

# THE TAYLOR REVIEW OF MODERN WORKING PRACTICES

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THE GOVERNMENT'S GOOD WORK PLAN

The Taylor Review of Modern Working Practices (the Review) was published on 12 July 2017. In our first article on the Review, we explained the proposals of interest to employers. You can read that article [here](#). In our second article, we considered over 40 of the key proposals made in the Review and what they would mean for your business. You can read that article [here](#). In our third article in the series, we considered the Government's Response to the Review (Response), published in February 2018. You can read that article [here](#). In this fourth article, we consider the Government's [Good Work Plan](#) which was published on 17 December 2018 and the new legislation that is being introduced to implement the reforms that the Government will be taking forward.

	TAYLOR REVIEW PROPOSAL	THE GOVERNMENT'S RESPONSE IN THE GOOD WORK PLAN	ACTION POINTS FOR EMPLOYERS
<b>PROPOSALS AFFECTING EMPLOYMENT STATUS</b>			
1.	<b>Definitions of employment status to be enshrined in primary legislation, with further detail in secondary legislation and guidance.</b>	<p>The Government will bring forward legislation to improve clarity on employment status, reflecting modern working practices. The Government agrees that businesses should not be able to avoid their responsibilities by misclassifying their staff. They have commissioned independent research to find out more about those with uncertain employment status and how they may be best supported.</p> <p>The Government will also bring forward detailed proposals on how tax and rights frameworks could be aligned.</p> <p>The Government will not be taking forward the recommended adaptations to the piece rates legislation.</p>	<p>The timescale for such legislative reform is not stated.</p> <p>In the event that new status tests are implemented as a result of the legislation, employers should consider conducting an audit to assess which status applies to each member of its workforce.</p>
2.	<b>Government to produce a free online tool to provide an indication of employment status and information for employers on their associated responsibilities.</b>	The Government will improve the guidance and online tools available in order to help people to understand their status. This will be taken forward once status changes are in place.	There are no immediate actions for employers to take. The timescale for production of such online tools is not stated.
3.	<b>Workers who are not employees to be renamed "dependent contractors" and the test for acquiring this status to place much greater weight on the principle of control than on a requirement for personal service.</b>	The Good Work Plan does not suggest that a new test will be introduced; rather the Government will bring forward legislation to clarify the existing test.	N/A

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4.	<b>Employers operating in the gig economy to be able to pay dependent contractors based on the number of tasks performed, provided that an average individual earns the National Minimum Wage with a 20% margin of error.</b>	The Government will not be taking forward the recommended adaptations to the piece rates legislation.	Although the Government are not taking forward the specific recommendation, gig platform employers should consider auditing their workforce either now or in the near future to assess whether the average individual earns the National Minimum / Living Wage for the work they do. Where this threshold is not being met, such employers may wish to start thinking about how they will plug the gap (e.g. absorbing the additional cost; increasing charges to customers; restructuring the workforce).
5.	<b>Government to explore options for requiring online platforms to provide real time data of the mean hourly output rate to the dependent contractor.</b>	The Government refers to the call for evidence earlier in 2018 concerning the use of online platforms to support tax compliance. The outcome of that consultation was published on 7 November 2018.	No immediate action required but see the action point at (4) above by way of best practice.
6.	<b>Employment and tax status frameworks to be aligned so that if someone is employed for tax purposes then they will be either an employee or a dependent contractor for employment status purposes (and vice versa).</b>	As for (1) above.	As for (1) above.
7.	<b>Employees and dependent contractors to have the right to receive a written statement of particulars on Day 1 of their job, including details of their statutory employment rights. They should have the right to claim compensation where an employer fails to comply.</b>	<p>The Government will extend the right to a written statement to all workers and make this a day 1 right. The statement will set out new requirements for mandatory contents.</p> <p>The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 will come into force on 6 April 2020.</p> <ul style="list-style-type: none"> <li>The following additional categories of information will be required in the section 1 statement: (i) details of the days of the week the worker is required to work; (ii) whether or not such hours or days may be variable and, if they are, how they may vary and how any variation is to be determined; (iii) any other types of paid leave (e.g. maternity leave and paternity leave); (iv) any other benefits provided; (v) any probationary period, including any conditions and its duration; (vi) any training entitlement; (vii) any part of the training entitlement which is</li> </ul>	It should be relatively easy for employers to comply with this requirement when it comes into force. Employers have some time to prepare and will be able to ensure that their systems log the additional information relating to hours, paid leave, other benefits, probationary periods and training. They will also be able to ensure that they audit their worker population and have the information required under the amended sections of the Employment Rights Act 1996.

