however, that any of these policies can be seamlessly transplanted to the UK. Responses are often the product of specific legal systems, enforcement regimes, industrial relations, politics and labour market structures. That said, specific employment restrictions appear the most common and straightforward way of limiting non-standard work, though compensation for NGHs does exist in some jurisdictions.

One caution relates to complexity. While the extent to which the variation within the Australian minimum wage regime has led to non-compliance with casual loading is debatable, the potential for confusion among both employers and employees should be borne in mind when considering a premium.

Unions play a major role in a number of countries, and in UK sectors where collective bargaining is important, some of the provisions included elsewhere could be explored further. The design of in-work support, particularly given the introduction of Universal Credit, is another issue to bear in mind, given evidence that for some workers it may increase income volatility relative to the previous tax credit system. An overarching finding, regardless of the

approach taken, is that careful design, ongoing evaluation and an increase in enforcement resources commensurate with the challenges of any policy move are all likely to increase the odds of the policy having the desired impact.



## Section 1: Introduction

*The UK's employment performance has been impressive in recent years. But anxiety has grown over the use of non-standard contracts, particularly those offering few or no guaranteed hours. The Taylor Review made a number of recommendations that could help to address the 'one-sided flexibility' that some employers using these contracts benefit from. This report explores what other countries have done to combat such concerns.*

### **Employment is at record levels but concerns about insecure work have grown**

Effective regulation of labour markets is something of a balancing act. As regulation becomes more restrictive, this increases the risk that employers will opt to hire fewer workers, or that those with a preference to work non-standard hours lose out. On the other hand, as regulation becomes looser, it may lead to more insecurity for workers. In highly simplified terms, this can be viewed as a trade-off between unemployment and exploitation. But for a given place at a given point of time, which of these two concerns dominates is likely to depend on a number of factors, including: industrial relations; politics; the strength of the labour market; and existing employment law.

The current state of play in the UK is no exception. The labour market since the financial crisis that began in 2008 has been notable for a number of reasons. Compared to previous recessions and the experiences of other similar countries over the past decade, headline employment rates fell less and recovered faster. In 2018 to date, the employment rate of workers aged 16-64 has averaged 75.6 per cent. This represents a record in recent decades in the UK.

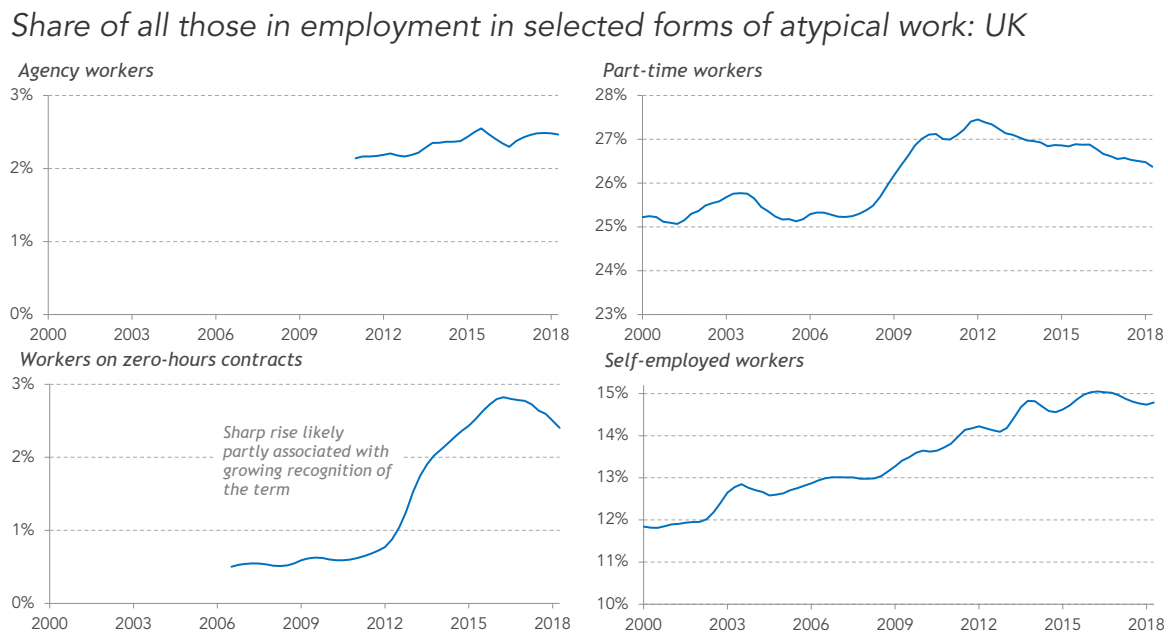
The growth in employment has not been a universally extolled development, however. In recent years in particular, most of the growth in employment has been in full-time employee roles but various forms of non-standard employment have also contributed to the impressive headline figures, as Figure 1 shows.

Two forms in particular have been prevalent in public discussion: self-employment and zero-hours contracts (ZHCs). Immediately before the financial crisis, 13 per cent of all those in employment were self-employed. For much of 2016 and 2017, that proportion stood at 15 per cent, again a record in recent decades, only abating slightly in 2018. On ZHCs, while the Office for National Statistics (ONS) has noted that some of the early increase may be due to individuals discovering the kind of contract they were already on, there still appears to have been a genuine increase in their use.

While self-employment and ZHCs may have dominated the public debate, other non-standard forms of employment have also begun to rise up the agenda. The 'gig economy' is often loosely defined, with the focus tending to be on self-employment. Dependent self-employment, particularly among those using apps or platforms, has

been frequently debated, both with regard to the effectiveness of employment law but also more fundamental questions such as where the lines should be drawn between self-employment, worker status and employee status. Similarly, agency working and involuntary part-time work have both been raised as indicators of the ongoing weaknesses of the labour market as well as potential sources of concern.

**Figure 1: Various forms of insecure work have increased in the UK since the financial crisis**



That concern has been driven at least in part by reports and high-profile examples of potentially exploitative use of such contracts by employers. Taking ZHCs as an example, a number of surveys have found that the majority of those employed on such contracts are satisfied.<sup>[1]</sup> Consistently, however, ZHC workers have been more likely than non-ZHC workers to say they face difficulties, whether that be a desire for more hours<sup>[2]</sup> or notice further in advance of their shifts<sup>[3]</sup> (both problems that can extend to a far larger group of workers than those on ZHCs).

## Taylor Review suggested approaches to tackle one-sided flexibility

Against this background, the government asked Matthew Taylor, chief executive of the RSA, to undertake a review of ‘modern employment practices’. His report, published in July 2017, made a number of recommendations, many of which were sparked by a concern regarding “one-sided flexibility”.<sup>[4]</sup> Among these recommendations was a suggestion for a premium to be placed on top of the minimum wage for hours that were not guaranteed

[1] CIPD, *Zero-hours and short-hours contracts in the UK: Employer and employee perspectives*, December 2015

[2] See for instance ONS, *People in employment on a zero-hours contract*, March 2017

[3] M Pennycook, G Cory & V Alakeson, *A Matter of Time: The rise of zero-hours contracts*, June 2013

[4] M Taylor, *Good Work: The Taylor Review of Modern Working Practices*, BEIS, July 2017

within an employment contract. The Taylor Review set out one version of how such a policy could be designed but left the door open to different interpretations.

In its response in February 2018, the government accepted some of the Review's recommendations and launched consultations on a number of them:

*The government recognises the real issues that one-sided flexibility can cause for working people and their families. We want to find ways to tackle this issue while retaining the flexibility that many people find so valuable, and avoid placing unnecessary burdens on business. We accept the review's recommendation to ask the Low Pay Commission (LPC) to explore the impacts of introducing a higher NMW/NLW [National Minimum Wage/National Living Wage] rate for hours that are not guaranteed as part of the contract. We will also investigate alternative means of tackling the issue, and ask the LPC to do the same and provide advice on the impacts of alternative options.<sup>[5]</sup>*

This report, commissioned by the LPC, forms part of the investigation of these issues, looking beyond a minimum wage premium. Here, we explore what options are available to the government in seeking to reduce one-sided flexibility in the labour market, learning lessons from the experience of other countries. Given the LPC's remit does not cover the self-employed, we focus on the kinds of non-guaranteed hours (NGHs) and insecure work that affects workers and employees who are legally entitled to the minimum wage. That said, and given bogus self-employment is another issue discussed by the Taylor Review, where appropriate we consider actions to support the self-employed.

This report is primarily based upon a literature review, alongside analysis of labour market data from a range of countries. The literature review sought to identify the discussions around these employment practices internationally, the kinds of policies that may act to counter concerns arising from their use and, where available, evaluations of the effectiveness of such responses.

In terms of the policies explored, this report focuses primarily on employment laws, regulations and practices, spanning public policy as well as collective agreements and approaches from employers. But the social security system and labour market institutions within an area can also influence the extent to which atypical working leads to income insecurity. We touch on these but do not attempt to paint a comprehensive portrait of how, for instance, benefits systems interact with the prevalence of, and policy response to, insecure work, which could constitute a report of its own.

Relevant research was identified using a rapid evidence review, as well as contacting labour market experts in a range of countries and in international organisations to highlight policies of note. Data analysis covered a range of sources including those from Eurostat, the Organisation for Economic Co-operation and Development (OECD) and the International Labour Organization (ILO).

