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Employment Rights Bill 2024-25

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Summary

The Employment Rights Bill 2024-25 was introduced on 10 October 2024. It is bill 11 of the 2024-25 parliamentary session. The bill is listed for second reading on Monday 21 October 2024.

Most of the bill applies to England, Scotland and Wales, but not Northern Ireland where employment law is devolved. However, some clauses have different territorial extent, for example part 3 on sectoral bargaining in social care and school staff does not apply in Scotland.

A money resolution will be required for the bill as it requires additional expenditure, for example due to the changes to statutory sick pay and the establishment of a new labour market enforcement body.

This briefing does not provide an exhaustive guide to every clause of the bill. Analysis focuses on clauses that have legally or politically significant effects. See the bill's explanatory notes (PDF) for further detail on other clauses.

Employment law in the last decade

Between 2010 and 2024 there was relatively little new employment legislation, with most key laws, such as the Employment Rights Act 1996, dating from the 1990s.

Two significant pieces of primary legislation related to industrial relations have been passed in the last decade. The Trade Union Act 2016 imposed several new restrictions on trade unions in respect of industrial action and their finances and administration. The Strikes (Minimum Service Levels) Act 2023 created a framework allowing the government to set minimum service levels during strikes in several key sectors, though in practice the legislation has not been used to date by employers.

Both these acts proved controversial, being opposed by trade unions and the Labour Party, which has stated its intention to repeal them both.

Alongside this, there have been many private members' bills introduced on various aspects of employment law. Many of these, on topics such as banning fire and rehire, regulating zero hours contracts or protecting pregnant employees from redundancy, did not receive a second reading. Others, such as the Parental Bereavement (Leave and Pay) Act 2018, became law.

More recently, during the 2022-23 parliamentary session, a series of seven private members' bills, all with government support, passed and became law,

on topics including tipping, redundancy protections and family leave, flexible working and protection from sexual harassment at work.

What would the bill do?

The bill largely implements plans that were outlined in the Labour Party's pre-election June 2024 publication Labour's Plan to Make Work Pay: Delivering A New Deal for Working People (PDF). This plan was largely based on Labour's September 2022 Employment Rights Green Paper: A new deal for working people (PDF).

Major topics covered by the bill include:

- Zero hours contracts – introducing a right to reasonable notice of shifts and to be offered a contract with guaranteed hours, reflecting hours regularly worked.
- Flexible working – requiring employers to justify the refusal of flexible working requests.
- Statutory sick pay – removing the three-day waiting period (so employees are eligible from the first day of illness or injury) and the lower earnings limit test for eligibility.
- Family leave – removing the qualifying period for paternity leave and ordinary parental leave (so employees have the right from the first day of employment), and expanding eligibility for bereavement leave.
- Protection from harassment – expanding employers' duties to prevent harassment of staff.
- Unfair dismissal – removing the two-year qualifying period (so employees are protected from unfair dismissal from the first day of employment), subject to a potential probationary period.
- Fire and rehire – making it automatically unfair to dismiss workers because they refuse to agree to a variation of contract.
- Sectoral collective bargaining – reintroducing the School Staff Negotiating Body and creating an Adult Social Care Negotiating Body, which could determine pay and other terms and conditions for workers in these sectors.
- Trade unions – introducing rights for trade unions to access workplaces, and repealing the Strikes (Minimum Service Levels) Act 2023 and most provisions of the Trade Union Act 2016.

- Enforcement – bringing together powers of existing labour market enforcement bodies, along with some new powers, under the Secretary of State and enforcement officers

Alongside the bill, on 10 October, the government published a policy paper Next Steps to Make Work Pay. This outlined its wider approach to employment rights, including some reforms outside of this bill, and set out the government's intentions for future consultations and implementation of some of the measures in this bill:

> We expect to begin consulting on these reforms in 2025, seeking significant input from all stakeholders, and anticipate this meaning that the majority of reforms will take effect no earlier than 2026. Reforms of unfair dismissal will take effect no sooner than autumn 2026.

1 General overview

The Employment Rights Bill 2024-25 was introduced on 10 October 2024. It is bill 11 of the 2024-25 parliamentary session.

The bill is listed for second reading on Monday 21 October 2024.

The bill's long title is:

> A Bill to make provision to amend the law relating to employment rights; to make provision about procedure for handling redundancies; to make provision about the treatment of workers involved in the supply of services under certain public contracts; to provide for duties to be imposed on employers in relation to equality; to provide for the establishment of the School Support Staff Negotiating Body and the Adult Social Care Negotiating Body; to make provision about trade unions, industrial action, employers' associations and the functions of the Certification Officer; to make provision about the enforcement of legislation relating to the labour market; and for connected purposes.

Explanatory notes (PDF) for the bill have been prepared by the Department for Business and Trade.

Most of the bill applies to England, Scotland and Wales, but not Northern Ireland where employment law is devolved. However, some clauses have different territorial extent. See the section on territorial extent under part 2.23 below for more details.

A money resolution will be required for the bill as it requires additional expenditure. See the section on financial provision under part 2.23 below for more details.

This briefing does not provide an exhaustive guide to every clause of the bill. Analysis focuses on clauses that have legally or politically significant effects. See the bill's explanatory notes for further detail on other clauses.

The bill largely implements plans that were outlined in the Labour Party's pre-election June 2024 publication Labour's Plan to Make Work Pay: Delivering A New Deal for Working People (PDF), itself largely based on Labour's September 2022 Employment Rights Green Paper: A new deal for working people (PDF).[1]

[1] Labour Party, A New Deal for Working People, [PDF] October 2022, accessed 23 September 2024; Labour Party, Labour's Plan to Make Work Pay: Delivering a New Deal for Working People, [PDF] May 2024

Following the 2024 general election, the Employment Rights Bill was listed in the King's Speech on 17 July 2024, and the main themes it would cover were outlined in the King's Speech 2004: background briefing notes.[2] The government committed to introducing the bill within 100 days of entering office. The bill was published and received its first reading on 10 October 2024.

Alongside the bill, on 10 October, the government published a policy paper Next Steps to Make Work Pay.[3] This outlined its wider approach to employment rights, including some reforms outside of this bill, and set out the government's intentions for future consultations and implementation of some of the measures in this bill:

> We expect to begin consulting on these reforms in 2025, seeking significant input from all stakeholders, and anticipate this meaning that the majority of reforms will take effect no earlier than 2026. Reforms of unfair dismissal will take effect no sooner than autumn 2026.[4]

Some of the proposed future reforms not in the current bill include tightening the ban on unpaid internships, a new code of practice on the "right to switch off" and allowing the use of electronic balloting for trade union statutory ballots.[5]

The policy paper also suggested that the government would add additional measures into the bill during its passage that are not currently contained within the bill clauses, saying for example that "measures to extend the time limit for bringing claims to Employment Tribunals will also be added via amendment".[6]

2 Prime Minister's Office, King's Speech 2024: background briefing notes, 17 July 2024, p 20-22
3 Department for Business & Trade, Next Steps to Make Work Pay, 10 October 2024
4 Department for Business & Trade, Next Steps to Make Work Pay, 10 October 2024
5 Department for Business & Trade, Next Steps to Make Work Pay, 10 October 2024, para 48
6 Department for Business & Trade, Next Steps to Make Work Pay, 10 October 2024, para 34

2 Zero hours contracts

Zero hours contracts are used by employers where workers have no guaranteed hours and agree to be potentially available for work. They are used by companies seeking labour flexibility and by workers seeking flexibility around their other commitments.

The bill would give workers on zero-hours contracts rights, including a right to reasonable notice of shifts and a right to be offered a contract reflecting the hours someone regularly works. However, some of the details of these rights will be set by future secondary legislation.

2.1 Background

The use of zero-hours contracts raises a number of legal issues. One of the key questions is what the employment status of people on zero-hours contracts is: "employees", "workers" or self-employed. For a more detailed discussion of this legal issue, see the Library briefing Employment status.

For several years, there have been concerns that zero-hours contracts lead to 'one sided' flexibility which unfairly benefits employers.[7] There has been particular criticism of exclusivity clauses, which require workers to work exclusively for one employer, regardless of the hours offered. In 2015, the Conservative government legislated to ban exclusivity clauses in the Small Business, Enterprise and Employment Act.[8]

A series of private members' bills aiming to ban or regulate zero-hours contracts have been introduced in recent years, though only one – the Workers (Predictable Terms and Conditions) Act 2023 – received Royal Assent.[9] This act proposed to amend the Employment Rights Act 1996 to give workers and agency workers the right to request more predictable terms and conditions of work.[10] However, the act never came into force (no commencement order has been made); it would be repealed entirely by

7 Labour Policy Forum, Zeroed Out: The place of zero-hours contracts in a fair and productive economy: an independent report by Norman Pickavance, [PDF] 25 April 2014, accessed 14 October 2024; Department for Business and Trade and Department for Business, Energy & Industrial Strategy, Good Work: the Taylor Review of modern working practices, 11 July 2017, p43

8 Small Business, Enterprise and Employment Act 2015

9 House of Commons, Zero Hours Contracts Bill (HC Bill 23), 19 November 2014; House of Commons, Workers (Definition and Rights) Bill (HC Bill 114), 17 January 2018; UK Parliament, Workers (Predictable Terms and Conditions) Act 2023, 13 November 2023

10 Workers (Predictable Terms and Conditions) Act 2023

clause 5 of the present Employment Rights Bill 2024-25, which instead outlines a new legal approach to zero-hours contracts (see part 2.2 below).

The Library briefing Zero hours contracts contains more detailed information on policy background and discussion.

Prevalence of zero-hours contracts

Around a million people aged 16+ in the UK reported that they were employed on a zero-hours contract in April to June 2024, which was 3.1% of people in employment.

Of those on zero-hours contracts in April to June 2024:

- 54% were women, compared with 49% of all people in employment.
- 75% were working part-time, compared with 25% of all people in employment.
- 40% were aged 16 to 24, compared with 11% of all people in employment.
- 24% were in full-time education, compared with 4% of all people in employment. [11]

Those working on zero-hours contracts worked, on average, fewer hours per week than other workers. Around a quarter said they wanted either more hours in their current job, or an additional job or replacement job that offered more hours, while around 60% said they did not want more hours.[12]

2.2 Clauses 1 to 6 and schedule 1: Zero-hours contracts

Clauses 1 to 6, and schedule 1 (which covers various consequential amendments), would together insert 25 new sections into the Employment Rights Act 1996 (ERA 1996). These would collectively create new rights for workers on zero-hours and low-hours contracts. The key rights created would be:

- The right to reasonable notice of shifts and payment for shifts that are cancelled or curtailed at short notice.
- The right to a guaranteed hours contract reflecting the hours regularly worked.

11 ONS, EMP17: People in employment on zero hours contracts, 13 August 2024
12 ONS, EMP17: People in employment on zero hours contracts, 13 August 2024

Clause 1: Right to guaranteed hours

This right would apply to workers on contracts where the employer is either not required to offer any working hours (a "zero-hours" contract) or is only required to offer a low number of hours (a "low-hours" contract). The number of hours that counts as 'low' would be set by future regulations.

Workers on zero-hours or low-hours contracts would gain a right to be offered a new contract or varied terms and conditions with a working pattern reflecting the hours actually worked during an initial "reference period". This could be repeated after subsequent "reference periods".

The Secretary of State would be given the power to make regulations setting out how this reference period must be calculated and the working pattern the employer would have to offer in such a situation. While not specified in the bill or explanatory notes, the government indicated in its Next Steps to Make Work Pay policy paper that this would be a "12-week reference period".[13] This policy paper also stated that "We will consult on how these subsequent review periods should work with employers and trade unions, ensuring they are reasonable and proportionate for both workers and employers."[14]

Such a new contract or varied terms and conditions would have to be permanent, unless it was reasonable for it to be for a limited term because the contract was linked to a specific task, or in anticipation of a particular event.[15]

Clause 2: Right to notice of shifts

Under new section 27BI of the ERA 1996, created by clause 2, workers on zero-hours contracts, as well as other workers with unpredictable working patterns to be specified in future regulations, would have the right to be given "reasonable notice" of any shift they are asked to work. What counts as "reasonable" would depend on the circumstances of a case, but notice would be presumed not to be reasonable unless given at least a certain amount of time before the shift, with the amount something which could be specified by the Secretary of State in future regulations.[16]

New section 27BJ, also created by clause 2, would create a similar right for workers to be given reasonable notice of the cancellation or change of any shift.

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13 Department for Business & Trade, Next Steps to Make Work Pay, 10 October 2024, para 29

14 As above

15 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 84-87

16 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 143

Payments for cancelled shifts

Where shifts are cancelled, "moved" or curtailed at "short notice", zero-hours workers (and other workers with unpredictable hours) would be entitled to a "payment" from the employer. The definitions of "moved", "short notice", what groups of workers would qualify and the level of any "payment" would all be set by the Secretary of State in future regulations.

Schedule 1: New protections against detriment and dismissal

Under new section 47H of the ERA 1996, created by schedule 1, workers would gain new protections against detriment, including on the grounds that they declined to work shifts where the employer had not provided reasonable notice. The explanatory notes provide the following example:

> For example, an employer must not stop offering the worker hours or reduce the worker's hours on the basis that the worker has refused to work such a shift as this would amount to a "detriment".[17]

New section 104BA would also create new protections against unfair dismissal in cases where employers sought to dismiss a worker in order to avoid their responsibility to offer guaranteed hours.[18]

Agency workers

Although none of these new rules would automatically apply to agency workers, new section 27BV, created by clause 4 of the bill, would create a power for the Secretary of State to make regulations to extend equivalent rights to agency workers.[19]

The Next Steps to Make Work Pay policy paper stated the government's intention to do this, saying "These measures will also be adapted and applied to agency workers. The government will consult shortly on the best way to achieve this."[20]

Repealing Workers (Predictable Terms and Conditions) Act 2023

Clause 5 of the bill would repeal the Workers (Predictable Terms and Conditions) Act 2023, which would have offered a different legal approach to providing workers with more predictable working patterns. This act received

17 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 239c

18 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 247b

19 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 222

20 Department for Business & Trade, Next Steps to Make Work Pay, 10 October 2024, para 30

Royal Assent in September 2023 but has not yet been brought into force. See the section 2.1 above for further details on this act.

3 Flexible working

3.1 Background

The right to request flexible working is set out in Part 8A and section 47E of the Employment Rights Act 1996, as amended, and associated regulations.[21]

The statutory right to request flexible working entitles employees to apply to their employers for a change to their terms and conditions of employment relating to their hours, times or location of work. This right applies from day one of employment.[22] The change could include, for example, working part-time, from home or compressed hours. Employers may only refuse the request on grounds defined in legislation, for example, the burden of additional costs or a detrimental effect on the ability to meet customer demand.[23]

However, this is currently a subjective test – the employer need only show that they "consider" that one of the statutory grounds applies, but that belief does not have to be a 'reasonable' one.[24]

On 6 April 2024 the Employment Relations (Flexible Working) Act 2023, originally a private member's bill, came into force. This meant that employees can now make two, rather than one, requests per year for flexible working arrangements.[25] The deadline for employers to respond to such requests was also reduced from three to two months.[26] The changes also mean employers have to provide reasons for denying any request, and employees no longer have to explain the impact of their request.

At the same time, the Flexible Working (Amendment) Regulations 2023 came into force, removing the 26-week qualifying period for making flexible working requests and thereby making it a day one right.

21 Employment Rights Act 1996, pt 8a, s 47E; See The Flexible Working Regulations 2014 (SI 2014/1398), Employment Relations (Flexible Working) Act 2023, The Flexible Working (Amendment) Regulations 2023

22 Employment Rights Act 1996, s 80F, ss 1; The Flexible Working Regulations 2014 (SI 2014/1398), reg 3

23 Employment Rights Act 1996, s 80G, ss1, para b

24 IDS Employment Law Handbook 'Atypical' and Flexible Working, Thomson Reuters, December 2019, para 4.31

25 Employment Relations (Flexible Working) Act 2023, s 1

26 Employment Rights Act 1996, s 80G, ss1 & s 80G, ss 1B, amended by the Employment Relations (Flexible Working) Act 2023, s 1, ss 6

Together these two pieces of legislation largely implemented the then government's commitments from its 2021-22 consultation Making flexible working the default.

The Library briefing Flexible Working also contains further information.

Patterns in flexible working

Surveys suggest that the majority of employees have access to flexible working practices, and that most employers offer these practices.

The British Chamber of Commerce reported in July 2023 that three quarters of employers offer flexible working, with almost a quarter offering flexible working as standard in all contracts.[27]

The proportion of people who mostly work from home has increased in recent years. 21% of employed people were mostly working from home in 2023, which compared to 4% in 2015.[28]

Respondents to the ONS Annual Population Survey between January and December 2023 reported their agreed working arrangements. 13% reported that they were working flexible hours, 5% that they were working annualised hours, 4% that they were working a term-time working arrangement, while 1% were working condensed or compressed hours.[29]

According to a 2023 survey by the CIPD, 39% of organisations were offering a day one right to request flexible working. Additionally, 39% of survey respondents would work flexible hours if available, and 18% would work compressed hours. [30]

3.2 Clause 7: Flexible working

Clause 7 would amend the way that statutory flexible working requests have to be treated by employers, currently found in section 80G of the ERA 1996.

While the list of statutory reasons why employers can refuse a flexible working request would remain the same (including factors such as "the burden of additional costs" or "detrimental impact on performance"), a new and additional requirement would be added by new subsection 1(b)(ii) that "it

27 BCC, Three quarter of firms offer flexible working – but significant sectoral disparities exist, 13 July 2023

28 Figures for 2015- 2020: ONS, Homeworking in the UK labour market, 17 May 2021 Figures for 2021-2023: House of Commons Library analysis of Annual Population Survey data

29 House of Commons Library analysis of Annual Population Survey data January 2023 to December 2023

30 CIPD, Flexible and hybrid working practices in 2023, 25 May 2023

is reasonable for the employer to refuse the application on that ground or those grounds".

This would turn what is currently a subjective test – with an employer only needing to show they believed one of the listed grounds applied – into an objective test – with an employer needing to demonstrate that their reliance on the listed ground was "reasonable".

In addition, new subsection 1ZB would require employers when refusing an application to tell the employee the reason for which it was being refused and explain why it was reasonable to refuse it for that reason.[31]

[31] Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 254

4 Statutory sick pay

4.1 Background

Statutory sick pay (SSP) is the basic minimum statutory payment to which qualifying employees are entitled for periods where they are incapable for work because of an illness. It is currently paid at a rate of £116.75 per week.[32]

The right to SSP is set out in the Social Security Contributions and Benefits Act 1992 and the Statutory Sick Pay (General) Regulations 1982.[33] These set out who is entitled to SSP, the rate at which it is paid and the periods when it is payable.

SSP is a minimum statutory right. Many employers have occupational sick pay schemes which may provide higher rates of pay or cover longer time periods. Occupational sick pay will be governed by the terms of the employment contract. There are no restrictions on how an occupational sick pay scheme operates, provided employees do not receive less than their minimum statutory entitlement and employers abide by the terms of their own policies and contracts.