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		<p>mandatory; and (viii) any other training which the worker is required to complete and which the employer will not bear the cost of.</p> <ul style="list-style-type: none"> <li>The majority of the information required in the written statement must be provided on day 1. The remainder of the information (pension, collective agreements and training) can be provided within 2 months. This differs from the current position where all the information can be provided within 2 months.</li> <li>Section 198 which stated that an employer did not have to provide the statement if the individual had less than one month's employment will be repealed.</li> </ul> <p>The Employment Rights (Miscellaneous Amendments) Regulations 2019 will come into force on 6 April 2020 and amends sections 1 to 7B and sections 11 and 12 of the Employment Rights Act 1996 so that they apply to workers. The current regime only applies to employees.</p> <p>Consequential changes will also be made to section 38 of the Employment Act 2002 (failure to give a statement of employment particulars) so that this covers workers as well as employees.</p>	
8.	<b>National Insurance Contributions (NICs) paid by employees and self-employed people to be moved closer to parity.</b>	The Government agrees that the small differences in contributory benefits no longer justify the scale of differences in rates of National Insurance Contributions but has no plans to revisit the issue.	There are no actions for employers to take.
9.	<b>Government to "address areas of entitlement" (e.g. parental leave) where self-employed people lose out.</b>	As per (8). This is not addressed.	There are no immediate actions for employers to take.

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10.	<b>Government to consider accrediting a range of platforms designed to move towards cashless transactions. The aim is that this will increase transparency of payments made to self-employed individuals and ensure that they pay the correct amount of tax.</b>	The Government will continue to keep this under review. The Government launched two calls for evidence earlier in 2018 regarding how the Government can support digital payments and the role of online platforms and marketplaces in supporting their users to comply with tax obligations.	There are no immediate actions for employers to take.
11.	<b>Government to consider making certain rights conditional on using a certain payment mechanism. The example given is linking an individual's right to work in the UK to the use of such a payment mechanism.</b>	This is not addressed in the Good Work Plan.	There are no immediate actions for employers to take.
<b>PROPOSALS AFFECTING ATYPICAL WORKERS</b>			
12.	<b>Consider introduction of a new higher National Minimum Wage rate for hours of work that are not guaranteed as part of the contract.</b>	<p>The Government asked the Low Pay Commission to consider this option and alternatives.</p> <p>On 17 December 2018 the Low Pay Commission published: A Response to Government on "One-sided Flexibility."</p> <p>The Low Pay Commission does not endorse the proposal to introduce a premium to the National Living Wage for non-guaranteed hours worked but instead recommends alternative action as set out below:</p> <ul style="list-style-type: none"> <li>• A right to request a switch to a contract that reflects the worker's normal working hours. <ul style="list-style-type: none"> <li>▪ The Low Pay Commission explains that this would result in proper recognition of normal working hours.</li> <li>▪ Legislation would be required to determine any qualifying period of service and the reference period for assessing</li> </ul> </li> </ul>	<p>Employers should consider the Low Pay Commission recommendations in the light of their workforce and ascertain whether their arrangements are sufficiently clear in relation to how staff are notified of their work schedules, the notice to be provided when a shift is cancelled or shortened and whether any compensation is available in that situation.</p> <p>In the light of the recommendations of the Low Pay Commission, and the focus on gig economy workers more generally, employers may wish to audit their workforce to determine whether a change in status is appropriate for individuals who have a normal working pattern.</p> <p>Once the scope of the right to request a contract that reflects normal working hours is clarified (see further (15) below), there may be an increase in staff requesting a change to their working arrangements.</p>

