Institute of Employment Rights

Provisional list of suggested amendments to the Employment Rights Bill 2024 proposed by officers of the Institute of Employment Rights

Seventh edition, 050325

Note: This series of amendments to the Employment Rights Bill seeks to build on the positive content already in the bill and bring the measures closer to the Employment Rights Green Paper (*New Deal for Working People*), the restatement in *Labour's Plan to Make Work Pay*, and its General Election Manifesto commitments. Some amendments deal with problems which arise in practice at the workplace or in legal proceedings but are not dealt with at all in the Bill. The list of amendments does not claim to be exhaustive. The government have today (5 March 2025) published a series of further amendments. Where relevant to the amendments proposed by the IER these have we believe (in the time available) been cross referred to. Many MPs have also tabled amendments which do not overlap with the IER amendments

The amendments highlighted in grey have been through the Public Bill Office (PBO) and subjected to proper parliamentary drafting and have been tabled by Andy McDonald MP starting at NC61. The amendments which are not highlighted in grey have not yet been referred to the PBO.

In relation to some matters, we have not attempted a formulated amendment at all but merely described what we had in mind in square brackets. They still need to be drafted.

We have added comments in italics in square brackets to explain the purpose of the amendments but these will have to be re-worded in most cases to be put in the language of the 'Member's Explanation' which should go with every amendment.

We have listed and numbered the amendments in a (fairly arbitrary) order of significance rather than the order in which they appear in the Bill.

Contents

1. Fair pay agreements / Sectoral Collective bargaining – cls.28 – 44 and Sched 3

1.*Social care Negotiating Body*
In clause 31(2)(b) delete all after 'Negotiating Body' and substitute: 'that person being selected by agreement between the union officials and employers' representatives who are members of the Negotiating Body and, in the event of a failure to agree chosen by the Central Arbitration Committee.'

[*This substitutes for selection of the Chair by the SoS and is intended to fulfil the requirements of the ILO for free and voluntary collective bargaining.*]

2.In clause 31(3) delete (a) and (b) and substitute instead: '(a) equal numbers of persons nominated by trade unions which represent the interests of social care workers and persons nominated by employers' associations representing the interests of employers of social care workers.

[*This is to create a negotiating body rather than a Pay Review Body consisting of persons nominated by the SoS.*]

3. In clause 32(1) delete 'matters that relate to any of the following' and (a) and (b) and insert: 'matters relating to or connected with any of those set out in s.178(2) of this Act.'

[*This broadens the remit of the negotiating body to the statutory list of matters for collective bargaining set out in s.178 (the statutory definition of collective bargaining).*]

4.In clause 32(1) after (c) add (d) to (g):
(d) the training of social care workers;
(e) career progression of social care workers;
(f) a procedure for the resolution of disputes at employer, regional and national level and may refer a dispute to ACAS for conciliation and mediation and, if not then resolved, shall be entitled to refer the matter to the Central Arbitration Committee to resolve the dispute, the decision of the latter being binding;
(g) discipline and grievance procedures;
(h) any other matter agreed to be the subject of negotiation by the parties.

[*(d) and (e) are copied from the SSSNB but currently omitted for social care workers presumably because of the separate bodies for training in each of the four UK nations but that is not a reason why the ASCNB should negotiate these matters (or aspects of them)*

nationally. (f) to (h) are to emulate a typical negotiating body, the agenda and resolution of disputes of which are not to be decided by the SoS.]

5.In clause 33(1) delete all after '"social care worker" means' and insert 'an individual who, as paid work, provides social care for an adult, including an individual who, as paid work, supervises or manages individuals providing such care or is a director or similar officer of an organisation which provides such care.'

[This brings the definition into line with the formulation for a social care worker in section 20(3) Courts and Criminal Justice Act 2015 and broadens the scope of adult social care workers whose terms and conditions will be set by the ASCNB to cover all those working in the sector and not just employees. This is necessary given the rapid growth in the sector of modern slavery, multiplicity of employment, self-employment and gig economy arrangements and privately commissioned care].

6.In clause 34 delete (1) and (2) save for (2)(e).

[*This removes the power of the SoS to dictate the proceedings of the Negotiating Body but preserves the power in the regulations that agreements be referred to him.*]

7.In clause 35(3) delete (c) to (f).

[*This preserves the power of the SoS to send a Negotiating Body agreement back to it but removes the SoS's power to dictate to the Negotiating Body how it must respond to that referral. Without this the process cannot be described as free and voluntary collective bargaining within the meaning (and obligations) of ILO Convention 98.*]

8.Omit clause 36 (failure to reach agreement).

[*It is neither necessary nor appropriate for the SoS to determine the disputes procedure – that is a matter for the parties to resolve by negotiation. That accords with the requirements of the ILO.*]

9.In clause 38(2) delete 'the worker's remuneration is to be determined and paid in accordance with the agreement' and substitute 'the worker's remuneration is to be no less than that determined and paid in accordance with the agreement.'

[*This removes the remarkable provision that a social care worker cannot be paid or enjoy more favourable terms than those approved by the SoS, even if collectively agreed or contractually binding, The amendment reverts to the usual situation in sectoral collective bargaining by which local agreement can be more but not less favourable than the national agreement.*]

10.Omit clause 39 (power of the SoS to deal with matters).

[*This provision is otiose and inappropriate since it is for the parties to collective bargaining to agree their disputes resolution procedures and the amendment above provides ultimately for arbitration by the CAC, resolution of disputes by the SoS being outwith the concept of free and voluntary collective bargaining given that the SoS is an interested party as the likely ultimate funder of any matter in dispute.*]

11.Omit clause 45 (status of agreements).

[*Clause 45 as it stands says that agreements reached by the negotiating body are not to be treated as collective agreements as defined by s.178 TULRCA. The purpose of this is not understood save that it is a recognition that the provisions unamended do not constitute collective bargaining in the sense understood by the ILO and industrial relations experts. With the amendments above the agreements reached by the Negotiating Body would properly be described as collective agreements within the meaning of s.178.*]

School Support Staff Negotiating Body (SSSNB) in Schedule 3 under the heading 'Part 8A:

12. In section 148B delete 'matters relating to the following' and (a) to (d) and insert: 'matters relating to or connected with any of those set out in s.178(2) of this Act.'