SSP is paid to 'employees' who earn over the lower earnings limit (LEL). However, the definition of an employee for SSP purposes differs from other areas of employment law.[34] All those who pay Class 1 National Insurance Contributions (NICs) are considered employees for the purposes of SSP.[35] This can include some workers, including agency workers and those on zero-hours contracts. To qualify for SSP, an employee's average weekly earnings must be at or above the LEL.[36] The LEL is currently £123 per week.[37]

SSP is payable for 'periods of incapacity for work' (PIW). This is a period of four of more consecutive days where an employee is, or is deemed to be:

32 GOV.UK, Statutory Sick Pay (SSP), [accessed 15 October 2024]

33 Social Security Contributions and Benefits Act 1992; The Statutory Sick Pay (General) Regulations 1982

34 For a comparison of employment status definitions see Commons Library briefing CBP-8045, Employment Status

35 Social Security Contributions and Benefits Act 1992, s 163; Statutory Sick Pay (General) Regulations (1982/894), reg 16

36 Social Security Contributions and Benefits Act 1992, sch 11, para 2(c)

37 GOV.UK, Statutory Sick Pay (SSP), [accessed 15 October 2024]

> incapable by reason of some specific disease or bodily or mental disablement of doing work which he can reasonably be expected to do under that contract.[38]

SSP is paid for each 'qualifying day' that falls within a PIW. Qualifying days can be agreed between the employer and the employee. They will usually be the days the employee is contracted to work.[39]

At present, SSP is not paid for the first three qualifying days. These are called 'waiting days'.[40] As such, employees will typically be paid SSP from their fourth day of absence from work. Clauses 8 and 9 of this bill would remove the three day qualifying period, as well as the requirement to earn the LEL to qualify. Clause 9 would also change the rate of SSP.

The Library briefing Statutory Sick Pay contains further information on the legal framework, as well as on the Work and Pensions Select Committee 2023 inquiry into SSP reform.[41]

Statutory sick pay statistics

Median weekly pay for full-time employees was £682 in April, which means that the SSP rate of £116.75 was 17% of median full-time weekly wages.[42] The Work and Pensions Select Committee heard evidence in 2024 that the UK's SSP rate was "inadequate as a means of providing financial support to employees during periods of sickness absence".[43]

Between around 700,000 and around 1.4 million people were paid less than the lower earnings limit in March to May 2023.[44]

A 2020 OECD report found that among OECD countries, the UK's SSP replaced the smallest percentage of full-time employees' wages in the first four weeks of leave due to Covid-19: UK SSP replaced around 10% of employee wages, compared to an OECD average of around 70%. However, sick pay was topped up in the UK by non-mandatory employer sick pay, so the average full-time worker had 100% of their wages replaced by sick pay in total.[45]

38 Social Security Contributions and Benefits Act 1992, s 151(4)

39 Social Security Contributions and Benefits Act 1992, s 154; The Statutory Sick Pay (General) Regulations 1982, reg 5

40 Social Security Contributions and Benefits Act 1992, s 155

41 Commons Library briefing CBP-9435, Statutory Sick Pay

42 ONS, Earnings and hours worked, all employees: ASHE Table 1, 1 November 2023

43 Work and Pensions Committee, Fourth Report – Statutory Sick Pay inquiry, 28 March 2024

44 ONS, Annual Survey of Hours and Earnings Table 1.1a shows that 10% of part-time employees earn £77 per week or less and 20% earn £128 per week or less in April 2023, which means between 10 and 20% of part-time employees earn less than the lower earnings limit. ONS, A01: Summary of labour market statistics shows there were 7.04 million part-time employees in March to May 2024.

45 OCED, Paid sick leave to protect income, health and jobs through the COVID-19 crisis, 2 July 2020, Figure 3

The DWP published a March 2023 Employee research report which included a survey of workers' experience of sick pay. As part of this research, over 3,800 employees were surveyed about their sick pay eligibility. Of these:

- 86% of employees reported that they receive sick pay of some kind.
- 53% reported they receive Occupational Sick Pay (OSP).
- 9% reported they receive SSP some of the time and OSP some of the time.
- 6% reported that they didn't know what sick pay they were eligible for.[46]

8% of the employees surveyed reported that they did not receive sick pay at all.

4.2 Clauses 8 to 9: Statutory sick pay

Clauses 8 and 9 would amend the Social Security Contributions and Benefits Act 1992.

Clause 8 would remove the current three "qualifying days" that employees must currently wait during any period of incapacity for work before they become eligible for Statutory Sick Pay (SSP). This means that SSP would become payable from the first day of illness or injury, rather than only from day four onwards.

Clause 9 would remove the current requirement for employees to earn above the Lower Earnings Limit (currently £123 per week) before they become eligible for SSP.

At the same time, Clause 9 would change the rate of SSP, so that instead of all recipients being paid the flat rate of SSP (currently £116.75 per week), they would instead either receive the flat rate or a percentage of their weekly earnings, whichever is lower. The percentage would be set and variable by the Secretary of State by order subject to the affirmative procedure (in the same way the flat rate is currently amendable by order).[47]

Although the Bill states this rate would be set by regulations, in their Next Steps policy paper the government said that they would "consult on what the percentage replacement rate for those earning below the current flat rate of Statutory Sick Pay should be, and will bring this change forward through a government amendment to the bill during its passage"[48]

46 Department for Work and Pensions, Employee research Phase 1 and 2, 15 March 2023, p56

47 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 265

48 Department for Business & Trade, Next Steps to Make Work Pay, 10 October 2024, para 18

5 Tips and gratuities

5.1 Background

In 2015 there were media reports of unfair tipping practices by major restaurant chains and other hospitality outlets, such as deducting from tips before passing them on to workers.[49] This led to calls for reform to require employers to pass on all tips and service charges in full.[50]

There have been a number of government consultations and proposals in this area, beginning with a 2015 call for evidence on tips, gratuities, cover and service charges.[51] This was followed by a 2016 consultation on 'Tips, gratuities, cover and service charges: proposals for further action' seeking feedback on whether employers should be prevented from making any deductions from such payments.[52]

In 2018 the government announced its intention to legislate to prevent employers from making deductions from tips, as part of a package of 'New measures to support workers, businesses, and entrepreneurs'.[53] Measures to meet this commitment were included in the Employment Bill proposed in the December 2019 Queen's Speech.[54] The Employment Bill was not ultimately introduced.

There were renewed calls for reform during the Covid-19 pandemic amid concerns that changing payment habits were seeing a fall in cash tips alongside wider challenges for the hospitality sector. The Government said in September 2021 that 80% of all UK tipping now happens by card, rather than

49 The Guardian, Jamie Oliver's Italian restaurant chain under fire over tipping policy, 30 September 2015; BBC News, Pizza Express: The war over tipping, 4 September 2015; The Guardian, Las Iguanas faces backlash over 'grossly unfair' tipping policy, 29 August 2015

50 HL Deb 30 November 2015 767 c933-4; PQ 15369 [on Gratuities], 17 November 2015; PQ 901340 [on Gratuities], 15 September 2015

51 Department for Business, Innovation & Skills, Tips, gratuities, cover and service charges: call for evidence, 30 August 2015

52 Department for Business, Energy & Industrial Strategy, Tips, gratuities, cover and service charges: proposals for further action, 2 May 2016

53 Department for Business, Energy & Industrial Strategy press release, New measures to support workers, businesses, and entrepreneurs, 1 October 2018

54 Prime Minister's Office, Queen's Speech December 2019: background briefing notes, 19 December 2019, p43

cash, and suggested this means businesses are less likely to pass tips onto staff.[55]

Employment (Allocation of Tips) Act 2023

The Employment (Allocation of Tips) Act 2023 was introduced to Parliament as a private member's bill by Conservative MP Dean Russell. The act amends the Employment Rights Act 1996 to insert new legal obligations on employers regarding tips and gratuities.[56]

Under the act, employers must ensure that all tips, gratuities and service charges they receive or exercise control over are paid to workers in full without deductions and by the end of the following month.[57] It also introduced obligations to ensure the fairness of arrangements to distribute those tips among workers, either when distributed by the employer or via an independent tronc.[58] Employers are also required to maintain a written policy for employees setting out how tips are dealt with in that place of business.[59]

The legislation also empowered the Secretary of State to introduce a new code of practice about the fair and transparent distribution of qualifying tips, gratuities and service charges which would help to indicate what would count as a fair distribution for the purposes of the new legal obligations.[60] These provisions apply both to those working directly for hospitality businesses and to agency workers supplied to work in those businesses.[61]

After approval from Parliament, the new Code of practice on fair and transparent distribution of tips was published on 29 July 2024 and came into force on 1 October 2024, at the same time as the provisions of the Employment (Allocation of Tips) Act 2023.

Clause 10 of this bill would introduce a new requirement for employers to consult with employee representatives before producing their written tipping and gratuity policy, as well as to review the policy every three years.

Further information on the Tips Act 2023 as well as the legislative background is included in the Library briefing Employment (Allocation of Tips) Bill 2022-23: Progress of the Bill.

Statistics on tips

In 2024, there were around 120,000 business in the UK within the food and beverage service activities sectors where tipping is common practice, and

55 Department for Business, Energy & Industrial Strategy press release, All tips to go to staff under government plans to enhance rights of 2 million workers, 24 September 2021
56 The Employment (Allocation of Tips) Act 2023
57 The Employment (Allocation of Tips) Act 2023, s 2, s 4
58 The Employment (Allocation of Tips) Act 2023, s 3
59 The Employment (Allocation of Tips) Act 2023, s 6
60 The Employment (Allocation of Tips) Act 2023, s 9
61 The Employment (Allocation of Tips) Act 2023, s 5

they employed around 1.7 million people.[62] Median weekly earnings for full-time employees in this sector were £501 in 2023, compared to £682 for all full-time employees.[63]

The impact assessment which accompanied the Employment (Allocation of Tips) Act 2023 estimated that 65% of the 1.56 million workers in restaurants, pubs and bars worked for businesses were not following the code of best practice on tipping before the act was in place. [64]

5.2 Clause 10: Tips and gratuities

Clause 10 would amend section 27I of the ERA 1996, which recently came into force as a result of the Employment (Allocation of Tips) Act 2023 (see background above for more details).

Section 271 of the ERA 1996 currently requires employers to maintain a written policy for how tips, gratuities and service charges are allocated between workers at each place of business.

Clause 10 would introduce a new requirement for employers to consult with representatives of recognised trade unions, elected worker representatives or, in their absence, with workers likely to be affected, before producing such a policy.[65] It would also introduce a requirement to review the policy at least once every three years, with similar consultation.[66]

62 DBT, Business population estimates 2024, table 7

63 ONS, Earnings and hours worked, industry by four-digit SIC: ASHE Table 16, 1 November 2023. This wages figure does not include tips.

64 Employment (Allocation of Tips) Act 2023, Impact assessment from the Department for Business, Energy and Industrial Strategy, 20 January 2023

65 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 268

66 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 270

6 Family-related leave

6.1 Background

Bereavement leave

The Parental Bereavement (Leave and Pay) Act 2018 started as a private member's bill introduced by Kevin Hollinrake MP during the 2017-2019 session.[67] Regulations passed under the Parental Bereavement (Leave and Pay) Act 2018 created new entitlements to parental bereavement leave and parental bereavement pay.[68] They apply where a child dies before they turn 18 or where someone pregnant suffers a stillbirth after 24 weeks of pregnancy. Parental bereavement leave and pay are available to employees who are the child's parents.

Parental bereavement leave is available to all such employees from day one of employment. Parental bereavement pay is available to employees who have been in continuous employment for 26 weeks with their employer and earn at least £123 per week on average before tax.[69]

Eligible parents can take up to two weeks of leave for each child who has died or was stillborn, starting anytime from the date of the death or stillbirth and finishing within 56 weeks of the date of the death or stillbirth. It can be taken in blocks of one week at a time. Employees must notify their employer of their intention to take leave and complete a declaration to claim statutory parental bereavement pay. Statutory bereavement pay is paid at a rate of £184.03 a week or 90% of average weekly earnings (whichever is lower).[70]

Ordinary parental leave

The right to unpaid parental leave (sometimes called 'ordinary' parental leave), separate from other forms of leave such as maternity or shared parental leave, is provided in Part 8 of the Employment Rights Act 1996 and Part 3 of the Maternity and Parental Leave etc. Regulations 1999.[71] An employee with at least one year's continuous service may be eligible for

67 Parental Bereavement (Leave and Pay) Act 2018

68 Specifically the Parental Bereavement Leave Regulations 2020 and the Statutory Parental Bereavement Pay (General) Regulations 2020

69 Gov.uk, Statutory Parental Bereavement Pay and Leave, [accessed 15 October 2024]

70 Gov.uk, Statutory Parental Bereavement Pay and Leave, [accessed 15 October 2024]

71 Employment Rights Act 1996, pt 8; Maternity and Parental Leave etc. Regulations 1999, SI 1999/3312, pt 3

unpaid parental leave if they have parental responsibility for a child.[72] The employee will be entitled to up 18 weeks' leave in respect of any individual child to take at any time up to the child's 18th birthday.[73] The leave may be taken in one-week blocks, up to a maximum of four weeks per year.[74]

Paternity leave

The right to paternity leave is set out in Part 8 of the Employment Rights Act 1996 and Part 2 of the Paternity and Adoption Leave Regulations 2002.[75]

Paternity leave lasts for one or two weeks, at the parent's choice, which can be taken in either one two-week block or two one-week blocks, within the first year of the child's due date or arrival if the baby arrives early. Employees have to give 28 days' notice for each week of leave.

To qualify for paternity leave an individual must have been employed with the same employer for at least 26 weeks at the end of the 15th week before the expected week of the child's birth.[76]

Paternity leave is available to both men and women, provided they are parenting a child and are the partner of the mother or adoptive parent. The rights to paternity leave apply to the member of an adopting couple who is not eligible for adoption leave and pay (the partner who is not the "primary" adoptive parent).

Paternity pay is paid at the flat rate of £184.03 or 90% of average weekly earnings, whichever is lower. In order to qualify for paternity pay the individual must earn at least £123 per week before tax.[77]

Before 2015, there were two types: ordinary paternity leave (one or two weeks) and additional paternity leave (up to 26 weeks). Additional paternity leave was abolished for parents of children due after 5 April 2015, and it was replaced by shared parental leave and Shared Parental Pay. However, one result of the way the law was changed is that it is not currently permitted to take paternity leave after a period of shared parental leave.[78]

For further information on family-related leave and shared parental leave, see section 10 'Family-related leave' of the Library briefing 'Key Employment Rights'.

Clauses 11 to 14 of the bill would extend employee rights to family-related leave.

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72 Maternity and Parental Leave etc. Regulations 1999, SI 1999/3312, reg 13
73 Maternity and Parental Leave etc. Regulations 1999, SI 1999/3312, regs 14-15
74 Maternity and Parental Leave etc. Regulations 1999, SI 1999/3312, sch 2, paras 7-8
75 Employment Rights Act 1996, pt 8
76 Paternity and Adoption Leave Regulations 2002 SI 2002/2788, reg 4
77 See Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 (SI 2002/2822); Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) Regulations 2002 (SI 2002/2818)
78 Gov.uk, Paternity pay and leave: Leave [accessed 16 October 2024]

Statistics on family-related leave

Bereavement leave

A YouGov survey for the Chartered Institute of Personnel and Development (CIPD) found in March 2022 that around 80% of employers provided paid bereavement leave for close family members. Of these, 40% offered three to five days and 14% offered one to two days of paid leave.[79]

Paternity leave

The most recent Parental Rights Survey, which was conducted by market researcher BMG Research in 2019 and surveyed 3,500 parents, estimated that 59% of new fathers take paternity leave. 21% took time off that was not statutory leave (for example, using annual leave or taking unpaid time off), 18% took no time off, and 4% took shared parental leave.

27% of fathers who did not take statutory leave said it was because they were not entitled to any statutory leave. A further 15% said they didn't know whether they were entitled to leave.[80]

6.2 Clauses 11 to 14: Family-related leave

Clause 11 would remove the current power of the Secretary of State to make regulations setting a qualifying period for parental leave (also known as 'ordinary' or 'unpaid' parental leave – see above), thereby making it a day one entitlement for all employees.[81]

Clause 12 would do likewise for paternity leave, also making it a day one entitlement.

Clause 13 would remove the current restriction on employees taking paternity leave and pay after they have already taken a period of shared parental leave and pay.[82]

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79 CIPD, Three quarters of employers support extending paid bereavement leave to close family members, CIPD research finds, 3 March 2022

80 Institute of Employment Studies, Parental Rights Survey 2019, June 2023

81 Although this bill would not explicitly repeal the qualifying period found in Regulation 13(1)(a) of the Maternity and Parental Leave etc. Regulations 1999, by repealing a power to make secondary legislation, any secondary legislation made under that power is impliedly revoked (see Bennion on Statutory Interpretation, para 8.17). The Employment Rights Bill also contains transitional and saving provision in clause 114 which could be used to clarify any amendments to relevant secondary legislation.

82 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 277

Bereavement leave

Clause 14 would expand on the current right to parental bereavement leave found in section 80EA of the ERA 1996, which was introduced by the Parental Bereavement (Leave and Pay) Act 2018. Currently the right only applies when an employee's child dies before the age of 18. Clause 14 would instead require the Secretary of State to create new regulations allowing employees to take bereavement leave when anyone dies to whom they have a specified relationship, to be defined by the Secretary of State in the regulations.

However, the bill would not make any equivalent changes to the Social Security Contributions and Benefits Act 1992, meaning that while eligibility for bereavement leave would be expanded, there would be no corresponding increase in eligibility for pay. Eligibility for parental bereavement pay would remain only for parents whose child dies before the age of 18.

7 Protection from harassment at work

7.1 Background

Section 40 of the Equality Act 2010 prohibits employers from harassing their staff.[83] Section 26 defines harassment covered by the act as "unwanted conduct" that violates a person's dignity or creates an "intimidating, hostile, degrading, humiliating or offensive environment" and which falls into one of three categories:

- unwanted conduct related to a relevant protected characteristic
- unwanted conduct of a sexual nature
- unfavourable treatment due to submitting to or rejecting "unwanted conduct of a sexual nature or that is related to gender reassignment or sex".[84]

The latter two categories are generally described as "sexual harassment" specifically, as opposed to more general harassment related to protected characteristics.[85]

Section 109 of the 2010 act states that employers may be vicariously liable for harassment carried out by their employees.[86] Employers are therefore already liable where employees harass fellow staff, unless they can show they took "all reasonable steps" to prevent it.

However, since the repeal of subsections 40(2)–(4) of the Equality Act in 2013, coupled with a 2018 Court of Appeal ruling *Unite the Union v Nailard*, employers are not generally liable where staff are harassed by third parties outside of the employer's direct control, such as customers or suppliers.[87]

In response to the Women and Equalities Committee 2018 inquiry on 'Sexual harassment in the workplace', the government held a consultation about the effectiveness of anti-harassment law.[88] In response to the consultation, the

83 Equality Act 2010, s 40
84 Equality Act 2010, s 26
85 Acas, Discrimination at work: Harassment, 10 May 2023
86 Equality Act 2010, s 109
87 Unite the Union v Nailard [2018] EWCA Civ 1203
88 Women and Equalities Committee, Sexual harassment in the workplace, 13 February 2018; Government Equalities Office, Government response to consultation on sexual harassment in the workplace, 21 July 2021

government committed to introducing legislation to create a duty on employers to take reasonable steps to prevent sexual harassment.[89]

Worker Protection (Amendment of Equality Act 2010) Act 2023

The Worker Protection (Amendment of Equality Act 2010) Act 2023, originally a private member's bill introduced by Liberal Democrat MP Wera Hobhouse, introduced a new duty on employers relating to the prevention of sexual harassment in the workplace.[90]

The act introduced a duty on employers to take "reasonable steps" to prevent sexual harassment of their employees and set out provisions for how this duty would be enforced.[91] The act also provided for an uplift in compensation in sexual harassment cases where employers are found to be in breach of their duty.[92]

In the Lords, the bill encountered opposition from backbench Conservative peers, who tabled over 40 amendments ahead of committee stage. Due to a compromise agreement being reached between the government, the bill's sponsor and Conservative backbenchers, two amendments were ultimately accepted during committee stage, which significantly reduced the scope of the legislation.