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		<p>the normal working hours (e.g. 12 weeks or 12 months).</p> <ul style="list-style-type: none"> <li>▪ It would also be necessary to outline the circumstances in which a request could be refused on objective grounds. The Low Pay Commission refer to arrangements set by collective agreements, an absence of evidence to support normal working hours, a significant adverse change to the business, exceptional or unforeseen circumstances and where the average hours have been affected by a temporary situation that no longer exists.</li> <li>▪ This right would need to be underpinned by the ability to enforce it in the Employment Tribunal and penalties.</li> </ul> <ul style="list-style-type: none"> <li>• The right to reasonable notice of the work schedule. The Low Pay Commission recognises that what amounts to reasonable notice will vary according to the setting and sector and invites the Government to produce statutory guidance on the subject. The right to reasonable notice of the work schedule would need to be enforceable in the Employment Tribunal and supported by penalties for non-compliance. It is envisaged that notice would be given by print, email or text.</li> <li>• Compensation for shift cancellation or curtailment without reasonable notice. The Government is</li> </ul>	

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		<p>invited to consult on the appropriate compensation method ranging from the value of the shift to a multiple of the National Minimum Wage (which would vary according to the level of notice given). The Low Pay Commission recognises that good record keeping would be required to prove the shift was offered and cancelled.</p> <ul style="list-style-type: none"> <li>The provision of information via a written statement of terms. The Low Pay Commission recommend that the written statement should include details of how to request a change to guaranteed hours, the notice that will be provided of the work schedule, the compensation available where the shift is cancelled or curtailed at short notice and what constitutes short notice.</li> </ul> <p><a href="https://www.gov.uk/government/news/lpc-publishes-its-recommendations-to-tackle-one-sided-flexibility">https://www.gov.uk/government/news/lpc-publishes-its-recommendations-to-tackle-one-sided-flexibility</a></p>	
13.	<b>Government to consider other ways of encouraging employers to guarantee more hours to their staff, including the role of voluntary collective agreements.</b>	This is not addressed in the Good Work Plan.	There are no actions for employers to take.
14.	<b>Continuous service in employment should be preserved where any gap in employment is less than 1 month, rather than the current 1 week.</b>	The Government will extend the period from one to four weeks.	Employers should ensure that they maintain good records detailing periods of work and non-work so that an accurate assessment of service can be made, having regard to the extended gap.

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15.	<b>Zero hours workers who have been engaged for 12 months or more to have the right to request a contract that guarantees the hours which reflect the actual hours worked. Employers to report on how many requests of this nature have been received and how many were agreed.</b>	<p>There will be a right to request a predictable and stable contract for all workers.</p> <p>Page 13 of the Good Work Plan suggests that 26 weeks' service will be required to make this request.</p>	<p>This is a right to <i>request</i> a fixed hours contract, rather than a right to <i>move</i> to a fixed hours contract. It is likely to operate like the current flexible working regime.</p> <p>This could mean that an employer could refuse the request provided there was a good business reason for doing so and the request was considered reasonably.</p> <p>Employers should familiarise themselves with some of the suggestions by the Low Pay Commission (see (12) below) which may have an impact on how the right is implemented.</p>
16.	<b>On holiday pay, the Government should increase the pay "reference period" used to calculate holiday pay for workers who do not have normal working hours from 12 to 52 weeks to take account of seasonal variations in work.</b>	<p>The holiday pay reference period will be increased to 52 weeks for workers who do not have normal working hours. There will also be a holiday pay awareness campaign. This will involve new guidance, including real life examples. It will be accompanied by an updated and improved holiday entitlement calculator. The Government is also exploring the option of a new holiday pay calculator.</p> <p>The Government has published the Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 which come into force on 6 April 2020.</p> <ul style="list-style-type: none"> <li>• Regulation 16(3) of the Working Time Regulations 1998 will be amended to change the reference period that applies for calculating an average week's pay: <ul style="list-style-type: none"> <li>◦ where a worker has normal working hours but their remuneration varies for the amount of work done or the time the work is done;</li> </ul> </li> </ul>	<p>The legislation which introduces the 52-week reference period for workers whose pay varies with the amount of work done or the time that the work is done and for workers without normal working hours does not come into force until 6 April 2020.</p> <p>In advance of 6 April 2020, employers will need to ensure that their payroll systems are adjusted to take account of the longer reference period, and any associated policy should also be updated to reflect the change in how holiday pay is calculated (if this is covered in the affected policy).</p> <p>Where workers have normal working hours, a 12-week average can continue to be used to calculate the rate of pay.</p>



