Written evidence submitted by The National Union of Rail Transport and Maritime Workers (RMT) to The Employment Rights Public Bill Committee (ERB53).

Introduction

The National Union of Rail, Transport and Maritime Workers (RMT) organise over **80, 000 workers** across the transport and offshore energy sector. We welcome the Employment Rights Bill and the Labour government's commitment to deliver its Make Work Pay policies in full which will undoubtedly strengthen the rights of our members at work, as well as extending collective bargaining coverage for workers across the industries where our members work.

This written evidence outlines the measures on the face of the Bill affecting our members in the transport and offshore energy sectors, covering rail services, rail infrastructure, road transport, shipping and offshore energy. It also covers the areas where the government has committed to amend its own legislation.

The areas where we provide written evidence are not exclusive, given the fast pace of legislation. This submission supplements the oral evidence provided by RMT General Secretary Mick Lynch to members of the Public Bill Committee on 26th November.

PART 1 – EMPLOYMENT RIGHTS (Zero Hours, Fire & Rehire/Unfair Dismissal)

Zero Hours Contracts

Transport workers in infrastructure are employed on a variety of precarious contracts that place economic and safety risk disproportionately on workers: casual workers, zero hours contracts, bogus self-employment, agency work.

- A significant amount of Network Rail's maintenance, and especially renewals and enhancements work is performed by workers on zero hours contracts, engaged through networks of sub-contractors, employment agencies or forms of self-employment, bogus and genuine. This workforce is estimated at around 100,000 Sentinel card holders, qualified to work safely on the railway.[1] RMT estimates that a substantial amount, possibly a majority, of those workers not directly employed by Network Rail but by its sub-contractors are on some form of zero hours contract. It's important to emphasise that these are rail workers, dependent almost exclusively on their work for Network Rail. In addition, Network Rail, employ contingent labour via agencies directly. In 2022, it spent £24 million on contingent labour from these agencies, an increase of 73% on the previous year.

[1] https://info.railsentinel.co.uk/about/

- London Underground engages agency workers to work on its track maintenance via two agencies, Morson and Cleshar. In addition, some Train Operating Companies engage workers through agencies to provide labour on station gatelines, effectively on zero hours contracts.
- In the offshore oil and gas sector, the growing use of 'ad hoc' workers since the pandemic is a serious concern. These workers are engaged on an ad hoc basis by offshore contractor companies with no guarantee of minimum hours. Sometimes they are required for three days and sometimes three weeks. Whilst the worker knows the length of the engagement before transport to the offshore workplace by helicopter, there is no subsequent guarantee of employment, either in terms of hours or rostered time offshore.
- This is in contrast to 'core workers' offshore who are rostered to work shifts in the North Sea on a regular basis, for example the controversial 3-weeks on 3-weeks off shift pattern which is banned in the Norwegian offshore sector but are engaged on a self-employed basis in the majority of cases. The government must extend zero hours measures to tackle ad hoc agency contracts offshore and address self-employment in the offshore energy sector as part of the wider Make Work Pay agenda.
- In the maritime sector, RMT regard 'voyage only' contracts as a form of zero hours work because the seafarer has no guarantee of subsequent employment at the end of the contract. Voyage only contracts are becoming more common in the shipping industry, as a result of the actions of P&O Ferries in dismissing and replacing their directly employed seafarers with an agency crew employed through an agency registered in Malta. Under the Maritime Labour Convention, these voyage only contracts could be as long as eleven months. Other employers, such as Irish Ferries and operators of charter vessels also use voyage only contracts which put seafarers at a significant risk of fatigue and wider exploitation that results from the structural disadvantage in a seafarer labour market where voyage only contracts are legal and poorly regulated.

Transport is a safety critical industry and the use of zero hours contracts, agency work and other forms of precarious work represent a serious safety risk.

- In 2013, the Office of Rail and Road's Chief Inspector of Railways Ian Prosser acknowledged in a letter to RMT that "the widespread use of 'notionally self-employed' staff on zero hours contracts …has a generally negative effect on the attitudes and behaviour of those involved, which is not conducive to the development of a safe railway."
- In 2019, Network Rail was advised by the RAIB to tackle its use of zero hours contracts after a worker was struck by a train and killed between London Bridge and Three Bridges. The RAIB said, "When workers are employed on a casual basis on zero hours contracts, there can be great pressure for them to try and

juggle multiple jobs to make ends meet. The possible effects of such patterns of employment on fatigue and fitness for work are significant. We are therefore recommending that the railway industry reviews the way it manages the use of staff on zero hours contracts, to minimise the risk associated with this pattern of work".

- Exactly the same issues were raised by the Rail Accident Investigation Board in relation to agency workers after a worker was struck by a Tube train at Chalfont Latimer in 2022. On 15th April 2022, a worker engaged by Morson was struck by a train at Chalfont Latimer, narrowly escaping with her life. The subsequent RAIB report highlighted critical issues with the use of agency employment in safety-critical work.
- RMT conducted a survey of its members at Morson and Cleshar between 23 and 26 May 2023. 63% of respondents to the survey agreed or strongly agreed with the suggestion by the RAIB that they would feel *uncomfortable raising an issue for fear of losing work*.

For these reasons, we welcome the fact that a Labour government is taking action to drastically cut the number of workers on ZHCs, although we continue to call for an outright ban on these insidious employment contracts. Sufficient flexibility is provided in the labour market by appropriately regulated employment agencies, including for young people forced to work in temporary jobs whilst they juggle parental or caring responsibilities, or to pay for the eye watering fees and living costs required to complete a university degree.

We support the 12 week reference period for the offer of a guaranteed hours contract but are concerned that this has not been put on the face of the Bill. RMT's response to the current consultation on extending zero hours measures to agency workers supports a 12-week reference period. It is important that this is preserved, as there is a majority support of this option amongst trade unions.

