



Department
for Business
Innovation & Skills

EMPLOYMENT LAW 2013:

Progress on reform

MARCH 2013

Contents

Contents	2
Employment law 2013: progress on reform	3
Foreword from the Minister for Employment Relations and Consumer Affairs	3
1. Our vision for the Labour Market	4
A flexible labour market	7
An effective labour market	12
A fair labour market	14
Next steps	16
2. Employment Law Review Update	17
Taking people on	19
Managing people	21
Letting people go	24
3. Annex: The UK Labour Market	28
The size and structure of the labour market	28
The level of employment since the recession	29
Where have new jobs come from?	30
Rebalancing the economy after the recession	31
Satisfaction and experience at work	31
Earnings at work	33
Moving from unemployment into work	34
Moving from unemployment into work during the recession	36
Levels of economic participation, and economic inactivity	36

Employment law 2013: progress on reform

Foreword from the Minister for Employment Relations and Consumer Affairs

The UK still has one of the most lightly-regulated labour markets in the world, and this helps to explain recent positive employment trends despite the difficult economic conditions. There has, however, been a steady flow of new employment regulation over the last two decades which has added complexity and, to a degree, undermined the overall efficiency of the labour market.



These changes have given rise to perceptions that employment law is costly, time-consuming and over-bureaucratic. These perceptions may often be misconceived but we have to address them and tackle real barriers, where they exist, to flexibility, effectiveness and fairness in the labour market.

We launched the Employment Law Review to take a systematic approach to testing our existing laws. Through the Review and other consultative processes we have listened. Two years into the Review, we have delivered significant improvements.

Our reforms support better relationships between workers and employers. They are aimed at making evolutionary improvements to the labour market so it retains a flexibility and dynamism that benefits individuals, employers and the economy.

We report here on the vision and strategy that guides our approach, on the improvements made to date, and an ambitious schedule of implementation for the remainder of this Parliament.

A handwritten signature in blue ink that reads "Jo Swinson". The signature is written in a cursive, flowing style.

Jo Swinson, Minister for Employment Relations and Consumer Affairs

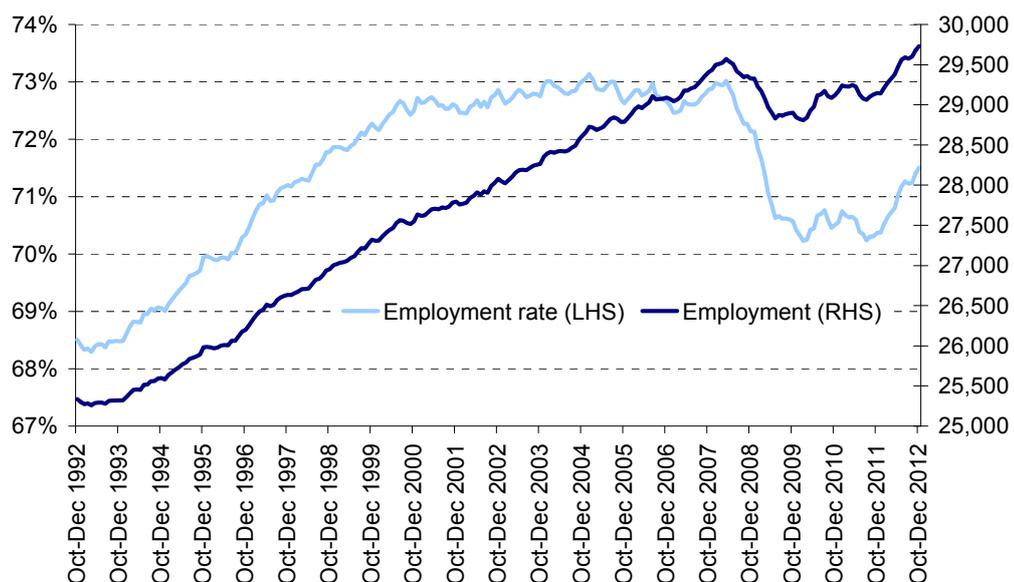
1. Our vision for the Labour Market

Summary

The labour market is already supporting high levels of employment and decreasing unemployment. But we are not complacent. We are continuing with evolutionary improvements to achieve our vision of a flexible, effective and fair labour market. We will continue with light and even regulation which supports employers to create new job opportunities, underpins a dynamic and diverse labour market, and which embeds fundamental fairness. Elsewhere, we will step back from dictating outcomes in the labour market and instead aim to support and facilitate employers, individuals and their families – those who know best – with the freedom to arrange their employment relationships in ways that work for them.

- 1.1. In the Plan for Growth¹ the Government set out its ambition to create a competitive and supportive business environment that allows businesses to establish themselves, grow and employ people. An important part of this ambition is the need to achieve a strong and efficient labour market that allows employers to access labour, and gives people opportunities to find jobs which are right for them.
- 1.2. The UK labour market is high performing, both historically and compared to other countries. There are more people in employment than ever before.

Graph 1: Historic employment levels in the UK

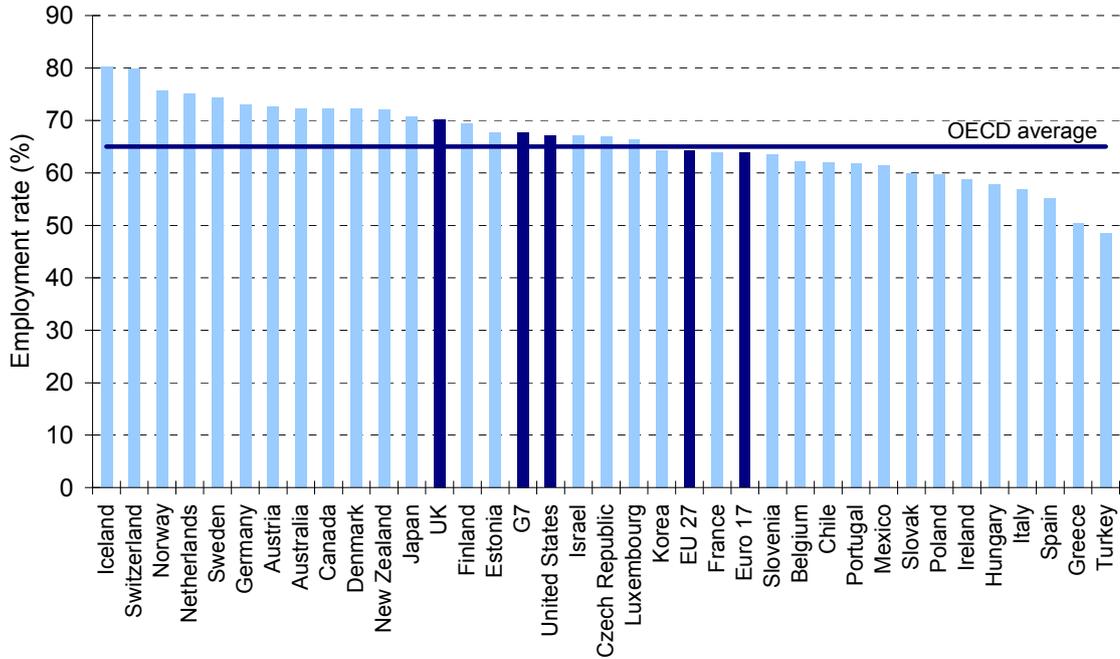


Source: ONS Monthly Labour Market Statistics

¹ HM Government (2011) *The Plan for Growth*, http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf

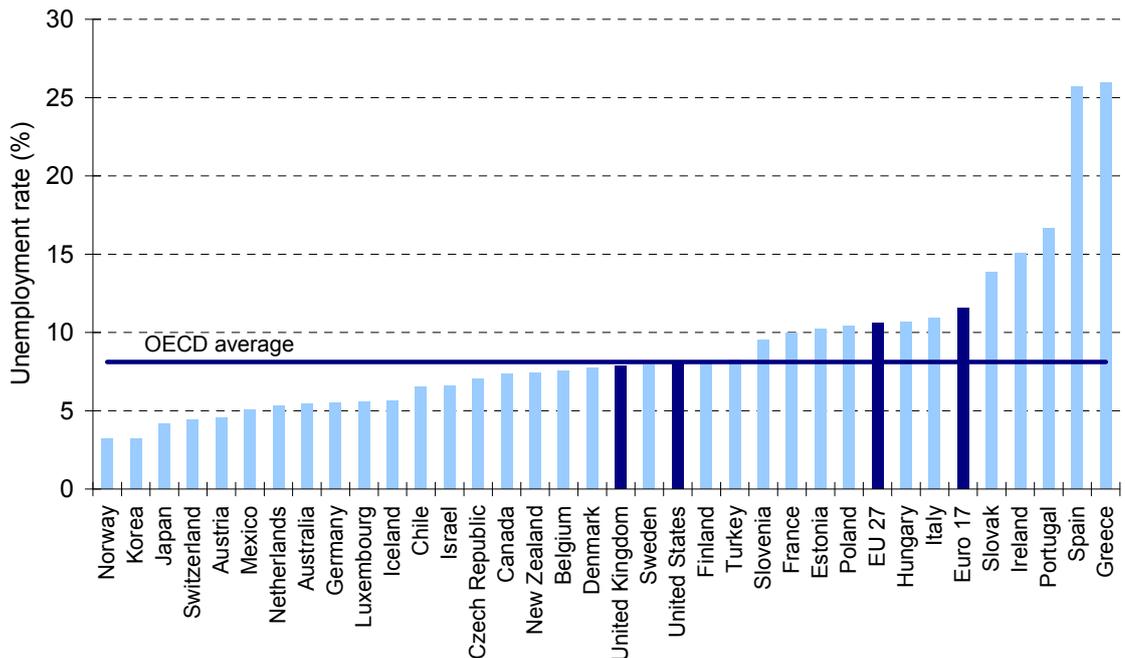
1.3. The UK working age employment rate is 72.5% and the unemployment rate is 7.8%. Graphs 2 and 3 show how these rates compare internationally; based on Q3 2012 figures, our employment rate is higher than the US and the G7, OECD and EU averages; and our unemployment rate is lower than the OECD average.

Graph 2: Employment rates in the OECD



Source: OECD 2012 Q3 data. All persons aged 15-64

Graph 3: Unemployment rates in the OECD



Source: OECD 2012 Q3 data. All persons aged 15-64

- 1.4. The recent recession had an impact on both employment and unemployment, but since 2011 the number of people in work has been increasing and the number of people unemployed has been decreasing.
- 1.5. The Government recognises that the recent impressive performance of the UK labour market is not the full story. Employers, particularly those in small businesses, are concerned about the impact of employment law on their businesses². And we know being unemployed is still a daunting and uncertain experience and that people want to be treated fairly in the workplace and have the opportunity to find work that suits their personal circumstances.
- 1.6. The Government is committed to addressing these concerns so the labour market continues to perform well, supporting both employers and employees. That is why the Government launched the Employment Law Review in 2010, the most comprehensive review of employment regulation for a decade.
- 1.7. The Employment Law Review and all our labour market reforms are guided by our vision of achieving a labour market that is:
 - **flexible** – encouraging job creation and making it easy for people to stay in work and find work;
 - **effective** – enabling employers to manage staff productively; and
 - **fair** – employers competing on a level playing field and workers benefiting from core employment protections.
- 1.8. Some UK employment law is derived from regulation established at European level. The EU has a vital role in encouraging Member States in their labour market reforms and in promoting labour market agility – but not by creating more costly and burdensome EU employment law.
- 1.9. The Government's approach to engaging in Europe is also based on these three principles. The UK Government will continue to engage in Europe to ensure that EU-wide legislation is proportionate, does not make it harder for businesses to hire people and respects national labour market models. This approach benefits both UK business and the performance of the single market.

² For example, see:

(i) Kitching, J and Blackburn, R (2012) *Employer Perceptions and the Impact of Employment Regulation Research*;

(ii) Federation of Small Businesses (2012) *Regulatory Reform: Where Next?*, www.fsb.org.uk/frontpage/assets/fsb_regulatory_reform_web.pdf; and

(iii) Better Regulation Executive (2010) *Lightening the Load: The Regulatory Impact on the UK's Smallest Businesses*, www.bis.gov.uk/assets/biscore/better-regulation/docs/11/10-1251-lightening-the-load-regulatory-impact-smallest-businesses.