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		<ul style="list-style-type: none"> <li>○ where the worker does not have normal working hours.</li> <li>• If the worker has been employed for at least 52 weeks, the reference period will be increased from 12 weeks to 52 weeks.</li> <li>• If the worker has been employed for less than 52 weeks, the reference period is the number of weeks for which they have been employed.</li> <li>• Where earlier weeks have to be brought into the calculation because the reference period contains weeks in which no remuneration was payable, the weeks preceding the 104 weeks before the beginning of the period of leave are disregarded. Where this results in fewer than 52 weeks, the lower number of weeks is used as the reference period.</li> <li>• If, having applied the approach outlined above for the relevant categories of workers, there are no weeks to take into account, a week's pay is calculated by the amount which fairly represents a week's pay, having regard to section 228(3) of the Employment Rights Act 1996.</li> </ul>	
17.	<b>All dependent contractors to be given the choice of either taking paid holiday or receiving "rolled up holiday pay" (i.e. the practice of not paying holiday pay while the worker is on holiday, but making a compensatory payment during the weeks worked).</b>	The Government will not take forward the proposal on rolled-up holiday pay.	There is no action for employers to take.

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18.	<b>Agency workers to be given clearer information on the applicable rates of pay and those responsible for paying them.</b>	<p>The Government will introduce a Key Facts Page that must be made available to agency workers at the start of each contract. This will deal with the type of contract a worker is employed under, the minimum rate of pay that they can expect, how they are paid, if they are paid via an intermediary company, any deductions or fees that will be taken and an estimate of what this means for their take home pay. The Government will work with business groups to prepare guidance on the format.</p> <p>The employment business will be responsible for issuing the Key Facts page.</p>	Employment businesses which place agency workers with end users should ensure that their records are accurate so that they can populate the Key Facts Page once the requirements are clarified in greater detail.
19.	<b>Agency workers to have the right to request a direct contract of employment after 12 months with same hirer, which the hirer would have to reasonably consider. The employer should also be required to report on how many requests of this nature have been received and how many were agreed.</b>	There will be a right to request a predictable and stable contract for all workers.	As for (15) above.
20.	<b>The "Swedish derogation" should be abolished. This is the provision in the Agency Workers Regulations 2010 which allows agencies to avoid matching end-user pay by employing agency workers in a way that allows for pay between assignments.</b>	<p>The Swedish derogation will be abolished.</p> <p>The Agency Worker (Amendment) Regulations 2019 come into force on 6 April 2020 and will remove the Swedish derogation. Where an agency worker was subject to the Swedish derogation, they must receive a written statement which states that from 6 April 2020 they have the rights relating to pay that are conferred by regulation 5 of the Agency Worker Regulations 2010. This statement must be provided on or before 30 April 2020. An agency worker will be able to bring a complaint to the Employment Tribunal where that right has been infringed. Agency workers will be protected from unfair dismissal or detriment for reasons relating to these Agency Worker (Amendment) Regulations 2019.</p>	Employers who engage workers and benefit from the Swedish derogation may wish to assess the potential increase to the cost of engaging such workers. This may lead employers to reconsider their use of agency workers vs. permanent workers.