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[5] HM Government, *Good Work: A response to the Taylor Review of Modern Working Practices*, February 2018

## Structure of the report

This report is structured as follows:

- The next section – Section 2 – investigates the extent to which insecure work has emerged as a concern in other countries, and how underlying policy environments may have contributed.
- Section 3 then turns to relevant policies that are in place, either recently or of long standing, to reduce or prevent the one-sided flexibility that can go along with such working arrangements.
- Section 4 considers the evidence on the effect of such policies, their impact on the workers and businesses affected, as well as broader potential lessons on design and implementation.
- Section 5 concludes the report and offers reflections on the types of interventions used, the logic underlying them, their effectiveness, the transferability of policies and what they suggest for the UK in the coming years.

## Section 2: Insecure work around the world

*Non-standard work exists in a variety of forms, a number of which have increased across advanced economies. A challenge exists in differentiating non-standard work that suits both workers and employers well, from situations in which the benefits look more one-sided. But using measures of those involuntarily in part time or temporary work which can be considered proxies for the kinds of insecure work on which this report focuses, it is clear that is a significant issue. This is particularly the case for younger workers and those in crisis-hit countries. The variation in the levels and change in non-standard work acts as an important reminder that insecure income is not an inevitable result of forces like globalisation or technology. Labour market policy can and does make a difference.*

### Debates about non-standard work have been ongoing since at least the mid-1970s

Non-standard work has risen up the policy agenda in many advanced industrialised economies since the financial crisis. But debates about non-standard work have been ongoing since at least the mid-1970s across Western Europe and the United States. Defined in opposition to the standard work relationship, which comprises full-time work offered on a permanent basis, non-standard work can take numerous forms. The most common include part-time work, temporary work, self-employment and agency work.

These forms of work have emerged amid large structural shifts in both global and local economies. In the first instance, globalisation has given rise to increasingly competitive labour markets in which more flexible working relationships enable firms to minimise costs and respond to demand-led markets. A shift towards service-based economies coupled with technological advances, particularly the development of app-based service provision, may also have contributed to a rise in on-call and temporary work relationships.<sup>[6]</sup>

This has occurred alongside long-term declines in union representation which are likely to have increased requirements for employees to be flexible. In many countries, including Spain and the Netherlands, these pressures have been complemented by deregulation and active efforts to create more flexibility in the labour market in order to reduce unemployment.<sup>[7]</sup>

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[6] G Bosch, *Towards a New Standard Employment Relationship in Western Europe*, British Journal of Industrial Relations, December 2004

[7] ICF & Radar Europe, Key messages from the Peer Review on 'The rise of precarious work (including bogus self-employment)

However, given vastly different historical, political and economic contexts, the extent to which each form of non-standard employment has grown varies greatly across countries. And given the specificities of labour market institutions and regulatory regimes, these differences remain pronounced even among countries with similar economic fortunes and welfare regimes. For instance, Hipp et al. find that “the prevalence of non-standard work greatly varies within the Conservative/Continental European country cluster” with the proportion of the working-age population in non-standard work ranging from 20-25 per cent in France and Belgium to over 40 per cent in the Netherlands.<sup>[8]</sup>

## Non-standard work versus insecure employment and incomes

It is important to draw a distinction between work that is classed as non-standard and insecure work. Non-standard work presents a specific policy issue because it often entails a shift of employment-related risks from employer to employee. For instance, part-time workers who regularly work beyond their contracted hours bear the costs of a sudden reduction in demand faced by the employer. Under a full-time permanent contract, employers would have to minimise profit margins, shoulder a loss or, where possible, seek to lay workers off. But not all part-time work entails this element of insecurity. For many, part-time work is a choice that allows them a more favourable work-life balance or the ability to balance paid work with childcare.

For the purpose of this study, our aim where possible is to isolate non-standard work insofar as it entails an element of insecurity for workers. The measurement of insecurity in work is complicated in and of itself. The measures we focus on in this section can be considered as proxies for the type of insecure work we are interested in. Further complications arise due to cross-country differences in the forms of work being discussed and the terminology used to discuss them. For example, on-call work, just-in-time scheduling, zero-hours and if-and-when contracts are used to describe very similar working relationships in different country contexts. Nevertheless, there have been significant efforts over the past decade to capture insecurity in work.

A common metric used to assess insecurity in work on a cross-country basis is the share of involuntary part-time workers in total employment, displayed in Figure 2. The assumption here is that people who work part time, but would prefer full-time work, are more likely to rely on NGHs to supplement earnings from their contracted hours. There has been significant growth in involuntary part-time work across some, but not all, OECD countries, with levels of growth differing from country to country. Italy, Spain and Greece, which were among the countries worst-affected by the crisis, have experienced the most significant growth at 6.5, 5.2 and 4.1 percentage points respectively. Growth in the UK was notably lower at 1.3 percentage points. There is a significant degree of overlap between those countries experiencing the fastest growth in involuntary part-time working and those countries with the highest level in 2017: Italy having the highest rate (13 per cent of all those in employment) and Spain the second-highest (10.5 per cent).

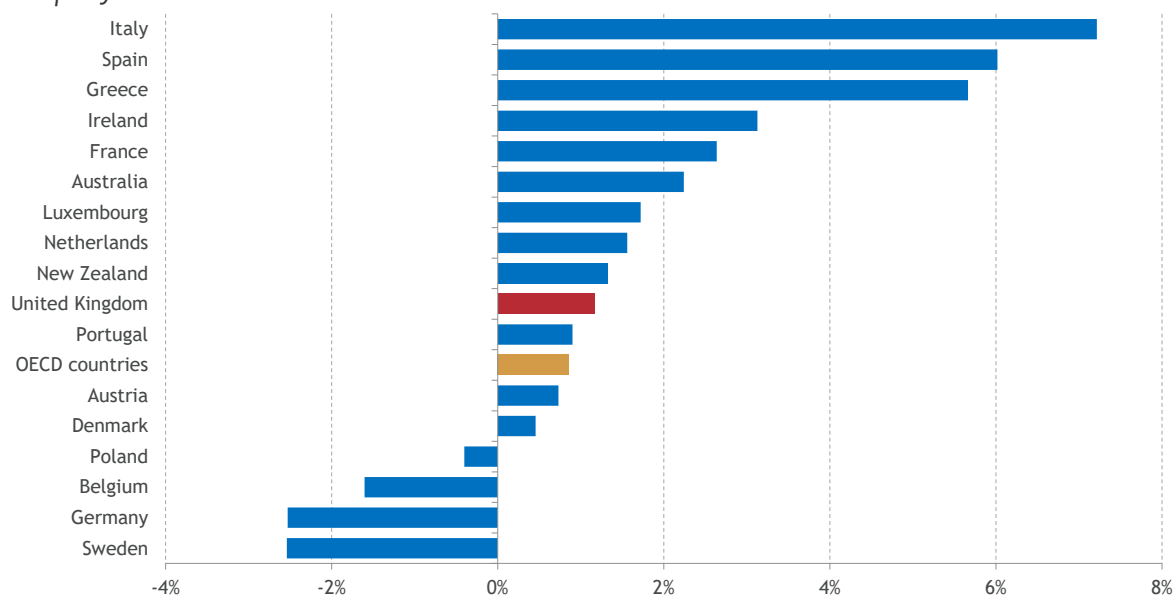
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– causes, challenges and policy options’, European Commission, May 2018

[8] L Hipp, J Bernhardt & J Allmendinger, *Institutions and the prevalence of nonstandard employment*, Socio-Economic Review, March 2015

**Figure 2: The strongest growth in involuntary part-time work has been in countries worst hit by the financial crisis**

*Percentage point change in share of involuntary part-time workers in total employment: 2007-17*



Source: RF analysis of stats.OECD.org

## Insecurity of work disproportionately affects young people

Insecure work is, of course, not equally distributed across the labour force. While data are not readily available for the full spectrum of characteristics that may be of interest – including ethnicity, family type and migrant status – one major issue we can explore is age. Part of the debate around ZHCs in the UK has centred on who those workers are, with students and those in or moving towards retirement viewed as more likely to undertake insecure work. At the same time, divides between generations, including experiences in the labour market, have become a talking point, both in the UK but also internationally.

