Written evidence submitted by Ewan McGaughey[1] to The Employment Rights Public Bill Committee (ERB27).

Employment Rights Bill: briefing on 12 key reforms, recommended amendments, and 3 further policies

Summary

1. Give a right to regular (not zero) hours, variable by a 20% maximum, on fair notice: cut 24 pages to 240 words
2. Day one rights are the international norm, and probation must have no effect on fair dismissal rights
3. The minimum wage needs to be sectoral, regional and with pay scales, to not be a low pay economy
4. Fair pay in social care is a start, but powers are needed now for sectoral bargaining generally
5. Collective bargaining recognition should mean a duty to bargain on all terms and conditions
6. Make equality action plans include equal paid child care leave, and enforceable equal pay rights
7. End fire and rehire in full by removing broad or undefined exceptions
8. Electronic balloting should be enabled in the Bill, with details for regulations
9. Protection from unfair dismissal for union action, like detriment, should exist for all workers
10. Secondary action should be allowed for the purpose of achieving a good faith collective agreement
11. Guarantee facility time for workplace governance reps, pension trustees, and caseworkers
12. Expand the Fair Work Agency's remit to cover all labour rights laws

A. Enact 'single worker status' based on law, not contract, to end rights and tax evasion

B. Update the Companies Act and Pensions Act for workers on boards

C. Guarantee full employment in law by updating the Bank of England and Treasury's rules

Introduction

The Employment Rights Bill is a landmark designed to 'make work pay'. British workers suffered the longest fall in real wages since the industrial revolution,[2] and income inequality is back at pre-war levels.[3] Labour is cheap, capital is not being invested, and productivity is stagnant. This follows the 2008 bank crash, austerity, Brexit and Truss, but also the 'rules of the game' in the workplace tilting power ever further away from working people.

The Bill is a 'crucial first step' as the TUC says,[4] and 'a significant step forward' as the CBI puts it,[5] but will it achieve economic success, and fulfil human rights standards? Successful economies set a floor of universal labour rights for dignity at work, promote union rights to sector-wide bargaining and action, tackle inequality's structural causes, guarantee that at least one-third to one-half of directors on boards are worker-elected, and protect job security strictly with voice in governance. The Bill's current shape is not there yet, but can be improved with small yet impactful changes. This note sets out 12 key reforms in the Bill, explains their limits, adds three policies left out of the Bill, and suggests amendments based on data and the cutting-edge evidence.

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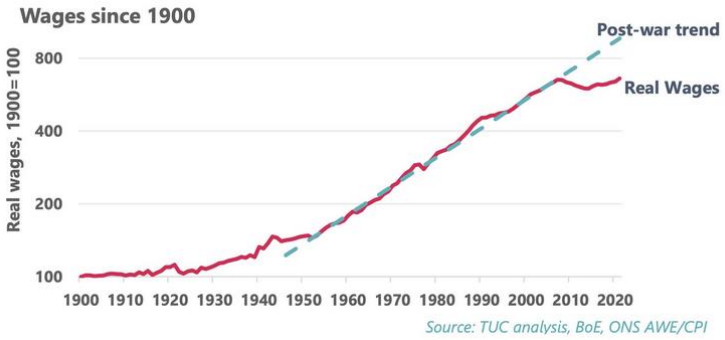
1 Professor of Law, King's College, London. Research Associate, Centre for Business Research, University of Cambridge.
2 TUC, *Raising Pay for Everyone* (2022)
3 World Incomes Database: https://wid.world/
4 P Nowak, *The Employment Rights Bill: a potential gamechanger* (14 October 2024)
5 CBI, *Employment Rights Bill: parliamentary briefing* (2nd reading, House of Commons, Monday 21st October 2024)

Figure 1: UK real wage cuts 2008 to 2022[6]



1. Give a right to regular hours, variable by a 20% maximum, on fair notice: cut 24 pages to 240 words

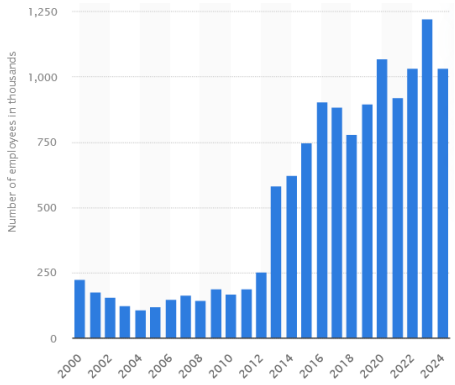
Everyone has the rights to fair pay and hours,[7] and these rights are undermined if the law lets employers vary hours unilaterally, and workers have no choice but to accept. One-sided power is restricted by law in contracts between businesses and consumers,[8] but not yet in employment. The Bill's attempt to tackle this problem, in clauses 1 to 6, covers 24 pages of byzantine complexity. They state in essence that employers should offer a 'guaranteed hours' contract at periodic intervals, and give notice of changes. It does not yet say when, with more Regulations of unknown volume still to come.[9] Clause 27BV may exempt agency workers.

A simpler approach is to build on the existing right to a written statement of a contract, including terms on hours.[10] Instead of reinventing the wheel, there are many working, existing models abroad to adapt. This could require, for instance, that employers specify regular hours in a contract, that default hours are those actually worked over 12 weeks, and that variable hours may be no more than 20% in a week with reasonable notice unless agreed.[11] This will ensure predictable pay through predictable hours. It may be achieved in 240 words, not 24 pages. Agency workers should not fall under different rules, as the current draft may allow. Rights are harder to enforce if rules are not succinct and clear. An even better step forward would be to place this right to regular hours within a new statutory model contract of employment, just as there is a model company constitution.[12] This would spell out default terms and rights in law, changeable by the parties, to limits in the law.

The Bill does not yet address the main cause of zero hours contract numbers soaring after 2012: Jobcentres requiring that workers accepted contracts without regular hours, or face benefit sanctions (Figure 2).[13]

6 TUC, *Raising Pay for Everyone* (2022)
7 Universal Declaration arts 23-24 European Social Charter 1996 arts 2 and 4
8 Consumer Rights Act 2015 Schedule 2, para 11
9 A new Employment Rights Act 1996 s 27BB
10 Employment Rights Act 1996 section 1(4)(c)
11 Compare Germany's Part time and Fixed Term Act 2000 §12. Teilzeit- und Befristungsgesetz 2000 §12, which in contrast sets a 20 hour per week default, rather than a 12 week reference period, and allows variation up 25% or down 20%.
12 Companies (Model Articles) Regulations 2008, made under the Companies Act 2006 s 19. Similar provision could made in ERA 1996.
13 R Mason, 'Jobseekers being forced into zero-hours roles' (5 May 2014) Guardian

Figure 2: *Number of employees on a zero hours contract* (2024) Statistia



To fix this, the Bill should restore jobseekers' right to refuse offers where regular working hours are not agreed.

