Written evidence submitted by Thompsons Solicitors LLP to the Employment Rights Public Bill Committee

Introduction

1. We are the leading firm of trade union lawyers in the UK. We have advised and represented trade unions and their members in many of the most important trade union and employment cases that have gone to the UK Courts.

2. We welcome the Employment Rights Bill and see it as an important first step in improving workers' and trade union rights. However, there is more to be done.

3. Particularly in the context of trade union rights, it is essential to assess the totality of the protections for, and restrictions on, trade unions and their members 'in the round', so as to enable proper calibration and evaluation of the UK's measures to protect freedom of association and trade union rights against international labour standards. It is important to view union access, recognition and collective bargaining rights, and the right to strike, as a coherent legislative package of rights in order to ensure compliance with the UK's international obligations for the protection of freedom of association and that the legislative framework plays its part in a successful modern economy.

4. In this written evidence, we focus on the provisions of the Bill concerning fire and re-hire and trade union rights. Our evidence includes comments and observations we have already made in our responses to 'Making Work Pay: Consultation on strengthening remedies against abuse of rules on collective redundancy' and 'Making Work Pay: Consultation on creating a modern framework for industrial relations'.

Fire and re-hire

5. The introduction of a new section 104I of the Employment Rights Act 1996 (the "ERA 1996") is welcome. It will introduce an "automatically unfair" reason for dismissal under s104I (2) & (3) in circumstances where the dismissal occurred because: (i) the employer "sought to vary" the contract and the employee did not agree to the variation; and (ii) the employer was seeking to employ another person or re-engage the employee under a varied contract of employment to carry out "substantially the same duties" as the employee carried out before being dismissed. We note the policy intention behind this provision is to end the "scourge of fire and rehire" as set out in Make Work Pay[1].

6. The only exception to this position is when the new section 104I(4) ERA 1996 is engaged, which provides that the dismissal will not be automatically unfair where an employer has dismissed employees for eliminating, preventing, significantly reducing or significantly mitigating the effect of any financial difficulties, which at the time of the dismissal were

[1] https://www.gov.uk/government/collections/make-work-pay

affecting, or were likely in the immediate future to affect, the employer's ability to carry on the business as a going concern or otherwise carry on the activities constituting the business. We have two key concerns around this exemption:

Firstly, we consider that the inclusion of the wording "or were likely in the immediate future to affect" creates too broad a gateway for employers to avoid a finding of automatic unfair dismissal because of the way in which the word "likely" may be construed. Section B12 of the Equality Act 2010 Guidance[2] provides that "likely" should be interpreted as something that "could well happen". In our view, an employer only being required to demonstrate something "could well happen" to impact its ability to operate as a going concern is insufficiently robust to address unscrupulous fire and rehire tactics.

All manner of things "could well happen" to affect the ability of an organisation to continue as a going concern in the current uncertain economic climate. We consider that is an insufficient basis to justify dismissing a workforce and re-engaging them on less favourable terms and conditions and ending the "scourge of fire and rehire" in accordance with the underlying purpose of the provision.

We consider that an employer should need to demonstrate that any variation is necessary to ensure its survival and therefore, the wording "or was likely in the immediate future to affect" should be removed from s.104I(4) ERA 1996. If the current wording does remain, then we consider it imperative that guidance is provided as to how the term "likely" should be interpreted and that the test is significantly more robust than the one referenced above.

For example, the interim relief test (ss.161-167 TULRCA and in similar terms in ss.128-132 ERA 1996) requires an employee to show that they are likely to succeed which is interpreted as a need to show a "significantly higher degree of likelihood than more likely than not" that they will succeed at a substantive hearing. That would be a more appropriate test in this particular context.

Secondly, we consider that, where any employer seeks to avail itself of this defence, it should be required under the provision to submit a report from its independent auditors that its financial circumstances are such that if the changes to terms were not made, it would affect the employer's ability to carry on the business as a going concern or otherwise to carry on the activities constituting the business. This will guard against any unscrupulous employers manipulating financial forecasts to assert their circumstances fall within s104I (4) ERA 1996.