[*This broadens the remit of the negotiating body to the statutory list of matters for collective bargaining set out in s.178 (the statutory definition of collective bargaining).*]

13. In section 148B(1) add new clauses (e) and (f):

(e) A procedure for the resolution of disputes at employer, regional and national level and may refer a dispute to ACAS for conciliation and mediation and, if not then resolved, shall be entitled to refer the matter to the Central Arbitration Committee to resolve the dispute, the decision of the latter being binding;

(f) Any other matter agreed to be the subject of negotiation by the parties.

[*As before this is to emulate a typical negotiating body the agenda of which is not to be set by the SoS.*]

14. In section 148B delete (2).

[*This removes the power of the SoS to determine which aspects of remuneration, training and career progression the parties wish to negotiate. In free and voluntary collective bargaining it is for the parties to decide what they will negotiate.*]

15. Omit section 148Q (agreements of SSSNB not to be collective agreements).

[*As with the Social Care Negotiating Body, the justification for precluding agreements reached by the SSSNB from being treated as collective agreements as defined by s.178 TULRCA is not understood. It is a recognition that the provisions unamended, because of the powers of the SoS to regulate both procedure and outcomes, do not constitute collective bargaining in the sense understood by the ILO and industrial relations experts. With the amendments the agreements reached by the Negotiating Body can properly be defined as collective agreements within the meaning of s.178.*]

[*It is not understood why the original provisions establishing the SSSNB (Sched.15, Apprenticeships, Skills, Children and Learning Act 2009 – repealed by the Education Act 2011) could not have been resurrected. They were far less prescriptive and hence more in tune with a genuine negotiating body.*]

Particular sectors

16. "Sectoral collective bargaining: particular sectors

(1) Regulations under this Act may include regulations for collective bargaining in particular sectors of the economy.

(2) Regulations made under subsection (1)—

(a) may only be made following consultation with representatives of workers and employers in those sectors; and

(b) may provide that agreements reached by such collective bargaining shall apply to the workers and employers in the relevant sector save to the extent that a previous or subsequent collective agreement has provided a more favourable term or condition."

[*This at least enables regulations to be laid for sectoral collective bargaining in particular sectors of the economy. The structure could be set out by using the template of the Wages Councils, the Fair Work Act New Zealand 2022, the Workplace Relations Act 2015 in Ireland and other exemplars but for the moment this hopefully suffices. It fulfils the commitment in* New Deal for Working People *to extend SCB across the economy and the promise in* Making Work Pay *that Social Care and School Support Staff were the forerunners of a wider programme of sectoral collective bargaining.*]

17. Add a new cl. 46A as follows:

In the Trade Union and Labour Relations (Consolidation) Act 1992 after the heading 'Part VI Administrative Provisions' insert a new section 246A:

'246A It shall be the duty of the Secretary of State for Business and Trade to lay before Parliament within 6 months of the coming into effect of this Act and after consultation with organisations representing employers and trade unions an action plan to achieve within five years that the principal terms and conditions of employment of at least 80 percent of workers in the United Kingdom are determined by collective agreement.'

[*This is to enable the UK to keep pace with the EU Adequate Wage Directive (2022/2041). It requires every EU country with less than 80% of its workforce covered by collective agreements to produce an action plan to achieve this level of coverage. Within 5 years. (Though the constitutionality of the Directive is challenged in the Opinion of Advocate-General Eiliou of 14 January 2025 (Case C-19/23* Denmark v European Parliament*), he accepted the legitimacy of the collective bargaining provisions. The matter will be resolved in the CJEU later this year.*]

18. Add a new Schedule 4A headed 'Consequential amendments to Part 4

Trade Union and Labour Relations (Consolidation) Act 1992

Amend s.209 TULRCA by adding after 'industrial relations,' the following: 'and in particular to encourage the extension of collective bargaining and the development and, where necessary, reform of collective bargaining machinery'.

[*This would restore the original wording of s.209 as in 1992 and would restore to ACAS the duty to promote collective bargaining, a duty that is specifically required of Member States by ILO Convention 98 and European Social Charter Article 6(2).*]

19. Amend s.179 TULRCA by deleting the existing text and substituting the following:

> 179 Whether agreement intended to be a legally enforceable contract.
>
> (1) A collective agreement shall be conclusively presumed to have been intended by the parties to be a legally enforceable contract unless the agreement—
>
> > (a) is in writing, and
> >
> > (b) contains a provision which (however expressed) states that the parties do not intend that the agreement shall be a legally enforceable contract.
>
> (2) A collective agreement which satisfies those conditions shall be conclusively presumed not to have been intended by the parties to be a legally enforceable contract.
>
> (3) If a collective agreement is in writing and contains a provision which (however expressed) states that the parties intend that one or more parts of the agreement specified in that provision, but not the whole of the agreement, shall not be a legally enforceable contract, then—
>
> > (a) the specified part or parts shall be conclusively presumed not to have been intended by the parties to be a legally enforceable contract, and
> >
> > (b) the remainder of the agreement shall be conclusively presumed to have been intended by the parties to be such a contract.
>
> (4) A part of a collective agreement which by virtue of subsection (3)(a) is not a legally enforceable contract may be referred to for the purpose of interpreting a part of the agreement which is such a contract.

[*S.179 was introduced at a time when trade unions had significant bargaining strength without the constraints of the 1982-1992 legislation and were generally in a position to enforce collective agreements through industrial processes rather than by legal proceedings. Hence the presumption (already established in common law:* Ford Motor Co. v AEUFW [1969] 2 QB 303*) was made explicit that a collective agreement was legally unenforceable (other than through the contracts of employment of the workers). The balance of power has altered very significantly since then, as the case of P&O Ferries particularly highlights. There, the employer not merely ignored the substantive provisions of the (longstanding) collective agreements but also disregarded the dispute resolution procedures and the termination obligations. Accordingly, it is appropriate now to reverse the legal presumption so as to make legally enforceable the obligations undertaken by employers in collective agreements, in particular dispute resolution procedures.*]

20. [*This amendment is deleted because it duplicates (badly) Amendment 17*]

