

**Are EU workers economically active
enough to deserve rights? The
reclassification of ‘worker’ under the
earnings threshold in the UK.**

Alice Welsh

Part-time and atypical work under EU law (1)



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- EU law on the definition of worker explicitly recognises the importance of including part-time work

Case 53/81 *Levin*:

‘Part-time employment... constitutes for a large number of persons an effective means of improving their living conditions, the effectiveness of Community law would be impaired... if the enjoyment of rights conferred by the principle of freedom of movement for workers were reserved solely to persons engaged in full time employment’

‘to the exclusion of activities **on such a small scale** as to be regarded as purely marginal and ancillary’.

Part-time and atypical work under EU law (2)



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- The EU's recognition of the need to look at atypical work
 - EU Commission DG for employment social affairs and inclusion consultation on non-standard employment
 - occurrences of atypical work increasing
 - Not granted access to social protection on par with workers in traditional full-time/permanent contracts
 - Recommendation of new definition of worker including forms of atypical work in EU Employment law
 - Could trickle into all areas of EU law



Minimum Earnings Threshold (MET)

- (1) a threshold of (£162 pw – 20.7 hours);
- (2) genuine and effective test
 - **In theory**, a two tier test complies with EU law. **In theory**, not a change at all.

BUT...

- Why change policy if nothing changes at all?
- Application is key

Why was the threshold introduced? (1)



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FINANCIAL TIMES

Opinion **UK immigration**

Free movement within Europe needs to be less free

David Cameron NOVEMBER 26, 2013

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‘...We are also toughening up the test which migrants who want to claim benefits must undergo. This will include a new minimum earnings threshold. If they don’t pass that test, we will cut off access to benefits such as income support. ...’

Why was the threshold introduced? (2)



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Press release

Minimum earnings threshold for EEA migrants introduced

Published 21 February 2014

From: [Department for Work and Pensions](#)

*‘Currently European Union case law means the definition of a ‘worker’ is **very broad**, meaning some people may benefit from this **even if, in reality, they do very little work**.*

*So in order to help ensure benefits only go to those who are genuinely working a minimum earnings threshold will be introduced as part of the government’s long-term plan **to cap welfare and reduce immigration...**’*

*Work and Pensions Secretary Iain Duncan Smith said: “These reforms will ensure we have a fair system – one which provides support for **genuine workers** and jobseekers, but does not allow people to come to our country and **take advantage** of our benefits system.”*

Problems with the MET (1)

- The level of earnings necessary:
 - The current threshold is £162 pw = 20.7 hours (minimum wage)
 - Best case scenario;
 - May not be earning minimum wage
 - May be under 25
- Does not comply with EU law on part-time work
 - Case 171/88 *Rinner-Kuhn* (10 hours a week)



Problems with the MET (2)

- The decision maker guidance (1)
 - DMG presumption that part-time work must be marginal and ancillary:
‘work that is part time or low paid is not necessarily always marginal and ancillary’
 - DMG persistently implying the importance of earnings and hours
 - 2nd tier of the test directs decision makers to consider earnings and hours again



Problems with the MET (2)

- The decision maker guidance (2)
 - DMG requesting that the ‘...*person’s primary motivation in taking up employment*’ should be considered
 - Despite judgment in C-53/81 *Levin* clearly stating that motivation is ‘...of no account’
 - Failing to consider holiday/sickness pay
 - Case 14/09 *Genc*



Problems with the MET (3)

- No recognition of capacity to work
 - Recognised for UK citizens if you are a lone parent, have a disability or are a carer
 - EU nationals must meet MET first
 - Those with caring responsibilities – not considered ‘work’



Is the MET determinative (1)

- EU Commission spokesperson warned that:

“...a definition of a worker according to the amount [a worker] earns is not compatible with EU law’

EU Rights Project

Testing the theory of EU citizenship and the limits of equal treatment



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- EU rights project recorded evidence of;
 - Forgetting about tier 2 altogether
 - Misunderstanding of ‘marginal and ancillary’
 - Dismissing atypical work as showing lack of effective work

Impact of a negative MET decision

- No worker status = no access to benefits
 - No housing benefit as a jobseeker
 - Break in continuity of residence

Beyond the refusal of benefits

- Permanent residence
 - 5 years continuous lawful residence required
- Post-work rights
 - Retaining worker status
 - Requires to have worker status first
 - Derivative rights (Case 310/08 *Ibrahim* and Case 480/08 *Teixeira*)

Brexit means...

- Incorrect decisions in worker status now may have repercussions for future rights to stay in the UK.

Brexit means...



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