Proposed provisions that did not form part of the act

The Worker Protection (Amendment of Equality Act 2010) Bill 2022-23, as originally introduced, would have done two things. Firstly, clause 1 would have created new liabilities for employers in cases of third-party harassment of their staff, unless the employer took "all reasonable steps" to prevent it. This would have re-created protections similar to those that originally existed in the Equality Act 2010, but were removed by the Enterprise and Regulatory Reform Act 2013.

However, the amendments at Lords committee stage removed clause 1 so no such liability was created by the act that passed. The situation created in 2013 therefore remains, with employers having no liability for harassment of staff by third parties.

The second thing the bill as introduced would have done is through clause 2, to create a new legal duty, enforceable by the Equality and Human Rights Commission (EHRC), for employers to take "all reasonable steps" to prevent sexual harassment of their employees in the course of their employment. As a result of amendments made at Lords committee stage, this duty as contained

89 Government Equalities Office, Government response to consultation on sexual harassment in the workplace, 21 July 2021

90 Worker Protection (Amendment of Equality Act 2010) Act 2023

91 Worker Protection (Amendment of Equality Act 2010) Act 2023, s 1, s 2

92 Worker Protection (Amendment of Equality Act 2010) Act 2023, s 3

in section 1 of the final act is now only a duty to take "reasonable steps", not "all reasonable steps".

See the Library briefings 'Worker Protection (Amendment of Equality Act 2010) Bill – Lords Stages and Amendments' and 'Worker Protection (Amendment of Equality Act 2010) Bill 2022-23: Progress of the Bill' for further background on the act.

Prevalence of harassment in the workplace

The CIPD conducted a survey of workplace conflict and published the results in the January 2020 report Managing conflict in the modern workplace. Respondents were asked if they had observed or experienced harassment at work in the previous three years:

- 8% reported that had experienced harassment other than sexual harassment at work, while a further 11% reported they had observed it.
- 4% reported they had experienced sexual harassment at work, while a further 7% reported they had observed it. [93]

In 2018, the Women and Equalities Committee reported that a very low number of claims are successful at a tribunal hearing, which they believe suggests that the 'tribunal system is not currently an effective means of holding employers to account'. The committee also said that is likely that a lot of sexual harassment in the workplace goes unreported. [94]

7.2 Clauses 15 to 18: Protection from harassment at work

Clause 15 would amend section 40A of the Equality Act 2010, which sets out the existing duty of employers to take "reasonable steps" to prevent sexual harassment of employees, to a duty on employers to take "all reasonable steps" to prevent such harassment.

This would undo the effect of a Lords amendment which removed the word "all" from the duty to take reasonable steps when the provision was first introduced through the passage of the Worker Protection (Amendment of Equality Act) 2010 Act 2023.[95]

Clause 16 would separately extend liability to employers in cases where staff are harassed by third parties in the course of their employment and the

[93] CIPD, Managing conflict in the modern workplace, 21 January 2020

[94] Women and Equalities Committee, Sexual harassment in the workplace, fifth report of the session 2017-19 (PDF), 18 July 2018

[95] For further details see Library briefing CBP 9867, Worker Protection (Amendment of Equality Act 2010) Bill – Lords Stages and Amendments, 12 October 2023

employer has failed to take "all reasonable steps" to prevent such harassment. This includes not just sexual harassment but harassment (defined in the Equality Act as "unwanted conduct" with the purpose or effect of "creating an intimidating, hostile, degrading, humiliating or offensive environment") related to any protected characteristics covered by harassment in the Equality Act, including disability, race, gender reassignment and religion or belief. [96]

This would restore similar provisions which had originally been in the Equality Act 2010 until they were removed in 2013, and which would have been restored by clause 1 of the Worker Protection (Amendment of Equality Act) 2010 Bill 2022-23, before they were removed by a Lords amendment during the bill's passage.[97]

Clause 17 would create a power for a Minister of the Crown to make regulations to specify particular steps that employers may be required to make to comply with the duty to take "reasonable steps" to prevent sexual harassment of employees.[98] However, this power to specify steps relates only to "sexual harassment" and not to what steps to take to prevent other kinds of "harassment" (such as race-based harassment), as employers may be required to do under the new liabilities introduced by clause 16.

96 Equality Act 2010, section 26

97 As above

98 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 296-299

8 Qualifying period for unfair dismissal

8.1 Background

The law on unfair dismissal is covered in Part X of the Employment Rights Act 1996.

The right of employees not to be unfairly dismissed has existed in some form in law since the Industrial Relations Act 1971. The general right is currently in section 94 of the Employment Rights Act 1996, with the default qualifying period of continuous service outlined in section 108(1).

The length of continuous service required to claim unfair dismissal has changed several times between 1971 and 1985, from two years, to six months, to one year, then back to two years. In 1999 under the then Labour government it was reduced again to one year. Under the coalition government on 6 April 2012 it was once again increased to two years by the Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012.

The government provided reasons for this increase to two years in 2012 in its response to the 2011 consultation Resolving workplace disputes. These included "impact on employer's confidence to recruit and retain staff", "more opportunity to assess individuals and reduce the level of pressure on deciding whether to retain a trainee", "improving business confidence" and "reducing the number of tribunal claims".[99]

The government has been asked about qualifying periods for unfair dismissal on a number of occasions. In 2022 the Conservative government was asked in a written question about the "potential merits of returning the unfair dismissal qualification period to one year on employee's employment rights". The then Labour Markets Minister Dean Russell responded for the government, saying it thought the qualifying period at the time struck the right balance between employees and employers:

> The qualifying periods for unfair dismissal are intended to strike the right balance between providing fairness to employees and to increase business confidence for recruiting and retaining staff. The UK now has record levels of payroll employees, and the unemployment rate is at 3.8%, which is below the pre-pandemic rate.

[99] Department for Business, Innovation and Skills, Resolving workplace disputes: government response to the consultation, 27 January 2011, p 32-34

> It is important to note that no qualifying period applies if a dismissal is for certain specified reasons, for example the right not to be unlawfully discriminated against. We believe this provides the right balance for employees and employers.[100]

It is possible for workers to claim unfair dismissal in some situations without two years' qualifying service; there is a list of 'automatically unfair' reasons for dismissal that apply from day one of employment. As noted on the Acas guidance page on unfair dismissal, these include:

- making a flexible working request
- being pregnant or on maternity leave
- wanting to take family leave, for example parental, paternity or adoption leave
- being a trade union member or representative
- taking part in legal, official industrial action for 12 weeks or less, for example going on strike
- asking for a legal right, for example to be paid the National Minimum Wage
- doing jury service
- being involved in whistleblowing
- being forced to retire (known as 'compulsory retirement')
- taking action, or proposing to take action, over a health and safety issue[101]

8.2 Clause 19 and schedule 2: Removal of qualifying period for unfair dismissal

Clause 19, together with schedule 2 of the bill, would remove the two-year qualifying period that currently exists for the ordinary ability to claim unfair dismissal. However, there would be exceptions for employees who have not yet started work and for dismissals during a "initial period of employment" (referred to in some commentary as a 'probationary period'). In their Next Steps policy paper accompanying the bill, the government said "Reforms of unfair dismissal will take effect no sooner than autumn 2026".[102]

[100] PQ 45084 [on Unfair Dismissal], 21 September 2022
[101] Acas, Dismissals: Unfair dismissal, updated 28 July 2022
[102] Department for Business & Trade, Next Steps to Make Work Pay, 10 October 2024, para 18

None of this would affect the ability of employees to claim unfair dismissal for automatically unfair reasons such as whistleblowing, pregnancy or trade union membership, which already apply from day one of employment.[103]

Section 108 of the ERA 1996, which contains the current two-year qualifying period, would be repealed. In its place would be added new sections 108A and 98ZZA, setting out special exemptions for employees who have not yet started work, and employees during a probationary period, respectively.

Schedule 2: New section 108A

Paragraph 2 of schedule 2 would insert a new section 108A into the ERA 1996. This would prevent new employees who are dismissed before they have started work from making an unfair dismissal claim, unless they are dismissed for one of the existing set of automatically unfair reasons.

Without this new section, the removal of any qualifying period could enable employees with a contract but who have not yet started work to claim unfair dismissal if they are dismissed before their first day.[104]

Schedule 2: New section 98ZZA

Paragraph 3 of schedule 2 would insert a new section 98ZZA into the ERA 1996. This would give the Secretary of State the power to make regulations altering the unfair dismissal test for employees dismissed during an "initial period of employment" (which has been referred to in some commentary as a 'probationary period'); the length this period would be determined through such future regulations. This would include employees notified of dismissal during this period even if their effective date of termination fell up to three months afterwards.

This altered test for unfair dismissal would not apply in cases of redundancy: employees who are dismissed unfairly for reasons of redundancy would still be able to claim for unfair dismissal from day one of employment and the usual tests of fairness would apply, even if they were in the probationary period.

Regulations made under this new power would be subject to the affirmative resolution procedure in Parliament.

In their Next Steps policy paper the government commented in detail on their plans for this probationary period, saying it would consult on the details of the proposals:

> We will consult on the length of that initial statutory probation period; the government's preference is 9 months. We will also engage further during the

[103] See Gov.uk, Unfair dismissals: Automatically unfair reasons for dismissal for a full list of such reasons.

[104] See Darren Newman, The Employment Rights Bill – Unfair Dismissal as a Day-One Right, A Range of Reasonable Responses, 11 October 2024

passage of the bill on how we can ensure the probation period has meaningful safeguards to provide stability and security for business and workers.

[...]

As a starting point, the government is inclined to suggest it should consist of holding a meeting with the employee to explain the concerns about their performance (at which the employee could choose to be accompanied by a trade union representative or a colleague).

The government will consult extensively, including on how it interacts with Acas's Code of Practice on disciplinary and grievance procedures. Existing day 1 rights that provide protection for employees from unfair dismissal will not be affected by the statutory probation period.

[...]

The government also intends to consult on what a compensation regime for successful claims during the probation period will be, with consideration given to tribunals not being able to award the full compensatory damages currently available.

39. The government has committed to a full consultation on the detail of the proposals. Before the measures come into force there will be a substantial period – once the detailed rules in secondary regulations are confirmed – to allow employers to prepare and adapt. To provide sufficient time for this, we are making clear now that the reforms to unfair dismissal will not come into effect any sooner than autumn 2026, and until then the current qualifying period will continue to apply.[105]

[105] Department for Business & Trade, Next Steps to Make Work Pay, 10 October 2024, para 36

9 Protections for new parents against dismissal

9.1 Background

Currently, under regulation 10 of the Maternity and Parental Leave etc. Regulations 1999, employees who are pregnant or taking maternity leave enjoy some protections against redundancy. This protection means that if their role is made redundant their employer must give them first refusal of any other vacancies; however, they can still be made redundant if no appropriate vacancy is available. These protections last up to 18 months after childbirth.[106]

Women and Equalities Committee inquiry

In 2016, the Women and Equalities Committee conducted an inquiry into pregnancy and maternity discrimination.[107]

The inquiry found that pregnant women and mothers reported "more discrimination and poor treatment at work now than they did a decade ago".[108] The committee recommended that the government make changes in laws and protections to prevent discriminatory redundancies. The inquiry included in its recommendations that German-style protections should be introduced where redundancies during pregnancy and maternity leave, and up to six months afterwards, are completely prohibited except in specified circumstances.[109]

In 2017, in their response to the committee's report, the government indicated that the current situation was "clearly unacceptable" and that they would bring forward proposals to ensure that the protections in place for those who are pregnant or returning from maternity leave are sufficient.[110] However, the government did not commit to adopting the committee's recommended German-style system of restricting permissible reasons for redundancy in such cases. Instead, the government preferred to maintain and expand the

106 The Maternity and Parental Leave etc. Regulations 1999, Regulation 10

107 Women and Equalities Committee, Pregnancy and Maternity Discrimination inquiry, 22 March 2016

108 Women and Equalities Committee, Pregnancy and Maternity Discrimination inquiry: 1st report, [PDF] 31 August 2016, p5

109 Women and Equalities Committee, Pregnancy and Maternity Discrimination inquiry: 1st report, [PDF] 31 August 2016, para 70

110 Department for Business, Energy and Industrial Strategy, Pregnancy and maternity discrimination: response to the select committee report, 26 January 2017, p9

current UK approach based on prioritising the offer of alternative vacancies in cases of redundancy.[111]

Government consultation

In January 2019 the Department for Business, Energy & Industrial Strategy launched a consultation on 'Pregnancy and maternity discrimination: extending redundancy protection for women and new parents'.[112] The consultation ran from 25 January to 5 April 2019. The majority of responses on the proposals to extend redundancy protection agreed that:

- six months would be an adequate period of "return to work" for redundancy protection purposes
- protection should be extended to parents who have taken adoption leave and shared parental leave.[113]

The government responded to the consultation on 22 July 2019. The response included a series of commitments to increase redundancy protections in this area, including to:

> - ensure the [existing] redundancy protection period applies from the point the employee informs the employer that she is pregnant, whether orally or in writing;
> - extend the redundancy protection period for six months once a new mother has returned to work. We expect that this period will start immediately once maternity leave is finished;
> - extend redundancy protection into a period of return to work for those taking adoption leave following the same approach as the extended protection being provided for those returning from maternity leave – it will be for six months;
> - extend redundancy protection into a period of return to work for those taking shared parental leave, taking account of the following key principles and issues:
> - the key objective of this policy is to help protect pregnant women and new mothers from discrimination;
>
> – the practical and legal differences between shared parental leave and maternity leave mean that it will require a different approach;

111 Department for Business, Energy and Industrial Strategy, Pregnancy and maternity discrimination: response to the select committee report, 26 January 2017

112 Department for Business, Energy & Industrial Strategy, Pregnancy and maternity discrimination: extending redundancy protection for women and new parents, 22 July 2019

113 Department for Business, Energy & Industrial Strategy, Pregnancy and maternity discrimination: extending redundancy protection for women and new parents: summary of responses, [PDF] 22 July 2019, p7

- the period of extended protection should be proportionate to the amount of leave and the threat of discrimination;
- a mother should be no worse off if she curtails her maternity leave and then takes period of Shared Parental Leave;
- the solution should not create any disincentives to take Shared Parental Leave.[114]

The Queen's Speech in December 2019 included an employment bill with provisions for extending redundancy protections to prevent discrimination for pregnancy and maternity.[115] The employment bill was ultimately not introduced.

Between 2019 and 2021 Conservative MP Maria Miller introduced three private members' bills aiming to prohibit redundancy during pregnancy, maternity leave and up to six months after, other than for a limited set of reasons. None of the bills received a second reading.[116]

Protection from Redundancy (Pregnancy and Family Leave) Act 2023

The Protection from Redundancy (Pregnancy and Family Leave) Bill 2022-2023 was a private member's bill brought to Parliament by Labour MP Dan Jarvis and Conservative peer Baroness Bertin.[117] The bill received government support and passed without opposition. Regulations made under the act to deliver the additional redundancy protection for pregnant employees and new parents were laid in December 2023 and came into effect on 6 April 2024.[118]

The regulations extended the duration of existing protections so that they now begin on the day the employer is first notified of the employee's pregnancy and end 18 months after the date of the child's birth. These protections also extend to 18 months after the date of adoption for parents taking adoption leave or 18 months after the child's birth in cases where a parent is taking at least six weeks of shared parental leave.[119]

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114 Department for Business, Energy & Industrial Strategy, Extending redundancy protection for women and new parents: Government response, [PDF] July 2019

115 Prime Minister's Office, Queen's Speech December 2019: background briefing notes, 19 December 2019, p44

116 Pregnancy and Maternity (Redundancy Protection) Bill 2021-2022; Pregnancy and Maternity (Redundancy Protection) Bill 2017-2019; Pregnancy and Maternity (Redundancy Protection) Bill 2019-2021

117 Protection from Redundancy (Pregnancy and Family Leave) Act 2023

118 The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 SI 2024/264

119 The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 SI 2024/264

Further background to the act is available in the Library briefing Protection from Redundancy (Pregnancy and Family Leave) Bill 2022-23: Progress of the Bill.

9.2 Clauses 20 to 21: Protection against dismissal for new parents

Clauses 20 to 21 would extend existing powers of the Secretary of State to make regulations to protect employees from dismissal during periods of pregnancy or family related leave.

Clause 20 would amend section 49D of the ERA 1996 to extend the current power to make provision about "redundancy" during, or after, a protected period of pregnancy, turning it into a power to make provision about "dismissal" throughout the same period. This would allow the Secretary of State to extend existing regulations to cover situations where pregnant employees were dismissed for reasons other than redundancy.[120]

Clause 21 would amend part 8 of the ERA 1996 to extend the current powers to make regulations about dismissal "during" periods of various family leave (such as maternity leave, adoption leave or shared parental leave), turning them into powers to make regulations about dismissal "during or after" those periods of family leave.[121] Clause 21(5)(a) would also extend the power to make provision for dismissals for reasons other than redundancy in cases of such leave, similar to clause 20 above.

This is similar to the way that the Protection from Redundancy (Pregnancy and Family Leave) Act 2023 extended the power to make regulations about redundancy during periods of pregnancy by inserting the words "or after" before "pregnancy".[122]

120 Most notably, Regulation 10 of the Maternity and Parental Leave etc. Regulations 1999

121 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 333-339

122 For further details see Library briefing CBP 9606 Protection from Redundancy (Pregnancy and Family Leave) Bill 2022-23: Progress of the Bill, 27 January 2023

10 Fire and rehire

10.1 Background

The practice of fire and rehire (also called dismissal and re-engagement) is when an employer dismisses an employee and offers to rehire them on new terms. The new terms are usually more favourable toward the employer.

The tactic is typically used when it has not been possible for the employer to vary the terms of the contract by agreement.[123] The practice is not currently unlawful in and of itself. However, as it does involve dismissal, the employer might face claims for unfair dismissal. If there are sufficient numbers of employees involved, the employer will also have a legal duty to undertake collective redundancy consultations first.

Private members' bills

Since 2020, three private members' bills have been introduced to Parliament with the aim of reforming the law on fire and rehire.[124] None of the bills were successful.

Further information is available in the Library briefing Fire and rehire practices.

Fire and rehire statistics

Reliable estimates for the number of people who have experienced fire and rehire are not available.

In 2020 the Advisory, Conciliation and Arbitration Service (Acas) carried out a fact-finding exercise on fire and rehire. They spoke to employer bodies, trade unions, professional bodies and others, including academics. They found that fire and rehire is not new, and participants thought that it was becoming increasingly prevalent. [125]

9% of people responding to a survey commissioned by the Trades Union Congress (TUC) in November 2020 said they had experience with fire and rehire: they agreed with the statement 'I have been told by an employer that I

123 CIPD, "'Fire and rehire' – guidance for employers", 31 March 2022

124 Employment (Dismissal and Re-employment) Bill; Employment (Dismissal and Reemployment) (No.2) Bill; Employment and Trade Union Rights (Dismissal and Re-engagement) Bill

125 Advisory, Conciliation and Arbitration Service (Acas), Dismissal and re-engagement (fire-and-rehire): a fact-finding exercise, 8 June 2021

need to reapply for my job under worse terms and conditions, or that my job may be at risk if I do not accept these conditions'.[126]

P&O Ferries 2022 dismissals

P&O Ferries Ltd (P&O) made 786 of its seafarers redundant with immediate effect on 17 March 2022. This was done without prior consultation of the workforce, who were informed of their dismissal via a pre-recorded video call.[127] The company announced its plans to move to a new operating model using third-party agency workers to crew its ships.

