

## Written Evidence Submitted by the Royal College of Nursing (RCN) – Employment Rights Bill – Public Bill Committee

### ***About the Royal College of Nursing***

*With a membership of over half a million registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.*

### **1. Introduction**

- 1.1. Nursing staff bear extraordinary responsibilities, delivering life-saving care and compassion under immense pressure. Yet, despite the critical role they play, the rights afforded to them often fail to match the magnitude of their responsibilities, especially in independent health and social care.
- 1.2. Nursing staff deserve a framework of rights that ensures fairness, dignity, and respect – a foundation that empowers them to work with pride and security, in the interest of their patients. Nursing stands as a profession steeped in women’s leadership and woven with rich diversity. The voice of nursing must be central to discussions on strengthening workplace rights, particularly for marginalised groups. Nursing staff, who reflect the communities they serve, are uniquely positioned to highlight the systemic inequalities that persist in the workplace and their impact on workforce morale, safety, and patient care.
- 1.3. The Royal College of Nursing (RCN), representing over half a million members as both the largest professional body and trade union for nursing staff in the world, approaches the Employment Rights Bill from a dual perspective. We advocate for nursing staff as workers, but we also champion patient safety and public health. When nursing staff are undervalued, unsupported, or subjected to exploitative practices, it is not only the workforce that suffers – patient safety is directly impacted.
- 1.4. While the issues addressed by this Bill are relevant to all our members, they are particularly acute in the independent health and social care sectors. These sectors have seen increasing reports of serious labour abuses affecting nursing staff, from exploitative contracts to unsafe working conditions. It is unacceptable that those who dedicate their lives to caring for others should face exploitation and indignity. We have specific suggestions we would ask the Committee to consider so as to further strengthen the Bill, particularly with these vulnerable workers in mind.
- 1.5. The RCN welcomes the Bill’s ambition to restore fairness and equity in the workplace. It represents a significant step towards rebuilding trust between government, employers, and workers, a trust founded on mutual respect, open dialogue, and shared commitment to progress. By creating a modern framework of protections that

meets the needs of nursing staff, as the largest clinical profession in the UK, this Bill can support our members in delivering the highest standards of care.

- 1.6. Fair workplace rights are not merely an entitlement, they are a necessity for building a resilient, safe, and sustainable health and care system. By enshrining these rights in law and ensuring robust enforcement, this Bill has the potential to empower nursing staff and safeguard the quality of care upon which the public relies.

## **Key provisions and recommended enhancements**

### **2. Trade union rights**

- 2.1 The RCN believes that strengthening trade union rights is essential to creating fairer, more equitable workplaces. Trade unions are fundamental to advocating for better pay, working conditions, and protections, particularly in sectors like health and social care, where workers face systemic challenges such as fragmented employment, insecure contracts, and exploitation.
- 2.2 The Employment Rights Bill offers an opportunity to address barriers to effective collective representation and strengthen workers' rights to organise and advocate collectively. The RCN strongly supports the removal of the thresholds imposed by sections 2 and 3 of the Trade Union Act 2016, which have unfairly restricted the ability of workers to take industrial action.<sup>1</sup>

#### ***Workplace access and communication***

- 2.3 The RCN strongly supports the introduction of a statutory right for trade unions to access workplaces. Nursing staff, especially those in independent or agency roles, often work in dispersed and isolated settings, making it difficult for unions to engage with all workers. Without meaningful access, many nursing staff are left unsupported and unable to address workplace concerns effectively.
- 2.4 The Bill must ensure that unions can engage directly with staff in their workplaces. This includes both physical access, such as the ability to meet workers on-site, and digital access, allowing unions to communicate via email, phone, or workplace messaging systems. Employers should also be required to provide accurate and up-to-date staff lists to facilitate this communication and prevent any worker from being excluded.
- 2.5 During disputes or industrial action, union access rights must remain protected. Employers must not be allowed to obstruct union activities or restrict communication with workers. Strong enforcement mechanisms, including meaningful penalties for non-compliance, are necessary to ensure these rights are upheld.

#### ***Duty to inform workers of their right to join a trade union***

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<sup>1</sup> Trade Union Act 2016, c. 15, ss. 2–3

- 2.6 The RCN strongly supports the introduction of a duty on employers to inform workers of their right to join a trade union. This is a positive step towards empowering workers, particularly in sectors such as independent health and social care, where union membership is often lower.
- 2.7 To ensure the effective implementation of this duty, the RCN recommends the issuance of statutory guidance, particularly targeted at smaller employers and the organisations that represent them. Such guidance would help employers understand their obligations and implement best practices for informing workers of their rights.

