

Current issues in Labour's Economic Policy

1. Make work pay I:
rights, equality, job security

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Pledges

- ‘... stand up for working people, **tackle insecure work and low pay**.... Pull down obstacles that limit opportunities and talent. We are the **party of the Equal Pay Act**’. Keir Starmer pledges 7 and 9.
- ‘Labour will stop the chaos and turn the page to create a partnership between business and trade unions, by implementing ‘Labour’s Plan to Make Work Pay: Delivering a New Deal for Working People’ in full – **introducing legislation within 100 days**. We will **consult fully** with businesses, workers, and civil society **on how to put our plans into practice before legislation is passed.**’ Manifesto p.45

(1) A single worker status

- (a) Pledges we've been given
- (b) Why they matter, and human rights
- (c) Legal background, as it stands now
- (d) UK's international rank and data
- (e) Options for reform
- (f) Benefits and costs of reform

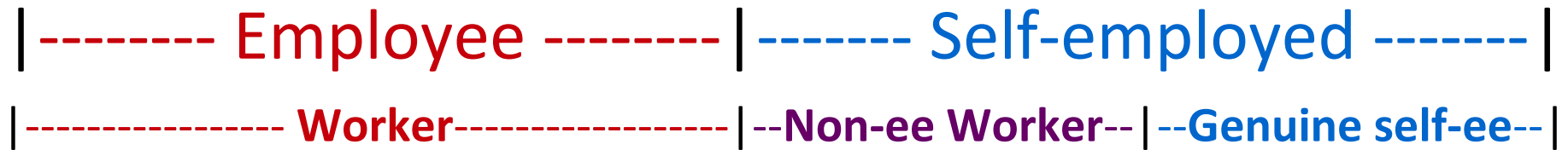
(a) New Deal + Make Work Pay

- ‘Labour will ensure that this injustice [of insecurity] is rectified by **creating a single status of ‘worker’ for all but the genuinely self-employed**. All workers, regardless of sector, wage, or contract type, will be **afforded the same basic rights and protections**. This includes rights to sick pay, holiday pay, parental leave, protection against unfair dismissal and many others. By creating a simple, single status for all, Labour will also **clamp down on bogus self-employment**.’ *New Deal for Working People* (2022) 7.
- ‘We have acknowledged that there are other areas of the New Deal that will take longer to review and implement. We will carry out **full and detailed consultation on our plans to move towards a single status of worker...**’ *Make Work Pay* (2024) 4

(b) Who gets which rights at work?

- Employees get:
 - notice, fair dismissal, redundancy pay, paid parental leave, statutory sick pay, written contract.
 - employer to pay 13.8% National Insurance Contributions (for state pension, unemployment insurance) + 8% employee NICs. Employer pays income tax.
 - ... ‘worker’ status, and so also get all ‘worker’ rights...
- Non-employee workers (since 1998):
 - Minimum wage, 3% er + 5% ee auto-pension contribs, 28 days paid holidays, union recognition, equality, safety.
 - Pays own NICs, just 6%. Pays own income tax.
- Genuinely self-employed: no ‘employer’ in law, responsible for own rights, taxes, job security, etc. An issue for state.

The UK's three-tier system



- In the UK in 2024, ages 16-64, 33.23m are working:
 - 28.83m **employees** + 4.24m **self-employed** (12.7%)
 - + 1.44m *unemployed* (4.1%) + 9.3m *inactive* (21.9%)
- **Other countries just have employees or self-ees.**
- **How many 'non-employee workers'? Who knows.**
 - Uber drivers: 100k.
 - Law firm partners: 27k.
 - +Deliveroo, JustEats, UberEats, who'd be ee's abroad...

'Everyone' in Universal Declaration

- '**Everyone**, as a member of society, has the right to **social security**...
- '**Everyone**, without any discrimination, has the right to **equal pay for equal work**...
- '**Everyone** who works has the right to **just and favourable remuneration** ensuring for himself and his family an existence worthy of human dignity....
- '**Everyone** has the right to rest and **leisure**, including reasonable limitation of working hours and periodic holidays with pay.' UDHR 1948 arts 22, 23(2)-(3) and 24 (same in ICESCR 1966 art 6-10)

ILO, Employment Relationship Recommendation, 2006 (No. 198)

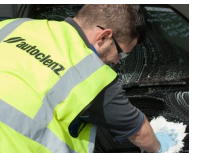
- Preamble ‘labour law seeks... to address what can be an **unequal bargaining position** between the parties’.
- Section 5, ‘Members should... ensure effective protection to workers especially affected by the **uncertainty** as to the existence of an employment relationship.’
- Section 12 recommends ‘clearly defining the conditions applied for determining the existence of an employment relationship, for example, **subordination** or dependence.’

(c) UK's legal background

- Law says an employee has a 'contract of service', but fails to define this, **leaving it to the courts**: Employment Rights Act 1996 s 230. TULRCA 1992 ss 295-6.
- A 'worker' is defined as someone who personally performs work, not for a client or customer, but statute says no more, **leaving it to the courts**: ERA 1996 s 230(2)(b)
- ERA 1999 s 23, **ministers can extend scope by order**: **never done**
- ERA 1996 s 203, **agreements void if they limit operation of Act**
- Court cases have been contradictory at least since 1984:
 - **one line of cases says a person is an employee judged independently of the contract's terms**
 - **a conflicting line of cases says an employee/worker is defined by terms in the contract (moo/subs), invariably written by an employer, often to evade rights**