This decision and the way it was handled generated considerable attention, leading to protests by trade unions including the initial refusal of some dismissed seafarers to leave their vessels.[128] The move also drew widespread condemnation from government ministers and backbench MPs.[129] Several overlapping issues of employment law were raised in Parliament and in the media during this period, including of fire and rehire practices.

See the Library briefing P&O Ferries: Employment law issues for further discussion of the case and information on the parliamentary response.

Code of practice on dismissal and re-engagement

In response to this incident, the Department for Transport published the policy paper '9-point plan for seafarers' in July 2022.[130] The plan included a provision to develop a statutory code of practice for fire and rehire practices, with potential uplift in compensation awarded in cases where the employer does not comply with the code.

The code of practice was published and came into force on 18 July 2024.[131] However, as noted in the code of practice, "A failure to follow the code does not, in itself, make a person or organisation liable to [legal] proceedings."[132] Rather, the code is admissible in evidence before courts or employment tribunals when other claims are brought (such as for unfair dismissal); a tribunal may grant an uplift of up to 25% of any compensation due if it finds that the employer has unreasonable failed to comply with the code.

126 Advisory, Conciliation and Arbitration Service (Acas), Dismissal and re-engagement (fire-and-rehire): a fact-finding exercise, TUC Poll data carried out 19 to 29 November 2020, 8 June 2021

127 BBC News, Outrage and no ferries after mass P&O sackings, 18 March 2022 [accessed 16 October 2024]

128 BBC News, Outrage and no ferries after mass P&O sackings, 18 March 2022 [accessed 16 October 2024]

129 HC Deb 21 March 2022, c38; PQ 141945 [on P&O Ferries: Conditions of Employment], 23 March 2022

130 Department for Transport, Nine-point plan for seafarers – our commitments to protect seafarers, 6 July 2022

131 Department for Business and Trade, Dismissal and re-engagement: code of practice, 30 July 2024

132 Department for Business and Trade, Dismissal and re-engagement: code of practice, 30 July 2024, para 12

10.2 Clause 22: Fire and rehire

Clause 22 would add a new section 104I to the ERA 1996, creating a new type of "automatically unfair dismissal".[133]

This would make it automatically unfair to dismiss an employee because either:

a) The employee did not agree to a variation of their contract, or

b) The employer dismissed an employee in order to re-hire them, or hire someone else to carry out substantially the same job, on a varied contract.[134]

Such dismissals would not be automatically unfair if the employer can show that the variation of contract was because of "financial difficulties" that would affect its ability to carry on the business, and that it could not have "reasonably avoided" making the variation.[135] The employer would still need to show that the dismissal was fair, and section 104I provides a series of matters that must be considered in determining whether the dismissal was fair or unfair.[136]

133 See Gov.uk, Unfair dismissals: Automatically unfair reasons for dismissal for a list of current such reasons.

134 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 345-346

135 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 347

136 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 348

11 Part 2 of the bill: Other matters relating to employment

11.1 Clauses 23 to 24: Collective redundancies

Clause 23 would change the scope of existing requirements to notify the government and collectively consult with appropriate workforce representatives in cases of redundancies, business transfers and service provision changes.[137]

It would also change the threshold for a "pre-transfer" consultation which may arise in a TUPE transfer where the transferor is proposing to make redundancies and the "transferring individuals" may be affected by the proposed dismissals.

These notification requirements and TUPE consultation threshold are currently only triggered when 20 or more employees are being made redundant or transferred at a single establishment within 90 days or less. Clause 23 would remove the reference to "one establishment" in the relevant pieces of current legislation, so that these requirements applied any time 20 or more employees were affected across the whole workforce.

Clause 24 would expand the current requirement to notify the flag state in the case of certain redundancies of the crew of certain ships registered at ports outside of Great Britain, by expanding the definition of "employees ordinarily working in Great Britain" for this purpose as including crew on certain "GB-linked ships" and adding a requirement to notify the UK government and making companies that fail to comply liable to a fine.[138] See part 4 of the Library briefing P&O Ferries: Employment law issues for context on these changes.

[137] The latter two categories being collectively referred to as "TUPE transfers" due to the Transfer of Undertakings (Protection of Employment) Regulations 2006. See gov.uk TUPE: guide to 2006 regulations, 15 January 2014

[138] Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 354-360

11.2 Clause 25: Public sector outsourcing

Clause 25 would amend the Procurement Act 2023 by inserting a new section 14A. It would create a power for a Minister of the Crown to make regulations specifying provisions to be included in a relevant public sector outsourcing contract that would guarantee that workers being transferred with the outsourcing were treated no less favourably than other workers of the supplier, and vice versa.

If the power is exercised then there is a duty on the Minister to publish a statutory code of practice with relevant guidance

This would prevent the emergence of what is referred to as a "two-tier workforce" of private and ex-public sector employees on different terms and conditions following the outsourcing of public sector work.[139]

Regulations made under this power would be subject to the affirmative procedure.

11.3 Clause 26: Equality action plans

This clause would insert a new section 78A into the Equality Act 2010. This would allow regulations to be made which could require employers to develop and publish an "equality action plan", setting out steps they are taking relating to "gender equality" such as "addressing the gender pay gap" and "supporting employees going through the menopause".[140]

Although described in the bill as 'equality action plans', the regulation making power relates specifically to plans "related to gender equality" and not to other protected characteristics such as race or disability.

This would only apply to employers with at least 250 employees and to specified public authorities. Regulations made under this power would be subject to the affirmative procedure.

[139] Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 361

[140] Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 383

11.4 Clause 27: Gender pay gap reporting and contract workers

Clause 27 would amend the Equality Act 2010 by expanding the regulation making power in section 78 – the power used to make the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017. As expanded, these regulations would be able to extend gender pay gap reporting requirements to require employers to report the identity of any service providers they use for outsourcing.[141] Outsourced service providers may themselves already be required to report on gender pay gaps among their own employees under the existing regulations.

[141] Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 388-391
On 23.10.24 we edited this sentence to clarify that extended power was only specified to cover reporting the identity of any service providers, not reporting the pay gaps of service providers (although such service providers may already be required to make reports of their own on their pay gaps under the 2017 regulations).

12 Part 3 of the bill: Sectoral collective bargaining

12.1 Background

Sectoral bargaining today

In the UK today most collective bargaining, where recognised trade unions exist, takes place at the enterprise level, rather than the sector level. This is in contrast to the practice in many European countries such as Germany, Italy or Norway where sectoral bargaining is more common.

An example of where sectoral bargaining is still practiced in the UK today is in local government, where the National Joint Council for Local Government Services, including both union and employer representatives, jointly agree on pay and conditions for local government workers each year in a Single Status Agreement, also known as the 'Green Book'.

In Scotland sectoral bargaining remains somewhat more common than in England and Wales, with examples of where it is practiced including the Construction Industry Joint Council and the Scottish Negotiating Committee for Teachers (SNCT), which both set sector-wide pay and conditions through collective bargaining in their respective sectors (The SNCT technically being a tripartite body which also includes representatives from the Scottish Government).

Sectoral bargaining on a statutory basis is also still practiced in Scotland and Northern Ireland through an Agricultural Wages Board. The Agricultural Wages Board for England and Wales was abolished in 2013.[142]

History of sectoral bargaining in the UK

The UK system at the time of the second world war was more dominated by sector-wide agreements. However, this "formal" system of sectoral bargaining increasingly fell into tension with an "informal" system of workplace level agreements or deviations, as described by the Royal Commission on Trade Unions and Employers' Associations (known as the

[142] Department for Environment, Food and Rural Affairs, The future of the Agricultural Wages Board for England and Wales, Agricultural Wages Committees, Agricultural Dwelling House Advisory Committees, 16 October 2012

Donovan Commission) which was issued in 1968 to explore the issue of industrial relations at that time. The Commission concluded that:

> 1. Industrywide agreements no longer provide an accurate guide to the character of plant level labor relations, either substantively or procedurally. Wage drift is pervasive in many industries as large gaps have opened up between basic wage rates and earnings which are largely the result of local bargaining in a full employment environment. Moreover, industrywide dispute settlement procedures also have become ineffective either as a result of delays because of growing caseloads or more simply because they have been ignored; British industry has experienced a rising incidence of unofficial and unconstitutional strikes over local issues not covered by industrywide agreements, (paras. 57-64).
>
> 2. These developments indicate that key collective bargaining decisions have shifted from the industry level to the factory.[143]

The Commission's report was seen as influencing the passage of the Industrial Relations Act 1971, which formalised certain aspects of industrial relations by requiring trade unions to be registered in order to benefit from legal protections and giving workers the right to choose whether or not to belong to a trade union.

Recent debate

The Institute of Employment Rights (IER), has campaigned in favour of sectoral collective bargaining for several years, in particular through its Manifesto for Labour Law launched in 2016. This was seen as influencing the Labour Party's 2021 Employment Rights Green Paper which pledged to "establish Fair Pay Agreements across the economy… negotiated through sectoral collective bargaining".[144]

The IER contrasts the current UK position with what it sees as better outcomes under the UK's history of sectoral bargaining and its use in other European countries:

> Sectoral collective bargaining was promoted and practised in this country by governments of all political persuasions from the end of the First World War until the advent of Thatcherism in the 1980s. As a result, by the end of the Second World War no fewer than 86% of all workers were covered by a collective agreement. In consequence, workers benefitted from higher wages and better working conditions. Having also been commonplace throughout Europe, SCB is now being promoted by the European Commission, as a means of reducing low pay and promoting equality.[145]

143 Royal Commission on Trade Unions and Employers' Associations, as quoted in Robert F Banks, The Reform of British Industrial Relations : The Donovan Report and the Labour Government's Policy Proposals (PDF), Industrial Relations vol. 24, no2, 1969, p333-382

144 Labour Party, Employment Rights Green Paper: A new deal for working people (PDF), 2021
IER, Labour Party adopts IER sectoral collective bargaining plan, 25 September 2021

145 IER, The Long Slow Death of Labour's Plans for Sectoral Collective Bargaining?, 10 September 2024

This view of sectoral collective bargaining (SCB) is critiqued by other commentators, such as academic Peter Ackers, who wrote in The Political Quarterly in 2020 that:

> The British and comparative history supporting the 'restoration' of SCB is one-sided. For example, it is misleading to suggest that 'The model of collective bargaining practised in Britain until the 1980s was not dissimilar to arrangements in other European countries'. This was true of union membership and bargaining coverage, but not of SCB, which had already decayed badly, long before the onset of Thatcherism.
>
> Strikes, inflation and restrictive practices were the central IR problems of our failing postwar industrial economy. Public disorder through mass picketing became a major public concern. As a direct consequence, trade union policies like single union no-strike deals in the 1980s and partnership in the 1990s, were explicit overtures to employers, public opinion and the state, which fostered a more constructive image of British trade unions.
>
> The IER's comparative case for SCB is unconvincing. The manifesto fails to grasp the national social processes that make strong trade unions and SCB a constructive and valued part of society.[146]

School support staff in England

Previous School Support Staff Negotiating Body

The Apprenticeships, Skills, Children and Learning Act 2009,[147] passed under the last Labour government, created a School Support Staff Negotiating Body (SSSNB).[148]

The SSSNB became a statutory advisory body in January 2010. Its remit was to consider and seek agreement on matters relating to the remuneration and conditions of employment of school support staff working in local authority maintained schools in England.

The SSSNB was short-lived. In October 2010, the then Education Secretary, Michael Gove, announced that the coalition government would abolish the SSSNB because the body "[did] not fit well with the Government's priorities for greater deregulation of pay and conditions arrangements for the school workforce".[149] The provisions establishing the SSSNB were repealed under the Education Act 2011.[150]

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146 Peter Ackers, Is it Really Possible to Resurrect Sectoral Collective Bargaining and Restore Trade Union Power?, The Political Quarterly, 9 April 2020

147 Apprenticeships, Skills, Children and Learning Act 2009 s227-241

148 Chapter XIII of the House of Commons Library briefing, Apprenticeships, Skills, Children and Learning Bill: provisions for children, education and learners, February 2009, provides information on the rationale for introducing the SSSNB

149 HC Deb 28 October 2010 [School Support Staff Negotiating Body], c15WS

150 Education Act 2011 s18; Section 3.4 of the House of Commons Library briefing, Education Bill, February 2011, provides information on the rationale for the abolition of the SSSNB

The announcement of the SSSNB's abolition said that:

> This decision means that school support staff will continue to have their pay and conditions determined in accordance with existing arrangements whereby decisions are taken at a local level by employers.[151]

Current position

Since the abolition of the SSSNB, the pay and conditions of school support staff have continued to be set by their employers.

Local government employees in England, which includes support staff at maintained schools, are covered by the National Joint Council terms and conditions, commonly known as the 'Green Book'.[152] Academies (including free schools) may set their own pay and conditions for staff, and so are not required to abide by the Green Book, although many do voluntarily.

When a school converts from maintained status to academy status, or moves between academy trusts, staff will have a change of employer. 'TUPE regulations' offer a general mechanism to protect the rights of transferring staff. However, there can be complexities, for example, where staff subsequently sign new contracts, or if new recruits are appointed on different terms.

Re-establishing the SSSNB

The Labour party included a commitment to re-establish the SSSNB in its manifesto for the 2024 general election, to "help address the acute recruitment and retention crisis in support roles."[153]

On 10 October 2024, the government confirmed the body would be established through the Employment Rights Bill, and that it would consult on the detail of the legislation, including the right definition of support staff. The announcement set out the following on the SSSNB's planned makeup and remit:

> The SSSNB will be made up of representatives of employers, unions and an independent chairperson and will be tasked with making sure support staff are paid fairly and have access to training and career progression opportunities. To ensure all school staff have access to fair pay and conditions the SSSNB will apply to support staff in both local authority maintained schools and academies.[154]

The adult social care sector

Around 1.59 million people worked in the adult social care sector in England in 2023/24.[155] Skills for Care, the workforce development and planning body

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151 HC Deb 28 October 2010 [School Support Staff Negotiating Body], c15WS

152 Local Government Association, Local government terms and conditions (Green book), May 2024

153 Labour Party Manifesto 2024

154 Department for Education, School support staff body reinstated, 10 October 2024

155 Skills for Care, The state of the adult social care sector and workforce, October 2024, p15

for adult social care in England, estimates the workforce will need to increase by around 430,000 posts by 2035 if it grows proportionally to the projected growth of the population aged 65 and above.[156]

The sector faces several longstanding workforce issues, including low pay. The Health Foundation and Nuffield Trust think tanks, for example, have said that "low pay contributes to chronic staffing problems and high levels of poverty among social care workers, and can affect people's quality of care."[157]

Pay rates

Median hourly pay excluding overtime for full-time care workers in the UK was £11.95 in April 2023, compared with an average of £17.40 for all employees. This means care workers are among the 20% of employees with the lowest pay. Hourly pay for care workers increased by 4% in real terms (adjusted for inflation) since April 2019, while median hourly wages for all employees fell by around 3%.[158]

While care worker pay has increased at a faster rate since the introduction of the National Living Wage (NLW) in 2016, concerns have been raised that the NLW may have led to a reduction in pay differentials.[159] According to Skills for Care, in March 2016 care workers with five or more years of experience could expect an hourly rate around 33 pence higher than a care worker with less than a year of experience. This "experience pay gap" had reduced to ten pence per hour by March 2024.[160]

Proposed Fair Pay Agreement

The Labour Party manifesto for the 2024 general election said a Labour government would establish a collective Fair Pay Agreement that "will set fair pay, terms and conditions, along with training standards" in adult social care. It added that it would "consult widely on the design of this agreement, before beginning the process and learn from countries where they operate successfully."[161]

The Institute for Fiscal Studies has suggested that the Fair Pay Agreement is anticipated to lead to increased wages in the sector, which is expected to "bring benefits in the form of lower turnover, lower recruitment costs and improved quality of care."[162]

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156 Skills for Care, The state of the adult social care sector and workforce, October 2024, p123

157 Nuffield Trust & Health Foundation, From ambition to reality National policy options to improve care worker pay in England, 18 July 2024, p2.

158 ONS, Annual Survey of Hours and Earnings, Earnings and hours worked, care workers: ASHE Table 26, 1 November 2023. Adjusted for Consumer Price Index (CPI).

159 Skills for Care, The state of the adult social care sector and workforce in England, October 2023, pp16-17; Nuffield Trust, Time to worry about the social care squeeze, 21 December 2023

160 Skills for Care, The state of the adult social care sector and workforce, October 2024, pp101-102

161 Labour Party, Change: Labour Party manifesto 2024, June 2024, pp100-101

162 Institute for Fiscal Studies, Adult social care in England: what next?, 10 October 2024, p31

However, questions have been raised about how any Fair Pay Agreement would be funded.[163] The majority of social care staff are employed by private sector providers who are responsible for setting their pay and conditions.[164] However, most providers accept clients whose fees are, at least in part, paid by the local authority. As a result, public funding has been described as "integral to social care provision" and "pivotal to wage setting".[165] "It is difficult" the Institute for Fiscal Studies states, "to see a path to a successful 'Fair Pay Agreement' that does not include some additional public funding for councils to increase fees paid to care providers."[166]

How much extra funding would be required for a Fair Pay Agreement depends on the nature of the agreement. In its workforce strategy for social care, published in July 2024, Skills for Care modelled various methods of increasing pay in adult social care. It estimated, for example, that introducing a sector minimum wage set at one pound above the National Living Wage would cost the public finances around £2 billion a year. It estimated it would lead to 264,000 additional people being recruited, and 435,000 additional people retained, over a 15 year period.[167]

Research from the University of Kent and the London School of Economics and Political Science (PDF), published in April 2024, also suggested that increasing pay rates would likely lead to an increase in employment in adult social care. It estimated that a 5% increase in real wages in the sector (and keeping everything else constant) would likely increase employment by 9-11%.[168]

Further information on this area is provided in the Library briefing on the adult social care workforce in England.[169]

12.2 Clause 28 and schedule 3: the School Support Staff Negotiating Body

Clause 28 and Schedule 3 of the Bill would establish a School Support Staff Negotiating Body (SSSNB). Schedule 3 would insert a new Part 8A and Schedule 12A into the Education Act 2002.

The new Part 8A of the 2002 Act would define the SSSNB's remit and define school support staff, as well as the matters the SSSNB may consider or

163 HL Deb 10 October 2024, cc2133 and 2146

164 PQ 149362, 29 March 2022

165 Migration Advisory Committee, Adult Social Care and Immigration: A Report from the Migration Advisory Committee, April 2022, p19.

166 Institute for Fiscal Studies, Adult social care in England: what next?, 10 October 2024, p33

167 Skills for Care, A Workforce Strategy for Adult Social Care in England, July 2024, pp31-32.

168 NIHR Policy Research Unit, Wages and labour supply in the Adult Social Care sector (PDF), April 2024.

169 Commons Library research briefing CBP-9615, Adult social care workforce in England

reconsider following a referral by the Secretary of State, such as the pay and terms and conditions of employment for support staff, as well as training and career progression.

The definition of school support staff in the bill includes those employed in academies as well as those employed in local authority maintained schools.

The new Part 8A also sets out the impact of regulations made following agreement by the SSSNB, and related matters including the powers of the Secretary of State to make regulations or guidance where the SSSNB has not reported or reached an agreement in particular cases.

The new Schedule 12A to the 2002 Act would provide for the SSSNB and its membership to be constituted in accordance with arrangements made by the Secretary of State.

Education policy is devolved. The Bill extends these provisions to England and Wales, but they would have effect in England only.