### ***Industrial action procedures***

- 2.8 The Trade Union Act 2016 imposed several draconian restrictions on industrial action, including a six-month expiration date for industrial action mandates and the introduction of high thresholds for turnout and support.<sup>2</sup> These thresholds, particularly the additional restrictions placed on “important public services” under sections 2 and 3, have unfairly limited the ability of workers, including nursing staff, to take industrial action even when significant workplace concerns exist. The RCN strongly supports the removal of these thresholds, which would restore workers’ democratic right to take collective action.
- 2.9 The six-month expiration date for industrial action mandates must also be repealed. This arbitrary limit places an unnecessary administrative burden on unions and disrupts long-running disputes, particularly in health and social care, where negotiations are often protracted. Returning to the pre-2016 Act framework, where mandates persisted until the resolution of the dispute, subject to court interpretation, would better reflect the realities of industrial relations.
- 2.10 While a full repeal of these restrictions is our preferred outcome, in the alternative, extending the mandate period to twelve months would be an improvement of sorts. A longer mandate would reduce the need for disruptive and resource-intensive re-balloting mid-dispute and provide greater stability during negotiations.
- 2.11 However, we would remind the government that their promise to the British people was to repeal the Trade Union Act 2016 in full, not to merely amend or dilute its most damaging provisions. The government’s current proposals fall short of this commitment, and as such, we would like to see the Bill amended.
- 2.12 Additionally, simplifying the notice requirements for industrial action is essential. Current rules impose excessive delays that hinder unions’ ability to respond swiftly to urgent workplace issues, such as unsafe conditions or breaches of employment rights. Streamlined procedures would ensure that industrial action remains a practical and effective tool for addressing serious concerns.

### ***Modernising voting through electronic balloting***

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<sup>2</sup> Ford, M. D., & Novitz, T. A. (2016). *Legislating for Control: The Trade Union Act 2016*. *Industrial Law Journal*, 45(3), 277-298. <https://doi.org/10.1093/indlaw/dww028>

- 2.13 The RCN strongly supports the introduction of electronic balloting for statutory union processes, including industrial action. E-balloting provides a modern, secure, and efficient alternative to postal voting, removing barriers to participation for workers in dispersed and irregular working environments. For nursing staff, who often work unpredictable hours across multiple sites, electronic voting would significantly improve accessibility and ensure their voices are heard.
- 2.14 Electronic balloting aligns with international best practices, with many democracies successfully implementing secure digital voting systems. In the UK, unions like the RCN already use electronic voting for non-statutory ballots, demonstrating its practicality and benefits. Concerns about the security and integrity of e-balloting can be addressed through robust encryption, independent oversight, and the continued role of scrutineers to maintain transparency and accountability.
- 2.15 Beyond accessibility, e-balloting reduces costs and accelerates processes, enabling unions to respond more quickly to workplace issues. It also offers environmental benefits by reducing paper use and the carbon footprint of traditional ballots. Introducing electronic voting is a practical, forward-looking reform that would enhance participation and efficiency in union decision-making. We are comfortable with the government's approach in repealing the relevant part of the 2016 Act but wish to see movement on this as the Bill progresses through Parliament.
- 2.16 Our preference is for this issue to be directly addressed in the Employment Rights Bill, with the inclusion of clear statutory principles to limit the ability of future governments to impose unreasonable restrictions through regulations. While we recognise that specific regulations will likely need to be laid through subsequent statutory instruments, particularly given the rapid pace of technological advancements, including in blockchain technology, a robust framework of overarching statutory principles in primary legislation is essential. Such principles would provide trade unions with legal recourse should a future government misuse its regulatory powers to undermine trade union rights.

### ***Repeal of the Strikes (Minimum Service Levels) Act 2023***

- 2.17 The RCN campaigned strongly against the Strikes (Minimum Service Levels) Act 2023, which imposed severe restrictions on the freedom to strike for key sectors, including healthcare.<sup>3</sup> We welcome its proposed repeal, as this will restore nursing staff's ability to take industrial action without the threat of punitive, government-imposed minimum service levels. This repeal represents a significant step towards fairer industrial relations and the restoration of workers' fundamental freedoms.

### ***Statutory recognition***

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<sup>3</sup> Royal College of Nursing (19 September 2023). *RCN calls for 'not fit for purpose' anti-strike bill to be scrapped*. Retrieved from <https://www.rcn.org.uk/news-and-events/news/uk-rcn-responds-minimum-service-level-regulations-190923>.

2.18 The Bill's provisions to simplify the process for trade union recognition are a welcome reform. By making it easier for unions to achieve statutory recognition, the Bill strengthens collective bargaining, particularly in fragmented sectors like independent health and social care. This is an important step in addressing disparities in pay and conditions across the workforce and ensuring workers have a voice in their employment terms.

### ***Blacklisting protections***

2.19 The RCN strongly supports the Bill's provisions to strengthen protections against blacklisting. Ensuring that trade union members are not discriminated against in recruitment or during their employment is vital for fostering a culture of fairness and inclusion. In the digital age, where sensitive data is easily shared or sold, these protections are more important than ever. Strong safeguards against blacklisting will protect unionised nursing staff from unjust treatment, in accordance with the principles of the European Convention on Human Rights Act (ECHR) and the Human Rights Act 1998.

## **3. Zero-hours contracts**

3.1 The RCN broadly welcomes the Bill's provisions granting workers the right to reasonable notice of shifts and the ability to request guaranteed-hours contracts. These measures represent an essential step in addressing the widespread misuse of zero-hours contracts, particularly in independent health and social care sectors. While zero-hours contracts may provide flexibility for some workers, they are frequently used to exploit nursing staff, leaving them unable to plan their lives or rely on a stable income. This instability has profound implications not only for the wellbeing of nursing staff but also for the quality and continuity of care provided to patients and service users.