2. Recognition – cl.51

~~Add a new (3):~~

~~Add a new para.12A:~~

~~'12A References to a 'union' in paragraphs 10, 11 and 12 is a reference to a union with a certificate of independence and a reference to 'unions' in those paragraphs is a reference to unions which each have a certificate of independence.' [*This excludes from the benefit of the recognition procedure unions without a certificate of independence under s.6 TULRCA 1992 (i.e. unions which are 'under the domination or control of an employer or group of employers or of one or more employers' associations' and 'liable to interference by an employer or such group or association arising our of the provision of financial or material support or by any other means whatsoever' (s.5 TULRCA.*]~~

[*This amendment is no longer required since the government has amended the Bill to similar effect.*]

21. Add after cl.47 (1) insert new subparagraphs to give effect to the following amendments to Schedule A1:

22. In paragraph 3(2) delete 'not'.

23. In paragraph 3(3) delete 'pay, hours and holidays' and substitute instead 'the matters set out in s.178(2)'.

[*The purpose of these amendments is to expand the subject matter of negotiations if recognition is agreed or imposed by the CAC from the minimal 'pay, hours and holidays' so as to include all the matters Parliament has determined as appropriate for collective bargaining as set out in s.178(2).*]

Trade union recognition

24. Clause 51, page 69, page 18, at end insert—

"(2A) In paragraph 22 (collective bargaining: recognition)—

(a) leave out sub-paragraph (1)(b) and insert—

"the CAC has evidence, which it considers to be credible, that a majority of workers constituting the bargaining unit want the union (or unions) to conduct collective bargaining on their behalf'."

(b) leave out subparagraphs (3), (4) and (5).

(2B) In paragraph 25 (collective bargaining: recognition)—

(a) in sub-paragraph (3)(a) leave out "20 working days" and substitute "10 working days", and
(b) leave out sub-paragraph (3)(b).
(c) after sub-paragraph (4)(a) insert "(aa) by secure electronic voting,"
(d) in sub-paragraph (4)(c) leave out "and b" and substitute "to (c)"
(e) after sub-paragraph (4)(c) insert—
"(d) only amongst those who are employed in the proposed bargaining unit and were so employed at the time the application was made".

(2C) In paragraph 26 after sub-paragraph (4) insert—
"(3A) In the event that the union (or unions) consider that such access has been unreasonably refused, it (or they) may apply to the CAC for a declaration and order that access be granted and in the event that such a declaration or order is made and the union (or unions) consider that such a declaration or order has been breached it (or they) may apply to the High Court for relief."

(2D) In paragraph 26 after sub-paragraph (4B) insert—
"(4BA) The sixth duty is to refrain from any act or omission, direct or indirect, likely to encourage a union member or members to resign from union membership or likely to discourage a person from joining a union or any particular union.
(4BB) It shall be unlawful to compel a worker or workers by threat of detriment or dismissal to attend any meeting in which the employer, its servants or agents expresses the view directly or indirectly that—
(a) membership of a union or any union; or
(b) recognition for the purposes of collective bargaining of a union or any union by the employer,
is undesirable."

(2E) In paragraph 27B(2) leave out "must be made on or before the first working day after" and substitute "must be made within 20 working days after".

(2F) In paragraph 29 (collective bargaining: recognition) leave out sub-paragraph (3)(b).

(2G) In paragraph 35(1) leave out "a collective agreement under which a union (or unions) are recognised as entitled to conduct collective bargaining" and substitute "a collective agreement under which an independent union (or independent unions) are recognised as entitled to conduct collective bargaining".

(2H) In paragraph 35(1) after "in the rules" insert "'in relation to all pay, hours and holidays".

(2I) In paragraph 39(2)(a) leave out "years" and substitute "months".

(2J) In paragraph 40(2)(a) leave out "years" and substitute "months".

(2K) In paragraph 41(2)(a) leave out "years" and substitute "months".

[*This single consolidated amendment covers a number of specific amendments as originally drafted. Their purpose is as follows:*

(a) to reduce the need for a ballot and to ensure that the CAC must grant automatic recognition to a union which can show (i) a minimum level of membership as required under paragraph 14 and (ii) majority support within the proposed bargaining unit. This is similar (though not identical) to the majority support determination procedure for recognition in Australia;

(b) *shortens the time delay for holding a ballot from 20 working days or longer if the CAC so decides to a maximum 10 days. Since this may be done electronically, this seems achievable. The problem is that delay always favours the employer's campaign against recognition*;

(c) *allow electronic voting in addition to workplace and postal balloting*;[

(d) *prevent packing the bargaining unit by bringing in new or transferred workers to defeat the claim - as alleged at Amazon*;

(e) *removes the requirement of at least 40% of the bargaining unit voting in favour and leaves it as a simple majority of those voting*;

(f) *substitutes a speedy and effective means of enforcing union access to the relevant workforce in a situation where, obviously, the employer has a virtual monopoly of access and the current provision provides no effective enforcement – just a penalty payable to the CAC!*;

(g) *deters the behaviour alleged at Amazon of encouraging members to resign and discouraging non-members from joining the GMB*;

(h) *deters the use of compulsory meetings (in vogue by union busting firms) to dissuade workers to vote against union representation;*

(i) *lengthens the period for making a complaint about an unfair practice in connection with the ballot from 1 to 20 working days. Given the time periods allowed for the rest of the procedure this seems reasonable*;

(j) *prevents employers reaching a recognition agreement with a union(s) without a certificate of independence (a sweetheart union - see above) in order to block an application by an independent union (as in* R (NUJ) v CAC, Sec. of State, MGN Ltd, BAJ *[2006] ICR 1; IRLR 53;* R (Boots) v Central Arbitration Committee, PDAU *[2017] EWCA Civ 66, [2017] IRLR 355. Another example on the Certification Officer website is News UK & Ireland Ltd (and 'NCS UK') which wholly fund, to the extent of £340,179 pa in 2024, the tame News Union (formerly News International Staff Association) which has no subscription income: https://assets.publishing.service.gov.uk/media/670fc80f92bb81fcdbe7b9ab/NU_Members_statement_2024.pdf* ;

(k) *ensures that the recognition for collective bargaining which allows one TU to block an application by another at least covers the three elements for which the recognition procedure grants recognition for collective bargaining and not (as seen in some of the cases) recognition for collective bargaining over entirely peripheral matters*; *and*

(l) *removes the 3 year barrier to a union which has lost an application for recognition and substitutes 3 months only.*]

25. *[Now taken in in no.24.]*

26. *[Now taken in in no.24.]*

27. *[Now taken in in no.24.]*

28. *[Now taken in in no.24.]*

29. *[Now taken in in no.24.]*

30. *[Now taken in in no.24.]*

31. *[Now taken in in no.24.]*

32. *[Now taken in in no.24.]*

33. *[Now taken in in no.24.]*

34. *[Now taken in in no.24.]*

35. *[Now taken in in no.24.]*

36. *[Now taken in in no.24.]*

37. Add after para.35(4)(c) a new (d):

> '(d) the union and the employer do, in practice, bargain collectively over pay, hours and holidays.'