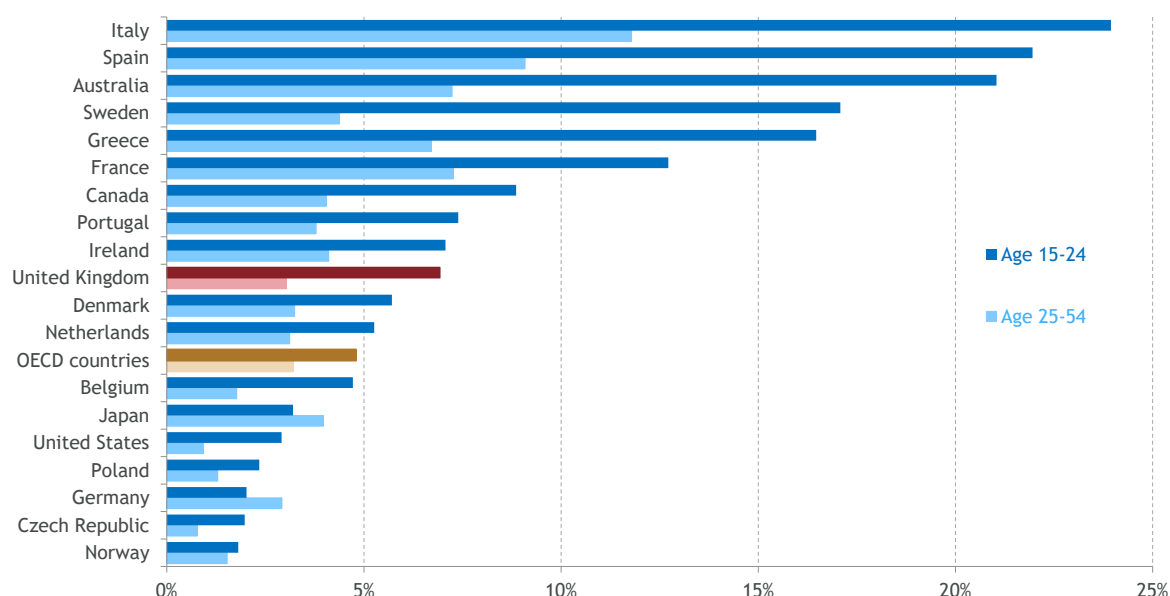
In the great majority of countries, involuntary part-time work is more prevalent among young people. This is shown in in Figure 3, which sets rates of involuntary part-time employment for workers aged 15-24 against those for workers aged 25-54. In Italy, the country worst-affected by growth in involuntary part-time work, people aged 15-24 are over twice as likely to be in this category as people aged 25-54. In Sweden, young people are almost four times as likely to be in involuntary part-time work. Interestingly, in the US the share of people in involuntary part-time work is comparatively low at 1.1 per cent, but young people are three times as likely to be affected.

That young people appear disproportionately likely to experience insecure work (on the reasonable assumption that involuntary part-time work represents a good proxy for it) is concerning because of its long-term implications. Studies have shown that rather than priming young people for more secure or permanent work, people who have been in low-paid, insecure work when they are young are more likely to stay in low-paid, insecure

work long term.<sup>[9]</sup> Moreover, our work in the UK has shown that young people facing greater levels of labour market risk are less likely to take risks themselves. Young people today are less likely to move from job to job than they have been in the past which means that they are increasingly missing out on the large pay increases afforded to those that do move jobs.<sup>[10]</sup>

**Figure 3: In most countries, younger workers are more likely to be in involuntary part-time work than prime-age employees**

*Proportion of employees in age bracket in involuntary part-time employment: 2017*



Source: RF analysis of stats.OECD.org

Increases in temporary employment for people who would rather have a permanent job have been smaller overall than changes in involuntary part-time work. In Italy, which is again the worst-affected country, the increase was 2.9 percentage points, compared with 6.5 percentage points for involuntary part-time work. But, as Figure 4 shows, the effect for people aged 15-24 has been far more significant, with an increase of 17.2 percentage points, than the effect for those aged 25-64, at 2.3 percentage points. In the UK, young people have also been more affected, albeit by a relatively small rise of 0.4 percentage points compared to a 0.1 percentage point increase overall for people aged 25-64. In the Netherlands, which is often cited as a country where non-standard work has grown significantly in recent years<sup>[11]</sup>, the increase was less than 0.1 percentage points for people aged 15-24 but 4 percentage points for people aged 25-34.

In terms of the share of people involuntarily in temporary work, in 2017 the UK had among the lowest rates, with only 1.5 per cent of workers affected. This is compared to

[9] A Broughton, I Biletta & M Kullander, *Flexible forms of work: 'very atypical' contractual arrangements*, Eurofound, March 2010

[10] S Clarke, *Get A Move On? The decline in regional job-to-job moves and its impact on productivity and pay*, Resolution Foundation, August 2017

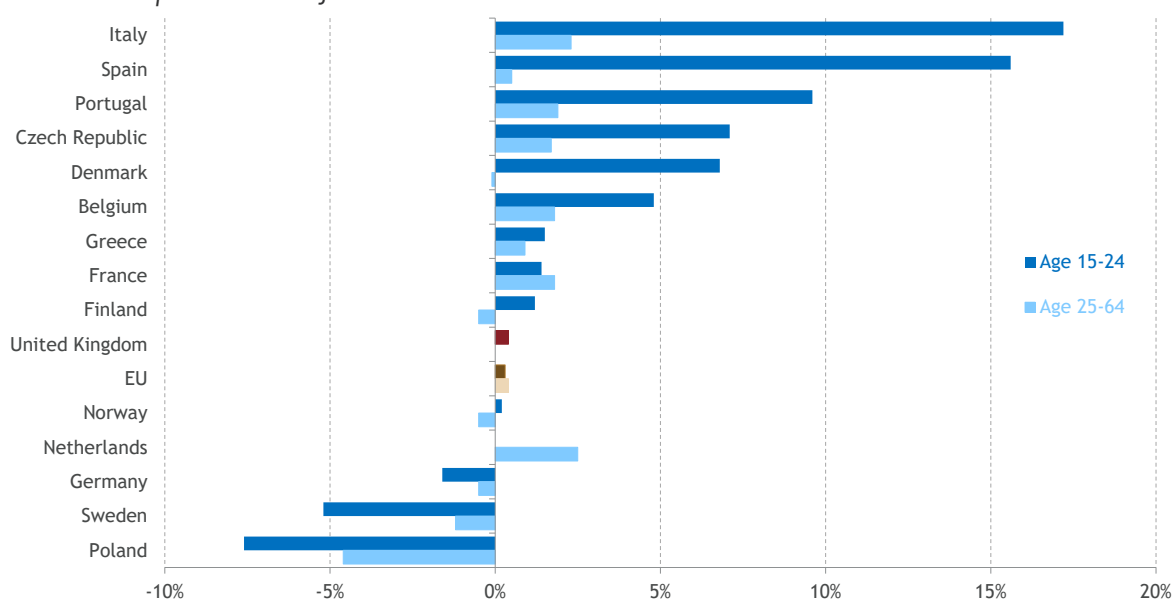
[11] ICF & Radar Europe, *Key messages from the Peer Review on 'The rise of precarious work (including bogus self-employment) – causes, challenges and policy options'*, European Commission, May 2018



the EU average of 7.8 per cent. Spain ranks as the country with the highest proportion of employees in involuntary temporary work, with 22.7 per cent of employees affected. Despite the comparatively low level of temporary work in the UK compared with other European economies, there is evidence that strengthening regulation relating to other forms of employment may push firms to make greater use of temporary contracts. A study by Kalleberg finds that, although the proportion of workers in the UK and the US is low compared with other OECD countries, it is likely that “the low levels of temporary work in these two liberal market economies reflects the weak employment protections in these countries, as employers can more easily lay off or fire permanent workers ‘at will’ without the need for the flexibility that comes with temporary work”.<sup>[12]</sup> Further studies have shown that temporary employment tends to be more common in countries where permanent employment is strictly regulated.<sup>[13]</sup>

**Figure 4: Many more young workers are on temporary contracts but want to find permanent work**

*Percentage point change in share of employees in temporary work citing ‘could not find a permanent job’ as the main reason: 2006-17*



Source: RF analysis of Eurostat

Moreover, there is the issue of ‘internal’ versus ‘external’ flexibility. Currently, employers are able to manage seasonality or sudden shifts in demand via the internal flexibility provided by the usage of ZHCs or short-hours contracts (SHCs). In effect, they can reduce hours for workers when demand is low. In the event that such contracts are no longer attractive or financially viable, they may move to a model of external flexibility whereby temporary workers are hired for short periods in order to deal with these shifts in demand.

[12] AL Kalleberg, ‘Job Insecurity and Well-being in Rich Democracies: Geary Lecture 2018’, *Economic and Social Review*, 49(3), Autumn 2018, pp. 241-258, November 2018

[13] D Hevenstone, ‘National Context and Atypical Employment’, *International Sociology*, 25(3), April 2010

The use of non-standard work to manage demand can often lead to ‘dualisation’ in workplaces and labour markets more broadly, particularly where regulation relating to these types of work is poor in comparison with that for full-time or permanent employment. Dualisation refers to the development of a core of permanent employees who are entitled to certain organisational benefits, such as health care or other social policy programmes not available to workers on the ‘periphery’. The higher proportions of young people in non-standard work suggest that younger, and therefore newer, entrants to the labour market are increasingly working on this periphery, while older workers maintain the privileges afforded to core workforces.

## **Solo self-employment has grown significantly in recent years and dominated much of the literature on insecure work**

So far, this chapter has focused on workers in direct employment relationships. Self-employment naturally entails greater levels of insecurity than the standard employment relationship because the individual is liable for all employment-related risks. But for many, the increased autonomy makes it a particularly appealing option.

However, self-employment isn’t just a by-product of entrepreneurship. A number of large firms increasingly use self-employed contractors to carry out work on their behalf. Solo self-employment has grown significantly in recent years in many countries and dominated much of the literature on insecure work. The prominence of large tech platforms that have in part facilitated its global rise may have contributed to the attention it has garnered.

Self-employed people in the UK are unlikely to be covered by approaches considered by the Low Pay Commission. But, given they form an important part of the story of insecure work in recent years in particular, and the Taylor Review’s consideration of where the line between self-employed, worker and employee status should be drawn, in this section we briefly explore cross-country trends.