3.2 The RCN's position is that zero-hours contracts should only be used with the explicit, ongoing consent of the worker. Employers must be required to review such arrangements regularly and ensure they remain genuinely voluntary. Furthermore, where nursing staff's hours have stabilised over a defined reasonable reference period, such as 12 weeks, employers should be required to offer guaranteed-hours contracts that reflect those working patterns. These measures are vital to ensuring that zero-hours contracts are not used as a default employment model but rather as a genuinely flexible option that works for the worker. We would oppose any attempts to significantly lengthen the reference period, as we believe that this would risk rendering it ineffective.

3.3 We additionally call for the Bill to empower the Secretary of State to issue a statutory Code of Practice, providing guidance to employers on how zero-hours contracts should operate within the health and social care sector. This Code should reflect the unique challenges of this sector, where precarious working conditions not only harm workers but also risk jeopardising patient safety. Clear and practical guidance is essential to ensure the effective implementation of the new framework and to safeguard the integrity of care delivery.

3.4 By combining these protections with the ability to issue sector-specific guidance, the Bill can ensure that zero-hours contracts are used responsibly and that the health and social care workforce is supported to deliver safe, consistent, and high-quality care. The RCN urges the Committee to adopt these measures to secure the stability and dignity nursing staff deserve.

#### 4 Flexible working

4.1 Flexible working arrangements are essential for supporting a diverse and sustainable nursing workforce. Flexible working is often a vital tool for achieving work-life balance, managing health conditions, or meeting caring responsibilities. In a profession that is predominantly female and frequently involves long, irregular hours, access to fair and flexible working practices is crucial for retaining skilled staff and maintaining morale.<sup>4</sup>

4.2 The RCN welcomes the Bill's provisions to strengthen workers' rights to request flexible working, recognising it as an important step toward addressing systemic inequalities in the workplace. However, ensuring that these rights are meaningful in practice requires robust safeguards against misuse or the overly broad application of refusal grounds by employers.

4.3 The RCN is calling for an amendment to Clause 7, subsection (1ZA)(i) to require the Secretary of State to consult a wide selection of trade unions before specifying any additional grounds for refusing flexible working requests. This amendment is critical in guarding against the undue expansion of lawful reasons to refuse flexible working requests. It also ensures that trade unions, as representatives of workers, have a meaningful role in shaping any future changes to these provisions.

4.4 This proposal strengthens the principle of fair consultation and ensures that any expansion of refusal grounds is subject to additional scrutiny, protecting the intent of the legislation. For nursing staff, whose ability to access flexible working can have a direct impact on their retention and well-being, this safeguard is particularly significant.

4.5 In addition to this amendment, the RCN believes the Bill must place clear and enforceable obligations on employers to engage in constructive dialogue with employees when handling flexible working requests. Employers should be required to provide written justifications for refusals, demonstrating how their decisions align with the specified refusal grounds. Transparent processes, supported by guidance and training for managers, are essential to ensuring that flexible working requests are handled fairly and consistently across organisations.

4.6 Flexible working arrangements benefit not only individual workers but also the broader health and social care system. Nursing staff who are better able to balance their professional and personal responsibilities are more likely to stay in their roles,

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<sup>4</sup> Chung, H. (2024). *Flexible working and gender equality: evidence and future scenarios and research agendas*. In *Sociology, Social Policy and Education 2024* (pp. 190–202). Published 12 September 2024. Available at: <https://doi.org/>

reducing turnover and promoting continuity of care. By adopting this amendment and strengthening employer obligations, the Bill has the potential to deliver meaningful protections for workers seeking flexible working. This will empower nursing staff to thrive in their roles and continue delivering the high-quality care that patients depend on.

## 5 Statutory Sick Pay (SSP)

5.1 The RCN supports the Bill's proposals to remove the three-day waiting period for SSP and abolish the lower earnings limit, both of which are long overdue reforms to address critical gaps in sick pay coverage. The current system, which excludes low-paid workers earning below £123 per week, disproportionately affects women and other marginalised groups in the workforce.<sup>5</sup> The proposed changes represent important steps in making SSP more accessible. However, the RCN believes the Bill must go further to address both the inadequacy of the SSP rate and risks of harm posed by the proposed replacement rate model.

### *Replacement Rate and ensuring fairness*

5.2 The RCN advocates that workers earning below the current SSP rate should receive 100% of their normal earnings during periods of sick leave. This principle should be explicitly legislated for in the Bill to ensure fair and adequate income replacement for the lowest-paid workers. These individuals are often without savings, operating on tight budgets, and face severe financial hardship when unable to work due to illness. Guaranteeing their normal earnings would provide essential financial stability and support their recovery.

5.3 Any percentage-based system that is ultimately imposed must be limited to workers earning below the current SSP rate, ensuring that all other workers continue to receive the full SSP amount. This approach prevents anyone from being financially disadvantaged under the reformed system, maintaining the government's commitment to "strengthen" SSP.<sup>6</sup> It also upholds the principle that these reforms should enhance, not diminish, workers' protections.

5.4 Concerns about potential misuse of this system are not borne out by evidence. Employers who already provide contractual sick pay at 100% have not reported significant increases in absenteeism, demonstrating that workers use sick leave responsibly. Furthermore, given the modest sums involved for workers earning below the SSP threshold, this policy would not impose a meaningful financial burden on employers, almost by definition.

