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‘When Hard Work Doesn’t Pay’

A Review of the Working Time and the National Minimum Wage Frameworks

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Introduction

The strained relationship between the regulation of working time,[1] and the provision of a national minimum wage[2] has long since been the source of rich academic debate amongst labour law theorists.[3] Since their statutory inception in the 1990s, these legislative giants have provided invaluable protections for millions of vulnerable workers in the fight against the substantial inequality of arms inherent in the employment relationship.[4] However, with the onset of the Covid-19 global pandemic combined with the relentless pace of technological advancement facilitating ever-more diverse and innovative working arrangements,[5] the precise boundaries between these temporal categorisations of labour have recently become increasingly blurred.[6]

Occupying the legally uncertain territory at the forefront of this inharmonious divide are the concepts of 'availability time,'[7] and 'time at the employer's disposal.'[8] Described as an interim status that constitutes neither full work nor rest,[9] this third kind of time[10] is most typically associated with

1 Working Time Directive 2003/88/EC; and The Working Time Regulations 1998.
2 National Minimum Wage Act 1998; and National Minimum Wage Regulations 2015.
3 Lisa Rodgers, 'The Notion of Working Time' (2009) 38 (1) ILJ 80, 88.
4 Hugh Collins, Gillian Lester and Virginia Mantouvalou, *Philosophical Foundations of Labour Law* (OUP 2019) 6.
5 Office for National Statistics, 'Business and individual attitudes towards the future of homeworking, UK: April – May 2021' (ONS 2021) 1 – 17.
6 Ciaran Devlin and Alex Shirvani, 'The Impact of Working Time Regulations on the UK labour market: A review of evidence' (BIS No 5, Department for Business Innovation and Skills 2014) 21, 26.
7 National Minimum Wage Regulations (n 2), r 32.
8 Working Time Regulations (n 1), r 2(1).
9 Kate Ewing, 'Tomlinson-Blake in the Supreme Court' (*UK Labour Law Blog*, 28 April 2021) <https://uklabourlawblog.com/2021/04/28/tomlinson-blake-in-the-supreme-court-by-kate-ewing/> accessed 17 December 2021.
10 Alain Supiot, *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (OUP 2001) 81.

'less active' elements of the working day, such as; travelling,[11] on-call periods,[12] sleeping,[13] and time between (usually gig-economy) assignments and/or tasks.[14] Owing to its potentially far-reaching political, socio-economic and cultural ramifications, the question of how exactly these periods of so-called 'slack time'[15] should be counted for the purposes of working, and/or waged time is one which the courts have historically struggled to answer, both at a domestic and EU level. From this jurisprudence however, two distinct approaches have emerged – productivity regulation, and unitary analysis.[16] Through a comprehensive evaluation of the theoretical underpinnings, and practical applications of these two diametrically opposed visions of regulatory labour theory to the working time and national minimum wage frameworks, this article will seek to demonstrate that reformation of both regimes is clearly required in order to adequately safeguard workers against the risk of exploitation; before considering what measure of blended reform could, *realistically,* be achieved in the current political and economic climate. In order to do so however, it is first necessary to place these concepts into their proper statutory contexts.

Waged Time & Productivity Regulation

Purely domestic in origin, and now operating under the auspices of the National Minimum Wage Regulations 2015 ("NMWR 15"), the first New Labour government's historic National Minimum Wage Act 1998 represented something of a seminal event in the history of UK labour relations. Under this regime, which seeks to provide a minimum level of remuneration for all UK workers,[17] work, although not explicitly defined,[18] is divisible into four sub-categories; salaried, time, (paid by the hour), piece, (paid by the amount of goods produced), and unmeasured (any other form of work).[19] Whilst these categories are mutually exclusive temporally-speaking, any given working relationship may include periods of each.[20] For example, a salaried worker performing overtime hours would likely be engaging in time work for that period.

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11 Case C – 266/14 *Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL, Tyco Integrated Fire & Security Corporation Servicios SA* [2015] OJ C363/16.

12 Case C – 303/98 *Sindicato de Médicos de Asistencia Pública (Simap) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana* [2000] ECR I-07963; and Case C – 151/02 *Landeshauptstadt Kiel v Norbert Jaeger* [2003] ECR I-08389.

13 *Royal Mencap Society v Tomlinson-Blake* [2021] UKSC 8, [2021] ICR 758.