Conflicting cases: contract vs. law

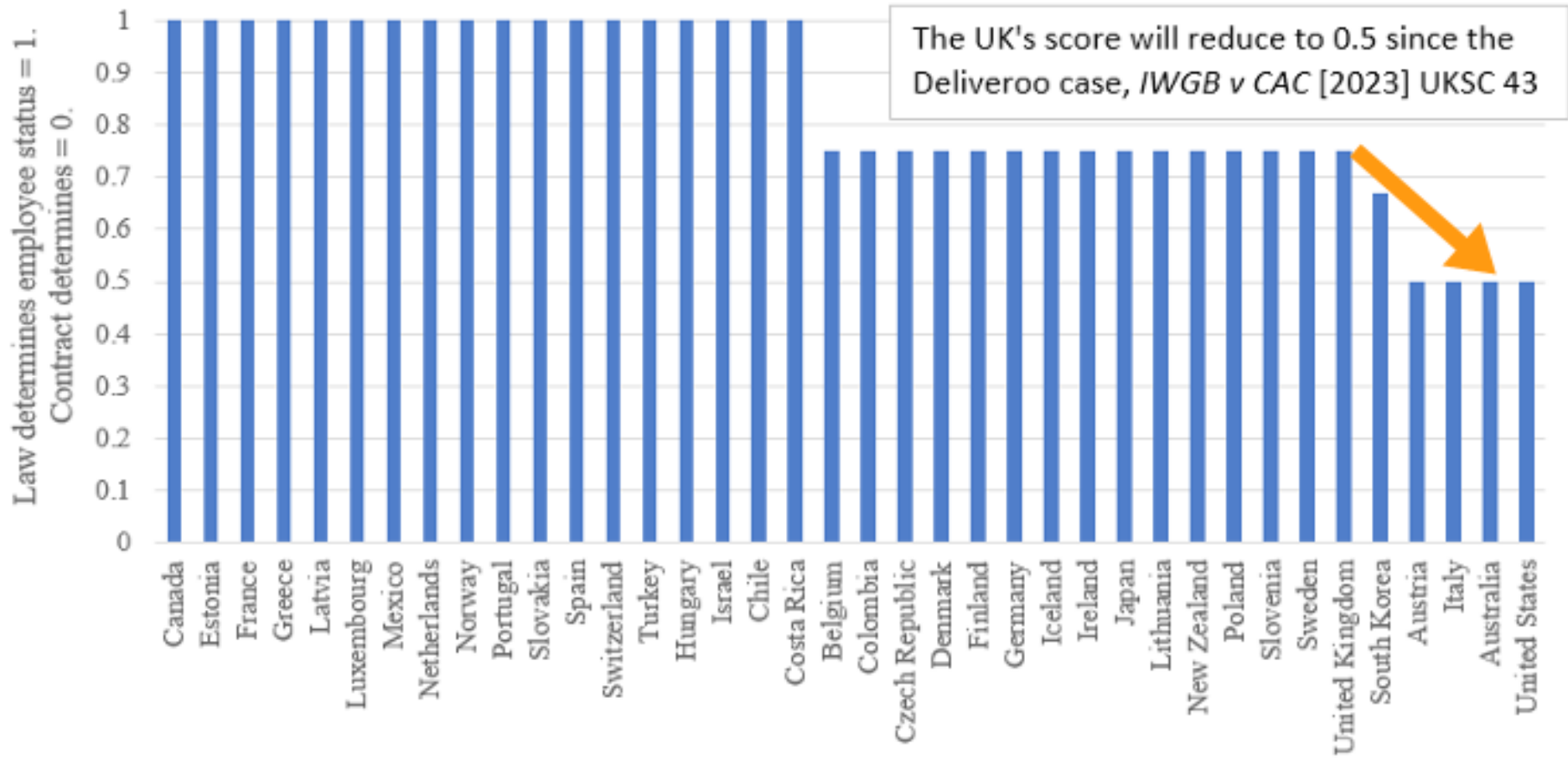
- **Ready Mixed Concrete (1968)** held truck drivers were self-employed, despite wearing company uniforms and being locked in the job with a hire-purchase truck
- **Young & Wood Ltd v West (1980)** held a sheet metal worker was an employee, despite the contract stating he was self-employed: primarily a question of law
- **O'Kelly (1983)** held waiters were not employees as the employer had not undertaken to keep them employed, no protection from dismissal for forming a union
- **Nethermere (1984)** held home workers were employees (ignoring the *O'Kelly* test) and could claim unfair dismissal after a dispute over holiday pay
- **Carmichael (1999)** held tour guides were not employees, as the employer had not undertaken to keep them employed, so no right to written contract
- **Autoclenz (2011)** held car valets were employees, despite being hired through a subcontractor, so they did have rights to the minimum wage and paid holidays
- **Windle (2017)** held court interpreters were not even workers, as employer had not undertaken to keep employed, so not covered by laws against discrimination
- **Uber (2021)** held app drivers were workers (at least) and covered by the minimum wage and holiday pay – decided 9 years after launching of Uber in the UK
- **Deliveroo (2023)** held cyclists were not even workers, as employer said they could substitute others, and so no right for their union to be recognised for bargaining
- **PGMOL (2024)** held referees were controlled enough to be employees (subject to FTT decision), **yet approved *O'Kelly* test of 'mutuality of obligation'**.



(d) The UK ranks poorly in upholding rights

OECD members, legal status of worker protection, A.1.

Source: Cambridge Centre for Business Research, Labour Regulation Index (2023)



(e) Models and options

- Nearly all countries have employed/self-ees only. Most rich countries distinguish this using factors such as **subordination or bargaining power**: purposive tests to **create rights in law if markets don't**.
- Use powers in ERA 1999 s 23 to cover the sham-self-employed, especially in the gig-economy, reversing *Deliveroo*, and legislate.
- EU Platform Work Directive 2024 art 4, presumption of employment
- Status of Workers Bill, would create a single status in existing Acts, distinct from someone 'genuinely operating a business on his or her own account', or a client or customer.
- Given the record of the UK judiciary, it may make sense to spell out that contract terms are irrelevant in determining worker status (except that it is for work, as opposed to goods, land, etc) and **refer to subordination/bargaining power, as the ILO Recommendation 2006 in section 12 requires**.

(f) Benefits and costs of reform

- National Insurance from single worker status, e.g.
 - 100,000 Uber drivers x average £35,700 p.a. +
 - 50,000 Deliveroo riders x av. £23,400 p.a. +
 - 50,000 Uber eats riders (?) x av. £23,400 p.a. +
 - 100,000 JustEats riders (?) x av. £23,400 p.a. +
 - 27,000 law firm partners x av. £313,893(?) p.a.
 - x 13.8% employer NICs
 - = around **£2.3bn p.a.** (*but really more?*)
 - = **£11.5 billion over this Parliament**

Evidence of costs and benefits

- Costs of greater protection are largely theoretical, not evidence-based, such as supposed risks to ‘flexibility’ without any grounding in data
- Stronger labour rights, across the board are closely correlated with **higher employment and labour share of income, lower unemployment, and slightly higher productivity**: Z Adams, S Deakin, et al, ‘Economic significance of law relating to employment protection and different forms of employment: analysis of a panel of 117 countries’ (2019) 158 ILR 1

(2) Wages and time

- (a) Low Pay Commission + adult rate
- (b) Banning zero hours contracts

(a) Pledges

- ‘We will change the remit of the independent Low Pay Commission so.... it **accounts for the cost of living**... all **adults** are [to be] entitled to the **same minimum wage**.’ Manifesto p.45
- ‘Labour **will ban zero hours contracts** and contracts without a minimum number of guaranteed hours. We will also ensure anyone working regular hours for twelve weeks or more will gain a right to a regular contract to reflect those hours normally worked.’ New Deal p.8
- Plan for ‘**banning exploitative zero hours contracts** and ensuring everyone has the right to have a contract that reflects the number of hours they regularly work, based on a twelve-week reference period.’ Make Work Pay p.5
- Legislation ‘will include **banning exploitative zero hours contracts**’.
Manifesto p.45