[*This is to ensure that the recognition for collective bargaining which allows one TU to block an application by another at least functions in practice rather than being an inert blocking device.*]

38. *[Now taken in in no.24.]*

3. Industrial action – cls.54-61

Add a new Schedule 4A to contain consequential amendments relating to Part 4 (on industrial action).

39. In Schedule 4A amend section 219 by inserting at the beginning of subsection (1):

> 'Every worker shall have the right to take industrial action whether or not in breach of any contract subject to the provisions of this Part, and for the avoidance of doubt…'

[*This establishes a positive and express right to strike (such a right having been already recognised by the ECtHR in many cases, including* RMT v UK *[2014] IRLR 467; (2015) 60 EHRR 10 and (implicitly) by the UK Courts in* RMT v Serco Ltd; ASLEF v London & B'ham Rly *[2011] EWCA Civ 226; [2011] I.C.R. 848; [2011] I.R.L.R. 399).*]

40. In Clause 62 delete the heading 'Union Supervision of Picketing' and substitute 'Picketing' and add a new subsection (3):

> (3) In section 220 (Peaceful Picketing):
>
> (a) omit the words in (1)(a) and (b) and substitute instead: 'a place of work';
>
> (b) omit subsections (2) to (4).

[*These changes remove the restriction confining pickets to their own place of work only. That restriction was another ground on which the ILO held that UK industrial action law was incompatible with Convention 87.*]

41. In Schedule 4A repeal s.223 (which removes protection from strikes against the dismissal of an employee for taking unofficial unprotected industrial action).

[*That restriction was another ground on which the ILO held that UK industrial action law was incompatible with Convention 87. There is no justification for making strikes against the*

dismissal of a fellow worker unlawful merely on the ground that it turns out (retrospectively) that the action the worker took was unofficial.]

42. In Schedule 4A repeal section 224 (secondary action)

[*The bar in UK industrial action law on all forms of secondary action is a prominent reason that the ILO have held that UK industrial action law is incompatible with ILO Convention 87. Zarah Sultana has an almost identical amendment as NC31.*]

43. In Schedule 4A in section 244(1) (meaning of trade dispute):
delete 'a dispute between workers and their employer' and substitute 'a dispute between workers and one or more employers'
And in section 244(5) (definition of 'worker' delete in (a) 'a worker employed by that employer' and substitute 'a worker employed by an employer'

[*This completes the removal of the bar on secondary action*.]

44. In Schedule 4A in section 244(1) delete 'which relates wholly or mainly to' and substitute 'connected with'.

[*This substitutes the original 1906 wording of the section which was changed in the 1980s. The change was the subject of another finding of incompatibility with Convention 87 by the ILO*.]

45. In Schedule 4A repeal section 225 (pressure to impose union recognition requirement).

[*There is no reason why industrial action should not be taken to achieve recognition for collective bargaining – both ILO Convention 98 and Article 6(2) European Social Charter require Member States to promote collective bargaining and recognition for collective bargaining has been held by both to be a legitimate objective of the exercise of the right to strike*.]

46. Insert a new cl.58(3):
(3) Omit section 226A (notice of ballot and sample ballot paper for employers).

[*The obligation to provide a ballot paper to the employer and, even more, the obligation to provide a long and complex notice that a ballot is to be held for IA is another reason that the ILO have held that UK IA law is not compatible with ILO Convention 87. Furthermore, it adds to the extreme complexity of this part of the Act, another basis of the finding of incompatibility. The government ptorpose in NC42 to simplify pre-ballot notice but not to remove the requirement.*]

47. In Schedule 4A repeal sections 228 and 228A (separate and aggregate ballots).

[*These add complexity to industrial action ballots which the ILO have held is one of the reasons that UK IA law is not in conformity with ILO Convention 87. The TU should be free to choose the constituencies it will ballot.*]

48. Omit cl.60 and insert a new clause 60(3):
'In section 230 (conduct of balloting) insert a new subsection (4):

(4) Alternatively a trade union may elect to conduct the ballot electronically in accordance with regulations to ensure the secrecy, security and verifiability of such ballots which the Secretary of State shall make by Order within 7 days of the Act coming into force and after consultation with the Trades Union Congress and the Certification Officer in which case subsection 2 shall only apply to those members who have notified the trade union in writing that they are unable or do not wish to vote electronically.

[*Cl.60 currently allows the SoS to make an order for electronic voting pursuant to s.54 ERA 2004 but does not compel him to do so or impose any timescale for doing so. This remedies those defects.*]

49. In Schedule 4A repeal section 54 Employment Relations Act 2004.

[*This completes the electronic voting provision since the power is no longer necessary.*]

50. In cl.61 delete the heading 'Industrial action: provision of information to employer' and substitute: 'Industrial action: provision of information'

In cl.61 insert a new (1) and (2):

51. '(1) In s.231 (provision of ballot result to members) delete 'the trade union shall take such steps as are reasonably necessary to ensure that all persons entitled to vote in the ballot are told' and substitute 'the trade union shall display reasonably prominently on its website on a webpage reasonably easy to find and which is freely accessible to the general public:'

[*This removes any ambiguity as to the need to send out the ballot result by post to members and employers – over which there has been much litigation e.g.* Metrobus Ltd v UNITE the Union *[2009] IRLR 851, [2010] ICR 173;* British Airways v UNITE the Union *[2010] ICR 1316; IRLR 809. It accords with modern industrial relations and technology.*]

52. (2) S. 231A (employers to be informed of ballot result) is repealed.

