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POST-BREXIT THREATS TO WORK SAFETY AND HEALTH STANDARDS AND GOOD WORKING CONDITIONS IN THE UK

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ABSTRACT. This paper reviews how legal, political and economic threats to be borne out of Britain's decision to leave the European Union (EU) will short-change pre-Brexit work protection standards in the United Kingdom (UK). These threat-factors are considered in view of their effects on two classes of workers: low-income temporary agency workers (TAW); and low-income self-employed workers in the growing UK gig economy. This paper describes impending post-Brexit threats, to pre-existing policy implementation threats curtailing legally envisaged occupational safety and health (OSH) standards, and the practice of proactively preventing all foreseeable work related risks to the mental or physical health of workers. Post-Brexit threats add to current limitations to employment protections for low-income workers in the UK, and despite the recently proposed labour law reforms by the 2017 *Taylor Review* in regard to low-income workers, it is argued that these Brexit threat factors increase the risk of not extending the principle of equal protection to these two classes of workers in UK law, in ways envisaged under the current EU regulation. The paper concludes that in view of the notion of occupational wellbeing, the risks of physical and mental harms posed to low-income workers through exploitative work practices segment them from other workers who enjoy full employment law protections under UK labour law.
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Keywords: occupational wellbeing; low-income workers; dependent workers, gig economy; temporary agency workers; self-employed workers; equal protection

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1. Introduction

The UK voted in a referendum on 23 June 2016 to withdraw its membership in the EU. On 29 March 2017, the Prime Minister of the UK, Theresa May, sent a formal notification letter to the EU, triggering Article 50 of the Lisbon Treaty, hence

fulfilling the legal condition for UK's formal withdrawal from the powerful multi-lateral institution. This process of UK's departure entails significant changes to the EU: it means that upon its completion on 29 March 2019, the number of EU Member States will be reduced to 27; it also means that EU laws will no longer hold supranational powers over laws enacted in the UK's Westminster Parliament, and the European Court of Justice (ECJ) will cease to hold superior adjudicatory powers over the UK Supreme Court; based on the current political position of the Tory led government of Theresa May, it also means that the UK will no longer participate in the EU's Single Market, and shall as well withdraw from the EU's Customs Union. These key legal political and economic changes if fully implemented after UK's formal departure elevate threats to how the current regulatory gaps concerning employment protection for low-income UK workers could be eliminated, and could create more space for business incentives that jeopardise good working practices and employment conditions.

We must therefore accept right here from the outset that the approach of this paper is based upon the formally expected legal, political and economic changes just described. The approach used in this paper does not consider scenarios which fall outside the context of these given assumptions: i) the end to the process of legal and institutional convergence by virtue of UK's withdrawal from the Lisbon Treaty; ii) the end to UK's free access to trade in goods, services, labour and capital as a full member of the EU; and iii) the beginning of *regulatory divergence* in the UK: an inevitable effect of the political meaning of leaving the EU. These three legal, political and economic assumptions have some macro and micro effects, all of which are to varying degrees important to UK's labour market user undertakings,[1] temporary agency workers[2] and low-income self-employed workers – now officially being referred to as "dependent contractors/workers" in the UK.[3]

The type of working terms we consider in particular is basic working and employment terms afforded to workers, including through the UK occupational social security scheme,[4] and the UK Employers' Liability Act 1969.[5] The 1969 Act seeks to achieve three objectives: to protect employees from occupational accidents and diseases emanating from breach of legal obligations an employer owes to their employees;[6] to provide enforceable employment rights to employees to obtain different forms of liability compensations from their present or past employers for breach of OSH obligations;[7] and by virtue of the employers' liability insurance agreement, to provide an economic incentive to businesses to improve employment practices in their business domains, so as to hold down the cost of their employers' liability insurance premiums.[8]

Theoretically speaking, the UK Employers' Liability Insurance Scheme fulfils two forms of OSH objectives: i) it offers legal guarantee or assurance to employees that they will be compensated if they are injured or taken ill due to occupational factors; ii) it offers user undertakings the incentive to establish a framework for employee relations, human resources management, employee performance improvement incentives and OSH informed employment practices; and these in turn help

minimise and prevent the exposure of the workforce to physical and psychosocial risks to their health. Since the enactment of the Enterprise and Regulatory Reform Act by the Tory led government of David Cameron in 2013, these two forms of OSH protections offered to most employees under the UK Employers Liability regime are no longer intact, for the 2013 enactment annulled the right of employees subject to Section 47 of the UK Health and Safety at Work Act 1974, to bring civil liability actions against their employers for breach of statutory OSH obligations.[9] Even prior to 2013, temporary agency workers and dependent workers (then referred to as self-employed workers) were excluded from some employment based protections such as the right to occupational sick pay, and to compensation for occupational accident and diseases.[10] The rationale for this exemption is that such excluded employment protections are expensive and cannot probably be affordable by many SMEs, who need temporary agency work in order to cope with the fluctuating labour market forces controlling the demands for workers. This is the major reason for introducing a labour market flexibility policy that solves the problem.[11]

The current UK flexibility policy model is a work-in-progress policy, for the policy creates some unintended consequences for both the State and low-income workers. It sucks up a large chunk of the financial income that should have gone to the UK Treasury.[12] It also blocks possible innovative or tech-based marketable resources that should operate to improve basic working and employment protections, against occupational risks to temporary agency and dependent workers, while it creates a lucrative bazaar for businesses of various forms sizes and corporate-values, including unscrupulous profit-only driven business models, such as the business model of Sports Direct International plc (Sports Direct), Deliveroo UK, Uber UK, Hermes Courier UK, Amazon UK and many other such businesses that have so far not attracted any attention worthy of UK government scrutiny.

In view of legal rules and the disparity of entitlements in practice the UK labour market comprises of: i) *labour market insider workers*, included in this class are all workers who are entitled to basic working and employment protections, and are fully covered by the UK occupational social security scheme, including the Employers' Liability Act, and ii) *labour market outsider workers*, who have no protection cover at all, have limited basic working and employment protection cover under the law, or under the UK occupational social security scheme, or workers who lack the necessary work insurance protection in their occupation. For the category i), these are mainly employees by virtue of Section 230 (1) of the UK Employment Rights Act 1996, some fixed-term contract employees,[13] part-time employees, and some agency workers although these workers are only likely to be covered for physical accidents and injuries under the insurance policy in place at their workstation.[14] For category ii), on the other hand, workers in this category are mainly low-income temporary agency and dependent workers. There is no employment law protection for the physical and mental harms they could suffer in their occupations, such as through road accidents, or mental diseases which they may

suffer on their job as a result of the fault, negligence or breach of statutory duties by their employers.

Despite legislative measures recently taken by the British government to enact legal rules that offer employment protection to all *dependent workers*[15] regardless of the type of employment services they do, some temporary agency and dependent workers (self-employed workers) remain excluded from legally envisaged employment protections for all workers under current EU law. Some UK studies report that the individuals found among this cohort of workers comprise mainly of East European,[16] Black and Indian workers.[17] As a matter of fact this cohort of workers contribute significant labour capital to the UK's macroeconomic successes often accorded as credit only to the British labour market flexibility model itself.[18] Overall, the UK's employment law regime offers much inferior employment protection[19] coverage to this cohort of workers compared to the form of employment protection coverage provided to typical workers under the law.

Directive 2008/104/EC stipulates that the basic working and employment conditions for temporary agency workers should be at least equal to those of the direct employees of the user undertaking where they work.[20] The Directive further provides a definition for basic working and employment conditions,[21] yet at the same time allows Member States a leeway to depart from the mandate on formal guarantee for the right to equal employment protection standards subject to national employment law. There are certain reasons for the derogation rules, from what I prefer to call *the principle of equivalent employment standards* under Directive 2008/104/EC[22]: i) across the EU, there are considerable differences in the notion and use of temporary agency work, and the legal status, situation and working conditions of that type of work or worker;[23] ii) the principle is subject to national law with respect to the definition of pay, contract of employment, employment relationship and worker;[24] iii) when a new institutional framework is established in the absence of clear law and practice or universal collective agreement covering a sector or geographical region of a country, to provide adequate level of protection to temporary agency workers, provided that such framework is agreed by the relevant social partners;[25] iv) when there is a legally set minimum qualifying period under the national employment law;[26] and v) if there are objective reasons for excluding temporary agency workers from employment conditions granted to the employees of a user undertaking.[27]

How exactly can the basic working and employment conditions of workers be determined in the UK pursuant to the Directive 2008/104/EC? The Directive operates on both the EU's principle of proportionality and subsidiarity as outlined in Article 5 of the EU Treaty, and is implemented in the UK through the UK Agency Workers Regulations 2010. The Directive provides that the legal meaning of the basic working and employment conditions in a country must specify whether occupational social security schemes,[28] including sick pay and financial participation schemes are included in the legal meaning.[29] Occupational social security schemes,[30] which can be an integral part of the baseline working and employment conditions offered

to workers within a country, ideally encompasses legal protection for the following risks (among other): i) sickness from or on the job, and ii) industrial accidents and occupational diseases. While the analysis here concerning the right to basic working and employment conditions rely much on the EU Directive concerning temporary agency work, the entitlements for such rights is contemplated in EU law to apply to self-employed workers as well.[31] This point is important for we attempt to present the threats to good working conditions for temporary agency workers and dependent workers in the UK. In view of the definition of the occupational social security scheme in Directive 86/378/EEC, it is clear that the UK employers' liability insurance scheme and the UK social security scheme[32] come within the definition for occupational social security scheme in the EU Directive.

Currently, the basic working and employment conditions of the UK "labour market outsider workers" are not equivalent to working and employment conditions of the UK "labour market insider workers." This indicates that the types of occupational risk to the physical and mental health of the "labour market outsiders" are different from the occupational risks faced by the "labour market insider workers," simply because of variations in the ways their working relationships are legally conceived, and in how the mechanisms for their working relationships function in practice. The EU Treaty purports to separate aspects of labour market policies and employment relations it has powers to regulate such as the minimum requirements for workers safety and health and working conditions; from aspects of the same subject matters which it leaves to the Member States, such as, the nature of social security regulation and the definition and content of the social protection for workers. In other words, Member States of the EU have subsidiary powers to regulate social security and social protection of workers at the national levels,[33] whereas the EU contributes to and complements the regulation of the minimum requirements element of employment and labour market regulations.[34]

Part 2 of this paper discusses current threats to good working conditions by reviewing: i) UK government's official reviews about balancing the rights and responsibilities of self-employed workers; ii) the UK government's official studies on temporary agency workers exploited by some UK undertakings, such as Sports Direct; and iii) UK media reports about exploitation of temporary agency workers, and low-income self-employed workers in undertakings such as Deliveroo UK, Uber and Amazon UK. Part 3 of the paper examines the legal, political and economic effects of post Brexit UK on safety and health standards and good working conditions – for low-income temporary agency and dependent workers. In this Part, the paper presents the risk of reduced legal safety and health standards for this cohort of workers; the economic risk of weakening policy and practice standards regarding equal basic working and employment conditions; and the risk that the UK diverges politically from the EU, opening gateways to deteriorating working standards for that cohort of workers.