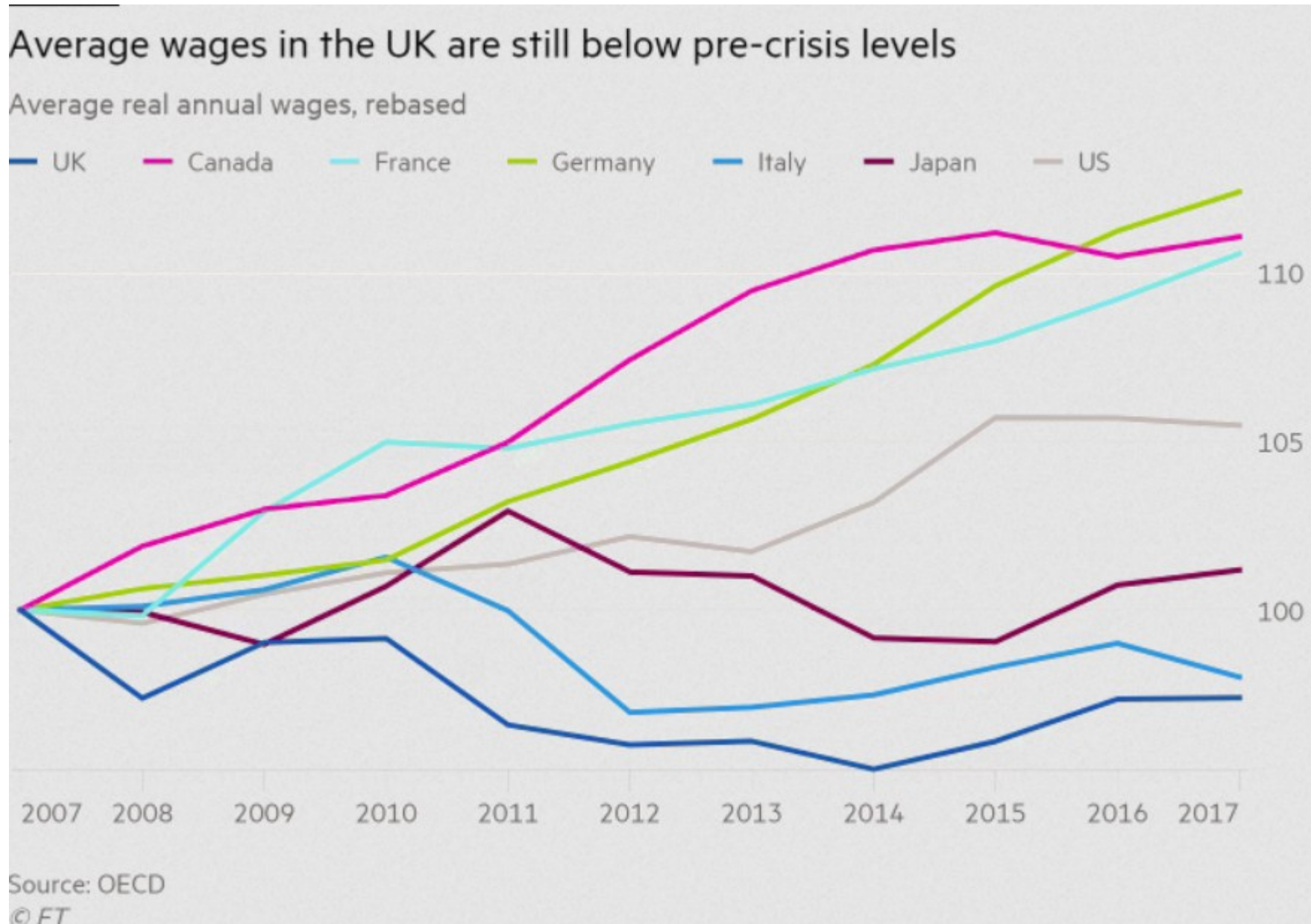
(b) Human rights

- ‘**Everyone** who works has the right to **just and favourable remuneration** ensuring for himself and his family an existence worthy of human dignity....
- UDHR 1948 art 23(3) (same in ICESCR 1966 art 6-10)

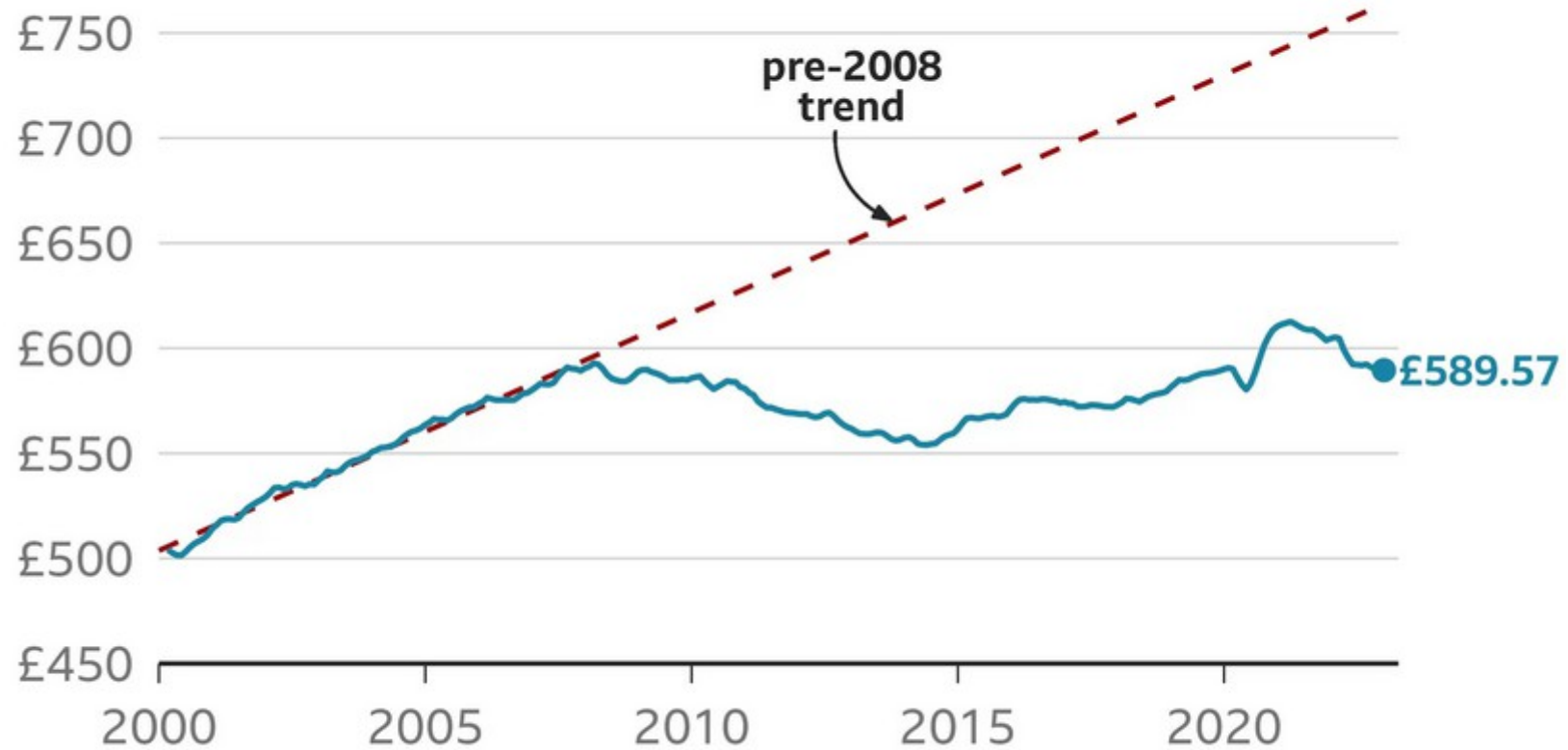
(c) Minimum wage + zero hours now

- Low Pay Commission remit does not take into account living costs yet: National Minimum Wage Act 1998 ss 5-6
- There are also no separate minimum wages for regions, or sectors, or jobs (or experience) as in the US, Sweden, Australia, etc: NMWA 1998 s 2(8)
- Employers are able to give contracts to staff that unilaterally vary hours, including to zero, so long as the worker can work elsewhere: ERA 1996 ss 27A-B.