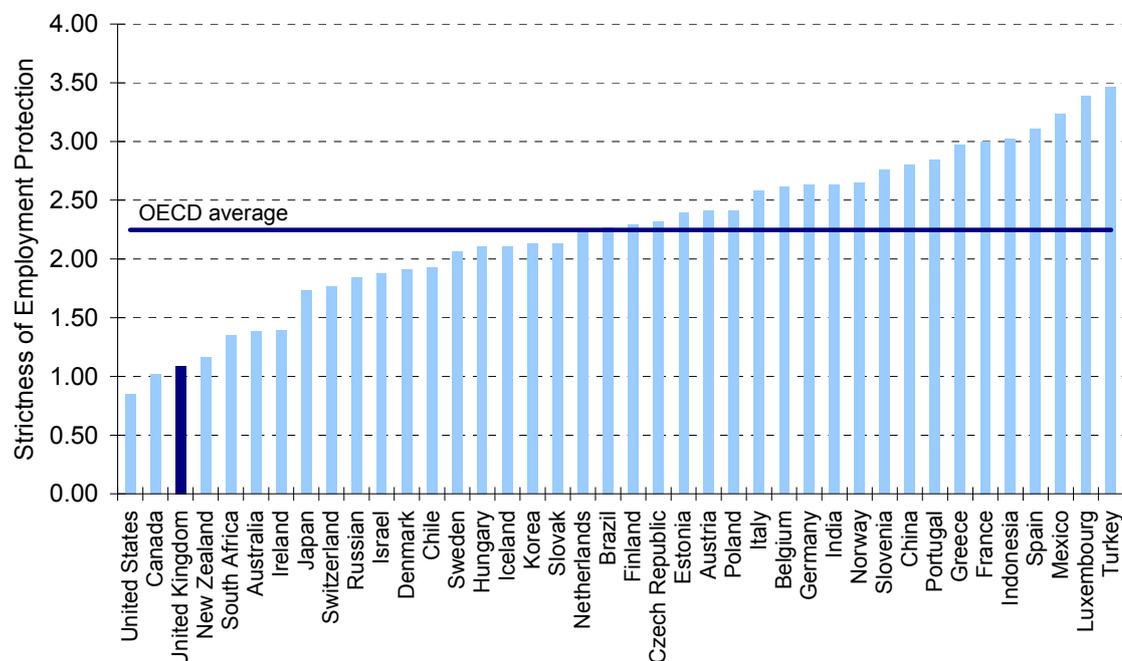
A flexible labour market

1.10. Flexible labour markets are able to adapt to changes in the economy and accommodate the varying preferences and circumstances of people and businesses in the market. Flexibility enables people to take jobs on terms that suit their circumstances, and to seek out new opportunities. Similarly, flexibility gives employers the confidence to hire people to meet new challenges, knowing they can reduce the size of their workforce if economic circumstances require.

1.11. Flexibility goes hand in hand with the Government's ambition to maximise participation in the labour market. Widening participation gives people more opportunities to enter and succeed in the labour market and maximise their well-being. And by widening participation, employers also benefit as they are able to recruit from the widest pool of labour and talent, increasing their chances of finding the right person for their business.

1.12. The Government will promote flexibility by regulating the labour market in a light-touch way. The approach we take means the UK labour market is one of the most lightly regulated labour markets in the OECD³. Graph 4 shows that the UK is third amongst OECD countries in terms of the lightness of its employment protection regulation.

Graph 4: Strictness of employment protection legislation



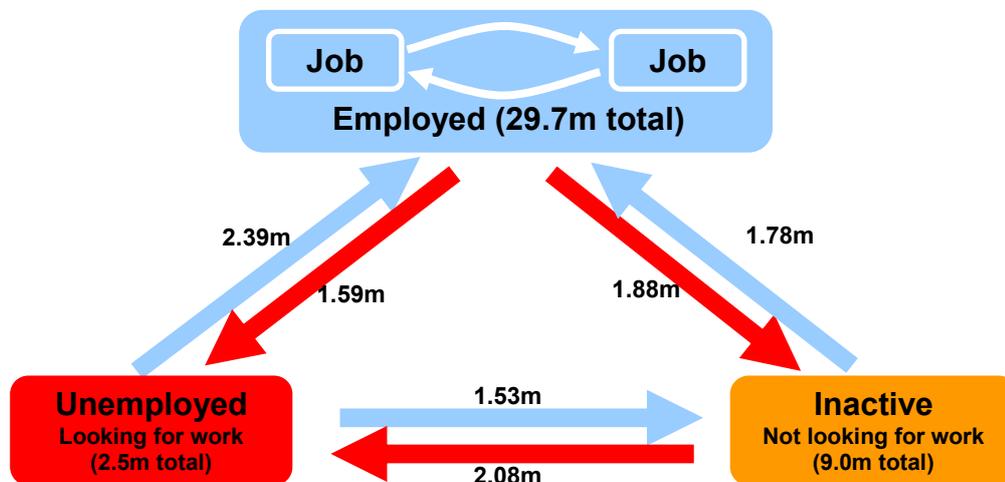
Source: OECD Employment Protection Index 2008

³ OECD Indicators of Employment Protection. Available at: www.oecd.org/employment/emp/oecdindicatorsofemploymentprotection.htm.

1.13. Our light-touch approach facilitates dynamism in the market by ensuring the employment protection offered to workers is not so great that employers are disincentivised from creating new jobs, or that employees are discouraged from moving from job to job for fear of risking employment protections they have acquired over time⁴. The movement of existing workers into new roles creates opportunities for others who are seeking to change jobs, or those not currently in work to access jobs as vacancies arise.

1.14. In any given year there are five to six million moves into new jobs – either by people moving into employment from unemployment or inactivity, or people moving from one job to another as they develop their career (Figure 1).

Figure 1: Flows of people in the labour market, Q1 – Q4 2012



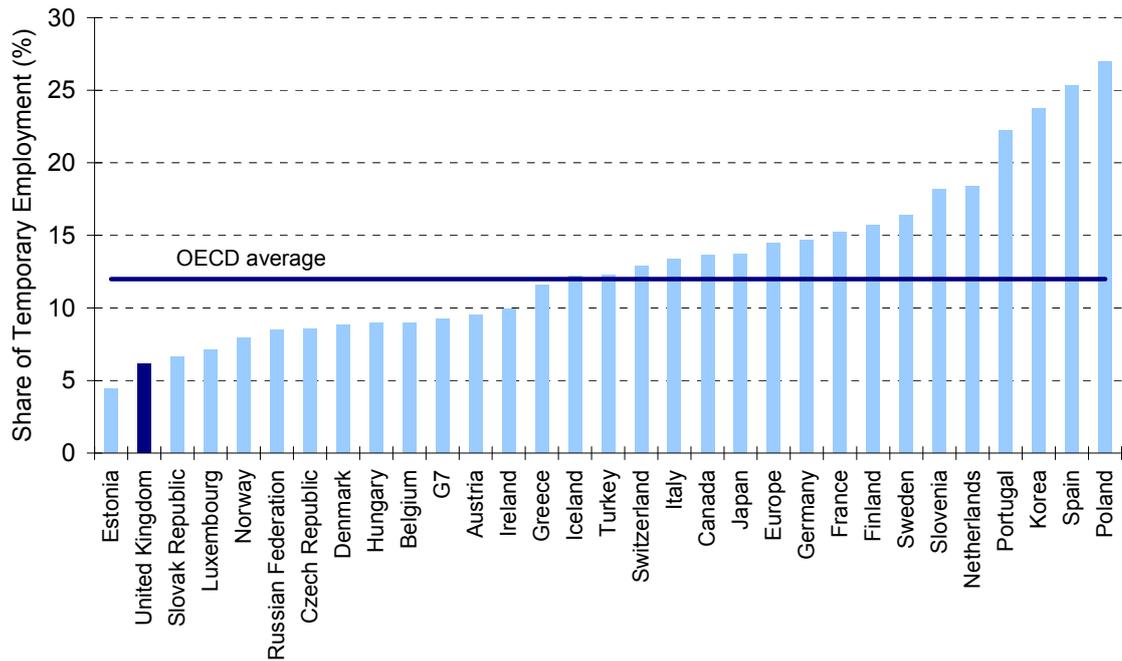
Source: ONS Labour Market Flows, experimental statistics and ONS Monthly Labour Market Statistics

1.15. In addition to creating job opportunities, dynamism in the labour market also affects the type of work people have access to. It contributes to the UK having a lower incidence of temporary working, and a higher proportion of permanent contracts. High levels of temporary working are associated with several European countries with more rigid labour markets and stricter employment protection, where employers turn to temporary working to avoid the expense of taking on new workers on permanent contracts (see Graph 5)⁵. In such cases, strict regulatory protections make the labour market inflexible and favour those already with jobs at the expense of those without.

⁴ For example, see OECD (2009), *Employment Outlook 2009* (Chapter 1, Part A p.55), www.oecd.org/els/emp/45219634.pdf.

⁵ OECD (2011), *Employment database 2011*. 'Temporary' in this context is defined as 'employees on a fixed-term contract or whose expected duration of main job [is] less than one year with seasonal/temporary/fixed contract work supplied as the reason'.

Graph 5: Incidence of temporary working



Source: OECD 2011 data

1.16. By encouraging movement between jobs through light-touch employment laws, our flexible labour market gives young people joining the labour market for the first time the greatest opportunity of finding work. Nevertheless, there is much more to do to support young people to make the transition from education into work. Youth unemployment remains high (see Graph 16) which is why the Government has introduced a number of measures as part of a participation strategy⁶ for young people (see Box 1).

Box 1: Increasing young people’s participation

The Government wants to ensure that all young people are able to get the skills they need to succeed in a competitive, highly-skilled labour market and make a successful start in employment.

Apprenticeships

We will continue to support Apprenticeships for people of all ages, helping people to upskill and reskill, to progress in their careers. But we will in particular target efforts where Apprenticeships deliver greatest benefits, including for younger people (16 to 24), to reflect sector skills needs and opportunities, and where there is progression to Advanced and Higher levels.

⁶ HM Government (2011), *Building Engagement, Building Futures*, <http://media.education.gov.uk/assets/files/pdf/building%20engagement%20building%20futures.pdf>.

Box 1: Increasing young people's participation

Traineeships

Plans for a new Traineeships programme will support a significant number of young people into Apprenticeships and other employment opportunities, by offering a combination of extended work placements, work skills training and English and Maths, together with other flexible training and support to suit individual young people's needs. Our aim is for Traineeships to become available for young people to access from August 2013.

The Youth Contract

We are investing £126 million in England over the next three years specifically to support disengaged 16 to 17 year olds to move into education, training or employment with training. For 18 to 24 year olds, we will provide nearly half-a-million new opportunities, including apprenticeships and voluntary work experience placements. From April 2012 until April 2015, employers are able to take advantage of 160,000 wage incentives worth up to £2,275 each when they employ an 18 to 24 year old from the Work Programme or selected Jobcentre Plus centres⁷.

Raising the participation age

From 2015, all 16 and 17 year olds in England will be required to continue in education or training. They will be able to participate in a number of ways:

- full-time education, such as school or college;
- an Apprenticeship; or
- full-time employment, volunteering or self-employment with part-time accredited education or training alongside.

Careers guidance

All schools in England have now been placed under a new legal duty to secure access to independent and impartial careers guidance. This must include information on all post-16 options, including Apprenticeships. In parallel, the National Careers Service provides young people with access to high quality information and professional advice on learning and work: online, via the telephone and through webchat.

1.17. While burdens from employment law are low by international standards (see Graph 4), when we talk to employers we find that the fear of getting it wrong still undermines business confidence, and this is supported by a number of external surveys.⁸ The fear of employment law is most acute in those (usually smaller) businesses that do not have either a HR team or easy

⁷ Further information on the Youth Contract is available from: www.dwp.gov.uk/youth-contract/key-initiatives/.

⁸ For example, see Kitching, J and Blackburn, R Ibid.

access to tailored HR support. These businesses are often happy to work informally with their workforce which can sometimes result in them inadvertently failing to comply with employment law, reinforcing the perception of employment law as expensive and time-consuming to comply with⁹.