Amendments

- Give a right to regular hours, variable by a maximum of 20%, on fair notice, reducing 24 pages to 240 words
- Create a statutory model contract of employment, applied by default, variable by consent, up to limits in law
- Restore a right to reject contracts without regular hours in Jobcentres; codify in the Jobseeker's Act 1995

2. Day one rights are the international norm, and probation must have no effect on fair dismissal rights

Qualifying periods for rights undermine universality, and entrench poor work, so the Bill is welcome in removing a 4 day wait to qualify for sick pay, 26 weeks for unpaid paternity or parental leave, and two years for unfair dismissal protection. A two year qualifying period removes around 20% of the UK workforce from protection, while 10% never have jobs longer than a year.[14] The Bill does not yet abolish the two year qualifying period for redundancy protection, which accrues at (just) 1.5 weeks' pay per year worked from age 41,[15] or the one month qualifying period for notice before dismissal.[16] It does not yet abolish the 26 week qualifying periods for pay during maternity leave or paternity leave, even though government funds it.[17] These qualifying periods should go.

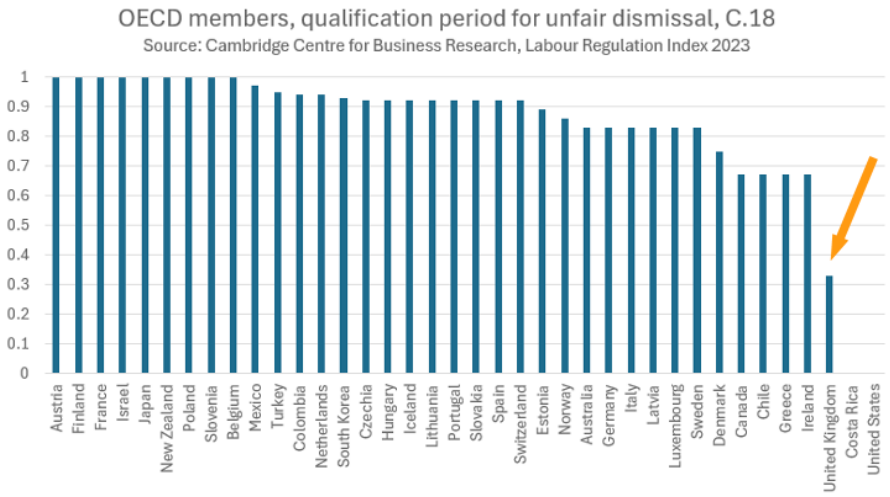
Schedule 2 creates a new Secretary of State power of 'modifying' the right to unfair dismissal protection during an 'initial period of employment', which the Secretary of State must still define. Currently, government moots a 9 month period of probation, and says this will mean a 'lighter touch' process, amending ACAS codes.[18]

Whatever this government considers fair, new powers for 'modifying' the law would give future hostile governments a free pass to tear up unfair dismissal protection by order, without Parliament. It is unnecessary because there is already a power to change ACAS dismissal codes to allow simpler processes for capability or conduct if people do not pass probation.[19] Since dismissal rights were first proposed, Tory governments raised

14 'One in ten workers never stay in the same job for more than a year' (22 May 2023) HR Director, n=2001. No official statistics yet.
15 ERA 1996 s 155. By s 162(2) below age 41 redundancy payments are 1 week's pay, and below age 22, half a week's pay.
16 ERA 1996 s 86. One week's notice after one month. Two weeks after two years. Three weeks after three years, and so on to 12 years.
17 SSCBA 1992 ss 164(2)(a) and 171ZA(2)(b). Government pays 90% of paid maternity leave for 6 weeks, and statutory £184.03 for 33 weeks. Statutory paid paternity leave of £184.03 lasts 2 weeks. Employers may pay more under a contract or collective agreement.
18 UK Government, *Next Steps to Make Work Pay* (October 2024) 10, [29]-[31]
19 Trade Union and Labour Relations (Consolidation) Act 1992 s 200

qualification times, while Labour governments put them down, bouncing back and forth like ping pong.[20] Wealthier, more equal countries in the OECD have no qualifying period, and do not let probation affect the need for fairness in dismissal. An unsuccessful probation based on capability or conduct is already a fair reason for dismissal. If the UK adopted a 9 month qualifying period, we would move from being the 3rd worst in the OECD to merely the 7th worst (to Canada's level, where many provinces have no protection).[21] This is shown in Figure 3, ranking OECD members with high protection at '1', and countries with no protection at '0'. We should join wealthier countries with day one rights, and remove the 'modifying' power in Schedule 2.

Figure 3: The UK's extreme lack of unfair dismissal protection



Amendments

- Remove power to modify unfair dismissal law, and use existing powers to change ACAS Codes for probation
- Remove qualifying periods for redundancy, notice before dismissal, and paid paternity and maternity leave

3. The minimum wage needs to be sectoral, regional and with pay scales, to not be a low pay economy

The right to fair pay includes an 'adequate standard of living', sharing in the 'fruits of progress' and working time related to increases in productivity.[22] Recognising this, the government wrote to the Low Pay Commission to require that it takes account of the 'cost of living'.[23] However, the National Minimum Wage Act 1998 section 2(8) currently prevents different wage scales based on areas, sectors, or types of job. This is a problem because although the UK has raised its minimum wage relative to average wages, an exponential number of people have had their wages crushed to the minimum, as fair pay scales have been lost. Britain is a poor, low pay economy.

20 E McGaughey, 'Unfair Dismissal Reform: Political Ping-Pong with Equality?' (2012) Equal Opportunities Review, Issue 226
21 Cambridge Centre for Business Research, *Labour Regulation Index: Dataset of 117 Countries, 1970-2022)* (2023) indicator C.18
22 Universal Declaration arts 23 and 25. ILO Declaration of Philadelphia 1944 art III(d). European Social Charter 1996 art 2(1)
23 DBT, Rachel Reeves and Jonathan Reynolds, 'Government commits to a genuine living wage for working people' (30 July 2024)

Figure 4: Minimum wage Britain in 2014, without most people on middle incomes

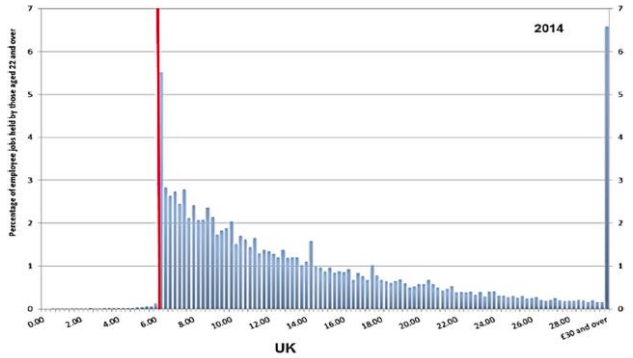


Figure 3.
Source: Richard Dickens and the Low Pay Commission (median around £12 p/h ≈ £24k pa).