14 *Uber BV v Aslam* [2021] UKSC 5, [2021] 4 All ER 209.

15 Robert A. Hart, *Working Time and Employment* (Routledge 2010) 41 – 44.

16 Deirdre McCann, 'Temporal Casualisation and 'Availability Time': Mencap, Uber and the Framed Flexibility Model' (2020) DWR Research Paper 01/2020, 4 – 5 <https://ssrn.com/abstract=3789540> accessed 18 December 2021.

17 National Minimum Wage Act (n 2), s 1.

18 Sammy Baba-Ahmed, 'Supreme Court unanimously dismisses appeals of care workers seeking National Minimum Wage for full duration of 'sleep-in' shifts (Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad and another' [2021] LNB 108.

19 Hugh Collins, Keith Ewing, and Aileen McColgan, *Labour Law* (2nd edn, CUP 2019) 276.

20 Zoe Adams, Catherine Barnard, Simon Deakin and Fraser Butlin, *Deakin & Morris' Labour Law* (7th edn, Hart Publishing 2021) 290 – 291.

For the purposes of both salaried and time work, a calculation of this National Minimum Wage ("NMW") is specifically stated to include: "*hours when a worker is available, and required to be available, at or near a place of work for the purposes of working….*"*21* Commonly understood as relating to on-call working (where time work is typically the preferred method of payment), this provision is expressly stated not to apply to workers when they are at home.[22] A further exclusion is made for sleep-in workers in the same sub-categories which specifies payment of the NMW only for those: *"hours when the worker is awake for the purposes of working, even if a worker* [*by arrangement*] / [*is required to*] *sleep[s] at or near a place of work and the employer provides suitable facilities for sleeping."23* In a recent and controversial Supreme Court decision with potentially far-reaching consequences,[24] it was confirmed that such workers only qualify for the NMW when '*actively*' performing their duties, and not, as a series of previous decisions had held,[25] for the duration of their shifts more generally.[26] Accordingly, where workers are merely on 'stand-by' (irrespective of their location), they will not qualify for the NMW – or, it seems, any form of remuneration in the absence of an express contractual agreement – despite being available to work, and at their employer's disposal for the duration of their potentially lengthy shifts / on-call periods.[27]

Similarly, the legislation also declines to extend the definition of 'working' to include 'availability to work' for those engaged in piece work, for whom no analogous provision exists under the regulations. Lastly, it should be noted that periods workers spend travelling to-and-from their usual place of work from their home address is also statutorily excluded from the scope of the NMW framework for all types of workers.[28] Whilst these disparate categories of availability time may appear, prima facie, unconnected, they each share one common vulnerability which renders them uniquely susceptible to the destructive effects of an increasingly widespread regulatory practice known as time drainage – they are all, ostensibly, unproductive.

Most typically associated with the rise of the gig economy and so-called 'zero hour contracts,'[29] the concept of time drainage is certainly nothing new.[30] Drawing its authority from the politico-

21 National Minimum Wage Regulations (n 2), r 27(1)(b), r 32(1).
22 ibid.
23 ibid, r 27(2), r 32(2).
24 *Mencap v Tomlinson-Blake* (n 13).
25 See: *British Nursing Association v Inland Revenue* [2002] EWCA Civ 494, [2003] ICR 19; *Whittlestone v BJP Home Support Limited* [2013] UKEAT/0128/13, [2014] ICLR 176; *Burrow Down Support Services Ltd v Rossiter* [2008] UKEAT/0592/07, [2008] ICR 1172; and *Scottbridge Construction Ltd v Wright* [2002] ScotCS 285, [2002] IRLR 21.
26 *Mencap v Tomlinson Blake* (n 13) [44].
27 Stephen C Miller, 'National Minimum Wage', *Harvey on Industrial Relations and Employment Law* (Issue 293, December 2021) 216.06.
28 National Minimum Wage Regulations (n 2) rs 27(1)(c), 34(1)(a), 39(1)(a).
29 Deidre McCann, 'Travel Time as Working Time: *Tyco,* The Unitary Model and the Route to Casualisation' (2016) 45 (2) ILJ 244, 249.
30 A.C.L Davies, 'Wages and Working Time in the 'Gig Economy" (2020) 31 (2) Kings Law Journal 250, 251.