Figure 4 shows the percentage point change in ‘own-account’ self-employment, the defining feature of which is people working on a self-employed basis without employees. Between 2006 and 2017, the UK and Netherlands had the biggest increases in own-account work, of 4.1 and 2.6 percentage points respectively. Interestingly, own-account work has declined in significance across many high-income countries over the past decade, including the US, which has seen a 1.1 percentage point decline. However, Belgium, which has experienced declines in both involuntary part-time and temporary work largely attributed to the continued strength of its trade unions, which is discussed in more detail in the next section, has seen an increase in own-account work of 0.6 percentage points.

Debates on solo self-employment in the UK often touch on their low earnings relative to employees and the self-employed with employees, as well as the insecurity of work and reduced access to training and pensions.<sup>[14]</sup> Moreover, the autonomy typically associated with self-employment is negated by reliance on a single provider or client, which often seek to maintain control over the ways in which work is performed and the setting of

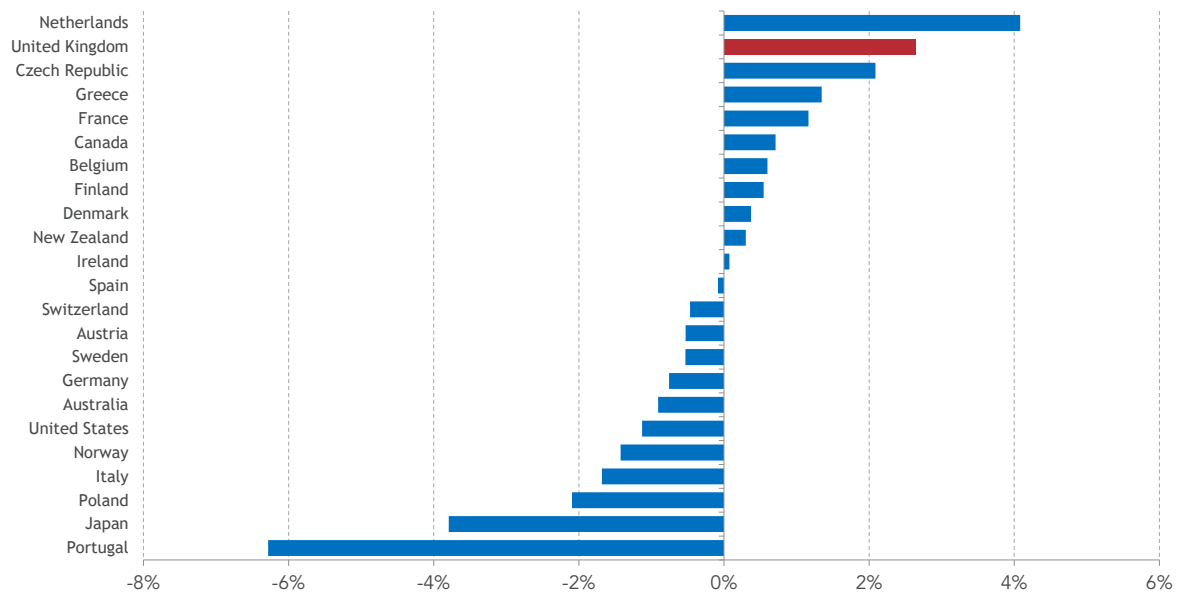
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[14] See for instance C D’Arcy & L Gardiner, *Just the job or a working compromise: The changing nature of self-employment in the UK*, Resolution Foundation, May 2014

wages. That said, and as previous Resolution Foundation research has explored, much of the increase in self-employment in the UK in recent years appears to have come from higher-paying industries such as advertising.<sup>[15]</sup>

**Figure 5: Own-account self-employment has grown significantly in the UK**

Percentage point change in share of own-account workers in total employment: 2006-17



Notes: Own-account self-employment is defined by the ILO as “workers, who hold self-employment jobs and do not engage ‘employees’ on a continuous basis”.  
Source: RF analysis of ILOStat

The element of control exercised by the work provider is the subject of extensive debate and has been at the heart of the high-profile legal case against Uber in which the firm recently lost its appeal against a ruling that its drivers should be classed as workers with minimum-wage rights and entitlement to holiday pay. This is important because it suggests that self-employment is used by firms to bypass employment regulation that provides security for workers. This notion is supported by studies which find that the strength of dismissal protection in regular employment appears to have a positive effect on ‘dependent self-employment’ but a negative effect on ‘genuine’ self-employment.<sup>[16]</sup> As with employees, the self-employed are a heterogeneous group, but one which can represent the sharp end of modern labour market.

## Non-standard employment and poverty

Insecure work is ultimately of greatest concern for those without other regular sources of income. A study by the OECD found that in 2012 households with only non-standard employment have a poverty rate of 22 per cent on average across OECD countries.<sup>[17]</sup> This is compared with an average poverty rate of around 40 per cent for jobless households,

[15] D Tomlinson & A Corlett, *A tough gig? The nature of self-employment in 21st Century Britain and policy implications*, Resolution Foundation, February 2017  
[16] For instance see G Schmid & J Wagner, *Managing social risks of non-standard employment in Europe*, ILO, 2017  
[17] OECD, *In It Together: Why Less Inequality Benefits All*, May 2015

2 per cent in households with a mix of standard and non-standard work and less than 1 per cent in households with only standard work. This suggests that, while not as closely linked to poverty as joblessness, non-standard work is certainly an area of serious concern for families' living standards.

The figures for the UK are very close to these OECD averages. In other countries, such as Greece and Luxembourg, the poverty rate for non-standard worker households is very close to that of jobless households, although this is likely due to higher taxes or less access to benefits.

The high poverty rates experienced by non-standard worker households, coupled with the increased likelihood of losing a job, volatility of earnings, and the fact that affected workers are likely to remain in non-standard work long term pose a significant challenge for policy makers across high-income countries.

## Conclusion

Concerns about non-standard work, then, are far from unique to the UK. While such work appears in various forms and to various extents across countries, worries about insecurity of income arising from atypical work are widespread. They are particularly acute in countries particularly affected by the financial crisis but, as the following sections will explore, the differing labour market landscapes have also influenced the relative rise of such work. Data remains, overall, patchy, with definitions differing and comparisons of employment legislation hard to make. Nonetheless, the range of outcomes, both in terms of the prevalence of insecure work and its growth, highlights that though trends in globalisation, technology and the changing composition of the workforce may contribute, an increase in insecure work is not inevitable or uniform across countries. The next section explores the measures taken in other countries to address the issues raised by non-standard work.

## Section 3: Policies to tackle insecure work

*Around the world, a range of policies are in place to prevent, reduce or regulate non-standard work and non-guaranteed hours, or to compensate workers bearing the risk of insecure employment. Some countries effectively ban zero-hours contracts. Other jurisdictions require employers to pay for cancelled or rescheduled shifts. While less common than these approaches, in some places the cost of insecure work is raised, with some placing a premium on overtime work. In other countries, collectively bargained agreements of the social security system supplement or stand in for such legislation.*

### **Other countries' policies are useful guides but deep differences should be kept in mind**

As the previous section noted, the UK is far from the only country dealing with insecure work and the associated issues of one-sided flexibility and unpredictable income. In this section, we discuss how other countries have responded to these concerns, as well as reviewing laws or protections already in place that may act to prevent such forms of work arising in the first place.

An important caveat throughout this report, but relevant in this section in particular, is the differing environments in which these approaches have emerged. As Section 2 discussed, some countries have loosened labour market regulation in order to encourage higher employment rates, while others have moved in the other direction. The extent to which this regulation is enforced or that employees have avenues to ensure their rights are protected is another key factor, and one we return to in Section 4.

As well as these different directions of travel and practical issues, the deeper foundations upon which such policies are built vary too. From a legal perspective, the structure of employment law and the definition of employees, the self-employed and any categories in between can mean that the options available and the kinds of individuals affected varies. Considering labour market institutions, the health of industrial relations, the position of trade unions and the prevalence of collective bargaining all contribute too; countries in which unions are, and have historically been, strong may be less likely to have restrictions formally set out in law but instead have them embedded in agreements.

These differing backgrounds mean that the policy approaches discussed below should be considered in their context. This, of course, does not mean that ideas and initiatives from abroad cannot be applicable to the UK. It merely acts as a reminder that, as with most

policy, the interactions with existing laws, culture and institutions all matter.

In this section, we consider three types of response to the issue of insecure work:

- Measures that remove or severely restrict employers' ability to offer non-standard work;
- Measures that raise the cost of non-standard work for the employer; and,
- More indirect steps that either act to disincentivise employers or remove risk from workers with non-standard terms and conditions.

We focus where possible on those most closely related to non-guaranteed hours (NGHs).

## Measures that remove or severely restrict employers' ability to offer non-standard work

Across countries, there is a spectrum of permissiveness of employment regulation, particularly with regard to non-standard work. At one end of this spectrum are those that place severe limits or effective bans on various forms of non-standard work. At the other end are those with very light restrictions. But many countries fall in between these two poles, with a wide variety of practices.

Given the scope of this report and its goal of discussing alternative approaches to tackling one-sided flexibility, we do not undertake a comprehensive list of countries and their policy frameworks. Instead, based on relevance to the UK and more practical limitations, specifically the availability of previous analysis or research, a number of examples are discussed, illustrating some of the approaches that have been used around the world.