7. The proposed s.104I(4) ERA 1996 will require employment tribunals to interrogate the financial circumstances of any given organisation that wants to rely on that provision. This is

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2 Disability Unit, 'Disability: Equality Act 2010 - Guidance on matters to be taken into account in determining questions relating to the definition of disability (HTML)' (2011) https://www.gov.uk/government/publications/equality-act-guidance/disability-equality-act-2010-guidance-on-matters-to-be-taken-into-account-in-determining-questions-relating-to-the-definition-of-disability-html accessed 14 November 2024.

not something they have previously had to engage with in any material way. However, there is no reason why Judges cannot be equipped to undertake this sort of exercise, and it does happen in other jurisdictions.

The employment tribunal can be assisted by expert witnesses where that is appropriate. We also consider employment tribunals would be greatly assisted by a provision requiring independent auditors to produce a certificate asserting that it is their belief these circumstances are engaged, as we reference immediately above.

8. We note that the Employment Rights Bill does not make provision to prevent reliance on widely drafted unilateral variation clauses to effect changes to terms and conditions (Bateman v Asda Stores Ltd [2010][3]). It is of paramount importance to impose some restriction on the operation of these clauses so that the purpose of the new automatic unfair dismissal provision is not subverted.

9. With respect to the factors to be assessed in determining the fairness of a dismissal that falls within s.104(4) ERA 1996, set out in s.104(5) ERA 1996, we would propose adding a further one, being the employer's adherence to the terms of any relevant collective agreement with a trade union. This may impose obligations that go above and beyond a requirement to consult.

10. In our view the Employment Rights Bill should also amend s 124 (1A) ERA 1996 to include dismissals made in contravention of s104I ERA 1996 so that the usual cap on the compensatory award does not apply.

11. We are aware of suggestions in some commentary that the ambit of s104I (4) ERA 1996 is too narrow and will prohibit employers from making some important contractual changes where that provision is not engaged. It is important to reflect on the purpose of these provisions as outlined above. At present, employers can effectively unilaterally change (and often erode) terms of conditions of employment through fire and re-hire tactics because the law affords them considerable latitude in doing so.

    The Government has rightly chosen to legislate to address this and end one-sided flexibility. The new provisions do not prevent an employer from seeking consent to make any changes to terms and conditions as and when they want, and important changes will continue to be made through that mechanism with due consideration provided. However, the provisions will enable employees to stand on the contractual promise they have agreed with their employer if they wish to do so (a contractually orthodox position), except in circumstances where s104I (4) ERA 1996 is engaged. It is imperative any such exception is narrow to avoid this provision being abused.

12. We have made clear in our consultation response that we strongly support the proposal to extend interim relief to dismissals which are alleged to have been made in contravention of s104I ERA 1996. We do not repeat our reasons for those conclusions here.

[3] 2 WLUK 337

Collective redundancy consultation

13. We agree with the proposal to remove reference to a single "establishment" from s.188(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA). The current law allows for employers dismissing any number of employees to avoid the requirement to collectively consult provided that, at each individual establishment, there are fewer than 20 employees to be made redundant. This is a very important step in strengthening consultation rights, as the obligation will be engaged in a wider set of circumstances than at present. It will prevent absurd outcomes such as in USDAW v WW Realisation 1 Limited & Ethel Austin[4],where collective redundancy obligations were not engaged in many Woolworths stores which were being closed, as those individual stores employed fewer than 20 employees, notwithstanding the fact there was one proposal to dismiss all of the employees concerned across the entire organisation.

14. We note some commentators have raised concerns about the fact that large organisations dismissing small numbers of employees at distinct sites/establishments will be compelled to collectively consult even if the redundancies taking place are for entirely unconnected reasons. We consider this to be entirely positive. Collective consultation can often result in jobs being saved. It is likely to mean employers and unions take a "wider view" as to what is happening across any respective organisation as a whole rather than adopting a narrower viewpoint. The requirement for employers to coordinate redundancy exercises is ultimately likely to save jobs.