- 1.18. This persistent perception of burdens and bureaucracy has the potential to limit business confidence. So our approach to regulatory reform now needs to be two-fold. Firstly we will continue to monitor the burden of employment regulation to ensure it secures basic employee rights and other benefits, and reduce it when it is unnecessarily burdensome. Secondly, we will seek to address perceptions, particularly by improving the relevance of information and guidance available to existing and potential employers and employees. This is a key part of the contribution the Advisory, Conciliation and Arbitration Service (Acas) makes to the labour market (see Box 2).

Box 2: The role of Acas

The Advisory, Conciliation and Arbitration Service's (Acas) mission is 'to improve organisations and working lives through better employment relations' and all of the services provided by Acas are intended to promote good employment relations and ensure that workplace disputes are kept to a minimum.

Acas currently provides four main services:

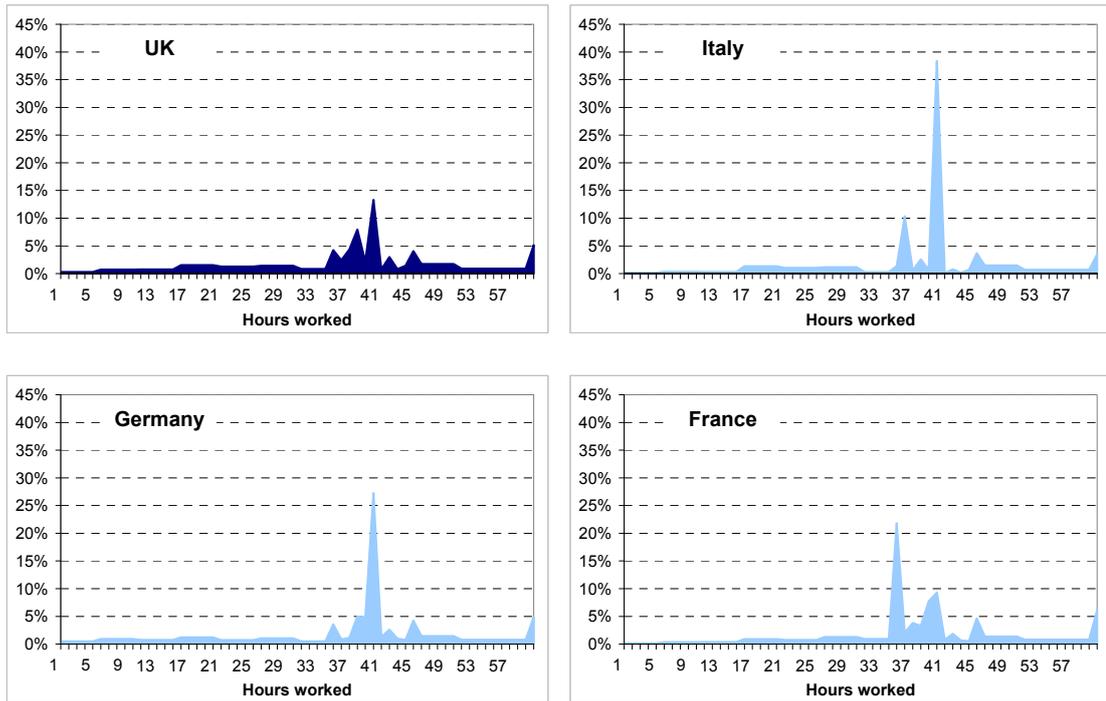
- **Collective Conciliation:** Acas has a statutory duty to conciliate in industrial disputes to address issues of collective concern, and to prevent strikes and other industrial action. The service is voluntary and free of charge.
- **Individual Conciliation:** Acas has a statutory duty to conciliate in the majority of cases where an individual or group of individuals have made a claim to an Employment Tribunal about their employment rights. This service is voluntary and free of charge and Acas' role is to help the individual(s) and their employer find a mutually acceptable solution without the need for a tribunal hearing.
- **Provision of advice and guidance –** Acas operates a Helpline that provides advice and guidance on all aspects of employment relations to both employers and employees.
- **Good Practice Services:** As part of its statutory duty to promote workplace relations, Acas offers a diverse suite of products and services under its 'Good Practice Services' function. These products and services aim to intervene early and minimise the risk of subsequent disputes.

⁹ Ibid.

An effective labour market

- 1.19. The Government aims to support an effective labour market, in which individuals and employers are able to establish and adapt employment relationships so they work for both parties. In practice, this allows individuals to get the jobs they want, while employers can find the right people and manage their workforces productively.
- 1.20. The Government believes the best way of achieving this is to remove or change those laws that get in the way of employers and individuals mutually agreeing ways of working that suit their situation. The key challenge for Government is to establish a framework that facilitates constructive discussions between employers and employees, and that encourages the employee voice within the workplace, while protecting employees from exploitation.
- 1.21. Over the course of an individual's working life, different circumstances, events and choices will impact how they can work. Individuals and employers need to be able to maintain and adapt their working relationships to cope with events such as having children, managing sickness, or planning for retirement. Similarly, employers operating in competitive markets will wish to change and adapt their workforce as economic circumstances require.
- 1.22. The Government cannot and should not seek to legislate for every possible change in circumstance. Instead, we believe that individuals and their employers are best placed to come to mutual agreements on how best to structure the employment relationship and adapt to change themselves. The Government is seeking to step back from direct interventions, and instead to facilitate employers and their employees to have constructive conversations and agree themselves how to structure the employment relationship (see Box 2).
- 1.23. The Government's approach to facilitating individuals and employers to agree ways of working themselves has resulted in a very diverse labour market. By providing greater scope for businesses and workers to agree types and patterns of work that suit them best, the UK now has one of the most diverse ranges of working hours in the world. Graph 6 shows how individuals and employers in the UK have agreed a greater diversity of working hours than our European counterparts.

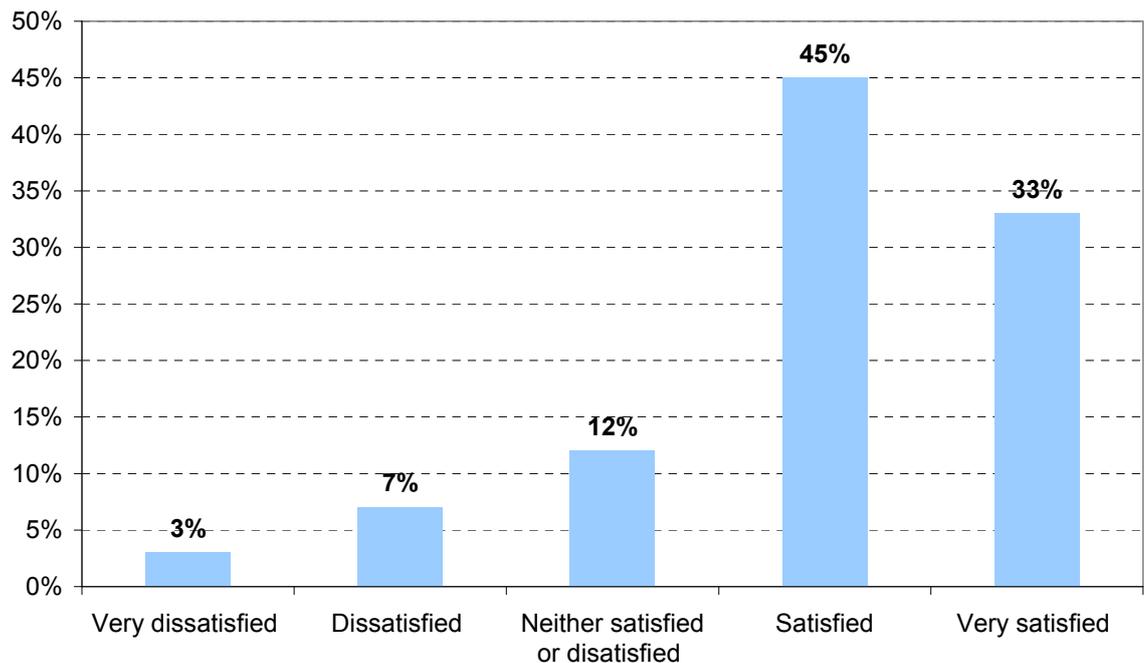
Graph 6: Distribution of actual hours worked, 2012 Q3



Source: Eurostat

1.24. The greater diversity in working hours outlined above shows workers in the UK have a better chance of working the hours they want. This was demonstrated by a 2011 survey which showed that workers in the UK are generally satisfied or very satisfied with their working hours (see Graph 7).

Graph 7: Satisfaction with working hours



Source: BIS, The Fourth Work-life Balance Employee survey, 2011

- 1.25. A further consequence of the Government's approach is that the UK now has one of the most inclusive workforces in Europe. More people have more opportunities to find suitable working arrangements that allow them to enter the labour market or retain their position within it. For example, the UK's female employment rate is 65.2% (EU27 average 58.9%), and older workers are choosing to stay in employment longer – the employment rate for workers over 55 is 58.3% (EU27 average 49.5%)¹⁰.
- 1.26. Promoting effectiveness in the labour market and encouraging mutual agreements is therefore central to the Government's objective to increase participation. By ensuring that all individuals and groups have the opportunity to find work, we benefit the individuals concerned and also the wider economy as the skills and experience of the UK workforce – the country's human capital – are best utilised and not lost through unemployment or economic inactivity.
- 1.27. But there is more for Government to do to further establish the state's role as a facilitator of mutual agreements. To continue to support people and employers, our employment law framework will provide:
- **A right to request flexible working for all employees**, to encourage constructive discussions between people and employers so the working patterns that best suit each party can be agreed;
 - **Shared parental leave**, reducing the role of the state so that families have more flexibility to decide themselves how they manage childcare whilst maintaining their attachment to the labour market;
 - **Statutory 'settlement agreements'** and further **support from Acas** to enable employers and people to come to private agreements over workplace issues before they reach employment tribunals; and
 - **Support and guidance from Acas** to encourage good workplace relations (see Box 2 for the range of support offered by Acas).
- 1.28. The Government will deliver these reforms in this Parliament, and will continue to search for ways to facilitate more individuals and marginalised groups into the labour market, by understanding the barriers and disincentives that prevent them from taking up opportunities when they arise.

A fair labour market

- 1.29. Whilst we aim to create a framework which minimises regulatory burden and encourages dynamism, we also want the labour market to be fair for individuals and their employers. All markets need rules to operate effectively, and a core purpose of the rules the Government sets is to embed and promote fairness and prevent unacceptable outcomes.

¹⁰ Eurostat. http://epp.eurostat.ec.europa.eu/portal/page/portal/statistics/search_database. Data refers to 2012 Q3. Data was last updated on 17/01/2013. This is comparative data and will not necessarily tally with UK definitions. Working-age population is defined here as 15-64 and older workers 55-64.

- 1.30. The Government therefore aims to support a fair labour market by establishing commonly agreed rules which protect employees and employers and give employees the best opportunity to find work which suits them and is fulfilling. The Government provides a framework which facilitates the employee voice and mutual agreements between employee and employer so they can agree terms and conditions that suit their circumstances best.
- 1.31. The Government recognises that employment relationships are not equal. The Government regulates to provide workers with essential protections around, for example, how they are paid, their annual leave entitlement, and how redundancy is managed. Our employment laws provide a statutory right of redress when things go wrong. We aim to ensure our regulation is 'light and even'. Our regulation does not benefit particular groups of people or employers over others, or create regulatory burdens that discourage employers from hiring new staff or people from moving jobs.
- 1.32. There are important social benefits of promoting fair treatment in the workplace. In a fair labour market, people have the confidence to look for and take on work, they also have the confidence to ask for changes to their work, or seek out new opportunities or even a radical career change.
- 1.33. Fairness improves the individual's well-being, but benefits employers too. The Government's framework also seeks to prevent unscrupulous employers from gaining an unfair advantage by exploiting their staff and undercutting their competitors who play by the rules.
- 1.34. Not all people are able to enforce their employment rights, especially where there can be a commercial or competitive incentive for businesses not to comply with the law. It is in instances such as these where we will focus Government enforcement activity, and provide support to people in a way that is accessible to them – such as the Pay and Work Rights Helpline¹¹ or through the support offered by Acas (see Box 2).
- 1.35. However, relying on enforcement alone will not create a fair labour market. The Government recognises that it is more efficient to help employers understand their obligations so conflict in the workplace can be avoided. In addition to reforming law, the Government wants employers and people to be able to work within the framework the law creates. We are therefore continuing to provide good practice guides to employers and dedicated advice to both workers and employers, and supporting the work of the Engage for Success initiative¹².
- 1.36. As described above, we will also seek to provide people and employers with a framework within which they can come to mutual agreements on how best to structure the employment relationship. A key element of this is to encourage the employee voice and enable people to have a say in how they

¹¹ Pay and Work Rights Helpline is: 0800 917 2368. The helpline provides confidential advice to workers on employment law. The advice includes support for the National Minimum Wage, temporary work and permanent work finding agencies, Gangmasters and working time.