### Some countries place tight limits on atypical work

In some countries, strong legislation has prevented concerns about one-sided flexibility and insecure income from work arising, at least in the forms considered in the UK. One particular version of such work is ZHCs. A recent study exploring this phenomenon listed Slovenia, Spain, Croatia, Poland, France and Denmark as having effective prohibition of ZHCs.<sup>[18]</sup>

While in some instances, this appears to be the result of longstanding legislation, in others there is more evidence of recent policy shifts. In France, for example, since 2014 part-time contracts must provide a minimum of 24 hours per week, which in effect prevents the existence of ZHCs or SHCs. This has emerged from a ruling by the Social Chamber of the Court of Cassation that an employment contract places a requirement on an employer to provide work.

However, there are exceptions to this rule in France. First, reduced hours can be requested by workers, if for instance they wish to have an additional job or they would prefer fewer hours. Second, if specified in collectively bargained agreements, firms and employees may be subjected to different rules, with the 24 hours floor applying to all those *not* covered by such an agreement. Third, agency workers and students aged under 26 are not included.

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[18] M O'Sullivan et al., *A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees*, University of Limerick, 2015

These exemptions can be interpreted as attempting to promote two-sided flexibility, where workers may desire more flexible contracts. But, with the exceptions of students and agency workers, the power appears to remain with the worker, as the emphasis is on them to request shorter hours and explain why this is necessary. Of course, as the UK's experience with opt-outs from the maximum number of hours permitted by the Working Time Regulations has illustrated,<sup>[19]</sup> some employers may try to work around this system. The reality of power dynamics between employers and low-earning staff may also mean this right is abused.

Moving away from ZHCs, other forms of NGHs appear to be effectively banned or strictly controlled in a number of countries. While not among the primary forms of non-standard work considered in Section 2, overtime working can be an important element of potential insecurity. This, clearly, is not the case for individuals working full-time hours and occasionally working an hour or two on an overtime basis to meet exceptional demand or to earn a little extra from time to time. It represents a greater concern, however, for those workers who are more dependent upon it. These may be those on SHCs, perhaps guaranteed only six or eight hours per week but frequently working multiples of that. The scale of such contracts and working patterns in the UK remains an under-explored topic, though research for the Low Pay Commission has identified that a number of large firms operate in this way.<sup>[20]</sup>

In contrast to the UK, some countries place strict limits on overtime working. In Spain, for instance, a maximum of 80 hours can be worked on an overtime basis annually, thereby limiting the extent to which an employee can depend on NGHs as a regular part of their earnings.<sup>[21]</sup> A similar approach is in place in Luxembourg, where as well as prior authorisation or notification to the Ministry of Employment, overtime cannot exceed two hours per day.

### Others pursue the idea of exemptions further

While those excluded from part-time hours rules in France may be thought of as a small minority of those potentially affected, in other countries the groups carved out of such restrictions are larger. In Italy, for instance, 'on-call' contracts may be used to deal with exceptional demand or unusual periods but not as a standard part of the organisation's daily business. Again, as in Luxembourg, employers are required to notify the Ministry of Labour.

But there are three elements of the law around non-standard work that are particularly notable in Italy, in terms of preventing widespread use of NGH contracts.<sup>[22]</sup> Workers aged between 25 and 55 cannot be employed on on-call contracts, thereby preventing the majority of the workforce from being employed in this way. Given one part of the debate around ZHCs in the UK is that they are particularly valuable to younger and older workers, but concerns mount when – as illustrated by the poverty statistics outlined in Section 2 – an individual or family is solely reliant upon them, this is one way of

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[19] See, for instance: V Keter, *Working time directive: opt out from 48 hour limit on working week*, House of Commons Library, 2008

[20] Incomes Data Research, *Minimum and Zero Hours Contracts and Low-paid Staff*, November 2018

[21] Clyde & Co, *Employment law at a glance: An international guide to employment law across 28 countries*, May 2017

[22] M O'Sullivan et al., *A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees*, University of Limerick, 2015

embedding this in law. Of course, this overlooks those under 25 and over 55 who may be supporting themselves solely on these contracts.

The second innovation in Italy is the placing of time limits on the use of on-call contracts, which is also used in Hungary, Belgium and Slovakia. For any Italian employee, no more than 400 days over 3 years can be worked on an on-call basis. After that point, the employment relationship converts into a full-time indefinite contract. This, in theory, prevents on-call contracts from becoming a long-term position that employees find themselves in.

The third approach of note in Italy is limits on the extent to which firms can rely on such contracts. Fixed-term and temporary agency workers cannot comprise more than 20 per cent of the number of ‘standard’ workers employed by the firm. A similar provision is in place in Norway with regards to fixed-term contracts, where workers on these terms cannot exceed 15 per cent of a firm’s workforce.<sup>[23]</sup> It may reveal something about the dominance of large employers that 5 per cent of firms account for 90 per cent of all temporary workers in Norway.<sup>[24]</sup>

### **Some countries’ protections affect communication between employers and staff**

Rather than set explicit limits on the amount of non-standard working that individuals or firms can do, some countries instead focus on moves to minimise the potential negative side effects of these contracts. In many instances, policies address not the number of NGHs but how they are advertised, assigned and managed; or the consequences of refusing to work those hours. The aims of these policies appear to be to encourage predictable shift schedules; to discourage employers from using insecure contracts or notifying workers at the last minute; to protect workers from retaliation if they do not agree to work these hours; and to help employees who may feel underemployed in such roles.

One of the main uncertainties relating to ZHCs and SHCs is the number of hours that will in practice be worked. While the issue of how many hours will be offered is likely to be discussed at an interview for such roles, there is no requirement for employers to do so in the UK. In Oregon in the US, however, some employers<sup>[25]</sup> are required to provide a “good faith estimate” of work schedules to employees when they are hired.<sup>[26]</sup> Similarly, in San Francisco employers have to give an estimate to employees of the expected minimum number of shifts they will work per month. In Seattle, employers are required to give employees an estimate of both the median number of hours they can expect to work, and clarity on whether the employee will be expected to work on-call shifts. Interestingly, and a potential positive for both employees and employers, this estimate must be provided both upon hiring the worker and subsequently on an annual basis, thereby allowing the needs and expectations of both to be adjusted accordingly.

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[23] ILO, *Non-standard employment around the world: Understanding challenges, shaping prospects*, 2016

[24] T Hunt & S McDaniel, *Tackling insecure work: Political actions from around the world*, SPERI/GMB, September 2017

[25] Section 4 will discuss the kinds of firms and employees these policies apply to, and the consequences of these decisions, in more detail.

[26] This and the other US examples in this section are drawn from National Women’s Law Center, *State and Local Laws Advancing Fair Work Schedules*, April 2018



Other places have taken steps to provide workers doing non-guaranteed hours or unpredictable shifts with more certainty from week to week. In Germany, for instance, those employed on on-call contracts are required to receive notification of their working hours at least four days in advance.<sup>[27]</sup> A number of cities and states in the US have gone further, extending the period to two weeks (in Seattle, for retail workers in San Francisco and for fast food employees in New York City).

The consequences for employers who do not provide sufficient notice can either be that staff are free to turn down the work, leaving them understaffed, or that staff must be compensated. Here, there is some overlap with the subsequent discussion of placing a premium on non-guaranteed hours. How this so-called ‘predictability pay’ is calculated varies. In the New York example, the premium ranges from \$10 to \$75 per schedule change, with the amount varying based on how much notice was provided and the kind of change. In San Francisco, the notice given also influences the amount of compensation. One extra hour’s wages is paid for any shift changed between one day and seven days in advance. For notification within 24 hours, this rises to two hours additional pay for a shift of four hours or less, and four hours of additional pay for a shift longer than this.

Other jurisdictions have introduced laws bolstering employees’ ability to request certain working patterns or turn down work. One of the issues that has been raised regarding ZHCs is the potential for firms to punish workers who do not accept a shift that is offered to them. In a phenomenon sometimes referred to as ‘zeroing down’<sup>[28]</sup>, employers reduce the number of hours offered to an individual as a form of punishment. To help protect against such behaviour, New Zealand law explicitly states that employers cannot discriminate against an employee without a specified responsibility to work at a given time or shift.<sup>[29]</sup>

While the right to request flexible working is already in place in the UK, wider versions are in place in other areas. In Emeryville, a city in California, employees can request additional or fewer hours, changes to the days they work, a predictable schedule, the ability to swap shifts with colleagues and other forms of more flexible working.<sup>[30]</sup>

A final notable approach to distributing hours is in place in San Jose in California. As part of the Opportunity to Work ordinance, additional hours have to be offered to existing employees within the business before new employees can be hired. This would in theory help to encourage better matching between employees and roles in terms of their hours’ worked and their preferences, and discourage firms from having a large number of workers underemployed on ZHCs or SHCs.

### Measures that raise the cost of non-standard work for the employer

Next, we consider policies that effectively raise the cost of non-guaranteed hours. In most instances, this theoretically raises the wage that goes to the affected employee, although in some countries the increased income goes to the state in the form of taxes or social security contributions.

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[27] JC Messenger & P Wallot, *The Diversity of “Marginal” Part-Time Employment*, ILO, 2015

[28] See ACAS, *Give and take? Unravelling the true nature of zero-hours contracts*, May 2014

[29] <https://www.employment.govt.nz/hours-and-wages/hours-of-work/>

[30] National Women’s Law Center, *State and Local Laws Advancing Fair Work Schedules*, April 2018

Perhaps the most common form of placing a premium on non-guaranteed hours is in relation to overtime. While there is no legal requirement in the UK to do so, many companies do pay more for hours that are worked on an overtime basis. But internationally, many countries include a requirement of such bonus payments in law. These can take a variety of forms, a selection of which are discussed below.