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<sup>5</sup> Equality Analysis for Statutory Sick Pay Reform Measures in the Employment Rights Bill, Updated 6 November 2024, Department for Work and Pensions, available at:

<https://www.gov.uk/government/consultations/making-work-pay-strengthening-statutory-sick-pay/equality-analysis-for-statutory-sick-pay-reform-measures-in-the-employment-rights-bill>.

<sup>6</sup> Labour Party (2024). *Labour's Plan to Make Work Pay*, p. 10. Available at: <https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>

5.5 The RCN believes this approach provides a balanced solution that aligns with the government's stated objectives, protects the financial security of the lowest-paid workers, and ensures fairness across the workforce.

### ***Differential SSP for health and social care workers***

5.6 The RCN is also calling for the Bill to amend the Social Security Contributions and Benefits Act 1992 to allow the Secretary of State to set a higher rate of SSP for health and social care workers. This workforce, which plays a critical role in safeguarding public health, faces unique risks of illness and infection in the workplace. A higher differential rate would enable these workers to take sick leave without financial hardship, reducing the likelihood of presenteeism and workplace transmission of illness. This amendment would reflect the significant public health responsibilities of health and social care workers and ensure their financial stability during periods of illness. It would also help ensure patient safety, especially in the context of any future health emergency.

### ***Reviewing the adequacy of SSP***

5.7 The current rate of SSP – at £116.75 per week – is grossly inadequate. It replaces just 20% of average earnings and is among the lowest rates in Europe.<sup>7</sup> For workers on low incomes, SSP often fails to meet basic living costs, forcing many to make impossible choices between returning to work while ill or facing severe financial difficulties.

5.8 The RCN joins others in calling for an urgent review of the adequacy of SSP. The government must consider raising the SSP rate to provide a meaningful income replacement, ensuring that workers are not pushed into financial hardship during periods of illness. Any such review must include a commitment to action within the current parliamentary term to ensure that proposed reforms will be delivered and make a tangible improvement to workers' lives.

### ***Avoiding unintended consequences***

5.9 The government must carefully consider the impact of its proposals on all workers. Applying a percentage-based replacement rate to all SSP claimants risks undermining the positive changes introduced by the Bill. Workers currently eligible for full SSP may be worse off, particularly during extended periods of illness, which could lead to confusion, financial hardship, and pressure to return to work before fully recovering. These outcomes would not only harm individual workers but also weaken public health protections.

## **6 Protection from harassment**

6.1 Nursing staff face a heightened risk of harassment, including third-party harassment from patients, clients, or visitors. The emotionally charged nature of health and social care settings, combined with close interactions with patients and families, often exposes nursing staff to unacceptable behaviour.<sup>8</sup> Such harassment

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<sup>7</sup> Ibid

<sup>8</sup> Royal College of Nursing (25 October 2024). *Bullying and harassment*. Available at: <https://www.rcn.org.uk/Get-Help/RCN-advice/bullying-and-harassment>



is not an inevitable part of the profession, and robust measures must be taken to ensure the safety, dignity, and wellbeing of staff.

- 6.2 The RCN strongly welcomes the Bill's expansion of employers' duties to prevent harassment in the workplace. This is a significant step towards fostering safer environments for nursing staff and holding employers accountable for protecting their workforce. Additionally, the inclusion of protections for whistleblowers reporting sexual harassment is a critical and welcome enhancement. By adding sexual harassment to the list of relevant failures under Section 43B of the Employment Rights Act 1996, the Bill ensures that nursing staff who report sexual harassment, whether from colleagues or third parties, are protected from unfair dismissal and other detriment.
- 6.3 The misuse of non-disclosure agreements (NDAs) is an area in need of reform. NDAs have at times been used to silence victims of harassment, obscure patterns of unacceptable behaviour, and shield employers from necessary scrutiny. We urge the committee to consider how reforms could promote transparency and accountability, particularly in publicly funded workplaces. Reform should empower individuals to share their experiences without fear of legal repercussions, fostering a culture where harmful workplace practices can be openly addressed and prevented in the future.
- 6.4 Employers must also take proactive steps to prevent harassment. Comprehensive anti-harassment policies, robust enforcement measures, and clear reporting mechanisms are essential. Specific guidance for managing third-party harassment in health and social care settings is particularly critical given the heightened risks faced by nursing staff. Employers who fail to meet their obligations should face strong penalties to ensure the Bill's provisions are meaningful and effectively implemented.
- 6.5 Harassment-free workplaces are not only essential to protect individual workers but also to retain skilled staff and maintain high standards of patient care. The RCN urges the Committee to strengthen the Bill by addressing the misuse of NDAs, ensuring whistleblower protections are robust, and enforcing anti-harassment measures. These steps are vital to creating safer, more transparent working environments for nursing staff and improving the culture of the health and social care system as a whole.

## **7 Adult Social Care Negotiating Body**

- 7.1 The RCN strongly supports the creation of the Adult Social Care Negotiating Body, recognising it as a critical opportunity to address systemic challenges in the sector. Many of these issues, including low pay, poor working conditions, and exploitative practices, are particularly acute for internationally educated nurses (IENs) and other international workers, who make up a significant proportion of the workforce.