¹² See www.engageforsuccess.org.

work. For example, by extending the right to request flexible working we are seeking to support more people to discuss their preferences at work. Through introducing shared parental leave, we aim to give families more choice in how they divide childcare responsibilities and working between partners, freeing them to reach agreement with their employers without the state stopping them as it does now.

Next steps

- 1.37. The Government is half-way through the Employment Law Review, through which we will make the improvements necessary to embed a flexible, effective and fair labour market. From now until the end of this Parliament, the Government will continue to implement the changes needed to deliver this vision. We are moving into a more intense phase of implementation, but we will consider other areas of employment law for reform on a case by case basis.
- 1.38. The remainder of this document:
 - Sets out the detail of what has been achieved so far through the Employment Law Review, and what more we still have to do; and
 - Provides an analytical annex detailing the current performance of the UK labour market.

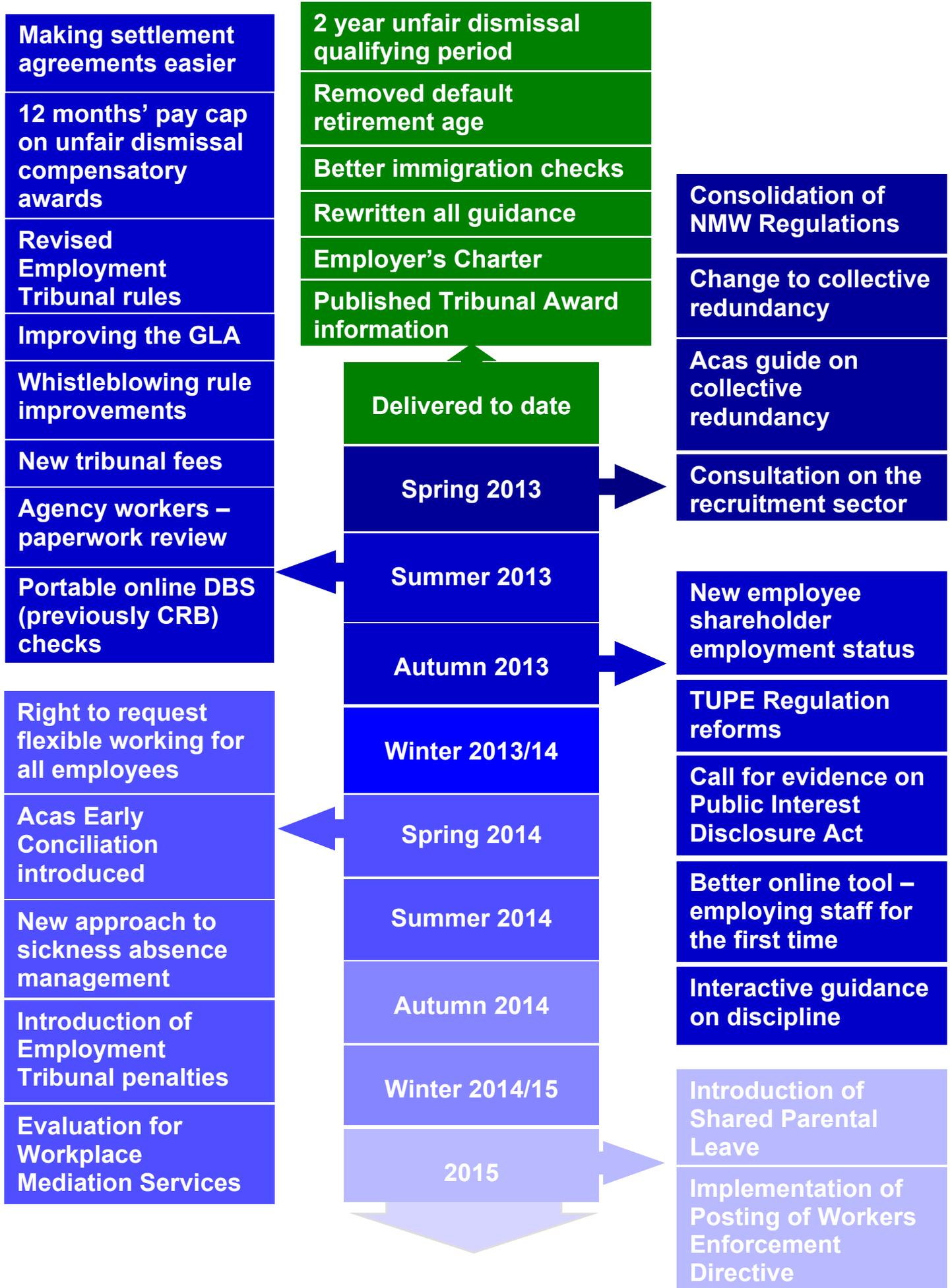
2. Employment Law Review Update

Summary

The Government is now half-way through our Parliament-long Employment Law Review. We have listened and consulted extensively on the improvements necessary to support individuals and employers and to further embed our vision of a UK labour market that is flexible, effective and fair. The improvements cover both regulatory reform to improve the employment law framework, and also improvements to process and information so individuals and employers can use the system more easily and effectively.

The timeline provided overleaf shows the first set of improvements we have made, and the significant range of improvements we are working to deliver in the remainder of the Parliament.

- 2.1. The Employment Law Review, launched in 2010, seeks to reduce regulatory burdens on business to ensure the labour market is **flexible**. Our employment law reforms have the aim of allowing employers and individuals to make mutual agreements that suit their personal circumstances rather than prescribing these through regulation. Our approach, therefore, seeks to encourage and facilitate conversations between people and employers, so the labour market is **effective** and allows employers to manage their workforce productively. When Government does intervene, it will be to ensure **fairness** which protects both individuals and employers.
- 2.2. As our reforms are implemented we will increasingly focus on the effectiveness of the new framework, and how Government can improve the way in which employers and individuals use it. We will seek to address the perception of employment laws, and ensure that individuals and employers understand new and existing rules. This will help maximise compliance with the rules and help employers better understand what they have to do to manage their workforce in a fair manner.
- 2.3. Significant progress has been made so far. The timeline overleaf shows progress so far and forthcoming reforms this year and next. The remainder of this chapter details these reforms further, organised by their application to:
 - Taking people on;
 - Managing staff; or
 - Letting people go.



Taking people on

- 2.4. There is a range of employment laws that seek to make the process of taking people on fair. The Government continues to review these regulations to ensure they do not unreasonably burden employers or disincentivise them from hiring people, ensuring the labour market remains flexible. At the same time, our aim is to ensure regulations are effective in delivering their benefits by being proportionate and targeted.
- 2.5. There are several measures, based on extensive consultation, which we are introducing to reform employment law to achieve these aims.
- 2.6. Businesses have told us there are too many National Minimum Wage (NMW) regulations which reflect numerous changes to the rules over the years. The Government wants to retain the simplicity of the NMW, and ensure the regulations themselves are easy to understand. The Government will therefore **consolidate the NMW Regulations** and publish a set of improved regulations by the end of April 2013. This will help to retain fairness for individuals, increase effectiveness and support employer compliance.
- 2.7. The Government wants to make the transfer of employees between businesses easier, to encourage growth whilst protecting individuals in that process. The Government is currently consulting on proposed **reforms to remove gold-plating in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)**. Reforms are aimed at ensuring protection is retained and businesses have more flexibility. The consultation closes on 11 April 2013, and we aim to bring any necessary changes into force from October 2013.
- 2.8. The rules **governing how the recruitment sector operates are complex and out-of-date**. We are consulting on a set of proposals to overhaul these regulations, to strip away unnecessary red tape and provide greater flexibility for the sector. The consultation also seeks views on enforcement arrangements. However, we will continue to ensure that protections are in place for those people seeking work through recruitment agencies. The consultation closes on 11 April 2013.
- 2.9. We are making changes to the Agricultural Minimum Wages regime to simplify employment legislation in the sector and to enable flexible modern working practices in the sector. We are taking forward legislation in the Enterprise and Regulatory Reform Bill to abolish the Agricultural Wages Board for England and Wales, the 15 related Agricultural Wages Committees and 16 Agricultural Dwelling House Advisory committees in England and to make amendments to bring agricultural workers within scope of the National Minimum Wage regulations. We will also separately make amendments to secondary legislation to ensure that agricultural workers are protected by the Working Time Regulations. These changes will simplify employment legislation in the sector and allow farm businesses to introduce flexible modern working practices. They will provide greater clarity and certainty to

the industry, as well as remove unnecessary additional burdens, whilst continuing to protect individuals through other employment laws.

- 2.10. The Government implemented the **Agency Workers Regulations in 2010**, in line with the obligations of the Agency Workers Directive. While the fundamental fairness for agency workers needs to be retained, the Government will review the paperwork obligations associated with the Regulations to ensure the practical arrangements necessary for employers and agencies are as simple as possible. The Government will start this work shortly.
- 2.11. To help first time employers take on their first member of staff, we will **further develop the online tool 'Employing Staff for the First Time'**, which was initially launched in April 2012 as 'Taking on an Employee'. A major milestone will be the better integration of the tool with other content about PAYE and taxation when the HMRC website migrates to GOV.UK in December 2013.
- 2.12. Employers told us that checking if a potential employee has the right to work in the UK is a complex and time-consuming process, and that they are worried about the consequences of getting it wrong. We are therefore **making it easier for employers to check a person is legally entitled to work in the UK** by issuing more biometric residence permits to foreign nationals. These stand-alone documents issued by the UK Border Agency are increasingly familiar and checking them alone establishes the right to work. The Agency has enhanced its free dedicated service enabling employers to confirm that the document details are correct and the document remains valid. The UK Border Agency is also considering the future of checking services and intends to pilot a chip-checking service with selected partners in 2013. In time we expect chip-checking services, which will provide even greater assurance, to become widespread.
- 2.13. Employers taking on staff who are eligible for criminal record checks issued by the Disclosure and Barring Service (formally known as the Criminal Records Bureau (CRB)) expressed concerns about the process involved. The Home Office aims to introduce a **portable Disclosure and Barring Service (DBS) check** by summer 2013, to reduce delays in recruitment by allowing employers to check online whether an individual's DBS check is up-to-date. If it is they will not need to apply for a new one. This will speed up recruitment for employers and significantly reduce bureaucracy, allowing individuals to move roles without needing a new check each time.
- 2.14. We have also listened to employers who have described how there can be a 'fear' of the consequences of failing to comply with employment law. So we will accompany regulatory reform with better information and guidance to help employers become confident and more informed about hiring new staff. To achieve this we have:

- **Published the Employer's Charter**¹³, which is a simple explanation of what employers can already do when managing staff.
- **Re-launched guidance on employment law** for employers and employees as part of the creation of the GOV.UK single government website launched in October 2012¹⁴. The guidance which had previously been on the Business Link website for employers and Directgov for employees was completely rewritten to make it simpler, faster and clearer for people to use.