12.3 Clauses 29 to 44: The Adult Social Care Negotiating Body

Clause 29 would give the Secretary of State the power to make regulations establishing an Adult Social Care Negotiating Body. The body would be required to include members from trade unions and representatives of adult social care employers (other persons would also be able to be included as members). Clause 29(5) provides for the regulations to be able to amend existing legislation in consequence of the establishment of the negotiating body (a Henry VIII clause).

The negotiating body's remit would include the remuneration, and other terms and conditions of employment, of social care workers or social care workers of a specified description.[170] Other matters related to employment as a social care worker would also be able to be added to the body's remit.

Clauses 32 to 40 provide for the Secretary of State to have the power to make regulations making further provision relating to the negotiating body. This would include powers, among other things, to:

- Specify factors that the negotiating body would have to consider when coming to an agreement (clause 32).
- Refer an agreement back to the negotiating body for reconsideration (clause 33).

[170] Clause 31 defines "social care worker" as "a person who is employed wholly or mainly in, or in connection with, the provision of adult social care in England."

- Ratify agreements of the negotiating body. In such cases, a worker's remuneration would have to be determined in accordance with the agreement and any provisions of an agreement related to other terms and conditions would take effect as part of the worker's contract (clauses 35 and 36).[171]

- Make provision about a social care workers' remuneration and terms and conditions in the event that the negotiating body had been unable to reach an agreement (clause 37).

- Provide for the remuneration terms of an agreement (or regulations under clause 37) to be enforced under national minimum wage legislation (clause 40).

Clause 42 provides that regulations ratifying an agreement of the negotiating body would be subject to the negative resolution procedure. All other regulations relating to the negotiating body would be subject to the affirmative resolution procedure.[172]

Adult social care policy is devolved. The Bill extends these provisions to England and Wales, but they would apply in England only.[173]

In its Next Steps to Make Work Pay policy paper, the government said the bill would enable it "to bring forward a framework for a Fair Pay Agreement process in the adult social care sector." It added that the government would "launch a consultation soon to consider exactly how the Fair Pay Agreement should work."[174]

In the human rights memorandum for the bill (PDF), the government set out its rationale for introducing sectoral agreements in the adult social care sector:

> the voluntary bargaining framework has not been able to address the imbalance in bargaining power between employers and social care workers and many social care workers receive pay at or only slightly above the national minimum wage. This in turn has led to an unsustainable recruitment and retention crisis in the adult social care sector. These clauses aim to address this crisis by establishing a mechanism for the Secretary of State to implement improved terms and conditions for social care workers that have been agreed by representatives of the sector.[175]

171 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 482

172 For further information see the Delegated Powers Memorandum to the Employment Rights Bill 2024-25 (PDF), paras 361-402

173 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 57

174 Department for Business and Trade, Next Steps to Make Work Pay, 10 October 2024

175 Department for Business and Trade, Human Rights Memorandum to the Employment Rights Bill 2024-25 (PDF), para 130.

13 Part 4 of the bill: Trade union law and industrial action

13.1 Background

More detailed information on trade union law and industrial action can be found in the Library briefing Trade unions and industrial relations.[176]

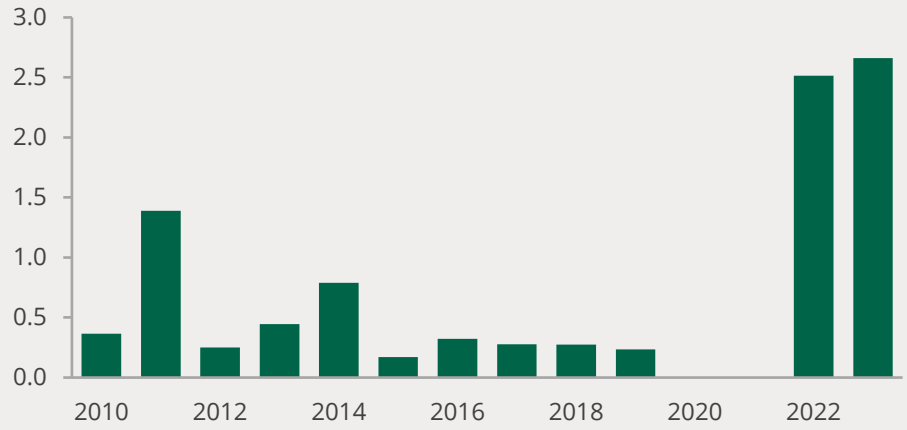
Trade union statistics

6.4 million employees in the UK were trade union members in 2023, 22.4% of all employees.[177]

The number of days lost due to strike action for each year since 2010 are shown in the chart below. Around 540,000 days were lost to strike action between January and August 2024, involving around 230,000 workers.[178]

Working days lost due to strike action in the UK

Millions of days



Note: The publication of this data was temporarily suspended following the start of the coronavirus pandemic. The ONS resumed publication of these statistics from December 2021, but figures are not available for the period between February 2020 and December 2021.
Source: ONS, Labour disputes in the UK, 15 October 2023

176 Commons Library briefing CBP 9785, Trade unions and industrial relations, 5 January 2024
177 Department for Business and Trade, Trade union statistics 2023, 5 June 2024
178 ONS, LABD: Labour disputes in the UK, 15 October 2024

Trade Union Act 2016

The Trade Union Act 2016 was a significant piece of legislation introduced under the Conservative government in 2015.

The legislation included a range of measures introducing new restrictions on industrial action, restricting unions' collection of political funds and granting new powers to the Certification Officer which oversees trade union registration. In particular, the act:

- Set new 50% minimum turnout thresholds that ballots must meet to legally authorise industrial action, as well a further requirement that ballots in "important public services" have at least 40% support from all members eligible to vote.
- Increased the minimum notice unions must give of industrial action from seven to 14 days.
- Caused legal mandates from industrial action ballots to expire after six to nine months.
- Required union members to opt-in to contributing to political funds, rather than unions being allowed to have their members opt-out.

The legislation proved controversial, with strong opposition from the Labour Party and trade unions, as well as some academics.[179] Employer organisations, however, including the CBI, British Chambers of Commerce and Institute of Directors were supportive of the proposals, particularly around the new ballot thresholds.[180]

The Library briefing on the then Trade Union Bill 2015-16 provides more detail about the background of this legislation and its contents as introduced.[181]

Since the passage of the Trade Union Act 2016, the Labour Party has repeatedly committed to repealing the legislation.[182] As noted below in box 1, the Employment Rights Bill 2024-25 would repeal the vast majority, but not quite all, of the provisions of the 2016 act.

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179 TUC backs day of action over Trade Union Bill, BBC News, 15 September 2015
Trade union bill not backed by evidence, Guardian, 17 August 2015

180 See Commons Library briefing CBP 7295 Trade Union Bill, 8 September 2015, p38

181 Commons Library briefing CBP 7295 Trade Union Bill, 8 September 2015

182 Jeremy Corbyn to repeal trade union bill if Labour wins next election, Guardian, 10 December 2015
Labour pledges to repeal Trade Union Act 'within 100 days' of taking office, Nautilus International, 12 September 2019
Labour's Plan to Make Work Pay: Delivering a new deal for working people (PDF), Labour Party, June 2024

1 Repeal of the Trade Union Act 2016

The clauses of this bill would repeal almost all of the measures introduced by the Trade Union Act 2016. The only remaining substantive parts of the Trade Union Act 2016 which are not repealed would be:

- Section 9 – the expiry of industrial action mandates six to nine months after the ballot
- Subsections 11(3) and 11(4) on the management of union political funds (subject to amendments such as those made by clause 48)
- Section 16 – stating that the Certification Officer is not subject to political direction
- Section 17(3) giving effect to some remaining parts of schedule 2 that alter the powers of the Certification Officer
- Section 19(4) mamking clear that the Certification Officer has standing to enforce their own orders[183]

Electronic ballots

At present, industrial action ballots must be conducted by post. Electronic balloting (e-balloting) is not permitted.

In 2016, using powers introduced by the Trade Union Act 2016, the government commissioned an independent review of the possibility of using e-balloting in industrial disputes. The review, conducted by Sir Ken Knight and published in 2017, recommended a "a test of e-balloting on non-statutory ballots" before the possibility of using e-balloting for industrial disputes was decided.[184]

In June 2023, the government said it was "finalising our consideration of Sir Ken's recommendations before we issue our response" to the review.[185] The government did not report further on these plans before the 2024 general election.

Clause 56 of the Employment Rights Bill would remove the provision in the Trade Union Act 2016 for the piloting scheme and its review, but would not otherwise affect the existing power of the Secretary of State to determine permissible means of balloting for industrial action (which could be used to

183 Section 21 of the 2016 act, while not explicitly repealed, would in practice be entirely undone by the effects of clause 69 of this bill.

184 BEIS, Electronic balloting for industrial action: Knight review, 18 December 2017, p3

185 PQ 190278 [on Trade Unions: Electronic Voting], 20 June 2023

allow electronic balloting), contained in section 54 of the Employment Relations Act 2004.[186]

Minimum service levels

The Strikes (Minimum Service Levels) Act 2023 was passed in 2023, allowing the government to set minimum service levels in certain sectors. This meant workers could then be required to work during industrial action in order to provide that service.[187]

The bill was controversial, with the then Deputy Leader of the Opposition Angela Rayner stating during the bill's third reading debate that "the Opposition have been clear throughout that we will oppose this sacking nurses Bill. If it passes, the next Labour Government will repeal it."[188] The then Business Secretary, Grant Shapps, described the bill at second reading as necessary to ensure "that when strikes occur, people's lives and livelihoods are not put at undue risk".[189]

The legislation's background, contents and passage are explained in more detail in the Library briefings Strikes (Minimum Service Levels) Bill 2022-23 and Strikes (Minimum Service Levels) Bill: Lords stages and amendments.[190]

Clause 61 of the Employment Rights Bill would repeal this legislation (see below).

The Strikes (Minimum Service Levels) Act 2023granted the Secretary of State powers to make "minimum service regulations" which could set minimum service levels required during strikes in any services within six sectors:

- health services
- fire and rescue services
- education services
- transport services
- decommissioning of nuclear installations and management of radioactive waste and spent fuel
- border security

Employers could then issue a "work notice" to a trade union concerning any strike affecting a service subject to minimum service regulations. The work

186 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 642

187 Strikes (Minimum Service Levels) Act 2023

188 HC Deb 30 January 2023, c166

189 HC Deb 16 January 2023, c 54

190 CBP 9703 Strikes (Minimum Service Levels) Bill 2022-23, 13 January 2023
CBP 9793 Strikes (Minimum Service Levels) Bill: Lords stages and amendments, 18 May 2023

notice would specify which workers the employer required to work to ensure the service levels required by the minimum service regulations. They would not be permitted to request more workers than "reasonably necessary" to meet the minimum service regulations. Failure of the union or worker to comply would result in the loss of unfair dismissal protections and protections from liability in tort.[191]

Minimum service regulations and use

Since the passage of the Strikes (Minimum Service Levels) Act 2023, minimum service regulations under the act have been made in four sectors: passenger rail, ambulance services, border security and fire and rescue services.[192] Consultations were held on other areas such as hospital services, but the government did not complete their response to these before the 2024 general election.[193]

The Library Insight How will minimum service regulations affect passenger rail? (13 December 2023) gives further detail on how the minimum service regulations in passenger rail could have operated.[194]

In practice, however, there have been no reported instances of work notices being issued by employers since the legislation came into force. The closest the regulations came to being used was in January 2024 during strikes by the train drivers' union Aslef. Only one train operator, LNER, announced an intention to use the minimum service laws during the strike. In response, Aslef announced it would add an additional five days of strike action on LNER services. LNER then withdrew their plans to issue work notices and Aslef called off the additional strike action in response.[195]

Trade union access to workplaces

The issue of trade union access to workplaces was debated in a Westminster Hall debate on 4 June 2019. The thhen Labour MP Faisal Rashid, opening the debate, noted the lack of current legal rights of workplace access for unions in the UK, saying:

> there are currently no rights of access for trade unions to enter the workplace and speak to workers for the purposes of recruitment. Workers at Amazon

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191 See part 5 of the Library briefing CBP 9785 Trade unions and industrial relations, for further discussion of why this is the case.

192 The Strikes (Minimum Service Levels: Passenger Railway Services) Regulations 2023; The Strikes (Minimum Service Levels: NHS Ambulance Services and the NHS Patient Transport Service) Regulations 2023; The Strikes (Minimum Service Levels: Border Security) Regulations 2023; The Strikes (Minimum Service Levels: Fire and Rescue Services) (England) Regulations 2024

193 Department of Health and Social Care, Minimum service levels in event of strike action: hospital services, updated 16 October 2023

194 Commons Library Insight, How will minimum service regulations affect passenger rail?, 13 December 2023

195 Train drivers call off extra strike days after LNER minimum service law U-turn, Guardian, 22 January 2024. For more discussion see Why is minimum service law not being used for England train strikes?, Guardian, 30 January 2024

> have had their shift patterns interrupted and randomised simply to prevent them from talking to union officials on the way into work. Union representatives visiting branches of McDonald's across the UK to speak to workers about the benefits of joining a trade union are routinely thrown out of stores, with their presence reported to senior regional managers.
>
> When I raised these issues in Parliament several weeks ago, both Amazon and McDonald's responded by denying that these practices were taking place in their stores.[196]

In their 2024 pre-election publication Labour's Plan to Make Work Pay: Delivering A New Deal for Working People (PDF) Labour pledged to introduce policy in this area, noting that other countries have existing workplace access laws for trade unions:

> Labour will introduce rights for trade unions to access workplaces in a regulated and responsible manner, for recruitment and organising purposes. This would bring the UK in line with many other modern advanced economies, giving business, workers and unions clarity and certainty when navigating their interactions.[197]

Clauses 45 to 47 of the Employment Rights Bill would introduce a system of workplace access agreements (see below).

As an example of other countries with such laws, in Australia under the Fair Work Act 2009 trade union officials can obtain Fair Work entry permits from the Fair Work Commission, which allow them to enter workplaces for specific reasons if they send appropriate notice to the employer.[198]

Facility time for union representatives

Under the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA 1992), trade union officials and members have some rights to time off work to carry out certain specified trade union duties, often referred to as 'facility time'.[199] These rights generally only apply in cases where unions are both independent and recognised by the employer for collective bargaining.[200]

These rights only apply to the carrying out of specific duties listed in section 168 of TULRCA 1992.[201] These duties include:

196 HC Deb 4 June 2019 c30WH

197 Labour Party, Labour's Plan to Make Work Pay: Delivering A New Deal for Working People (PDF), June 2024, p13

198 Australian Fair Work Commission, When an official can enter a workplace [accessed 16 October 2024]

199 Trade Union and Labour Relations (Consolidation) Act 1992, ss 168-173

200 The only exception is rights to time off to accompany a worker at a disciplinary or grievance hearing, which is guaranteed even if the union is not recognised. See Acas, Code of Practice on time off for trade union duties and activities, 2010, para 20.

201 Trade Union and Labour Relations (Consolidation) Act 1992, s 168

- negotiating pay, terms and conditions
- helping union members with disciplinary or grievance procedures including meetings to hear their cases
- going with union members to meetings with their line manager to discuss flexible working requests
- discussing issues that affect union members like redundancies or the sale of the business[202]

Union learning representatives are separately, under section 168A, allowed time off to carry out their duties, such as to:

- analyse the learning or training needs of union members
- give information and advice about learning or training
- arrange or encourage learning or training
- discuss their activities as a learning representative with their employer
- train as a learning representative[203]

In addition, separate provisions under the Safety Representatives and Safety Committees Regulations 1977 allow union health and safety reps time off to perform their functions.[204]

Union representatives have a right to be paid for the time off taken for all these duties, so long as they take place during the representative's usual working hours.[205]

Clauses 50 to 52 of the Employment Rights Bill relate to facility time (see below).

Protection during strike action

Employees dismissed for taking protected industrial action are considered automatically unfairly dismissed, under section 238A of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA 1992).[206] This protection applies from day one of employment, even if employees have not accrued the two years' continuous service required to qualify for general unfair dismissal protections.

This special protection applies unless the employee continues to take action beyond the "protected period", generally 12 weeks from the first day of protected industrial action. After that time, provided the employer has taken

202 GOV.UK, The rights of trade union reps [accessed 16 October 2024]
203 GOV.UK, The rights of trade union reps [accessed 16 October 2024]
204 Safety Representatives and Safety Committees Regulations 1977 regulation 4(2)(a)
205 Trade Union and Labour Relations (Consolidation) Act 1992, s 169
206 Trade Union and Labour Relations (Consolidation) Act 1992, s 238A

"reasonable" procedural steps to try and resolve the dispute, the employee loses their special protections against unfair dismissal granted by section 238A.

In cases where employees lose their section 238A protections (such as for industrial action continuing beyond 12 weeks or the union failing to meet the tests for protected action), section 238 of TULRCA provides employers with immunity against any unfair dismissal claims from workers taking part in industrial action.[207] This includes dismissals for reasons of redundancy or in cases of lock-out (where an employer prevents employees from working). This only applies if the employer dismisses all such workers without exception, and does not offer to re-employ any of them within three-months.

Where the employer is selective in dismissing some striking employees but retaining others, this section 238 immunity from unfair dismissal claims does not apply.

If the employer does not have immunity from claims under section 238 and the employee does not have automatic protections from dismissal under section 238A, then any unfair dismissal claims would simply be heard in the usual way under Part X of the Employment Rights Act 1996 (ERA), with the usual tests of reasonableness contained in section 98 ERA applying.[208]

See section 13.6 of this briefing below for how clause 60 of the Employment Rights Bill would extend these current protections.

Lack of protection against detriment

While employees currently enjoy protection against unfair dismissal for taking protected industrial action, as noted above, there is no equivalent protection in law against detriment (other than dismissal) for taking industrial action.

Section 146 of TULRCA does protect workers against detriment for taking part in trade union "activities" "at an appropriate time".[209] However, as a matter of domestic case law, "at an appropriate time" excludes working time and therefore does not cover the case of industrial action during the worker's usual working hours.[210]

This issue came to attention in April 2024 when the Supreme Court handed down a judgment in *Secretary of State for Business and Trade v Mercer*, finding that section 146 of TULRCA was incompatible with article 11 of the European Convention on Human Rights. The court noted that the European Court of Human Rights had already concluded in cases such as *Tek Gida Iş Sendikasi v Turkey*[211] that the right to strike was protected under article 11 (freedom of assembly and association), and that the UK Government had an

207 Trade Union and Labour Relations (Consolidation) Act 1992, s 238

208 IDS Employment Law Handbook, Industrial Action, Thompson Reuters, 2017, p232, paras 8.38-8.39

209 Trade Union and Labour Relations (Consolidation) Act 1992, s 146

210 *Secretary of State for Business and Trade (Respondent) v Mercer (Appellant)*, [2024] UKSC 12, 17 April 2024

211 *Tek Gida İş Sendikası v. Turkey*, European Court of Human Rights, April 2017 - 35009/05

obligation to fairly balance the interests of workers and employers in how that right was expressed in domestic law:

> In my judgment the state's positive obligations under article 11 do not require it to confer universal protection in all circumstances to all workers against any detriment (however slight) intended to dissuade or penalise them from participating in a lawful strike. If that were the case, the conditions that must be fulfilled to attract the protection from dismissal afforded under Part V of TULRCA would be incompatible with the UK's obligations under article 11, and RMT would have been decided differently. Equally, it would be surprising if sanctions could not be imposed in circumstances where an employer could permissibly dismiss an employee for participation in a lawful strike. There may be circumstances where it is permissible to impose a detriment for participating in lawful strike action where employees have necessarily acted in breach of contract, particularly where the manner of the breach is harmful or disruptive. However, it does not follow that in a private sector case where sanctions short of dismissal are imposed to deter lawful strike action, the state has no positive obligations at all. On the contrary, the legislative scheme must strike a fair balance between the competing interests at stake and any provision of the scheme that restricts the protection of article 11 rights must be justified, recognising the margin of appreciation to be accorded to the state.[212]

The judgment concluded that "It is for Parliament to decide whether to legislate and, if so, the scope and nature of such protection."[213]

The Employment Rights Bill would address this issue through clause 59.