15. We remain concerned about abuse in regard to companies artificially constructing complex operating models with different limited companies acting as employers to avoid triggering these obligations, given the duty is only engaged where an employer (one single legal entity) is proposing to dismiss as redundant 20 or more employees.

16. It would also be helpful if the Employment Rights Bill addressed the ECJ decision in UQ v Marclean Technologies SLU[5] that employers need to look at a rolling 90 day period when establishing whether the duty to collectively consult is engaged and made that explicitly clear in the statutory wording.

17. The requirement to collectively consult for 90 days should be reinstated, having been reduced to 45 days after the last Labour government lost power in 2010 (s.188A(1) TULRCA). As stated above, effective consultation can save jobs and rescue failing businesses. Curtailing the length of consultation is not in the interests of employers, trade unions, or employees.

18. Employers' requirements to consult under s.188(1) TULRCA should be amended so that it is triggered when redundancies are "contemplated" instead of "proposed." This would bring the requirement to consult forward, so the union and/or representatives can engage in the

[4] [2015] (Case No C-80/14)
[5] C-300/19 [2022] IRLR 548

process at an earlier stage, which will increase the likelihood of the parties agreeing on a solution that avoids the need for redundancies.

19. We also propose that s.188(2) TULRCA should require employers to consult about the "reasons" for the dismissals as, although information about the reasons for dismissals must be provided at present, there is no requirement to consult on this. Some authorities have suggested there is already a requirement to consult on the business reasons for any proposal (UK Coal Mining v NUM[6]), but it is not explicit in the statute and arguably limited to circumstances where an organisation is closing.

    Consultation on the reasons for proposing dismissals by redundancy would facilitate more constructive dialogue between employers and representatives, as employers would be required to explain their commercial motivation and engage with representatives' views on these. It will also tie in with the provisions to be introduced by s.104I ERA 1996, which will require employers to provide evidence of the necessity for dismissals to vary the terms and conditions of employment.

20. We further propose that s.188(1A) TULRCA be amended to confirm that employers are restricted from "issuing" notices of dismissal until the end of the consultation period rather than simply providing that dismissals cannot "take effect" until the end of that period. We propose that the default position should be that a final decision to dismiss cannot be made until the expiry of the consultation period. This reflects the approach most employers already take in practice, and it should be formalised and enshrined in statute.

21. The obligations to collectively consult should also be expressly extended to encompass "workers" and employees, as the present differentiation in treatment cannot be justified.

22. We agree with the proposal to remove the cap on protective awards and the introduction of interim relief to breaches of s.188 TULRCA for the reasons already set out in our consultation response which we again do not repeat here.

Trade Union rights: the starting point

23 We see it as essential that the legislative framework for modern industrial relations has its foundations in compliance with the internationally recognised and protected rights and freedoms of association and collective bargaining under international instruments ratified by the UK. Those international instruments include:

- the European Convention on Human Rights;
- ILO Conventions 87[7] and 98[8];

[6] [2008] ICR 163
[7] On Freedom of Association and Protection of the Right to Organise
[8] On the Right to Organise and Collective Bargaining

- the European Social Charter; and
- the EU-UK Trade and Cooperation Agreement.

24. A legislative framework for modern industrial relations must ensure that (i) positive obligations imposed on the UK are fulfilled, and (ii) any restrictions on the rights and freedoms provided by those instruments are justified and necessary. The need to comply with these requirements makes it so important to assess the protections for, and restrictions on, trade unions and their members 'in the round'.

25. Central to the legislative framework must be the principle of the promotion of collective bargaining, as spelled out in 'Make Work Pay', and as provided for in Article 4 of ILO Convention No.98 as follows:

    'Measures appropriate to national conditions shall be taken, where necessary to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.'