2.15. The Government is also taking radical steps to increase the variety of employment contracts companies¹⁵ can use by creating a new employment status, providing greater flexibility of choice for employers. The new employment status combines capital gains tax exempt shares and a de-regulated approach to employment law. The new status would retain essential employment protections – and thereby fairness – for individuals. Subject to the Parliamentary process, **the Government intends to introduce the new 'Employee Shareholder' status in 2013.**

Managing people

- 2.16. More can be done to help employers manage their workforce. Effective management helps businesses become productive, helps individuals and employers adapt working arrangements as they require, and can enhance employees' well-being.
- 2.17. At the heart of our approach is a belief that employers and their staff are in the best position to decide what works for them and that the role of Government is to provide the right framework which facilitates this. We therefore need to ensure that our employment laws do not get in the way of those relationships, and allow employers and individuals to agree terms that are best suited for their situation. We believe if we take this approach, individuals and employers are more likely to develop effective and sustainable employment relationships.
- 2.18. The Government's employment law reforms are therefore designed to provide that framework so that those mutually beneficial agreements and employment relationships can be achieved.
- 2.19. To help individuals balance childcare with their involvement with the labour market we are **creating a new right of Shared Parental Leave**. This will mean that families will be able to decide by whom and how children are looked after in the first year, providing them with greater choice in how they manage childcare while giving both parents a fair opportunity to participate in

¹³ Available to view here: www.gov.uk/government/publications/managing-staff-what-employers-can-and-cant-do.

¹⁴ The guidance for employers is at www.gov.uk/browse/employing-people and the guidance for employees is at www.gov.uk/browse/working.

¹⁵ Only companies that can issue shares will be able to offer employee shareholder contracts.

the labour market. The Children and Families Bill, which was introduced into Parliament in February 2013, will establish the legislative framework necessary. Shared Parental Leave will be introduced in 2015.

- 2.20. Reflecting the vital role of flexibility in the efficient operation of the labour market, we want to create a culture change across business, where the concepts of 'full-time working' and 'part-time working' are substituted by just the concept of 'working'. To encourage more discussions and information exchange between people and their employers about working patterns we are **extending the right to request flexible working to all employees**. The legislative changes are part of the Children and Families Bill and we expect to introduce the changes in 2014.
- 2.21. To ensure the state facilitates mutual agreements between parties, rather than dictating outcomes, the Government has **committed to limiting the application of the Working Time Directive**. We have made it a priority to retain the individual's right to opt-out of the 48 hour maximum working week, while we will seek additional flexibility in the areas of on-call time and compensatory rest. This is also necessary to reduce burdens on business.
- 2.22. A crucial part of facilitating effective relationships is reducing unnecessary regulatory burdens and making complex laws easier to understand and comply with. Legislation aimed at embedding fairness should change the behaviour of bad or rogue businesses, and minimise additional burdens or hurdles for good employers. To deliver this, the Government has a number of changes which will be implemented this year and next.
- 2.23. Recognising that employers already keep records through their own payroll systems, we will reduce the administration burden on employers by **abolishing the Statutory Sick Pay record keeping obligations**.
- 2.24. In the area of whistleblowing, we are looking to achieve the right balance between protection for individuals making important disclosures, and preventing misuse of the system purely for private grievances. We are **reforming whistleblowing rules to ensure they only protect disclosures which are in the public interest** via the Enterprise and Regulatory Reform Bill, and **introducing vicarious liability** to protect individuals from the actions of their co-workers.
- 2.25. Responding to concerns from business about the practical difficulty of applying some legislation, the Government will **repeal the third party harassment provisions in the Equality Act 2010**. This is to remove the 'three strikes' test without reducing protection for employees who have been harassed by third parties, such as a customer. The general harassment provisions in the Act which ensure fairness by providing protection for an employee who is subjected to such conduct will remain.
- 2.26. We will reduce pressure on business around pre-claim disclosure by **repealing the obtaining information provisions in the Equality Act 2010**. We will replace the statutory provisions, including the forms for questions

and answers and the eight week time limit for businesses to respond, with an informal approach. This new approach will be set out in guidance produced by Acas and will include advice on how individuals can ask questions and why employers and service providers should respond. This will enable business to better challenge any unreasonable requests for information which they have told us they currently experience with the statutory provisions. A non-legislative approach will be simpler and fairer for all.

- 2.27. The Government will **consult on streamlining and improving the Gangmasters Licensing Authority (GLA)** with changes beginning to come into effect from the summer of 2013. Our aim is to reduce the burden on compliant labour providers and labour users and focus on gross abuse of workers by unscrupulous gangmasters whose crimes include tax evasion, trafficking, health and safety negligence and other serious crimes.
- 2.28. To limit barriers to genuine cross-border businesses, the Government will **resist the imposition of unnecessary and burdensome controls in the Posting of Workers Directive**. The Government has sought to ensure that the final Directive limits the extent of the information that Member States can demand of companies who are posting workers. This will support the single market and reflects existing European Court of Justice case law balancing protections for workers while enabling businesses necessary freedoms to provide services.
- 2.29. Making changes to the regulatory framework to support employers to manage staff effectively will only help if businesses know what is expected of them and what they can do in their day to day operating of the business. Therefore better access to practical information and guidance is vital. The Government will address information gaps on key issues of day to day management. For example, we will:
- **Evaluate the guidance and other tools available to help employers to manage sickness absence** and ensure that businesses have access to information they need at the right time. This includes the introduction of a **new health and work assessment and advisory service in 2014** which will offer free occupational health expertise to employees, employers and GPs including an independent assessment of employees who have been off sick for four weeks.
 - This and other measures to support employers manage sickness absence more effectively will be funded by **abolishing the Percentage Threshold Scheme** which currently provides financial recompense for those facing high levels of sickness absence, but without providing incentives or support to reduce those levels, or recognising those employers who already effectively manage absence.

Letting people go

- 2.30. Businesses have told us that dismissing staff is time-consuming and difficult, sometimes inadvertently leading to unnecessary employment tribunal claims. The risk is that the fear of being faced with tribunal claims impedes growth because businesses become too cautious to hire people or to address capability issues in the workforce. In April 2012 we increased the qualifying period for **Unfair Dismissal** from one to two years to address this risk and business concerns that more time is needed to make sure they have made the right hiring decision. Whilst this provides businesses with greater flexibility to make difficult decisions around dismissal, the change does not affect fundamental employee protections which are in place from the first day of employment.
- 2.31. The UK labour market is dynamic and there are millions of movements into a new job in any given year. A key part of the market's flexibility is the ability of employees and employers to end the employment relationship when it is appropriate. At the same time, for many people, losing employment creates uncertainty and anxiety, and it is important the process is as fair as possible.
- 2.32. Some grievances and problems between employers and their staff can escalate and require an Employment Tribunal to settle. In 2008, 36% of claimants cited that they found their Employment Tribunal case emotionally draining, while employers mentioned low staff morale (11%) and interrupted business/increased stress levels (6%)¹⁶.
- 2.33. We want to reduce the likelihood of this happening. We believe that it is best for employers and their staff to seek to mutually resolve problems before they become so acute no rapprochement is possible. The evidence shows this approach works. Acas provides pre-tribunal conciliation services to help resolve workplace disputes. In 2011/12, Acas dealt with around 22,000 cases that were appropriate referrals to pre-claim conciliation, of which 78% did not result in a subsequent tribunal claim¹⁷.
- 2.34. While many workplaces have mechanisms in place to encourage mutual agreements and pre-tribunal settlements, uptake is low. For example, provision for mediation is included in 62% of workplace grievance procedures and 61% of disciplinary and dismissal procedures, covering 63% and 56% of employees, respectively. However, of all workplaces, only 7% had used mediation to resolve an individual dispute in the 12 months prior to the Workplace Employment Relations Study: 4% with an internal mediation and 3% with an external mediator¹⁸.
- 2.35. To encourage employees and employers to discuss problems before their relationship irrevocably breaks down, and to help people work through their

¹⁶ Department for Business, Innovation and Skills (2008), *Survey of Employment Tribunal Applications*.

¹⁷ Acas (2012), *Annual Report and Accounts*.

¹⁸ WERS, 2011.

disagreements themselves, without resorting to an employment tribunal, the Government is reforming the framework so that it encourages open dialogue, fairness and mutual agreements between parties. This includes:

- **Enabling the increased use of settlement agreements** as a consensual and mutually beneficial way of ending the employment relationship that avoids the cost and distress of a tribunal. It gives the parties greater flexibility to come to an agreed outcome that they consider fair than if the case went to an Employment Tribunal. Legislative changes, a new Statutory Code of Practice and accompanying guidance will be introduced by summer 2013.
- **Providing Early Conciliation** before a claim can be lodged at an Employment Tribunal, offering the parties the opportunity to resolve their dispute through Acas conciliation and avoid the need to go to a tribunal. We have recently consulted on the implementation of Early Conciliation, and the Government Response will be published in the spring. We are aiming for implementation from early 2014.
- **Making parties better informed** about possible outcomes at Employment Tribunals, for example by providing details of average awards on ET1 and ET3 forms. To further encourage people to think more carefully about Employment Tribunals and alternatives, we will **introduce Tribunal Fees into Employment Tribunals and Employment Appeal Tribunals in summer 2013.**
- **Launching a pilot to train SMEs in Workplace Mediation services** in the Cambridge and Manchester regions. The aim of the pilot is to train a network of SMEs who can offer mediation services to other pilot members free of charge giving businesses flexibility over how to handle problems at work. The pilot will run until end December 2013.

2.36. Some disputes do reach Employment Tribunals. It is important to underline that such cases are relatively rare, and are not as expensive as many respondents to the Employment Law Review have claimed (see Box 3). The percentage of workplaces in which an employee made an Employment Tribunal application was 4% in 2011¹⁹. There were 186,300 claims accepted by employment tribunals during 2011-12 (1 April 2011 to 31 March 2012), a 15% fall on the number received in the previous year, and 21% lower than the number in 2009 -10²⁰.

¹⁹ WERS, 2011

²⁰ Employment Tribunals and EAT Statistics, 2011-12

Box 3: Summary of costs incurred during Employment Tribunals

	Employment Tribunal hearing	Individual conciliation	Average across Tribunal claim outcome
Employer's costs	£6, 200	£3, 500	£3, 900
Claimant's costs	£1, 800	£1, 100	£1, 400
Exchequer cost	£3, 200	£590	

Source: BIS estimates from Acas, HMCTS, SETA and ASHE data in 2012 prices. Figures are rounded (Early Conciliation, Impact Assessment)

2.37. Nevertheless, for the cases that do reach tribunal stage, our aim is for both parties to have confidence in the system and for the process to be fair and effective. To deliver this, the Government will:

- **Introduce a new 12 months' pay cap on the compensatory award for unfair dismissal in summer 2013 to run alongside the overall cap.** This will give employers more certainty about their potential liabilities and employees more realistic expectations about unfair dismissal award levels.
- **Introduce revised Employment Tribunal rules** later this year. The new rules will strip out unnecessary bureaucracy in the administration of the system, and in particular formalise existing good practice in case management so that fairness and consistency in approach is applied across the different Employment Tribunal offices.
- **Undertake a Remissions System Review.** We are committed to review the fee remissions systems in operation across courts and tribunals, including those which will operate in Employment Tribunals. The review will look at the operation of the system as a whole to ensure that it is well targeted, fair and consistent. It will also consider the impact of changes to the benefits system brought by the introduction of Universal Credit from October 2013.
- **Give Employment Tribunals the power to levy financial penalties against employers found to have breached employment rights.** Judges will have the discretion on whether to levy a penalty of up to 50% of the value of the award where an employer has breached employment rights. Genuine mistakes will not be penalised. This should ultimately lead to fewer workplace disputes and Employment Tribunal claims.
- **Introduce a power to enable secondary legislation to be made on mandatory equal pay audits.** We are introducing a power through the

Enterprise and Regulatory Reform Bill to enable Ministers to legislate, at a later date, for Employment Tribunals to impose pay audits on employers who are found to have discriminated because of sex in contractual or non-contractual pay matters.

- 2.38. Employers have said that it is too difficult for employers to make workers redundant and that the regulatory burdens faced by them can be disproportionate. Generally, we know both employers and employees find the redundancy process difficult. We are **reforming collective redundancy rules from April 2013**. To support these reforms, the **Advisory, Conciliation and Arbitration Service (Acas) will publish new collective redundancy guidance**.
- 2.39. Finally, we will further support business by improving the information and guidance available to help employers manage the redundancy process. We will **work with Acas to produce a simple online guidance tool on the entire disciplinary process in 2013**. This interactive tool will be targeted at small businesses and also address key issues raised by them.