(d) International rank and data



Average weekly wages when adjusted for inflation*

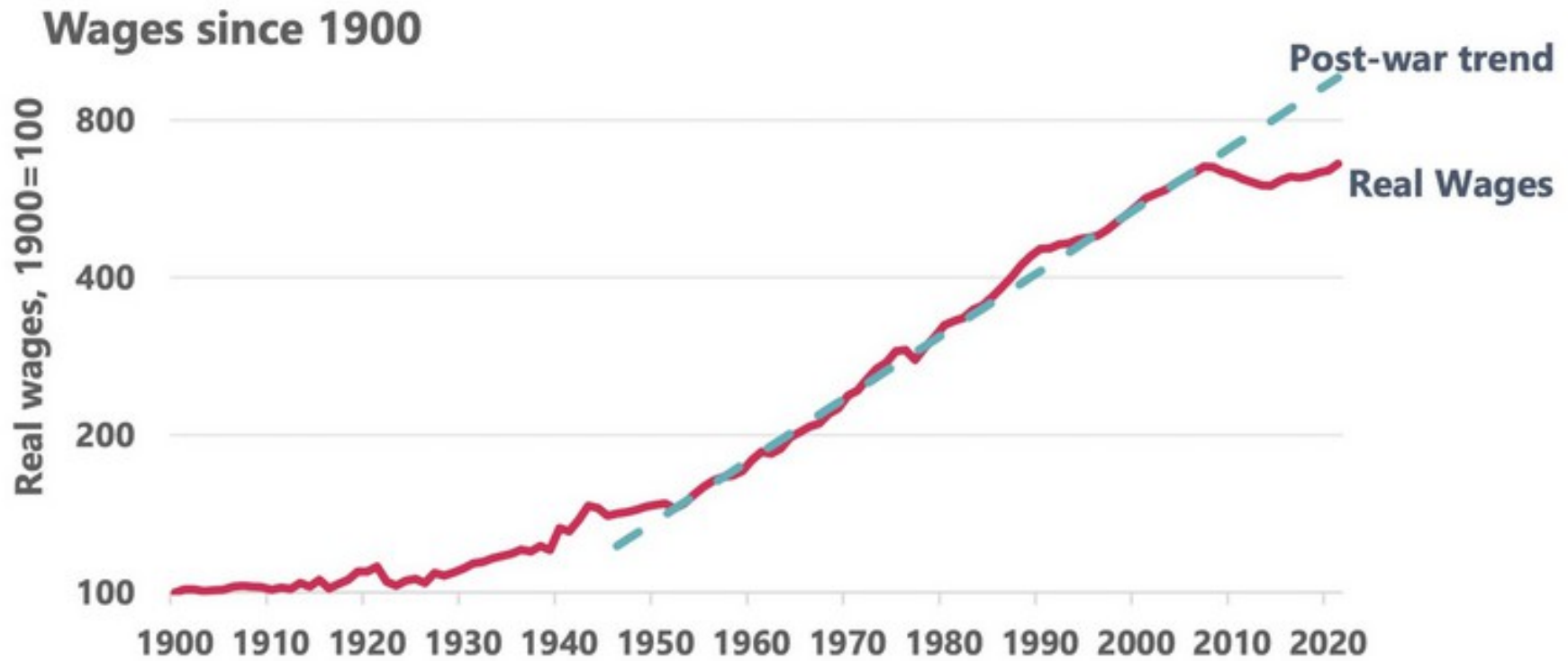


*Based on December 2022 prices

Source: Office for National Statistics

UK wages, 1900-2022

<https://www.tuc.org.uk/research-analysis/reports/raising-pay-everyone>



Source: TUC analysis, BoE, ONS AWE/CPI

Normal wage distribution, Germany 1995

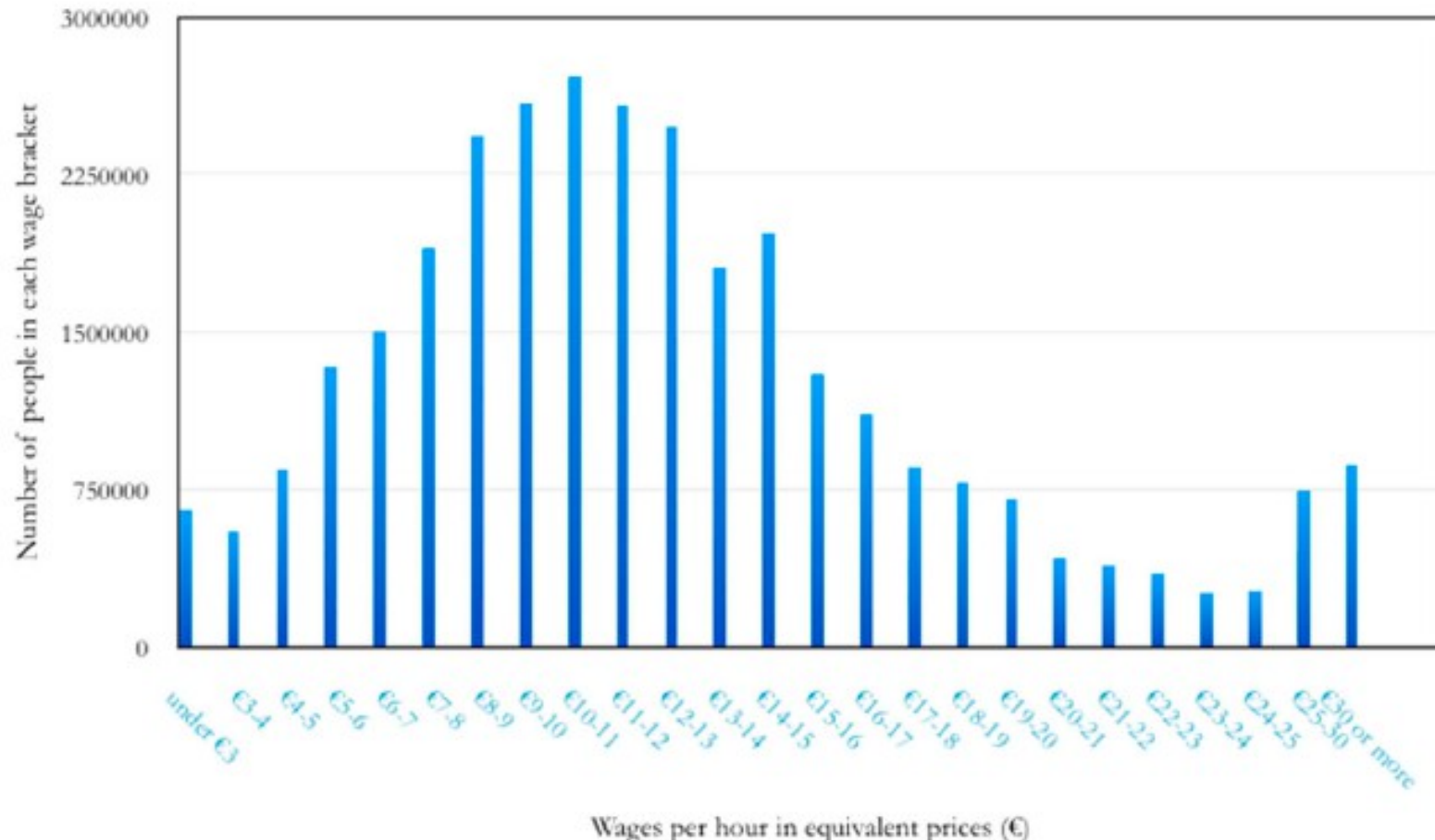


Figure 1. A 'normal' wage distribution. German wages in 1995, adjusted for inflation. Source: G Bosch, 'Wage Inequality in Germany and the Bumpy Road to a Minimum Wage' [2013] *Intereconomics* 339.