First, it should be noted that overtime working is relatively distinct from some of the forms of one-sided flexibility that the Taylor Review focused on. But it is the most common form of non-guaranteed working in the UK, with roughly one-in-ten employees reporting having done overtime recently.<sup>[31]</sup> Depending on how a premium on NGHs is defined, many of these employees could be affected.

Some countries, of which Austria is a prime example, require a premium to be paid for any hour worked beyond those specified in the employee's contract.<sup>[32]</sup> This includes part-time employees, for example, those working 30 hours on a 16-hour contract. Other countries, such as Switzerland, apply a premium only for full-time workers (with full-time working defined differently across countries). This may be intended to encourage firms to offer additional hours to part-time staff.

Returning to the Austrian system, the premium applied varies. A 25 per cent uplift applies up to 40 hours worked per week with a 50 per cent boost ('time-and-a-half') beyond that, and a 100 per cent premium for overtime at unsociable hours and public holidays. Switzerland takes a similar but less broad approach, limiting the premium to those working beyond 45 hours a week.

Other legal systems have similar structures but limit the eligible beneficiaries to lower earners. In the US, employees earning less than approximately \$24,000 a year who work more than 40 hours are entitled to time-and-a-half.<sup>[33]</sup> A similar policy applies in Newfoundland and Labrador in Canada but with a crucial difference. Rather than the 50 per cent uplift being applied to a person's wage, there is an overtime minimum wage rate set at 1.5 times the minimum wage.<sup>[34]</sup> This applies once a person has worked 40 hours in a week. In New Zealand, workers who are obliged to work NGHs should receive compensation but that does not appear to happen in practice, with no guidelines on the level of compensation that needs to be paid or in precisely which instances.<sup>[35]</sup>

Australia falls into a slightly different category, with perhaps greater relevance in relation to concerns about low-paid work and insecure incomes. Along with the hundreds of 'awards' that operate from sector to sector – effective minimum wages, with overtime premia related to these that vary depending on the kind of worker and the skills they possess – Australia also operates a policy called 'casual loading'. This means that those on casual contracts are entitled to a boost above their 'award' to compensate for the additional insecurity they accept.

Other examples exist of countries in which the cost of hiring workers on more insecure terms is higher, but in the form of higher taxes or social security payments. One prominent example of this is 'mini-jobs' in Germany, essentially workers paid less than

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[31] C D'Arcy, *Time for time-and-a-half? Exploring the evidence and policy options on overtime*, Resolution Foundation, December 2017

[32] Clyde & Co, *Employment law at a glance: An international guide to employment law across 28 countries*, May 2017

[33] [https://www.dol.gov/whd/overtime/fact\\_sheets.htm](https://www.dol.gov/whd/overtime/fact_sheets.htm)

[34] [https://www.aesl.gov.nl.ca/publications/labour/labour\\_relations\\_work.pdf](https://www.aesl.gov.nl.ca/publications/labour/labour_relations_work.pdf)

[35] See Section 4 for further discussion of New Zealand's approach.

€450 per month. Such workers are exempted from the German equivalent of National Insurance – though joint-taxation on couples complicates this matter – but employers pay at a higher rate than for more standard employees.<sup>[36]</sup> Both the Australian and German examples are discussed in more depth in the next section.

## Tax and benefit systems can influence both the prevalence of non-guaranteed hours and their impact on workers' incomes

Although they vary, the majority of the policies discussed so far in this section have been provisions in the legal system that directly affect, in one way or another, NGHs or non-standard contracts. But focusing solely on employment law and on the state as the only actor overlooks other potentially key pieces of the puzzle around such work.

Higher tax for those in mini-jobs in Germany is one helpful example of this. Though we do not explore it in detail – the question of how tax systems shape work incentives is huge – this example highlights that the structure of tax systems can influence the prevalence of atypical working. Whether tax is payable on every penny earned, or only applies over a certain threshold, and how that burden is spread between employers and employees are all important factors to be borne in mind by policymakers weighing alternative options.

A similar argument can be made regarding benefits, both for those in and out of work. Social security systems can be an important factor in the popularity of non-standard work, but also in terms of how possible negative effects are mitigated. There are a number of ways in which this relationship can function. Here, we paint a broad brush picture of different regimes; in practice, the interaction of various policies, skills systems and regulation will be vital. It may be that in some countries, insecure work exists *instead of* unemployment or inactivity, whereas, in contrast, in other countries a more generous system of unemployment benefits or training makes atypical work less attractive. Similarly, low-wage and insecure work may become a more feasible proposition if the state is willing to top-up the wages of workers in such roles.

Overall, our review of international literature has not uncovered clear examples of tax and benefit systems being altered in response to non-standard employment. Instead, and as discussed in Section 2, such changes have tended to be part of longer-term shifts towards tighter or looser regulation of the labour market.

The most obvious exception to this general trend is treatment of the self-employed. While such individuals are likely to be outside the scope of policies recommended by the Low Pay Commission, it is nonetheless interesting to note recent developments. The OECD among others has emphasised the importance of extending protections traditionally only available to employees to the self-employed.<sup>[37]</sup> A particular emphasis has been placed upon dependent self-employed workers rather than those working through or with multiple organisations, and those who have employees.

Including the self-employed in systems primarily designed with employees in mind is, however, not always straightforward. An important contributor to this, and one that can be shared with employees working non-guaranteed hours, is fluctuations in earnings. As a recent Resolution Foundation report explored, the introduction of Universal Credit (UC)

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[36] <https://www.tuc.org.uk/research-analysis/reports/mini-jobs>

[37] OECD, *The Future of Social Protection: What works for non-standard workers?*, May 2018

may exacerbate such issues.<sup>[38]</sup> While it is notionally more responsive than the current tax credits system – in which entitlements are (re)calculated on an annual basis – UC’s monthly focus can create problems for workers with changeable earnings. For some, a low UC payment may coincide with a low month of earnings, with a subsequent high UC payment accompanying a high month of earnings. For example, if a person paid monthly is paid on the first day of their assessment period, and their pay falls significantly from one month to the next (for example, due to reduced hours), then the lower UC payment associated with the initial month of higher pay (which is paid in arrears a few days after the end of the month-long assessment period) will be received almost contemporaneously with the lower pay packet from the second month. The report recommended that the Department for Work and Pensions should allow individuals already in work the flexibility to move their assessment period in order that it better reflects the dates on which they are paid, and hence a smoother income.

## The role of employers and trade unions

Again, given the scope of this paper, we do not focus extensively on steps taken by individual employers or trade unions in response to non-standard employment. It is clear that many firms have been pro-active on this issue, either opting to avoid the use of ZHCs for instance, or setting out guidelines for their use in order to encourage genuine two-sided flexibility. In many instances, these resemble those ideas discussed above, particularly in relation to the right to request particular working patterns and minimum notification periods for shifts. Of course, many employers have not chosen this path in isolation, but have done so working with or in response to pressure from workers, trade unions or the public.

This paper, then, does not explore individual employers or unions or the policies they have adopted. Instead, we briefly consider the larger institutional role that representatives of workers and employers can play, through collectively bargained agreements and social partnerships (of which the Low Pay Commission is an exemplar in the UK).

Belgium offers an interesting case study. Again, as in some previously discussed examples, employment law lays down basic standards with collective agreements often superseding these with additional restrictions or exemptions. One study cites this as the explanation for why “[o]n several measures [of] ‘non-standard’ employment such as the incidence of fixed-term contracts, temporary work, night work, and weekend work, Belgium is to be found at the lower end each time, usually below the EU-15 average and certainly far below its northern European neighbours.”<sup>[39]</sup> This approach, then, appears to have prevented non-standard work from becoming as pressing an issue as in some of the other countries discussed in this report.

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[38] D Tomlinson, *Irregular payments: Assessing the breadth and depth of month to month earnings volatility*, Resolution Foundation, October 2018

[39] I Marx & G Verbist, ‘Belgium, a Poster Child for Inclusive Growth?’, in B Nolan (ed.) *Inequality and Inclusive Growth in Rich Countries*, Oxford University Press, 2018

## Conclusion

As the previous section noted, the extent to which insecure work has risen up the agenda and the exact form it has taken varies from country to country. This is a product of different legal systems, economies and cultures. But looking across these systems, it appears that relatively straightforward restrictions through employment law are the most common response to one-sided flexibility. Some jurisdictions take broad steps to prevent NGHs becoming prevalent while in others the emphasis is placed on preventing or offsetting the worst elements of atypical work.

Our research suggests that directly raising the cost of NGHs or insecure work is less common, but not unheard of. Perhaps the closest example we found to the idea proposed in the Taylor Review is that in Newfoundland and Labrador. Unfortunately, little evidence appears to exist on its impact or how widely it is used in practice. The following section will discuss questions such as these in more depth.

## Section 4: The impact and implementation of policies

*The policies discussed in the previous section are varied. The impacts they have, therefore, would also be expected to differ. But even taking an individual policy, how firms (and workers) respond can be hard to predict. The design of the policy clearly matters; all else equal, a major policy switch is likely to lead to a stronger reaction than a tweak to existing legislation. There still remains, however, much that is unknown about how employers (and employees) decide to act. Acknowledging this, below we consider some of the potential outcomes that the policies discussed in the previous chapter could lead to, before turning to the interaction with the broader environment and some specific examples of how policies have been implemented.*

### Potential impacts of policies around insecure work

Beginning with the example of a premium for hours worked on a non-guaranteed basis, a number of responses appear possible. In the simplest model, firms could continue to staff their organisations exactly as before, resulting in a wage boost to those employees working NGHs. In this model, employees who have accepted the risk of working NGHs are compensated through higher wages.