The minimum wage cannot truly take account of the cost of living unless there can be higher pay than the national minimum in regions such as London or Scotland, as states and cities may have in the US (but not allow undercutting of the national minimum).[24] Further, where people's work creates more value, or with the experience in their job, there should be minimum pay scales that rise progressively as is found in the award system in Australia,[25] or under the English Agricultural Wages Board until its abolition in 2013. To achieve pay that matches the cost of living, and the value of work – to give people a sense that they can progress with work – section 2(8) should be removed, and both regional authorities and the Low Pay Commission should be empowered to set higher standards than the national minimum.

A problem related to low pay is that holidays were abolished for many workers in 2023, with the reincarnation of 'rolled-up' holiday pay, after human resource lobbying. This is where employers say to workers they get 12.07% pay for holidays "rolled" into their wage calculations, but do not actually get paid holidays. In practice employers reduce the wages they would otherwise pay by the same amount. This is unlawful in EU law, as it deprives vulnerable workers of the right to paid holidays.[26] It violates the post-Brexit EU-UK Trade and Cooperation Agreement, against weakening labour rights.[27] Regulations should make rolled-up holiday pay unlawful again, and an Act of Parliament should prevent a future hostile government abolishing holidays again.

Amendments

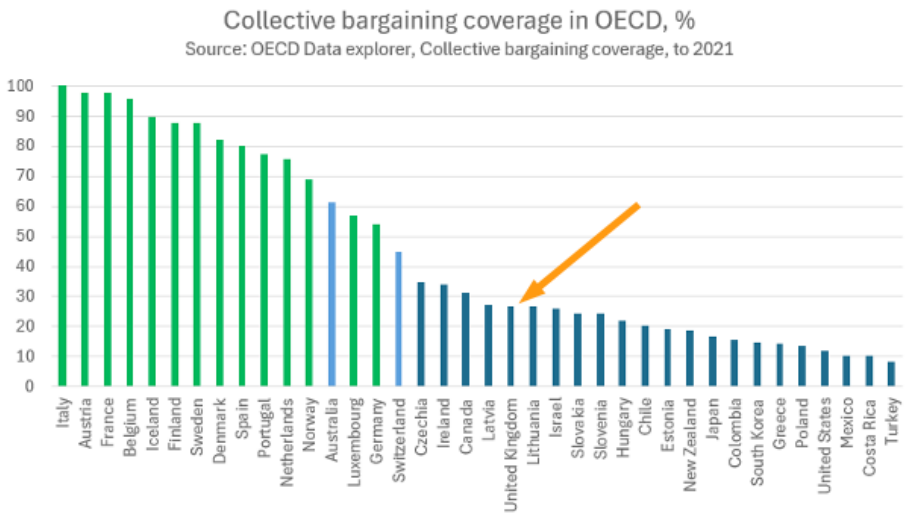
- Empower the regional authorities or the Secretary of State to set higher minimum wages in regions or cities
- Empower the Fair Work Agency to set minimum pay scales by sectors, job types, and experience
- Restore paid holidays for everyone by removing the loophole of so called 'rolled-up' holiday pay

24 United States, Fair Labor Standards Act, 29 USC §218(a)
25 Australia, Fair Work Act 2009 s 139
26 *Robinson-Steele v RD Retail Services Ltd* (2006) C-131/04 which would make SI 2023/1426 unlawful where it introduces Working Time Regulations 1998 reg 16A
27 EU-UK Trade and Cooperation Agreement 2021 art 387

4. Fair pay in social care is a start, but powers are needed now for sectoral bargaining generally

The right to fair pay is realised most effectively with full collective bargaining coverage. Since 2022, the European Union is requiring member states to implement plans to reach 80% cover.[28] The UK's cover is 28%, because most bargaining is done within single enterprises, not across sectors. Figure 5 shows bargaining coverage. Countries with mostly sector bargaining are in green. Countries with mostly enterprise bargaining are in blue.[29] Australia is unusual in that it has sector-wide pay and standard scales but enterprise bargaining, and Switzerland is a hybrid system (both in light blue).

Figure 5: The UK's low collective bargaining coverage



The Bill's welcome innovation is to launch a 'fair pay agreement' on pay and all terms in the adult social care sector. Unlike the clauses on zero hours contracts, clauses 29 to 44, in 8 pages, are admirably succinct and clear.

The Bill does not yet make provision for other sectors. One extra subsection could enable fair pay agreement processes to begin in any sector if an independent union or employer group requests it. There are already sector-wide agreements, albeit problematic with statutory support, for universities, schools, the NHS, engineering construction, and electrical contracting. The government has promised to assess where sector-wide bargaining outside care may work, and rightly stated it does not wish to interfere with existing collective agreements that work well, yet 72% of UK workers currently have nothing. A useful lesson comes from New Zealand, which passed a Fair Pay Agreement Act 2022 after five years of reviews and delays. The Act was repealed the moment the Labour party lost an election a year later. The former NZ Minister for Workplace Relations recommends that we 'move with speed and confidence and get [fair pay agreements] implemented' because they 'will prove popular' and become 'difficult for future conservative governments to unpick'.[30] To enable this, the power to begin sector-bargaining should be in the Bill, without the need for further legislation.

28 EU Adequate Wage Directive 2022 art 4. Note recital 16, 'sectoral and cross-industry level collective bargaining is an essential factor for achieving adequate minimum wage protection and therefore needs to be promoted and strengthened.'

29 Note that Australia is not accurately recorded in the OECD's statistics: Australia has only enterprise bargaining, with low coverage of just 15% in 2021. However most people are covered by 'awards' set across sectors by the Fair Work Commission, but these are not collectively bargained as such. Switzerland is a hybrid system with a mix of sector and enterprise bargaining.