We also believe that the 12-week reference period should be added to the face of the Bill by government amendment, following the closure of the consultation on 2nd December, whilst the Bill is in the Commons. We also share some of the concerns of the Institute of Employment Rights expressed in their evidence concerning potential loopholes for employers to exploit in the form of the use of 'limited term contracts', 'umbrella companies' and agency workers.

We welcome the fact that the government has conducted a separate consultation on how to extend the right to be offered a guaranteed hours contract to agency workers and have submitted our own response. Compared to workers in general, agency workers are at greater risk of low pay, poor working conditions and poor job security – the conditions

that the government recognises have been holding our economy back.[2] The Resolution Foundation calculated the agency worker pay penalty as £400 a year, and found widespread experiences of poor and sometimes unlawful practices.[3] This pay penalty is likely to be worse for agency workers on zero hours contracts (ZHCs), as median hourly pay for ZHC workers is so low.[4]

In our response we noted that

- The end hirer must be responsible for the guaranteed minimum hours offered to the agency worker based on a 12 week reference period.
- In the event of an agency worker transferring from temporary to permanent employment with the same end hirer, no transfer fee should apply.
- There should be equal liability on the employment agency and the end hirer for providing a reasonable notice of shifts to workers.
- As the employer, the employment agency should be responsible for paying short notice cancellation or curtailment payment to an agency worker. This cost should not be passed on to the end hirer as disputes will delay payment of the compensation to the worker.
- The Employment Tribunal process must not be the only remedy for agency workers who are entitled to compensation when a shift is cancelled at short notice.

The Fair Work Agency should be responsible for compliance and enforcement of these measures for agency workers, including in the maritime and offshore sector where employment agencies regularly supply workers, including during peak seasonal periods in the ferry sector.

The Employment Agency Standards Inspectorate's budget for 2023-24 was a measly £1.52m and only 34 staff were responsible for a sector that facilitates bogus self-employment, zero hours contracting and the use of umbrella companies. EASI does not even cover employment agencies in the maritime sector, so there are no powers whatsoever, at present, to tackle overseas agencies. This includes those agencies established with the specific purpose of supplying cheaper workers to replace UK

[2] https://www.gov.uk/government/publications/next-steps-to-make-work-pay/next-steps-to-make-work-pay-web-accessible-version

[3] https://www.resolutionfoundation.org/publications/the-good-the-bad-and-the-ugly-the-experience-of-agency-workers-and-the-policy-response/

[4] The government's impact assessment for the right to guaranteed hours includes the following analysis: January – March 2024 LFS data suggests that median hourly pay on zero-hour contracts was £10.75, for variable hour workers (excluding zero-hour contracts) was £11.70 for agency workers £15.38 compared to £16.18 across other forms of work.
https://assets.publishing.service.gov.uk/media/67124fc99cd657734653d7d9/Impact_assessment_zhcs_right_to_guaranteed__hours.pdf

workers covered by collective bargaining agreements, as happened in the P&O Ferries case.

The work to deliver the definition of single employment status also has to start as soon as possible. The measures in the Budget statement to tackle umbrella companies are also welcome and significant in the context of zero hours measures in the Bill and agency workers. RMT believe that umbrella companies should be outlawed as they serve no practical purpose for workers or end hirers. This prohibition should be seen in employment terms as well as through the tax system.

It's vital to ensure that employers do not have the option of simply migrating to a new or under-regulated contract form and reproducing the same risks for workers. This makes it also makes it vital to bring forward the single worker status legislation as fast as possible to prevent an expansion in the use of bogus self-employment, umbrella companies and so on as ZHCs and Agency work are better regulated.

We note that the Institute of Employment Rights has proposed a New Clause to set the law around employment status. We believe that the IER's proposal should form the basis of early consultation on singe employment status, with regulations introduced in early 2025. This would be in line with the government's commitment[5] to consult over longer term reforms, including a single 'worker' status from Autumn 2024.

Fire and Rehire and Unfair Dismissal

Clause 22 of the Bill tackles the growing menace of fire and rehire/replace that escalated considerably in the P&O Ferries scandal in March 2022, when 786 directly employed UK seafarers were summarily dismissed via an online pre-recorded message from a P&O executive and replaced on the same day by cheaper agency crew.

We strongly welcome the Labour Government's approach to closing as many loopholes as possible and to introducing deterrents. This is in marked contrast to the previous government, when ministers claimed that there would be consequences "If they [P&O Ferries] have breached UK notification law, there are criminal sanctions and unlimited fines."[6] And the Prime Minister at the time made spurious claims about legal action: "We will take 'em [P&O Ferries] to court, we will defend the rights of British workers."[7]

The following day, P&O Ferries' CEO Peter Hebblethwaite told MPs on the joint select committee that: "It was our assessment that the change was of such a magnitude that no union could possibly accept our proposal."[8]

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[5] Pg 14, Next Steps to Make Work Pay 10 October 2024.
[6] Paul Scully, Q202 Transport Committee & Business, Energy and Industrial Strategy Committee Oral evidence: P&O Ferries, HC 1231 Thursday 24 March 2022
[7] Col. 326 *Hansard*, 23 March 2022.
[8] Q129 Transport Committee & Business, Energy and Industrial Strategy Committee Oral evidence: P&O Ferries, HC 1231 Thursday 24 March 2022

A civil investigation of P&O Ferries by the Insolvency Service continues to drag on. In its annual accounts for 2021, submitted late in August 2023, P&O dismissed the possibility that the Insolvency Service would penalise the company and that the Insolvency Service would not be able to prove that civil charges against them 'were in the public interest.'

The Director of Labour Market Enforcement's recent scoping study has also found that "The reliance on civil sanctions risks fines and compensation for workers being simply factored into the 'cost of doing business'."[9] That is certainly one of the most notorious aspects of the P&O Ferries debacle.

Nothing has happened to P&O Ferries or to its parent company DP World as a direct result of their actions. We would also point out that Irish Ferries carried out a remarkably similar assault on the jobs of seafarers in Wales and the Republic of Ireland in 2005, dismissing the directly employed crew and replacing them with agency crew recruited internationally.