economically focussed model of labour classification known as productivity regulation, this practice advocates for a traditionally capitalistic interpretation of labour in which a binary (and arguably overly simplistic) distinction between 'active' and 'inactive' hours dictates how working waged time is calculated.[31] Under this qualitative assessment, only those hours a worker spends actively performing 'core functions' will qualify for payment of the NMW.[32] Conversely, any periods of corresponding inactivity, such as those spent merely 'available' or 'at the employer's disposal', are ignored when calculating working waged time.[33] This fragmentation is evidently detrimental to workers' rights, allowing for the near-infinite dissection of the working day into increasingly narrowly defined periods of 'core' paid time,[34] thus leaving workers vulnerable to arguments such as those ran (unsuccessfully) in *Uber v Aslam*.[35] As such, by expressly recognising and compensating only for the arduousness of labour,[36] this approach prioritises an employer's economic business interests over the restrictions placed on a worker's time.

This reductionist interpretation of labour law,[37] which many have argued does not account for the nuances of reality in many people's working lives,[38] is perhaps most graphically illustrated by the much maligned Supreme Court findings in *Mencap*.[39] In reaching the conclusion that Ms Tomlinson-Blake, a care worker, was not engaged in NMW work during the periods of her shift in which she was asleep,[40] the court was required to explicitly overlook the various finely balanced judgement calls she was obliged to make during such periods – usefully summarised by her description of an obligation to 'keep a listening ear out'[41] – tasks which, although inactive (and therefore invisible to productivity regulation),[42] were nonetheless integral to her role. After all, as McCann powerfully argues in her critique of the Court of Appeal decision in this case, "*what greater degree of inactivity, than sleep*!"[43]

31 Deidre McCann and Jill Murray, 'Prompting Formalisation Through Labour Market Regulation: A 'Framed Flexibility' Model for Domestic Work' (2014) 43 (3) ILJ 319, 341.
32 A.C.L Davies, 'Getting More Than You Bargained For? Rethinking the Meaning of 'Work' in Employment Law' (2017) 46 (4) ILJ 477, 480.
33 ibid, 477.
34 ibid.
35 *Uber v Aslam* (n 14) [138].
36 Deirdre McCann, 'Now That We Care About Carers: Temporal Casualisation in 'Mencap' and 'Uber'' (*DWR Project*, 24 April 2020) <https://medium.com/@UnacceptableFoW/now-that-we-care-about-carers-temporal-casualisation-in-mencap-and-uber-9a5d5fc977aa> accessed 19 December 2021.
37 Ewing, 'Tomlinson-Blake in the Supreme Court' (n 9) accessed 19 December 2021.
38 ibid.
39 *Mencap* (n 13) [34] – [50].
40 ibid [47], [73].
41 ibid [19].
42 McCann, 'Now That We Care About Carers' (n 36).
43 McCann, 'Temporal Casualisation and 'Availability Time'' (n 16) 18.

Given the contemporaneous documentary evidence concerning the recommendations of the Low Pay Commission (on whose impetus the government enacted the NMW regime) however,[44] and the fact that any other decision would have likely rendered regulations 27/32 effectively redundant,[45] the Supreme Court's pseudo-endorsement of productivity regulation was perhaps, although disappointing, somewhat inevitable.[46] Similarly, although the court does not specifically mention them, this approach is equally demonstrative of the rationale behind the various other statutory exclusions listed above, all of which are framed around periods that would also likely be considered as 'inactive' (and therefore unremunerated) under this model. Viewed through this lens, and as implicitly found by the Supreme Court, unpalatable as it may be, it is difficult to foresee an argument (*Uber* notwithstanding)[47] whereby some form of logic pre-disposed towards a model of productivity regulation does not represent the parliamentary intent underpinning the statutory excision of these 'availability' periods from the NMW framework.[48] For reasons explored more fully below, this emphasis has profound ramifications in practice.