Part 4 is the conclusion. It is argued that the risks of physical harms to bicycle couriers (dependent workers) through road accidents remains. And, the psycho-

social[35] and other physical health risks which low-income TAW are currently exposed to have not gone away as well. In fact, the post-Brexit threats we analyse could pave ways for employment practices where the next occupational illness, whether of anxiety, stress, fatigue, depression, body aches, loss of limbs through accident or general accident injuries, will become foreseeable outcome for the cohort of workers we examine, and worse still, the normal consequences of engaging in low-income temporary agency or dependent work in UK's gig economy.

2. Recent Empirical Accounts of Poor Working Practices Imposed on Low-Income Temporary Agency and Dependent Workers in the UK

According to official UK government figures, there are about 5 million self-employed workers in the UK, making up 15% of the UK workforce.[36] The UK Office for National Statistics (ONS)[37] found that temporary employees make up about 5.8% of all UK employees as of June 2017, and the Financial Times reported in December 2016 that the UK has about 340,000 TAW.[38] In practice, and under the current UK employment law, low-income temporary agency and dependent workers do not have employment protections that can rightly be equated to the employment protection accorded to other typical workers under the law. For this reason, there are a string of cases of UK business models imposing different forms of exploitative labour market practices on this cohort of workers.[39]

There are two crucial differences between the two outsider workers we consider, just within the category of all outsider workers: i) for the purpose of employment protection entitlements, temporary agency workers are considered as workers under EU Directive 2008/104/EC, but are not considered as workers in view of the statutory interpretation definition of "workers" under the UK Agency Workers Regulations 2010;[40] and ii) self-employed workers (dependent workers) although envisaged in EU law to enjoy the same rights as employees, are neither employees nor workers under the UK employment law.[41] These two categories of workers are nevertheless considered together in this paper because, although their employment terms and circumstances are different in UK law, they share a unique legal characteristic that puts them in the so called "intermediate category";[42] that is, their status is somewhere in-between employee and worker.

Recent court decisions in the UK show that the parameters for a determination of whether an individual is considered to be a worker and in an employment relationship depends on the practical nature of the relationship between the alleged worker, and the entity the alleged worker offers given services or labour.[43] The UK government is considering the need to establish a formal policy that eliminates the gap between the formal benefits and contributions by some self-employed workers (dependent workers) and employed persons (workers) generally. A major step in that direction is the recommendation of the 2017 Report of the Work and Pension Committee on self-employment and the gig economy, to the UK government to

introduce policy reforms to recognise many acclaimed self-employed workers in the UK as dependent workers.[44]

Since the last 2–3 years UK media have reported some working and employment practices which expose low-income temporary agency and dependent workers to occupational risks that harm their physical and mental wellbeing. First, we look at UK media reports about the working and employment conditions of typical low-income self-employed workers (dependent contractors), that is, bicycle couriers used by online platform[45] home-delivery businesses such as Deliveroo UK, and Uber. After that, we review in the second instance, the 2016 UK Parliamentary Inquiry into the employment and working conditions of low-income temporary agency workers that work in Sports Direct's warehouse in Shirebrook Derbyshire.[46] The (temporary) agency workers were supplied to the hirer (Sports Direct) by two temporary work agencies – The Best Connection Employment Group UK, and Transline Group UK.[47]

Low-Income Dependent Workers (Self-employed Couriers)

Many home-delivery online business platforms in the UK have been censured recently for the poor employment and working conditions they impose on their "couriers" – a nomenclature that is deliberately selected to ensure that the so-called couriers are known and seen as having no employment relationship with the online platform companies, and only contractually engaged with the companies in their capacity as independent self-employed operators. It is entirely legal in the UK to work as or use the services of an independent self-employed person.

On 5 April 2017, *The Independent* reported that Deliveroo, Uber and Amazon are accused of exploiting UK dependent workers (Deliveroo, Uber and Amazon couriers) with "unintelligible" work contracts.[48] Judging from these media reports, the first way in which some enterprises exploit dependent workers (bicycle couriers)[49] is by imposing work contracts that purport to prevent the couriers from formally contesting their "independent worker status" (self-employed status).[50] The second technique they use to deny employed couriers the possibility of enjoying basic employment protection is to include clauses in their work contracts that bar the dependent workers (couriers) from contesting their contractually attested independent status (self-employed status) in courts.[51] The underlying purpose for these techniques seems to be to deny the workers employment terms, such as the right to sick pay and other basic working and employment entitlements.[52]

In doing this, these gig economy enterprises hope to guarantee that their dependent workers do not pursue any legal claims, established in UK law to protect employees and workers. Employers are overall in a more powerful position of power over low-income workers working with services requiring no special skills, surplus services, or readily dispensable services, but above all the employers have the power to offer the much needed *paid employment*.[53] As seen in several UK cases, enterprises in such position of power shirk the responsibilities for employment protection obligations they would otherwise owe workers employed to do the job

the bicycle couriers do. For example, Deliveroo's couriers lack employers' liability insurance cover. This type of insurance should ideally be available to all bicycle workers for they are on the road almost throughout their entire working time. First, an accident insurance for bicycle couriers will help insure them against the risks of physical injuries which may occur to them on the job of delivering food orders, parcels or letters; and the accident insurance also offers a *mental insurance* to the bicycle couriers that they will be recompensed in the event of an unforeseen accident on the job. In addition to that, an accident insurance would impose some obligations on the gig economy enterprises employing couriers by incentivising them to improve the working conditions for their bicycle couriers in regard to their occupational health. Second, an accident insurance will reduce human and economic losses for the UK welfare state, for it will insure the public from injuries or deaths caused in an accident with the gig economy's bicycle couriers.[54]

Low-Income Temporary Agency Workers

The EU Directive 2008/104/EC was established in order to minimise unfair competitive market advantages, and to help boost economic growth in the EU by increasing the flexibility options of employers, thereby reducing what business enterprises prefer to call the costly burdens of employment regulations. In the UK, recent government studies show that the UK's labour market flexibility policy has also helped create unscrupulous business models and hirers who abuse the regulatory system for labour market policies, rather than ensure the ultimate goals of flexibility and employment protections work for all participants in the labour market. As a result, one such unscrupulous UK business model or what was earlier referred to as profit-only driven enterprise attracted some rebuke from the UK House of Commons Business Innovation and Skills (BIS) Committee over the deplorable working and employment conditions it imposed on temporary agency workers. On 26 July 2016 the BIS Committee released a Report titled Employment Practices at Sports Direct.[55] The Report concerns an Inquiry the BIS Committee undertook concerning the working practices at Sports Direct's warehouse in Shirebrook Derbyshire.[56]

According to the Report, Sports Direct is the largest sporting retailer in the UK. It has 465 stores across the UK, with its corporate headquarters and major warehouse situated in Shirebrook Derbyshire. The enterprise has a total of 200 permanent employees; and 3000 agency workers – supplied by two temporary work agencies The Best Connection Recruitment Group UK and Transline Group UK.

The Report further cited reliable media accounts of poor working practices at Sports Direct's Shirebrook work facility, and shops. The first of the accounts was reported in April 2015 by the Channel 4 Dispatches documentary. It claimed that Sports Direct facility in Shirebrook "operated as a sweatshop, with Victorian working conditions."[57] The second account came through a BBC's "Inside Out" programme broadcast in October 2015, on the working practices at the Sport Direct warehouse at Shirebrook. Most importantly, "the BBC found that, between January 2013 and December 2014, 76 ambulances and paramedic cars were sent to the post-

code Sports Direct's distribution centre at Shirebrook."[58] The third media account of the working practices at Sports Direct's facility at Shirebrook includes: breaches of health and safety safeguards;[59] penalising temporary agency workers already working under very stressful working environment, for breaking minor workplace rules – with penalties such as the so called "six strikes and you're out" policy; and imposing onerous security checks on temporary agency workers, thereby bringing their final hourly wage, after factoring in the unpaid waiting time for the security checks, to an amount below the formal national minimum wage.[60]

From the bounty of disappointing information concerning the poor working and employment conditions which temporary agency workers are subjected to (a narrative that comes across as an embarrassing labour market policy failure), we can posit that the working practices at Sports Direct: i) create occupational risks to the physical health of temporary agency workers;[61] and ii) create psychosocial risks that will potentially lead to mental illnesses, or occupational risks that harm the mental wellbeing of low-income temporary agency workers.[62] As a result, the harsh working practices of Sports Direct are hardly practices that anyone would like to use to describe the basic working and employment conditions for UK employees, which should ideally be the comparable yardstick for the temporary agency workers in the mainstream UK warehouse sector. In practice however, this was exactly the abhorrent working practices that constituted the lived working experiences of temporary agency workers employed to work at the Sports Direct's Shirebrook warehouse, and its sweatshops. The three most significant reasons why Sports Direct's type of business models are expected to flourish are: i) due to the complex nature of the rules governing the use of temporary agency workers, or expressed differently, the fact that the hirer and the temporary work agency have each a hand in the mantle of employers' obligations towards the temporary agency worker; ii) due to the fact that the rules of employment relations are clearer for typical employees, than for temporary agency workers; and iii) due to the precarious nature of temporary agency employment, and the demography of the majority of the individuals drawn to low-income temporary agency work.

It is unclear whether and how temporary agency workers could be covered by the employers' liability insurance. There are three immediate problems about why the hirer's employers liability insurance may not cover temporary agency workers: i) the employer liability insurance is a policy that primarily seeks to protect an employee from the negligence of the employer in providing legally envisaged occupational protection to the employees, to help protect the employee from occupational accidents and diseases; ii) claims made by temporary agency workers under the Employers Liability Act 1969 may be contested by the insurer on the ground that a claim applicant was not an employee;[63] and iii) it is already cumbersome to extract clear lines of obligations that the hirer and the temporary work agency each and both owe to the temporary agency worker, separately or severally, and jointly or simultaneously. For these three reasons, it is posited that low-income

temporary agency workers in the UK are not in practice treated equally as the core employees of hirers are treated.[64]

3. Post-Brexit Threats to Basic Working and Employment Conditions in the UK

We have briefly examined the employment experiences of UK low-income temporary agency and dependent workers, that characterise the inequalities in their basic working terms relative to UK employees, in law and in fact. In this Part, we consider the legal economic and political threats of Brexit to the basic working and employment protections afforded to these low-income workers under the current EU OSH law. Until post-Brexit, the UK is legally obligated to maintain an OSH regime that is consistent and in line with EU OSH law.

From a legal point of view, the first fundamental legal effect of a separation from the EU is that the EU OSH standards would not be legitimately relied upon to discredit the legal provisions of UK's safety and health rules. This is quite significant because it means that the provisions of EU treaties such as in Article 137 of the Treaty establishing the EU, Directive 89/391/EC (including its daughter Directives), Directive 2008/104/EC and other EU OSH regulations, will no longer have supranational force over OSH rules established by the UK. The EU rules will, after Brexit in 2019, at best retain persuasive powers.