30 Michael Wood, Former New Zealand Workplace Relations Minister (June 2024) Interview with the Institute for Employment Rights

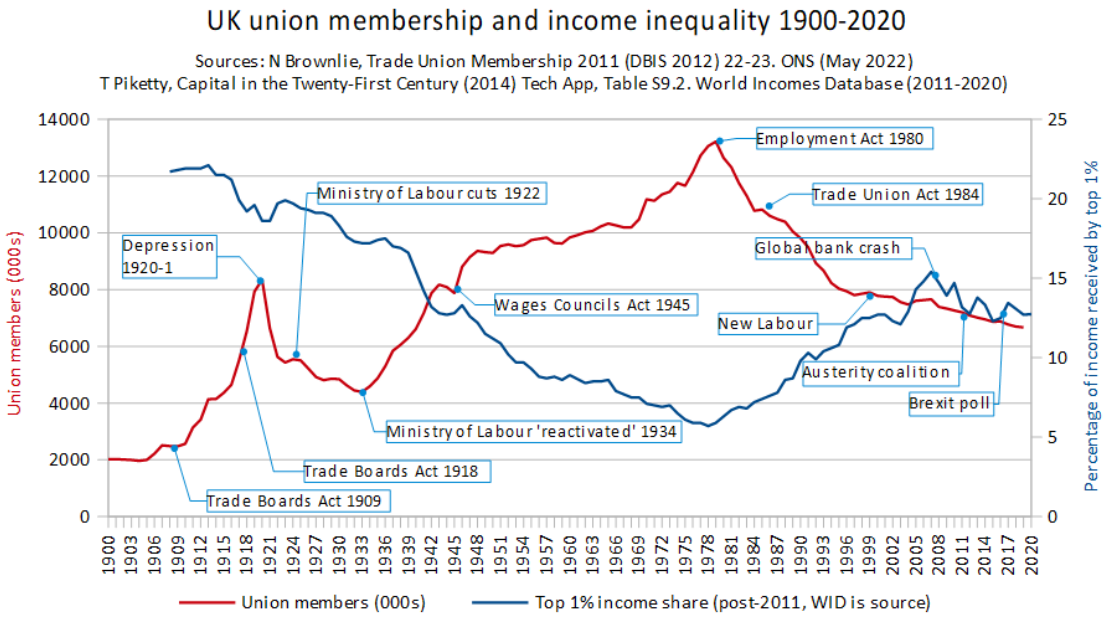
Amendment

- Enable fair pay agreements outside adult social care on application of independent unions or employers

5. Collective bargaining recognition should mean a duty to bargain on all terms and conditions

The right to collective bargaining in international law includes state support for machinery to ensure voluntary negotiations between employers and unions, across sectors.[31] The Bill's clause 47(3) ensures an employer will recognise a union to bargain if there is a ballot with majority support of workers, removing an arbitrary 40% voting threshold. The government may also use existing powers to allow e-ballots, which will get high turnout. This is vital because as collective bargaining declined, and union membership atrophied, income inequality has risen again to pre-World War Two levels (Figure 6).

Figure 6: The inverse relationship between inequality and union membership



The Bill does not yet address three key problems. First, recognition only applies to a workplace 'bargaining unit', not sectors, where effective bargaining must take place to reach international standards. Second, there is not yet a duty on employers to bargain in good faith with a view to agreement, by requiring meetings in a reasonable time, with managers that have decision authority. Third, there is currently only a right to recognition to bargain on 'pay, hours and holidays',[32] not all terms including equality, governance, and job security. This means recognition rules are narrower than to the right to strike,[33] which encourages employers to refuse to bargain, run down the clock, gamble with strike ballots, and destroy production and growth. The Bill should have a sectoral duty to bargain on all terms and conditions.

31 European Social Charter 1996 article 6(2)
32 TULRCA 1992 Sch A1, para 3(3)
33 TULRCA 1992 s 244

Amendments

- Require employers recognise unions for bargaining across sectors, not merely bargaining units
- Require employers to negotiate in good faith with a view to agreement
- Change recognition to cover bargaining on all workplace terms or issues of common interest

6. Make equality action plans include equal paid child care leave, and enforceable equal pay rights

The right to equal pay for equal work is universal,[34] and yet 50 years after the Equal Pay Act 1970, the UK gender pay gap remains at 14%. Women are paid on average 86 pence in the pound compared to men. The Bill has a welcome provision requiring employers with over 250 staff (covering about half the UK's workforce) to publish equality action plans to address the pay gap. The Bill does not yet require measures that address the pay gap.

The evidence shows that the top three structural causes of gender pay inequality are unequal parenting, outright discrimination, and occupational segregation.[35] These problems can be solved. First, paid child care leave should rise to the same levels for men and women, to ensure women are not forced to take on an unequal child care burden, and spend more time out of careers than men. Child care leave rights should (like holidays) not be tradeable, because private choice in 'shared parental leave' reproduces social stereotypes.[36] Leading workplaces give equal paid child care leave for at least 26 weeks, or 52 weeks, regardless of gender.[37]

Second, the Bill includes welcome provisions to extend protection from unfair dismissal after return from maternity (or other family) leave, because a systemic practice has developed of women, particularly on fixed term contracts, being told they will be redundant when they return from maternity leave, presumably because it is calculated, statistically, someone who has had a child is likely to have another.[38] In addition, the law should ensure sex-based pay claims are not harder than for other kinds of discrimination claims, by raising all time limits to claim to Tribunals to an extendable six months, and enabling a hypothetical comparator to bring a claim of less favourable treatment.[39] Third, to reduce occupational segregation, the law should support sectoral collective bargaining on all terms at work, including equality, with overall fair pay scales across a range of jobs.

Amendments

- Ensure equality plans raise and equalise paid maternity and paternity leave, and statutory rights do too
- Equalise pay claims with six month extendable time limits, and with hypothetical comparators
- Ensure fair pay agreements can begin in all sectors, and unions may bargain on all terms including equality

7. End fire and rehire in full by removing broad or undefined exceptions

'Everyone, as a member of society, has the right to social security',[40] which includes job security against arbitrary

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34 Universal Declaration art 23(2)

35 This is taken from Australia, which in this respect has a similar system and problems to the UK: Diversity Council of Australia and Workplace Gender Equality Agency, 'She's Price(d)less: The Economics of the Gender Pay Gap' (22 August 2019) 7

36 Department for Business and Trade, *Shared Parental Leave: Evaluation Report* (June 2023) 8, finding just a 5% take-up in shared leave

37 Equileap, *Gender Equality Global Report & Ranking* (2024) 31. Unicef, notably, provides equal paid leave at 52 weeks since 2020.