Working Time & Unitary Analysis

In direct contrast to this comparatively restrictive approach stands the statutory framework governing working time. Originating from the Working Time Directive 1992, and given effect under domestic legislation by the Working Time Regulations 1998 ("WTR 98"), this regime seeks to protect workers via the imposition of strict limits on the amount of time that can be spent 'working' during any given period.[49] Such measures include, for example, the provision of a maximum (48 hour) working week,[5051] the right to minimum periods of daily, and weekly rest breaks, and a four week annual leave entitlement.[52]

Under this legislation, the concept of being 'available for work' and/or 'at an employer's disposal' enjoys no autonomous meaning. Instead, it is considered as part of the wider cumulative definition of 'working time' defined under the regulations as: "*any period during which* [the worker] *is working, at his employer's disposal and carrying out his activity or duties."53* Unlike its sister provisions under the NMWR 15, the concept of working time is viewed as a fundamental social right by EU

44 *Mencap* (n 13) [6].
45 A.C.L Davies, 'Sleep-in Shifts and the National Minimum Wage: Royal Mencap Society v Tomlinson-Blake, Shannon v Rampersad' (2018) 47 (4) ILJ 553, 561.
46 Miller, *Harvey on Industrial Relations* (n 27) 216.09.
47 See: *Uber* (n 14) [71] – [75], [87].
48 Davies, 'Sleep-in Shifts and the National Minimum Wage' (n 45) 560.
49 Ian Smith, Aaron Baker, and Owen Warnock, *Smith & Wood's Employment Law* (15th edn, OUP 2021) 372.
50 Stefan Corbanie, Elizabeth Gillow and Martin Hopkins, *EU and International Employment Law* (Issue 104, January 2022) 3.15; and Working Time Regulations (n 1), r 4(1).
51 Although see: ibid r 5(1).
52 *Tolley's Employment Law Handbook* (35th edn, 2021) 24.33
53 Working Time Regulations (n 1), r 2(1).

jurisprudence,[54] and has thus been construed comparatively broadly,[55] so as to include the entirety of a worker's on-call / sleep-in shift (when at a location determined by the employer);[56] not merely those periods when they are awake and/or actively performing duties.[57] Similarly, travel time between a worker's home address and place of work is also ordinarily counted for the purposes of this calculation,[58] as is time spent travelling to respond to emergencies when on-call from home[59] – although such home-based on-call periods remain themselves unprotected, albeit for entirely different reasons.[60] The rationale behind this divergence can again be gleaned by examining the regime's legislative purpose. To this end, much as the NMW framework owes its emphasis on productivity regulation to the apparently restrictive intentions of its parliamentary legislator, so too does the more liberal approach mandated under the WTR 98 draw its strength from the broad, sociologically-orientated provisions of its parent Directive;[61] whose express purpose is stated as being in the protection of workers' health and safety.[62] In order to give effect to this protective intent, an equally worker-centric model of labour categorisation is clearly required in practice.

In many ways the polar opposite of productivity regulation, a unitary assessment of working waged time specifically incorporates, not merely the industrial dimension of the contract of employment, but also its social one.[63] By recognising that a worker's level of activity is usually inextricably linked to an employer's work organisation strategies,[64] this more nuanced approach categorises working waged time, not by the economic intensity or output of labour,[65] but instead by the degree of temporal and geographical restrictions placed on a worker during periods spent at their employer's disposal.[66] The quantitative emphasis of this 'time out of life' interpretation[67] ensures that working waged time is therefore determined *solely* by the amount of time spent present and 'available for work.' In doing so, this model, also favoured by the ILO,[68] recognises an employer's inherent (and contractually necessary) prerogative to direct that a worker's labour should be utilised in service of a

54 Collins, Ewing, and McColgan, *Labour Law* (n 19) 291.
55 David Cabrelli, *Employment Law in Context* (4th edn, OUP 2020) 287.
56 *Trusgrove v Scottish Ambulance Service* [2014] UKEATS/0053/13/JW, [2014] ICR 1232 [32] – [34].
57 See: *Simap v Valenciana* (n 12) [48] – [49]; *Kiel v Jaeger* (n 12) [63]; and *Uber* (n 14) [133] – [134].
58 See: *Servicios Privados del sindicato Comisiones obreras v Tyco* (n 11) [65].
59 Case C – 518/15 *Ville de Nivelles v Matzak* [2018] IRLR 457 (CJEU) [63] – [66].
60 *Simap* (n 12) [50].
61 Working Time Directive (n 1).
62 ibid, Arts 1(1), 6, 10, 12, 13, 15, 17(1).
63 Davies, 'Getting More Than You Bargained For?' (n 32) 488.
64 McCann, 'Temporal Casualisation' (n 16) 5.
65 Case C – 14/04 *Dellas and Others v Premier ministre and Ministre des Affaires sociales, du Travail et de la Solidarité* [2005] ECR *I-10253 [43]; and Whittlestone v Home Support* (n 25) [15].
66 Deirdre McCann, 'New Frontiers of Regulation: Domestic Work, Working Conditions, and the Holistic Assessment of Nonstandard Work Norms' (2012) 34 *Comparative Labour Law and Policy Journal* 167, 188.
67 Deirdre McCann and Jill Murray, 'The Legal Regulation of Working Time in Domestic Work' (ILO 2010) <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_150650.pdf> accessed 20 December 2021.
68 Hours of Work (Commerce and Offices) Convention 1930 (No 30) Art 2.

