



## DEBATE PACK

Number CDP-2021-0013, 22 January 2021

# Opposition Day debate: employment rights, holiday pay and 48-hour weekly working limits

## Summary

An [Opposition Day debate](#) relating to employment rights, holiday pay and 48-hour weekly working limits has been scheduled for Monday 25 January 2021.

The title of the motion is “That this House believes that all existing employment rights and protections must be maintained, including the 48-hour working week, rest breaks at work and inclusion of overtime pay when calculating some holiday pay entitlements, and calls upon the Government to set out to Parliament by the end of January 2021 a timetable to introduce legislation to end “fire and re-hire” tactics.”

The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

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# 1. Background

## Summary

The EU Working Time Directive (2003/88/EC) creates a right to paid annual leave, sets limits on maximum weekly working time and provides for daily and weekly rest breaks. The Directive is implemented in the UK by the Working Time Regulations 1998. The Regulations contain an 'individual opt-out' from the 48-hour work week.

On 31 December 2020, the implementation period in the UK-EU Withdrawal Agreement came to an end. While existing EU employment rights are saved as "retained EU law" the UK can now amend or repeal such rights. However, under the Trade and Cooperation Agreement the UK cannot reduce labour standards in a manner that effects trade or investment.

On 14 January 2021, the *Financial Times* reported that the Government was considering repealing aspects of retained EU employment law, including the 48-hour work week, the inclusion of overtime in holiday pay calculation and the duty of employers to record worker's hours. The Business Secretary, Kwasi Kwarteng, confirmed to the Business, Energy and Industrial Strategy Committee that the Government would be assessing retained EU employment law but that it was "committed to having a really high standard for workers".

## 1.1 The 48-hour work week

The [Working Time Regulations 1998](#) (WTR) set a maximum limit on weekly working time. The limit is 48 hours per week. It was introduced to comply with the [Working Time Directive \(2003/88/EC\)](#) (WTD).

The limit is on average weekly working time. The average is calculated over a specified reference period. By default, the reference period is a rolling 17 weeks, although employers and workers can agree to set successive 17-week reference periods (defining the start and end dates). For some workers, such as trainee doctors, the reference period is 26 weeks. Employers and workers can, by collective agreement, extend the reference period to up to 52 weeks.

As the limit is on average working time, it is possible for a worker to work more than 48 hours in any given week provided they are within the limit over the relevant reference period.

The Government has published [guidance on calculating working time](#), including information on which hours count as working time.

Neither the WTR nor the WTD address the situation where a worker does work for more than one employer. The European Court of Justice has also not ruled on this point. The Health and Safety Executive's (HSE) [guidance on the WTR](#) says it is good practice for employers to check whether a worker has other jobs and either ensure that their total working time is under 48 hours or agree an opt-out with the worker.

Some workers are not covered by the working time rules in the WTR. This includes those in the shipping, road and civil aviation sectors, who are covered by separate regulations. Domestic workers and those who do unmeasured work, such as executives, are also not covered.

### Individual opt-out

The WTD gives EU member states the option of allowing employers and workers to agree to opt out of the 48-hour work week, provided that workers are protected from detriments for refusing to opt out and employers maintain records of workers who have opted out.

The WTR allows employers and workers to opt out of the 48-hour week by individual agreement. This may take the form of a separate opt-out agreement or it could be included in the workers' contract.

Workers cannot be subject to a detriment because they refused to enter into or continue an opt-out agreement. If an employee is dismissed for refusing to enter into or continue an opt-out agreement the dismissal will be automatically unfair.<sup>1</sup> The provisions only cover existing workers. They do not cover workers who are refused a job because they did not agree to an opt-out clause.

A [2015 study by the European Commission](#), which looked at working time rules in 10 EU member states, concluded that the UK made the widest use of the opt-out provision. Some countries, such as France and the Netherlands, only permitted opt-outs in the healthcare sector. Others, including Germany, allowed general opt-outs but only through collective agreements. The UK was the only country among those that were considered which allowed general individual opt-outs.<sup>2</sup>

The WTR requires employers to keep up-to-date records of workers who have agreed to opt-out of the 48-hour week. This was understood as meaning that employers need only keep a record of the names of the workers who had opted out.<sup>3</sup> However, following a 2019 judgment of the European Court of Justice it appears employers are required to keep records of hours worked in order to comply with the WTD (see below).<sup>4</sup>

### Impact of the 48-hour week

In December 2014, the Department for Business, Innovation and Skills (now BEIS) published a [review of the impact of the WTR](#). It found that there was a long term downward trend in hours worked, both within and outside of the EU. It concluded that the WTR did have an additional impact in reducing levels of long-hour work (over 48 hours) in the UK.<sup>5</sup>

However, other studies have argued that the WTR has not placed any significant constraint on employers in the UK given the permissiveness of the individual opt-out.

In a [2004 study of the WTR and the 48-hour week](#), Professors Catherine Barnard, Simon Deakin and Richard Hobbs concluded that the existence of the opt-out meant that WTR had done little to impact on a culture of

<sup>1</sup> Sections 45A and 101A, *Employment Rights Act 1996*

<sup>2</sup> European Commission, [Study measuring economic impacts of various possible changes to EU working time rules in the context of the review of Directive 2003/88/EC](#), May 2015, p155

<sup>3</sup> See e.g. Health and Safety Executive, [The Working Time Regulations 1998: Guidance on the legislation \(OC1/6\)](#)

<sup>4</sup> [Case 55/18 Federación de Servicios de Comisiones Obreras \(CCOO\) v Deutsche Bank SAE \[2019\] IRLR 753](#)

<sup>5</sup> Department for Business, Innovation and Skills, [The Impact of the Working Time Regulations on the UK labour market: A review of evidence](#), December 2014

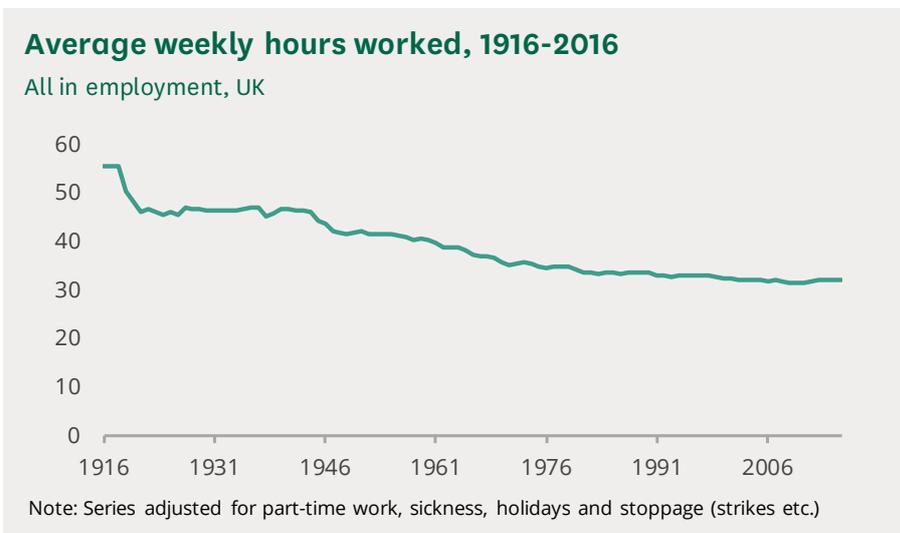
long-hours working. They found that in many cases opt-outs were made a condition of employment, putting pressure on workers to accept. The study concluded:

There seems little doubt that a complete ban on long-hours working would be unfeasible in many firms and sectors. At the same time, the way in which the individual opt-out has been implemented reduces the pressure on both employers and unions to negotiate towards meaningful working time reductions. So one conclusion to draw from our study is that as long as the individual opt-out continues in place, a much needed stimulus for the modernisation of working time, which could have come from the Directive, will fail to materialise.<sup>6</sup>

The [Trades Union Congress](#) (TUC), among others, have campaigned for many years to remove the opt-out. The [2019 Labour party manifesto](#) committed to repealing the individual opt-out following recommendations in a [review of working time by Lord Skidelsky](#) commissioned by the then Shadow Chancellor John McDonnell.

### Trends in working hours

Working hours have declined steadily throughout time, as shown in the chart of average (mean) weekly hours worked below, so initiatives to limit the working week to 48 hours have become less relevant.