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<b>PROPOSALS AFFECTING THE ENFORCEMENT OF EMPLOYMENT RIGHTS</b>			
21.	<b>HMRC to be given responsibility for enforcing holiday pay rights (in addition to National Minimum Wage and sick pay rights) for the lowest paid workers. This means that such workers would not have to enforce their rights via the Employment Tribunal.</b>	<p>The Government will introduce a new state enforcement system for holiday pay and identify the most appropriate enforcement body.</p> <p>There is already state enforcement for National Minimum Wage. HMRC run a disputes process for statutory sick pay. The Government will consider the enforcement of sick pay rights as part of a wider reform of statutory sick pay.</p>	When this proposal is implemented it will affect only those employers of the "lowest paid workers" (i.e. those earning the National Minimum Wage or National Living Wage), meaning we would expect to see a greater impact in sectors such as retail, hospitality and social care. Affected workers would not have to bring claims in the Employment Tribunal to enforce their holiday pay rights. Instead, they would complain to HMRC, who would then be responsible for enforcement. Whilst affected employers could benefit from avoiding the cost of Tribunal litigation, it is not clear how HMRC would determine the validity of a holiday pay claim and what right of appeal would exist from any decision reached.
22.	<b>Claimants should be able to have their employment status determined at an expedited preliminary hearing without having to pay any fee.</b>	The Government notes that there are no fees in the Employment Tribunals following a Supreme Court judgment. If fees are reintroduced this will be the subject of a separate consultation.	There are no actions for employers to take.
23.	<b>The burden of proof in hearings where employment status is in dispute should be reversed and placed upon the employer, subject to a number of safeguards, such as the use of an online tool to determine employment status.</b>	The Government will consider this further after an online tool for employment status has been developed.	There are no immediate actions for employers to take.
24.	<p><b>The Government should seek to enforce Tribunal awards itself without action from the claimant, or payment of any additional fee.</b></p> <p><b>A "naming and shaming" scheme should be established for employers who do not pay awards within a reasonable time.</b></p>	<p>The Government accepts that the enforcement process could be simpler and states that a reform project is underway which will address a number of the concerns raised by the review.</p> <p>The Government agrees that a "naming and shaming" scheme should be introduced for employers who do not pay tribunal awards within a reasonable period.</p>	There are no actions for employers to take.
25.	<b>Tribunals should be obliged to consider the use of awarding aggravated damages and making costs orders if an employer has already lost an</b>	The Government accepts this proposal and will introduce an obligation on Employment Tribunals to consider the use of aggravated breach penalties and cost orders in instances of	There are no actions for employers to take.

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	employment status case on broadly comparable facts.	<p>repeated breaches. The government will provide new guidance with examples of how current powers can be best used.</p> <p>The Employment Rights (Miscellaneous Amendments) Regulations 2019 come into force on 6 April 2019 in relation to aggravated breaches of a worker's employment rights under section 12A of the Employment Tribunals Act 1996. These Regulations increase the penalty available from £5,000 to £20,000 for aggravated breach.</p>	
26.	Tribunals should be allowed to award uplifts in compensation if there are subsequent breaches against workers with the same, or materially the same, working arrangements.	The Government will allow the use of compensation for uplifts in instances of repeated breaches. To ensure the powers are consistently used, there will be an obligation on Employment Judges to consider the use of such sanctions in cases of repeated breaches by the same employer.	There are no actions for employers to take.
<b>PROPOSALS AFFECTING ENGAGEMENT AND TRANSPARENCY</b>			
27.	The Government should review the Information and Consultation of Employee Regulations 2004 (ICE Regs) and extend the rules to workers and reduce the threshold from 10% to 2% of workforce making the request.	<p>The Government will reduce the threshold for a request to set up information and consultation arrangements from 10% to 2% of the workforce. However, this has not been extended to workers.</p> <p>The Employment Rights (Miscellaneous Amendments) Regulations 2019 come into force on 6 April 2020 and will replace the 10% requirement with the 2% requirement.</p>	As the thresholds in the ICE Regs will be reduced, the number of employers who could potentially receive a valid request to negotiate an information and consultation framework may increase. Employers who are currently outside the scope of the ICE Regs should then ensure that they understand the framework and are able to respond to a request to negotiate if one was triggered.
28.	The Government should work with Investors in People, Acas, trade unions and others to promote the development of better employee engagement and workforce relations, particularly in sectors with high levels of casual employment.	The Government agrees to work closely with Investors in People, Acas, Trade Unions and other experts to promote better employee engagement.	There are no immediate actions for employers to take.
29.	Companies above a certain size should be required to be more transparent. Amongst other things, they	The Government is monitoring the impact of corporate governance reforms which come into effect for reporting years starting from 1 January 2019 onwards. The Government is	Employers should monitor any changes to the FRC guidance on annual reports.