38 Employment Rights Bill clause 21

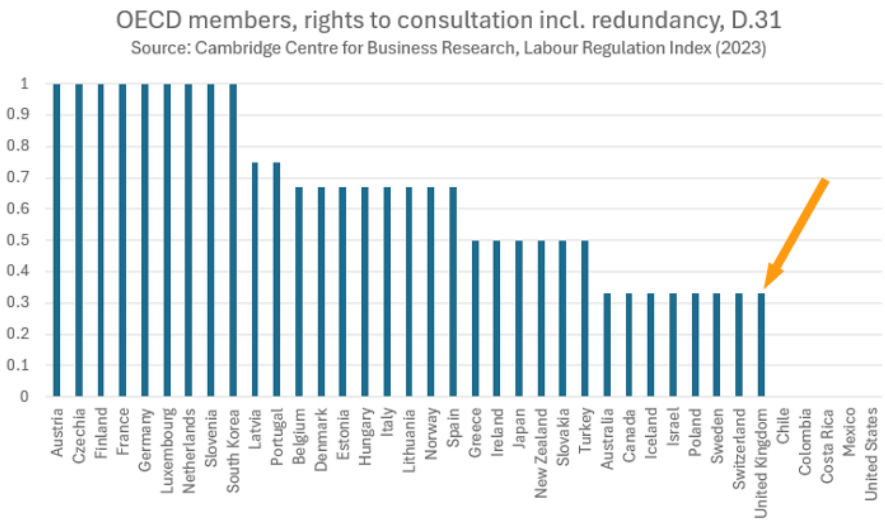
39 Equality Act 2010 ss 79 (real comparator) and 129 (6 months non-extendable). cf ss 19 (hypothetical) and 123 (3 months extendable)

40 Universal Declaration art 22

dismissals or unilateral changes to pay and working conditions. The Bill rightly restricts unilateral variations of contracts in clause 22, but then allows an exception if employers aim to 'mitigate the effect of, any financial difficulties' which they could not avoid, taking into account consultation with employees and unions.

This exception treats employment contracts differently to other contracts. Contracts may only be varied by consent, not unilaterally. The Bill should limit variations in financial difficulty to those responsible: to manager pay, to shareholder dividends or to bank interest. Treating workers' contracts differently is unjustified. The Bill also does not yet address employers using express clauses in contracts that reserve a power to vary all terms without limits, or the loophole that employers may drive through changes against employees for 'some other substantial reason' who then become unprotected from dismissal. Finally, the Bill does not yet address the weak duties of UK employers to consult with unions before dismissals including redundancies (Figure 7).

Figure 7: Weak consultation duties of UK employers



To fix these problems, and ensure workers cannot be fired and rehired, the Bill should treat employment contracts the same as others. It should further prevent contracts varying other employment terms, unless a union or workers agree. It should clarify the definition of 'some other substantial reason' for dismissal, as suggested by the former president of the UK Supreme Court, to be restricted to misconduct outside the contract, not opposing unilateral variations.[41] The essential problem is the lack of collective voice to negotiate flexible responses in changing businesses. Existing powers may amend the ACAS code to require that unions or elected workers must approve dismissals, as is found in wealthier countries,[42] to ensure employers consult and negotiate.

Amendments

- Remove exceptions for employers to change employee contracts, including under financial pressure, but instead make explicit a power to cut manager pay, cease dividends to shareholders, or renegotiate bank loans
- Define 'some other substantial reason' as misconduct outside the contract, not rejecting unilateral variations

41 *Reilly v Sandwell MBC* [2018] UKSC 16, [32] per Lady Hale
42 e.g. Germany's Work Constitution Act 1972 §§87 and 102

- Update the ACAS codes to ensure unions or elected worker bodies must approve dismissals

8. Electronic balloting should be enabled in the Bill, with details for regulations

The right to fair pay depends on the right to take action, because collective bargaining without the right to strike ends up as 'collective begging'.[43] The Bill expresses a welcome endorsement of electronic balloting for strike action referring to a power in force, but never used, in the Employment Relations Act 2004 section 54. Ballots by post are mandated for strikes, union recognition, and union elections,[44] even though it suppresses voter turnout. The Bill does not yet state that electronic ballots are allowed, rather than leaving this to further regulations from the Secretary of State. The Bill should simply enact the right, because even if the law stays discretionary, a future hostile government can take e-ballots away without Parliament, grinding union rights for fair pay to a halt again.

Amendment

- Make the right to secret, secure, and verifiable e-ballots explicit in section 56 of the Bill

9. Protection from unfair dismissal for union action, like detriment, should exist for all workers

Everyone's right to freedom of association includes being free from detriment or dismissal by employers. The UK has lost cases on this issue in the European Court of Human Rights,[45] yet our legislation still restricts the right to protection from unfair dismissal to a narrow scope of 'employees'. By contrast, protection against detriment exists for the larger group of 'workers', and even this group currently excludes some of the most vulnerable people in our workforce, for platforms.[46] The Bill does not make the simple change of ensuring protection against unfair dismissal for industrial action applies to all workers.[47] The Bill also does not yet enact a 'single worker status' nearly all other countries have, defined by law and bargaining power, not a contract. It should, because this limit of protection is openly contrary to our duties under the European Convention.

Amendments

- Ensure all workers have protection for dismissal for union action, along with a single worker status

10. Secondary action should be allowed for the purpose of achieving a good faith collective agreement

The right to take collective action is a universal right because it is the vanguard of democracy and a final weapon against dictatorship. It is enshrined for unions in case of any 'conflict of interest' for 'ensuring the effective exercise of the right to bargain collectively'.[48] All wealthier, more equal countries protect the right to take collective action, not only against a direct contractual employers, as in the UK, but also in solidarity with workers across an employer's corporate group, in solidarity with workers for competitors, or across sectors, in order to

43 Jules Kolodney quoted in LJ Siegel, 'The unique bargaining relationship of the New York City Board of Education and the United Federation of Teachers' (1964) 1 Industrial & Labor Relations Forum 1, 46