Source: Bank of England, [A millennium of macroeconomic data](#), Table A54, Composite series of Average Weekly Hours Worked

More recently, hours worked have remained relatively static. Median hours worked for full-time employees, for example, has stayed at around **37 hours a week** since 2002, when comparative records began.<sup>7</sup>

<sup>6</sup> Catherine Barnard, Simon Deakin and Richard Hobbs, [Opting out of the 48-hour week – Employer necessity or individual choice? An empirical study of the operation of Article 18\(1\)\(b\) of the Working Time Directive in the UK](#), ESRC Centre for Business Research, University of Cambridge Working Paper No. 282, March 2004, p25

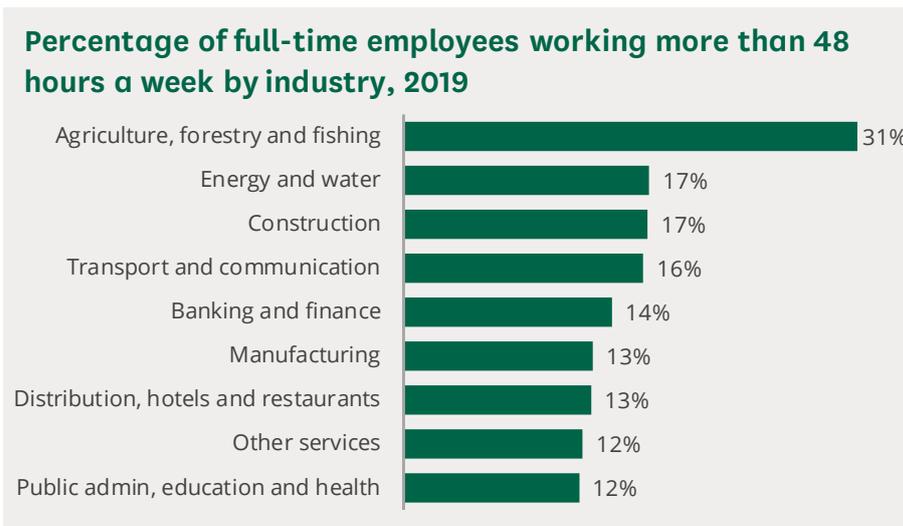
<sup>7</sup> ONS, [Annual Survey of Hours and Earnings](#), 2020 Table 1.9a

### Employees working more than 48 hours a week

The Annual Survey of Hours and Earnings, which does not include unpaid overtime, estimates that **less than 10%** of full-time employees work more than 48 hours a week.<sup>8</sup>

According to the Annual Population Survey, around 2.7 million full-time employees, **13.6%** of all full-time employees, worked more than 48 hours a week in 2019. This includes unpaid overtime.<sup>9</sup>

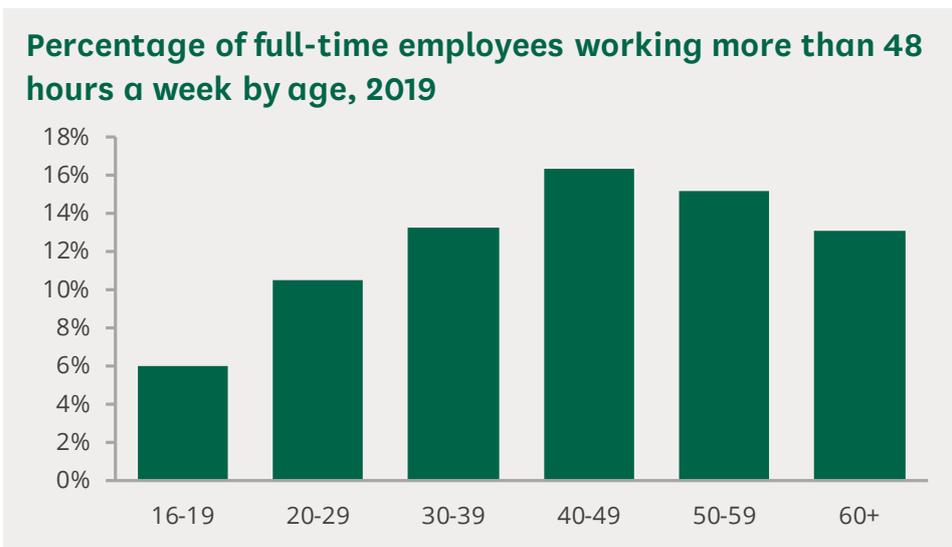
The industry with the largest proportion of full-time employees working over 48 hours a week in 2019 was agriculture, forestry and fishing, at around 31%.



Source: Library analysis of ONS, [Annual Population Survey Q1-Q4 2019](#).

Around 17% of men full-time employees worked over 48 hours in 2019, compared to around 9% of women full-time employees.

The age group with the highest percentage of full-time employees working more than 48 hours a week is 40-49 year olds, at around 16%.



Source: Library analysis of ONS, [Annual Population Survey Q1-Q4 2019](#).

<sup>8</sup> ONS, [Annual Survey of Hours and Earnings](#), 2020 Table 1.9a

<sup>9</sup> Library analysis of ONS, [Annual Population Survey](#), 2019

## Health and safety and other limits on working time

The 48-hour week is not the only constraint on working time.

In particular, the WTR provides that workers must receive 11 hours of consecutive rest each day and one period of 24 hours of consecutive rest each week (or 48 hours of consecutive rest each fortnight). These provisions effectively guarantee a worker at least 90 hours of rest per week (11 hours for 6 days and one 24-hour rest).

Employers also have general obligations to protect the health and safety of their workers under the [Health and Safety at Work etc. Act 1974](#).

The relationship between health and safety and working time is not necessarily straightforward. On the one hand, the WTD is a health and safety directive and sets 48 hours as the maximum work week. On the other hand the WTD allows opt-outs, suggesting that it is permissible for workers to work more than 48 hours per week.

In 2003, the HSE commissioned a [study of the health impacts of working long hours](#). It found possible links between long hours and physical health problems such as cardiovascular disease. It also found that working long hours can lead to fatigue and mental health issues. The study recommended further research was needed to determine whether 48 hours should be the cut off for maximum working time.

The HSE also has general [guidance on fatigue and shift management](#).

## 1.2 Recording working time

Regulation 9 of the WTR requires employers to keep records that are “adequate” to show that it is complying with its obligations concerning the 48-hour week and daily and weekly rest periods.

In a 2019 judgment, the European Court of Justice (ECJ) strongly suggested that the WTD requires employers to record workers’ actual daily working hours.<sup>10</sup>

This judgment was made before the end of the Brexit implementation period and remains binding on the Employment Tribunal (ET) and the Employment Appeal Tribunal (EAT) (see below).

However, it is questionable how significant an impact the judgment will have on UK law as workers are not able to bring claims before the ET for non-compliance with the record-keeping obligation. Rather, these provisions need to be enforced by the Health and Safety Executive.<sup>11</sup>

## 1.3 Calculation of holiday pay

Article 7 of the WTD gives workers a right to four weeks of paid annual leave. The directive does not specify how pay during annual leave must be calculated.

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<sup>10</sup> [Case 55/18 \*Federacion de Servicios de Comisiones Obreras \(CCOO\) v Deutsche Bank SAE\* \[2019\] IRLR 753](#)

<sup>11</sup> Reg. 28(2), [Working Time Regulations 1998 \(SI 1998/1833\)](#)

### **Calculating holiday pay under the WTR: 'a week's pay'**

The WTR provides a right to 4 weeks of annual leave (reflecting EU law) and 1.6 weeks of additional annual leave. Under the WTR, holiday pay is calculated using the formula for calculating 'a week's pay' in sections 221-224 of the [Employment Rights Act 1996](#) (although the WTR uses a 52-week reference period instead of the 12-week reference period).

The rules for calculating 'a week's pay' are complicated and can vary depending on the type of work a worker does. The key distinction for these purposes is whether a worker has "normal working hours".

Under these rules, if a worker has "normal working hours" and their pay varies by the amount of work done, in some cases their holiday pay will be calculated based on their basic rate of pay, excluding payments such as overtime, commission or bonuses.

The issue is illustrated in the *Bamsey* case. The case concerned a worker who had fixed working hours of 39 hours per week. The contract also provided for compulsory but not guaranteed overtime for which they were paid extra. In the reference period, the claimant had worked an averaged 60 hours.

The Court of Appeal held that only compulsory *and* guaranteed overtime would count as "normal working hours" for the purposes of calculating 'a week's pay'. As such, the claimant's holiday pay was based on hourly pay for their fixed hours, discounting any overtime.<sup>12</sup>

### **ECJ case law on calculating holiday pay: 'normal remuneration'**

In a series of cases, many referred by UK courts, the European Court of Justice has considered what constitutes 'pay' for the purposes of paid annual leave under the WTD.