### ***Tackling labour abuses***

- 7.2 Labour abuses in adult social care are widespread, with international workers disproportionately affected. The RCN has seen cases where IENs face exploitative contracts, are tied to unsupportive employers through restrictive visa conditions, and endure unsafe or inequitable working environments. Many are denied basic rights, fair wages, or opportunities for career progression. These practices not only harm individual workers but also contribute to workforce instability and a decline in care quality.
- 7.3 A Negotiating Body offers a vital mechanism for setting a clear floor for pay, terms, and conditions across the sector. By establishing consistent minimum standards, the Negotiating Body can help eradicate exploitative practices, ensuring all workers are treated fairly and with dignity. This would be particularly transformative for IENs and other vulnerable workers, who are currently at significant risk of abuse.

#### ***Strengthening the Negotiating Body***

- 7.4 To ensure its success, the RCN is calling for amendments to Clause 29 to impose a duty on the Secretary of State to establish and maintain the Negotiating Body. These changes would replace discretionary language with a mandatory requirement for the body to be created within two years of the Act coming into force and to remain operational thereafter. Without such guarantees, there is a risk that the body's creation could be delayed, or its role undermined over time.
- 7.5 Additionally, the RCN believes the Negotiating Body's remit must include the proactive promotion of equality and fair treatment for the international workforce. We are calling for an amendment to Clause 30, subsection (1) to make this an explicit objective. This provision would recognise the unique vulnerabilities of IENs and ensure their inclusion in protections and career opportunities, helping to combat the systemic inequities that persist in the sector.

#### ***Setting a floor for standards***

- 7.6 The Negotiating Body would serve as a mechanism to establish a baseline of decency across the adult social care workforce. By setting consistent standards for pay, terms, and conditions, it would address the fragmentation that currently allows exploitation to flourish. For IENs and other workers, this floor would provide protection from unfair practices and create a pathway to secure and dignified employment.
- 7.7 This baseline is essential not only for supporting the workforce but also for improving the overall quality and consistency of care. A motivated, fairly treated workforce is better equipped to deliver the high-quality care that patients and service users deserve.

#### ***Certainty for the workforce***

- 7.8 A well-functioning Negotiating Body requires stability and confidence in its mandate. The proposed amendments would ensure its establishment within a defined timeframe and guarantee its continued operation. These safeguards are critical for delivering long-term solutions to the sector's challenges and for providing workers, particularly those who are most vulnerable, with the protections they need.

## 8 Enforcement and oversight

- 8.1 The RCN supports the establishment of the Fair Work Agency (FWA) as a centralised enforcement body. However, its effectiveness will depend on adequate resources, strategic priorities, and its ability to act decisively in high-risk sectors such as health and social care. Enforcement must be proactive, transparent, and supported by strong penalties for non-compliance to address the deeply entrenched issues of exploitation and poor employment standards.
- 8.2 Proactive labour inspections must form the cornerstone of the FWA's operations. The UK currently falls far below the International Labour Organization benchmark of one inspector per 10,000 workers, with fewer than 0.3 inspectors per 10,000 workers.<sup>9</sup> Without significantly increasing inspection capacity, enforcement efforts will remain limited, leaving vulnerable workers, including nursing staff, exposed to systemic abuses.<sup>10</sup> Proactive inspections are particularly critical in the care sector, where practices such as wage theft, debt bondage, and unsafe accommodation are alarmingly prevalent. Inspections should not only enforce wage and working hours compliance but also investigate recruitment practices and workplace safety.
- 8.3 Migrant workers in health and social care are especially susceptible to exploitation, with many tied to their employers through restrictive visa sponsorship schemes. Employers have been known to use immigration status as leverage, threatening workers with deportation to enforce unfavourable conditions. For the FWA to be effective, it must establish safe, confidential reporting mechanisms that are independent of immigration enforcement. Workers must be able to report abuses without fear of retaliation including loss of their visa, and employers must be prohibited from using immigration status to intimidate or control their staff. Provisions should include anonymised reporting systems, multilingual resources, and the ability to impose severe penalties for employers who engage in exploitative practices, including revocation of sponsorship rights.
- 8.4 Cases of modern slavery in the care sector have risen sharply, highlighting the urgent need for targeted enforcement.<sup>11</sup> Workers have reported extreme exploitation, including illegal repayment fees, withheld wages, and overcrowded or inadequate housing. Reports to us suggest that some nursing staff have been coerced into signing unfavourable contracts upon arrival in the UK, with employers later reducing agreed wages or imposing additional working hours to meet visa requirements.
- 8.5 The FWA must hold employers accountable through decisive penalties for breaches of labour standards. Employers guilty of serious violations should face unlimited fines, restrictions on visa sponsorship privileges, and, where necessary, criminal sanctions. Penalties should be publicised to act as a deterrent and to build

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<sup>9</sup> International Labour Organization (26 April 2024). *Safety in numbers: what labour inspection data tells us*. Retrieved from <https://ilostat.ilo.org/blog/safety-in-numbers-what-labour-inspection-data-tells-us/>.

<sup>10</sup> Unseen UK (17 April 2024). *Calls to modern slavery helpline rise for fourth year running*. Retrieved from <https://www.unseenuk.org/calls-to-modern-slavery-helpline-rise-for-fourth-year-running/>.

<sup>11</sup> Ibid

confidence among workers that violations will not go unpunished. Employers should also receive clear, proactive guidance on compliance to prevent inadvertent breaches and to promote adherence to best practices.