Blacklisting

Blacklisting refers to the practice of employers compiling or circulating information about trade union members or organisers for the purpose of discriminating against them in recruitment or other treatment.

In March 2009 the Information Commissioner published evidence of blacklisting carried out by an organisation called The Consulting Association. This led to the enactment of the Employment Relations Act 1999 (Blacklists) Regulations 2010, which prohibit the compilation, use, sale or supply of blacklists.[214]

See section 13.5 of this briefing below for how clause 53 of the Employment Rights Bill would amend the law on blacklists.

For more detail on trade union blacklisting, including the background and passage of the 2010 Regulations and subsequent developments, see the 2017 Library briefing Trade unions: blacklisting.[215]

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212 *Secretary of State for Business and Trade (Respondent) v Mercer (Appellant)*, [2024] UKSC 12, 17 April 2024, para 80

213 *Secretary of State for Business and Trade (Respondent) v Mercer (Appellant)*, [2024] UKSC 12, 17 April 2024, para 120

214 Employment Relations Act 1999 (Blacklists) Regulations 2010, regulation 3(1)

215 Commons Library research briefing SN06819, Trade unions: blacklisting, 1 September 2017

13.2 Clauses 45 to 47: Trade union access and recognition

Clause 45 would insert a new section 136A into the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA 1992). This would create a requirement for employers to provide all their workers at the start of their employment with a written statement of the worker's right to join a trade union. Further details of what is to be included in this statement could be set out in secondary legislation.[216]

Clause 46: Trade union access agreements

Clause 46 would insert a new chapter 5ZA, including 12 new sections, into TULRCA 1992. These would set out details of a new system of trade union "access agreements".

Trade unions would be able to make "access requests" to access a workplace for one of a specified list of purposes, and employers would then have to give a "response notice" within a certain timeframe. The union and employer would then enter into negotiation for a set period which may result in an "access agreement". The access agreement would be lodged with the Central Arbitration Committee (CAC).

The specified purposes would include "to meet, represent, recruit or organise workers" and "to facilitate collective bargaining", but would explicitly not include "organising industrial action".

New sections 70ZE and 70ZF of TULRCA would set out details of a process whereby, in cases where the employer did not respond in the specified timeframe or an agreement could not be reached through negotiation, the CAC could make determinations about whether the union officials should be granted access or not, and on what terms.[217]

The CAC would also be given powers under new sections 70ZH to 70ZJ to make orders to enforce access agreements where there has been an alleged breach.[218] Where subsequent breaches of the agreements are found, the CAC would be able to impose penalties.

Regulations could be made specifying the length of relevant periods and the manner and form that certain notifications and requests must be made in.

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216 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 531-535

217 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 544-551

218 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 553-564

Clause 47: Trade union recognition

Clause 47 would make several amendments to schedule A1 of TULRCA 1992 to make it easier for trade unions to secure recognition.

It would replace the current requirement, where a union must apply to the CAC to demonstrate that it has at least 10% membership of the proposed bargaining unit, with a requirement to demonstrate that it has at least a "required percentage". By default this would still be 10%, but it could be set by the Secretary of State through regulations as anywhere between 2% and 10%.[219]

Clause 47 would also remove the current requirement to secure at least 40% support in the bargaining unit in a recognition ballot, as well as a simple majority. Unions would therefore only need to secure a simple majority in favour of recognition to have recognition approved by the CAC.[220]

13.3 Clauses 48 to 49: Trade union subscriptions and political funds

Clause 48 would amend TULRCA 1992 to repeal the requirement (introduced by the Trade Union Act 2016) that trade union members must opt-in to making contributions to a union's political fund. This would largely return the law to the pre-2016 situation where unions could instead require their members to opt out if they did not want to make such contributions.[221]

Clause 49 would repeal the restrictions on 'check-off' for public sector employees introduced by the Trade Union Act 2016 and which came into force on 9 May 2024 through the making of the Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2024.

Check-off is a system whereby employers deduct union membership from employees' salaries and pay them over to unions. These 2024 regulations and the associated provisions in TULRCA 1992 currently prevent specified public sector employers from operating check-off unless their employees have an alternative means of paying (such as direct debit) and unions reimburse the administrative costs of operating the scheme.

219 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 567 and 576

220 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 569

221 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 577

For more details on check-off see part 1.2 of the Library briefing Trade unions and industrial relations.[222]

13.4 Clauses 50 to 52: Facilities and time off for trade union duties and activities

Clause 50 would amend section 168 of TULRCA 1992 to add a new duty on employers, to provide trade union representatives who are taking time off for trade union duties ('facility time') with reasonable facilities for carrying out those duties where requested.[223]

Clause 51 would insert a new section 168B into TULRCA 1992, providing a similar right to time off for union "equality representatives" to carry out their duties as is currently provided for union learning representatives under section 168A.[224]

Clause 52 would repeal measures, introduced by sections 13 and 14 of the Trade Union Act 2016, that currently allow a Minister of the Crown to make regulations requiring public sector employers to report the time off taken for trade union duties and activities. This would also repeal the reserve power of ministers to make regulations restricting this facility time in the public sector.[225]

13.5 Clause 53: Blacklists

Clause 53 would extend current prohibitions on the use by employers of trade union blacklists. These are currently detailed in the Employment Relations Act 1999 (Blacklists) Regulations 2010.

Clause 53 would amend the power used to make these regulations, found in section 3 of the Employment Relations Act 1999. This would enable regulations to be made extending current protections to cases where the lists are used "for the purposes of" discrimination against union members even if not originally "prepared" for that purpose. This clause would also extend the scope of this power to apply to third parties who are neither employers nor employment agencies.

222 Commons Library briefing CBP 9785 Trade unions and industrial relations, January 2024
223 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 597
224 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 605-606
225 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 616-617

According to the bill's explanatory notes, this would cover the use of artificial intelligence (AI) in preparing such lists:

> This will enable secondary legislation to be brought in to ensure that where AI compiles a list (and a person with a view to discriminate is not involved in compiling that list); where that list is subsequently used or sold or supplied by a person with a view to discriminate – that list becomes a prohibited list at that point.[226]

13.6 Clauses 54 to 61: Strikes and industrial action

Clause 54: Removal of ballot thresholds

Clause 54 would remove the special thresholds needed for industrial action ballots to be approved that were introduced by the Trade Union Act 2016. Specifically clause 54 would repeal:

- Section 2 of the Trade Union Act 2016, which requires at least 50% turnout in industrial action ballots in order for industrial action to be approved, and
- Section 3 of the Trade Union Act 2016, which requires at least 40% of the total membership entitled to vote to support industrial action for it to be approved, in the case of "important public services".

This would therefore return the law to requiring a simple majority of those voting to support industrial action in any ballot.[227]

For more details on these existing requirements, see section 5.5 of the Library briefing Trade unions and industrial relations.[228]

Other changes

Clause 55 would remove the requirement, introduced by sections 5 and 6 of the Trade Union Act 2016, for unions to specify certain information on ballot papers to members about the dispute.[229]

Clause 57 would remove the requirement, introduced by section 8 of the Trade Union Act 2016, for unions to give 14 days' notice to employers of upcoming

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226 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 620. For further discussion of the intersection of AI and employment law, see Library briefing CBP 9817 Artificial intelligence and employment law, 11 August 2023.

227 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 626

228 Commons Library briefing CBP 9785 Trade unions and industrial relations, January 2024

229 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 632-637

industrial action. The required notice period would return to seven days as it was until 2016.[230]

Clause 58 would remove the requirement, introduced by section 10 of the Trade Union Act 2016, for unions to appoint picket supervisors during industrial action, and their corresponding duties.[231]

Clause 61: Repeal of minimum service legislation

Clause 61 would repeal the Strikes (Minimum Service Levels) Act 2023, which currently allows the Secretary of State to create regulations setting minimum service levels to be provided during strike action.

Clauses 59 to 60: Protections for workers taking industrial action

Clause 59 would insert four new sections into TULRCA 1992, granting a new right for workers not to be subject to detriment for the "for the sole or main purpose of preventing or deterring the worker from taking protected industrial action, or penalising the worker for doing so". The types of applicable detriment could be defined by regulations.

This would give workers protections against detriment similar to those they currently enjoy against dismissal for taking part in industrial action. This would remedy what the Supreme Court determined was an incompatibility with article 11 of the European Convention on Human Rights in April 2024 (see 'lack of protection against detriment' under part 13.1 above).[232]

Clause 60 would extend current protections against unfair dismissal for workers taking part in protected industrial action. Currently these protections only exist during the "protected period", by default 12 weeks from the start of the industrial action. Clause 60 would remove the definition of this protected period, so that such protections applied throughout any protected industrial action. For more context, see section 5.3 of the Library briefing Trade unions and industrial relations.[233]

230 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 643

231 Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 646

232 *Secretary of State for Business and Trade (Respondent) v Mercer (Appellant)* [2024] UKSC 12

233 Commons Library briefing CBP 9785 Trade unions and industrial relations, January 2024

13.7 Clauses 62 to 69: Powers of the Certification Officer

Clauses 62 to 63 would remove various obligations, introduced by the Trade Union Act 2016, for certain details to be reported by trade unions to the Certification Officer. This includes details about recent industrial action and political expenditure.

Clauses 64 to 69 would remove certain investigatory and enforcement powers from the Certification Officer in relation to trade union annual reports. In particular, clause 66 would remove the power of the Certification Officer to open investigations without having first received a complaint from a trade union member, while clauses 67 and 68 would remove the powers of the Certification Officer to impose financial penalties or levies.[234]

[234] Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, paras 685-717

14 Part 5 of the bill: Labour market enforcement

14.1 Background

There are two major frameworks for enforcement of employment rights in the UK. Firstly, employment rights which can only be enforced by individuals by bringing claims to an employment tribunal. Secondly, some rights which are enforced by the state.

Individual enforcement – employment tribunals

For an explanation of the employment tribunal system, see the Library's casework article Making a claim to an employment tribunal.

In 2013, the government introduced fees for bringing a claim to the employment tribunal. The fee scheme was struck down as unlawful by the Supreme Court in 2017 and, to date, has not be reintroduced.[235]

The employment tribunal does not have the power to enforce its own judgments (of which the vast majority are monetary awards). Rather, judgments are enforced through the County Court in England and Wales or the Sheriff Court in Scotland.[236] There are a number of ways to enforce a judgment through the County Court as set out in the Part 70 of the Civil Procedure Rules and the accompanying Practice Directions. HM Courts and Tribunals (HMCTS) form EX328 provides an overview of these methods. The most commonly used procedure is the Employment Tribunal Fast Track scheme where a High Court Enforcement Officer, acting under the supervision of a solicitor, will file and attempt to recover the unpaid award.

Since 2016, the Government has also operated a penalty scheme for employers who do not pay tribunal awards. If an enforcement officer finds that an award has not been paid they can issue a warning letter to the employer. If the award is not paid within 28 days the officer can issue a penalty notice imposing a penalty of up to 50% of the unpaid award (subject to a cap of £5,000).[237] The penalty is paid to the government, not to the claimant.

235 *R (UNISON) v Lord Chancellor* [2017] UKSC 51

236 Employment Tribunals Act 1996, section 15

237 Employment Tribunals Act 1996, Part 2A

State-led enforcement

In addition to individual enforcement, a limited set of employment rights are enforced by the state. The UK currently has four key labour market enforcement bodies:

- Gangmasters and Labour Abuse Authority (GLAA)
- Employment Agencies Standards Inspectorate (EAS)
- His Majesty's Revenue and Customs (HMRC)
- Health and Safety Executive (HSE)

Each body has its own remit and covers different sectors and rights set out in table 1 below.

Table 1 – Remit of labour market enforcement bodies

GLAA	Labour exploitation; modern slavery; licensing for high risk sectors (agriculture, horticulture etc.)
EAS	Employment businesses / employment agencies
HMRC	National Minimum Wage (on behalf of the Department for Business and Trade); statutory sick pay (on behalf of DWP)
HSE	Workplace health and safety (higher risk sectors)

Since 2016, the Director of Labour Market Enforcement (DLME) has had oversight of labour market enforcement in the areas covered by three of these bodies: the GLAA, the EAS and HMRC.[238] The DLME must publish an annual report setting out their assessment of the state of noncompliance and a proposal for how labour market enforcement functions should be exercised.

These state enforcement bodies each currently have a range of powers at their disposal.

Gangmasters and Labour Abuse Authority (GLAA)

The GLAA has two primary functions. First, it acts as the licensing authority for certain sectors (agriculture, horticulture and shellfish gathering). It is an offence to act as a gangmaster without a licence or to enter into arrangements with an unlicensed gangmaster.[239]

Enforcement officers have the power to require a relevant person to furnish them with documents, as well as to enter premises. It is a criminal offence to fail to comply with a request without reasonable cause. Officers can also

[238] Immigration Act 2016, sections 1-9
[239] Gangmasters (Licensing) Act 2004, sections 12-14

enter a premises under warrant if admission to the premises has been refused.[240]

The GLAA produce detailed guidance on licensing decisions and their approach to enforcement action. It maintains a public list of companies that have been the subject of inspections. Cases can be passed to the Crown Prosecution Service (CPS) for prosecution.

Since April 2017, the GLAA has had a broader responsibility for investigating labour market offences. Labour Abuse Prevention Officers (LAPOs) can exercise certain powers under the Police and Criminal Evidence Act 1984 (PACE), including powers to execute warrants.

Employment Agencies Standards Inspectorate (EAS)

The EAS has the power to investigate employment businesses and agencies, including the power to enter premises and inspect documents.[241] Prosecution lawyers from the Department for Business and Trade can instigate criminal proceedings for breaches of the relevant legislation.[242]

The EAS can also apply to the employment tribunal for a prohibition order to prohibit a person from carrying on an employment business or agency.[243] The EAS maintains a public list of persons who are subject to a prohibition order.[244]

HMRC

HMRC compliance officers have the power to make a notice of underpayment (NoU) where they find that there are outstanding arrears of the minimum wage. The NoU will require an employer to pay the specified workers the amount owed to them within 28 days. In addition, the compliance officer can impose a financial penalty of 200% of the total underpayment to all workers specified in the NoU (subject to a cap of £20,000 per worker). HMRC can start civil proceedings if an employer fails to comply with an NoU.[245]

Where an employer refuses to pay the minimum wage, HMRC can also refer cases to the CPS for prosecution.[246] HMRC also operate a scheme of naming employers who fail to comply with an NoU within 28 days, which was revised in 2020 after being paused 2018-2020. The most recent round of names was published in February 2024. HMRC and the Department for Business & Trade have published updated guidance on National Minimum Wage enforcement.

240 Gangmasters (Licensing) Act 2004, sections 16-18
241 Employment Agencies Act 1973, section 9
242 Employment Agencies Act 1973, sections 5-6
243 Employment Agencies Act 1973, section 3A
244 EAS, People prohibited from running an employment agency or business, 24 June 2024
245 National Minimum Wage Act 1998, sections 19-19D
246 National Minimum Wage Act 1998, section 31

Labour market enforcement undertakings

The Immigration Act 2016 created a power for the GLAA, EAS and HMRC to issue notices inviting a company to negotiate a labour market enforcement undertaking (LME undertaking).[247]

The power to request an LME undertaking is available to an enforcement authority if it believes that an offence under the relevant legislation (called a 'triggering offence') has been or is being committed. LME undertakings can include measures that can prevent or reduce the risk of non-compliance and which the authority considers just and reasonable.

If a person fails to negotiate an LME undertaking within 14 days or refuses to give one, the enforcement authority can apply to a court for an LME order. A person who breaches an LME order is liable, upon conviction, to a custodial sentence. In 2016 the Home Office and the then Department for Business, Energy and Industrial Strategy produced a code of practice on LME undertakings and orders.

Taylor Review 2017

On 1 October 2016, Theresa May, then Prime Minister, commissioned Matthew Taylor, the chief Executive of the Royal Society of the Arts, to lead a review into how employment law needed to adapt to keep pace with modern business practices. The review was driven by the rise in atypical forms of working, particularly in the 'gig economy'.

Good Work: the Taylor Review of Modern Working Practices was published in July 2017. The review contained a number of recommendations across a broad range of issues. On labour market enforcement Taylor made three significant recommendations:

Remit of enforcement bodies

The Taylor Review concluded that the limited remit of the EAS was not covering key issues faced by agency workers. In particular, Taylor found that the introduction of umbrella companies into the agency working arrangement was detrimental for lower-paid workers. Taylor recommended that the Government should consider expanding the remit of the EAS to cover umbrella companies and compliance with the Agency Worker Regulations 2010 (AWR) more broadly.

Taylor also concluded that the lack of state enforcement for holiday pay was detrimental for lower-paid workers who could often not afford to bring claims through the tribunal system. He recommended that along with minimum wage and statutory sick pay, the remit of HMRC be expanded to cover holiday pay for the most vulnerable workers.[248]

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247 Immigration Act 2016, sections 14-30

248 Good work: the Taylor review of modern working practices, pages 58-59

Enforcement of employment tribunal awards

The Taylor Review expressed concern at the number of employment tribunal awards that go unpaid. It cited a 2013 study by the then Department for Business, Industry and Skills which found that overall, 35% of claimants did not receive any payment at all. Taylor stated that the enforcement routes open to individuals had limitations and was critical of the fact that they attracted fees (since abolished by the Supreme Court). He also criticised the fact that while the Department for Business pursued financial penalties, it does not pursue the award itself.

Taylor recommended that the government simplify the process for enforcing tribunal awards by taking on the responsibility for enforcing awards without claimants having to pay fees or instigate court proceedings. He also recommended that the government establish a naming and shaming scheme for employers who do not pay employment tribunal awards.

A naming scheme for employers who have unpaid tribunal awards was announced by the government in December 2018. However, no lists of names of employers have ever been published under this scheme. In a letter to the Chair of the Business and Trade Select Committee in November 2023, then Business Secretary Kemi Badenoch stated that the government continued to keep the merits of launching this naming scheme "under review".[249]

Employment tribunal powers

The Taylor Review also considered enforcement in the broader context of the workforce. Among other things, Taylor considered, and rejected, the idea of applying employment tribunal judgments to the entire workforce (currently they only apply to the workers who bring each individual claim and do not set wider precedent unless appealed to the Employment Appeal Tribunal).

Ultimately, Taylor settled on the idea of penalising employers for repeated breaches. He recommended that tribunals should be able to uplift compensation if an employer is subsequently found to have breached the rights of workers with similar working arrangements. The employment tribunal currently has the power to uplift or reduce compensation for certain claims where one of the parties has failed to follow the Acas Code of Practice on Disciplinary and Grievance Procedures.[250]

Government response and the Good Work Plan

The government first issued it's response to the report in February 2018. The response, by then Business Secretary Greg Clark, noted that Taylor "made 53 recommendations aimed at delivering an overarching ambition: that all work in the UK economy should be fair and decent with realistic scope for development and fulfilment. We agree with this ambition." The Annex to the

[249] Letter from the Secretary of State for Business & Trade to the Chair of the Business & Trade Committee (PDF), 1 November 2023

[250] Trade Union and Labour Relations (Consolidation) Act 1992, section 207A

response shows that the Government either accepted or agreed to further look at almost all of these recommendations to some degree. At the same time the Government launched four consultations:

- Agency workers
- Employment status
- Enforcement of employment rights
- Increasing transparency in the labour market

In December 2018, the government published the Good Work Plan which responded to the four consultations and set out in more detail how it intended to implement the recommendations from the Taylor Review.