44 TULRCA 1992 ss 51 (elections), 226 (strikes) and Sch A1 para 25(4) (recognition)

45 *Wilson v United Kingdom* [2002] ECHR 552

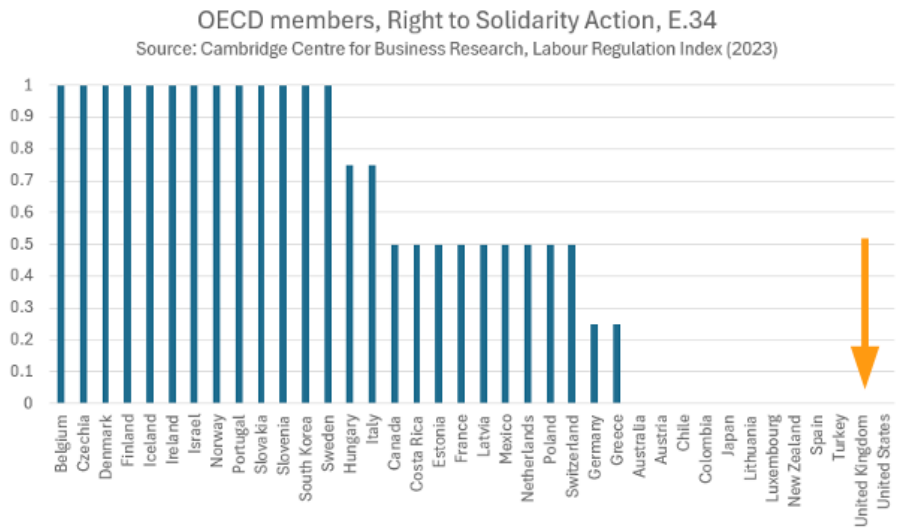
46 This is the result of the 'Deliveroo' decision, saying riders were not even workers: *IWGB v CAC* [2023] UKSC 43

47 Introducing a new TULRCA 1992 ss 236A and 238A

48 European Social Charter 1996 art 6

get a collective agreement. The UK's ban on solidarity action puts it at the bottom of the OECD in this respect, alongside mostly poorer or unequal countries.

Figure 8: The UK's weak rights to collective action



Because the Bill envisages sector-wide collective bargaining, it should enable sector-wide action for the purpose of achieving sector-wide collective agreements.

Amendment

- Replace the prohibition on secondary action with the right to take action to get a collective agreement

11. Guarantee facility time for workplace governance reps, pension trustees, and caseworkers

To carry out union functions, and protect workers' rights, representatives need paid time off, known as 'facility time'. The Bill includes welcome provision for equality representatives to receive facility time, on top of existing rights for officials who conduct collective negotiations and consultation. Yet this leaves three gaps in facility time.

First, workers become directors on boards, performing vital governance functions, for instance under the UK Corporate Governance Code, the National Health Service Act 2006, in schools or universities. Second, member-nominated pension trustees or directors are chosen by unions or elected by beneficiaries under the Pensions Act 2004 to co-manage pension savings. Third, individual caseworkers in most union branches ensure that rights are upheld without going to Employment Tribunals, saving the system time and money. The Bill should recognise these vital roles and extend facility time, to include governance, pension and casework training.

Amendments

- Guarantee facility time for worker directors, pension trustees, and casework, plus the right to training

12. Expand the Fair Work Agency's remit to cover all labour rights laws

Rights without a remedy are not really rights at all, and that is why in international law rights must be enforced.[49] The Bill sets up a welcome new structure for the Secretary of State to delegate enforcement of 'labour market legislation' to a public body, to be called the 'Fair Work Agency'. The Fair Work Agency has powers to enter premises, seize documents, accept undertakings, and apply to court for orders in relation to a 'labour market offence'. This only covers offences in criminal law, not breaches of civil rights that affect the vast majority of workers, such as the right to a written contract, a fair dismissal, paid child care leave, or equal treatment. Schedule 4 contains the list of laws,[50] and allows the Secretary of State to add to the list. It does not yet include the Trade Union and Labour Relations (Consolidation) Act 1992, Employment Rights Act 1996, or Pensions Act 2008 that contain other key offences, such as P&O Ferries' failure follow redundancy laws in its fire and rehire strategy.

Amendment

- Empower the Secretary of State to pursue civil enforcement, as well as actions for all criminal offences

A. Enact 'single worker status' based on law, not contract, to end rights and tax evasion

All labour rights depend on falling within the scope of coverage, yet the UK has a three-tier system, which enables employers to contract out of rights. Currently 'employees' have most rights, a smaller group of non-employee 'workers' have fewer rights, and there are limited rights for the genuinely self-employed. Statute does not give clear definitions, leaving workers to rely on court cases that have contradicted each other at least back to 1983.[51] Currently, courts define 'employee' and 'worker' to let employers to insert contract terms that negate rights, such as denying an ongoing duty to provide work, or enabling workers to substitute others at work. This enables multi-billion corporations such as Deliveroo, Uber, Amazon or City solicitor firms, to evade rights and tax. This puts the UK at the bottom of the OECD, worsened in recent UK Supreme Court decisions.[52]

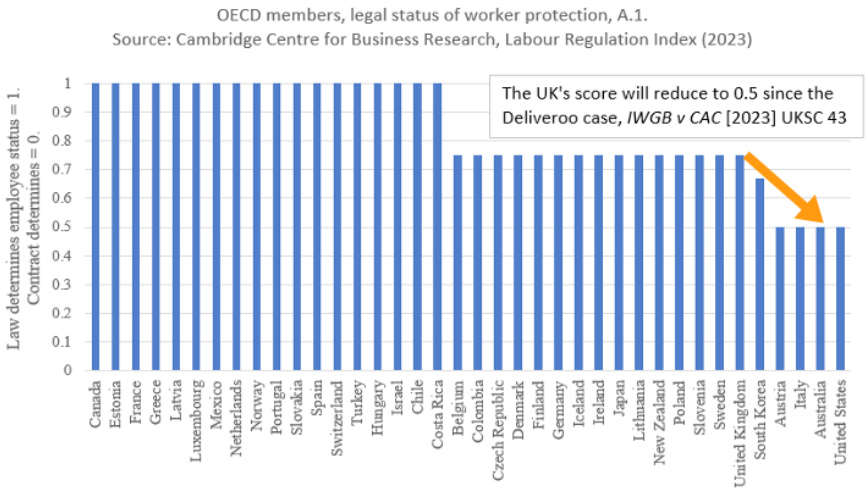
49 European Convention on Human Rights 1950 art 13

50 Employment Agencies Act 1973, Social Security Contributions and Benefits Act 1992 Part 11 (sick pay), Employment Tribunals Act 1996 Part 2A (failure to pay sums), National Minimum Wage Act 1998 (records, underpayment, detriment), Working Time Regulations 1998 (leave and rolled-up holiday pay), Gangmasters (Licensing) Act 2004, Modern Slavery Act 2015 and ERA 2025.