particular business need, whilst insulating these 'inactive' periods of availability where such direction fails to materialise. Consequently, the worker's time, which is nonetheless often being utilised for the employer's benefit (most typically in order to fulfil a particular legal obligation,[69] or business need),[70] remains protected.

The most instructive example of this approach in practice is contained within the decision of the CJEU in *Jaeger*,[71] where it was determined that an obligation on (German) doctors to be present and available at their workplace with a view to providing their professional services during on-call periods should be regarded as falling within the definition of '*carrying out their duties*' for WTR 98 purposes, regardless of the type of work actually performed during such periods.[72] Moreover, following a similar such decision in the earlier case of *SIMAP,73* the court found this to be the only possible interpretation that gave any meaningful effect to the broad health and safety mandate envisioned by the Working Time Directive, and so felt compelled, much as the Supreme Court did in *Mencap,* to construe the facts in accordance with this underlying worker-protective intent.[74] After all, if these workers were not able to pursue their own private interests and enjoy relaxation time, free from such restrictive work-related obligations, how could they conceivably be said to be at rest.[75] Incidentally, this earlier judgement (*SIMAP*) also provides a unitary rationalisation for the exclusion of home-based on-call work from the scope of WTR 98 protection, reasoning (somewhat unconvincingly) that the comparatively fewer restrictions in these circumstances allows for a greater degree of freedom to pursue other, presumably non-work-related, activities.[76]

Notwithstanding their distinct statutory origins then, the logical juxtaposition between these two ideologically opposed approaches to the regulation of working waged time is clear. As exemplified by the differing emphases (and arguably conflicting decisions) in *Mencap* and *Jaeger*, the application of these disparate theoretical approaches produces an equally divergent result in practice. Conceivably then, whilst many of these 'availability' periods may fall within the definition of 'working' for the purposes of the WTR 98, it is distinctly possible that a different conclusion may be reached in calculating whether this 'working time' should attract payment of the NMW.[77]

69 LJB Hayes, 'Three steps too far in the undervaluing of care: Mencap v Tomlinson-Blake' (*UK Labour Law Blog*, 15 August 2018) <https://uklabourlawblog.com/2018/08/15/three-steps-too-far-in-the-undervaluing-of-care-mencap-v-tomlinson-blake-ljb-hayes/> accessed on 22 December 2021.
70 See: *Uber* [136].
71 *Jaeger* (n 12).
72 ibid (n 57).
73 ibid.
74 *Jaeger* [70].
75 Tom Walker, 'Golden Slumbers?' (2014) 164 (7625) NLJ 10.
76 *Simap* (n 60).
77 Ian Smith, 'Employment law brief' (2021) 171 (7928) NLJ 8.

Problems & Reform

The obfuscation of workers' rights facilitated by this disconnect as between time actually worked on the one hand, and time which is remunerated on the other, is a well-documented source of concern among both domestic and EU commentators alike.[78] Whilst clearly unideal, there is however, a deeper, altogether more pernicious problem that is created by this inconsistency, which threatens to undermine the very fabric of these regimes themselves. For at the heart of this dichotomy lies an uncomfortable, yet increasingly common reality for many ordinary workers; one in which those who most need to limit their working time in order to protect their health, are also those who most need to increase their hours to maintain their fragmented and dwindling incomes.[79] For many workers then, the health and safety bedrock of the WTR 98 must feel extremely hollow in the shadow of a domestic NMW framework which, through its preferment of productivity regulation, effectively forces them into forgoing its statutory protections in order to survive.[80] Put simply, workers are being forced to work harder, for longer, with appreciably less chance of adequate remuneration.[81] The resultant subversion of the NMWR 15 wage floor and health and safety underpinnings of the WTR 98 is unmistakable, and demonstrates just how radically these regimes are failing in their stated regulatory purposes.[82] Reform, and more importantly regulatory and purposive alignment, should be affected as a matter of utmost priority.