26. To date, beyond the Fair Pay Agreement to be established in the social care sector, initial changes to the statutory recognition procedure and its proposals on access agreements, government has not set out proposals for the promotion of collective bargaining.

Right to statement of trade union rights

27. We welcome the creation of a right to a statement of trade union 'rights'. However, the headings to Part 4 and Clause 45 of the Bill refer to 'trade union rights' (plural), whereas the substance of the right contained in the draft section 136A refers only to the right to be a member of 'a trade union'.

28. We think that a requirement for a brief statement of the rights protecting trade union membership and the use of trade union services would be appropriate. We also think the statement should refer to the right to membership of an 'independent' trade union. Employers should also not be permitted to disseminate material discouraging workers from taking up their right to membership of an independent trade union.

Right of trade unions to access workplaces

29. We welcome the creation of a new right for trade unions to access workplaces. However, we are concerned that the formulation of that right currently contained in the Bill will not deliver an effective right of access that can be easily and rapidly exercised with a minimum of administrative intervention, and which can be enforced legally if necessary.

30. The right should only apply to 'independent' trade unions.

31. A right of access must include not just physical access, but also access by digital and electronic means. Consideration should be given to enabling trade unions to communicate with workers via an employer's email system, and also to unions being permitted to display materials on an employer's intranet.

32. 'Access purposes' should also include monitoring compliance with health and safety standards, and with other employment and labour standards.

33. As the Bill stands, the union would only have a right to make a request for access, which may or may not be agreed to, followed by a right to request a determination by the Central Arbitration Committee, whose determination must be consistent with the 'access principles'. Employers would only have to take 'reasonable steps' to facilitate access. Access could be refused altogether 'where it is reasonable in all the circumstances to do so'.

    The circumstances, which could be set out in regulations and which would be sufficient for (or even require) the CAC to deny access, would currently be very wide, including the number of union members at the workplace, the description of the business carried out by the employer, the number of employees, the 'description of workplace' or the employer's ability 'to facilitate access'.

34. The starting point should be a presumptive right of access, which would apply save in the most exceptional circumstances. Such exceptional circumstances (which should be closely defined in regulations) might relate, for example, to national security, or exceptional health and safety concerns. In order to be able to rely on such exceptional circumstances, employers should be required to provide a certified statement of their reasons.

35. Consent for access should not routinely be required – for example where there is already in force a collective agreement with the trade union, covering employees employed by that employer at that workplace, or where negotiations have been initiated for a collective agreement between the trade union and the employer which would cover employees employed at that workplace. Where consent is required, it should not be unreasonably withheld.

36. Instead of a lengthy process whereby a union makes an access request, then awaits a response and, in the absence of agreement, has to complain to the CAC, the employer should be required to respond to the request within one working day, and if the request is refused, the CAC would be required to make a determination within a particular timeframe. Its determination would have to be consistent with access principles based on the presumptive right of access.

37. The access conditions should start from the presumption that a union should have a right of access, and that restrictions should only be such as it is reasonable to impose on the union. Such restrictions would include compliance with health and safety measures and having regard to business operations procedures and routines.

38. We don't think a two-stage enforcement procedure is appropriate – especially as the CAC may already have made a determination on the union's original access request. We think the approach should be a one-stage complaint procedure with the CAC being required to make a determination on the complaint. It would then have the power to require payment of a sum (in the case of the employer, payable by it to the trade union), or to require payment if conditions are not satisfied. The declaration made by the CAC should be capable of enforcement as if it were a declaration or order of the court – i.e. by an application to a court for an order for a specific performance. (There currently seems to be an inconsistency in the draft s70ZJ(1)(a), which provides that an access agreement is only enforceable by way of a complaint under s70ZH or 70ZI).

Trade Union recognition

39. We welcome the reduction of the 10% admissibility threshold, which we believe, if there is to be one at all, should be set at no more than 2%. We also welcome the introduction of a requirement for the CAC to issue a declaration of recognition where the result of a ballot is that a majority of those voting support recognition. These are important steps.