What changed after 2005 was that secondary legislation[10] introduced in 2018, in theory, provided stronger protections for seafarers on foreign registered ships regularly working from UK ports from this sort of assault. However, this legislation proved to be too weak to cope with the corporate aggression orchestrated from Dubai on ships registered under foreign flags of convenience.

As RMT General Secretary Mick Lynch stated in evidence to members of the Employment Rights Public Bill Committee on 26th November: "We negotiate contract changes all the time, and the great problem with P&O is that they deceived us. They told us that they were going to negotiate change for new technology, new vessels and new ways of working. There probably would have been some job losses, and we would have dealt with that through normal processes. They decided to sabotage that because it was quicker, and they wanted to get imported foreign labour on those vessels at £4 and £5 an hour, rather than a collective agreement. I do not see good employers struggling with that."[11]

We welcome this reform but the intention to permit the use of fire and rehire in specific circumstances is concerning, as this would affect the extent and effectiveness of the remedies for workers, which is subject to the consultation which closed on 2nd December, to which RMT has responded. We are also concerned at permitting fire and rehire/replace in certain circumstances would undermine the application of the new protections against unfair dismissal in Clause 19.

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[9] Director of Labour Market Enforcement 29th November 2024 Measuring the scale and nature of labour market non-compliance affecting people in precarious work in the UK: executive summary

[10] The Seafarers (Transnational Information and Consultation, Collective Redundancies and Insolvency Miscellaneous Amendments) Regulations 2018

[11] Q60, Col. 63 Public Bill Committee, Employment Rights Bill Second Sitting 26 November 2024.

It is extremely important to remember that hundreds of P&O Ferries staff had been employed by the company for over ten years before being sacked and replaced in this disgraceful manner. Applying protection against unfair dismissal from day one must, therefore, come with serious penalties for employers who try to breach this provision.

There have been a series of fire and rehire scandals in UK workplaces since the P&O Ferries case, including most recently Unite members in TGI Fridays and Oscar Mayer. The trade union movement will not tolerate this and whilst the measures on fire and rehire in Clause 22 are welcome, further reassurance is needed to tackle employers who seek to frustrate unfair dismissal protections.

Responding to the government's consultation on strengthening remedies around collective redundancies and fire and rehire/fire and replace, RMT has argued that the cap on protective awards should be removed entirely. This would be a far more effective deterrent to employers planning to break or test the law would not be able to 'price in' the cost of their actions. In tandem with other measures in the Employment Rights Bill, removing the cap would ensure that there could be no repeat of the P&O Ferries scandal when the employer offered their own staff an ex-gratia payment, effectively to forego their employment rights, which was time limited (two weeks) and contained a Non-Disclosure Agreement.

Increasing the protective award cap to 180 days would be an improvement but would be an insufficient deterrent to employers with deep pockets, particularly state backed or owned multinationals from pricing in breaching these protections. This is vitally important, as the retention of a cap will still allow some employers to calculate the cost, effectively, of breaking their own workers' employment rights during the redundancy process.

We have also argued that Interim relief should be made available to workers alongside removal of the cap on protective awards claims to an Employment Tribunal for breach of collective consultation obligations and introduction of a new form of injunctive relief which provides workers with 'real time' protections from employers seeking to illegally sever their employment status. As Mick Lynch, RMT General Secretary, said in evidence to the Employment Rights Bill Committee on 26th November:

> "The Bill does not go far enough, but we can improve it during this process. One of the things we would like to see is the power for trade unions to get redress—injunctive power—against people like P&O, which was never considered. We were told that if we took action against P&O—and there was a slim possibility of it—we could be liable for all its revenue loss for every day of trading, which could have been up to £15 million or £20 million a day. That is impossible for workers and their organisations to take forward." [12]

[12] Q55, Col. 57 Public Bill Committee, Employment Rights Bill Second Sitting 26 November 2024.

The need for 'real time' protections for workers and their trade unions from a P&O style assault funded by wealthy owners, is imperative for maritime and land-based workers.

At present we have an imbalanced system where employers can take out an injunction against recognised trade unions for infringements in processes governing industrial ballots of their members but trade unions cannot obtain injunctions to protect their members from employers like P&O Ferries who openly break the law to remove directly employed staff to replace them with an agency workforce recruited internationally on starkly exploitative contracts which also erode maritime safety standards.

In fact, our preference would be for a properly equipped Fair Work Agency to be able to take immediate injunctive action when law breaking is occurring against workers.

Also, the Employment Rights Bill must require employers to consult with workers through their trade unions when redundancies are being *contemplated* and not, as happens to often, as an after thought when employers issue dismissal notices or actions are taken against workers to end their employment.

Under the current laws, employers often announce redundancies without any prior consultation with the trade unions or they consult trade unions at the last minute to reduce the likelihood of a legal challenge. The law needs to make it clear that the legal process does not favour employers' wealthy enough to fund accountants and lawyers to find loopholes or costed proposals to break the law around collective redundancy consultation.

The Bill could be amended to add these changes to interim relief, protective awards and a new form of injunctive relief for workers and their unions could be made, following the conclusion of the consultation on strengthening remedies against abuse of rules on collective redundancy and fire and rehire, via New Clauses in Part 1 covering Dismissals.

These changes should also be linked to the commitment in the Make Work Pay agenda to increasing the number of workers covered by collectively bargained terms and conditions of employment, as we discussed earlier in our written evidence to the Bill Committee. We would support the Institute for Employment Rights' proposal for an amendment to be made in Part 3 (Pay and conditions in particular sectors) after cl.44 by adding a new Chapter 3 headed 'Other sectors' which would include the following target:

The Secretary of State shall draw up an action plan to enhance the coverage of collective bargaining to 80% of the workforce within 5 years of the coming into force of the Act.[13]

PART 2 – OTHER MATTERS RELATING TO EMPLOYMENT (Collective Redundancies and Insourcing)

Collective Redundancies Post P&O Ferries

We are pleased that the government has recognised the weaknesses around notification and consultation which were ruthlessly exploited by P&O Ferries in March 2022. Clauses 23 and 24 of the Employment Rights Bill are welcome but on their own and in the context of the current draft of the Bill, these changes will not be sufficient to prevent future job losses amongst UK seafarers, especially in the ferry sector.