3. Annex: The UK Labour Market

Summary

This annex provides further data and analysis on how the labour market works and recent changes to it. It shows the high performance of the labour market in terms of employment and unemployment rates, and the longer-term increase in the participation of older people and women in the labour market.

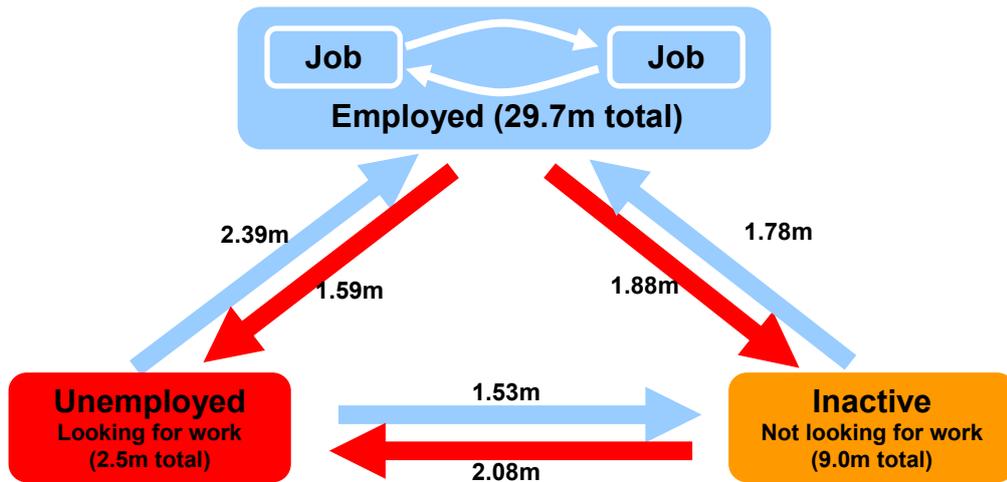
The impact of the recession is demonstrated: particularly the fall in employment and increase in unemployment. The data show that since 2011 both have begun to turn back. A selection of key trends are picked up in this analysis. Particularly, the extent to which the labour market is rebalancing from public to private sector employment, the recent increase in 'second choice' jobs as individuals adjust to economic circumstances, and changes to the participation rates amongst women and older workers. Data on employee well-being and satisfaction at work are also provided.

The size and structure of the labour market

- 3.1. There are 41 million people of working age²¹ who make up the labour market, and they are categorised according to whether they are:
 - Employed;
 - Unemployed and actively looking for work; or
 - Economically inactive, which means they are unemployed and not looking for work (for example because they are studying or looking after family or home).
- 3.2. Figure 2 shows the volume of individuals in each category, and the flows between each category.

²¹ The Labour market is comprised of all those over the age of 16 up to the age of 64, and also those over 64 if they are either working or looking for work.

Figure 2: Flows of people in the labour market, Q1 – Q4 2012

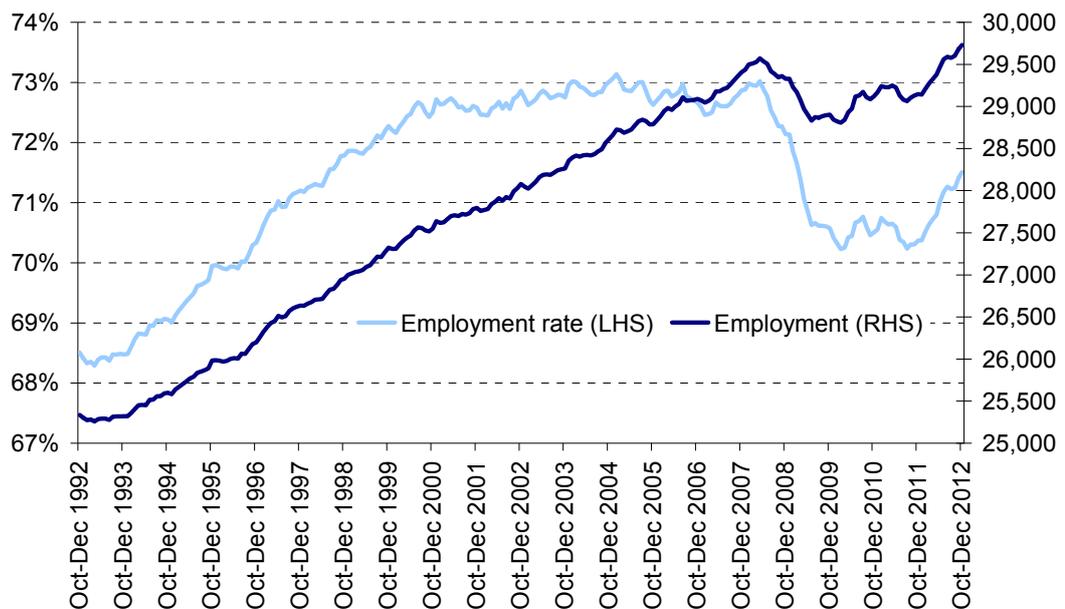


Source: ONS Labour Market Flows, experimental statistics and ONS Monthly Labour Market Statistics

The level of employment since the recession

3.3. Graph 8 shows the employment rate and the total number of people in employment. More people are employed than ever before. Over the last 12 months, employment increased by over half a million to reach 29.73 million people in Q4 2012.

Graph 8: Historic employment in the UK



Source: ONS Monthly Labour Market Statistics

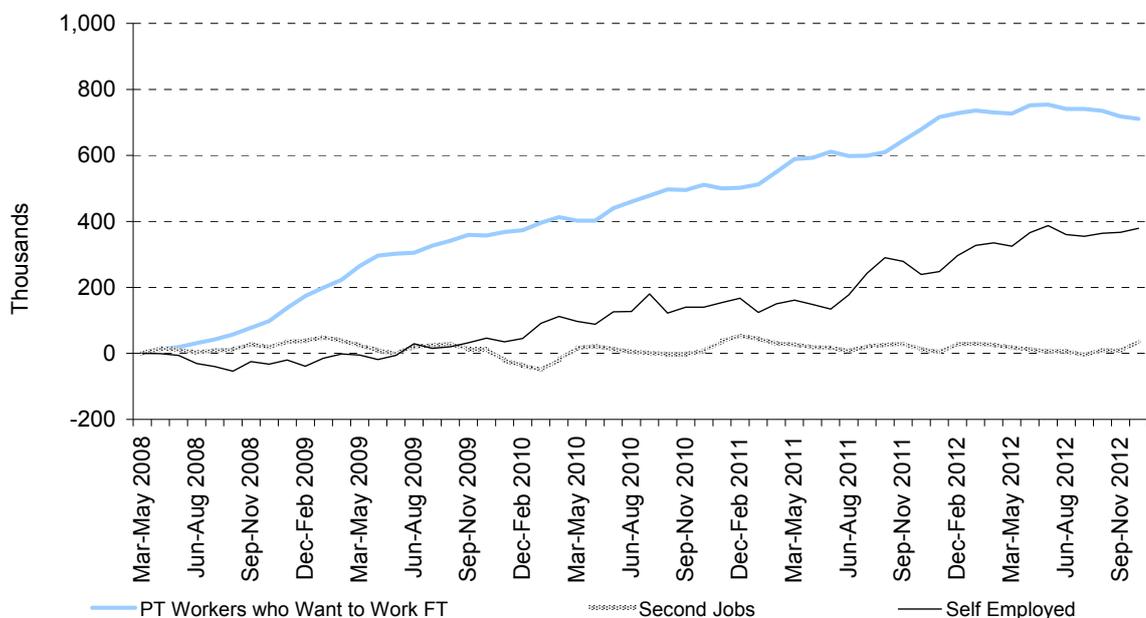
3.4. These figures also demonstrate resilience through the recession. During the 08/09 recession, gross domestic product (GDP) fell by 6.1% while employment fell by 2.1%. And despite quarterly GDP growth turning negative for more than two successive quarters a second time in 2011, and remaining relatively static since then, the employment indicators described above are showing improvement. Nevertheless, the employment rate has not yet recovered to its pre-recession high.

Where have new jobs come from?

3.5. While employment is growing again after the recession the nature of employment is shifting as people and employers adapt to changed economic circumstances. There has been a general increase in part-time employees and the self-employed, the increase in which more than offsets the fall in full-time employees (see Graphs 9 and 10). Particularly, within the numbers of part-time workers, more report that they are working part-time while they would prefer to be in full-time work.

3.6. Despite the increase in part-time workers, the total number of hours worked in the economy has been increasing, and has almost recovered to the pre-recession high seen in the first quarter of 2008. However, even at that point, average hours worked in the economy were lower than in the 1990s and the early 2000s²².

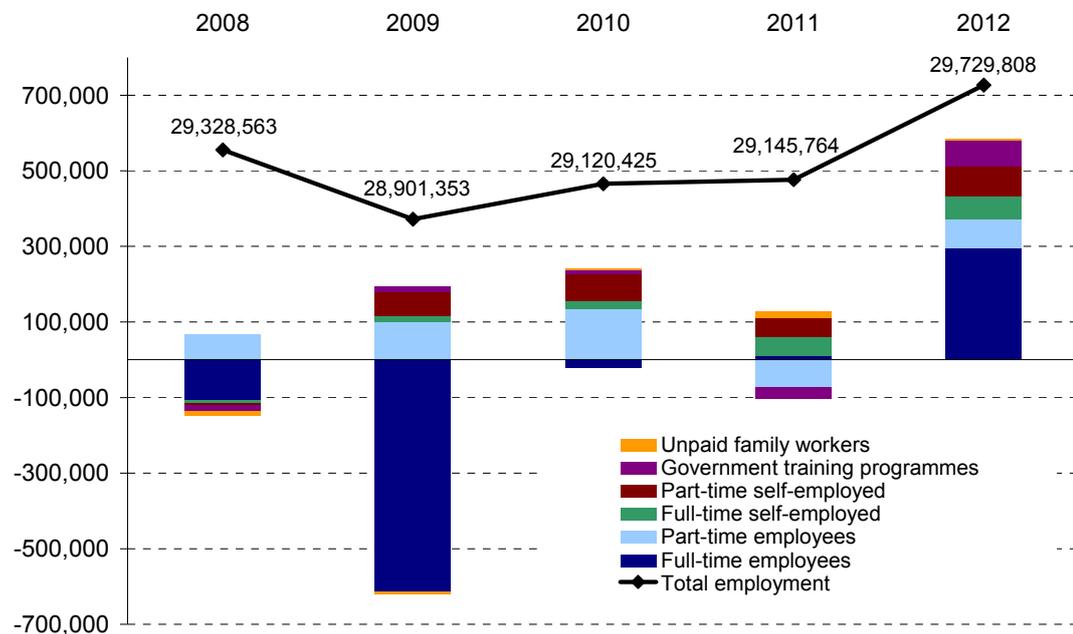
Graph 9: Employment changes since 2008



Source: ONS Monthly Labour Market Statistics

²² ONS, Labour Market Statistics.