In *Williams v British Airways*, the ECJ held that a worker's holiday pay should be based on their "normal remuneration". The ECJ noted that case-by-case analysis would be required to determine what components of pay count as normal remuneration. However, it held the overarching purpose of the WTD was that workers should be able to enjoy a period of rest and relaxation with pay that is comparable to periods of work.<sup>13</sup> The principle was later followed in *Lock v British Gas* where the ECJ held that holiday pay should be calculated including commission payments.<sup>14</sup>

In *Bear Scotland v Fulton*, the Employment Appeal Tribunal declined to follow the decision in *Bamsey* as that case had been decided before the ECJ judgments in *Williams* and *Lock*. The EAT held that, in light of those decisions, overtime payment did need to be included when calculating holiday pay under the WTR for those with normal working hours.<sup>15</sup> When the *Lock* case returned to the UK, the Employment Tribunal read a new provision into the WTR so that commission payments could be included in holiday pay. The Court of Appeal upheld this decision.<sup>16</sup>

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<sup>12</sup> [Bamsey v Albon Engineering and Manufacturing plc \[2004\] ICR 1083](#)

<sup>13</sup> [Case 155/10 Williams v British Airways \[2012\] ICR 847](#)

<sup>14</sup> [Case 539/12 Lock v British Gas Trading Ltd \[2014\] ICR 813](#)

<sup>15</sup> [Bear Scotland Ltd v Fulton \[2015\] ICR 221](#)

<sup>16</sup> [Lock v British Gas Trading \[2016\] ICR 503](#)

As a result of the decisions of the ECJ, and their application to the WTR by UK courts, it is currently the position that holiday pay in the UK must always be calculated so as to reflect a worker's normal remuneration, including payments such as overtime, commission and bonuses.

These rules do not appear explicitly in the text of the WTR (which has not been amended). Rather, they have been developed by UK courts interpreting the WTR so as to be compatible with EU law.

It should also be noted that these rules only apply to the 4 weeks of annual leave that implemented EU law. The 1.6 weeks of additional annual leave is a domestic law right and holiday pay for this period is calculated in line with the standard interpretation of 'a week's pay'.

## 1.4 UK's ability to amend "retained EU law"

The UK ceased to be bound by EU law on 31 December 2020. On the same day the [European Communities Act 1972](#), which gave effect to EU law in the UK, also ceased to have effect.

However, by virtue of the [European Union \(Withdrawal\) Act 2018](#), most EU law that applied in the UK at the end of the implementation period continues to apply as "retained EU law".

The WTR, which is secondary legislation made under the 1972 Act, remains in force as "EU derived domestic legislation". It retains its status, meaning it can be amended by subsequent secondary legislation.

The Employment Tribunal and Employment Appeal Tribunal are bound to follow judgments of the ECJ issued before 31 December 2020 so long as the retained EU law they are interpreting has not been modified. Even if the law has been modified, they must continue to follow ECJ case law if that is consistent with the purpose of the modification.

The Court of Appeal and the Supreme Court can depart from ECJ case law if it is "right to do so".

No UK court is required to follow judgments of the ECJ issued after the end of the implementation period although they may choose to do so if they consider it is relevant.

The effect of these provisions is that all the provisions of the WTR, such as the 48-hour week, rest periods and holiday pay, continue to apply. Furthermore, the ET and the EAT must continue to interpret the WTR in light of ECJ case law such as *Williams* and *Lock* on issues such as the calculation of holiday pay.

However, the effect of the UK's departure from the EU is that Parliament can now amend or repeal retained EU employment law without necessarily putting itself in breach of international law.

The Government could, in theory, make secondary legislation, or Parliament could pass primary legislation, to repeal the 48-hour week or to amend the WTR to make it clear that the rules on calculating holiday pay should be read under ordinary domestic principles of statutory interpretation, disregarding any ECJ case law.

Further information on these issues can be found in the Library Briefing, [End of Brexit transition: workers' rights \(CBP-9099\)](#).

### **UK-EU Trade and Cooperation Agreement**

On 24 December 2020, the UK and the EU agreed a new [Trade and Cooperation Agreement](#) (TCA). The TCA covers, among other things, the new rules for trade between the UK and the EU. The agreement currently has provisional application, meaning the parties are applying its terms although the agreement has not yet formally come into force.

Part 2 of the TCA (on trade) contains a provision on a level playing field. Of particular relevance is Heading 1, Title XI, Article 6.2, which provides:

1. The Parties affirm the right of each Party to set its policies and priorities in the areas covered by this Chapter, to determine the labour and social levels of protection it deems appropriate and to adopt or modify its law and policies in a manner consistent with each Party's international commitments, including those under this Chapter.
2. A Party shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its labour and social levels of protection below the levels in place at the end of the transition period, including by failing to effectively enforce its law and standards.

This is a non-regression clause that prohibits both the UK and the EU from reducing their labour standards in a manner that affects trade or investment. In contrast to many EU free trade agreements (FTAs), this is a hard obligation (“shall not weaken”).<sup>17</sup>

Labour standards are defined as including fundamental rights at work, occupational health and safety, fair working conditions, information and consultation rights and rules on restructuring of undertakings.

In the context of labour standards there is relatively little authority on the meaning of “in a manner affecting trade or investment”. The most detailed discussion to date is in the [final report of the arbitration panel in US-Guatemala CAFTA dispute](#). The panel concluded that to “affect” meant to have some “material” impact:

We begin by considering the plain meaning of “affecting trade.” Both disputing Parties acknowledge that to “affect” is to “influence” or “make a material impression.” We agree. Action or inaction that is in a manner “affecting trade” must influence or make a material impression upon some aspect of trade, that is, upon the cross-border exchange of goods and services.

This means that an interpretation of Article 16.2.1(a) that treated as a violation every failure, through a sustained or recurring course of action or inaction, to effectively enforce labor laws simply because it occurred in a traded sector, or with respect to an enterprise engaged in trade, would not be consistent with its wording. It would require no proof of influence or material impression upon the cross-border exchange of goods and services. It would simply require proof of some effect on an employer or economic sector engaged in trade. This is not the same thing as an effect on trade. Had the CAFTA-DR Parties wished to cover

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<sup>17</sup> For background see [The UK-EU future relationship negotiations: Level playing field](#), Commons Library Briefing Paper CBP-8852, 19 June 2020

every failure to enforce through a sustained or recurring course of action occurring in a traded sector or with respect to enterprise engaged in trade, they could easily have done so using clearer language. A failure to effectively enforce labor laws must affect some aspect of trade. The question is which effects on trade bring a matter within the scope of Article 16.2.1(a).<sup>18</sup>

The panel found that this meant that the measure had to produce some competitive advantage, although it rejected a narrow interpretation that would require evidence of an impact on prices or trade flows (which it concluded could be impossible to produce). The panel summarised:

Thus our enquiry into whether a failure to enforce labor laws is such as to confer a competitive advantage in trade between the CAFTA-DR Parties focused principally on (1) whether the enterprise or enterprises in question export to CAFTA-DR Parties in competitive markets or compete with imports from CAFTA-DR Parties; (2) identifying the effects of a failure to enforce; and (3) whether these effects are sufficient to confer some competitive advantage on such an enterprise or such enterprises.<sup>19</sup>

It should be noted that this report is in no way binding on a panel of experts convened under the TCA.

There is also an [ongoing dispute between the EU and South Korea](#) under the [EU-Korea FTA](#). However, this dispute concerns a slightly differently worded clause on trade and labour standards.

### **Enforcing the non-regression clause in the TCA**

Unlike EU law, the TCA does not create directly effective rights that would allow an individual to challenge legislation in UK courts. Rather, enforcement is a matter for state-to-state dispute settlement between the UK and the EU.

If either party believes that the other has breached the non-regression clause they can trigger dispute settlement. There is a specific tailored dispute settlement process for the level-playing field provisions.