From an economic point of view, there are two types of economic threats of Brexit which are examined to highlight the potential economic effects of Brexit on the basic working and employment conditions of low-income temporary agency and dependent workers in the UK. First, there are macro- and microeconomic setbacks or slowdowns in economic progress in the UK, anticipated by the Bank of England to occur in the aftermath of Brexit after 2019.[65] These macro- and microeconomic effects will pose greater economic and mental health challenges to the lowest bracket of the UK labour force. Second, these post-Brexit macro- and microeconomic effects will certainly put greater pressure on the current state of the UK labour market flexibility policies.

From a political point of view lastly, the decision to leave the EU's Single Market, Customs Union, withdrawal from the jurisdiction of the ECJ; will all entail a post Brexit era of political differentiation of values and institutional strategies for the achievement of policy objectives. This political aspiration guiding Brexit shows that the UK must diverge from the EU politically once the country exits the Union, to avoid the political trap of leaving the EU and remaining within the regulatory control of the EU. It is therefore argued that a major post-Brexit threat to basic working and employment conditions for low-income UK workers includes what may be called an era of regulatory divergence, whereby in distinguishing itself, the UK move to politically project itself as different and independent, and perhaps attempt to show politically that it is doing better than the EU in solving very contentious labour market OSH problems, such as the problem of the occupational risks to the physical and mental wellbeing of low-income "outsider" workers.

Let's resist the temptation of thinking of the three post-Brexit threat factors as unrelated, in regard to their impact on the basic working and employment conditions of UK low-income workers. As firmly entrenched in various EU OSH legal instruments, there are underlying economic and political policy basis for the type and quality of employment protections envisaged for all EU workers, to help achieve in practice, the economic and social dimensions of the EU's grand objectives for its internal market. Quite central to these internal market goals (in the area of OSH), is the view that all employment or work relations measures that improve the mental, physical and social wellbeing of workers in the context of work, unlock the productivity potentials of those workers in the best possible economic sense. In the long-term, designing work responsibilities, work environments, work processes and the rules of workplace behaviour, with the human workers in mind, by significantly considering the best practicable fit of those designs to the physical and mental comfort of the human workers, is overall an economic win-win situation for the employer, the employed, co-employees and the UK welfare state.

Brexit Legal Effect on Basic Working and Employment Conditions in the UK

The European Union (Withdrawal) Bill was formally put forward to the UK House of Parliament on 13 July 2017. Upon its final adoption, the Bill will pass into law and repeal the UK European Communities Act 1972.[66] The Bill seeks to i) legally sever the ties to the legislative jurisdiction of the EU in terms of setting legal rules on various matters after the formal exit of the UK from the Union;[67] ii) transpose current rules that apply to the UK, by adopting most EU laws valid in the UK today into UK law;[68] and iii) bestow rule making powers on the UK government through statutory instruments, in other words, a form of delegated authority to appropriate government ministers, to establish secondary laws.[69]

The safety and health policies we have examined so far in regard to the working conditions of UK's low-income temporary agency and dependent workers will be valid rules after the UK departs from the EU. There is economic and political impetus for the EU legal rules controlling the working conditions of low-income workers. EU and UK laws in this area attempt to establish rules governing labour market flexibilities needed for economic growth,[70] while at the same time protecting fundamental social and economic conditions of the labour force driving economic prosperity from below.[71] Nevertheless, there are two crucial technical challenges for ensuring the exercise of legally guaranteed basic working and employment terms by low-income temporary agency and dependent workers, for both the current EU and the future UK OSH regime. The first is a technical divergence on the principle of equal treatment of workers. The second is the technical differences in the conception of the rights and obligations of temporary agency workers.[72]

In terms of the technical divergence, there is no doubt that the EU's prescriptive principle of equal treatment seeks to eliminate all avenues for the discrimination of this cohort of workers, or the subjugation of their employment protection rights. Conversely, UK temporary agency workers have never been regarded to possess

employment protection entitlements equal to those of employees, whether in law or in practice. On the other hand, the EU and the UK regimes possess some further distinct technical differences in their rules. First, the UK regime contemplates a flexibility regulatory policy where a temporary agency worker is not regarded as a "worker" but rather a distinct type of employed person (worker), although the UK Agency Workers Regulations 2010 establishes limited right to basic working and employment rights for agency worker – which should be *comparable* to those of (employee) colleagues. The EU Directive 2008/104/EC clearly contemplates a temporary agency worker as a worker working temporarily without a permanent contract.[73] The second technical difference is in the titles of the EU and UK legal instruments. The EU envisaged a labour market flexibility policy for temporary work, hence the title Directive 2008/104/EC on Temporary Agency Work.[74] The UK envisaged a different form of market flexibility policy in this regard where its regulation covers both temporary agency workers[75] and permanent agency workers,[76] hence the title The Agency Workers Regulations 2010.[77] The third technical difference is: in the pursuit of suitable labour market flexibility policies. The EU seeks to achieve its grand labour and social policy objectives enshrined in the EU Treaty and the Charter of Fundamental Rights of the EU, through the Directive 2008/104/EC regulation.[78] On the other hand, the UK opted to extricate itself from the goals of the Charter of Fundamental Rights of the EU – in the pursuit of its labour market flexibility policies.[79]

Considering the disparity of employment protection between low-income temporary agency and dependent workers; and UK labour market insiders; it is crucial to highlight two key EU Treaty flaws which contribute to unintended disparity of protection for these two classes of workers.[80] First, the legal meaning of Article 137 (1) (a) of the EU Treaty appears to suggest that the EU seeks to improve the safety and health of workers only in their working environment – leaving no legal commitment for improving the safety and health of workers "in the course of carrying out their employment services or duties." In this regard, workers who do not per se have any working environment, or whose working environments are indeterminate because of the nature of their employment services, seem to have been left unprotected. Gig economy workers such as Deliveroo Couriers, Uber Couriers, Hermes couriers; but also some other familiar workers such as fund raisers and lorry drivers who may not have a stationed working environment are almost technically excluded from the EU Treaty safeguard enshrined in Article 137 (1) (a).[81] Second, the principle of equal treatment of workers enshrined in Article 5 (1) of Directive 2008/104/EC, and Article 2 (1) of Directive 86/378/EEC is misleading, (due to their well-intentioned rhetoric of equal treatment of basic working and employment conditions of employees and non-employees in practice), which is why the principle was referred to in the Introduction as *the EU's principle of equivalent employment standards*.

The principle of equal treatment of workers in the context of occupational social security schemes is thus far more or less an aspirational goal. Let us briefly look at

three reasons for this claim: i) the *principle* failed to account for the underlying economic reason for labour market flexibility policies which is a major driver of why and how temporary agency and dependent workers are used. Flexibility policies allow user undertakings to minimise the cost of social protection the user undertaking pays on a given labourer or a group of workers, who are employed through a gateway different from the employment gateway of other employees in the user undertaking; ii) The challenge about ensuring "equal treatment" of insider and outsider workers in labour markets (in relation to basic employment and working conditions) is often wrongly blamed on stringent national dismissal and redundancy rules alone, and how these stifle competitive advantages and flexibility options for enterprises, particularly small scale business enterprises. However, the issue of equal treatment is equally about who bears the cost of social protection such as national insurance contributions, employers' income tax contributions, contributions to pension, other HR management perks and benefits, as much as it is about redundancy costs or the ease to get rid of employees in order to adjust to the fluctuating market forces controlling the demand for labour; and iii) the definition and regulation of pay and occupational social security schemes are subject to national laws, institutions and practices. In practice, it is still farfetched for establishments especially business enterprises, in view of employment practices in this regard, to treat their non-employees (temporary agency and dependent workers) equally as they would treat them if they were their employees, in the absence of significant law and institutional reforms.

If the user undertakings do, then the policy objective for flexibility policies would be jettisoned, for temporary agency workers may, from a long term planning perspective, become more expensive to hire than giving workers direct employment in the user undertaking. For example, equal treatment entails that user undertakings which have active HRM policies, perks that motivate their workers or induce their loyalty, and other non-financial but costed benefits given to employees, be extended to temporary agency (and dependent) workers, equally. In terms of the technical dissimilarity of their OSH legal regulations for temporary agency workers, the principle of equal treatment remains utopian within the two regimes post-Brexit. One thing is clear though. The EU has political and legal commitments to the principle of equal treatment, and thus far the UK does not have such commitments in law, and even though it proclaims concerns for exploited workers politically, it has not yet embedded such political proclamations into law. We posit therefore that there are post-Brexit legal threats to the basic working and employment protections of low-income temporary agency and dependent workers in the UK, in view of the technical differences between the current (EU and UK) regimes set up to protect these workers.

Brexit Economic Effect on Basic Working and Employment Conditions in the UK

The decision of the UK to withdraw from the EU, the EU's Single Market, the EU's Customs Union and the jurisdiction of the ECJ, pose significant economic

implications for the country.[82] There are several studies by reputable institutions outlining the economic consequences of UK's decision to withdraw from the EU, such as projections by the UK Institute of Fiscal Studies,[83] the Centre for Economic Performance at London School of Economics,[84] the IMF,[85] the OECD,[86] the Bank of England (BoE),[87] the Boston Consulting Group (BCG),[88] the UK HM Treasury,[89] Minford,[90] the Oxford Economics,[91] the Confederation of British Industry,[92] the British Chambers of Commerce (BCC),[93] and many other projections. We do not need to recount all these post-Brexit economic projections again here, but rather, will consider some of the overall macro- and microeconomic impacts of a negative economic performance scenario post-Brexit, compared to the pre-Brexit economic performance status of the UK. There are two reasons why we consider selected accounts of post-Brexit economic projections from a stack of economic projections: i) to focus on elements we regard as strong drivers of labour market flexibility policies; and ii) to highlight the point that despite theoretical possibilities of the UK emerging economically better off post-Brexit, it is highly unlikely that the UK can more profitably find and tap into trading and economic markets that are nearly as big and rich as the EU's Single Market. In other words, it is highly unlikely that the UK will become macroeconomically richer than it was pre-Brexit, maintain competitive advantage in the global trade market, while at the same time maintaining safety and health standards equivalent to working standards envisaged in EU law for all workers – including low-income temporary agency and dependent workers.[94]

Therefore, we depart on the premise that post-Brexit economic conditions where the overall microeconomic conditions of the consumer is negative, decreases the prospect of life satisfaction and wellbeing for the lowest bracket of the UK labour force (low-income temporary agency and dependent workers). To demonstrate this, we narrow our consideration of analyses to two reports concerning the post-Brexit economic performances: i) the June 2017 BoE Report (n 87); and ii) the July 2017 BCG Report (n. 88), commissioned by the Association for Financial Markets in Europe (AFME). From the conclusions drawn by economists and experts in these reports the overall macroeconomic situation in the UK is negative post-Brexit, which means higher pressure on the economic wealth of consumers – that is, greater pressure on the microeconomic performances of workers, business enterprises, and other establishments. This means a significant post-Brexit challenge to the psychosocial wellbeing of low-income workers, for it will test the limits of the current gaps of the principle of equal treatment.[95]