Therefore, we welcome the government's consultation on fire and rehire and collective redundancy consultation which gets to the heart of some of the wider protections needed to deter employers from seeking to gain a competitive advantage from practising fire and replace in the shipping industry. With regard to fire and rehire, these are covered in the previous section of our evidence.

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[13] Pg 3-4 *Provisional list of suggestions for amendments to the Employment Rights Bill 2024* – IER 26.11.24

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> "The Bill does not go far enough, but we can improve it during this process. One of the things we would like to see is the power for trade unions to get redress—injunctive power—against people like P&O, which was never considered. We were told that if we took action against P&O—and there was a slim possibility of it—we could be liable for all its revenue loss for every day of trading, which could have been up to £15 million or £20 million a day. That is impossible for workers and their organisations to take forward." [14]

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[14] Q55, Col. 57 Public Bill Committee, Employment Rights Bill Second Sitting 26 November 2024.

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> *The Secretary of State shall draw up an action plan to enhance the coverage of collective bargaining to 80% of the workforce within 5 years of the coming into force of the Act.*[15]

Protection for outsourced workers and insourcing

RMT welcomes the Employment Rights Bill's measures to give the Secretary of State the power to introduce a new statutory Two-Tier Code.

It's important to get this right. The Bill has to cover people who are performing public services and services in receipt of public subsidy.

For example, the previous Two-Tier Code of Practice never applied to Rail. It was constructed to cover Central Government, Non-Departmental Public Bodies, the NHS and Local Government. Rail companies were Non-Financial Private Corporations. Even the publicly owned ones are Non-Financial Public Corporations under national accounting rules.

It is also vital that the Code covers all outsourced workers in public services. It's not completely clear to us that this is the case. The explanatory notes to the Bill say that it will apply to workers where they are 'transferring from the public sector body undertaking the outsourcing to the supplier'. It's not clear that the Bill would cover services where no transferring is taking place or transferring of previously in-house workers takes place between different private sector employers.

Network Rail, for example, have claimed that cleaners they outsource to Mitie are not actually outsourced because they haven't transferred from the public sector. Yet they're subcontracted cleaners on inferior pay and conditions. Plainly, we need to know that these workers should be in the scope of the legislation as historically all rail cleaning was in-house and the outsourcing of cleaning developed since the 1990s as the railways were fragmented and privatised.

The reality is that there is a multi-tiered workforce in place that moves between private sector bodies. That workforce is disproportionately female and BAME in composition.

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[15] Pg 3-4 *Provisional list of suggestions for amendments to the Employment Rights Bill 2024* – IER 26.11.24

In response, we need to see the 'wave of insourcing' that the government promised in its New Deal**.** There are around 10,000 outsourced cleaners for example working on Train Operating Company contracts or cleaning the Tube for London Underground. These workers have no occupational sick pay, inferior terms and conditions and no decent pensions for their retirement.

Network Rail's maintenance, and especially renewals and enhancements work is dominated by workers on zero hours contracts and engaged through networks of sub-contractors, agencies or forms of self-employment, bogus and genuine.

RMT estimates that the work being done various forms of precarious work could create an additional 40,000 full time directly employed jobs, depending on the length of the week worked.

These workers are taken outside of collective bargaining arrangements, fragmented and subjected to inferior pay and conditions and often put on precarious contracts.

Absent from the Employment Rights Bill was mention of Labour's historic pledge to 'oversee the biggest wave of insourcing for a generation'.

However, RMT was pleased to see in the *Next Steps* document a clear statement of the intention to take forward reforms to procurement to ensure that social value is mandatory in contract design and to use public procurement to raise standards on employment rights.

The pledge to oversee 'the biggest wave of insourcing for a generation' is of great importance. It was immensely popular with RMT members in outsourced sections of the rail industry and it tackles deep rooted problems in the UK's labour market and economy.

- In 2019, the Institute for Government estimated that more than a third of all public spending was devoted to procuring goods, works and services from external suppliers.
- One fifth of all government spending on procurement goes to 25 'strategic suppliers', defined as those companies with whom government has contracts valued in excess of £100 million.
- As the collapse of Carillion and Interserve both showed, these large outsourcing firms have become conglomerate bidding machines focussed on winning new contracts and turbo-charged for growth. This is a consequence of their orientation toward shareholder dividends, particularly in the case of the Carillion scandal.
- Because outsourcing firms' margins depend chiefly on cutting labour costs, they embed a 'low road' employment model based on low skills, low pay, low investment and high 'flexibility'.

- These firms are a major obstacle to greater productivity in the UK economy. As a 2023 report by the Productivity Institute notes: 'Many UK firms have been following an unsustainable low wage, low investment, low productivity path'.
- Outsourcing and sub-contracting are rife in the rail industry. There are an estimated 10,000 outsourced workers in 'ancillary' services in rail passenger operations, including more than 2,000 outsourced cleaners working on London's Underground network.
- There are around 100,000 sub-contracted infrastructure workers, in Network Rail's supply chain, between 80% and 90% of whom are on zero hours contracts.

Reforms to procurement legislation to embed social value and the institution of a Public Interest Test, as indicated in Next Steps, are essential measures for delivering volumes of insourcing, anchoring it over the long-term and undoing the damage wrought by decades of outsourcing dogma. Labour must begin this legislative work now, in consultation with trade unions.

However, there is also work that can be done now, beyond the legislative reforms, to begin insourcing. Labour's Make Work Pay document says:

> "The next Labour government will also examine public services that have been outsourced as part of our drive to improve quality, design better services to meet changing needs, ensure greater stability and longer-term investment in the workforce, and deliver better value for money... In most cases, the best time to achieve value for money for publicly-run provision will be when existing contracts expire or are broken through a failure to deliver."