[*The employer can access the TU website for full details of the ballot result.*]

53. After cl.60 insert a new cl.60A:

'In section 234 (period after which ballot ceases to be effective) omit subsections (1) to (5) and substitute:

'(1) Industrial action that is regarded as having the support of a ballot shall cease to be so regarded when the dispute which gave rise to it ceases or when the union has taken no steps to pursue the dispute for a period of six months.'

[*This is to remove an arbitrary obligation on the union in a long running dispute to re-run the ballot every six months – it can be assumed that a union will know when support for the action is waning and in those circumstances it will call the action off. The provision also permits an immediate walk out where the workforce is sufficiently angered by a unilateral act by the employer which has already taken place. The government propose in NC43 to extend ballot validity to one year.prison*]

54. After cl.61 insert a new clause 61A:

'In section 234A omit subsections (3) to (9) and substitute new subsections (3) and (4):

(3) For the purposes of this section a relevant notice is one in writing which identifies:

(a) the day or the first of the days on which, at the time of the service of the notice industrial action, the union proposes to call industrial action;

(b) the principal broad categories of employee the union intends to call on to take industrial action.

(4) The notice must be provided to the employer as early as practicable after the ballot result is known and the decision to take industrial action in furtherance of it has been taken. But where the dispute has arisen about an event which has already taken place no notice shall be required.

[*These provisions simplify the notice provisions as indicated in the* New Deal for Working People *and* Making Work Pay. *They also address yet another complexity in the legislation which the ILO has held to be incompatible with ILO Convention 87. In reality the complexity of the provisions was only ever intended to furnish grounds for employers to seek injunctions.*]

55. In Schedule 4A, repeal sections 127 and 127A of the Criminal Justice and Public Order Act 1994.

[*This is required to remove the ban on the right to strike of prison officers and their union. It fulfils a promise made many years ago by a Labour Home Secretary to remove the restriction which has no justification, and which has resulted in the degradation of the pay of prison officers with the resultant problems of recruitment and retention now seen in the prison service. John McDonnell and others have NC8 and NC9 to similar effect.*]

4. **Statement of TU rights – cl.49**

56. To insert the following Clause—

"Statement of trade union rights

Every employee, worker and self-employed person has the right—

(a) to join an independent trade union of his choice, subject only to its rules;

(b) to take part in the activities of an independent trade union at an appropriate time, subject only to its rules."

[*The duty proposed on employers in cl.49 to provide a worker with a statement of their right to join a trade union is of limited benefit. The right to participate in the activities of an independent trade union is not required to be stated. It is true that the Bill reserves to the SoS the power to make regulations stating what is to be included in the statement and the form the statement must take but the choice of the SoS on these matters now and in the future is*

unknown. In any event, if the employer cannot make the case in the statement cl.49 invites the employer to issue a corresponding statement of the right (protected by Article 11 ECHR) not to join a trade union and the reasons why the employer considers the worker should not do so. On the other hand, clarity needs to be provided as to right in law to join an independent trade union and to engage in its activities.

The proposed amendment is necessary because the right to join and the right to participate in the activities of an independent trade union is not otherwise stated in UK law, though they may be considered to beimplicit in ss.146 and 152 of TULRCA (protection against detriment and dismissal for being a member of an independent trade union) but need to be made explicit.]

57. In cl.49(2) in the proposed s.136A(1) delete 'trade union' and substitute 'independent trade union and participate in its activities at appropriate times.'

[*This makes clear that there is a right to membership of an 'independent' trade union and extends the right of membership to a right to participation in trade union activities. The rights currently in ss.146 and 152 do not extend to membership or activities of a non-independent TU and without this amendment the employer could misleadingly suggest in the written statement that there is a right to join a non-independent trade union, i.e. one under the control of the employer (see s.5 of the 1992 Act). This is likely to be the case where the employer only recognises a trade union which is under the 'domination or control' of an employer.*]

58. In cl.49(2) in the proposed s. 136A(1) at the end add 'and the statement must contain nothing else.'

[*Without this the employer could bury the statutory words in verbiage, especially wording intended to discourage union membership.*]

5. **TU right of access – cl.50**

In cl.50 (which introduces a new Part 5ZA into TULRCA):

~~Substitute 'independent trade union' in place of 'listed trade union' wherever it occurs and amend cl.70ZA(3) accordingly [*This is intended to discourage use of this right by an employer entering an access agreement with a non-independent sweetheart union (see above in relation to recognition) in an attempt to block an independent union.*]~~

This amendment is no longer necessary since the government has accepted an amendment to confine access to trade unions which are certified as independent. The mystery remains as to who it was who chose to add the adjective 'listed' with the foreseeable effect of permitting an employer to grant access to a non-independent union in an attempt to justify refusal of access to an independent union.

Right of Trade Unions to Access Workplaces

59A. Page 61, line 14 leave out Clause 50

[Member's explanatory statement: New clause (X) is intended to replace Clause 50.

59B *[New clause X]*

In part 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (trade unions), before Chapter 5A insert:

"CHAPTER 5ZA
RIGHT OF TRADE UNIONS TO ACCESS WORKPLACES

70ZA Right of access
(1) A designated official of an independent trade union shall have a right to enter premises occupied by an employer in order to access a workplace or workplaces, subject to the conditions set out below.
(2) An employer shall not:
(a) refuse entry to a designated trade union official seeking to exercise his or her right of access under sub-section (1), or
(b) otherwise obstruct such an official in the exercise of his or her right of access under sub-section (1).
(3) A 'designated trade union official' means a person nominated by the trade union to exercise the right of access on its behalf.

70ZB Access purposes
(1) The right of access may be exercised for the access purposes.
(2) The access purposes are to:
(a) meet, represent, recruit or organize workers (whether or not they are members of a trade union); and
(b) facilitate collective bargaining.

70ZC Notice to employer
(1) The right of access may be exercised only after the designated official of an independent trade union has given notice of an intention to do so to the employer whose premises it is proposed to enter for the purposes of access to a workplace or workplaces.

(2) The notice must be:

(a) in writing; and
(b) given at least 24 hours before it is intended to exercise the right of access;

(3) The notice required to be given under subsection (2) shall:

(a) specify the purpose for which entry is sought; and
(b) identify the workers or categories of workers the designated official intends to meet, represent, recruit or organize.