This involves consultation between the parties followed by arbitration before a panel of experts. The panel will issue an interim and a final report. If the responding party is found to have breached the non-regression rules and fails to implement the panel's recommendations, the complaining party can put in place "temporary remedies" (i.e. trade sanctions) for as long as the non-compliance persists.<sup>20</sup>

## **1.5 Review of EU employment law**

The Johnson Government has said on a number of occasions that in leaving the EU the UK will enhance, rather than weaken, EU-derived employment rights. During a Parliamentary debate in October 2019, then Business Secretary Andrea Leadsom said:

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<sup>18</sup> [In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1\(a\) of the CAFTA-DR FINAL REPORT OF THE PANEL June 14, 2017](#), June 2017, paras. 167-168

<sup>19</sup> *Ibid.* para. 192

<sup>20</sup> Part 2, Heading One, Title XI, Article 9 of the [Trade and Cooperation Agreement](#), December 2020; see also [UK-EU Trade and Cooperation Agreement: summary and implementation](#), Commons Library Briefing Paper CBP-9106, 30 December 2020

I find it extraordinary that the hon. Lady thinks that the only valid protector of UK workers' rights can be the European Union. Why on earth does she think that her party, my party, the other Opposition parties and our strong trade union tradition in the UK are utterly incapable of building on the superb tradition we already have in the UK of exceeding workers' rights in the EU in so many areas? Once we have left the European Union, the United Kingdom will not be represented in EU institutions and nor will we have any direct influence on future EU legislation on workers' rights. Why then should the Government and this Parliament seek to engineer circumstances where we are required to implement legislation over which we have had no say? As we leave the European Union, we have a unique opportunity to enhance protections for the workforce and tailor them to best support UK workers. It will be for the United Kingdom to create and enhance UK employment rights and to take advantage of the superb opportunities for new UK-wide skills, jobs and prosperity that await us after we have left the European Union.<sup>21</sup>

The Government has taken a number of steps recently to strengthen workers' rights in areas that were covered by EU law. In April 2020, the Government removed the 'Swedish Derogation' which excluded some agency workers from right to equal pay with directly hired workers after 12 weeks of working for a hirer.<sup>22</sup> Also in April 2020, the Government amended rules on written statements of employment particulars, bringing UK law in line with parts of the new [Directive on Transparent and Predictable Working Conditions \(EU 2019/1152\)](#).<sup>23</sup> The deadline for implementing the directive is August 2022, meaning the UK would not have been under an obligation to give effect to it.

However, at the same time, the Government removed clauses from the *European Union (Withdrawal Agreement) Bill*, which would have given some additional domestic protection to retained EU employment rights.

In the December 2019 Queen's Speech, the Government committed to include these provisions in an *Employment Bill*. However, that Bill has yet to be published. For further information see the Library Insight, [Removal of workers' rights in the EU \(Withdrawal Agreement\) Bill](#).

On 14 January 2021, the *Financial Times* reported that the Government was considering repealing certain rights derived from the WTD. It was reported that this included the 48-hour work week, the inclusion of overtime in holiday pay and the requirement for employers to record worker's hours.<sup>24</sup>

On 19 January 2021, the Business Secretary Kwasi Kwarteng told the Business, Energy and Industrial Strategy Committee that the Government was reviewing EU employment rights but denied that workers' rights would be weakened.<sup>25</sup>

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<sup>21</sup> [HC Deb 29 October 2019 c205](#)

<sup>22</sup> [Agency Workers \(Amendment\) Regulations 2019 \(SI 2019/724\)](#)

<sup>23</sup> [Employment Rights \(Miscellaneous Amendments\) Regulations 2019 \(SI 2019/731\)](#)

<sup>24</sup> "UK workers' rights at risk in plans to rip up EU labour market rules", *Financial Times* [online], 14 January 2021 (accessed 22 January 2021)

<sup>25</sup> "Kwarteng confirms government review of UK employment law", *Financial Times* [online], 19 January 2021 (accessed 22 January 2021)

## 2. Press Articles/Blog posts

### [Business secretary confirms review of EU labour laws](#)

#### **HR Review**

**21 January 2021**

Business Secretary, Kwasi Kwarteng, has confirmed that the Government has started a review of EU labour laws but further insists that this will not lead to a dilution of workers' rights in the UK.

Earlier this week, Business Secretary Kwasi Kwarteng stated that the Government has "absolutely no intention of lowering the standards of workers' rights" in the UK. This was in response to the suggestion that the Government was looking to scrap some EU labour laws such as the 48 hour working week and rest breaks at work.

However, Mr. Kwarteng has now confirmed that a review of EU labour laws is currently underway.

Despite this, the minister has firmly stated that this will not lead to a "bonfire of rights", and said the idea that the Government is trying to whittle down standards is "not at all plausible or true".

Instead, Mr. Kwarteng argued that the Government was examining the "whole range of issues relating to our EU membership" and examining which laws the UK would keep post-Brexit.

However, this commentary was sharply criticised by Shadow Secretary of State for Business, Energy and Industrial Strategy, Ed Miliband.

Mr. Miliband stated:

A government committed to maintaining existing protections would not be reviewing whether they should be unpicked. This exposes that the government's priorities for Britain are totally wrong.

Malcolm Mason, employment partner at Keystone Law, stated that the UK government will need to be very cautious because of what it agreed to during the final negotiations of the UK-EU Trade and Cooperation Agreement.

Mr. Mason goes on to explain that either side could take counter measures, including tariffs, if they are being damaged by measures taken by the other side in subsidy policy, labour and social policy, or climate and environment policy. If used too frequently, this could also lead to a review of these provisions and the trade aspects more broadly.

He stated:

I would have expected that the UK government would be far more cautious before making any changes to UK employment and labour laws (both home-grown and EU-derived) which could be seen to reduce the level of protection for workers or fail to enforce employment rights in a manner that will have an effect on trade.

James Froud, Head of Employment at McCarthy Denning, has said:

Given the opportunity, it does seem inevitable that this Conservative government will seek to trim around the edges of EU-derived red-tape for two reasons: (1) from a political perspective, workers' rights offer a visible – and universally relevant – platform on which the Government can demonstrate it is 'taking-back control of our laws (and borders)', and (2) reducing the legal burden on UK businesses may be imperative for them to thrive in a post-Brexit world.

Mr. Froud further continues to explain that any changes made to workers' rights will need to be carefully balanced against the UK's commitment to the Trade Agreement. Resultingly, this may mean that it may be workers' rights that many employers choose to opt out of anyway which are amended:

I think there is going to be limited scope or appetite to resile in any material way from the existing framework of employment rights. There may be some tinkering around the edges for political reasons but I think the fundamental landscape of rights and obligations will remain in place.

Some tinkering with requirements which are, perhaps reasonably, viewed as somewhat counter-culture here in the UK seems perfectly possible.

The working time regulations present a good example of bureaucracy which is generally hated by business and not much relied upon by workers; there are a great many employees in the UK who opt-out of the 48-hour week by choice. Culling that particular social protection might be seen as an easy-win.

### [Changes to UK's working time laws 'just conjecture', but watch this space](#)

#### **Out-Law News**

**21 January 2021**

Is the government planning to dilute UK workers' rights, and in particular the 48-hour limit on the working week? That is the question doing the rounds after an article appeared in the FT last Thursday. It subsequently appeared on the FT's twitter feed and was circulated widely on social media at the end of last week. The Business Secretary Kwasi Kwarteng was quick to respond, tweeting 'we are not going to lower the standards of workers' rights'. That was then picked up by the mainstream media the following day and has been the subject of much debate since. The BBC quotes the FT in saying the proposals were being drawn up with the approval of Downing Street, hadn't yet been approved by ministers or cabinet and were, at this stage, just proposals. So there is no formal government position on this yet.