We would wish to see an amendment to the Bill or government commitment that Ministers will begin this work now by instructing all Departments to draw up comprehensive data on their contracts and expiry dates and then consult with recognised unions in each case to identify a programme of insourcing targets within all public sector funded contracts.

PART 3 – PAY CONDITIONS IN PARTICULAR SECTORS (Fair Pay Agreements)

Fair Pay Agreements – A first, vital step

RMT welcomes the Employment Rights Bill's clauses empowering the Secretary of State to create an Adult Social Care Negotiating Body. This is the first phase of delivering on Labour's commitment in Make Work Pay. The second phase is to 'assess how and to what extent FPAs could benefit other sectors and tackle labour market challenges.'[16]

RMT welcomes the clear commitment in the government's Next Steps document to 'delivering all our manifesto commitments with a Plan to Make Work Pay'.

[16] Pg. 11 *Labour's Plan to Make Work Pay* June 2024.

This year's TUC Congress resolved to reconvene its 'Fair Pay Agreements Working Group' to develop recommendations for preliminary proposals and timelines for mandatory Fair Pay Agreements/sectoral collective bargaining across the economy. This work can reinforce and help inform the government's own work to assess how FPAs could benefit other sectors of the economy.

The importance of the government delivering on this work cannot be overstated. As is well known, the level of collective bargaining of the UK workforce has suffered catastrophic destruction from some 86% in 1976 (82% in 1979) to just over 20% today. This has led to stagnation in wages, growing inequality and weak economic performance in the UK economy.

Collective bargaining is internationally recognised as the single most effective lever of labour market regulation and guarantor of positive labour market outcomes.

- An IMF paper published in 2015 found that "the erosion of labour market institutions in the advanced economies examined is associated with an increase of income inequality."[17]
- In 2019 a report from the OECD recognised that "Collective bargaining, *providing that it has a wide coverage and is well co-ordinated*, fosters good labour market performance."[18]
- An ILO paper from 2023 said: "Economic literature suggests that collective bargaining plays a vital role in promoting equality of earnings and studies tend to indicate that a higher collective bargaining coverage rate is linked with reduced earnings inequality.....Through collective bargaining, workers can negotiate for better wages and improve their standard of living. In addition, collective bargaining helps to reduce inequality, support economic growth, and promote decent work by ensuring that workers have a voice in decisions that affect their lives. Promoting inclusive collective bargaining systems and other forms of social dialogue is key to helping ensure a just share of the fruits of progress to all."[19]
- A study of the US labour market published by the IMF in 2020 noted that "The key wage-setting institution for middle-wage workers has been collective bargaining, so the erosion of union representation has been the major factor depressing wage growth" while "union erosion explains from 29 percent to 37 percent of

[17] https://www.imf.org/en/News/Articles/2015/09/28/04/53/soint071015a

[18] OECD (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, OECD Publishing, Paris, https://doi.org/10.1787/1fd2da34-en.

[19] https://ilostat.ilo.org/blog/beyond-the-numbers-exploring-the-relationship-between-collective-bargaining-coverage-and-inequality/

male wage inequality growth and 37 percent of the growing gap between high-wage and middle-wage men".[20]

- And In July 2022, the European Commission acknowledged that "countries with high collective bargaining coverage tend to have a lower share of low-wage workers, lower wage inequality and higher wages." The Commission has recently established an objective that asks Member States where the collective bargaining coverage is less than 80% to establish an action plan to promote collective bargaining.[21]

In repealing the 2016 Trades Union Act, developing measures to make it easier for unions to access the workplace, reaching recognition and simplifying the legal framework around industrial disputes, the government has implicitly acknowledged that strengthening and extending collective bargaining is a policy objective.

This is a welcome development that the government needs to take further by explicitly spelling out that increasing collective bargaining coverage is a government objective. This in turn will be an important tool that can support other government policy goals including increasing economic growth, productivity and social cohesion while reducing inequality and insecurity at work, and in society as a whole.

In many cases, the single best way to enforce the substantial individual rights being granted through the Employment Rights Bill and adapt them to the specific needs of different industries will not be through the tribunals system but through the development of effective sectoral collective bargaining arrangements.

Supported by the international comparisons we have identified above, RMT believes the UK government should also set a goal for collective bargaining coverage of at least 80% and the government should establish and be bound by a legal duty to increase collective bargaining coverage across the economy and to set a timeline for achieving this improved coverage.

At the very least when assessing its next steps for this consultation and its wider approach to employment legislation the government should assess whether what it is doing is likely to strengthen and increase collective bargaining coverage.

RMT would therefore support amendments to the bill which extend Fair Pay Agreements across the economy. Specifically, within the first term of a Labour government to (a) identify the sectors or sub sectors to be covered by FPAs b) the content of the FPA c) the process for introducing the FPA d) the timeline for introduction of the FPA (Janet Williamson may have some thoughts on this as well as she led the FPA working

[20] https://www.imf.org/en/Publications/fandd/issues/2020/12/rebuilding-worker-power-mishel

[21] https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3441

groups). With a view to introducing at least three priority FPAs in the first term of a Labour government. Although the debates around access and recognition are very important rolling out FPAs is the most effective vehicle for achieving the policy objective of extending collective bargaining coverage. This could be raised through amendments to clauses in Part 3 of the Bill.

PART 4 – TRADE UNIONS AND INDUSTRIAL ACTION ETC

Trade union rights and the right to strike

We strongly welcome the government's plans to remove the majority of the Trade Union Act 2016. This and the moves to repeal the Minimum Service Levels legislation remove the most egregious anti-trade union legislation in recent years but there is still an historic imbalance in British employment law that means workers in this country don't have a positive right to strike and have to jump through hoops to take action without being sued.

Our view is that a rebalancing of power in our workplaces is long overdue. Part of that is recognising that the law is onerous on unions and prevents them giving expression to workers' right to withhold their labour. This is a view shared by the European Committee on Human Rights.