(3) The right of access may be exercised without giving notice where there are exceptional circumstances such as to justify access without prior notice.

(4) Whether circumstances are exceptional shall be determined by having regard to the relevant provisions of a Code of Practice issued by ACAS.

70ZD Access conditions
(1) The right of access is subject to the following conditions.
(2) The right of access may be exercised -

(a) only at a reasonable time, and
(b) subject to reasonable conditions imposed by the employer,

(3) What is reasonable for the purposes of subsection (2) shall be determined by having regard to the relevant provisions of a Code of Practice issued by ACAS.

70ZE Dwellings
(1) The right of access does not apply to any part of premises which are used exclusively as a dwelling.
(2) Where sub-section (1) applies and only where sub-section (1) applies, the employer shall provide a reasonable, suitable, and alternative venue to enable the right of access to be exercised.
(3) What is reasonable and suitable for the purposes of subsection (2) shall be determined by having regard to the relevant provisions of a Code of Practice issued by ACAS.

70ZF Enforcement of right of access
(1) Where an employer refuses or obstructs access contrary to section 70ZA, a complaint may be made to the CAC by the trade union of which the designated official is a representative.
(2) Where the CAC finds the complaint to be well-founded it shall make a declaration to that effect and may make an order requiring the employer to comply with section 70ZA, subject to such conditions as the CAC may determine.
(3) If the CAC makes a declaration under subsection (2) the trade union may, within the period of three months beginning with the date on which the declaration is made, make an application to the Employment Appeal Tribunal for a penalty notice to be issued.
(4) Where such an application is made, the Employment Appeal Tribunal shall issue a written penalty notice to the employer requiring the employer to pay a penalty to the trade union in respect of each refusal or obstruction of access unless satisfied, on hearing representations from the employer, that the refusal or obstruction of access resulted from a reason beyond the employer's control or that the employer has some other reasonable excuse.
(5) If the CAC makes an order under subsection (2) the order shall be recorded in the High Court and on being recorded may be enforced as if it were an order of the High Court.

70ZG Penalty notice
(1) A penalty notice issued under section 70ZF(4) shall specify—

(a) the amount of the penalty which is payable;
(b) the date before which the penalty must be paid; and
(c) the failure and period to which the penalty relates.

(2) A penalty set by the Employment Appeal Tribunal under section 70ZF(4) may not exceed a prescribed amount.
(3) Matters to be taken into account by the Employment Appeal Tribunal when setting the amount of the penalty shall include—

(a) the gravity of each refusal or obstruction of access;
(b) the period of time over which each refusal or obstruction of access occurred;
(c) the number of occasions on which each refusal or obstruction of access occurred;
(c) the reason for each refusal or obstruction of access;
(d) the number of workers affected by each refusal or obstruction of access; and
(e) the number of workers employed by the undertaking.

(4) The Employment Appeal Tribunal shall also take into account any previous refusal or obstruction of access to a designated official of the independent trade union to which the application relates.
(5) If the specified date in a penalty notice for payment of the penalty has passed and—

(a) the period during which an appeal may be made has expired without an appeal having been made; or
(b) such an appeal has been made and determined, the trade union may recover from the employer, as a civil debt due to it, any amount payable under the penalty notice which remains outstanding.

(6) The making of an appeal suspends the effect of a penalty notice pending the outcome of the appeal.

70ZH Other provisions relating to trade union access
(1) Sections 70ZA-70ZG are in addition and without prejudice to any other provisions relating to trade union access to workers.
(2) For the avoidance of doubt, the latter include but are not confined to:

(a) Section 188(5A) of this Act
(b) Sections 198A and 198B of this Act;
(c) Schedule A1, paragraphs 26 and 118 of this Act;
(d) ACAS Code of Practice on time off for trade union duties and activities issued under section 199 of this Act, for the time being in force; and
(e) Any collective agreement which makes more favourable provision."

[*Explanatory Note: This amendment provides a simplified and more effective mechanism for achieving the trade union right of access.*]

12. In cl.50 in the proposed s.70ZI wherever the phrase 'Central Arbitration Committee' appears (that is p66 line 32, line 35; p67 line 11, 19, 23, 24, 27) save in 70ZI (5)(b) (that is p67, line 16) substitute the phrase 'High Court'.

[*Explanatory Note: This opens the wide range of remedies available in the High Court, and in particular will give an effective remedy to a union to seek an injunction in the High Court where it has been denied access in breach of an Order of the CAC. Without the amendment there is no effective enforcement of a CAC Order.*]

60. In cl.50 in the proposed s.70ZA(5) *[added by government amendment]* add at the end 'except in relation to adult social care workers working in dwellings.'

[This is necessary to permit union access to the workplace of adult social care workers working in premises classed as dwellings.]

61. In cl.50 in the proposed s.70ZI wherever the phrase 'Central Arbitration Committee' appears save in 70ZI (5)(b) substitute the phrase 'High Court'.

[*This opens the wide range of remedies available in the High Court, and in particular will give an effective remedy to a union to seek an injunction in the High Court where it has been denied access in breach of an Order of the CAC. Without the amendment there is no effective enforcement of a CAC Order.*]

62. p67, line 16 - in cl.50 in the proposed s.70ZI(5)(b) substitute the phrase 'the complainant' in place of the phrase 'Central Arbitration Committee'.

[*Explanatory Note: This means any penalty awarded goes to the trade union not to the CAC. Without it there is no sufficient incentive for a union to pursue a complaint (and incur the irrecoverable costs of doing so) since the declaration is unenforceable and the payment is of no benefit to the union or its members.*]

63. p67, line 17 - in cl.50 in the proposed s.70ZI(6) delete the words 'may not exceed a prescribed amount' and substitute 'shall be such as the High Court considers to be just and equitable in the circumstances and bearing in mind in particular the need to ensure that such penalties should have a deterrent effect. The amount payable shall include the costs of the complainant.'