40. However, there are other changes needed to the statutory recognition procedure, which must itself be considered alongside the right to trade union access (outside the statutory recognition procedure) and the right to take industrial action. Some of those further changes are considered in the Consultation on creating a modern framework for industrial relations – such as the extension of the Code of Practice on Unfair Practices, the employer being required to submit the numbers of employees in the bargaining unit once the union makes its application, removal of the requirement for an unfair practice to be likely to change a voter's intention and a finite window for agreement of an access agreement.

41. Yet there are still many further important changes that are needed to the statutory recognition procedure. The current procedures (and lack of effective prior access for trade unions) provide employers with opportunities to block recognition applications through tactics such as mass recruitment into the bargaining unit, preventing unions from communicating effectively with workers in the bargaining unit, entering agreements with non-independent unions to block admissibility and the introduction of delay. Many of these failings arose directly in GMB's application for recognition at Amazon. We set out, non-exhaustively, below some of the important further changes that are required.

42. There needs to be a wholesale review not only of the Code of Practice on Unfair Practices, but also of paragraphs 26(3) and 27 of Schedule A to address not only the measures referred to in the consultation, but also latent deficiencies. Further matters that need to be addressed include (non-exhaustively):

    - digital and online access to workers in the bargaining unit, including via the employer's email system;

- employers permitting full-time officials to enter the workplace and talk to workers, unless there are genuine health and safety reasons;
- simultaneous exchange by employers and unions of plans for access and workforce communication;
- the employer should give early disclosure of any special circumstance genuinely affecting the union's ability to access, such as work and roster patterns, and workers working away from the premises; and
- increase in the frequency and duration of union activities (the current one meeting of 30 minutes duration for every 10 days of the access period – see paragraph 30 of the Code of Practice- is inadequate).

43. The seven 'unfair practices', currently confined in their application to the ballot period, listed para 27A(2), are regularly abused – for example, by mixing a message not to vote in favour of recognition with news that workers were to receive a bonus[9]; see also the use of 'one click to quit the union' QR codes in GMB's recognition bid at Amazon. Obligations should be imposed on employers, from the submission of the request for recognition, not to attempt to interfere with the relationship between workers and their trade union, for example, by encouraging or inducing them to resign their union membership.

44. The application of those requirements should begin from the date the union submits its written request for recognition.

45. The admissibility requirement of there being no collective agreement already in force under which 'a union' is entitled to conduct collective bargaining requires amendment[10]. At the very least, it should only be collective agreements already in force with an 'independent union' that bar an application by another union.

46. The admissibility requirement of demonstrating that 'a majority of workers in the bargaining unit would be likely to favour recognition' is too high a threshold for unions to have satisfy. That is particularly the case under the current framework whereby access rights will not have started to apply by the time the union has to satisfy that requirement.

47. Compulsory statutory recognition is currently confined to 'pay, hours and holiday'. That coverage is too narrow and should be expanded if collective bargaining is to be both encouraged and meaningful.

48. We also think that the small employer exemption should be removed, as should the three-year moratorium on subsequent claims following a previously accepted claim for recognition.

[9] See CWU and Cable Wireless Services UK Ltd (TUR1/570/07, 19 June 2008)
[10] See paragraph 35 Schedule A1

Industrial action

49. We repeat below some of the points we made in our response to the consultation on creating a modern framework for industrial relations. At the forefront is the commitment in 'New Deal' that 'the laws regulating industrial action should ensure that UK law complies in every respect with the international obligations ratified by the UK, including those of the International Labour Organisation and the European Social Charter, as reiterated in the Trade and Cooperation Agreement with the European Union'.