In *Make Work Pay*, the government promised to update trade union legislation and remove 'unnecessary restrictions on trade union activity', including repealing 'all the anti-trade union legislation in the last 14 years, including the TU Act 2016 and the MSLs legislation.

The 2016 requirement for new members to 'Opt-in' to the Political Fund will be abolished. These measures will come into force two months after Royal Assent.

The ERB removes most of the 2016 Trade Union Act's restrictions on ballots:

- the ballot thresholds for turnout and majorities are repealed, enabling unions to take industrial action on a simple majority of members.
- Requirements to provide additional information on the ballot paper such as issues of dispute and types of action planned are removed.
- The period of notice for action, which was extended to 14 days, is reduced to 7 days again.
- Other restrictions, such as the requirement to have a picket supervisor and the additional powers of the Certification Officer are also repealed.

However, the six-month expiry date for ballot mandates has not been repealed. Instead, the government has proposed a 12-month expiry date in its consultation on the legislation, which closed on 2nd December.

Without support from trade union members. industrial action will be ineffective so there is no requirement to stipulate this in law. There is a strong risk with the imposition of a mandate limit that members will feel they need to take action early on while the mandate is still active instead of focusing on resolving the conflict.

RMT, therefore, reject the proposal for any mandate. A mandate prohibition is contrary to the Labour manifesto commitment to implement Make Work Pay and to the Prime Minister's commitment at TUC Congress 2024 to repeal the 2016 Trade Union Act.

We note the proposals to simplify the information provided in balloting, notice of a ballot and notice of industrial action. However, we do not believe these go far enough. For far too long, there has been a consensus that it is reasonable to expect unions to provide extended notice to employers at every stage of exercising their right to strike.

However, the reality is that Britain's employment law system is rigged against unions, hampering their ability to redress the structural imbalance of power in the workplace. Most notably, there is no recognition of the positive right to strike in UK employment law, only a limited protection from action under Tort law.

The European Committee of Social Rights has said that the requirement to give any notice at all is an 'excessive restraint on the right to strike' and doesn't conform to the European Social Charter 1961. We believe that Section 226A of the TULRCA 1992 should be repealed completely and unions freed of the requirement to give notice and to provide any but the most generic information.

RMT and TUC policy is to repeal all anti-trade union laws.

We also share the concerns of the Institute of Employment Rights in their submission to the Employment Rights Bill Committee that "The Bill is silent too on the question of sympathy or solidarity action, despite the recent conclusions of the ILO Committee on Freedom of Association which produced a powerful report in the wake of the P&O Ferries Ltd case, which highlighted the implications of the case for trade union freedom and the government's obligations under ILO Convention 87. Despite the strong opposition of the then Conservative government, the Committee nevertheless recalled that a general prohibition of sympathy action could 'lead to abuse' and that workers should be able to take such action 'provided the initial strike they are supporting is itself lawful."

Access rights – more to be done

The Employment Rights Bill delivers significant and welcome improvements to trade union rights. Much of the Trade Union Act 2016 is repealed to remove unfair thresholds on trade union ballots that did not apply to other elections, delivering on the Prime Minister's commitment to the TUC in September.

However, the six-month limit on industrial action mandates remains. RMT would like to see Labour deliver in full on the Prime Minister's pledge by removing this time-limit.

The legislation proposes simplifications to the process of gaining trade union recognition, with the removal of the requirement for a union to show that at least 50% of workers would be likely to support recognition. This is a welcome step forward, though it will still prove an onerous process for unions to navigate recognition campaigns with recalcitrant employers.

Make Work Pay also said:

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

The Employment Rights Bill proposes reforms which go some way to delivering on this but which also raise questions. It is possible that some of these can be dealt with in consultations over Secondary Legislation. Areas where more clarity is needed include:

- Why the purposes for which access should be granted do not include the purpose of organising industrial action as part of a trade dispute.
- Why the legislation applies to 'listed' trade unions rather than 'registered'. This potentially opens the door to employers granting access and recognition to their own unions to avoid doing so with a registered union.
- Why the Central Arbitration Committee does not have the right to make an enforceable determination that a trade union should have access beyond the imposition of a fine.

As with recognition, the process of securing agreement through the Central Arbitration Committee can be prolonged and provides a well-funded large-scale employer ample time and opportunity to 'game the system'.

The absence of a penalty beyond a fine makes it perfectly possible that an employer determined to resist recognition could 'price in' the costs of non-compliance with employment law, as happened with P&O Ferries, safe in the knowledge that there is no further sanction.

While the action to extend trade unions access to workplaces is welcome, it is not clear at this stage that the legislation will deliver the re-balancing of rights and power that Make Work Pay seeks. The risk is that large employers who are determined to resist union organisation and deny their workers the opportunity to make an informed choice will still be able to do so.

Part 5 of the Bill, on enforcement of labour market legislation must provide the new regulator, the Fair Work Agency with adequate powers to intervene and to enforce the improvements to workers' rights that this Bill will deliver. The FWA should have powers to intervene to prevent a P&O Ferries style case of open law breaking, as well as stepping in to ensure that employers do not attempt to frustrate the provisions in Part 4 of the Bill around trade union access, for example.

We are also concerned that the Bill is silent on the need to protect trade unions and their members from de-recognition. Extending access to organise in the workplace in order to obtain recognition from employers should be accompanied with stronger protections from de-recognition.

PART 5 – ENFORCEMENT OF LABOUR LEGISLATION

A Fair Work Agency that is fit for purpose

Part 5 of the Bill must provide the new regulator, the Fair Work Agency with sufficient powers and resources to intervene and to enforce the improvements to workers' rights that this Bill will deliver. The FWA should have powers to intervene to prevent a P&O Ferries style case of open law breaking, as well as stepping in to ensure that employers do not attempt to frustrate the provisions in Part 4 of the Bill around trade union access, for example.

We are also concerned that the Bill is silent on the need to protect trade unions and their members from de-recognition. Extending access to organise in the workplace in order to obtain recognition from employers should be accompanied with stronger protections from de-recognition.