[*Explanatory Note: This is to remove any arbitrary cap set by the SoS and ensure that such penalties are adequate to deter employers from breaching CAC Orders for access. It is consistent with other amendments aimed at removal of statutory caps, e.g. on protective awards for failure to consult over collective redundancies.*]

6. Employment status – not in Bill *[This is now NC 51]*

64. To insert the following Clause—

"Status of Workers

(1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.
(2) Omit section 145F(3).
(3) Omit section 151(1B).
(4) Omit sections 295 (meaning of employee and related expressions) and 296 (meaning of worker and related expressions) and insert—

"295 Meaning of worker and related expressions

(1) In this Act—

(a) "worker" and "employee" both mean an individual who—

(i) seeks to be engaged by another to provide labour,
(ii) is engaged by another to provide labour, or
(iii) where the employment has ceased, was engaged by another to provide labour, and is not, in the provision of that labour, operating a business on the employee or worker's own account;

(b) an "employer" in relation to a worker or employee is—

(i) every person or entity who engages or engaged the worker or employee, and
(ii) every person or entity who substantially determines terms on which the worker or employee is engaged at any material time;

(c) "employed" and "employment" mean engaged as an "employee" or as a "worker" under subsection (1)(a);

(d) "contract of employment" means a contract or employment relationship, however described, whereby an individual undertakes to do or perform any labour, work or services for another party to the contract or employment relationship whose status is not by virtue of the contract or employment relationship that of a client or customer of any profession or business undertaking carried on by the individual, and any reference to the contract or employment relationship of an employee or a worker shall be construed accordingly;

(e) The ascertainment of the existence of a contract of employment or employment relationship shall be guided primarily by the facts relating to the performance of work, irrespective of how the contract or employment relationship is designated in any contractual or other arrangement by one or more of the parties involved;

(f) In ascertaining the existence of a contract of employment or employment relationship, all relevant facts may be taken into consideration but the following facts, if found, may be considered indicative of the existence of a contract of

employment and the presence of any such fact shall raise the rebuttable presumption that the arrangement is a contract of employment—

(i) the use, by a person other than the putative worker, of automated monitoring systems or automated decision-making systems in the organisation of work;
(ii) the work is carried out according to the instructions and under the control of another entity;
(iii) the work involves the integration of the worker in the organisation of another entity;
(iv) the work is performed solely or mainly for the benefit of another entity;
(v) the work is to be done, or is in fact done, predominantly by the worker personally;
(vi) the work involves the provision of tools, materials and equipment by an entity other than the worker;
(vii) the worker is to a significant extent subordinated to and economically dependent on the entity for which the work is done;
(viii) the determination of the worker's rate of remuneration and other significant terms and conditions is wholly or mainly that of an entity other than the worker and, in any event, significantly outweighs the power of the worker to determine his or her rate of remuneration and other significant terms and conditions;
(ix) the worker's remuneration and other terms and conditions are not determined by collective bargaining;
(x) the financial risks of the entity for which the work is done are not to any significant extent those of the worker beyond his or her interest in securing further remunerated work;
(xi) the worker has no significant capital investment in the entity for which the work is done beyond the provision of tools and equipment necessary for the worker to perform the work;
(xii) the remuneration for the work done constitutes the worker's sole or one of their principal sources of income;
(xiii) part of the remuneration is in kind, such as food, lodging or transport.

(2) It is for a person who is claimed to be the employer and contests that claim to demonstrate in any legal proceedings that—

(a) they are not the employer, or

(b) the person providing the work is not an employee ora worker.

(3) Subsections (1) and (2) apply to all employment of a government department, except for members of the armed forces.

(4) A person undertaking the work of a foster carer shall be treated as a 'worker' for the purposes of this Act.

(5) An entitlement on the part of a person to substitute the labour of another for his or her own labour shall be ignored in determining whether he or she is a worker or employee.

(6) Where a worker or employee provides labour through a personal service company the employer is the third party for whom the labour is performed.

(7) A “personal service company” means a company—

(a) in which the worker or employee is a director, or a substantial shareholding is held by the worker or employee, by themself or by or with a member of the family of the worker or employee, or by or with a third party for whom the labour is or was performed, or a nominee or nominees of such a third party; and

(b) which has contracted with the worker or employee to provide their labour to a third party or parties nominated by the company; and

(c) in relation to which the terms and conditions on which the worker or employee is or was engaged to perform the labour are or were substantially determined by any third party for whom the labour is or was to be performed, by itself or jointly with another person or entity; and

(d) in which the status of any third party for whom the labour is or was to be performed is not in practice that of a client or customer of the profession or business undertaking carried on by the worker or employee.

(8) An employer) that employs, or proposes to engage, an individual to carry out work must not represent to the individual that the contract under which the individual is, or would be, engaged by the employer is a contract for services under which the individual performs, or would perform, work as an independent contractor if that is not the case.

(9) Subsection (8) does not apply if the employer demonstrates that, when the representation was made, the employer reasonably believed that the contract was a contract for services.

(10) In determining, for the purpose of subsection (9), whether the employer's belief was reasonable, regard must be had to all relevant circumstances including the size and nature of the employer's enterprise.

(11) The Secretary of State may by regulations designate as “workers” other persons engaged in work, and designate as “employers” other entities engaged in the provision of work, after consultation with organisations which appear to the Secretary of State to represent such persons and entities and any such regulations must be made by statutory instrument,

(12) A statutory instrument containing regulations under sub-paragraph (11) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.(12) This section has effect subject to sections 68(4), 116B(10) and 235."

[*Parallel amendments will be required to The Employment Rights Act 1996, subsections (1) to (5) of section 230 and to various other statutes defining those who work.*

The clarification of the legal status of all those who work is essential since without this, the rights in the Bill are allocated piecemeal - some rights to employees with contracts of employment, some rights to limb-b workers, some (very few) rights to gig workers denied the status of employees or limb-b workers such as Deliveroo riders (after R (IWGB) v CAC and Deliveroo *[2023] UKSC 43), and some rights to other new ad hoc worker definitions (e.g. workers on 'non-contractual zero hours arrangements'). The situation of the false-self-employed, those employed by umbrella companies and personal service companies, and anomalous workers such as foster carers, is not otherwise dealt with and their rights, e.g., in relation to ZHCs is left opaque. Furthermore, bringing all workers into a single status is an essential element of the Party's promise to bring about the greatest 'insourcing' ever.*

The status of workers is left out of the Bill. There are to be consultation. However, NC38 gives some protection to agency workers who are not otherwise 'workers'.