The kinds of firms that this would be most likely to apply to would be those that face particularly unpredictable demand. It may be for some that their business model, or at least a particular service provided, is entirely dependent upon the use of flexible labour. On the other hand, if an employer felt that the wage premium on NGHs could not be offset through price rises, productivity gains or other responses, it may be that they simply choose to stop providing such a service, resulting in lower total labour use, with flexible workers most affected.

Another potential response from employers however is to move away from the use of NGHs towards more guaranteed hours. Depending on how the policy is defined, this might mean offering more fixed hours as part of their standard contracts or offering shifts further in advance.

The above scenarios assume firms do not redistribute hours between staff. If the wage attached to NGHs is higher, this may make those hours more attractive, with preferred staff being offered these hours or shifts. In the case of a firm moving away from SHCs or ZHCs, it may be that the kinds of workers employed on these terms are different to those on more standard contracts. This could mean that within an organisation, or across the economy, some kinds of workers benefit from such a policy while others lose out.

Other responses could result in the policy having less bite. For instance, it could be that employers decide to ignore the policy and continue as before without paying a premium. Clearly, the level of enforcement and the potential penalties for non-compliance are key considerations here. Another potential ‘workaround’ that firms could use is shifting away from NGHs into other forms of insecure work. This potentially applies beyond the NGHs premium policy idea to any policy that seeks to restrict a form of insecure work. For instance, if ZHCs are more tightly restricted and firms feel they can still attract staff and will not face penalties for doing so, they may switch to using self-employed labour instead.

Again, this is highly dependent upon enforcement. It also highlights the question of whether policy shifts are made in isolation or as part of a package of changes (touched on below with reference to Oregon). But beyond enforcement, wider conditions are also key. The strength of the labour market, norms within it and the institutions that exist are all vital considerations that may determine whether or not a policy is effectively implemented and how employers react. These caveats should be borne in mind over the remainder of this section, which explores some salient examples of the impact of relevant policies. These specific countries and policies have been chosen primarily due to evidence being available on how effective policies have been, rather than presenting, for instance, a selection of ‘positive’ or ‘negative’ case studies.

This remains an under-explored area within research. For instance, the policy that arguably most closely resembles the idea put forward in the Taylor Review is that of the overtime minimum wage in Newfoundland and Labrador in Canada. However, we have been unable to find analysis of the impact of this policy, with most of the discussion surrounding it focusing on the level of the minimum wage and the mechanism through which it is increased from year to year, rather than treatment of NGHs.

## Experience of other countries

### Australia’s casual loading system

The Australian Fair Work Ombudsman describes a casual employee as one who “does not have a firm commitment in advance from an employer about how long they will be employed for, or the days (or hours) they will work.”<sup>[40]</sup> Alongside this uncertainty, casual employees also do not generally receive sick pay or annual leave entitlements.

To compensate casual employees for this reduced level of protection – both in terms of hours and entitlements – while also acting as a disincentive for employers to use such contracts, a premium or ‘casual loading’ is payable on top of the employee’s standard wage. Casual loading sits within the broader system of ‘modern awards’ in Australia, which sets out wages for a variety of sectors and occupations. Casual loading is calculated as a proportion of the relevant modern award for a role and now stands at 25 per cent, having been lower in the past.<sup>[41]</sup> Despite the apparent disadvantages to both employees and employers, casual work is common, with one in four employees in Australia employed on casual terms, rising to half of those aged 15 to 24.<sup>[42]</sup>

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[40] <https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees>

[41] I Campbell, *On-call and related forms of casual work in New Zealand and Australia*, Conditions of Work and Employment Series No. 102, ILO, 2018

[42] [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1718/CasualEmployeesAustralia](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/CasualEmployeesAustralia)

Analysis of the pay of casual employees suggests, however, that the 25 per cent uplift is far from universally paid. While a number of studies have found similar results, a recent paper covering 2001-14 found that:

*at no part of the distribution is the wage premium near the 20% specified in most industrial awards and agreements during the period covered by our data. In large part this simply reflects the fact that awards only specify minimum wages, and that non-casual employees are far more likely to be paid at rates above the relevant minimum award wage. Nevertheless, the marked penalty at the bottom of the wage distribution is suggestive of a considerable degree of non-compliance on the part of employers of low-wage casual labour.<sup>[43]</sup>*

This finding that the casual loading premium is least likely to be found among the lowest earners, those who could be considered to be most in need of it, is striking. It aligns, however, with surveys of casual workers, asking whether they do in fact receive the premium. In research from 2012, only half (49 per cent) of casual workers said they receive a premium with a little over one-third (34 per cent) reporting they do not receive a loading with the remaining respondents saying they did not know.

In terms of a point of comparison for the Taylor Review, the Australian system pre-dates the more recent growth in concern about insecure work. As is clear, it has not caused casual work to disappear, one of the possible responses employers could have taken in response to the wage premium. And while casual workers do appear to receive some premium over and above the minimum ‘award’, the mandated 25 per cent does not appear to be paid. This underlines the importance of enforcement, but also raises questions around policy design and the size of the premium. The Australian minimum wage system is, compared with the UK’s, complex and detailed. Other analysis lends further support to the idea that casual employees are not always content with their working patterns: nearly one-in-three casual employees wanted additional hours versus one-in-ten permanent employees, with half experiencing variable earnings, compared with 15 per cent of permanent staff.<sup>[44]</sup>

Casual loading has not been the sole response to the issue of insecure work in Australia. One recent policy response directly affecting casual workers is the ‘casual conversion clause’. As of October 2018, this provides the right to request a fixed-hours contract after a year of casual work with an employer. This highlights, as will be discussed below with regard to Oregon, that sets of policies can be introduced together in order to respond to concerns in a coordinated manner.

The move towards new protections has coincided with calls from employers for greater flexibility. The New South Wales Business Chamber, for instance, has called for the creation of a new type of casual working, deemed “perma-flexi”.<sup>[45]</sup> Such workers would gain enhanced rights around annual leave but would have a lower casual loading uplift, of just 10 per cent.

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[43] I Campbell, *On-call and related forms of casual work in New Zealand and Australia*, Conditions of Work and Employment Series No. 102, ILO, 2018

[44] G Gilfillan, *Characteristics and use of casual employees in Australia*, Australian Parliamentary Library, January 2018

[45] See for instance E Hannan, ‘*Small business backs ‘perma-flexi’ worker plan*’, The Australian, 26 September 2018



## Germany's mini-jobs

Mini-jobs are perhaps the most notable form of insecure or low-paying employment in Germany. This form of employment was introduced in the early 2000s, intended to boost employment rates, particularly of married women.<sup>[46]</sup> Specific provisions make mini-jobs distinct from more standard employment. Mini-jobbers can only earn a maximum of €450 per month as part of the contract but pay no or lower income tax and social security contributions. Employers pay a 30 per cent premium in order to hire individuals on mini-job contracts.

This has led to some discussion of the 'mini-job puzzle'<sup>[47]</sup>; that is, why do employers choose to use mini-jobs when on the face of it they are a more costly form of contract than standard employment conditions? To illustrate the higher cost involved, one study calculates that a 'standard' employee receiving €450.01 per month costs their employer approximately €39 less over that month than a mini-jobber paid €450.<sup>[48]</sup> Despite these higher labour costs, mini-jobs have become relatively popular, with 7.5 million mini-jobs in Germany in 2017.<sup>[49]</sup>

Other studies, however, point to differences in the reality of how mini-jobbers and other employees are treated. While compliance is close to complete for standard employees, approximately half of mini-jobbers report not receiving annual leave pay, sick pay or public holiday pay.<sup>[50]</sup> This non-compliance may help to explain why employers use mini-jobs despite the higher cost.

This reality is a helpful reminder of the need for effective enforcement when considering a minimum wage premium for NGHs. Previous Resolution Foundation analysis has highlighted an apparent ZHC "pay penalty", with individuals on ZHCs paid less than others in the same occupation, controlling for relevant factors such as age, education and region.<sup>[51]</sup> Concerns have also been highlighted about the extent to which agency workers – another vulnerable group within the UK's labour market – receive the rights to which they are entitled.<sup>[52]</sup> Just because a new regulation is introduced does not mean that compliance will be complete.