Graph 10: Annual change in composition of employment and total employment level



Source: ONS Monthly Labour Market Statistics

Rebalancing the economy after the recession

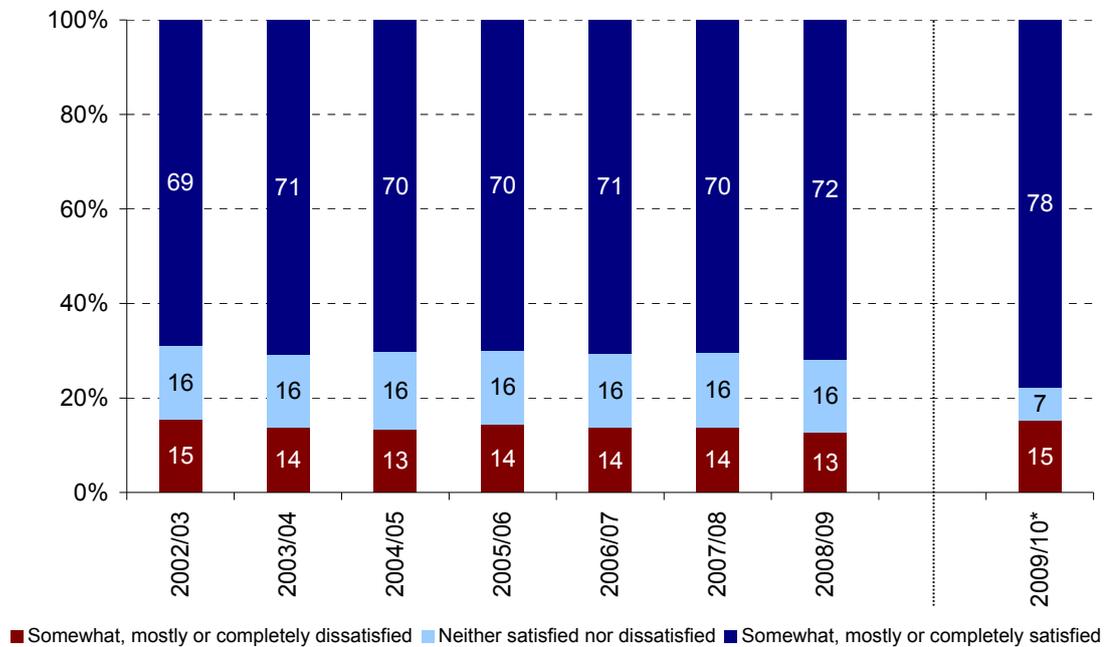
- 3.7. The labour market has demonstrated flexibility in adapting to shifting demand in the public and private sectors. Specifically, more jobs are being created in the private sector to offset job losses in the public sector.
- 3.8. The number of people employed in the public sector was 5.75 million in September 2012, down 24,000 from June 2012. The number of people employed in the private sector in September 2012 was 23.86 million, up 65,000 from June 2012. And between September 2011 and September 2012, the number of people employed in the public sector fell by 324,000 and the number of people employed in the private sector increased by 823,000. These large annual movements reflect the reclassification of some educational bodies from the public sector to the private sector.

Satisfaction and experience at work

- 3.9. A number of surveys allow us to determine workers' experience of employment. There is evidence that in general, people are satisfied with many elements of their working life.

3.10. According to the ONS measures of well-being²³, around 70% of people in employment are somewhat, mostly or completely satisfied with their job (Graph 11). Although data for 2009/10 is not directly comparable with previous years, levels of job satisfaction appear consistent over time.

Graph 11: Satisfaction with job



Source: ONS National Wellbeing measures, experimental statistics

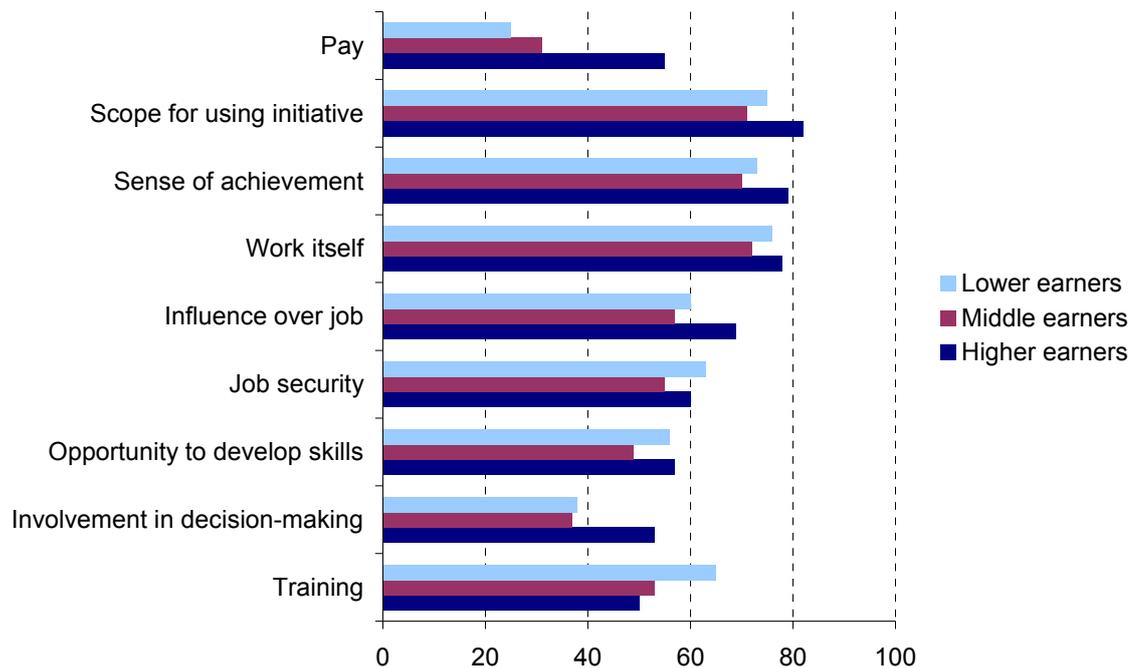
* 2009/10 is not directly comparable with other years due to a different sample size being used.

3.11. The Workplace Employment Relations Study, a separate survey, added further detail to these findings. Graph 12 shows the level of employee satisfaction with particular aspects of their jobs²⁴.

²³ www.ons.gov.uk/ons/guide-method/user-guidance/well-being/index.html.

²⁴ WERS (2013) First Findings report p40.

Graph 12: Employees ‘Very satisfied’ or ‘Satisfied’ with aspects of their job (%)



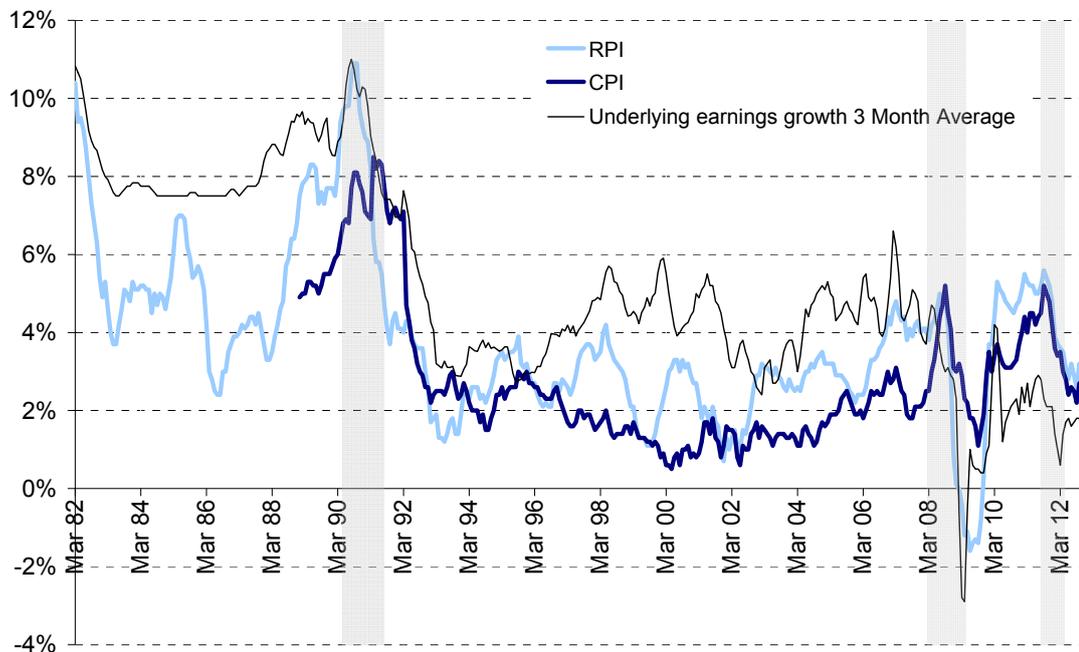
Source: WERS 2011 First Findings report. Base: Full time employees.

3.12. Furthermore, the British Social Attitudes Survey (2012) found that on average, people rate their job satisfaction slightly higher than they did in 2006. This is despite some of the survey’s measures of ‘job quality’, having shown a reduction since the recession.

Earnings at work

3.13. Nominal earnings growth generally remained positive during, and since the recent recession. However, it has been relatively moderate by historic standards. Graph 13 shows earning growth compared to inflation since the 1980s. Periods of economic recession are shown in grey. The recent recession may have shocked nominal wages downwards, as occurred in previous recessions. According to the 2011 Workplace Employment Relations Study (WERS), 42% of workplaces froze or cut wages in response to the recent recession – reflecting employers flexing their wage costs to adapt to the recession.

Graph 13: Underlying average earnings growth (annual change) compared with inflation



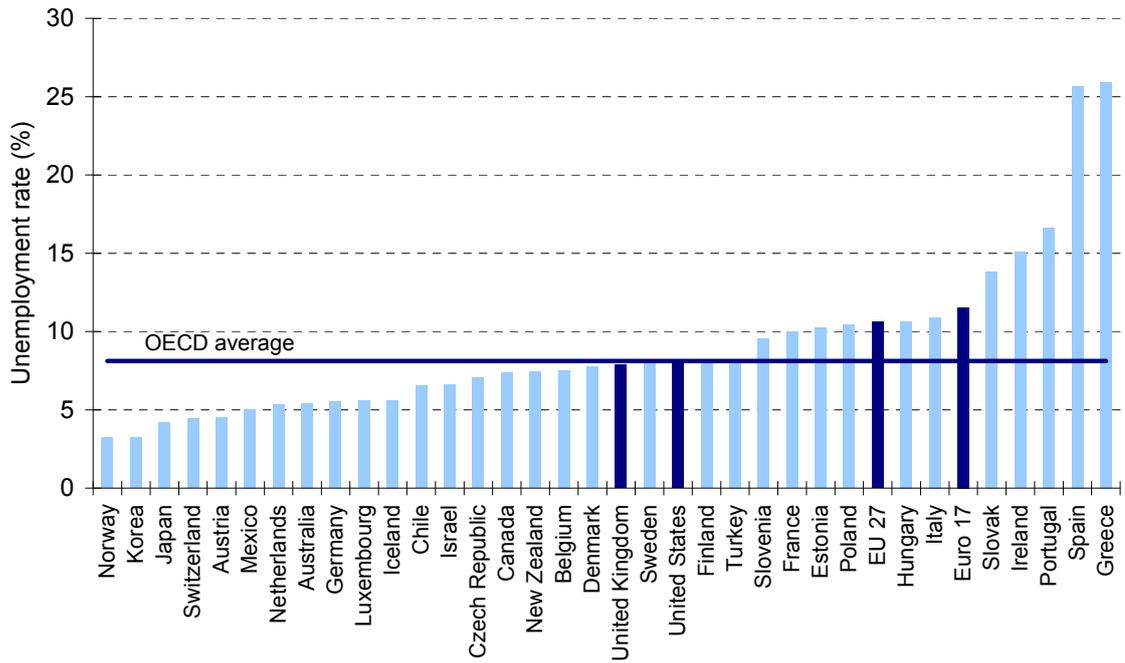
Source: ONS Monthly Labour Market Statistics and ONS Consumer Price Indices.

Note: To represent underlying earnings growth, underlying AEI is used from 1982-2001 and AWE (KAC3 series) is used from May 2001 onwards. CZBH and D7G7 series are used to represent inflation measures.