- 8.6 Transparency and accountability are essential to ensuring the FWA's credibility. The agency should publish annual reports detailing enforcement activities, outcomes of investigations, and penalties issued. Regular reporting will enable stakeholders, including trade unions and civil society, to monitor the FWA's progress and ensure it remains focused on its mandate. Trade unions such as the RCN must also play a central role in supporting enforcement efforts by providing intelligence, identifying patterns of abuse, and advocating for vulnerable workers. Partnerships between unions and the FWA will ensure that enforcement strategies are informed by on-the-ground realities and are responsive to the needs of workers.
- 8.7 Labour's *Plan to Make Work Pay* states that the new Single Enforcement Body will include "trade union and TUC representation."<sup>12</sup> As the largest trade union outside the TUC, due to historic reasons, it is vital that the RCN is offered a permanent seat at the table on the advisory board. This would ensure that the voice of our female-dominated profession, which is often at the forefront of labour abuses, particularly in independent health and social care, is not excluded from critical discussions. Seats must be allocated transparently and fairly, based on the size and relevance of trade unions, rather than political relationships, to ensure equitable representation.
- 8.8 The economic case for better enforcement underlines the value of these measures. High turnover rates caused by poor working conditions impose significant recruitment and training costs on the health and social care sectors. Better enforcement of employment standards would reduce attrition by improving job satisfaction and retention. Secure and equitable working conditions also enhance worker productivity and morale, leading to better outcomes for organisations and the patients they serve. Public health benefits are another key consideration — effective enforcement of statutory sick pay provisions, for instance, reduces the risks of infection transmission among staff and patients, lowering healthcare costs and safeguarding the wider community.
- 8.9 The exploitation of workers also imposes broader social costs, including reliance on public services to address the fallout of inadequate wages and unsafe conditions. By tackling these issues through rigorous enforcement, the FWA can reduce these burdens and ensure that employers meet their responsibilities. Moreover, strong enforcement creates a level playing field, ensuring that responsible employers are not undercut by those who disregard labour standards.
- 8.10 The FWA must be designed and resourced to deliver these outcomes effectively. Its success will depend on proactive engagement with high-risk sectors, robust penalties for non-compliance, and a clear commitment to worker protections. The

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<sup>12</sup> Labour Party (2024). *Labour's Plan to Make Work Pay*, p. 16. Available at: <https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>

RCN urges the Committee to prioritise these measures within the Bill to ensure it creates a fairer, safer, and more sustainable labour market.

## 9 Procurement

9.1 Public procurement practices are a powerful lever for driving improvements in workplace standards and addressing systemic inequalities. As one of the largest purchasers of goods and services, the government has the ability, and responsibility, to use procurement to ensure that companies benefiting from public contracts adhere to the highest standards of employment practices.

9.2 Labour's *Plan to Make Work Pay* outlined a commitment to using procurement to promote fair work, including requiring companies bidding for public contracts to recognise trade unions, ensure fair pay, and comply with strong workplace rights.<sup>13</sup> While the Employment Rights Bill includes welcome steps on tangentially linked issues, it does not directly address the transformative potential of procurement policies to shape better working conditions across the economy. This is a golden opportunity to rewrite the legislative framework as it relates to public sector procurement; trying to fix it later through statutory instruments is unlikely to suffice.

9.3 The RCN calls for the Bill to include clear provisions that ensure public procurement drives improvements in employment practices, particularly in sectors such as health and social care, where the government is a major funder. This would involve statutorily requiring companies bidding for public contracts to:

- Adhere to minimum employment standards, including those introduced by this Bill, such as protections against harassment and robust flexible working rights.
- Recognise trade unions and engage in collective bargaining where applicable.
- Sign up to *The Dying to Work Charter*, in line with the government's stated support for this.<sup>14</sup>

9.4 These measures are particularly important in health and social care, where independent providers deliver significant portions of publicly funded services. The RCN has consistently raised concerns about poor employment practices in these sectors, including the misuse of zero-hours contracts, inadequate sick pay, and insufficient protections against harassment. By embedding these expectations into public procurement processes, the government can create a level playing field that rewards fair employers and incentivises improvements across the sector.

9.5 Public procurement is not just about securing goods and services; it is about setting standards for what we value as a society. By integrating robust employment criteria into procurement processes, the Bill can play a pivotal role in creating a fairer labour

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<sup>13</sup> Labour Party (2024). *Labour's Plan to Make Work Pay*, p. 18. Available at: <https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>

<sup>14</sup> Labour Party (2024). *Labour's Plan to Make Work Pay*, p. 14. Available at: <https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>

market and supporting a more sustainable, motivated workforce in health and social care and beyond.

## 10 Family leave

10.1 The RCN strongly supports the Bill's proposals to remove the qualifying period for paternity leave and ordinary parental leave, extending these rights to all employees from the first day of employment. This reform is an important step toward creating equitable and supportive workplaces, particularly for those in precarious or short-term employment, which is prevalent in sectors such as health and social care.

10.2 Currently, the two-year qualifying period for ordinary parental leave and the six-month requirement for paternity leave exclude many workers, particularly those in agency or temporary roles. This disproportionately affects nursing staff and other care workers, many of whom juggle intense professional demands with significant family responsibilities. By eliminating these barriers, the Bill ensures that all workers, regardless of employment duration, have the ability to balance work and family life, fostering a more inclusive and supportive workplace culture.