The timing is interesting because the government has just signed a trade deal with the EU which includes 'level playing field provisions' which, on the face of it, prevents them from reducing employment rights in this

way. But when it comes to employment law, the agreement is not very prescriptive and specifically acknowledges that both parties are free to set their own policies and priorities, hence why this story has been running in the past few days. You may have seen it in the HR press - Personnel Today covered it in some detail and we noticed Rachel Suff, employee relations adviser at the CIPD, makes a good point when she says that quite apart from what the government may or may not be planning, the judges may have a say in this because there has been a lot of complex litigation in recent times in this area and some of it is still running. She doesn't specify which cases she has in mind but we can tell you about two of them which are listed to be heard by the Supreme Court in June. One is called Flowers, the other is Agnew. Sue Gilchrist has been tracking both, as well as the FT's story, and she joined me by video-link from Glasgow. I put it to Sue that it's an interesting development:

Sue Gilchrist: "Yes, it's really interesting isn't it, Joe. It does tend to suggest where the government's intentions might be leaning with regard to holiday pay so we will watch that with interest, but the other idea we have to account for is changes and decisions in the courts. There are two really significant holiday pay cases coming to the Supreme Court in June this year. The first of these relates to ambulance workers, Flowers, and it was about whether their voluntary overtime should be included in holiday pay calculations. The Court of Appeal said it should be where it's regularly worked, so it becomes part of normal pay, so if the Supreme Court follows that that would continue to be the law as it stands in the UK for the calculation of holiday pay and that has followed a whole line of cases. But the Supreme Court could decide that it doesn't intend to follow that decision, it could step away from what has been the line of thinking since the cases first went to the European Court a good number of years ago now, and the Supreme Court does have the power to depart from the European Court's decision so it could draw a line in the sand and take us in a new direction. The other case is a Northern Irish case, Agnew, which was about whether or not a three month gap in a chain of deductions claims for unpaid holiday pay was valid and whether that would break the chain of deductions. There was a GB case called Bear Scotland where it was decided that a three month gap would break the chain of deductions and that limited the amount that an employee could claim for backdated holiday pay but the Northern Irish Court of Appeal said no we don't agree with that and it is now going before the Supreme Court to decide whether or not the Supreme Court agrees with Northern Ireland on that or with the decision in GB, and that Supreme Court decision is binding across the whole of the UK so, again, it will be interesting to see how that develops. Whatever the Supreme Court's decision, the UK government might decide to legislate. It already has applied a limitation to the amount that can be claimed in relation to backdated holiday pay. Claims from July 2015 onwards can only go back two years, and there's a limit there, and the government might take a stance that it would limit it again, if the Supreme Court does follow the overtime position in Flowers or decides that the three month gap doesn't break the chain, the government might follow a favourable route for employers, but we'll need to wait and see that. I think the other layer on top of that which is also interesting is how Brexit impacts on the government's ability to make these changes and will those

changes affect the level playing field to a material extent that we might see the EU say that we weren't sticking to the trade and cooperation agreement and try to go for arbitration to suggest that we couldn't change working time rules in that way. That is all conjecture for now but it is another layer that that adds to the debate."

[UK's post-Brexit employment shake-up misses labour market flaws \[£\]](#)

**FT.com**

**20 January 2021**

[Business secretary confirms post-Brexit review of UK workers' rights](#)

**The Guardian**

**19 January 2021**

The business secretary has confirmed his department is reviewing how EU employment rights protections could be changed after Brexit, while insisting they will not be watered down.

The Guardian understands a consultation on employment rights was signed off by Kwasi Kwarteng's predecessor Alok Sharma, who left after being given a full-time role leading preparations for the Cop26 climate conference. Insiders say the consultation is ready to launch and has been circulated among some select business leaders.

Following reports last week that the government was examining EU rules such as the working time directive, which sets a maximum 48-hour week, ministers said they were not eroding protections.

But speaking to the business, energy and industrial strategy committee on Tuesday, Kwarteng confirmed his department was carrying out a consultation with business leaders on EU employment rules, including the working time directive.

Asked by the committee chair, Labour's Darren Jones, to outline the review, Kwarteng confirmed it was happening. "I think the view was that we wanted to look at the whole range of issues relating to our EU membership and examine what we wanted to keep, if you like," he said.

However, he added, the plan was to maintain "a really good high standard for workers in high employment and a high-wage economy. That's what I'm focusing on. And so the idea that we're trying to whittle down standards, that's not at all plausible or true."

On the working time directive, Kwarteng said a number of EU countries had opted out of it, adding: "So, even by just following that we are way above the average European standard. And I want to maintain that, I think we can be a high-wage, high-employment economy and a very successful economy. And that's what we should be aiming for."

However, just five countries have an opt-out of the time directive that applies to all sectors – and the UK is one of the five. Eleven other countries have limited opt-outs for specific sectors, mostly applying to doctors and medical staff.

Asked about his role in *Britannia Unchained*, a 2012 collection of essays by then Tory backbenchers calling for reduced worker protections, Kwarteng told the committee that was “a long time ago”.

He said: “We are absolutely looking at safeguarding employment rights. I know there’s been stories in the newspapers that there’s going to be some sort of bonfire of rights. This could not be further from the truth.”

According to the report in the *Financial Times*, proposals in the review also cover rules about breaks at work, and removing overtime pay when calculating certain holiday pay entitlements.

Another proposal would be to get rid of the requirement for businesses to log information about daily working hours, to save on administration costs.

Ed Miliband, the shadow business secretary, said Kwarteng had “let the cat out of the bag” after initially dismissing media reports.

“A government committed to maintaining existing protections would not be reviewing whether they should be unpicked. This exposes that the government’s priorities for Britain are totally wrong,” he said.

“Neither workers nor business want ministers to take a wrecking ball to the hard-won rights of working people and families.”

### [Scottish Gas workers in new wave of 'fire and rehire' strikes from Wednesday in 'biggest dispute for 40 years'](#)

**The Herald**  
**18 January 2021**

GAS WORKERS in Scotland are to begin a fresh seven day wave of strikes from Wednesday as part of the "biggest dispute seen in the sector for 40 years".

Over 1,000 Scottish Gas workers in Scotland are expected to take part in the action in a dispute over a "fire and rehire" cuts to pay and terms and conditions.

Members of the GMB union say they will withdraw their labour on Wednesday 20, Friday 22, Monday 25, Friday 29, Saturday 30, Sunday 31 January and Monday February 1.

They believe that the disruption has meant that those waiting for service number more than 100,000 across the UK. This is denied by Centrica.

Centrica which owns British/Scottish Gas told the Herald before the first wave of stoppages that they have done everything they could to avoid industrial action.

They have had contingency plans in place to allow them to continue to serve customers with the majority being carried out by their own engineers and also with the help of existing contractors.

The GMB union said that thousands of gas and electrical engineers were told in July that if they did not agree new terms and conditions, which their union the GMB characterised as containing "draconian" cuts to their terms and conditions, they would be "fired then rehired."

The strike follows a 9-1 vote in favour of industrial action by members of the GMB union, which has accused British Gas, which trades as Scottish Gas north of the border, and parent firm Centrica of planning to cut pay, terms and conditions.

Justin Bowden, GMB national secretary said: "The strike is stepping up a gear this week with further days of action, with the company apparently disregarding its customers and its obligations. "In the face of growing employee and customer discontent, and after the first round of the biggest and most successful gas strike in decades, the management of profitable British Gas continue to bury their heads in the sand.

"British Gas workers have already rejected pay cuts on pain of fire and rehire, yet in the face of condemnation across the political spectrum, Chris O'Shea refuses to listen to his workforce despite Centrica being a company of underlying profitability.

"Instead of lashing out the engineers who overwhelmingly rejected his plan and voted to take strike action, Mr O'Shea should withdraw fire and rehire and enter constructive discussions with GMB to avert further disruption."

Centrica, Britain's biggest energy supplier, told the Herald: "We're operating in an incredibly competitive market and British Gas has lost too many jobs and too many customers over recent years. We can't continue like this.

"We need to take action to modernise and refocus the company in line with what our customers need now, not what they needed 20 years ago. Our pay for engineers will remain the highest in the sector, but we need to get productivity back to where it used to be and for some, we need to increase the working week from 37 to 40 hours.

"We're not changing base pay or pensions and we will reward increased productivity through additional bonuses. 83 per cent of our employees have already accepted the new terms - including the majority of our engineers. Our changes are ultimately to protect and create jobs for the future."

Five weeks ago, a cross-party group of MPs urged Centrica's bosses to withdraw any threat of firing and then rehiring the British Gas engineering workforce.

The prime minister Boris Johnson was also asked for his support for workers in the House of Commons.

The only exceptions to the industrial action were to be dealing with emergencies and problems for households with vulnerable people as temperature's plummet and the nation enter a third national lockdown, according to the union.

In June Centrica said it was to cut 5,000 jobs as the company tries to set a new course amid the Covid-19 pandemic.

Centrica said it would strip out three layers of management to slimline the business and cut down on bureaucracy.

Around half of the 5,000 lost jobs were to be lost among the company's leadership, management and corporate staff.

In February, Centrica delivered its worst financial results since 2015, reporting a pre-tax loss of £1.1 billion for 2019 massively down from a £575 million profit in 2018.

Adjusted operating profits generated by British Gas fell by 71 per cent to £137 million, the lowest in the supplier's history.

The first wave of strike action within British/Scottish Gas began on January 7.

At the start of the strike action, Centrica told the Herald: "Whilst we've made great progress with our other unions, sadly the GMB leadership seems intent on causing disruption to customers during the coldest weekend of the year, amid a global health crisis and in the middle of a national lockdown.