Unequal wage distribution, UK 1997

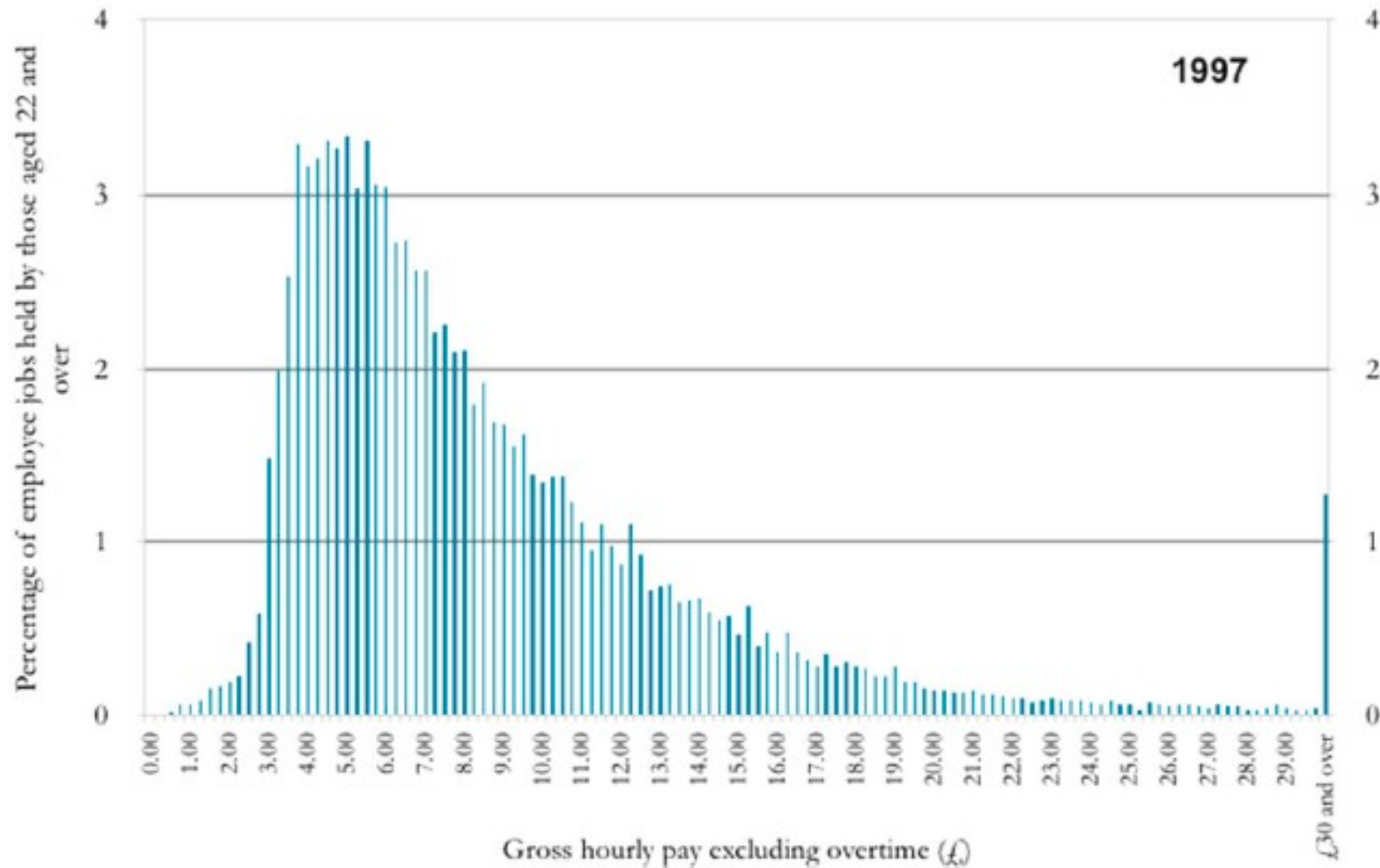


Figure 2.

Extremely unequal, UK 2014

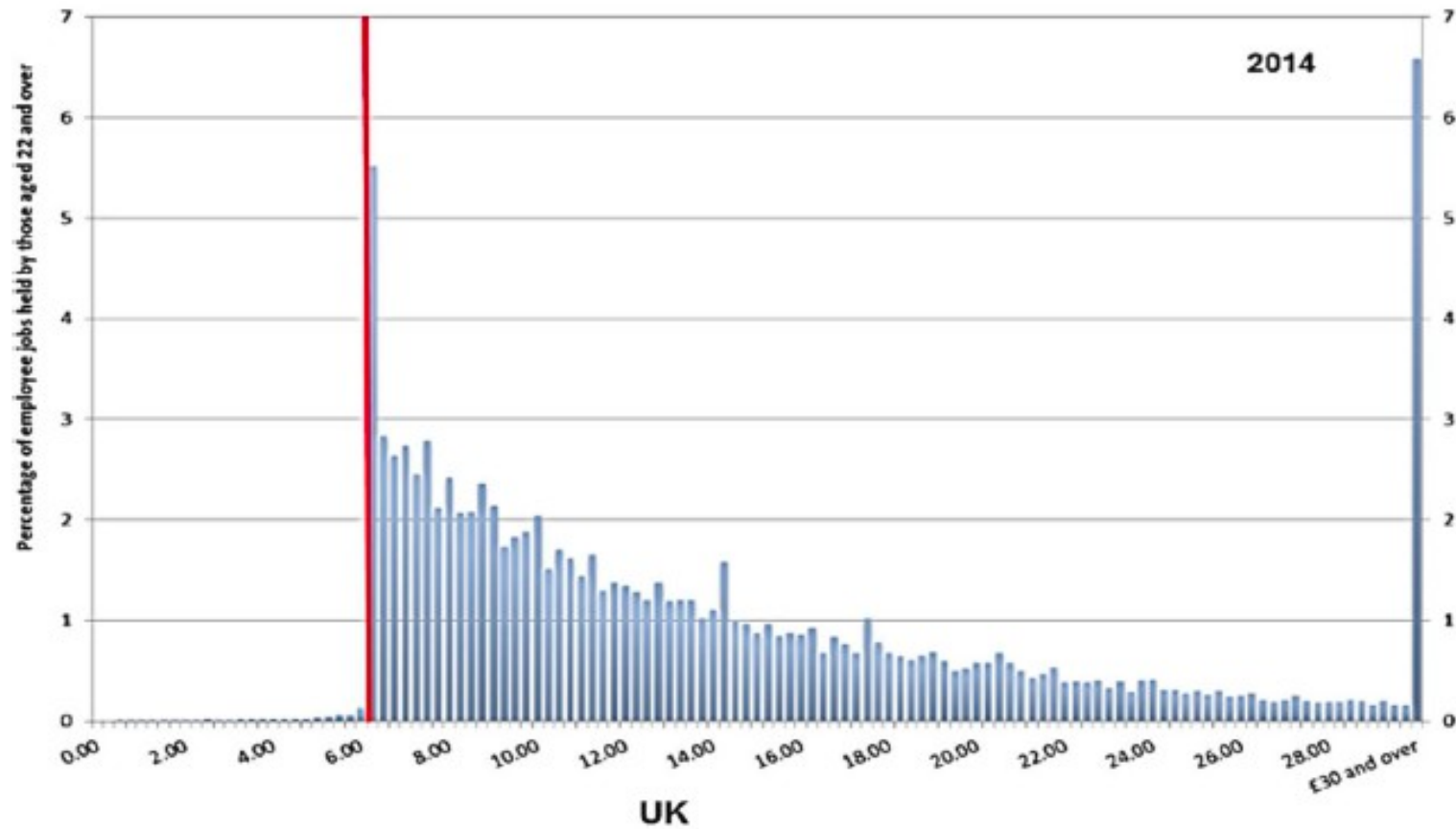
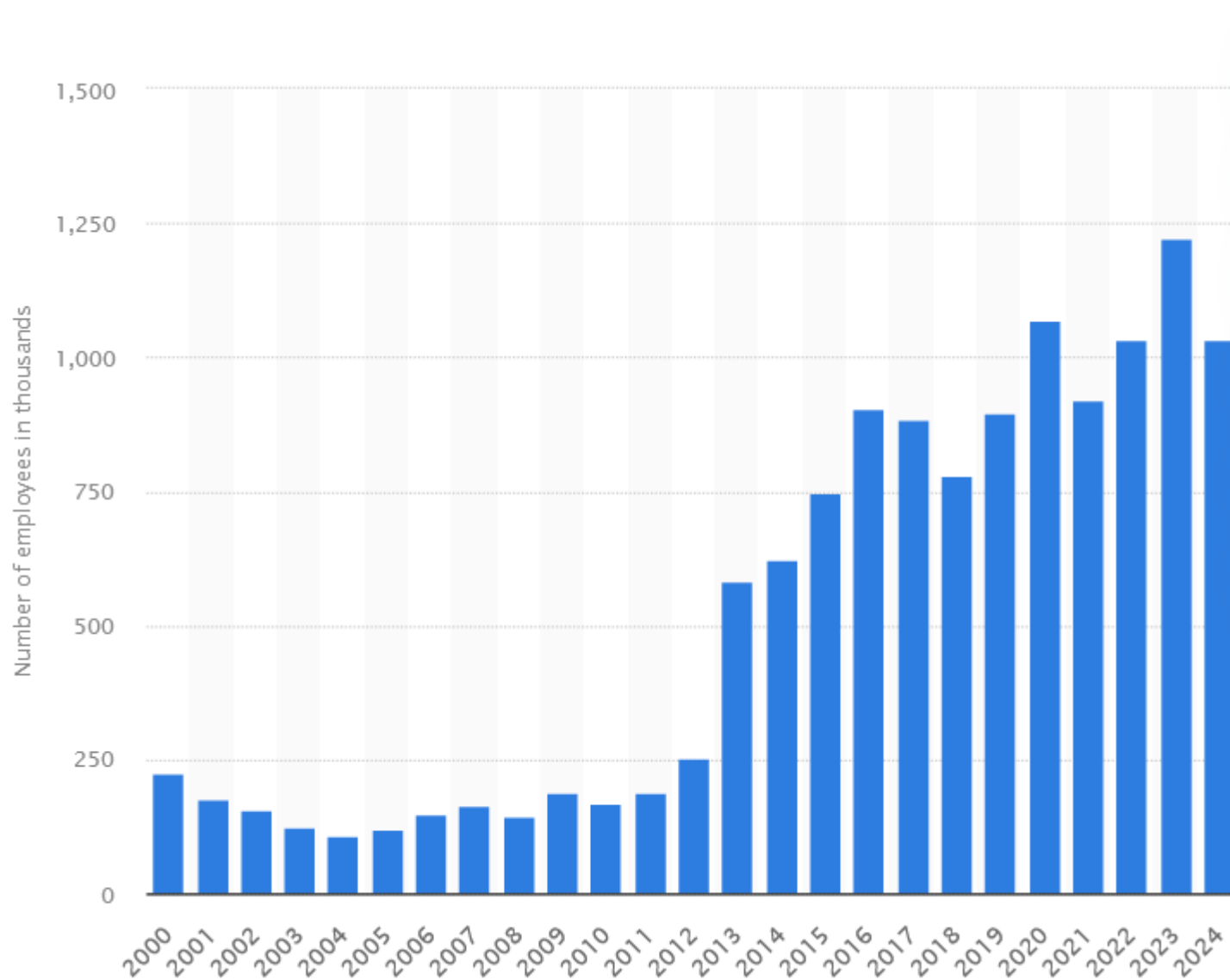


Figure 3.