10.3 Family leave provisions are particularly critical in health and social care, where the emotional and physical demands of the job can make balancing family responsibilities especially challenging. Ensuring equal access to these rights from day one will not only support the wellbeing of workers but also improve retention and morale across the workforce.

10.4 The RCN encourages the Committee to ensure that the implementation of these changes is supported by robust guidance and enforcement, ensuring that employers apply these rights fairly and consistently across all sectors. Removing the qualifying periods for parental leave represents a meaningful step in creating fairer workplaces that support workers at all stages of their careers.

## 11 Strengthening maternity rights

11.1 The RCN welcomes the Bill's proposals to strengthen maternity rights, particularly the inclusion of protections against dismissal during a protected period of pregnancy. This represents an important step toward ensuring fairness and security for workers during a uniquely vulnerable time. However, the RCN believes the Bill must go further to address the full range of adverse treatment that pregnant workers can face.

11.2 At present, Section 49D of the Employment Rights Act 1996 provides protections against redundancy for pregnant workers during the protected period of pregnancy. While the Bill's proposed addition of dismissal protections is a welcome enhancement, it does not address the more subtle but widespread issue of workers facing detriment. Adverse treatment such as being denied shifts, excluded from key opportunities, or subjected to workplace hostility often does not meet the threshold of dismissal or redundancy but can significantly impact a worker's financial stability, mental health, and career progression.

- 11.3 The RCN suggests an amendment to replace Clause 20 of the Bill with a provision that explicitly includes protections against detriment, alongside those for redundancy and dismissal, during the protected period of pregnancy. While we recognise that the rules governing detriment may necessarily be less stringent than those for dismissal, the inclusion of detriment protections is essential. Subtle discrimination and adverse treatment are far more common and can create an environment in which pregnant workers feel undervalued, unsupported, or pressured to leave their roles, perpetuating structural inequality.
- 11.4 For nursing staff, who frequently work in physically and emotionally demanding roles, robust maternity protections are critical. Pregnant nursing staff must be confident that they can continue working without fear of being treated unfairly or discriminated against. Including protections against detriment during the protected period of pregnancy would send a strong signal that all forms of pregnancy-related discrimination, no matter how subtle, are unacceptable.
- 11.5 The RCN urges the Committee to adopt such an amendment, replacing Clause 20 with a provision that provides comprehensive protections against redundancy, dismissal, and detriment during the protected period of pregnancy. This change is vital to creating a workplace culture that supports and values pregnant workers, ensuring they are able to thrive in their roles without unnecessary barriers or unfair treatment.

## 12 Bereavement leave and pregnancy loss

- 12.1 The RCN welcomes the Bill's provisions to expand bereavement leave, recognising it as a vital support for workers during one of the most challenging times in their lives. Nursing staff, who often balance emotionally demanding work with personal responsibilities, particularly need robust protections in this area to safeguard their mental health and wellbeing.
- 12.2 However, the RCN strongly believes these rights must be firmly enshrined in primary legislation, rather than being left to regulations. Key aspects, such as the duration of leave, eligibility criteria, and entitlement to pay, should be explicitly stated in the Bill to ensure they are secure for the future and not vulnerable to change without parliamentary scrutiny.
- 12.3 While parental bereavement leave is currently available, this provision must be broadened to include individuals who have experienced pregnancy loss or miscarriage during the early stages of pregnancy. At present, many people in these profoundly distressing circumstances are forced to take sick leave, which does not reflect the nature of their experience.<sup>15</sup> This is not right. Workers should not be left to navigate the physical and emotional toll of pregnancy loss without the dignity and

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<sup>15</sup> Acas (1 August 2024). *Stillbirth or miscarriage*. Available at: <https://www.acas.org.uk/time-off-for-bereavement/stillbirth-or-miscarriage>

support of statutory bereavement leave. Change is also essential to recognise and support their partners, who are also affected by the grief and loss.

12.4 By including these individuals within the scope of statutory bereavement leave, the Bill would better reflect the diverse and profound experiences of loss faced by workers. Ensuring access to such leave would demonstrate compassion and respect for those dealing with one of life's most difficult challenges while providing them with the time and space needed to recover.

12.5 The RCN urges the Committee to adopt an amendment to this end, ensuring that those who have experienced pregnancy loss or miscarriage, and their partners, are afforded the dignity and support they deserve. This is a necessary change to provide fairness and security for workers.

### **13 Menopause proposals**

13.1 The RCN welcomes the Bill's recognition of menopause as a workplace issue, reflecting an important step toward addressing the challenges faced by workers experiencing menopause symptoms. As a profession with a significant proportion of staff in the age group most affected by menopause, nursing is particularly impacted by the stigma and lack of support that has historically surrounded this issue.

13.2 The proposals in the Bill to strengthen workplace protections and improve employer awareness are crucial for creating environments where workers can feel supported rather than marginalised during this natural life stage. For nursing staff, who often work in physically demanding and high-pressure roles, these measures will help ensure they can continue contributing to the workforce without unnecessary barriers.

13.3 The RCN looks forward to working with policymakers and employers to ensure these proposals are implemented effectively, helping to create workplaces that are inclusive, supportive, and fit for all workers.