OTHER AREAS TO BE ADDRESSED

Mandatory Seafarers Charter

We are pleased to note that the government committed in the Next Steps document published alongside the Bill commits to:

> "…introduce powers to allow the UK to strengthen workers' rights at sea and implement international conventions relating to seafarer employment will be added to the [Employment Rights] Bill via amendment during Bill passage."

Helpfully, the Employment Rights Minister and the Maritime Minister have both confirmed to RMT, Nautilus and the TUC that the introduction of a mandatory Seafarers Charter in the ferries sector is one of the means by which they will amend the Bill to strengthen seafarers rights.

We look forward to the government bringing forward this amendment shortly. We also hope to work with government officials in DfT and DBT, at pace in parallel with the Bill's

parliamentary stages to develop the content of the Charter and use secondary legislation powers expeditiously.

The government will also amend the Bill during parliamentary passage to extend the time limit on claims to Employment Tribunals. Again, we welcome this and the further discussion of this measure and the resourcing that will be required to underpin these major improvements to seafarers and all workers' rights.

RMT, Nautilus International and the TUC have been working closely with Ministers and officials to establish the quickest route to a legally water-tight mandatory Seafarers Charter. We continue to appreciate the support for a mandatory charter in response to the P&O Ferries scandal, which the current government, including the Employment Rights Minister, Transport Secretary, Maritime Minister and Deputy Prime Minister have consistently supported in opposition and in government.

We also welcome the previous Transport Secretary's commitment, in an answer to Mary Glindon MP at Transport Questions in October to tackle the scourge of seafarers working long rosters:

> "The previous Government took two-and-a-half years after the P&O ferry scandal to do nothing…we are bringing forward legislation that will prevent such a scandal ever happening again, and we are working with operators who employ properly in this space and the trade unions to bring forward protections on rostering as well."

Contracts of over two weeks consecutive work at sea greatly increase the risk of seafarer fatigue which in turn increases maritime safety risks. P&O Ferries' agency crews were contracted to work over four months (17 weeks), replacing directly employed UK seafarers on collectively bargained terms and conditions, including a maximum of two weeks on two weeks off. On the Dover-Calais route, our members worked one week on one week off, in direct response to the causes of the Herald of Free Enterprise disaster in March 1987.

P&O Ferries' agency seafarers cannot take shore leave or days off when working for months at sea on routes from UK ports. A rostering cap in the ferries sector of two-weeks-on two-week-off will be a central component of the mandatary Seafarers Charter and is urgently needed to reduce seafarer fatigue and to improve maritime employment standards.

At present, it is legal to employ a seafarer on a contract up to the 11 months maximum permitted under the Maritime Labour Convention even on domestic routes like Cairnryan to Larne or Heysham to Warrenpoint. This is another reason why collective bargaining agreements for seafarers in the UK shipping industry are so important and why the Labour government's commitment to extend the coverage of collectively bargained terms and conditions.

Following the French Government's legislation earlier this year, it is illegal for seafarers to work a roster pattern longer than two weeks on two weeks off. Pension rights and the French minimum wage are also applicable on ferry routes between France and UK.

The UK needs to bring its ferry rostering conditions up to a standard agreed between maritime unions and employers. Again, we welcome the progress that the government is making in this area, in consultation with trade unions and employers.

The Charter will also represent a start in reversing the decline in UK seafarer jobs in the ferry and wider shipping sector over recent decades, which currently sees UK resident seafarers (Ratings and Officers) holding only 12% of over 148,000 jobs, according to the Department for Transport's own statistics.[22]

Application to Seafarers

RMT support an amendment to the Bill that ensures application of all measures in the Bill, as far as is practicable, to seafarers working in UK territorial waters and in UK maritime jurisdictions such as the UK Continental Shelf and Exclusive Economic Zone.

This would be a "seafarers jurisdiction clause" and could be established through the Schedules of the Bill. We welcome the fact that the government have recognized that one of the reasons P&O were able to act in the way that did was because seafarers were exempt from certain laws that applied to land-based workers. For example, the government have in clause 24 introduced new arrangements in respect of collective redundancy.

"Collective redundancy notifications: ships' crew 354 This clause amends s193A of TULRCA. It will require employers that are proposing to make collective redundancies across crew operating on one or more of its vessels including any UK registered vessel, any foreign flagged vessel providing a domestic service (i.e. GB to GB), and/or any foreign flagged vessel providing a service calling at a port in Great Britain at least 120 times a year".[23]

However, specific coverage criteria for seafarers does not apply to all aspects of this Bill. In addition, we do not believe that the criteria of 120 times a year will provide sufficient coverage and would instead propose 52 times a year which was a criteria Labour supported in opposition for the application of the Seafarers Wages Act which came into force on 1st December.

To expand on this point, a major motivation for large parts of this legislation is the P&O Ferries scandal. The Bill proposes to close the loopholes that P&O and its owner, the Dubai state, used to instantly dismiss and replace nearly 800 directly employed

[22] Chart 9 https://www.gov.uk/government/statistics/seafarers-in-the-uk-shipping-industry-2023/seafarers-in-the-uk-shipping-industry-2023

[23] Employment Rights Bill page 35 Clause 24, Section (6) (5) (a).

seafarers with agency crew largely recruited overseas many of whom remain on basic pay of £2.90 per hour[24], one quarter of the current national minimum wage rate for months of 12 hour days of work at sea without shore leave or wider employment rights, including sick pay, pensions and holiday pay.

Sections 23 and 24 of the Bill amend the relevant provisions in the TULRCA 1992 to extend full consultation and notification rights to crew on all ships working from a UK port to an international port that calls at a UK port, regardless of nationality of the seafarer or the flag of the ship. P&O Ferries' avoided criminal prosecution for their unlawful actions because the Insolvency Service was advised that they stood only a fifty-fifty chance of a successful prosecution. The trade unions were also advised that we would have to pay P&O's legal fees if an unsuccessful legal case was pursued.