50. There needs to be a realistic assessment of where the UK sits compared to other countries in terms of the restrictions placed on a union's ability to organise industrial action and workers' rights to participate in it. Professor Alan Bogg, University of Bristol and Old Square Chambers, has recently undertaken much of that exercise in his paper 'The right to strike, Minimum Service Levels, and European Values'[11]. Recognising the importance of the cumulative effect of the totality of restrictions placed on the right to strike, the paper dispels once and for all the myths peddled by the last government that minimum service levels were justified by reference to a comparison with strike laws in Spain, Italy and France.

51. We welcome the abolition of minimum service levels and many of the restrictions contained in the Trade Union Act 2016. However, we are still left with so many areas, described by Professor Bogg, in which restrictions on the right to strike in the United Kingdom exceed those in other countries. Such an international comparison confirms just how far towards the most restrictive end of the spectrum UK trade union rights continue to be, even after the welcome forthcoming repeals announced by this government. There must be no return to the turn-out and voting thresholds of the 2016 Act.

52. That comparison also shows that, unlike in most countries, the right to strike is still framed in the UK in terms of immunity from the economic torts. The legislative framework is set up as a very lengthy series of intricate requirements, each of which has to be complied with if the union is to secure immunity from suit, and its members are to have some protection against dismissal. We have at last got over the legal device of that meaning that the legislation should be interpreted restrictively against trade unions[12]. However, it is not the right place to start in terms of a modern framework for industrial relations, with the necessary respect for the principles we describe. We think that the ability of trade unions to organise industrial action needs to be given the positive legislative status it merits.

53. Giving due legislative status to the ability of trade unions to organise industrial action does not mean that unions will be more likely to call for industrial action. In fact, the opposite is

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[11] Bogg, Alan L., The Right to Strike, Minimum Service Levels, and European Values (April 5, 2023). Available at SSRN: https://ssrn.com/abstract=4410323SSRN: https://ssrn.com/abstract=4410323 or http://dx.doi.org/10.2139/ssrn.4410323

[12] See National Union of Rail Maritime and Transport Workers v Serco Ltd [2011] IRLR 399, at paragraph 9.

more likely to be true. As observed in the Consultation on creating a modern framework for industrial relations, the UK lost more days to strike action in 2022 and 2023 than in any year since 1989. Those were years in which the Trade Union Act 2016 and, latterly, the Strikes (Minimum Service Levels) Act 2023 were in force.

54. Again, unlike in many other countries, the circumstances in which lawful industrial action can be called do not include political and socio-economic matters. There is also a total ban on secondary action (with a limited exception for some picketing). There has also been found to be no legitimate trade dispute where the dispute relates to future terms and conditions with a new employer, including on behalf of employees yet to be employed by that employer[13]. Not only do such limitations fail to meet the standards of the international instruments referred to, but they are also not reflective of the structures of modern corporate organisations and outsourcing and contracting-out. The definition of a 'trade dispute' needs to reflect these matters.

55. We welcome the steps towards the implementation of electronic balloting for union ballots. Due to the last government's delay, this is long overdue given that The Report of the Independent Review of Electronic Balloting for Industrial Action was published in December 2017.

56. If the union fails to satisfy just a single one of the intricate procedural requirements, it will lose its immunity, and industrial action will no longer be protected. That is the case even where there is no practical impact of the defect on compliance on the result of the ballot. Whilst there is a 'small, accidental failures' saving[14], it does not apply to all failures to comply with the legislative requirements. The concept of 'substantial compliance' is still being developed. The 'small accidental savings' provision should apply to all aspects of the balloting legislation; the sufficiency of 'substantial compliance'' should be confirmed; and not every defect in compliance should otherwise have the effect of the union losing immunity.

57. The European Committee of Social Rights has more than once declared that the requirement for a notice of ballot at all amounts to an excessive restraint on the right take industrial action, given that the union must in any event give notice before actually taking industrial action[15]. The European Committee on Social Rights has therefore declared that UK law does not conform with Article 6 of the European Social Charter 1961. On that basis alone, taking 'New Deal' at its word, the requirement for a s226A notice should be removed from the legislation.