### **14 Redundancy notifications for administrators**

14.1 The RCN is calling for an amendment to extend the definition of "officer of the body corporate" under Section 194 of the Trade Union and Labour Relations (Consolidation) Act 1992 to include administrators appointed under Part II of the Insolvency Act 1986. This modest amendment, suggested in a constructive spirit, would address the legal gap highlighted in *Palmer v Northern Derbyshire Magistrates' Court (2023)* and ensure that administrators are held accountable for redundancy notification obligations, alongside directors and other corporate officers.<sup>16</sup>

14.2 By closing this loophole, such an amendment would provide an important safeguard for workers, ensuring that proper redundancy procedures are followed even during

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<sup>16</sup> *R (on the application of Palmer) v Northern Derbyshire Magistrates' Court and another* [2023] UKSC 38, Case ID UKSC/2021/0233.



insolvency proceedings. The RCN urges the Committee to adopt this practical and reasonable improvement to the Bill.

## 15 Fire and rehire

15.1 The RCN supports the Bill's proposals to address fire and rehire practices, which are an important step toward protecting workers from exploitative employment tactics. By making dismissals resulting from a worker's refusal to accept detrimental contract changes automatically unfair, the Bill provides stronger safeguards for job security.

15.2 Fire and rehire practices, where workers are dismissed and re-engaged on worse terms and conditions, create significant instability and disproportionately affect workers in precarious employment, including those in health and social care. The RCN has long been concerned about the impact of these tactics on nursing staff, whose work is already physically and emotionally demanding. Such practices undermine morale, destabilise the workforce, and compromise the quality of care provided to patients and service users.

15.3 While the RCN welcomes the Bill's provisions, we believe that effective enforcement will be critical to their success. Employers must not be allowed to use superficial consultation processes as a means to justify harmful changes to contracts. Consultation should be meaningful, involving genuine attempts to seek agreement and to explore all reasonable alternatives. To ensure this, the RCN supports additional measures such as the introduction of interim relief awards in fire and rehire cases. These awards would provide essential financial security for workers who are pursuing claims of unfair dismissal, reducing the pressure to accept unjust changes due to immediate income loss.

15.4 However, for interim relief awards to be practical and accessible, the timeframe for application must be extended. The current seven-day limit is unreasonably short, particularly in complex cases or where workers face significant organisational barriers in seeking timely legal advice. Extending this timeframe would make the protections provided by the Bill more meaningful and accessible to those most affected by fire and rehire practices.

15.5 The RCN urges the Committee to ensure that the Bill is implemented with robust enforcement mechanisms and strengthened protections, particularly for those in sectors like health and social care, where the workforce is more vulnerable to exploitation. Ending fire and rehire practices is essential to creating a fairer and more stable employment framework, ensuring workers can perform their roles without fear of sudden, detrimental changes to their terms and conditions.

## 16 Unfair dismissal

16.1 The RCN welcomes the Bill's proposal to remove the two-year qualifying period for unfair dismissal protections, ensuring that all employees are safeguarded against arbitrary or discriminatory treatment from their first day of employment. This is a

vital reform, particularly for workers in sectors like health and social care, where insecure and fragmented employment is prevalent.

- 16.2 The current two-year qualifying period leaves millions of workers without critical job security during their early years of employment, disproportionately affecting women, younger workers, and those in part-time or agency roles.<sup>17</sup> These groups are already more likely to face precarious conditions, and the absence of protections during this period exacerbates their vulnerability. By extending protections from the first day of employment, the Bill empowers workers to raise legitimate concerns, such as unsafe conditions, harassment, or discrimination, without fear of retaliation.
- 16.3 For nursing staff, who work in safety-critical and high-pressure roles, this reform is particularly significant. The ability to challenge unfair treatment early in their employment could help address workforce instability, improve retention, and ultimately enhance the quality of care delivered to patients and service users.
- 16.4 The inclusion of a probationary period offers a reasonable compromise, allowing employers time to assess employees' suitability while extending fundamental protections. However, the RCN believes it is essential to prevent probationary periods from being excessively long, which could undermine the purpose of these reforms. We propose that probationary periods be capped at a maximum of six months, with the potential for an extension of up to nine months for employees earning above the additional rate income tax threshold, currently set at £125,140 per year. In Scotland, where tax arrangements differ, separate implementation arrangements could be considered, if necessary, given that any criteria for extensions would likely be determined through regulations, in any case.
- 16.5 Importantly, the RCN believes that the Bill should avoid mandating a minimum statutory probationary period, recognising that norms and practices differ significantly across industries. Flexibility in determining appropriate probationary periods ensures that employers can tailor their approach to meet the specific needs of their sector and workforce, while still adhering to reasonable limits.
- 16.6 Clear and transparent criteria for assessment during probation are essential, with dismissal decisions requiring demonstrable and legitimate justification. This ensures fairness in the process and protects workers from arbitrary or discriminatory treatment.
- 16.7 By removing the two-year qualifying period and setting reasonable, industry-sensitive limits on probationary periods, the Bill has the potential to enhance job security and fairness for all workers. For nursing staff, these reforms represent an important step toward fostering a supportive and equitable workplace culture, addressing high turnover rates, and ensuring stability in the health and social care

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<sup>17</sup> Harris, R., & Moffat, J. (2023). What explains the increase in trade union density and female share of union members in the United Kingdom in 2017–2020? *Journal of Industrial Relations*, 65(3).  
<https://doi.org/10.1177/00221856231157107>



workforce. The RCN urges the Committee to adopt these measures and incorporate clear probationary period limits into the primary legislation.

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