"We have strong contingency plans in place to ensure we will still be there for customers who really need us, and we'll prioritise vulnerable households and emergencies.

"Over 83% of our workforce have already accepted our new terms, in which base pay and pensions are protected, including a significant majority of GMB members. This shows most of our people understand that our business needs to change because customer needs are changing. GMB's mandate for strike action is weak; they are fighting against modernisation and changes which will help to protect well paid jobs in the long term and are doing so at a time that our country needs everyone to pull together."

### **[Brexit: No plans to dilute workers' rights, minister says](#)**

**BBC News**

**15 January 2021**

Business Secretary Kwasi Kwarteng has denied reports that his department is planning to dilute UK workers' rights.

It comes after the Financial Times said some protections brought in under EU law - such as the 48-hour limit on the working week - could be scrapped.

New rules on rest breaks and changes to how holiday pay is calculated from overtime could be proposed, it added.

But Mr Kwarteng insisted he wanted to "protect and enhance workers' rights going forward, not row back on them".

In a social media post, he said that the UK "has one of the best workers' rights records in the world - going further than the EU in many areas."

Labour said the newspaper report suggested the government was out of step with public feeling on workplace rules.

Shadow business secretary Ed Miliband said: "These proposals are not about cutting red tape for businesses but ripping up vital rights for workers. They should not even be up for discussion."

The FT said the proposals were being drawn up with the approval of Downing Street, but that they hadn't yet been approved by ministers or cabinet.

UK is 'standard setter'

A government spokesperson said: "We have absolutely no intention of lowering the standards of workers' rights.

"The UK has one of the best workers' rights records in the world, and it is well known that the UK goes further than the EU in many areas.

"Leaving the EU allows us to continue to be a standard setter and protect and enhance UK workers' rights."

When the UK left the EU it retained many of its laws, but it is now able to change them.

One aspect of EU employment regulation is the EU's Working Time Directive.

It governs the hours employees in the EU can be asked to work. This must not exceed 48 hours on average, including any overtime.

But employees can choose to opt out of the 48-hour week, if they often work overtime in roles in the emergency services, for example.

In the 2019 Queen's Speech outlining the government's agenda for the coming parliamentary session, changes in employment law were promised.

A new Employment Bill is expected to be published in 2021. One issue it is thought it will address is over the distribution of tips.

TUC General Secretary Frances O'Grady urged the prime minister to "make good on his promises to his voters" on Friday.

"The best way to do that is to bring forward the long-awaited Employment Bill, to make sure everyone is treated fairly at work," she said.

**[It's now clear this government wants UK workers to have as little power as possible](#)**

**Ed Miliband**

**The Guardian**

**15 January 2021**

As workers, families and businesses negotiate the hardest of hard times in this pandemic – trying to stay safe, care for their kids, fulfil their working responsibilities and keep their firms afloat – we now discover that some ministers' thoughts are elsewhere. Now, in this post-Brexit Britain, they are planning their vision of the future.

Unfortunately, it's one that threatens to make our profound injustices far worse. That future involves ministers contemplating ripping up hard-won workers' rights: from the safety cap that protects people from being made to work more than 48 hours a week – which is vital for key workers, such as those in the NHS, haulage and airlines – to undermining paid holiday, rest breaks at work and other protections.

Ministers have promised time and again that have no plans to diminish workers' rights, and they are continuing to stick to the line after this latest revelation about their plans – but there has been no denial that these specific proposals are on the table and under active consideration. Indeed, we should be clear that the key question is not whether they want to row back on workers' rights – of course they do.

This, after all, is the deregulated race to the bottom of which they have long dreamed. The new business secretary, Kwasi Kwarteng, even co-wrote a whole pamphlet proposing to exempt startup firms from employment legislation, moving away from a national minimum wage so it could be lower in some areas of the country. Elsewhere he co-authored a book that memorably claimed that the British are "among the worst idlers in the world". The government has failed to bring in the employment bill that it promised would protect and enhance workers' rights, and Boris Johnson himself flippantly explained just at the end of last year that maintaining workers' rights really just means not sending children back up the chimneys.

It's worth taking a step back here and understanding what all this means. Our country is racked by deep inequality, injustice and powerlessness. From the 2008 financial crisis and its aftermath to the pandemic, we have seen these injustices graphically exposed. But today we have a Conservative government that still thinks the way to address this situation is to take rights away from those who have few and make the imbalances of power in our workplaces even worse.

Take the experience of the pandemic. We have seen some workers feel unable to ensure their own safety, scared to raise complaints and compelled to come in to the office despite the government's instruction to work from home. The government would make this powerlessness worse.

The scourge of low pay and insecure work didn't happen because workers are idle, as Kwarteng believes, or because our labour markets are too highly regulated. Quite the opposite. We are among the most deregulated labour markets of advanced countries, and millions of workers in the UK already work very long hours.

What is emerging is not a new vision of Britain at all, but just more of what has been tried – and which has failed – by the Conservatives in the last four decades. What an unambitious, pessimistic and negative view of our country they have, believing that the way for us to compete and succeed is on low wages and few rights. This is the wrong priority for Britain, and way out of step with the priorities of the British people. Just as it has not worked before, it will not work this time.

There is a different path for our country. The pandemic has imposed huge hardship on workers and families in the UK. As we emerge from this emergency, we cannot go back to business as usual. We owe it to them to build a better and fairer future for Britain.

It is not workers living in fear or forced to work so many hours that they cannot see their families that make for a successful country; it is workers who feel safe and secure. And it is businesses who value their employees and foster a positive working environment, with the best terms and conditions for their workers, including recognising the need for families to be able to balance their caring and working lives.

Of the countless businesses that I have spoken to during this crisis, none have said to me that the priority for recovery is to take a sledgehammer to workers' rights. So many of them recognise the deep injustices of our country, and that we will become more productive or more fair not by competing on low wages and low rights but by raising standards and investing in the infrastructure, skills and industries of the future: a race to the top, not a race to the bottom.

Indeed, in the worst of times, during the pandemic, we have seen a spirit we can build on: businesses and trade unions working together for the benefit of companies and the country, many firms stepping up to do the right thing for their workers, and an ethos of helping each other. This spirit of togetherness and cooperation is a world away from the harsh, deregulated vision ministers want to serve up.

The real question over the coming months is not whether the government wants to weaken worker protections, but whether it can get away with it. Progressive businesses, trade unions, workers and families know that this is not the right future for our country. This a fight about who we are as a country, who we want to be, and whether we build a Britain that works for people and families or not. It is a fight we cannot, and will not, lose.

- Ed Miliband is the Labour MP for Doncaster North and shadow business, energy and industry secretary

## **Pressure grows on British Gas over 'fire and rehire' as British Airways backs down**

**Evening Standard  
16 September 2020**

Pressure was today mounting on British Gas owner Centrica to U-turn on its controversial "fire and rehire" plans, while British Airways appeared to back down from its similar stance.

The energy giant has been accused by unions of forcing 20,000 British Gas employees to accept worse contracts or risk losing their jobs. Workers face changes to conditions including their working hours and holiday entitlements under the plans.

British Gas followed British Airways in drawing the ire of unions with proposals to rehire 30,000 workers on lower pay and perks. Yesterday Labour leader Sir Keir Starmer condemned the practice of giving staff notice of redundancy and then hiring them back on worse pay and conditions.

MPs have now intervened, with 23 signing an early day motion calling for the company to withdraw its Section 188 notice of potential redundancies.

Labour MP John Cryer, who brought the motion, told the Standard: "A lot of British Gas engineers will be on good terms and risk losing those. They are skilled, valued engineers. If half the country has its terms and conditions ground into the dirt, it's just wrong. Where will it end?"

He added: "The Government is going to be forced to make an intervention as it's a not sustainable to have a strike at such a critically important business."

Southwark MP Neil Coyle said: "For people who are more vulnerable to Covid it's important their home is properly heated to avoid hospitalisation. There are also hundreds of thousands of people still working from home and people need heating in their homes."

Centrica has argued using the Section 188 notice is a last resort and there will be no change to base pay and pensions. It said that "constructive discussions" are ongoing.

The talks with 20,000 staff are on top of the 5,000 redundancies announced in June, although sources said these may be pared back to maintain customer service levels.

Justin Bowden, GMB National Secretary, said "The use of Section 188s really was a rarity until its infamous use by British Airways. It's been described as an insurance policy which is a disgusting euphemism for saying agree or have this done to you."

Separately, British Airways today backed down from its "fire and rehire" plan as its boss appeared before MPs.