Moving from unemployment into work

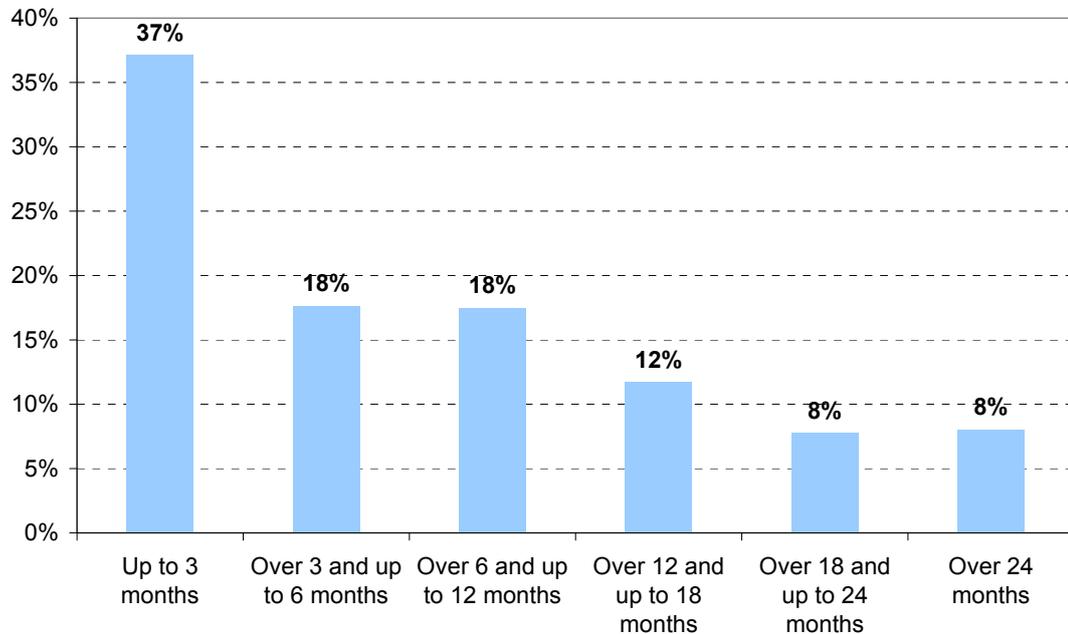
3.14. At the end of 2012 there were 2.49 million unemployed 16 to 64 year olds in the UK, which is below the OECD average (see Graph 14). Unemployment is decreasing and movement from unemployment is at its highest level for 15 years – last year 2.35 million jobs were filled by people coming off unemployment. Furthermore, for those who are unemployed, most leave the unemployed benefit claimant count quickly (see Graph 15), demonstrating the efficiency of the labour market in matching unemployed people to new vacancies that arise.

Graph 14: Unemployment rates in the OECD



Source: OECD 2012 Q3 data. All persons aged 15-64

Graph 15: Unemployment (claimant count) duration, September 2012

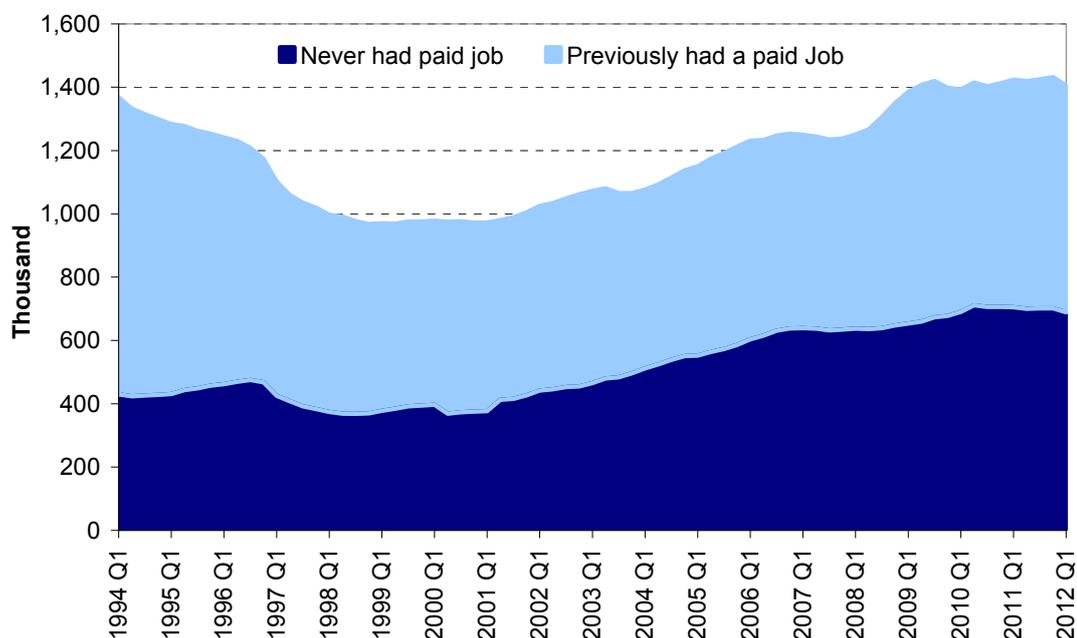


Source: ONS Labour market statistics.

Moving from unemployment into work during the recession

3.15. Unemployment remains above its pre-recession low of around 1.6 million people. A particular issue is that the recovery in employment has disproportionately fallen to over 25 year olds. Youth unemployment on the other hand has been on an upwards trend since around the end of 2001. Graph 16 below plots under 25 year olds (excluding those in full-time education) not in employment (inactive or unemployed), and whether they have never worked or have previously held a paid job.

Graph 16: Under 25 year olds (excluding full-time education): Total workless



Source: Labour Force Survey (rolling 4 quarter average).

Levels of economic participation, and economic inactivity

3.16. In the three months to December 2012, there were 9 million people aged 16 to 64 that were economically inactive. Graph 17 shows inactivity has been falling as more people enter the labour market to work or actively seek work.

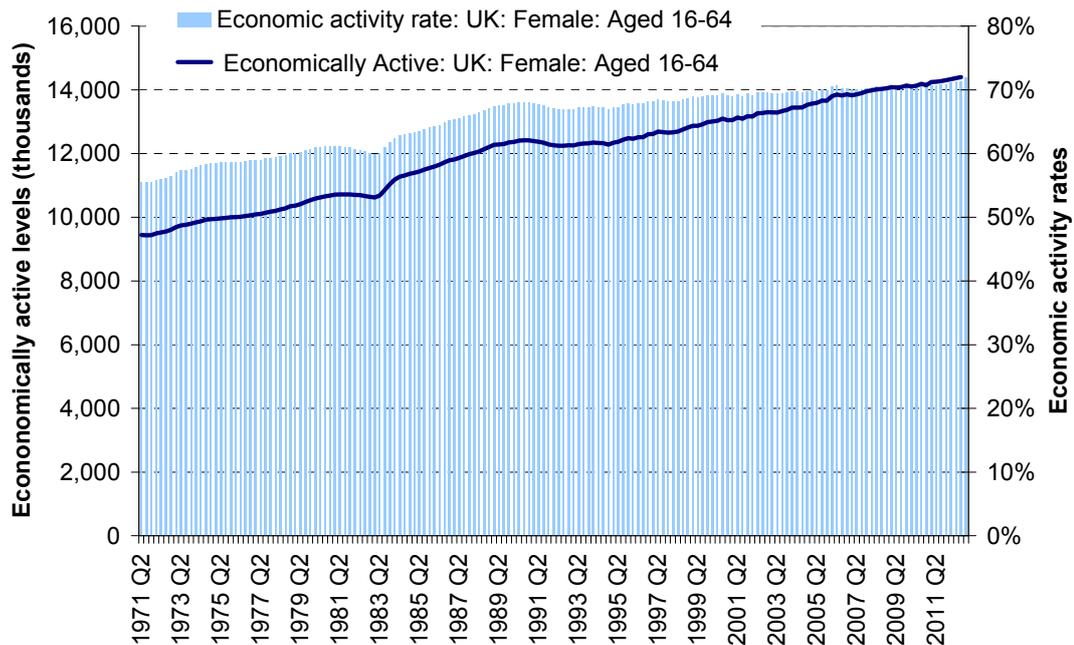
Graph 17: Inactivity rate



Source: ONS Monthly Labour Market Statistics

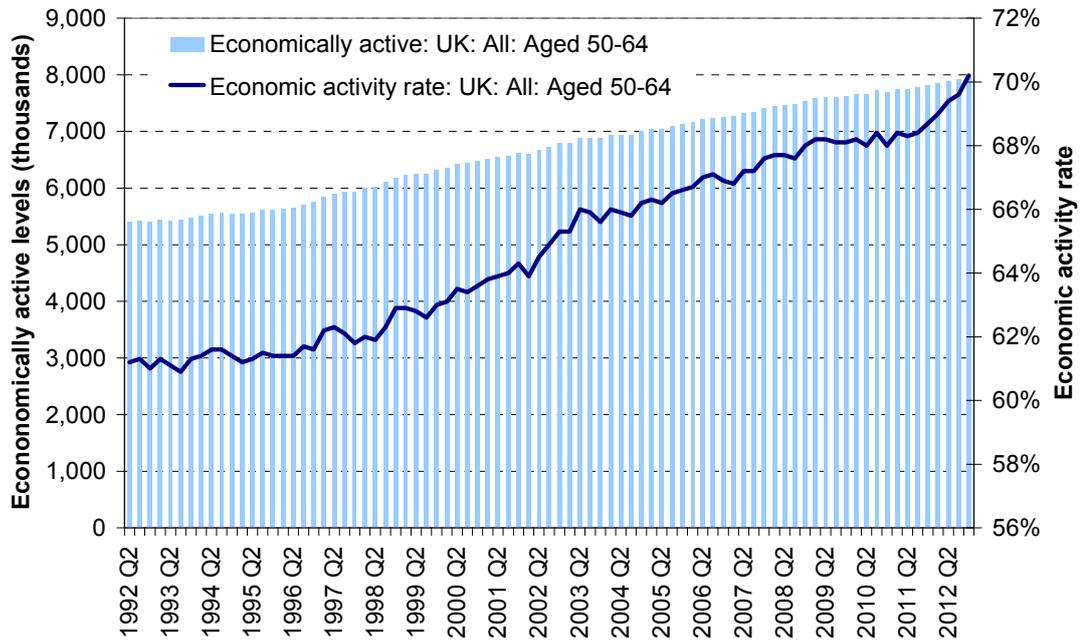
3.17. Contributing to this fall in activity has been an increase of labour market participation of women (graph 18); workers between the ages of 50 and 64 (graph 19); and workers above 65 years of age (graph 20).

Graph 18: Economic activity levels and rates for women aged 16-64 years old



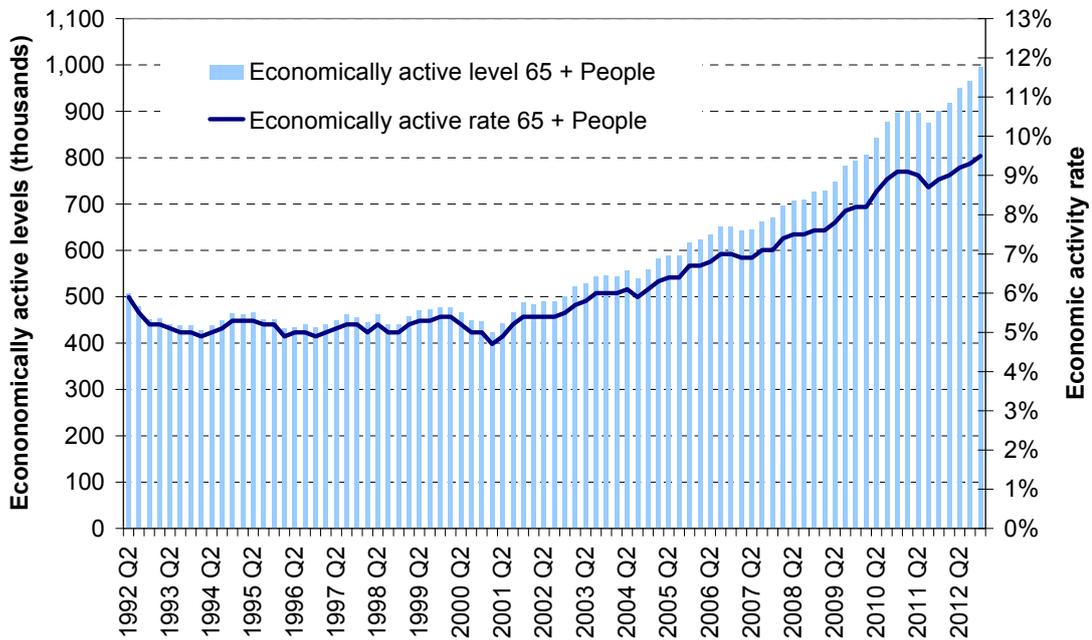
Source: Labour Force Survey. Seasonally adjusted data.

Graph 19: Economic activity levels and rates for 50-64 year olds



Source: Labour Force Survey. Seasonally adjusted data.

Graph 20: Economic activity levels and rates for 65+ year olds



Source: Labour Force Survey. Seasonally adjusted data.

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