The objective for the BCG Report is namely to seek answers to a serious question: "What will Brexit mean for companies and investors in the EU27 and UK, especially those that now do business across the borders that would soon be created between them?"[96] The BCG attempts to address the far reaching economic implication that UK's decision to leave the EU will cause to businesses, in order to lay bare to policy makers, information about the impact a separation from the EU will have on the real economy. The Financial Policy Committee (FPC) of the BoE has similar purpose and interest regarding the impact of Brexit on the continued seamless

flow of cross border goods and services between the UK and the EU, although its mandate is more formal, and limited to the UK's national financial and economic goals.[97] Since the UK voted to leave the EU on 23 June 2016, there have been some spectacular economic bumps and modest successes in the UK's economy, such as: on the depreciation in the value of the pounds;[98] high inflation and spending freezes;[99] rise in consumer spending (which has now tapered off); fall in the size of foreign direct investment (FDI);[100] fall in unemployment to records never achieved since 1975;[101] rise and fall in manufacturing and exports; and according to the UK Office of National Statistics, a slip into the worst performing advanced economy in the world, behind all G7 and EU countries – in the first quarter of 2017.[102]

The economic assessment of the BoE's FPC identifies the UK's withdrawal from the EU, and the rapid increase in consumer credits, as the two major current risks to the UK financial industry.[103] The BCG Report similarly argues that the UK's withdrawal from the EU (in a worst case scenario) will pose concrete risks to the financial market as it is known today. The BCG Report further argues that a hard Brexit will involve the relocation of huge capitals from London to the EU; a loss of *passport*[104] rights for UK banks will lead to increases in restructuring costs[105] and in the normal running costs of banking both in the EU and the UK.[106]

There are three important macro- and microeconomic outcomes the expert assessments of these Reports indicate: i) legal and political separation of the UK from the EU has impending economic consequences; ii) the impending economic consequences of Brexit have both macro- and microeconomic implications for consumers; and iii) the macro and microeconomic impacts on consumers will include the direct and indirect effects of Brexit on the UK's financial stability. This is a bad news for two classes of consumers: i) all low-income UK workers dependent solely on the disposable income they earn from work; and ii) business enterprises and establishments, which will be pulled back economically, by a contracted access to the EU's rich trading markets, and low-spending power. There are of course other costs associated with the contraction of access to EU's wealthy markets, such as the fact that, UK enterprises that still maintain trading opportunities in the EU will face increased administrative costs due to increase in tariffs for goods and services; increase in labour cost, due to a freeze in labour mobility across EU–UK borders; and higher costs of banking credits for certain kinds of transactions. These events will test the efficiency and effectiveness of the British labour market flexibility model, since we tend to hear the loudest chorus of regulatory burdens, on deregulation or about self-regulation during times of economic regression, when of course we tend to as well hear much vocal echoes and whistles of injured, anguishing and sick workers. Based upon all assessments made by many economic experts, a UK withdrawal from the EU's Single Market and Customs Union poses a threat of economic contraction in the UK, and a contracted UK economy would lead to a drop in the overall standard of living of UK workers, particularly workers in the lowest income bracket.

Brexit Political Effect on Basic Working and Employment Conditions in the UK

Due to the bipolar position of labour and employers on labour market regulations in times of economic downturn, the UK government is expected to be compelled to intervene with suitable post-Brexit fiscal and monetary policy measures, after the UK withdraws from the EU. In this regard it is argued that the success of the current UK labour market flexibility policy model will be put to test, as already signalled in the contrasting official reactions of the UK Labour Party and the Trade Union Congress (TUC) to the *Taylor's Review* of Modern Work Practices in the UK.[107] The withdrawal of the UK from the EU is an outcome of a political decision by the UK government, formalised through a UK political referendum in June 2016. It is the political aspect of Brexit that crystalized the legal and the economic threats that the withdrawal from the EU poses to current occupational safety and health standards – the basic working and employment conditions of low-income UK labour market outsider workers.

One of the most significant sources of the post-Brexit political threats to the equal employment protection right of this class of workers is the threat of legal and political divergence from the EU. The threat of legal divergence has been clear from the onset: the UK will no longer be bound by EU law, and it intends to abdicate the jurisdiction of the ECJ. An indicative sign of political divergence comes in the form of a political language that has so far almost gone unnoticed. The *We and They*[108] references in the political language of communication or debate in the media and the political language of the ruling UK political establishment in the negotiation for UK's withdrawal from the EU. The basis for this form of political articulation helps build a fertile nursery for the growth of political differentiation from the EU's political philosophy for labour market regulation, particularly the notion of blending flexibility policies with social security guarantees. The UK's political ambition of building a new identity in the world for itself, which is what a withdrawal from the EU entails in the context of Brexit, is a further indicator of the advent of political differentiation in policy values because, Brexit represents a departure from the status quo – UK's membership in the EU, and the obligation of loyalty to EU laws and values.[109] The advent of political differentiation of policy values is evident in the impasse between the EU and the UK since the start of the current divorce negotiation for UK's withdrawal, manned respectively by Michel Barnier (Chief Negotiator for the EU) and David Davis (Chief Negotiator for the UK).

There are also some indications for the advent of political differentiation (regulatory divergence) in the UK in the Theresa May's Lancaster House Speech on 17 January 2017. The first indication was her declaration that many British people feel that the UK's membership of the EU came at the expense of Britain's global ties and free trade ambitions. She added that "Our political traditions are different. Unlike other European countries, we have no written constitution, but the principle of Parliamentary Sovereignty is the basis of our unwritten – constitutional settlement…And, while I know Britain might at times have been seen as an awkward member state, the European Union has struggled to deal with the diversity of its

member countries and their interests. It bends towards uniformity, not flexibility."[110] Two elements of the political separation that Brexit occasions are worthy of notice: i) political questions regarding the working and employments terms of low-income UK workers, and ii) the issues about trade and economic policies that make the UK attractive for foreign investments, and an anchor port for non-EU companies who want to trade in the EU. Those two elements of the UK's political separation concern basic working and employment conditions, and are included in the Lancaster Speech of the UK Prime Minister. The first is the pledge to protect workers' rights. The Prime Minister stated that she wants to build a fairer Britain so that the UK can become a true promoter of the rights of working people. "Indeed, under my leadership, not only will the Government protect the rights of workers set out in European legislation. We will build on them. Because under this Conservative Government, we will make sure that legal protection for workers keeps pace with the changing labour market – and the voices of workers are heard by the boards of publicly-listed companies for the first time." The second concerns a new industrial strategy which the UK is developing, and the ambition to expand the UK's network of trading ties beyond its current scope.[111]

The second indicator of the advent of political differentiation of values concerns the *Taylor Review* on the UK's labour market flexibility policy, described by the *Taylor Review* as the British model of market flexibility.[112] The *Review* is important to our interest in the claim of political differentiation for i) the UK opted for derogation from the core political commitment of the EU's labour market flexibility model, in regard to the EU Directive 2008/104/EC. By this I mean the EU's social and employment protection objectives as embedded in the Charter of Fundamental Rights of the EU; and ii) the EU's social objective for regulating its internal market entails that its labour market flexibility policy model has two wings: flexibility, and social protection (security). We look briefly at this *Review* not in terms of the political character of its methods of investigation and conclusions, but rather, in view of the political significance of its Recommendations.

The *Taylor Review* was a study that examined future challenges of the British labour market such as demographic changes in the population of the UK, the accelerating trends of automation, and the emergence of new business models. It commenced on the vision to make all work in the UK decent and fair for people engaging in them. The *Taylor Review* made three key achievements which are of political significance for the class of low-income workers we review. First, the work of the *Review* was built on empirical investigations about segments of the UK's labour market, and draws from the perspectives of a wide array of labour market stakeholders. On this point, the *Review* was arguably open-minded, but at the same time apparently attempted to appeal to the political and economic desires of labour market actors at different points of the political spectrum.

Second, it shines a new light to the UK's current economic policy priority, namely, the introduction of measures and policies that create quality jobs, and not just numerous jobs. At the same time, it also acknowledged holes in current British

labour market flexibility model, such as the regulatory shortfalls that afford UK profit-only-driven business models the opportunities to impose poor working practices on *outsider workers* in the UK. The *Review* highlights the asymmetry of power in the employment relationships between UK business owners and UK low-income temporary agency and dependent workers. It made recommendations that should tackle the exploitation of misclassified dependent workers in the UK's gig economy, through special labour law reforms. This category of misclassified workers would encapsulate bicycle couriers, a class that was made one of the central subjects of this paper (the other being temporary agency workers). If the Recommendation of the *Taylor Review* were to be implemented by the UK government, bicycle couriers working for crowd-working platforms may be legally considered as workers, opening doors for them to formally enjoy certain working and employment protections granted to all workers in UK law.

Third, the *Review* offers a persuasive argument about the (pre-Brexit) macroeconomic benefits of the British flexibility policy model to the UK's economy. The British labour market flexibility model benefits the UK's economy in many ways: i) it is often touted by businesses and policy makers as a useful tool for creating jobs in the labour market; ii) it gives UK based businesses competitive advantages in international trade, and a wider profit margin on business investment, for it allows for the ability of businesses to reduce labour costs such as NIC, employers' income tax contribution, and the further costs of managing employees; and iii) it is an attractive labour market for starting businesses, so it helps the UK economy maintain a lucrative FDI turnover.

Despite the robust energy that the UK labour market flexibility model brings to its economy, the type of legal and economic changes that the UK's departure from the EU create will certainly occasion post Brexit political problems about the UK's labour market. The legal and economic changes about the withdrawal from the EU create political problems for a number of reasons: i) the most recent review of the British flexibility model for its labour market, just as is evident in the *Taylor Review*, provides macroeconomic benefits for the UK economy, but not microeconomic benefits for some of the cohort of workers responsible for its engine of success; ii) as is evident in the *Taylor Review*, the push by the UK government for high quality jobs as well as high quantity jobs is a work-in-progress. The UK labour market is a bit away from the threshold of significant policy and practice changes which are required to keep the ball rolling in terms of maintaining an economy with lots of high quality lower paid jobs; and iii) the economic performance of the UK's labour market flexibility model owes a lot of credit to UK's membership in the EU's Single Market and Customs Union. It is enough economic threats now that the UK will soon no longer be part of that lucrative trading and political alliance, because the fate of the UK's international trade and FDI turnover is at best uncertain outside the alliance, and at worst the already predicated negative economic consequences of a withdrawal. For these three reasons, it is posited that there are political impacts of Brexit that pose threats to the basic working and employment entitlements of

low-income temporary agency and dependent workers, and the policy measures that the UK government seeks to implement for this class of workers post-Brexit.