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	should be required to publicise their model of employment and use of agency services.	conducting a Post-Implementation review to assess current reporting requirements including large public interest entities reporting on their employees. This Post-Implementation review should be completed in early 2019.	
<b>PROPOSALS AFFECTING OTHER AREAS</b>			
30.	<b>Apprenticeship Levy: the Government should ask the Institute for Apprenticeships to work with sectors using high levels of lower paying and atypical work to ensure they are making best use of the current apprenticeship framework.</b>	The Government agrees to consider next steps after delivery of their current targets.	There are no immediate actions for employers to take.
31.	<b>Apprenticeship Levy: the Government should consider making the funding generated by the levy available for high quality "off the job" training other than apprenticeships.</b>	The Government agrees to consider next steps after delivery of their current targets.	There are no immediate actions for employers to take.
32.	<b>Internships: unpaid internships to be "stamped out" and the Government to clarify the interpretation of the law on employment status for interns and encourage enforcement action by HMRC.</b>	<p>The Government note that HMRC have launched a campaign to promote greater compliance.</p> <ul style="list-style-type: none"> <li>Between August 2017 and March 2018, 3000 assisted self-correction letters were issued by HMRC.</li> <li>High risk groups have been targeted via text message.</li> </ul>	Given the focus on this area, employers should consider reviewing the use of interns within their businesses. Where these are unpaid, employers should carefully consider the likely employment status of these individuals. If it is concluded they are workers, steps should be taken to ensure that they are paid in line with the National Minimum / Living Wage and receive paid holiday and other worker rights.
33.	<b>Flexible working: when the flexible working system is evaluated in 2019, the Government should consider whether the system might be used to permit requests for temporary changes to contracts.</b>	The Government has set up a taskforce with representations from across Whitehall and key organisations such as Carers UK, Working Families and Timewise and the TUC and key business groups.	There are no immediate actions for employers to take.
34.	<b>Flexible working: the Government should work with organisations such as Working Families and Timewise to encourage flexible working initiatives such as the use of the "happy to talk about flexible working" strapline in job advertisements.</b>	As above. The Government have committed to consider requiring all jobs to be advertised as flexible from Day 1 unless there are solid business reasons not to do so.	There are no immediate actions for employers to take.

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35.	<b>Pregnancy and maternity: guidance on pregnancy and maternity discrimination should be reviewed and consolidated to enable women to more easily spot unlawful discrimination and challenge it.</b>	The Government have committed to updating and consolidating the pregnancy and maternity pages on GOV.UK. They note that Acas published updated guidance on this subject in November 2018 and continue to support the work of the EHRC in this regard.	Employers should review any updated guidance as it is published.
36.	<b>Pregnancy and maternity: consideration should also be given to "further options for legislative intervention" in this field.</b>	The Government is reviewing legislation relating to redundancy protection to consider whether this is sufficient and will publish a consultation looking at extending redundancy protection for women and new mothers.	This is not a new development: the Government had already agreed to review the legislation relating to redundancy protection when it responded to a separate report published by the Women and Equalities Committee in August 2016. Until further details of any reforms are released there are no obvious actions for employers to take.
37.	<b>Sickness absence: statutory sick pay (SSP) should be reformed so that it is a basic employment right for which all workers are eligible, regardless of income, from Day 1 (and should be payable by the employer and accrued on a length of service basis).</b>	The Government agrees that employers should provide proactive support to retain and integrate people managing illness, health conditions and disabilities.  The Government will be consulting on measures to improve SSP next year.	Employers may wish to respond to the consultation on changes to the SSP regime when it is published.  In the event that SSP is extended to all workers this will result in an increase to an employer's pay bill. Employers may wish to consider working out the likely approximate cost per annum of this reform (i.e. number of workers x average number of sick days taken per year) and consider how they would fund this additional cost.
38.	<b>Sickness absence: employers to do more to support workers who are absent on long-term sickness grounds to return to work and go "above and beyond" the duty to make reasonable adjustments.</b>	As per (37) above.	There are no immediate actions for employers to take.
39.	<b>Sickness absence: individuals who have been absent on "prolonged sick leave" should have the right to return to the same or similar job (conditional upon engagement with the Fit for Work service).</b>	As per (37) above.	There are no immediate actions for employers to take.
40.	<b>Low pay: the Low Pay Commission's (LPC) remit to be widened so that it can make recommendations to Government on areas of change needed to improve the quality of work in the UK.</b>	The LPC has reservations about extending its role in this way.	There are no actions for employers to take.

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41.	Low pay: the LPC to work with employers, employees and stakeholders to: (i) promote quality work across all regions and sectors; and (ii) develop sector-specific codes of practice that <i>"support the provision of quality work"</i> .	As per (40) above. BEIS will take forward proactive work with sectors and draw on the advice of the LPC, Acas, the Director of Labour Market Enforcement and others.	There are no actions for employers to take.

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