Source: Richard Dickens and the Low Pay Commission (median around £12 p/h \approx £24k pa).

1.1m people on a ZHC in March 2024



Source: <https://www.statista.com/statistics/414896/employees-with-zero-hours-contracts-number/>

(e) Models and options for reform

- Build up to **at least 80% collective bargaining coverage** – through sectoral collective bargaining (next week): EU Adequate Wage Directive 2022 art 4.
 - recital 16, ‘**sectoral and cross-industry level collective bargaining is an essential factor for achieving adequate minimum wage protection** and therefore needs to be promoted and strengthened.’
- **Enable regional governments to set higher minimum wages**: US Fair Labor Standards Act, 29 USC §218(a)
- **Enable the Secretary of State to set minimum wages scales by sectors, jobs, and experience**: Australian Fair Work Act 2009 s 139
- **Guarantee the right to regular working hours in contract, with 25% change maximum**, and 10 hours a week if nothing specified: German Part-time and Fixed-term Work Act 2001 §12

(3) Equality and parental leave

(a) Review of paid parental leave

(b) Equality Act 2010

(a) Pledges

- ‘Labour will **review the parental leave system**, so it best supports working families, within our first year in government.’ Manifesto p.81
- ‘... we will enact the socio-economic duty in the Equality Act 2010... **strengthening rights to equal pay** and protections from maternity and menopause discrimination and sexual harassment. And Labour will **take action to reduce the gender pay gap**...’. Manifesto p. 88.

(b) Human rights

- ‘**Everyone**, without any discrimination, has the right to **equal pay for equal work...**
- UDHR 1948 art 23(2) (same in ICESCR 1966 art 6-10)
- But the UK still had a **gender pay gap of 14.3%** in April 2023.

(c) Equal pay + parental law now

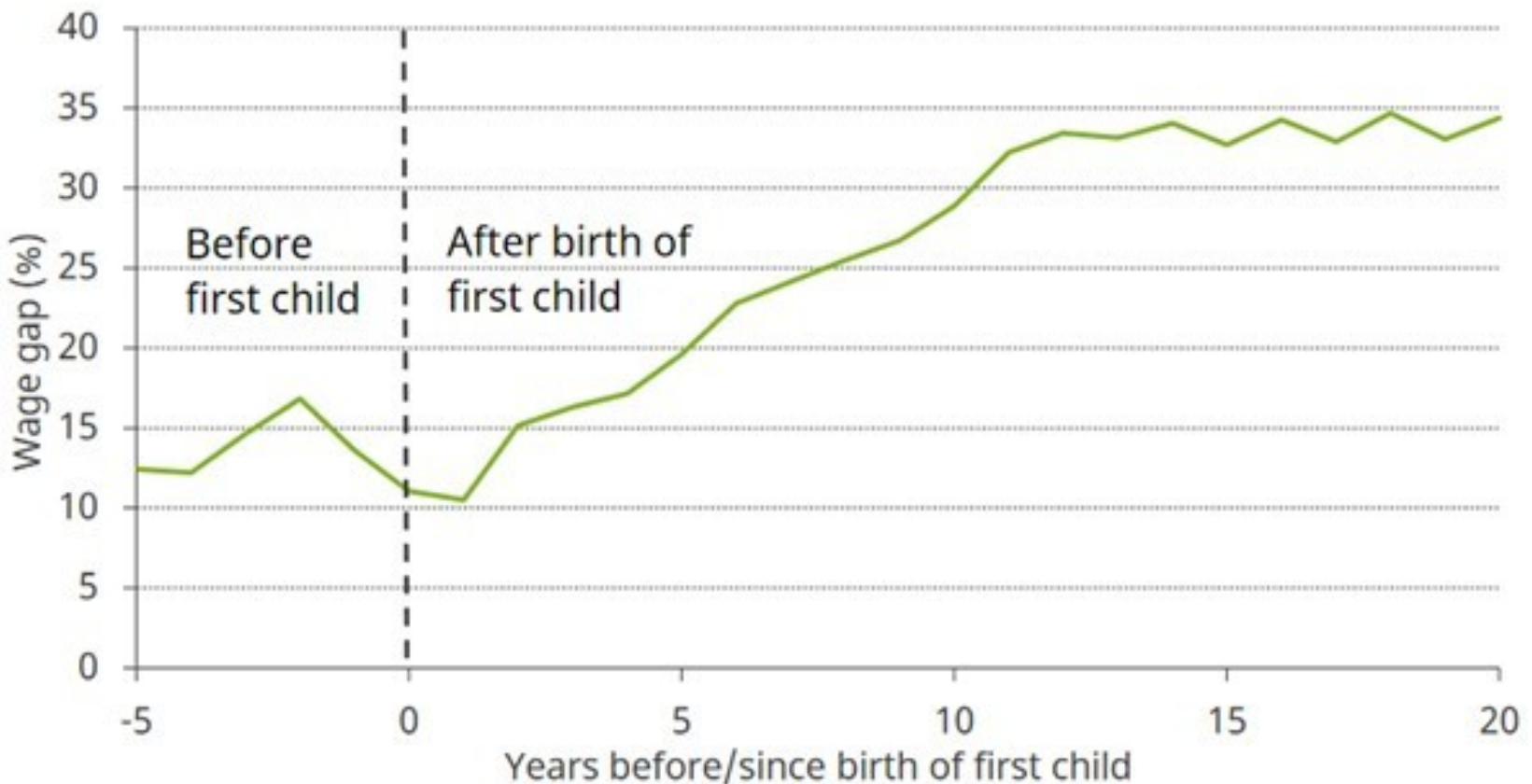
- Sex-based equal pay claims are separate and unequal to other kinds of discrimination claim, with a 6 month non-extendable time limit, the requirement of a real comparator, but claims in the High Court as well as Employment Tribunals: Equality Act 2010 ss 64-80
- Paid childcare leave is **2 weeks for fathers and 39 weeks for mothers**, with provision for shared-leave. Maternity is paid at 90% of salary for just 6 weeks (paternity 2), then £184.03 p/w for 33 weeks: ERA 1996 ss 71-80E and Regs.
- Only **5% of fathers, and 1% of mothers took up shared parental leave**: Dept for Business and Trade, *Shared Parental Leave: Evaluation Report* (June 2023)

(d) International rank and data

- Major drivers of the gender pay gap were identified in Australia as being:
 - **Unequal parenting** (39%),
 - then **outright discrimination** (39%),
 - then **occupational segregation** (17%)
- Diversity Council of Australia and Workplace Gender Equality Agency, 'She's Price(d)less: The Economics of the Gender Pay Gap' (22 August 2019) 7