4. Conclusion: The Anonymity of Preventable Occupational Diseases, Injuries and Deaths

We saw in the Introduction that the type of working terms offered to workers depends on the employment relationship that those workers have with their employers, and that low-income temporary agency and dependent workers have weaker labour law protections than employees in UK law. But to examine whether the working conditions are good or bad for the chosen class of workers, it was imperative to first, place identities to the legal statuses of these low-income temporary and dependent workers in UK employment law. It is through the determination of the legal identifies of the low-income workers, that we can decipher the nature of their employment relationships or contracts, the nature of legal obligations imposed upon their employers by the law, the importance of the medical service support offered to workers by their employed establishments and the psychosocial welfare impact of the incentives or perks offered by employers to reward the loyalty of workers to their employed establishments. The absence of adequate rules of employment law in UK law, as they currently function to regulate employment transactions involving this class of workers, implies that there are occupational risks to their physical and mental wellbeing at work.

In Part 2 we reviewed recent empirical studies of poor working practices by some UK enterprises such as Sports Direct and Deliveroo UK. The study undertaken by the UK government in this regard acknowledge that the flexibility options established to help enhance the functioning of UK's internal labour market are abused by some enterprises chiefly due to the imbalance of power that marks the employment relationship between employers and low-income workers. Even though that the UK's economy has overall performed well partly thanks to its labour market policy model, we saw in Part 3 legal, economic and political threats that the decision to leave the EU's Single Market and Customs Union pose to measures that ensure that low-income temporary agency and dependent workers receive basic working and employment protections like other employees within the establishments where they work.

The UK has arguably implemented its current obligations under the EU Directive 2008/104/EC, and seeks now to implement policies that will offer commensurate employment protections to dependent workers, albeit with some blemishes: i) it has a national enabling legislation for that Directive, the UK Agency Workers Regulations 2010, but it also opted for a derogation from the commitments the EU makes to fulfil the social objectives of the Charter of Fundamental Rights of the EU subject to Article 137 of the Treaty for the establishment of the EU; ii) the UK social security law makes provisions that purport to offer a universal safety net for all employed workers in the event of occupational accident or diseases. Although the Employers' Liability (Compulsory Insurance) Act does not cover all temporary

agency and dependent workers in practice, the UK Social Security and Benefits Act offers accident and sickness insurance to all employees and employed earners.[113] This seemingly precludes all dependent workers (self-employed workers classified as such by their employers); iii) the UK employment law regime offers a flexible regulatory mechanism which allows for the possibility to include new classes of employed persons as "workers," theoretically (an easy way to make continuous or needed regulatory improvements);[114] and iv) there are no clear legal rules currently in the UK regulating the working conditions and entitlements of low-income dependent workers (bicycle couriers). However, the *Taylor Review* proposes law reforms to fill that gap.

Regardless of the eventual political and economic outcomes of the UK's decision to withdraw from the EU, the post-Brexit legal threats to basic working and employment conditions of low-income UK temporary agency and dependent workers remains an inseparable aspect of UK's departure from the EU. We look at the essential elements of the legal threats to pre-Brexit basic working and employment conditions in their technical guises, to draw conclusions on whether they have any ramifications for preventable occupational risks injuries and deaths to these low-income precarious workers whose working and employment conditions we examine. The principle of equal treatment is central to the EU Directive 2008/104/EC. The principle is not replicated in UK law for low-income temporary agency workers but a conclusive determination of the post-Brexit threats to the quality of employment protections for low-income workers requires that we re-examine the technical dissimilarities in rules embedded in the relevant EU and UK laws. This is a useful way to draw conclusions on the discourse.

The technical rule of equal treatment, what we accepted earlier as the principle of equivalent employment standards, lies in the failure of the principle itself, its inability to engineer equal treatment of temporary agency and dependent workers, like regular employees are treated in practice. The UK Agency Workers Regulations 2010 implements the legal requirement for the principle of equal treatment of workers enshrined under Article 5 of Directive 2008/104/EC.[115] The Directive aims to guarantee equality for temporary agency workers to exercise the right to basic working and employment conditions as employees within the establishments where they work. But at the same time the Directive recognises that this objective is subject to the principle of subsidiarity which allows EU Member States to define pay, and subject to Article 5 (4) of Directive 2008/104/EC, to determine whether their national occupational social security schemes or financial participation schemes are included in the basic working and employment entitlements of temporary agency workers pursuant to Article 5 (1) of the Directive.

Although declared through provisions mandating treatment of temporary agency workers in ways comparable to how employees or workers are treated in applicable cases, UK regulations for temporary agency (and dependent) workers do not envisage "equal treatment" for this class of low-income workers. While the UK Agency Workers Regulations defines pay – Regulation 6 (2), and specifies what are included

in the terms and conditions of employment – Regulation 6 (1), some perks and employment terms are off-limits for temporary agency workers – Regulation 6 (3). The notion of "the principle of equal treatment," which is the title given to Article 5 of Directive 2008/104/EC is not replicated in the UK Regulation. The UK Regulation does however mandate what befits the principle of equivalent employment entitlement – for UK temporary agency workers (and if the *Taylor Review* is fully implemented, that would extend to an unknown number of dependent workers as well).

The Report of a study of 15 EU countries released in 2006 found that overall, temporary agency workers are in practice not treated equally as employees in most of the countries despite the fact the principle of equal treatment was embedded in the laws of most of the countries studied. This lends some support to the similar conclusion which can be drawn for the cases we considered in Part 3 of this paper, about exploitative work practices by some UK enterprises such as Sports Direct, Deliveroo, Amazon and Uber. In view of this evidence, of the precariousness of the basic working and employment entitlements of temporary agency and dependent workers, we conclude that there are inherent practical and legal factors which inhibit the possibilities for equal treatment for this class of workers. The first of the legal-practical impediments is their legal status,[116] and the complex or in some cases vague legal division of liabilities to temporary agency workers, between the hirer (and sometimes sub hirers or subcontractors), and the temporary work agency.[117] In practice, the major practical problem is the ability of temporary agency workers to understand the rules governing the complex structures of assignments controlling their work schedules. This problem also comes down to the capacity of low-income temporary agency workers to accurately calculate their legal qualifying periods for the basic working and employments entitlements, by unpicking the ill-motivated layering patterns of their work schedules. In law, there are separate, parallel, joint and blurred lines of obligations controlling the tasks done by a temporary agency worker, as shown in the provisions of the Regulations just cited.

The second factor is a practical problem linked to the first factor, namely, the practical efficacy of using such vague and complex labour rules to achieve the level of OSH protection envisaged for employees in law. UK Regulation allots the legal responsibility of protecting the physical and mental health of workers to two or more entities making it quite tedious for anyone to systematically map out for example, how discharged and undischarged obligations of the hirer, sub-hirer(s), and temporary work agency(ies) could worsen or improve the mental wellbeing of this worker-group. Regulation 14 (1) imposes the obligations for the basic working and employment conditions on temporary work agency, although factors that expose temporary agency workers to psychosocial risks or mental unwellbeing are sometimes probably controlled by employees of the hirer or sub-hirers, as seen in the case of exploitation of temporary agency workers at Sports Direct. Temporary agency workers can be moved in-between assignments, back and forth within or across establishments or projects, and temporary agency workers are known in some cases to have worked for long periods without being offered permanent contracts – within

their establishments. The recent comparative studies of EU countries on whether the principle of equal treatment applies to temporary agency workers in practice shows that the complex nature of the rules governing this class of workers can be confusing for even hirers and temporary work agencies themselves, which is why the principle is in practice a long way from fulfilment.

The third factor is an overall lack of appreciation by stakeholders, for what is required to actually fulfil the occupational safety and health goals of all workers, while at the same time optimising the productivity potentials of the workers. Current UK rules lack any concrete policy aim and strategy to protect temporary agency workers (in practice) from occupational mental health illnesses. This factor has also both legal and practical dimensions. First, considering the class of workers it seeks to regulate, the UK Agency Workers Regulations is too complex – verbose, with many interlinked provisions. When that is the case, of course the complexity of rules will cause misunderstanding and confusion in practice. This is mostly advantageous for hirers and temporary work agencies in two ways: it creates opportunities for the exploitation of workers who would usually lack a comprehensive understanding of the legal rules; and, even if these workers understand their legal rights, rule complexity masks the liabilities of the multi-actors involved, opening gateways for them to evade liabilities for breach of obligations. The problem highlighted now therefore does not account for the fundamental philosophy of occupational safety and health with respect to its two arms of physical and mental occupational wellbeing.

For temporary agency workers (and dependent workers) to enjoy working and employment conditions (equivalent) equal to treatments given to comparable employees, their employment entitlements must be designed to promote their occupational wellbeing – an element of the notion of occupational safety and health which is crucial in order to enhance mental wellbeing – psychosocial wellbeing. The rule-design should consider the twin pillars of occupational wellbeing – which can succinctly be defined as the full set of endogenous measures established in an establishment to enhance the physical and mental comfort of its human resources. The twin pillars of occupational wellbeing are: i) ergonomics, the physical dimension of occupational wellbeing, seeking to improve and soothe the physical comfort of workers; and ii) psychosocial welfare, the mental dimension of occupational wellbeing, targeting the improvement of the psychological and social aspects of workers' mental comfort. The physical and the mental components of occupational wellbeing are interlocked with one another, so contribute to the fulfilment of each other. This is why it is posited that legal rules and working practices must be integrated to enhance the physical and mental wellbeing of workers.

At Sports Direct, the basic working terms of temporary agency workers are hinged on the legal obligations that the Best Connection Employment Group UK, and Transline Group UK owe pursuant to the Agency Workers Regulations, but we know that the workers affected at Sports Direct were mainly exposed to psychosocial risks, and occupational injuries and diseases, while working under the control of the hirer – Sports Direct. The problems of poor working practices in this case is not

only confined to whether the legal safeguards in their work contracts were breached by the temporary work agencies; but rather, their working condition in the Shirebrooks warehouse and in the sweatshops, how they are integrated into the human resources management (HRM) plan of Sports Direct (if there is one),[118] how they are viewed by permanent employees of Sports Direct, the penalties and punishments meted out to them, the lack of active HRM within Sports Direct which integrates them on comparable terms to those of standard employees, and so on.