Plans for a single enforcement body 2019-2024

Out of the Good Work Plan, in July 2019 the government launched a new consultation; Good work plan: establishing a new single enforcement body for employment rights. In this the government sought views on bringing together existing labour market enforcement bodies under a single body with new powers.

The government response to the consultation was published in June 2021. In it, the then government stated it would proceed with plans to create the new single enforcement body:

> The consultation responses show there is a real opportunity to deliver more effective enforcement of employment rights for vulnerable workers. The government will proceed with plans to bring together the existing labour market enforcement bodies, in line with the manifesto commitment.
>
> This new single body will support employers to comply with the law, building on the compliance activity of the existing bodies, and by providing detailed technical guidance as well as introducing a compliance notice system for lower harm breaches.
>
> It must also be more effective at identifying non-compliance. We will look to achieve this through better data use and analysis, as well as tackling the barriers that can prevent workers, third parties and employers from coming forward with information.
>
> The body will also have new powers to tackle non-compliance, with the introduction of civil penalties for underpayment for the breaches under the gangmasters licensing and employment agency standards regimes that result in wage arrears. It will also have powers to enforce statutory sick pay, holiday pay and transparency in supply chains / modern slavery statement reporting.[251]

[251] Establishing a new single enforcement body for employment rights: Government response (PDF), June 2021

However, the single labour market enforcement body was not ultimately established before the end of the 2019-2024 Parliament. The Director of Labour Market Enforcement, Margaret Beels, noted in her 2023 report on labour market enforcement strategy that:

> Progress on establishing a Single Enforcement Body (SEB) for labour rights, a previous commitment for this government, has stalled with no sign that Parliamentary time will be found during the term of this government.[252]

Responding to a written question from then Deputy Leader of the Opposition Angela Rayner on progress towards creating a single enforcement body in February 2023, then Minister of State for Enterprise, Markets and Small Business, Kevin Hollinrake suggested that parliamentary time was a limiting factor in achieving this, saying:

> This Government remains committed to workers' rights and enforcement. We need to be realistic with what we can achieve and the limits of parliamentary time. We are reviewing what this means for the creation of the Single Enforcement Body which would be a significant organisational change . In the meantime, we continue to invest significantly in the existing labour market enforcement bodies and are working with the Director of Labour Market Enforcement to ensure that they are supported to work together as effectively as possible.[253]

14.2 Part 5 of the bill: Clauses 72-112 and schedules 4 to 7 – labour market enforcement

Part 5 of the bill consists of clauses 72-112 and incorporates schedules 4-7. It would establish a new system for labour market enforcement, bringing together all existing state enforcement functions by providing the Secretary of State with the current enforcement powers held by various enforcement agencies, as well as some new powers. This includes powers to request undertakings to comply; powers to make enforcement orders; and three new offences.

Paragraph 925 of the Explanatory Notes to the bill states:

> This Part provides for the creation of a new labour market enforcement body to enforce labour market legislation that will be an executive agency of the Department for Business and Trade. This will involve the abolition of an existing non-departmental public body (the Gangmasters and Labour Abuse Authority – GLAA) and the Secretary of State taking responsibility for enforcement of relevant labour market legislation set out in Part 1 of Schedule 4.[254]

252 Margaret Beels, United Kingdom Labour Market Enforcement Strategy 2023/24 (PDF), October 2023 Para 1.1.2

253 PQ 135263 (On Conditions of Employment: Public Bodies), tabled 30 January 2023

254 Explanatory notes, para 925

The government have indicated that the new single enforcement body would be known as the Fair Work Agency, and would replace the work of three existing bodies; the Gangmasters and Labour Abuse Authority (GLAA), the Employment Agency Standards Inspectorate (EAS) and the National Minimum Wage enforcement team and statutory payments enforcement teams of HMRC.

The majority of individual employment rights would continue to be enforceable only through the employment tribunal system. See the Library casework article, Making a claim to an employment tribunal, for further details.

Clauses 72 to 74 and schedule 4, clause 95, clause 109 and clause 111: Enforcing labour market legislation

Clauses 72 to 74 and schedule 4

Clause 72 would provide the Secretary of State with the overall function of enforcing specific labour market legislation, along with the powers to perform this function. It would also enable "enforcement officers" as appointed by the Secretary of State to exercise enforcement powers.

Box 2 below sets out the relevant labour market legislation.

2 Labour market legislation

The relevant labour market legislation is listed in Part 1 of Schedule 4:

- Employment Agencies Act 1973 and regulations made under section 5 of that Act (currently enforced by EAS)
- Part 11 of the Social Security Contributions and Benefits Act 1992 (statutory sick pay – currently enforced by HMRC).
- Part 2A of the Employment Tribunals Act 1996 (enforcement of the non-payment of employment tribunal awards, currently enforced by the Employment Tribunals Financial Penalties team at the Department for Business and Trade).
- Certain provisions of the National Minimum Wage Act 1998: entitlement, duty of employers to keep records, worker's right to access to records, underpayments, right to not suffer detriment, and offences (currently partly enforced by HMRC and GLAA).
- Provisions in the Working Time Regulations 1998 that relate to the right to payment in respect of leave payment and rolled-up holiday pay for

irregular hours workers and part-year workers (currently partly enforced by HMRC).

- Provisions in the Gangmasters (Licensing) Act 2004 that relate to prohibition of unlicensed activities, rules relating to licensing and offences (currently enforced by GLAA).
- Provisions of the Modern Slavery Act 2015 that relate to the offence of slavery, servitude and forced or compulsory labour (part 1) and slavery trafficking prevention and risk orders (part 2) and relevant offences (currently enforced by GLAA)
- Provisions of the Employment Rights Act 2025 (this bill) related to labour market enforcement undertakings and orders, and offences relating to part 5.

Part 2 of Schedule 4 would allow the Secretary of State to amend the list in Part 1 by regulations subject to the affirmative resolution procedure. A new enactment may only be added if it relates to specific labour market provisions as specified in paragraph 23(2). This could be used to expand the remit of state-led enforcement in future to cover any other employment legislation.

Clause 111 provides a definition of non-compliance with relevant labour market legislation as follows:

- failure to comply with any requirement, restriction or prohibition imposed by or under a provision of relevant labour market legislation;
- breach of a condition of a licence granted under section 7 of the Gangmasters (Licensing) Act 2004;
- the commission of a labour market offence (see clause 84 below).

Clause 111 explicitly states that non-compliance would include the failure to pay a relevant sum as required by Part 2A of the Employment Tribunals Act 1996.

Clause 73 provides that enforcement functions of the Secretary of State would include: any functions under Part 5 of this bill, any functions of the Secretary of State under the labour market legislation listed in Schedule 4, or any other function of the Secretary of State that is exercisable for the purposes of enforcing the labour market legislation. Clause 73(2) also specifies which functions are not enforcement functions (and thus cannot be delegated to enforcement officers or public authorities).

Clause 74 would permit the Secretary of State to delegate their enforcement functions plus any of their functions under sections 7 or 11 of the Gangmasters (Licensing) Act 2004 to a public authority. It would also permit the Secretary of State to appoint any staff of the public authority as an enforcement officer. Public authority is defined widely as "a person certain of whose functions are

functions of a public nature". The Secretary of State would be permitted to make payments to public authorities for performing any of these functions.

As noted by the Next Steps to Make Work Pay policy paper, the government's intention is that these enforcement powers would be exercised in practice by enforcement officers operating within a new Fair Work Agency:

> This Government will establish the Fair Work Agency which will bring together existing enforcement functions, including minimum wage and statutory sick pay enforcement; the employment tribunal penalty scheme; labour exploitation and modern slavery; as well as introducing the enforcement of holiday pay policy. By doing so, this Government will create a strong, recognisable single brand so individuals know where to go for help and lead to a more effective use of resources. The body will take a balanced approach to upholding workers' rights, with better support for the majority of employers who want to comply with the law, and tough action against the minority who deliberately flout it.[255]

Clause 95

Clause 95 would introduce a safeguard, requiring anyone exercising an enforcement function of the Secretary of State or power of an enforcement officer to produce identification showing their authority to act.

Clause 109: abolition of existing enforcement agencies

Clause 109 would abolish the following existing enforcement agencies:

- The Gangmasters and Labour Abuse Authority
- The Director of Labour Market Enforcement

It also accordingly repeals the provisions of the legislation which create these bodies.

Clauses 75 to 77: Advisory board and reports

These clauses broadly relate to the accountability of the Secretary of State in performing their enforcement functions.

Clause 75 would require the Secretary of State to establish an Advisory Board comprising at least nine members as follows:

- Persons representing interests of trade unions
- Persons representing interests of employers
- Independent experts (who do not fall into the bullets above).

[255] Department for Business and Trade, Next Steps to Make Work Pay, 10 October 2024

The Secretary of State would be permitted to make payment to these board members.

Clause 76 would require the Secretary of State to prepare and publish a labour market enforcement strategy for every three-year period. The first period would begin on 1 April following this clause coming into force. The Strategy must include the information set out by Clause 76 and be laid before Parliament and the Secretary of State must consult the Advisory Board.

Clause 77 would require the Secretary of State to prepare and publish annual reports as soon as reasonably practicable after the end of each financial year. The first financial year would begin on the day this clause came into force until the following 31 March. The annual report must include the information set out in Clause 77 and the Secretary of State must consult the Advisory Board. The annual report must be laid before Parliament.

Clauses 78 to 81: Obtaining and retaining documents

Clauses 78-81 relate to powers to obtain and retain documents.

Clause 96 would ensure that items subject to legal privilege are excluded from the requirements to provide documents and information.

Clause 97 would provide protection against self-incrimination where a person provides information in response to a requirement under clause 78. Certain exceptions to this protection are listed at clause 97(4).

Clauses 82 and 83: Additional powers to investigate

Clause 82 refers to section 114B of the Police and Criminal Evidence Act 1984 and indicates that provision is made under this act enabling enforcement officers in England and Wales to exercise specific police powers in relation to the investigation of labour market offences.

Clause 83 would provide for a warrant to be obtained for an enforcement officer to enter relevant premises to determine whether there has been a contravention of section 6 of the Gangmasters (Licensing) Act 2004. It would exclude enforcement officers who are authorised under clause 82.

Clauses 84 to 87: Labour market enforcement undertakings

Clauses 84-87 relate to labour market enforcement undertakings (LME undertakings).

An LME undertaking is defined in clause 84(3) as an undertaking by the person giving it to comply with any prohibitions, restrictions and requirements set out in the undertaking.

Clause 84 would provide the Secretary of State with the power to give a notice to a person who they believe has committed or is committing a labour market offence, requiring them to provide an LME undertaking.

A labour market offence is defined in clause 112(1) as:

- an offence under any provision of the labour market legislation (listed in Part 1 of Schedule 4) or
- an ancillary offence relating to such an offence

Clause 85 sets out the measures which an LME undertaking could include. Clause 86 relates to the duration of LME undertakings: the undertaking would have effect for the period specified in the undertaking up to a maximum of two years. Clause 87 sets out the means by which an LME undertaking could be given.

Clauses 88 to 94: LME orders

Clauses 88-94 relate to labour market enforcement orders (LME orders).

An LME order is defined in clause 88(2) as an order which prohibits or restricts the person to whom it is made from doing anything set out in the order or requiring the person to do anything set out in the order.

Clause 88 would give the court the power to make an LME order on application by the Secretary of State. The clause sets out the process for doing so, and details the appropriate court for England and Wales, Scotland and Northern Ireland.

Clause 89 sets out the circumstances under which the Secretary of State would be permitted to apply for an LME Order. Clause 90 sets out when the court would be permitted to make an LME Order directly where a person is convicted of a labour market offence.

Clauses 91 to 94 detail further information about: measures in LME Orders, length of LME orders, how a court may vary or discharge an LME Order, and how a respondent may appeal an LME Order.

The powers of LME undertakings and orders created by the bill would replace the existing legal framework of labour market enforcement undertakings and orders that stems from the Immigration Act 2016. Consequential amendments in Schedule 5 would repeal the relevant sections of the 2016 act.

Clauses 98 to 101 and Schedule 5: disclosure of information

Clauses 98-101 relate to the disclosure of information.

Clause 98 would allow for a person to disclose any information to the Secretary of State or an enforcement officer if the disclosure is made for

purposes of the exercise of an enforcement function. It would also allow the Secretary of State to disclose any such information to a person if done for a purpose connected with an enforcement function.

Clause 98(5) would allow the Secretary of State to disclose to any person specified in Schedule 5 if that disclosure is made for the purpose of that person's own function. Schedule 5 lists a number of bodies grouped together under the following headings:

- Authorities with functions in connection with the labour market or workplace
- Law enforcement and border security
- Local government
- Health bodies
- Other:
  - the Equality and Human Rights Commission
  - the Independent Anti-slavery Commissioner
  - a Northern Ireland department

Clause 98(6) would permit the Secretary of State to amend Schedule 5 by regulations.

There are certain restrictions on the clause 98 disclosure of information permissions in relation to HMRC information (Clause 100) and intelligence service information (Clause 101).

Clauses 102 to 108: offences

Clauses 102-104 would introduce three new offences and specify related penalties.

Clause 102 would provide for an offence of failing to comply with an LME Order (see clauses 88-94).

Clause 103 would provide for an offence of providing false information or documents in response to a request for information made under this Part 5 of the bill.

Clause 104 would provide for the offence of obstruction where a person intentionally obstructs a person exercising an enforcement function or fails to comply with any requirement imposed by a person exercising an enforcement function, without a reasonable excuse.

Clauses 105 to 108 would provide for how offences under this Part 5 of the bill would apply to different bodies, including: bodies corporate (clause 105),

partnerships (clause 106), unincorporated associations (clause 107), and the Crown (clause 108).

Schedules 6 and 7: Consequential, transitional and saving provisions.

Schedule 6 sets out the consequential changes that would be made to various Acts as a result of Part 5 of the bill.

Part 1 of Schedule 7 would provide the power to the Secretary of State to make a staff transfer scheme for designated employees of the Gangmasters and Labour Abuse Authority (GLAA) to become a member of staff of the Secretary of State and become a civil servant, with similar protections to those provided by TUPE.

It would also provide the power to the Secretary of State to make a property transfer scheme to enable the property, rights and liabilities of the GLAA or the Director of Labour Market Enforcement to be transferred to the Secretary of State.

Part 2 of Schedule 7 would provide for other transitional and saving provisions.

15 Part 6 of the bill: General provisions

15.1 Clause 113: Consequential amendments

Clause 113 would confer a power on the Secretary of State to make consequential amendments by regulation, including the power to amend primary legislation that is existing or which is passed later in this parliamentary session. This is a Henry VIII power. This power is subject to the affirmative procedure where it amends primary legislation, otherwise it is subject to the negative procedure.

15.2 Clause 116: Financial provision

Clause 116 would make financial provision for the bill. A money resolution would be required in respect of the bill as the bill would lead to additional public expenditure. The explanatory notes identify several areas where additional expenditure may be incurred:

- clause 8 – statutory sick pay: removal of waiting period
- clause 9 – statutory sick pay: lower earnings limit etc
- clause 25 – public sector outsourcing: protection of workers
- Part 3 – the School Support Staff Negotiating Body and the Adult Social Care Negotiating Body
- clause 46 – right of trade unions to access workplaces and
- Part 5 – the Fair Work Agency.[256]

An impact assessment will be published by the government setting out further details.

[256] Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, para 976

15.3 Clause 117: Territorial extent

Clause 117 sets out the territorial extent of the bill. Parts 1, 2 and 4 largely apply to England, Wales and Scotland, but not to Northern Ireland where employment law is devolved.

Part 3 of the bill, covering sectoral bargaining in adult social care and school support staff, only applies in England and Wales, but not Scotland or Northern Ireland where different public sector pay processes exist for these sectors.

Parts 5 of the bill, covering the new labour market enforcement powers, and clause 25, covering public sector outsourcing powers, apply across the whole of the UK, as do the general provisions in part 6.

The explanatory notes state that the legislative consent process will be engaged in respect of clause 25 (public sector outsourcing protection of workers) for all three devolved administrations and in respect of Part 5 of the bill (enforcement of labour market legislation) for Northern Ireland only.[257]

15.4 Clause 118: Commencement

Clause 118 sets out the commencement of the bill's provisions. Clause 61, covering the repeal of the minimum service levels legislation and clauses 113-119, covering general powers, would come into force immediately on Royal Assent.

Clauses 48, 49, 52, 53, 54, 55, 56, 57, 58, 63, 65, 66, 67, 69 and 71, covering many of the rules relating to industrial action, powers of the Certification Officer and trade union regulation, including trade union finances, would take effect two months after Royal Assent.

The remaining provisions could each be brought into force at any point by the Secretary of State through commencement regulations.

[257] Department for Business and Trade, Explanatory Notes to the Employment Rights Bill 2024-25, Annex A pp101-102

16 Commentary

As might be expected with such a wide-ranging bill, stakeholders' reactions have focused on different aspects of the proposed legislation.

16.1 Political commentary

Government commentary

Angela Rayner, Deputy Prime Minister, described the bill as, "the biggest upgrade to rights at work for a generation", and drew attention to the potential pay and productivity gains that she envisaged the employment reform would bring.[258] . The Business Secretary, Jonathan Reynolds, added the bill would boost the UK's economy, making employment law, "fit for modern life, raise living standards and provide opportunity and security for businesses, workers and communities across the country."[259]

Acas, a non-departmental public body of the government that specialises in workplace relations, welcomed the bill, with CEO Dan Ellis commenting, "It is good to see workplace relations taking centre stage today. Well-managed workplaces with good relations are more productive, more profitable, more resilient, and more likely to contribute to economic growth."[260]Acas anticipated a role in "supporting businesses and their staff to prepare for the new regulations".[261]

Other parties' commentary

From the opposition benches, Conservative Shadow Business Secretary Kevin Hollinrake commented that careful reflection was needed on the bill, but that "businesses and the economy needs certainty, not the threat of being sent back to the 1970s, unleashing waves of low-threshold, zero-warning strikes, driving down growth and slowing productivity."[262]

258 Department for Business and Trade, Government unveils significant reforms to employment rights, 10 October 2024

259 Department for Business and Trade, Government unveils significant reforms to employment rights, 10 October 2024

260 Acas, Acas welcomes government's focus on workforce relations, 10 October 2024

261 Acas, Acas welcomes government's focus on workforce relations, 10 October 2024

262 BBC News, More workers to get sick pay and parental leave rights, 10 October 2024

16.2 Legal commentary

Littleton Chambers, a barristers' firm specialising in employment and commercial law, saw the bill as opening the dialogue around potentially more transformative changes.[263] They reflected that the protection against unfair dismissal in the bill was less wide-ranging than it had been in original proposals, and that greater clarity was needed about the day one rights that employees would enjoy. Some of the more radical measures that Littleton Chambers noted included that the bill would prohibit employers from allowing third parties to harass their employees, although it was currently unclear what reasonable preventative steps would be.