58. We have commented in detail in our response to the Consultation on creating a modern framework for industrial relations on the proposals to revise the information to be provided

[13] See University College London Hospital NHS Trust v UNISON [1999] IRLR 31
[14] See s232B TULRCA
[15] ECSR Conclusions, XVIII–1 (2006), XIX–3 (2010), XX–3 (2014). The Charter was ratified by the UK in 1962.

by unions in their ballot and action notices. In short, our view is that the most general descriptions chosen by the union should suffice. Two points bear repeating.

59. Firstly, so much of the 'weaponisation' of the ballot and action notice information provisions has come down to the underlying purpose, express or residual, for which the information will be supplied. As we explained in our consultation response, the purpose expressed in the legislation has changed over the years from '... describing so that the employer can readily ascertain [the workers to be balloted or called]'[16] to '....[such information in the union's possession] would help the employer make plans and bring the information to the attention of his employees.....'[17]. Those formulations were used as the foundation for many of the legal challenges before 2011.

60. Even after the latter formulation was removed from TULRCA[18] in 2004, its effect has lived on. The Court of Appeal detected another 'underlying policy' for enacting the statutory provision in its current form "that is, to achieve notification requirements that are capable of being clearly and certainly applied by trade unions without creating too great a burden on them and without creating a series of traps and hurdles in the way of their exercise of rights to take industrial action'. Somewhat confusingly, however, the Court of Appeal held that '....a continuing rationale underpinning the notice requirements is to enable employers to make plans to mitigate the effect of strike action[19]'. This leaves remnants of the perception that the industrial action legislation is intended to create that system of 'traps and hurdles' that enable employers to secure injunctions to stop industrial action. To the extent that it persists, that notion needs to be dispelled.

61. What is needed is a clear legislative statement of the 'purpose' and 'rationale' of the notification requirements that gives due prominence to the right to strike.

62. Secondly, the proposals in the consultation appeared to include the removal of the facility for unions to use the alternative current 'check-off' formulation of providing such information as would enable the employer readily to deduce the information that would have been contained in the lists of categories and workplaces. We don't see any basis for that removal.

63. We agree with reducing the length of the notice of industrial action from 14 to 7 days. In our consultation response, we have set out our views on further proposals related to repudiation and 'prior call'.

64. There are two final matters. Firstly, the last government increased the maximum amounts of damages which may be awarded against trade unions by a multiple (generally) of four – from £10,000 to £40,000 in the case of unions with fewer than 5000 members, from £50,000 to

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[16] s18 Trade Union Reform and Employment Rights Act 1993.
[17] s4 and para 3(1) Schedule 3 Employment Relations Act 1999.
[18] by s22 Employment Relations Act 2004
[19] British Airways plc v British Airline Pilots' Association [2019] EWCA 1663, per Simler LJ, para 59.

£200,000 for unions with 5000 or more but fewer than 25,000 members, from £125,000 to £500,000 for unions with 25,000 or more but fewer than 100,000 members, and from £250,000 to £1,000,000 in the case of unions with more than 100,000 members[20]. These increases should be reversed.

65. Secondly, section 127 of the Criminal Justice and Public Order Act 1994, which prohibits the inducement of prison officers to take industrial action, should be repealed. The existence of the Prison Service Pay Review Body is not an adequate compensatory mechanism and does not justify the interference with prison officers' and the Prison Officers Association's rights under Article 11 of the European Convention. The matter is currently under challenge in the European Court of Human Rights in Prison Officers Association v United Kingdom[21]. The right of prison officers to take industrial action in Scotland was restored in 2015; the same should apply in England and Wales.

66. Our concern is that further matters, beyond those set out in the Bill, the various consultations to date and the 'Next Steps', including those we refer to in this evidence, also need to be addressed before the UK can have a fully functioning and effective modern framework for industrial relations.

Thompsons Solicitors LLP
9 December 2024

[20] The Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022

[21] Application 29545/22, pending