The fate of the Deliveroo's bicycle couriers in this regard, lies in what the UK government does about the recommendations of the 2017 *Taylor Review*. There are reasons for concerns about the fate of these yet unprotected bicycle couriers working in UK's gig economy: the uncertainty about their right to sick pay, an accident insurance that can incentivise employers to train them on safety and health aspects of their job, and to encourage the couriers to take care of themselves and other pedestrians while working on the roads. This point provides avenues for market and technology based solutions for the OSH problems of these low-income workers, which would reduce the long-term cost of no protection for the bicycle couriers, their platform employers, and the UK welfare state. For all these reasons, we may conclude that the post-Brexit legal, economic and political threats elicited in this paper will exert tremendous pressure on the means available to ensure equal treatment of all UK workers, once the full process of legal separation is completed in 2019. Moreover, the UK will at that stage be fully free to depart from the spirit of the Charter of Fundamental Rights of the EU.[119]

I attended the third labour law research network conference in the University of Toronto, Canada, in June 2017, and during a stroll in downtown Toronto, I accidently came across a very striking statue of a worker with his full PPE[120] on working with a chisel and hammer while sitting on genuflected posture, at the 100 Workers Monument in Simcoe Park Toronto. The 100 Workers Monument is a millennium project about prevention, commissioned by the Workplace Safety and Insurance Board (WSIB) of Ontario, and the worker's statue beside it has an inscription which reads "the anonymity of prevention." That Monument reminds me of what I am going to say now on the anonymity of occupational accidents and diseases that have not yet occurred to any low-income UK workers. The situation for temporary agency and dependent workers under the current UK law is such that, a combination of the threat factors elicited already, especially the economic one, keep effective legal reforms (a simple and well-designed regulation which meets the threshold for the EU principle of equal treatment)[121] and preventative measures (such as the imposition of compulsory accident insurance on all employers of bicycle couriers) off the table of UK policy makers. Under post-Brexit conditions as surmised, we hereby also point out that these low-income workers are held hostages to the anonymity of preventable occupational harms in their work spheres, by the currently inefficient labour regulations in force. This is simply a case of looming occupational accidents, diseases and deaths with no names of workers associated to them, because they have not yet occurred.

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NOTES AND REFERENCES

1. User undertakings include business enterprises, non-profit enterprises, government bodies, self-employed individuals and any private or public establishment that procures the services or labour of individuals '"user undertaking' means any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily" (Article 3 EU Directive 2008/104/EC on Temporary Agency Work 19 November 2008).

2. Studies about the working conditions of temporary agency workers are limited and problematic because first, the regulation of this form of employment is a recent development introduced to address the appetite for flexibility within the EU labour market. Second, the notion of temporary agency work has different meanings in different EU countries. There is also a proliferation of practices for temporary agency work both within and beyond any given country, which also means there are multiple employment practices for these varieties of temporary agency forms. Third and most importantly, EU Directive conceived a regulation for "temporary agency work," that is, short-term (temporary) agency work; whereas the UK Regulation which implements the EU Directive conceived a Regulation which applies to "agency work," namely, short-term (temporary) and permanent agency work

3. "Worker (or 'Dependent Contractor' as we suggest renaming it) status should be clearer about how to distinguish workers from those who are legitimately self-employed" (p. 9), *Good Work: The Taylor Review of Modern Working Practices*, (hereinafter *The Taylor Review*) July 2017, commissioned by the UK Department of Business Energy and Industrial Strategy on 30 November 2016; The so-called intermediate category identity for workers, that is, "dependent contractors" has been a tool for the regulation of employment relations for over four decades. For an insight into the etymology of the term "dependent contractors" in labour regulation, and comparative lessons from past regulations for this intermediate worker category see: Miriam A. Cherry and Antonio Aloisi (2017), '"Dependent Contractors" in the Gig Economy: A Comparative Approach," *American University Law Review* 66: 635–689; Harry W. Arthurs (1965), "The Dependent Contractor: A Study of the Legal Problems of Countervailing Power," *University of Toronto Law Journal* 16: 89–117.

4. See Regulations 5 and 6 of the UK Agency Workers Regulations 2010; Occupational social security scheme can be included in the basic working and employment conditions mandated for protecting temporary agency workers from occupational harm pursuant to Article 5 (4) of EU Directive 2008/104/EC

5. See Section 2 (1) of the Employers' Liability (Compulsory Insurance) Act 1969, 22 October 1969.

6. Section 1 (1) Employers' Liability Act 1969, ibid.

7. See AXA General Insurance Ltd & others v The Lord Advocate & others [2011] UKSC 46.

8. See Walter et al. (2003).

9. See Section 69 of the Enterprise and Regulatory Reform Act 2013. There are certain exceptions to the rule in Section 69, such as in regard to pregnant women, female workers

who have recently given birth or are breastfeeding, and unless a right to civil liability against an employer is authorised through by a health and safety regulation, through the powers bestowed on the Secretary of State. See Section 20 (7) of the Enterprise and Regulatory Reform Act 2013, and Regulation 2 of the Health and Safety at Work etc Act 1974 (Civil Liability) (Exceptions) Regulations 2013 No 4232. In practice, Section 69 removes the right of employees to enforce any action regarding mental health problems, against their employers.

10. Low-income temporary agency workers were never granted any right to bring civil liability claims against user undertaking in UK law since the adoption of Council Directive 91/383/EEC. See for example the legal provisions that exclude access to civil liability claims against user undertakings in Regulation 2 of the Management of Health and Safety (Amendment) Regulations 2006 No 438, Regulation 15 of the Management of Health and Safety at Work Regulations 1992; See also Regulation 6 (3) UK Temporary Agency Workers Regulations 2010 No 93.

11. The UK government enjoys some macroeconomic benefits such as boost in foreign direct investment and competitive market advantage that its labour market flexibility policy provides to all business enterprises, including sadly, some profit-only driven enterprises.

12. "HM Revenue and Customs (HMRC) estimates that the effective NICs annual subsidy to the self-employed relative to the employed exceeds the value of their reduced benefit entitlement by £5.1 billion" (p. 5), House of Commons Work and Pensions Committee, Self-employment and the Gig Economy, 13 Report of Session 2016–2017, HC847, 1 May 2017.

13. "These Regulations shall not have effect in relation to employment under a fixed term contract where the employee is an agency worker." Section 19 (1) The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, adopted for the implementation of EU Directive 99/70/EC.

14. Under the EU Directive 2008/104/EC, Member States are not authorised to exclude workers, contract of employment or employment relationship as defined in their national employment law, from their national occupational social security scheme, solely because they are part-time workers, fixed-term workers or temporary agency workers. See Article 3 (2) of Directive 2008/104/EC on Temporary Agency Work.

15. *Dependent* here is used in regard to the conditions formally proposed as means to determine whether a worker is self-employed, that is, an autonomous labour market operator; or whether the worker is dependent on the controlling powers of the employer for the work. '"Worker' includes an individual who is not a worker as defined by section 230 (3) but who (a) works or worked for a person in circumstances in which i) he is or was introduced or supplied to do the work by a third person, and ii) the terms on which he is or was engaged to do the work are or were in practice substantially determined not by him but by the person for whom he works or worked, by the third person or by both of them…." See Section 43K (1) (a) & (b) UK Employment Rights Act 1996 (as amended).

16. "In addition, black and ethnic minority workers and immigrants who have arrived after 2003 (both from new EU member states and 'rest of world') are more likely to be found in temporary agency work." Johnny Runge et al., *Use of Agency Workers in the Public Sector* (National Institute of Economic and Social Statistics, 2017), paragraph 10.1, p. 109, see https://www.niesr.ac.uk/sites/default/files/publications/NIESR_agency_working_report_final.pdf accessed 18 September 2017

17. "Less than seven in ten gig economy respondents (68%) describe themselves as white British compared with 85% of the other worker sample…There are also significantly

higher proportion of gig workers who describe themselves as either Indian or black African compared with the sample of other workers." *The Taylor Review*, 2017, p. 94.

18. "The UK's flexible labour market has been an invaluable strength of our economy, underpinning job creation, business investment, and our competitiveness…." CBI submission to *The Taylor Review*, 2017, p. 14 (n. 3).

19. See Regulation 6 (3) & (4) of the UK Agency Workers Regulations 2010.

20. Paragraph 14 Preamble and articles 5 (1) & 7 (2) of the EU Directive 2008/104/EC.

21. See 3(1) (f) of the EU Directive 2008/104/EC.

22. "The Principle of equal treatment": Articles 5 (1), 7 (2) and 9 (2) Directive 2008/104/EC; Regulation 5 (1) the UK Agency Workers Regulations 2010.

23. Paragraph 10 Preamble to Directive 2008/104/EC.

24. Article 3 (2) Directive 2008/104/EC.

25. Article 5 (4) Directive 2008/104/EC.

26. Article 5 (4) Directive 2008/104/EC; Regulation 7 (1) the UK Agency Workers Regulations 2010; Sections 198 and 1 (4) (d) UK Employment Rights Act 1996.

27. Article 6 (4) Directive 2008/104/EC.

28. See Article 2 (1) Council Directive 86/378/EEC on the Implementation of the Principle of Equal Treatment for Men and Women in Occupational Social Security Schemes 24 July 1986.

29. Article 5 (4) Directive 2008/104/EC.

30. See Article 4 Directive 86/378/EEC.

31. Occupational social security scheme is defined as "schemes not governed by Directive 79/7/EEC whose purpose is to provide workers, whether employees or self-employed, in an undertaking or group of undertakings, area of economic activity or occupational sector or group of such sectors with benefits intended to supplement the benefits provided by statutory social security schemes or replace them, whether membership of such schemes is compulsory or optional." Article 2 (1) Council Directive 86/378/EEC (n 28).

32. See *The Employment and Support Allowance Regulations*, 27 March 2008.

33. Article 137 (2) (a) of the Treaty establishing the EU; This paragraph accepts that the EU can take measures regarding basic working and employment conditions, excluding any harmonisation of the laws and regulations of the Member States. This position implies that i) the EU allows Member States on their own to close the differences in their laws and regulations in this area of regulation, having regard to the overarching goal of attaining the fundamental social rights entrenched in the 1961 European Social Charter and the 1989 EU Charter of the Fundamental Social Rights of Workers; and ii) the EU principle of equal treatment on basic working and employment conditions is a mere political aspiration rather than a firm legal condition. See Articles 3 (2) and 5 (4) of Directive 2008/104/EC.

34. Paragraph 23 Preamble to the Directive 2008/104/EC.

35. "In 2016, 15 million working days were lost due to stress, anxiety and depression." *The Taylor Review*, 2017, p. 11 (n. 3).

36. *Work and Pension Committee Report on the Self-employment and the Gig Economy*, 2017, paragraph 1, p. 4 (n. 12).

37. EMP07: Temporary Employees, UK ONS, at https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/temporaryemployeesemp07, accessed on 23 August 2017.

38. See Roger Blitz (2016), "UK Employment: UK to Have 1m Agency Workers by 2020," *Financial Times*, 5 December, at https://www.ft.com/content/ff371b92-ba32-11e6-8b45-b8b81dd5d080, accessed on 23 August 2017; *Self-employment and the Gig Economy*,

2016 – 17, p. 4 (n. 12); "Temporary workers, who include temporary agency workers, account for around 1.6 million of the total number of UK employees." *The Taylor Review*, 2017, p. 24 (n. 3).

39. "The apparent freedom companies enjoy to deny workers the rights that come with employee or worker status fails to protect workers from exploitation and poor working conditions. It also leads to substantial tax losses to the public purse, and potentially increases the strain on the welfare state." *Work and Pension Committee Report on the Self-employment and the Gig Economy*, 2017, para 21, p. 14, (n. 12).

40. Regulation 2 of the UK Agency Workers Regulations 2010 states that: '"worker' means an individual who is not an agency worker…." According to Regulation 5 thereof: "For the purposes of paragraph (1), the basic working and employment conditions are (a) where A [an agency worker] would have been recruited as an employee…and (b) where A [an agency worker] would have been recruited as a worker…" (my emphasis added in brackets).