However, Section 24 (6) (5) (a) sets a threshold of application to seafarers working on ships that call 120 time or more per year in a harbour in Great Britain. This is the threshold used in Clause 3 of the Seafarers Wages Act 2023 and it risks excluding some seafarers from these improved protections against a P&O-style dismissal and replacement masquerading as collective redundancy.

The original draft of the Seafarers Wages Act 2023[25] used the threshold of 52 calls per year. The Government response to the consultation stated that

> "...we have decided ... to define services in scope as those visiting UK ports at least once every 72 hours [120 times per year], without any exemptions for specific vessel types. This definition will keep the scope of the Bill tightly confined to those seafarers with close links to the UK without singling out any particular service or vessel type and avoiding any ambiguity around vessel definitions."

However, we do not accept the previous government's argument and worked with Labour Peers to table amendments in the Lords to the legislation at Grand Committee and Report Stage to re-insert the 52 calls threshold. This was narrowly defeated by 19 votes.[26] We continue to support a lower threshold of 52 calls per year. The Seafarers Wages Act is a narrow response to the P&O Ferries scandal, only addressing the issue of sub-NMW pay for foreign seafarers working regularly from UK ports on foreign flagged ships on short sea international routes who are not entitled to this basic protection under Section 40 of the NMW Act 1998.

Conservative Ministers in the Lords and the Commons argued during the passage of the Seafarers Wages Act that a lower threshold of 52 calls per year carried greater risk of infringement of international conventions and would bring crew and services into scope

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[24] https://www.itv.com/news/meridian/2024-05-07/p-and-o-ferries-boss-admits-he-couldnt-live-on-seafarer-wage-in-grilling-by-mps

[25] Para 1.7, DfT Impact assessment: harbours (seafarers' remuneration) bill 19 April 2022.

[26] Col. 1509-1510 *Lords Hansard* 26 October 2022.

that call more frequently at ports in other countries. But we maintain that working on a ship that calls at a UK port once a week establishes a link between the internal economy of the ship (which includes crew employment conditions) and the UK economy which facilitates the application of domestic employment law.

We are concerned that the threshold in the Seafarers Wages Act is being used as a read-across threshold for seafarers in Clause 24 of the Employment Rights Bill, the specific provision to close the loophole that P&O Ferries exploited and which the Insolvency Service cited as grounds for not taking a criminal case against this rogue employer.

However, the principle of applying UK employment law to seafarers on a flag and nationality blind perspective is established in the Seafarers Wages Act and in other legislation, such as the extension of National Minimum Wage coverage for all seafarers working in UK territorial waters and on routes form UK ports to offshore oil and gas installations up to 200 miles from the UK coastline.[27]

Fire and rehire provisions and linking the National Minimum Wage calculations to the cost of living will also have some residual benefits to seafarers but there are a range of conditions which need to be improved from a seafarer jurisdiction perspective in order to regain jobs and to secure better standards of employment for seafarer Ratings in the shipping industry. Crucially, this includes the growing number of seafarer jobs in the maritime supply chain of the offshore energy sector.

The prominence of fire and rehire/replace in the P&O Ferries case also necessitates certainty over the application of these and other measures in the ER Bill to as many seafarers working in territorial and other UK maritime jurisdictions as possible. This can be done in a way that does not infringe international law, such as the UN Convention on the Law of the Sea, as is the case on international ferry routes in the Baltic Sea.

Seafarer Equality

There are long-standing weaknesses in the statutory framework protecting seafarers, which mean that seafarers' employment rights are considerably weaker than those of land-based workers. RMT has long campaigned to tackle these structural inequalities for seafarers and the Employment Rights Bill and Next Steps are opportunities to tackle these fundamental inequalities in the labour market.

We strongly believe that doing so would re-build the seafarer workforce in the UK after decades of malaise which are eroding standards, the economy and national security.

We support action and will be working with ministers and officials across government to tackle these weaknesses which make shipping a less attractive and less safe industry to work in. These include:

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[27] The National Minimum Wage (Offshore Employment) (Amendment) Order 2020 No. 779

- Prohibiting nationality-based pay discrimination on UK flagged ships.
- Seafarers' statutory entitlement to sick pay is 16 weeks, compared to 28 weeks for land based workers.
- Employers pay reduced National Insurance Contributions through reforms under the last Labour Government, agreed with the unions in order to protect jobs from unfair competition. This needs urgent review to ensure UK Ratings and Officers remain able to compete for work in the shipping industry.
- Limited and poorly enforced pension rights.
- Lack of comprehensive National Minimum Wage protections in offshore energy supply chains.
- Use of the Accommodation Offset by some employers.
- Crewing agents supplying labour to the UK shipping industry are not regulated by labour enforcement agencies.
- The Maritime and Coastguard Agency regulates parts of the seafarer labour market but is not integrated into the statutory enforcement framework.

Through strengthening seafarers' employment rights with this legislation and in the associated Make Work Pay reforms, the Government has proved its willingness to listen to and to work with the maritime trade unions, not only to tackle under cutting and the exploitation of seafarers, but to ultimately increase the number of UK seafarers in employment and training.

As the 2023 seafarer statistics show, the shortage of UK crew is chronic – the DfT estimate UK seafarers account for a maximum 24,100 (16%) of total seafarer jobs in the UK shipping industry while the number of Ratings in the UK shipping industry increased by 35,000 in 2023. Shipowners are doing more work from UK ports with Ratings crew who are in the main recruited overseas and contracted to work for pay and conditions similar to those on the P&O Ferries and Irish Ferries fleets.

This lack of domestic skills and economic resilience is a national emergency for a maritime nation which relies on the shipping industry to move 95% of traded goods and over 18 million international ferry and cruise passengers from UK ports every year.

An amendment to create a taskforce to look at the application and improvement of seafarers employment rights, and to come up with draft legislation, would be welcome and could be tied to the 'seafarers jurisdiction clause' proposed earlier in this submission to the Public Bill Committee.

December 2024.