Given its obvious benefits from a worker-protective standpoint, it would clearly be remiss of this author not to argue, at least in the first instance, for the wholesale realignment of these statutory regimes towards a unitary model of labour categorisation which recognises all time spent 'available for work' / 'at the employer's disposal' as being entitled to payment of at least the NMW.[83] However, given the apparent intentions of parliament in passing the NMW framework discussed above, not to mention the complete re-structuring of entire sections of the UK economy that would necessarily be required in the event of such revolutionary reform (itself a key undercurrent in the *Mencap* litigation),[84] this idealistic approach is, regrettably, one that is unlikely to be grounded in reality. Instead, a more cautious, blended model of unitary reform is proposed. One that recognises business need as the key driver of economic productivity, whilst still maintaining the characteristically generous worker protections that typify a unitary approach.

78 See: *Tyco* (n 11) [49]; *Jaeger* (n 12) [26]; and *Mencap* (n 13) [8].
79 Collins, Ewing, and McColgan, *Labour Law* (n 19) 336.
80 Anne Spurgeon, *Working Time: its impact on Safety and Health*, (ILO 2003) 48.
81 Ewing, 'Tomlinson Blake in the Supreme Court' (n 9).
82 Collins, Ewing, and McColgan, *Labour Law* (n 19) 325.
83 Justine Riccomini, 'Calling Time on work' (2021) 187 Taxation Magazine 8.
84 Davies, 'Sleep-in Shifts and the National Minimum Wage' (n 45) 565.

By introducing alongside a worker's usual NMW-complaint wages, a new lower minimum hourly rate, paid to all workers during *all* periods of availability currently excluded from the NMW and WTR frameworks, together with a further requirement for employers to specify the precise periods covered by such payments in a worker's contract,[85] it is proposed that the logic behind both of these regulatory models could be respected. Crucially, this reform would preserve the ardour and skill of labour as the key economic differentiator between different pay periods, whilst simultaneously maintaining the wage floor at a semi-acceptable level, thereby ensuring a worker's health and safety remains protected. This methodology is clearly not beyond reproach, not least in its promotion of payments below the NMW threshold, which are commonly understood to represent an affront to basic human dignity,[86] and therefore ones that should ordinarily be avoided where possible. However, if any meaningful reform is to be realised, this could prove to be the unhappy socio-economic compromise that both sides of this partisan divide may have to learn to accept.

Conclusion

In summary, it is certainly no hyperbole to state that the future tone of labour law discourse in this field, as well as the degree of protections enjoyed by millions of the most vulnerable in our society, rests almost exclusively on the question of which of these two conflicting models of regulatory labour theory will ultimately prevail in our nation's conscience. If the past two years has given us any indication about which path to take at this important crossroads, it must surely be that those engaged in our lowest-paid professions, often so critical in our response to the pandemic, ought to be afforded a greater measure of protection for their exceptional efforts.[87] If we truly value their contributions, and we must, then now is the time to show it, with meaningful, unitarily-orientated alignment of the NMW and WTR frameworks. Whether the government will have the political and economic capital to achieve this reform in light of the sheer scale of fiscal prudence that will doubtless be required from both public and private sectors alike in this post-Covid-19 era, is a question perhaps best left for another time. No longer bound by the unitary jurisprudence of the European Union following Brexit however, the concern of many labour theorists is that although standardisation of these regimes may well occur, if the decision in *Mencap* is to provide us with any guide, the direction of travel may not be a positive one. We do know one thing for certain, though. The status quo *cannot* be maintained for long.

85 Collins, Ewing, and McColgan, *Labour Law* (n 19) 277.

86 Guy Davidov, 'A Purposive Interpretation of the National Minimum Wage Act' (2009) 72 *MLR* 581, 594.

87 Kate Ewing, 'The National Minimum Wage Bill: What it is, why it's needed, and how it could be strengthened' (IER, 28 October 2020) <https://www.ier.org.uk/comments/the-national-minimum-wage-what-it-is-why-its-needed-and-how-it-could-be-strengthened/> accessed 22 December 2021.

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