This lack of compliance is also worth noting in relation to another aspect of Germany's labour market regulation. ZHCs are in theory not permitted in Germany as any contract which does not specify a minimum number of hours must nonetheless pay 10 hours' worth of work each week. Two other special protections apply to 'on call' workers however: they are only obliged to work if they are given at least four days' notice of their working hours, and any shift that is offered must consist of a minimum of three consecutive hours. This represents another way of discouraging employers from abusing flexible contracts. However, research on this minimum advance notice reveals that it is often not adhered to, with mini-jobbers again likely to miss out on such protections.<sup>[53]</sup>

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[46] G Bosch, *Ad-hoc request on Expertise on labour market segmentation*, 2017

[47] *Ibid.*

[48] *Ibid.*

[49] European Commission, *Case study – gaps in access to social protection for mini-jobs in Germany*, 2018

[50] G Bosch, *Ad-hoc request on Expertise on labour market segmentation*, 2017

[51] Resolution Foundation, *Zero-hours contract workers face a 'precarious pay penalty' of £1,000 a year*, December 2016

[52] L Judge, *The good, the bad and the ugly: The experience of agency workers and the policy response*, Resolution Foundation, November 2018

[53] G Bosch, *Ad-hoc request on Expertise on labour market segmentation*, 2017

## Oregon's Fair Workweek Act

In 2017, Oregon became the first US state to pass what has become more widely known as a 'fair workweek' law. The Fair Workweek Act introduced a number of measures designed to provide those facing insecure or uncertain working patterns with more notice, compensation and protections. A number of these were discussed in Section 3 but include an estimate of typical working hours prior to employment commencing, two weeks' notice of shifts, compensation when changes are made after this, a 'standby' list of employees willing to work additional hours and a minimum of 10 hours between the end of one shift and the start of the next.<sup>[54]</sup>

While the policies are relatively new and no evaluations have been carried out so far, Oregon's approach is of note for a number of reasons, with food for thought particularly on implementation. First, a number of policies have been introduced as part of a combined package designed to provide greater stability for employees. In terms of its effectiveness, compliance and the way in which employers respond, it may be that introducing policies as a package has a larger impact. On the other hand, if undesirable effects were to occur – for instance a drop in employment among those affected – identifying whether particular policies within the package were driving employers to cut back on their labour usage may be harder.

Second, and as with a number of the US cities that have introduced similar regulation, this does not apply to all sectors but is instead restricted to those in retail, hospitality and food services. Specifically, only employees in what might be considered 'frontline' roles within those firms are covered; for instance, waiters and chefs employed by a restaurant chain would be affected but an individual working in the chain's marketing department would not. This allows for the policy to be targeted to some extent towards generally lower-paid or insecure roles through a focus on industry and occupation rather than on wage levels. While, of course, this is not the same as tying policies to the minimum wage, it does allow for some recognition of sector-specific issues, both from the point of view of employees but also employers.

Third, only organisations with more than 500 employees worldwide are affected by the policy. Size differentiation of this kind is more common in the US, with some recent \$15 minimum wage ordinances applying first to large employers with smaller firms affected only in subsequent years.<sup>[55]</sup> Again, the effects of this may be unpredictable. If the larger firms pay more than smaller ones for similar roles, it may make it more difficult for smaller firms to hire without matching pay levels. The treatment of franchises is another issue to be considered.

Oregon's approach shows that a number of policies can be introduced as part of a package to respond to income insecurity and that those policies can be limited to only apply to sectors, job roles or employers of interest. While such variation may or may not appeal in the UK, Oregon acts as a useful reminder that – provided legal restraints do not prevent such differentiation – policies can be designed to focus on some parts of the labour market rather than others.

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[54] For further details see <https://www.oregon.gov/boli/TA/Pages/Predictive-Employee-Scheduling.aspx>

[55] See for example Seattle's approach to raising its minimum wage: <https://www.seattle.gov/laborstandards/ordinances/minimum-wage>

## New Zealand's action on zero-hours contracts

Following a campaign by unions focused particularly on the fast food sector, in 2016 the New Zealand government introduced legislation to regulate and reduce the use of ZHCs.<sup>[56]</sup> A key consideration underlying this was “availability clauses”, essentially a requirement that an employee is available to work. The legislation requires any contract with such a clause to have a guarantee of a minimum number of hours. For hours that are not guaranteed and are worked under an availability clause, employers are required to compensate workers over and above their hourly pay rate.

While the policies remain relatively new and detailed analyses have not yet emerged, the policies appear to have been effective in moving employers away from ZHCs, with no reports of a fall in employment or particular groups of workers being adversely affected. Despite this, the policy's impact has been questioned, with attention focused on the lack of specifics included in the legislation.

First, there is no minimum number of hours that employers are required to offer, meaning ZHCs have been replaced in many instances by SHCs with very low numbers of hours guaranteed. Second, there is also no detail provided on the kind of compensation that should be paid. Both of these are contrasted with the collectively bargained agreement in the fast food industry in New Zealand, which goes further than the 2016 legislation.

The practical impact has also been questioned. Despite the Labour government pledging to double the number of labour inspectors, enforcement is deemed to be insufficient to effectively monitor compliance with the new laws, with issues such as the treatment of migrant workers and miscalculations of annual leave entitlements reported. In addition, the legislation relates primarily to those with written employment contracts, effectively overlooking those with more informal working arrangements.

The theory and practice of availability clauses is also an issue of some debate. While firms may claim that there is no compulsion on employees to work additional hours, in reality (and despite a requirement to ensure that employees are not discriminated against for turning down NGHs) the freedom to turn down additional work may seem weaker to those in vulnerable employment. This issue means that the question of compensation for those working NGHs as part of an availability clause is less live, simply because so many firms claim there is no compulsion. Exceptions tend to be in higher-paying sectors, such as doctors required to be on-call.

While the policy remains a relatively new addition to New Zealand's labour market, it appears to have achieved the goal of reducing the use of ZHCs. But it also highlights the importance of detail – the lack of specified minimum hours or compensation has led to criticism that little in practice has changed for some workers. Similarly, it raises the issue of the ‘squeezed balloon’, with a clampdown on one form of insecure work – in this case ZHCs – potentially leading to an increase in another form – SHCs.

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[56] This discussion of the policies and their impacts draws primarily on I Campbell, *On-call and related forms of casual work in New Zealand and Australia*, Conditions of Work and Employment Series No. 102, ILO, 2018 and a conversation with Mike Treen of Unite New Zealand.

## Conclusion

Efforts to boost security for workers come in many shapes and sizes. As the previous section illustrated, policy makers have a wide range of options available but as this section has shown, how those policies are implemented can be just as important. Whether policies are introduced in isolation or as part of a package is a first consideration that is particularly relevant in the UK, with the Taylor Review putting forward a number of ideas that could be introduced at once. The balance between specificity and complexity is another challenge this section has highlighted. Too little detail can allow employers to make only slight changes to existing working practices. While targeting specific sectors of the economy or particular elements of working practices may help to reduce undesirable effects, too much differentiation could potentially undermine compliance. The concluding section will discuss what the findings in this and the preceding sections means for the debate in the UK.

## Section 5: Conclusion

This report has shown that concerns about one-sided flexibility and income insecurity arising from work are far from unique to the UK. The exact forms of insecure work that have arisen and the extent to which they are deemed problematic varies from country to country, with the policy responses differing too.

NGHs and the difficulties they can cause for workers are implicitly or explicitly acknowledged in many of those responses. Some jurisdictions have effectively banned ZHCs or SHCs while others have focused more on improving how employers use them, for instance with longer notice periods for work, or compensation. This is an important consideration: outlining exactly what is thought of as undesirable and what the desired outcomes of the ban are would be helpful for a variety of reasons. For instance, being clear about whether the aim is to discourage employers from using particular contractual forms or ensuring that any such hours are better paid is instead preferable, should not only influence the design of the policy but also how it is evaluated.

On impacts, with the National Living Wage the government set out its expectations based on Office for Budget Responsibility analysis of the potential rise in unemployment and the acceptance of this as a potential downside of the policy. While modelling would be harder to do for policies around NGHs, having a sense of expected reaction and toleration of effects would allow for better assessment of the policy by the LPC or others.

The exact proposal put forward in the Taylor Review does not appear to have been implemented elsewhere, but we found a number of countries that have similar laws in place. A premium on overtime working was perhaps the most common approach along those lines, with Newfoundland and Labrador linking this to the minimum wage. Australia's casual loading applies an uplift to all hours worked by casual employees. In other countries, compensation when shifts are cancelled or rearranged is used as a way of limiting the downsides and unpredictability of atypical contracts.

We can take two conclusions from this. First, the concept of a carve-out for NGHs in place in a variety of countries with similar labour markets to the UK, suggests that such a policy could be implemented. Second, however, there is no ready-made example that could be transplanted into the UK's labour market, with questions over who it should apply to, at what level it should be set and how employers might react.

Evidence on the effectiveness of many of these policies is limited but some lessons can be taken. One consideration regarding adding a premium on top of the UK's minimum wage framework is that it would entail increasing complexity, which may increase non-compliance, either intentionally or accidentally. While the extent to which complexity and variation within the Australian minimum wage regime has led to non-compliance remains questionable, the potential for confusion, among both employers and employees, should be borne in mind when considering a premium. Pilots could be considered in particular sectors or firms in order to flush out concerns before a policy is applied more widely, although doing so may be difficult under current UK minimum wage legislation.

This question of whether all employers and sectors should be in scope has also emerged from our cross-country analysis. In the US, for example, a well-established principle exists in terms of applying policies first to larger employers and then extending them over time to smaller firms. The merits of this are debatable, and its application to franchises of chains would also need to be borne in mind. But the pressures that firms will face, and how they vary by sector, are certainly worth consideration.

Acknowledging the differing role of labour market institutions and frameworks in different countries is crucial. For instance, unions play a major role in a number of countries, and in UK sectors where collective bargaining is important, some of the norms observed in other countries could be explored further. The design of in-work support, particularly given the introduction of Universal Credit, is another issue to bear in mind, given evidence that for some workers it may increase income volatility relative to the previous tax credit system.

An overarching finding, regardless of the approach taken, is that careful design, ongoing evaluation and effective enforcement are all likely to increase the odds of a given policy having the desired impact.

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