UK wage gap grows primarily after children

Figure 10. Gender wage gap by time to/since birth of first child

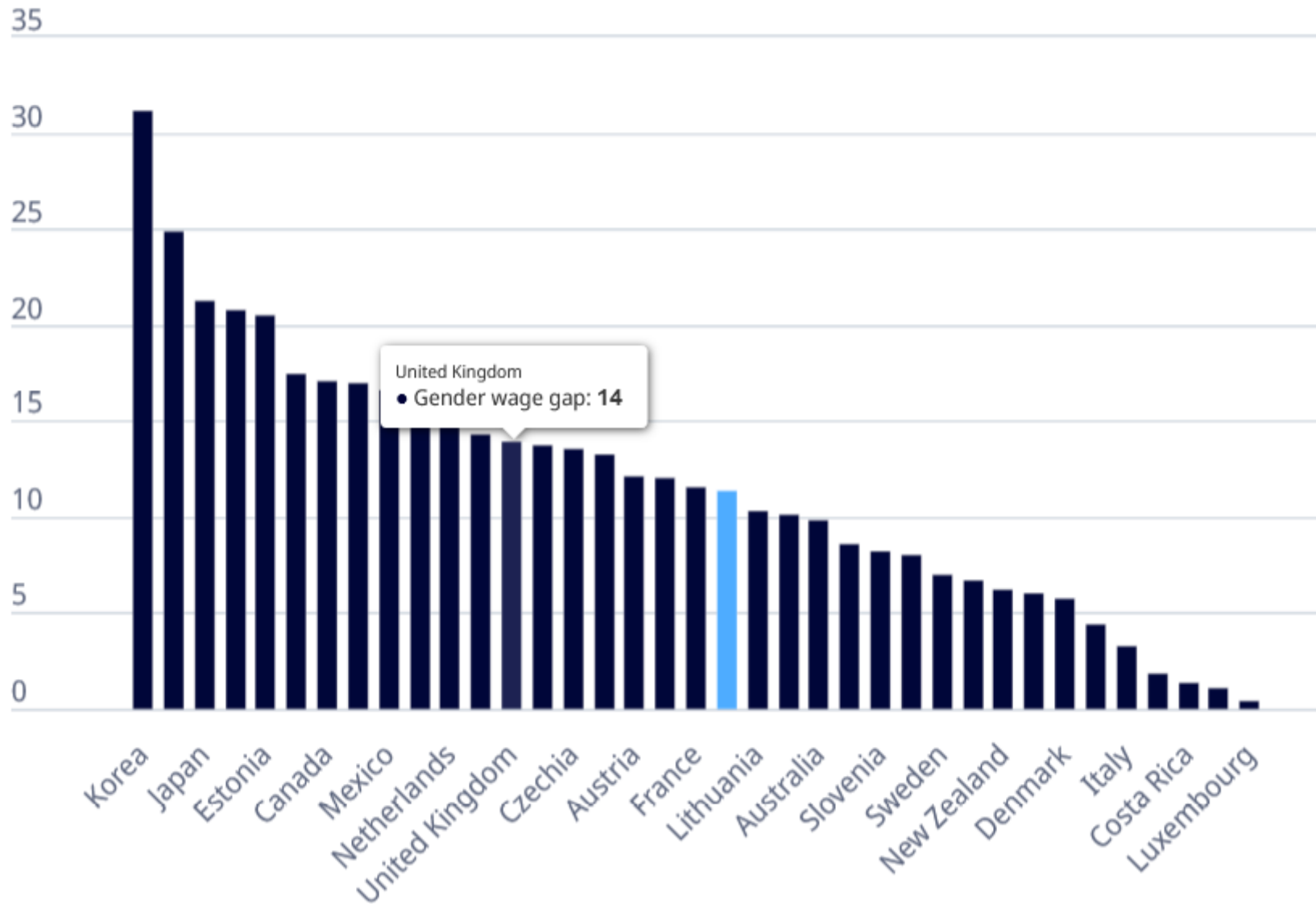


Note: Individuals in the bottom two and top one percentiles of the gender- and year-specific hourly wage distributions are excluded.

Source: BHPS 1991–2008.

Gender wage gap

% of median earnings of men, 2022



Source: <https://www.oecd.org/en/data/indicators/gender-wage-gap.html>

(e) Models

- Raise and equalise paid parental leave at 100% of salary to 12, 18, then 26 weeks, without sharing, like paid holidays.
- Equileap: '**11 UK companies [in their sample] provide 26 weeks or more of paid parental leave to all parents, regardless of gender.** These are: Diageo, Sage Group, Moneysupermarket.com, Abrdn, Aviva, M&G, Phoenix Group, British Land, St James's Place, Beazley, and Haleon.' Abrdn pays 40 weeks. *Gender Equality Global Report & Ranking (2024)*.
- No country has fully equal rights by law, but Finland has **160 days of leave for each parent**, and max 63 transferable, 70% of salary to €41,629, 40% to €64k, 25% over.

(4) Job security

(a) Dismissal now, and day 1 rights

(b) Fire and rehire

(c) Job security with voice

(a) Pledges

- ‘Labour will... **scrap qualifying time for basic rights, such as unfair dismissal, sick pay, and parental leave.**’ New Deal pp. 7-8
- ‘**This will not prevent** fair dismissal, which includes dismissal for reasons of capability, conduct or redundancy, or **probationary periods with fair and transparent rules and processes.** We will ensure employers can operate probationary periods to assess new hires. However, the **changes will help to ensure that newly hired workers are not fired without reason or cause and will help drive up standards in workplaces.**’ Make Work Pay p. 7
- ‘We will reform the law to provide effective remedies against abuse and replace the inadequate statutory code brought in by the Government, with a strengthened code of practice. **Ending fire and rehire means workers can be safe in the knowledge that terms and conditions negotiated in good faith can’t be ripped up under threat of dismissal.**’ Make Work Pay p. 6
- Legislation will include ‘ending fire and rehire; and introducing basic rights from day one to parental leave, sick pay, and protection from unfair dismissal.’ Manifesto p.45

(b) Human rights

- **‘Everyone, as a member of society, has the right to social security...’** - Universal Declaration art 22