41. "…employees (and to a lesser extent 'workers'…) have employment rights to protect them at work. These rights protect workers from hardship and help reduce state welfare costs. The self-employed have no such employment rights, and those paying their wages have no such obligations towards them." *Work and Pension Committee Report on the Self-employment and the Gig Economy*, 2017, para 11, p. 7 (n. 12).

42. Cherry and Aloisi (2017), n. 3.

43. See Aslam & others v Uber Case Nos 2202550/2015 UK Employment Tribunals; Clyde & co LLP and another v Bates van Wilkenhof [2014] UKSC 32.

44. This Report identifies two major challenges that the growing self-employment poses to the UK welfare state: i) the loss of work/employment contributions in the form of national insurance contribution (NIC), because UK law allow self-employed workers to contribute far less NIC compared with other workers; and ii) the practice of employers evading their health and safety obligations, including government policies that incentivises employers to avoid paying certain employment protection costs for the self-employed workers they hire.

45. "Online platform" business belongs to the gig economy – which is also referred to as: on-demand economy, Uber economy, peer-to-peer economy, sharing economy or 1099 economy. See Adrian Todoli-Signes (2017), "The 'Gig Economy': Employee, Self-employed or the Need for a Special Employment Regulation?" *Transfer: European Review of Labour and Research* 32(2): 193–205.

46. House of Commons, Business Innovation and Skills (BIS) Committee, Employment Practices at Sports Direct, Third Report of Session 2016–2017, HC 219.

47. Ibid.

48. See *The Independent*, "Deliveroo Uber and Amazon Accused of Exploiting Workers with 'Unintelligible' Contracts," at http://www.independent.co.uk/news/uk/politics/deliveroo-uber-amazon-gig-economy-workers-exploitation-contracts-mps-accuse-exploitative-a7668971.html, accessed 13 September 2017.

49. This is the low-income dependent workers that inspired the focus on dependent workers in this paper. They lack accident insurance for example, and some of them can be seen around cities in the UK working without helmets. The photo of a bicycle delivery courier in the newspaper report by *The Independent* (n. 48) also shows a Deliveroo courier working without a helmet on. There are otherwise other types of couriers used by the gig economy enterprises, such as truck couriers, car couriers, and motorbike couriers – most of whom are often seen using motorbike helmets.

50. "The Amazon Flex contract for couriers, published by the MPs, contains clauses stating: 'Nothing in this agreement will create any worker or employment relationship between you and Amazon. As an independent contractor, you will not be considered as having the status of an employee of Amazon for any purpose, including contractual rights. You will not make any representation that you have any authority to bind Amazon as an employee, worker agent, partner, or otherwise."' *The Independent*, (n. 48).

51. The UK Parliament's Work and Pension Committee conclude in their Inquiry that: "Whether any of these clauses are legally enforceable is perhaps not the point: the intention appears to be to put people off challenging their status, including going to court, and trying to obtain employment rights that may be due to them." *The Independent*, (n. 48).

52. "The contracts were also criticised by TUC general secretary Frances O'Grady, who said: 'These clauses are not legally enforceable. But they are being used as a scare tactic to stop workers from challenging bad working conditions.'" *The Independent*, (n. 48).

53. Paid employment here means the contractual relationship between the employed delivery courier and a business entity, which involves the payment of agreed hourly wages or sums worked out in a different way to the delivery courier, for the services the courier delivers to, for, or on behalf of the business entity

54. Between 2008 and 2017, there are three well reported bicycle accidents leading to the death of the pedestrians involved: i) In August 2008, Darren Hall a supermarket worker aged 20, rode his bicycle unsafely and hit down an 84-year-old pedestrian Ronald Turner. The accident led to Turner's death 13 days later. See http://news.bbc.co.uk/1/hi/england/dorset/8197430.stm, accessed 29 August 2017, ii) Darryl Gittoes aged 21, rode his defective bicycle (no brakes, a deflated rear tyre, a cracked front tyre and no bell) carelessly on a city street and caused an accident that led to death of Mary Evans aged 73, who died in the hospital nine days after she was hit down by Gittoes. See http://www.bbc.co.uk/news/uk-england-hereford-worcester-33236920 accessed 29 August 2017, and iii) In February 2016, Charlie Allison aged 20 rode a fixed wheel bicycle on Old Street Shoreditch in East London. He hit a 44 year old HR Consultant Kim Briggs down while she was returning to her office from a lunch break. She suffered head injuries and died one week later in the hospital. See http://www.bbc.co.uk/news/uk-england-41028321, accessed 29 August 2017. Although these reported accident cases are not yet about bicycle delivery couriers, and also not about occupational injuries caused to them on the job, they go to show that there are real occupational risks to employed bicycle delivery couriers while they travel around on the roads, as well as a general risk of injuries or death to members of the public

55. *Employment Practices at Sports Direct*, *2016–2017*, (n. 46).

56. "The way the business model at Sports Direct is operated, in both the warehouse at Shirebrook and in the shops across the country, involves treating workers as commodities rather than as human beings with rights, responsibilities and aspirations. The low-cost products for customers, and the profits generated for the stakeholders, come at the cost of maintaining contractual terms and working conditions which fall way below acceptable standards in a modern, civilised economy. There is a risk that this model – which has proved successful for Mr Ashley – will become the norm. We will be considering the full implications of this business model in the context of our broader inquiry into the labour market." *Employment Practices at Sports Direct*, *2016–2017*, para 34, p. 12, (n. 46).

57. *Employment Practices at Sports Direct 2016 – 2017*, para 2, p. 4, (n. 46).

58. Ibid.

59. "Steve Turner told us about the large number and extent of RIDDOR cases at Shirebrook, citing over 80 statutory incidents reported to the local authority, which required

workers to be off work for over seven days." *Employment Practices at Sports Direct, 2016–2017*, para 59, p. 19, (n. 46).

60. *Employment Practices at Sports Direct, 2016–2017*, para 3, p. 4, (n. 46).

61. Information from the Freedom of Information request of Unite the Union (Unite) to the Bolsover District Council show that: "There were 115 incidents from 1 January 2010 to 19 April 2016, including an amputation of a finger, a fractured neck, a crushed hand, and hand, wrist, back and head injuries. Twelve of the incidents were listed as 'major' injuries, with 79 injuries leading to absences from work of over seven days." *Employment Practices at Sports Direct 2016–2017*, para 58, p. 19, (n. 46).

62. Information from a Freedom of Information request made by Unite, to the East Midland Ambulance Service show that: "A total of 110 ambulances or paramedic cars were dispatched to the Shirebrook warehouse's postcode between 1 January 2013 and 19 April 2016 with 50 cases classified as 'life-threatening,' including chest pain, breathing problems, convulsions, fitting and strokes, and five calls from women suffering pregnancy difficulties, including one woman who gave birth in the toilet in the warehouse." *Employment Practices at Sports Direct, 2016–2017*, para 57, p. 19, (n. 46).

63. "Some occupational diseases and disorders develop with time and exposure to risk factors. One issue for temporary workers is that potential health problems linked to a specific job can develop long after their contract has ended, making it more difficult in terms of recognition and compensation." European Parliament Directorate General for Internal Policies, "Occupational Health and Safety Risks for the Most Vulnerable Workers," European Parliament, July 2011, p. 14.

64. See Labour Asociados Consultores (2006), *Study to Analyse the Practical Implementation of National Legislation of Safety and Health at Work*, Final Report, available at http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=200, accessed 03 September 2017.

65. "The United Kingdom's withdrawal from the European Union has the potential to affect the economy through supply, demand and exchange rate channels…In some scenarios, heightened uncertainty could also reinforce the existing risk of a fall in appetite of foreign investors for UK assets." Bank of England, *Financial Stability Report*, June 2017, Issue 41.

66. "The European Communities Act 1972 is repealed on exit day." Section 1, European Union (Withdrawal) Bill, 2017–19.

67. "The principle of the supremacy of EU law does not apply to any enactment or rule of law passed or made on or after exit date." Section 5 (1) European Union (Withdrawal) Bill, 2017–19.

68. Sections 2 & 3, European Union (Withdrawal) Bill, 2017–19.

69. Section 7(1), European Union (Withdrawal) Bill, 2017–19.

70. Paragraph 11, Preamble to Directive 2008/104/EC.

71. Paragraphs 2 & 8, Preamble to Directive 2008/104/EC.

72. The EU Council may adopt measures that encourage the realisation of the labour and social rights guaranteed in the Treaty, excluding "any harmonisation of the laws and regulations of the Member States." See Article 137 (2) (a), and also (b) of the Treaty establishing the EU. The technical differences further point to the justification for the divergence in the conceptions of the rule for temporary agency work.

73. Permanent contracts (permanent agency workers) are excluded from the dictates of Directive 2008/104/EC, in view of Paragraph 15 of its Preamble.

74. This title also indicates that the Directive seeks to regulate the relationship between the temporary agency worker, the user undertaking and the temporary work agency.

75. Regulation 3 (1) (a), The Agency Workers Regulations 2010, No 93.

76. Regulations 3 (1) (b) and 10 (1) (a), The Agency Workers Regulations 2010, No 93.

77. This title also suggests that the focus of the Regulation is primarily on the agency workers.

78. See Paragraph 1 Preamble Directive 2008/104/EC; Articles 136, 137 (1) (a) (b) (c), 137 (2) and 140 of the Consolidated version of the Treaty on European Union and of the Treaty Establishing the European Union 2002/C 325/01; Articles 31, 34 and 35 of the Charter of Fundamental Rights of the European Union 2000/C 364/01.

79. See Articles 1 & 2 of the Protocol No 30 on the Application of the Charter of Fundamental Rights of the European Union to Poland and the UK 09 May 2008. "The Secretary of State agreed that it was the current legal position that the Charter did not create new EU fundamental rights but consolidated existing EU and non EU obligations in a more prominent form…The Charter applied 'in the law of the UK' where 'EU law is applied in the British courts' but not 'in UK law,'" House of Commons European Scrutiny Committee, *The Application of the EU Charter of Fundamental Rights in the UK: A State of Confusion*, 43 Report of Session 2013 – 14 HC 979, 2 April 2014, paragraph 110, p. 39.

80. We further justify our consideration of temporary agency and dependent workers together, because: i) both are usually employed, indirectly or directly, by a hirer who is not in practice prepared to regard them as his employees; ii) both are in principle employed to work temporary in an establishment where the hirer goes along the understanding that the legal obligations an employer would owe them are shouldered by someone else; iii) asides technically worded legal contracts signed for their work, both are usually in practice, employed to work in or for an establishment operated or controlled by a hirer iv) EU OSH law envisage for both temporary and self-employed workers, employment protection *equal* to that of employees; and v) Based upon the *Taylor Review of Modern Working Practices* published in July 2017, the UK government is considering the possibility of adopting a labour market policy that considers many low-income self-employed (dependent) workers, as simply, dependent workers, so that they can enjoy due workers' rights.