51 e.g. *O'Kelly v Trusthouse Forte plc* [1983] ICR 728 (worker loses, contract test) or *Nethermere Ltd v Gardiner* [1984] ICR 612 (worker wins, law). *Carmichael v National Power plc* [1999] UKHL 47 (worker loses, contract) or *Autoclenz Ltd v Belcher* [2011] UKSC 41 (worker wins, law). *Uber BV v Aslam* [2021] UKSC 5 (worker wins, law test) or *IWGB v CAC* [2023] UKSC 43 (worker loses, contract test).

52 *IWGB v CAC* [2023] UKSC 43 (enabling employers to deny worker status with a substitution clause). *HMRC v Professional Game Match Officials Ltd* [2024] UKSC 29 (approving a line of cases back to *O'Kelly* that employers may deny that they have offered to give ongoing work, and so evade employee status).

Figure 9: The UK's bottom ranking for scope of rights protection in the OECD



The Bill does not contain a 'single worker status', as the government promises to consult on 'a simpler framework that differentiates between workers and the genuinely self-employed'. The issues are the best known in employment law, because they are the first topic discussed, and easily soluble. For example, the EU's new rules on platform work say an employment relationship must be defined by law and collective agreements, not contracts,[53] which are usually written by employers and workers are told to 'take it or leave it'. The International Labour Organisation's Employment Relationship Recommendation, 2006 (no 198) requires that rules 'ensure effective protection to workers especially affected by the uncertainty' of the scope of rights, and take into account workers' dependence or unequal bargaining position.[54]

Billions of pounds in tax and National Insurance Contributions will be raised if sham-self-employment is ended and a single worker status is restored. Uber, Deliveroo and their competitors probably account for over £1.1 billion in lost employer NICs receipts each year, which in 2024 stands at 13.8% of each wage (rising to 15% after the Autumn budget). In addition, law firm partners, who currently count as workers, but not employees in the same way as company directors, probably avoid paying over £1.2 billion each year in employer NICs. This contradicts the progressive principle that as people get better jobs within firms, and are paid more, they should pay more tax, not pay less tax than the staff they employ.[55] A further desirable reform is to equalise the rate of National Insurance paid by employees (currently 8%) and the self-employed (6%) so that there is no longer a 2% incentive on workers to go along with sham-self-employment from their employers.

Amendments

- Restore single worker/employee status, defined purposively by control, reality, and power, not the contract
- End the 2% disparity between employee and self-employed National Insurance to remove sham incentives

53 Platform Work Directive 2024 art 4(1) 'by the law, collective agreements' and Court of Justice cases, (2) 'guided primarily by the facts relating to the actual performance of work' and 'irrespective of how the relationship is designated in any contractual arrangement'. Recitals 31 and 39 highlight the 'power imbalance' between workers and platforms.

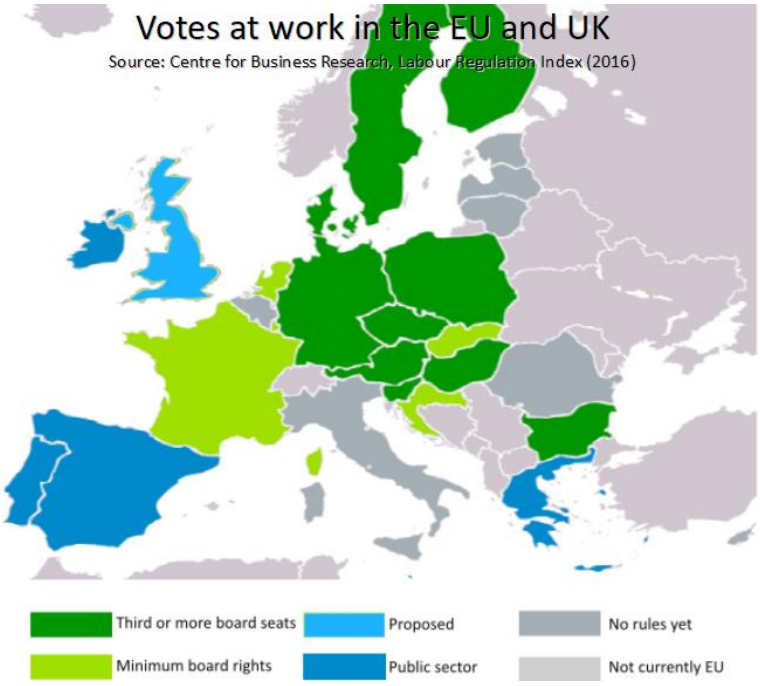
54 ILO, Employment Relationship Recommendation, 2006 (no 198) Preamble, and sections 5 and 12

55 A Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) Book V, ch 2, part II, on tax in proportion to revenue

B. Update the Companies Act and Pensions Act for workers on boards

There is a fundamental 'right to take part in the determination and improvement of the working conditions and working environment',[56] in addition to collective bargaining and consultation, that means workers on boards of directors. The UK is in a minority of OECD countries that have no general laws for worker directors, which usually require one-third to one-half worker-elected directors. The UK has isolated laws requiring worker-elected directors in some universities, schools, NHS foundation trusts, and the UK Corporate Governance Code 2024 requires listed companies to 'comply or explain' with three worker 'engagement' options, which may include a worker-director. The Pensions Act 2004 requires that at least one-third of pension trustees or directors, who manage workers' capital, must be union or beneficiary/worker elected. The Secretary of State may raise this threshold to one-half and remove exemptions for multi-employer plans, contract pensions, and NEST.

Figure 10: Worker director laws in Europe



The Bill does not yet contain coherent requirements for workers on boards, although a new Corporate Governance Bill is promised, and Labour's Manifesto promised to give 'stronger voice in the governance and strategic direction of the company' at the Royal Mail, to 'make work pay', to 'improve security in retirement, as well as to increase productive investment in the UK economy'.[57] The evidence suggests that rules for workers on boards lead to up to 1.5% increase in wages, fewer redundancies, and increased job satisfaction.[58] With other labour rights they lead to higher productivity, higher employment, lower unemployment, and a higher share of labour income.[59] They are also strongly associated with greater innovation, measured by patent filings.[60] They are

56 European Social Charter 1996 art 22
57 *Change: Labour Party Manifesto* (2024) 33 and 79
58 S Jaeger, S Noy and B Schoefer, 'What does codetermination do?' (2021) IZA DP No. 14465
59 Z Adams, L Bishop, S Deakin, C Fenwick, SM Garzelli and G Rusconi, 'The economic significance of laws relating to employment protection and different forms of employment: Analysis of a panel of 117 countries, 1990–2013' (2019) 158 International Labour

likely to lead to less conflictual industrial relations, with fewer strikes, and more trust. The UK should amend the Companies Act 2006 so that one-third of company boards with over 250 staff are worker-elected, raisable to one-half, and change the Model Articles for companies so that there is the same default in company start-ups.