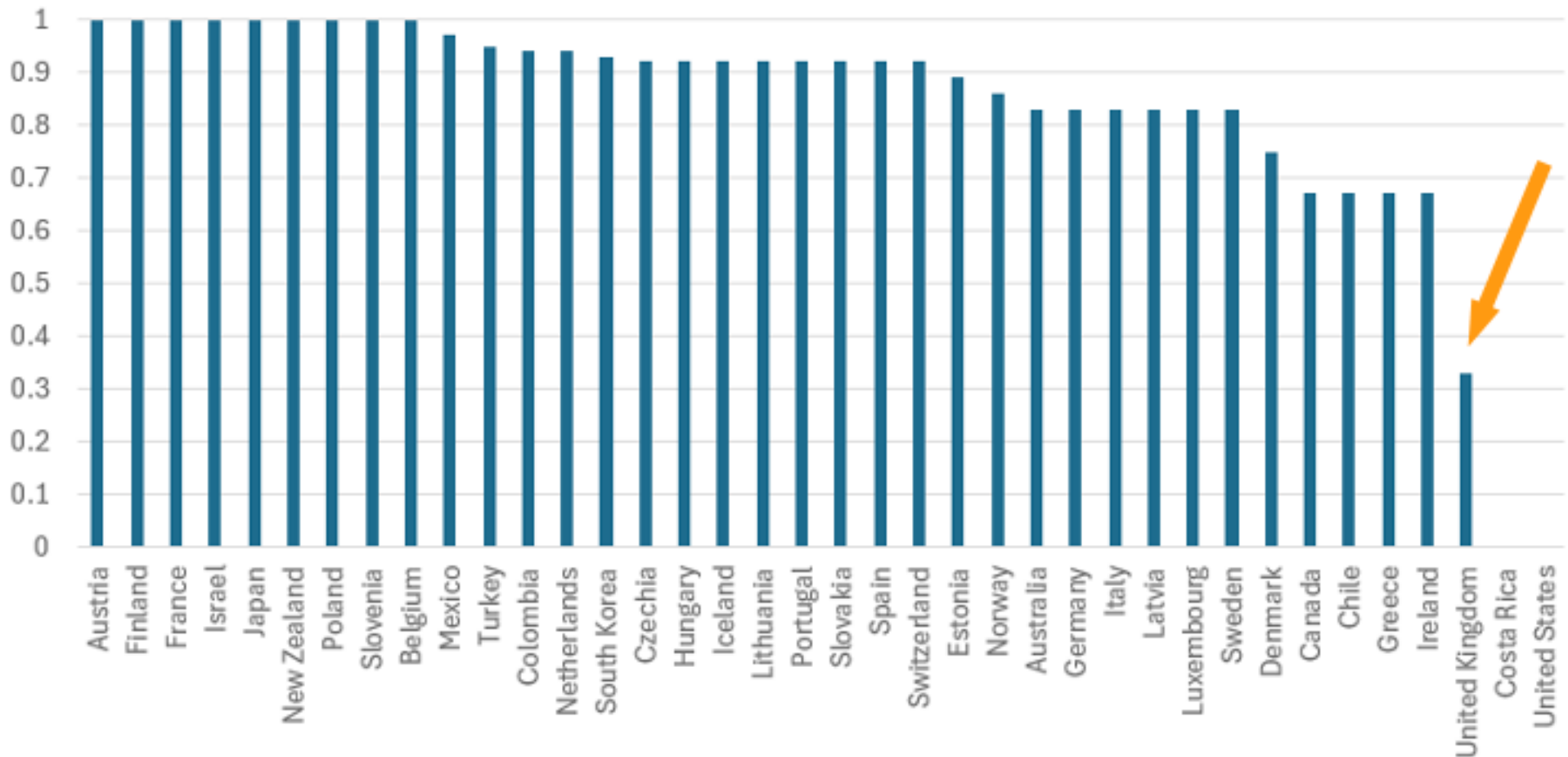
(c) Law on job security now

- Main qualification periods are:
 - 4 days to get statutory sick pay: SSCBA 1992 s 152
 - 1 month to have one week's notice: ERA 1996 s 86
 - 26 weeks for paid maternity etc: SSCBA 1992 s 164
 - 2 years for unfair dismissal: ERA 1996 ss 108
 - 2 years for redundancy: ERA 1996 s 155
- Conflicting court cases let employers draft broad variation clauses, even for pay: *Asda v Bateman (2010)*, cf *Wandsworth v D'Silva (1998)*
- Courts enabled employers to dismiss if employees refuse to accept unilaterally imposed restructure by ERA 1996 98(1)(b)
- Employer duty to consult over mass redundancies are weak with weaker remedies: TULRCA 1992 ss 98(1)(b), 188-194

(d) International rank: UK nearly worst

OECD members, qualification period for unfair dismissal, C.18

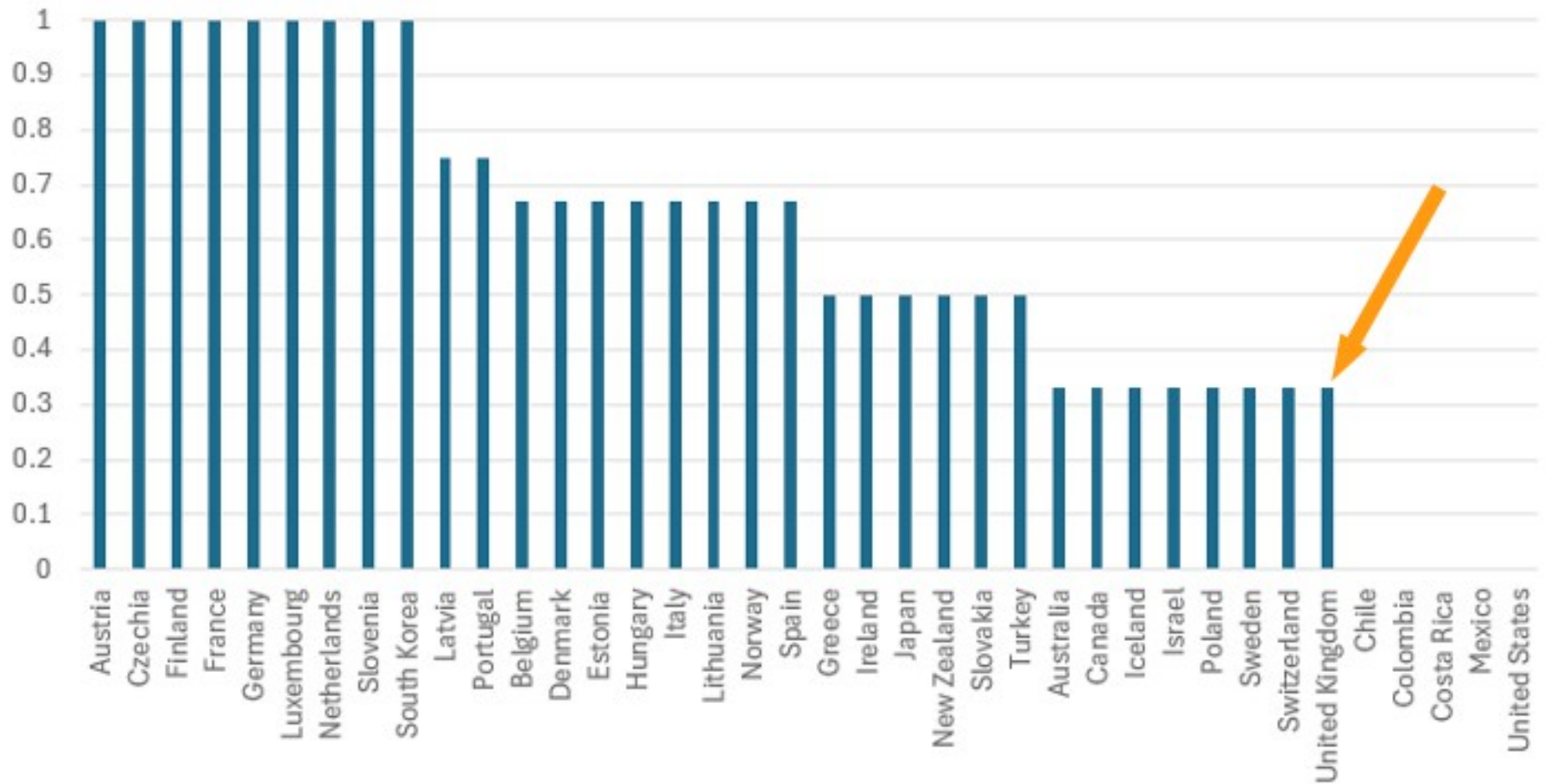
Source: Cambridge Centre for Business Research, Labour Regulation Index 2023



UK among worst for consultation

OECD members, rights to consultation incl. redundancy, D.31

Source: Cambridge Centre for Business Research, Labour Regulation Index (2023)



(e) Models for reform

- Maximum six month **probation need not affect day one rights**. As with expiry of a fixed term contract, reasons to not pass probation still can be fair.
- **Ban renegotiation of contract terms under the threat of dismissal**, and **improve remedies for breach of consultation duties with unions**: Employment and TU Rights (Dismissal and Re-engagement) Bill
- Require **elected bodies of workers can halt unfair dismissals and delay redundancies**: Germany's Work Constitution Act 1972 §§ 87 and 111. This can be achieved by updating the ACAS Code on Redundancy Procedure via TULRCA 1992 s 199

(f) Benefits and costs of reform

- With improved job security rights, including consultation and workers on boards, innovation measured by patents filed per capita goes significantly up: VV Acharya et al, 'Labor laws and innovation' (2013) 56(4) JLE 997.
- S Deakin, 'Economic significance of EPL... 117 countries' (2019) 158 ILR 1, higher productivity, employment and labour share of income, lower unemployment with stronger labour rights

Discussion questions

- 1. What should an Employment Rights Bill say on definition of worker/employee status?
- 2. What needs to be done to ensure adequate minimum wages and hours?
- 3. How should the Equality Act 2010, and paid parental leave rules, be reformed to undo the gender pay gap?
- 4. Will the Employment Rights Bill go far enough in securing jobs, and if not what is needed?