81. UK social security and accident insurance law provide employment protection guarantees for drivers and transportation employees during the course of their employment services, and in their working environments. Cf. Sections 94 (1), 98 and 99 of the UK Social Security Contributions and Benefits Act 1992.

82. "The costs and benefits of the UK leaving the EU are complex. Losses due to trade alone could be very substantial. Even under very optimistic assumptions, the sum of the static and dynamic trade losses would be almost 2.2% of GDP. More pessimistic calculations would lead to a long-term loss of almost a tenth of national income. The dream of splendid isolation may turn out to be a very costly one indeed." Gianmarco Ottaviano et al. (2014), "Brexit of Fixit? The Trade and Welfare Effects of Leaving the European Union," Centre for Economic Performance, LSE, May 2014, p. 5.

83. See Carl Emmerson et al. (2016), "Brexit and the UK's Public Finances," Institute for Fiscal Studies, May, IFS Report 116.

84. See the Brexit Analysis Series of the Centre for Economic Performance at the London School of Economics.

85. "The growth forecast has also been revised down for the United Kingdom for 2017 on weaker-than-expected activity in the first quarter." IMF World Economic Outlook Update, July 2017, at https://www.imf.org/en/Publications/WEO/Issues/2017/07/07/world-economic-outlook-update-july-2017, accessed 14 September 2017.

86. See United Kingdom – Economic Forecast Summary (June 2017), at http://www.oecd.org/eco/outlook/united-kingdom-economic-forecast-summary.htm accessed 14 September 2017.

87. Bank of England, *Financial Stability Report*, June 2017, Issue 41.

88. The Boston Consulting Group (2017), "Bridging to Brexit: Insights from European SMEs, Corporates and Investors," July.

89. See *HM Treasury Analysis: The Long Term Economic Impact of EU Membership and the Alternatives*, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517154/treasury_analysis_economic_impact_of_eu_membership_print.pdf, accessed 14 September 2017

90. "A 'hard' Brexit is 'economically much superior to soft,'" argues Prof. Patrick Minford, lead author of a report from Economists for Free Trade. "Hard" Brexit offers "£135bn annual boost" to economy, at http://www.bbc.co.uk/news/business-40972776, accessed 14 September 2017.

91. "Scenarios in which the UK fails to agree some type of preferential trading arrangement with the EU lead to, on average, inferior economic outcomes. This comes despite the enhanced regulatory and fiscal freedom associated with this option." *Assessing the Economic Implication of Brexit: Executive Summary*, at http://eagni.com/wp-content/uploads/2016/03/Assessing-the-Implications-of-Brexit-Executive-Summary.pdf, accessed 14 September 2017.

92. "We estimate that total UK GDP in 2020 could be between around 3% and 5.5% lower under the FTA and WTO scenarios respectively than if the UK remains in the EU." *Leaving the EU: Implications for the UK Economy*, PwC March 2016, at http://www.cbi.org.uk/news/leaving-eu-would-cause-a-serious-shock-to-uk-economy-new-pwc-analysis/leaving-the-eu-implications-for-the-uk-economy/, accessed 14 September 2017.

93. "The BCC has slightly upgraded its UK growth forecast for 2017 from 1.5% to 1.6%, but downgraded its growth expectations for 2018 and 2019 from 1.3% to 1.2%, and 1.5% to 1.4% respectively. UK GDP growth of 0.4% is expected in Q3 2017. The BCC has slightly upgraded its forecast for 2017, driven by a moderately stronger outlook for consumer spending growth in 2017. While inflation remains elevated, it is expected to peak at 3% by the final quarter of 2017. However, inflation is still forecast to outpace average earnings until 2019, eroding real wages and weighing on consumer spending, a key driver of economic growth, in future years," BCC Economics, Quarterly Economic Forecast Q3 2017, at http://www.britishchambers.org.uk/BCC%20Forecast%20Q3%202017.pdf, accessed 14 September 2017.

94. "We have presented a range of estimates, as there is uncertainty over the precise impact of Brexit, and subject the estimates to a wide range of other robustness tests in Dhingra and others (2016a). But the qualitative conclusion that there are nontrivial welfare losses from Brexit – especially from a hard Brexit are very robust and consistent with a wide range of estimates from other economists using many other modeling assumptions." John van Reenen (2016), "Brexit Long Run Effect on the UK Economy," Brookings Paper on Economic Activity, Fall, 367–382, 374.

95. "Without contingency plans that can be executed in the available time, effects on financial stability could arise both through direct effects on the provision of financial services, and indirectly, through macroeconomic shocks that could test the resilience of the financial system." *BoE Report*, 2017, p. vii, (n. 87).

96. n. 87.

97. "There is no generally applicable institutional framework for cross-border provision of financial services outside the European Union…So without a new bespoke agreement,

UK firms could no longer provide services to EEA clients (and vice versa) in the same manner as they do today, or in some cases not at all. This creates two broad risks. First, services could be dislocated as clients and providers adjust. Second, the fragmentation of service provision could increase cost and risks." *BoE Report*, 2017, p. vii, (n. 87).

98. "The most dramatic and salient economic impact of the Brexit decision came on the night of the decision itself. The pound suffered its biggest one-day fall against the dollar on record as currency traders bet that leaving the EU would impose a long-term and permanent economic cost on Britain." *The Independent*, Cost of Brexit: The Impact on Business and the Economy So Far, at http://www.independent.co.uk/news/business/news/brexit-economy-sterling-currency-investment-cost-impact-business-financial-banks-insurance-retail-a7695486.html, accessed 1 September 2017.

99. "Almost three quarters of foreign investors cite access to the European market as a reason for their investment in the UK." *HM Treasury Analysis*, 2016, p. 9, (n. 89).

100. "The United Kingdom's withdrawal from the European Union has the potential to affect the economy through supply, demand and exchange rate channels…In some scenarios, heightened uncertainty could also reinforce the existing risk of a fall in appetite of foreign investors for UK assets." *BoE Report*, 2017, p. viii, (n. 87).

101. *The Taylor Review*, 2017, (n. 3).

102. See UK is the Worst-performing Advanced Country in the World, official figures confirm at http://www.independent.co.uk/news/business/news/uk-economy-world-worst-performing-advanced-countries-state-g7-european-union-a7817046.html, accessed 1 September 2017.

103. *BoE Report*, 2017, p. iii, (n. 87). The primary responsibility of the FPC is to identify, monitor and take actions to remove systemic risks to the UK's financial market with a view to protecting and making it resilient

104. *Brexit Puts 71000 Jobs, Pounds 10bn in Tax Revenue at Stake – Report*, 4 October 2016 at https://www.ft.com/content/03c815a0-6dbf-3323-95d2-dff4b527e4ba, accessed 15 September 2017.

105. "A hard Brexit would be likely to impose material restructuring costs on Banks. This approach gives us an estimated cost of the required structural change of €15 billion. Amortised over three to five years, this could reduce return on equity for the banks affected by 0.5 to 0.8 percentage points. The actual cost would vary substantially from bank to bank, and would depend on the bank's existing EU27 footprint and client focus." The BCG, 2017, p. 28, (n. 88).

106. "We estimate that moving the approximately €83 trillion notional outstanding of euro-denominated interest rate contracts out of the UK to the EU27 would impose an additional collateral requirement on the European banking sector – in the form of initial margin – of approximately €30–40 billion, an increase of 40–50%." Ibid.

107. See BBC News, "Taylor Review: All Work in UK Economy Should be Fair," at http://www.bbc.co.uk/news/business-40561807, accessed 5 September 2017.

108. "At the core of this Anglosphere are the 'five eyes' countries…Each, it is argued, share a common history, language and political culture: liberal, protestant, free-market, democratic and English-speaking." Michael Kenny and Nick Pearce (2016), "After Brexit: the Eurosceptic Dream of an Anglosphere," *Juncture* 22(4): 304–307, 304; Andrew Gardner (2017), "Brexit, Boundaries and Imperial Identities: A Comparative View," *Journal of Social Archaeology* 17(1): 3–26.

109. “More recently, David Davis MP has appealed to the Anglosphere as the terrain for a new ‘global project.’” After Brexit, he argued, the UK should become more like Canada, not Norway or Switzerland.’ Kenny and Pearce, 2016, 306, ibid.

110. See *The Government Negotiating Objectives for Exiting the EU: PM Speech*, at https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech, accessed 1 September 2017.

111. “Because we would still be able to trade with Europe, we would be free to strike trade deals across the world. And we would have the freedom to set the competitive tax rates and embrace the policies that would attract the world’s best companies and biggest investors to Britain. And – if we were excluded from accessing the Single Market – we would be free to change the basis of Britain’s economic model.” Ibid.

112. “National labour markets have strengths and weaknesses and involve trade-offs between different goals but the British way is rightly seen internationally as largely successful.” *The Taylor Review*, July 2017, p. 7, (n. 3).

113. See Part XI of the Social Security Contributions and Benefits Act 1992; section 14 (1) of the Social security Administration Act 1992.

114. See section 43K (4) of the UK Employment Relations Act 1996; section 20 (7) of the UK Enterprise and Regulatory Reform Act 2013.

115. Note that Article 3 under Directive 86/378/EEC (intended principally to promote equal treatment of men and women at work) extends equal treatment to self-employed workers on access to the national occupational social security schemes of EU Member States. Article 8 thereof mandated Member States to take all necessary to reform provisions in their occupational schemes that are contrary to the principle of equal treatment by 1 January 1993. The UK carried out social security reforms which ushered new legislations into force in 1992; see also Council Directive 79/7/EEC on the Progressive Implementation of the Principle of Equal Treatment for Men and Women in Matters of Social Security, 19 December 1979.

116. See Regulation 2 of the Agency Workers Regulations 2010.

117. See Regulations 7 (3) (a) (b) (c), 8 (a), and 9 (1) (2) (3) (4) (5) of the Agency Workers Regulations 2010.

118. See David Guest and Neil Conway (1999), “Peering into the Black Hole: The Down-side of the New Employment Relations in the UK,” *British Journal of Industrial Relations* 37(3): 367–389.

119. “The Minister commented that the interpretation of the Charter in *Fransson* demonstrated how, because the Charter was ‘sufficiently vaguely worded’ (and the Lisbon Treaty ‘broad ranging’), it could be applied much more widely than the Government would have wished. However, the key issue was that, legally, the Charter could not be applied to ‘a purely UK legal matter,”’ House of Commons European Scrutiny Committee, *The Application of the EU Charter of Fundamental Rights in the UK: A State of Confusion*, 43 Report of Session 2013 – 14 HC 979 26, March 2014, para 116, pp. 40–41.

120. Personal Protective Equipment (PPE) – see the UK Personal Protective Equipment at Work Regulations 1992.

121. “Agency workers are supposed to have the same level of safety and health protection as direct employees as a result of the Temporary Agency Directive 91/383/EC.” *Employment Practices at Sports Direct, 2016–2017*, p. 19, fn. 84, (n. 46).