Amendments

- Require one-third of worker-elected directors in companies with over 250 staff, raisable to one-half
- Change the default rules in company Model Articles to require worker-elected directors
- Raise member-nominated trustees in pensions to one-half using existing powers, and remove loopholes

C. Guarantee full employment in law by updating the Bank of England and Treasury's rules

Labour law as a system only functions when there are jobs, which is why the right to work and full employment are universal rights.[61] The UK's unemployment rate is high historically, with under-employment and low pay even worse. Unlike other countries with better job security, the UK is more prone to sharp spikes of unemployment in crises, such as the global bank crash, or Covid. Full employment means around 1 to 2% unemployment, at full hours and fair wages.[62] However this has never been defined in law, leaving the door open to evidence-free theories that there is a 'natural rate of unemployment' and that if government uses fiscal or monetary to go below this then 'inflation accelerates' beyond control.[63] There was a brief duty on government to report progress to full employment, but this lapsed at the 2017 election.[64]

The Bill does not yet include reforms for full employment, although Labour's Manifesto is throughout committed to creating 'good jobs and productivity growth', and to 'make work pay'. First, as well as restoring a reporting duty, full employment should be defined in law to mean 1 to 2% unemployment, with fair wages and hours. Second, the monetary policy remit in the Bank of England Act 1998 should be updated to place the goals of price stability, maximum employment and growth on an equal foot, as they are for the United States Federal Reserve.[65] Third, 'price stability' should be defined in law to take account of escalating wage inequality, escalating housing costs, and volatile fossil fuels, all of which undermine price stability, and reduce real wages.

Amendments

- Restore government's duty to report on full employment, defined by 1 to 2%, with fair wages and hours
- Place the Bank of England's goals for price stability, maximum employment and growth on an equal foot
- Define price stability in law to take account of wage inequality, all housing costs, and fossil fuel dependence

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Review 1

60 VV Acharya, R Baghai-Wadji and KV Subramanian, 'Labor laws and innovation' (2013) 56(4) JLE 997

61 Universal Declaration art 23. European Social Charter 1996 art 1(1)

62 W Beveridge, *Full employment in a free society* (1944) 18, having necessary hours 'at fair wages'

63 FA Hayek, 'Full Employment, Planning and Inflation' (1950) 4(6) Institute of Public Affairs Review 174. M Friedman, 'The Role of Monetary Policy' (1968) 58(1) AER 1, 10.

64 Welfare Reform and Work Act 2016 s 1

65 Bank of England Act 1998 s 11. cf Federal Reserve Act of 1913, 12 USC §225a

Two page summary: key proposals, and evidence-based amendments in bullet points

1. Zero hours contracts should be replaced with regular hours, and maximum 20% variation, with notice

- Give a right to regular hours, variable by a maximum of 20%, on fair notice, reducing 24 pages to 240 words
- Restore a right to reject contracts without regular hours in Jobcentres; codify in the Jobseeker's Act 1995

2. Day one rights are the international norm, and probation must have no effect on fair dismissal rights

- Remove power to modify unfair dismissal law, and use existing powers to change ACAS Codes for probation
- Remove qualifying periods for redundancy, notice before dismissal, and paid paternity and maternity leave

3. The minimum wage needs to be sectoral, regional and with pay scales, to not be a low pay economy

- Empower the regional authorities or the Secretary of State to set higher minimum wages in regions or cities
- Empower the Fair Work Agency to set minimum pay scales by sectors, job types, and experience
- Restore paid holidays for everyone by removing the loophole of so called 'rolled-up' holiday pay

4. Fair pay in social care is a start, but powers are needed now for sectoral bargaining generally

- Enable fair pay agreements outside adult social care on application of independent unions or employers

5. Collective bargaining recognition should mean a duty to bargain on all terms and conditions

- Require employers recognise unions for bargaining across sectors, not merely bargaining units
- Require employers to negotiate in good faith with a view to agreement
- Change recognition to cover bargaining on all workplace terms or issues of common interest

6. Make equality action plans include equal paid child care leave, and enforceable equal pay rights

- Ensure equality plans raise and equalise paid maternity and paternity leave, and statutory rights do too
- Equalise pay claims with six month extendable time limits, and with hypothetical comparators
- Ensure fair pay agreements can begin in all sectors, and unions may bargain on all terms including equality

7. End fire and rehire in full by removing broad or undefined exceptions

- Remove exceptions for employers to change employee contracts under financial pressure, and make explicit the power to cut manager pay, cease dividends to shareholders, or renegotiate bank loans
- Define 'some other substantial reason' as misconduct outside the contract, not rejecting unilateral variations
- Update the ACAS codes to ensure unions or elected worker bodies must approve dismissals

8. Electronic balloting should be enabled in the Bill, with details for regulations

- Make the right to secret, secure, and verifiable e-ballots explicit in section 56 of the Bill

9. Protection from unfair dismissal for union action, like detriment, should exist for all workers

- Ensure all workers have protection for dismissal for union action, along with a single worker status

10. Secondary action should be allowed for the purpose of achieving a good faith collective agreement

- Replace the prohibition on secondary action with the right to take action to get a collective agreement

11. Guarantee facility time for workplace governance reps, pension trustees, and caseworkers

- Guarantee facility time for worker directors, pension trustees, and casework, plus the right to training

12. Expand the Fair Work Agency's remit to cover all labour rights laws

- Empower the Secretary of State to pursue civil enforcement, as well as actions for all criminal offences

A. Enact 'single worker status' based on law, not contract, to end rights and tax evasion

- Restore single worker/employee status, defined purposively by control, reality, and power, not the contract
- End the 2% disparity between employee and self-employed National Insurance to remove sham incentives

B. Update the Companies Act and Pensions Act for workers on boards

- Require one-third of worker-elected directors in companies with over 250 staff, raisable to one-half
- Change the default rules in company Model Articles to require worker-elected directors
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C. Guarantee full employment in law by updating the Bank of England and Treasury's rules

- Restore government's duty to report on full employment, defined by 1 to 2%, with fair wages and hours
- Place the Bank of England's goals for price stability, maximum employment and growth on an equal foot
- Define price stability in law to take account of wage inequality, all housing costs, and fossil fuel dependence

November 2024.