The airline has seen trading destroyed by the Covid pandemic, which triggered 12,000 job cuts.

Chief executive Alex Cruz told the House of Commons transport committee: "There will be no need to issue new contracts. No need to fire and rehire."

Cruz said that, while job cuts with pilots were quickly agreed, its attempts to get unions representing the rest of its staff to negotiate were tricky. "I frankly regret that it took such a long time for the other unions to sit down," he said.

Cruz claimed it took 73 days to get unions to sit down and they had been invited to 500 different meetings.

Cruz said final agreements had not been made but were imminent

**[Manage the risks of a fire and rehire strategy](#)**

**Employment Law Journal**

**September 2020**

**[The Effect of Long Working Hours and Overtime on Occupational Health: A Meta-Analysis of Evidence from 1998 to 2018](#)**

**Kapo Wong,\* Alan H. S. Chan, and S. C. Ngan**

**International Journal of Environmental Research and Public Health**

**June 2019**

### 3. Press notices

#### [British Gas board millionaire's club must rein in CEO over fire and rehire](#)

**GMB Union**

**22 Jan 2021**

GMB, the energy union, has called on the 'millionaires club' on the British Gas board to rein in CEO Chris O'Shea over his fire and rehire threat to thousands of workers.

At least four members of British Gas parent company Centrica's board are multimillionaires – who between them earned £37million from their jobs outside Centrica since 2015.

They are: Chairman Scott Wheway, Heidi Mottram, Kevin O'Byrne and Stephen Hester; as was the recently departed Chief Financial Officer Jonathon Ford.

Stephen Hester alone earned a whopping £18 million as CEO of insurance giant RSA between 2015 and 2019.

GMB is calling on them to curb the actions of the CEO Chris O'Shea who has provoked further strikes with his strategy of fire and rehire of the loyal, hardworking engineers.

Thousands of British Gas workers across the UK are set to down tools today as part of a second set of strikes. They are also due to walk out on January 25, 29, 30, 31 and February 1 after staff slapped the company with an overwhelming 89% 'yes' vote for strike action.

Centrica PLC recorded a group-wide operating profit of £901m in 2019, according to company accounts, with an adjusted operating profit of £229 million for its domestic heating business in the UK for the six months to 30 June 2020 – up 27% on the same period in the previous year.

Justin Bowden, GMB National Secretary, said:

"The board members of Centrica have been remiss; they should have asked Mr O'Shea how his plans would impact on British Gas customers when the engineers inevitably rejected hourly rates 15% below agreed pay rates and other imposed changes.

"It was wishful thinking in the extreme to believe that members of any union would ever acquiesce to cuts of this magnitude in a profitable company.

"Around 100,000 customers are already in a backlog waiting for service and this number will grow as the next seven days of stoppages impact.

"The Centrica board should reverse the view they have allowed to prevail that the company doesn't care about customers, by reining in the hopelessly out of touch and naive Mr O'Shea."

“The men and women in the Centrica millionaire's club are rich beyond the dreams of any British Gas engineer and they will never succeed in grinding loyal, hard-working staff into submission just to earn a few more quid at the expense of their customers.

“Mr O’Shea’s obsession with sacking the whole workforce and rehiring them on worse terms and conditions will ultimately cost the company – and the board – dearly.”

### **Labour to force vote to protect holiday pay and 48-hour weekly working limit**

**Labour Party  
21 January 2021**

Labour will force a vote in the House of Commons on Monday to protect holiday pay entitlements and safe working limits following Business Secretary Kwasi Kwarteng’s admission this week that employment protections are being reviewed to see which to scrap and which to keep.

Despite repeated but vague promises from Ministers that they have no plans to rip up the rights of workers, it has now been revealed that the Government will consult on changes which could mean:

- Ending the inclusion of overtime in how holiday pay is calculated, leaving workers hundreds of pounds out of pocket
- A longer working week, with no legal cap on the number of hours employers can make their employees work
- An end to the legal right to rest breaks at work

Labour’s motion calls on the Government to specifically rule out any changes to the 48-hour working week, rest breaks at work, or holiday pay entitlements. The motion also calls on the Government to outlaw fire and rehire tactics.

Taking a wrecking ball to these hard-won rights would leave workers and their families worse off and risk the safety of key workers including hauliers and airline workers who are currently legally protected from working excessive hours.

Andy McDonald MP, Labour’s Shadow Secretary of State for Employment Rights and Protections, said:

“In the middle of a pandemic and an economic crisis, Ministers are considering ripping up workers’ rights. This could see people across the country worse off, losing out on holiday pay and working longer hours.

“Scrapping the 48-hour working week cap could mean many key workers feel pressured to work excessive hours. The Government should be focused on securing our economy and rebuilding the country, not taking a wrecking ball to hard-won rights.

“The Government’s true colours are on full display once again and it’s clear their priorities couldn’t be further from those of workers and their families. But on Monday MPs across the House will have a chance to vote on the side of working people and protect our key workers.”

The Opposition Day debate motion, tabled today, is as follows:

Keir Starmer

Andy McDonald

Ed Miliband

Angela Rayner

Lucy Powell

Mr Nicholas Brown

The Government’s Plans for Employment Rights

That this House believes that all existing employment rights and protections must be maintained, including the 48-hour working week, rest breaks at work and inclusion of overtime pay when calculating some holiday pay entitlements, and calls upon the Government to set out to Parliament by the end of January 2021 a timetable to introduce legislation to end “fire and re-hire” tactics.

### [Kwarteng confirms government review of UK employment law](#)

[£]

**FT.com**

**19 January 2021**

### [CIPD: UK employment law already strikes the right balance for employers and workers](#)

**Chartered Institute of Personnel and Development**

**15 January 2021**

The CIPD has responded to concerns that worker protections could be ripped up as part of a post-Brexit overhaul of UK labour employment law, warning that the current framework already strikes the right balance for workers and employers

Rachel Suff, employee relations adviser for the CIPD, the professional body for HR and people development, comments:

“The UK labour market already provides a good balance between providing reasonable protection for individuals and flexibility for employers. The UK has one of the most lightly regulated labour markets in the OECD when it comes to employment protection for individual workers and our research on this issue with employers shows few concerns with the current framework.

“There may be a case for some tweaks to aspects of the Working Time Regulations, for example where case law has led to confusing changes on holiday pay calculation or on how working time is recorded but our

research shows that overall employers are supportive of these regulations. Six in ten employers report that the Working Time Regulations are necessary to protect the health and safety of workers, with just 13% disagreeing.

“The big issue the Government should be focusing on before looking at de-regulation should be improving how existing employment rights are enforced through publishing its long-awaited response to the consultation on the creation of a single enforcement body. An improved labour market enforcement system would be the strongest signal that the Government really is committed to protecting workers’ rights.

### **Ministers must not break their promise to protect and enhance workers’ rights**

**Tim Sharp, TUC**

**Labour List**

**15 January 2021**

This government went into the last election having promised to protect and enhance workers’ rights. But reports in today’s Financial Times suggest that rules around holiday pay and working time could be ditched as part of a labour law overhaul.

Make no mistake. This is not minor tinkering. Hard-won protections relied on by workers for years – particularly those in insecure jobs – could be in jeopardy. So what is at risk?

Holiday pay

Holiday pay appears to be at the top of the chopping list. Under EU law, workers are entitled to four weeks’ holiday pay a year, which UK law bumps up to 5.6 weeks by adding bank holidays to the count.

But workers have had to take court cases to force employers to include overtime and commission payments in their calculations. Judging by today’s leaks, these protections, which are particularly important for those working shifts or irregular hours, could be among the first to be rolled back.

Working time

Other working time rules designed to protect workers’ health and safety are also under threat. These ensure that workers can rest between shifts, receive meal breaks and should have a working week of now more than 48 hours. They are crucial for health and safety.

Despite these safeguards, there is still evidence that UK workers put in more hours than elsewhere in Europe. It’s completely bogus to say that removing them will boost productivity.

Agency workers’ rights

Agency workers are another vulnerable group. Rights based on EU law aim to ensure such workers receive equal treatment on pay, holidays

and working time after 12 weeks in the job. They are also granted equal access to facilities like toilets and canteens.

Last year the government finally closed a loophole that allowed some employers to pay agency workers less than permanent staff. Watering down these rights would be a sop to bad employers who want cheap labour.

#### Britannia Unchained

Business Secretary Kwasi Kwarteng was quick last night to reiterate his commitment to “protect and enhance” workers’ rights. But workers have a right to be wary.