International law firm Morgan Lewis reflected on how the bill represented a sea change for employment law, but that it also "rows back" on some of Labour's more complicated earlier proposals and added a note of caution as to whether the bill's modifications on flexible working would be sufficient to make it a genuine default position for all employees.[264]

Law firm Farrer&Co noted that the bill was "just the beginning of a period of significant upheaval for employment law and employment practitioners, though where we may end up in several years' time may look very different from the draft Bill that has just been published." In particular they noted that the reforms on fire and rehire set a "high bar for employers to meet", adding:

As it makes clear in its Next Steps document, the Government is serious about ensuring fire and rehire will only be available where there is "genuinely no alternative". As drafted, these provisions are likely to have extensive ramifications for employers seeking to restructure or change contractual terms.[265]At Osbourne Clark, the employment law team drew attention to the likely timescale of legislative change and the importance of stakeholders' involvement in this dialogue.[266] They suggested that employers might need to reassess their staffing levels in response to the new day one rights and predicted some cautious recruitment.[267]

Law firm Wollens published an article commenting that "with many of the sweeping reforms postponed or diluted, it feels more like the start of a steady transition than a seismic shift. Fulfilling the government's election promise to publish the Bill within 100 days of its landslide election victory generated a time pressure that has led to unfinished business and inevitable compromises." They added that, as many of the requirements rely on secondary legislation and are subject to consultation, or will not take effect

263 Littleton Chambers, The Employment Rights Bill 2024 – Start Legislating. Details to follow, 11 October 2024

264 Morgan Lewis, Groundbreaking Legal Reforms Under the Employment Rights Bill: What Is the Impact for UK Employers?, 11 October 2024

265 Farrer&Co, New Employment Rights Bill – Labour's plans for employment law, 11 October 2024

266 Recruiter, Recruitment industry reacts to Employment Rights Bill reforms, 11 October 2024

267 Recruiter, Recruitment industry reacts to Employment Rights Bill reforms, 11 October 2024

until 2026, "this staged approach should offer some relief to employers, knowing that there will be no overnight change of regime.[268]"

Darren Newman's employment law blog, A Range of Reasonable Responses, has published a series of articles reflecting in detail on noteworthy aspects of the bill. His assessment of its fire and rehire proposals was that they went further than Labour's pre-election pledges, with legislation that "is essentially a blanket ban on the practice of fire and rehire/dismissal and reengagement," offering limited scope for exceptions, such as an employer being in 'financial difficulties.' He concluded that this change on fire and rehire was "a big win for trade unions who have long opposed the practice."[269] On making unfair dismissal a day one right he noted that the detail of how the 'reasonableness' test might be modified during any probationary period was not yet clear, saying:

> In theory they could only give a slight tweak – merely requiring the Tribunal to take the fairness of any probation period into account for example. Or they could apply a completely different reasonableness test, perhaps requiring a specific procedure to be followed but providing that a dismissal should otherwise be presumed to be fair.
>
> …
>
> I'm still worried that the rules on probation will turn into something reminiscent of the statutory dispute resolution procedures[270]

On zero hours contracts he commented that "All of the crucial details are left to be 'specified' by future Regulations. As a result it is impossible to tell how significant this new right will be and how far it goes towards 'banning' zero hours contracts." He went on to raise some specific concerns about how aspects of the legislation would work:

> How, for example, does the Government set the various thresholds that will need to be specified without giving employers a target to aim at? If the Regulations say an offer must be made if the worker works more than 8 hours in at least six weeks of the reference period (for example) then what is to stop the employer from ensuring that the hours offered are never quite as regular as that? Will the new right create an incentive for employers to restrict working hours or ensure that workers never develop a regular pattern of work?
>
> I also don't see how the new right will cope with seasonal work or other surges in activity. If someone is recruited in October and the next 12 weeks are really busy with lots of work offered, will the employer really have to offer a contract guaranteeing consistent hours after the Christmas rush is over? Perhaps the

[268] Wollens Solicitors, Review of the Employment Rights Bill 2024 and implications for employers, 16 October 2024

[269] Darren Newman, Fire and Rehire under the Employment Rights Bill, A range of reasonable responses, 10 October 2024

[270] Darren Newman, The Employment Rights Bill – Unfair Dismissal as a Day-One Right, A range of reasonable responses, 11 October 2024

limited permitted use of fixed-term contracts could help here, but I don't quite see how that could work in practice.

These issues might be addressed as the Bill progresses, but there is a danger that the Government will wave away concerns by promising that they will be dealt with in the subsequent Regulations.[271]

16.3 Commentary from trade unions and workers representatives

Trade unions have been generally welcoming of the legislation, though some also keen to see the government go further.

Speaking on behalf of the Trades Union Congress (TUC), its General Secretary Paul Nowak said of the bill, "Driving up employment standards is good for workers, good for business, and good for growth. It will give workers more predictability and control and it will stop good employers from being undercut by the bad." Describing it as a 'seismic shift", he stressed the importance of working through its detail to see positive change in employment.[272]

Gary Smith, General Secretary of the General and Municipal Workers' Union (GMB), described the Bill's publication as "a significant and groundbreaking first step to giving workers the rights they've been denied for so long." He flagged the importance of Fair Pay Agreements for Carers and repealing anti-union legislation, and reiterated the importance of keeping unions centre stage in subsequent discussions to ensure that subsequent legislation was robust and able to consolidate workers' rights effectively.[273]

Meanwhile Unite, one of the UK's largest unions, delivered a mixed reaction to the bill. It welcomed more individual rights but felt that the legislation could have gone further in banning zero-hour contracts and 'fire and rehire' policies and emphasised that now was the time to enhance collective bargaining in order to deliver fair pay.[274] Unite's General Secretary Sharon Graham reflected, "This Bill is without doubt a significant step forward for workers but stops short of making work pay."[275]

The UK's public sector union Unison responded positively to the Bill's publication, with their General Secretary Christina McAnea stating that, "The

271 Darren Newman, The Employment Rights Bill – The Right to Guaranteed Hours, A range of reasonable responses, 11 October 2024

272 TUC, Employment Rights Bill can improve working lives for millions, 10 October 2024

273 GMB, Employment Rights Bill 'groundbreaking first step', 10 October 2024

274 Personnel Today. Employment Rights Bill 'will not make work pay' as it stands: Unite, 10 October 2024

275 Personnel Today. Employment Rights Bill 'will not make work pay' as it stands: Unite, 10 October 2024

Bill lays the groundwork for a brighter future for everyone at work."[276] She welcomed the clampdown on hiring bad practice and felt that the Bill would enhance unions' role in workers' protection. She particularly welcomed its commitment to fair pay agreements for care workers, "a sector that's been neglected and ignored for far too long." While conscious of the task ahead in refining the legislation, she concluded that the Bill promised "to overhaul working life, a huge achievement in less than 100 days."[277]

Roz Foyer, General Secretary of the Scottish Trades Union Congress (STUC), acknowledged the progress made by the Bill as the beginning of wider employment reforms, reflecting that, "The Employment Rights Bill has been hard fought for and hard won. This is the result of decades of campaigning from our movement."[278] She further called for employment law to be devolved to the Scottish parliament to protect workers rights from future government encroachments.

The Association for Independent Professionals and the Self-Employed (IPSE), the non-profit organisation representing self-employed workers, responded to the Bill with some caution about whether the proposed Fair Work Agency would be equipped with the necessary regulatory powers around the 'umbrella company market' that particularly affected the sector.[279]

16.4 Commentary from employer organisations

Response from employer organisations has been mixed, with some support but also some concerns expressed.

The Chartered Institute of Personnel and Development (CIPD) has positioned itself as a key campaigner for 'good work.' Its CEO, Peter Cheese, welcomed the bill and its intention to "raise employment standards, job quality, and access to work for all."[280] He reflected that the government had been engaging with the business community to understand their concerns in its drafting of the bill, and that this approach had been well-received. Peter Cheese flagged that it would be important to appreciate the different implementation challenges that small businesses could have around the changes, lacking in-house HR support.[281] The CIPD's Head of Public Policy, Ben Willmott, also welcomed the publication of the bill, which he saw as bringing positive change around sickness, parental, and bereavement leave, but he

276 Personnel Today. Employment Rights Bill 'will not make work pay' as it stands: Unite, 10 October 2024

277 Personnel Today. Employment Rights Bill 'will not make work pay' as it stands: Unite, 10 October 2024

278 The National, Labour's workers rights bill 'must only be beginning of reform', 10 October 2024

279 Recruiter, Recruitment industry reacts to Employment Rights Bill reforms, 11 October 2024

280 CIPD, Employment Rights Bill is a landmark moment for workers' rights, but ongoing consultation on the details will be key, 10 October 2024

281 CIPD, Employment Rights Bill is a landmark moment for workers' rights, but ongoing consultation on the details will be key, 10 October 2024

added a note of caution around the need for simple implementation guidance that covered new probationary periods.[282]

The Federation of Small Businesses (FSB) has been one of the more critical voices around the bill, with their policy chair, Tina McKenzie, claiming that it was unrealistic to expect smaller business to cope with its 28 simultaneous changes. This was countered by the Business Secretary on Radio 4's Today programme, who reiterated that there had been a long process of consultation on the reforms, and that he anticipated they would bring to productivity benefits to employers.[283]

Rain Newton-Smith, CEO of the Confederation of British Industry (CBI) welcomed the engagement that the government had facilitated with employers and unions on the drafting of the bill, and commented, "It's that willingness to work together to ensure we find the right landing zone and improve living standards by avoiding the unintended consequences that businesses have warned against."[284] Anne Francke, CEO of the Chartered Management Institute, also made an optimistic assessment that, "For many modern, forward-thinking employers the changes proposed in the Employment Rights Bill won't create much of a challenge, as the Government is in many cases just formalising practices that smart employers already follow."[285]

The British Independent Retailers Association expressed "cautious optimism about the consultation process while emphasising the need for careful consideration of the independent retail sector's unique challenges"[286]

The Homecare Association, endorsed the principles behind the bill aiming to improve the pay and terms and conditions for care professionals. However, the organisation also expressed concerns saying "We worry about the financial impact on the care sector and, crucially, on care availability for those in greatest need".[287] Jane Townson, CEO of the Homecare Association commented that the care sector faced unique workforce challenges, and proposed creating a National Contract for Care Services, requiring "public bodies to pay a minimum price for care services", adding that "If local authorities and the NHS don't provide more funding, these new reegulations could push many providers to the brink".[288]

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282 CIPD, The CIPD response to the Employment Rights Bill introduced by the UK Government (video), 10 October 2024.

283 Personnel Today, Business offers qualified support for Employment Rights Bill, Personnel Today, 10 October 2024

284 Insider, Business groups welcome plan to improve workers' rights, 10 October 2024

285 Independent, Business groups welcome plans to improve workers' rights with new laws, 10 October 2024

286 British Independent Retailers Association, Independent retailers cautiously welcome employment bill consultation, 11 October 2024

287 Homecare Association, Homecare Association responds to Employment Rights Bill, 10 October 2024

288 Homecare Association, Homecare Association responds to Employment Rights Bill, 10 October 2024

Tania Bowers, Global Public Policy Director of the Association of Professional Staffing Companies (APSCo) raised some concerns. She speculated that that day one rights might have adverse effects on recruitment practices for "risk-averse employers" who "may look at methods of pushing the risks onto others in the supply chain, such as staffing companies".[289] Furthermore, she felt that questions remained around the incorporation of agency workers into proposed changes around zero hours contracts, and that it was not yet clear whether employers or recruiters would bear this responsibility. She noted that labour demand could be harder to predict in sectors like healthcare and education, creating unique challenges around guaranteed hours.[290]

16.5 Other commentary

Charities and campaigning groups

Carers charity The Carers Trust found much in the bill likely to enhance their members' protection from exploitative work practices. However, its CEO, Kirsty McHugh, raised a gap in the bill in failing to review Carers' Leave, which she argued, if offered more generously, could provide a policy lever that kept more carers in work.[291]

Jane van Zyl, CEO of parents and carers charity Working Families, responded positively to the bill, anticipating that it could have transformational changes for many families, and offer benefits around gendered inequalities:

> Establishing workplace rights from day one and making flexible working the default could be the key to unlocking labour market mobility, with the promise of getting the economy moving and ensuring parents and carers are not held back in their careers.[292]

The Fawcett Society also welcomed the bill as "marking a significant step in workplace equality for Britain", pointing to the protections it offered women workers around flexible work and menopause, and in addressing challenges around caring responsibilities that could keep women stuck in low-paid and insecure work.[293] The Fawcett Society's CEO Jemima Olchawski commented:

> Today's draft [sic] employment bill is a win for women. Fawcett and our members have campaigned long and hard to see government chart a new course for inclusive economic growth and to improve women's working lives.

289 ResponseSource, APSCo responds to Employment Rights Bill announcement, 10 October 2024
290 ResponseSource, APSCo responds to Employment Rights Bill announcement, 10 October 2024
291 Onrec, Government is missing a trick with Employment Rights Bill by delaying Carers' Leave reform, Carers Trust says, 10 October 2024
292 Working Families, Working Families' response to the Employment Rights Bill, 10 October 2024
293 Fawcett Society, Fawcett celebrates the Draft Employment Rights Bill, 11 October 2024

She indicated the Society's willingness to work with government to ensure that reform measures were tightened to make them as effective as possible.[294]

Peter McGettrick, Chairman of the British Safety Council, welcomed the Bill's potential to bring benefits for employees, as well as businesses and the wider economy. He regarded it as an opportunity to position workplace health at the centre of the growth agenda:

> We would like to see them being part of a new approach to growth and productivity which recognises that people's wellbeing, health and safety are fundamental to our wider prosperity

He drew attention to the synergy between the timing of the Bill's publication and World Mental Health Day on 10th October.[295]

Think tanks

The Resolution Foundation provided a measured endorsement of the bill. While they felt it was set to improve the working conditions of Britain's lowest-paid workers, they caveated this with the observation that more remained to be done in refining and enforcing reforms to ensure meaningful change for the most vulnerable workers. Nye Cominetti, Principal Economist at the Resolution Foundation, reflected:

> There are inevitable trade-offs and compromises involved in introducing new rights, so the Government will need to strike a sensible balance between boosting job security and maintaining labour market flexibility as it consults on the detail of these measures.

He also reflected that the changes would bring the UK more in line with its OECD counterparts, where it currently sat at 33 out of 38 countries in terms of employment protection. He further emphasised the importance of the new Fair Work Agency being well-resourced and having adequate enforcement powers.[296]

The Nuffield Trust welcomed gains that the bill offers for the UK's adult social care workforce, with the creation of an Adult Social Care Negotiating Body, seeing the proposals as a "major step towards giving adult social care the visibility and priority it has been lacking for too long."[297] Nuffield's deputy director of policy, Natasha Curry, added a note of caution around the

294 Fawcett Society, Fawcett celebrates the Draft Employment Rights Bill, 11 October 2024
295 Workplace Insight, Reactions to the UK's new Employment Rights Bill, 11 October 2024
296 Resolution Foundation, Employment Rights Bill a major step forward in improving working life for low earners – but it is far from job done, 10 October 2024
297 Community Care, Employment Rights Bill: government to create body to set adult social care pay and conditions, 11 October 2024

implementation of new rights given the varied and often precarious nature of providers.[298]

Academics

Jonathan Lord, Senior Lecturer in HRM and Employment Law at Salford University acknowledged that the government had met its target of publication of employment reforms within 100 days of the election. However, he raised the point it also, "left many of the big decisions for later," and that significant consultation was required to hammer out the detail of the legislation.[299]

[298] Community Care, Employment Rights Bill: government to create body to set adult social care pay and conditions, 11 October 2024

[299] University of Salford, Expert Comment: Employment Rights Bill Reaction, 10 October 2024

17 How bills go through Parliament

Bills can be introduced in either the House of Commons or the House of Lords. They can be amended but the entire text has to be agreed by both Houses before they can receive Royal Assent and become law. In both Houses, bills go through the same stages although there are slight differences in the practices of the two Houses.

17.1 Commons stages

A bill that is introduced in the House of Commons will go through the following stages.

- First reading sees the formal introduction of a bill, when a clerk reads out the name of the bill in the Commons chamber. The Employment Rights Bill received its first reading on Thursday 10 October 2024. There is no debate at this stage. Bills cannot be published before their introduction. Government bills are usually published immediately after introduction.

- Second reading debate is the first time MPs debate a bill. They discuss the purpose of the bill. Debates are usually scheduled to take a full day (five to six hours). The Employment Rights Bill is listed for second reading on Monday 21 October 2024. At the end of the debate, MPs decide whether it should pass to the next stage. Sometimes a 'reasoned amendment', which sets out the reasons to reject a bill, is tabled. If this is agreed to, or if the bill is simply voted down, the bill cannot make any further progress. No amendments are made to the bill itself at this stage.

- Committee stage is usually conducted by a small number of MPs (usually 17) in a public bill committee but sometimes bills can be considered in detail in the Commons Chamber by all MPs in a Committee of the whole House. The committee debates and decides whether amendments should be made to the bill and whether each clause and schedule should be included.

- Report stage takes place in the Commons Chamber and involves MPs considering the bill as agreed at committee stage. MPs can also propose further amendments which can be voted on.

- Amendments at committee and report stage can leave out words, substitute words and add words, including whole clauses and schedules. They can be proposed by backbench and frontbench MPs. The Speaker or the chair of the committee selects and groups amendments to debate.

- Third reading, usually on the same day as report stage, is the final chance for MPs to debate the contents of a bill before it goes to the House of Lords. It's usually a short debate and changes cannot be made at this stage in the Commons. At the end of the debate, the House decides whether to approve the bill and therefore pass it onto the House of Lords.

17.2 Lords stages

Bills introduced in the Lords go through the same process, completing all stages in the Lords before being sent to the Commons.

The House of Lords respects the Commons' primacy on financial matters and does not usually amend Finance Bills (those that implement the Budget) or money bills.

Members of the House of Lords debate the bill, going through the same stages as in the Commons. Key differences between the two Houses are that in the Lords, committee stage usually takes place on the floor of the House and a bill can be amended at third reading.

Most bills are considered by a committee of the whole House in the House of Lords. Some are referred to the Lords Grand Committee – which all members can attend. However, divisions (votes) are not permitted in the Grand Committee and any amendments made have to be agreed to without a division.

The Lords can also make amendments to a bill. Major points of difference should have been resolved before third reading but amendments to "tidy-up" a bill are permitted.

No party has a majority in the House of Lords and government defeats are not uncommon. For bills that have started in the House of Commons, the Lords is essentially asking MPs to think again about the subject of the amendment.

17.3 'Ping pong'

If the Lords amend a bill that was sent from the Commons, the amendments are returned to the Commons and MPs debate the amendments proposed by the Lords. This is potentially the start of "ping-pong", a process whereby amendments and messages about the amendments are sent backwards and forwards between the two Houses until agreement is reached.

Once agreement has been reached, the Bill receives Royal Assent, becoming law when both Houses have been notified that Royal Assent has been granted.

17.4 Amendments

MPs can submit amendments, via the Public Bill Office (PBO), at three different stages of a bill: committee stage, report stage, and when a bill is returned from the Lords. Once the PBO accepts the amendment, it has been 'tabled'. If an MP wants to amend a bill during committee stage but is not a member of the committee, they will need a committee member to 'move' it for debate on their behalf.

In order to be debated, the amendment must be selected by the chair. Similar amendments may be grouped for debate to avoid repetition. For committee stage, selection and grouping is carried out by MPs from the panel of chairs chosen to chair the committee. If there is a Committee of the Whole House, the chair is the

Chairman of Ways and Means (the principal Deputy Speaker). For report stage, it is the Speaker.

Amendments might not be selected for debate if they are, for example, outside the scope of a bill, vague, or tabled to the wrong part of a bill. The PBO can advise on whether an amendment is likely to be selected.

17.5 Further information on bill procedure

The MPs' Guide to Procedure has a section on bills.

MPs who have questions about the procedure for bills or want advice on how to amend them should contact the Public Bill Office.

The Library can provide information on the background and potential impact of a bill and of amendments but cannot help MPs with drafting amendments.

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