Kwarteng was also a co-author, with others now in government of the notorious Britannia Unchained pamphlet that proclaimed: “Once they enter the workplace, the British are among the worst idlers in the world.”

The public want stronger rights at work

After the last election, the TUC conducted a 3,000 poll of voters. The findings on workers’ rights were crystal clear:

Nearly three-quarters (73%) of voters said the government must protect and enhance current workplace rights guaranteed by the EU, like paid holidays and rights for temporary and agency workers.

This was supported by two-thirds (65%) of people who voted Conservative in 2019, and by eight in ten (79%) of those who switched from Labour to the Conservatives.

The vast majority of voters (71%) also wanted new rights for gig economy workers, including the majority (65%) of Conservative voters and those who moved from Labour to the Conservatives during the election (78%).

There is clearly no public appetite – especially among ‘Red Wall’ voters – for any watering down of rights at work.

#### Time for action

To allay workers’ fears, the government needs to back up his fluffy rhetoric with action. The Queen’s Speech straight after the last election promised an employment bill. It is time for the government to bring this legislation to parliament.

If it is short of ideas, the TUC has a few:

- Ban zero-hour contracts
- Make flexible working a day one right
- Ten days’ paid carers’ leave
- Ethnic minority pay gap reporting
- Trade union access to workplaces

The country is going through the worst crisis in generations. Many insecure workers, including care workers, delivery drivers and shop staff, have been at the forefront of keeping society going.

Ministers need to put a marker down that the country won't repeat the mistakes of the last downturn in 2008 and allow insecure, bad jobs to spring up in the place of good ones. Some ministers might want to forget the government's promise about enhancing workers' rights. But trade unions will not let them.

### **Full-time employees work two and a half weeks more a year than the EU average**

**TUC**

**17 April 2019**

Workers in the UK are putting the longest hours in the EU, according to new TUC analysis published today (Wednesday).

Full-time employees in Britain worked an average of 42 hours a week in 2018, nearly two hours more than the EU average – equivalent to an extra two and a half weeks a year.

Britain's "long-hours culture" is not having a positive impact on productivity, says the TUC. In similar economies to ours, workers are much more productive for each hour they work.

For example, full-time employees in Germany work 1.8 hours a week less than those in the UK but are 14.6% more productive. And in Denmark – the EU country with the shortest hours – workers put in over four hours less than UK workers, but productivity in Denmark is 23.5% higher.

The average full-time week in Britain has shortened by just 18 minutes over the past decade, nowhere near fast enough to close the gap with other countries. Even if the EU average stayed the same, at current rates of progress it would take 63 years for UK workers to get the same amount of free time as their European counterparts.

TUC General Secretary **Frances O'Grady** said:

"Britain's long hours culture is nothing to be proud of.

"It's robbing workers of a decent home life and time with their loved ones. Overwork, stress and exhaustion have become the new normal.

"It's time for a change. Other countries have shown that reducing working hours isn't only good for workers, it can boost productivity.

"As new technology changes our economy, the benefits should be shared by working people. That means shorter hours, more time with family and friends, and decent pay for everyone."

**ENDS**

**Notes to editors:**

- The TUC supports efforts to significantly reduce working time in the coming decades, including moves towards a typical four day week.

- We're also calling for four additional bank holidays a year, curbs on unpaid overtime, and stronger rights to flexible working and parental leave.
- We believe that government should actively enforce statutory paid annual leave, rest breaks and the right not to work more than 48 hours a week on average. These rights should be enforceable both by complaint to a government enforcement agency and by taking a case to Employment Tribunal.

### **Working time and productivity in mature EU economies**

Country	Average full-time employee hours 2018	Hourly productivity 2018
Denmark	37.7	123.5
Netherlands	39.0	118.5
Italy	39.0	90.6
Belgium	39.0	122.7
France	39.1	115.0
Ireland	39.4	162.7
Sweden	39.9	117.2
<i>EU-28 average</i>	<i>40.2</i>	<i>91.4</i>
Germany	40.2	114.6
Austria	41.2	111.4
UK	42.0	100.0

Sources: Eurostat Database - full-time employee hours Q4 2018. OECD

database GDP per hour worked 2018 expressed as an index (UK 100)

- The Trades Union Congress (TUC) exists to make the working world a better place for everyone. We bring together more than 5.5 million working people who make up our 49 member unions. We support unions to grow and thrive, and we stand up for everyone who works for a living.

## 4. Parliamentary material

### Oral Parliamentary Question

**21 January 2021**

**Gavin Newlands**

**(Paisley and Renfrewshire North) (SNP) [V]**

As the Leader of the House may be aware, I have been campaigning on the issue of fire and rehire since it arose with British Airways. We heard warm words then, and have done throughout the past months, from the Prime Minister and various Ministers, but there has been little action. Indeed, we hear that the Department for Business, Energy and Industrial Strategy is to review workers' rights, and that existing protections are under threat. With strikes ongoing or potential action at British Gas, Heathrow airport, BA Cargo and Go North West buses, may we please have a statement from the Secretary of State for Business, Energy and Industrial Strategy on fire and rehire and his wider intentions on workers' rights?

### **Mr Rees-Mogg**

The UK has a record on workers' rights of which it can be enormously proud, and there is every intention to maintain high workers' rights, which have been something to which the Conservatives have been committed throughout their history. It was, of course, Lord Shaftesbury who, when a Member of this House representing a Dorset constituency, pushed through the Factory Act 1847 to improve conditions in factories, so the Conservatives have always been doing such things and will continue to do.

On fire and rehire specifically, the Government have made it clear that businesses should not use it as a mechanism for cutting costs, but there are circumstances in which employment situations change in response to economic conditions.

### Workers' rights

**EDM (Early Day Motion)1387**

**20 January 2021**

This House expresses deep concern over the Government's decision to review the "working time directive" implemented by the Working Time Regulations 1998; notes that amongst other achievements the Directive gave UK workers a statutory right to paid annual leave for the first time; further notes that the Government is yet to present its promised Employment Bill to enshrine EU employment law in the UK post-transition; and calls on the Government to present its new Employment Bill to honour its pledge made in the Queen's speech that workers' rights would be "protected and enhanced".

**Written Parliamentary Question**

**15 January 2021**

**Marion Fellows**

**Scottish National Party**

To ask the Secretary of State for Business, Energy and Industrial Strategy if he will introduce legislative proposals to ensure workers' rights and employment standards are maintained after the transition period.

**Paul Scully**

**Conservative**

As an independent, sovereign nation we are now ideally placed to capitalise on the wealth of opportunities available to us. We want to go further than ever before to uphold workers' rights, support UK businesses and ultimately boost productivity in the UK.

Our high standards have never been dependent on EU membership, and this agreement recognises the importance of these employment standards, whilst retaining flexibility for us to tailor our approach to what works for the UK and maintaining our strong levels of protection.

**Written Parliamentary Question**

**Peter Grant**

**Scottish National Party**

**14 January 2021**

To ask the Secretary of State for Business, Energy and Industrial Strategy, what assessment he has made of the potential merits of bringing forward legislative proposals to amend the Employment Rights Act 1996 to prevent or discourage companies from (a) laying off and (b) rehiring staff on less favourable terms.

**Paul Scully**

**Conservative**

**Answered on**

**14 January 2021**

Despite the unprecedented package of support provided by this Government, some employers will need the flexibility to be able to offer different terms and conditions to ensure the sustainability of their business and avoid redundancies. However, using threats about firing and re-hiring as a negotiating tactic is unacceptable and if the employer changes any of the terms without the employee's agreement, the employee may be entitled to seek legal redress.

Laws are in place to ensure that there is fair procedure in redundancy and dismissal matters as well as contractual terms and conditions cannot discriminate unlawfully. If the employer changes any of the terms without the employee's agreement, the employee may be entitled to seek legal redress. Both employee and employers can contact ACAS,

who provide free advice to workers and employers to enable them to understand their rights and responsibilities.

## 5. Further reading

### Previous Library Briefings

[End of Brexit transition: Workers' rights](#), Dec 2020

[Fire and re-hire tactics](#): Opposition Day debate, Oct 2020

### Other reports

[Brexit and Workers' Rights](#), by N Countouris and K D Ewing, Institute of Employment Rights, 2019

[Working time in 2017–2018](#), Eurofound, 2019

[Working time developments in the 21st century: Work duration and its regulation in the EU](#), Eurofound, 2016

[The Impact of the Working Time Regulations on the UK labour market: A review of evidence](#), UK Dept for Business Innovation and Skills, 2014

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