The proposed amendments are taken largely from the Status of Workers' Bill 2023 introduced in the House of Lords which received the support of the Labour Party in opposition. To these clauses has been added a measure taken from s357 ff Fair Work Act (Cth), Australia, and a further measure to deal with the anomalous position of foster carers discussed in National Union of Professional Foster Carers v Certification Officer *[2021] EWCA Civ 548, [2021] IRLR 588. The proposed amendments are also designed to be consistent with ILO Recommendation 198 and to capture the determinant features of an 'employment relationship' (a different and wider concept than employment under a contract of employment) in the jurisprudence of the ECtHR and the CJEU.*

In short these provisions do the following:

- *Provide that all rights contained in the Bill should apply to every worker - defined as 'any individual who is engaged by another to provide labour and is not, in the provision of that labour, genuinely operating a business on his or her own account';*
- *Provide that any right attributable to employers should apply to '(i) every person or entity who engages or engaged the worker or employee, and (ii) every person or entity who substantially determines terms on which the worker or employee is engaged at any material time';*
- *Establish that 'It is for a person who is claimed to be the employer and contests that claim to show in any legal proceedings that— (a) he or she is not the employer, or (b) the person providing the labour is not their worker';*
- *Establish that 'For the avoidance of doubt, where a worker provides labour through a personal service company or an umbrella company, the employer is the third party for whom the labour is performed';*
- *Impose a duty on an employer not to represent that a worker is self-employed if he or she is not;*
- *Clarify that foster carers are workers.]*

65. (5) The Employment Rights Act 1996 is amended as follows:

Insert a new section 7C:

“Unfair contracts

(1) "unfair contract" means a contract under which one person performs or is to perform work for another --

(a) that is, so far as the worker is concerned, unfair, harsh or unconscionable, or

(b) that is against the public interest, or

(c) that provides a total remuneration that is less than a person performing the work would receive as an employee performing the work, or

(d) that is designed to, or does, avoid the provisions of a collective agreement, or

(e) that contains a power on the part of the employer to unilaterally alter any contractual provision.

(2) An employment tribunal may make an order declaring wholly or partly void, or varying, any contract whereby a person performs work if the tribunal finds that the contract is an unfair contract.

(3) The tribunal may find that it was an unfair contract at the time it was entered into or that it subsequently became an unfair contract because of any conduct of the parties, any variation of the contract or any other reason.

(4) A contract that is a related condition or collateral arrangement may be declared void or varied even though it does not relate to the performance by a person of work, so long as--

(a) the contract to which it is related or collateral is a contract whereby the person performs work, and

(b) the performance of work is a significant purpose of the contractual arrangements made by the person.

(5) A contract may be declared wholly or partly void, or varied, either from the commencement of the contract or from some other time.

(6) In considering whether a contract is unfair because it is against the public interest, the matters to which the tribunal is to have regard must include (but are not confined to) the effect that the contract, or a series of such contracts, has had, or may have, on any system of apprenticeship and other methods of providing a sufficient and trained labour force.

(7) In making an order under this section, the tribunal may make such order as to the payment of money in connection with any contract declared wholly or

partly void, or varied, as the tribunal considers just in the circumstances of the case.

(8) In making an order under this section, the tribunal must take into account whether or not the applicant (or person on behalf of whom the application is made) took any action to mitigate loss.

[*This amendment is to introduce a provision equivalent to the Unfair Contracts Act in relation to work contracts, largely based on ss105-6 Industrial Relations Act 1996, New South Wales. Given the imbalance of power between the individual worker and the employer which is not so very different as between the consumer and the retailer/manufacturer, this seems a sensible protection in the absence of near universal coverage of collective agreements. It also outlaws the reservation by the employer of a power to vary a contract of employment unilaterally (as in* Bateman v ASDA *[2010] IRLR 370).*]

7. **Zero-hour contracts - Dealt with in cls1-6**

66. Clause 1, page 3, line 39, at end insert–

"(11) In this section an agency worker is a qualifying worker"

[*Explanatory Note: This amendment would give agency workers the same guaranteed hours offers as other workers. The government have proposed NC32 to achieve this end.*]

67. Add a new cl.1(2):

In section 27A insert a new subsection (2):

(2) A zero hours contract shall be unlawful unless it specifies:

(a) a minimum number of hours each week which shall not be less than two and which the employer will pay at the usual agreed rate and at least the National Minimum Wage irrespective of whether work is provided or not;

(b) that any increase in the specified minimum number of hours shall not be greater than 20%; and

(c) the days of the week and the times on those days on which the minimum hours will fall.

[*This is the most effective way of ensuring some guaranteed security for workers; employers must simply plan their work better.*]

68. In Schedule 1 insert a new provision [amending s.6E Job Seekers Act 1995 by adding a new (6)]:

'(6) For the avoidance of doubt no job seeker shall be required to accept:

(a) work under a zero hours contract;

(b) a job which has become vacant by reason of a dismissal and offer of re-engagement on less favourable terms and conditions which has been refused.'

[*This removes probably the greatest stimulus to ZHCs: the obligation to accept a ZHC contract on risk of being sanctioned under the State Benefits regime.*]

69. In cl.1(4) add new sub section 27BK:

(1) Where reasonable notice under clause 27BI has not been given the employer shall pay the worker at a rate of 150% of the rate for each such hour worked.
(2) Where reasonable notice of cancellation or change of a shift or part of a shift has not been given the employer shall pay the worker for each of the hours of the cancelled or changed shift in addition to payment for the hours actually worked in the light of the cancellation or change.

[*This is the most effective way of ensuring some guaranteed security for workers; employers must simply plan their work better.*]

70. Clause 1, page 5, line 4, leave out from "event" to the end of line 7.

Clause 1, page 5, line 14, leave out from "contract" to line 15 ",and".

Clause 1, page 5, line 25, leave out subsection (8).

Clause 1, page 5, line 11, leave out lines 11 to 12.

[*Otherwise it appears that employers are effectively invited to evade providing guaranteed hours by utilising fixed term contracts in order to deploy ZHCs.*]

71. In cl.1(4) add new sub section (2) after cl.27BE(1):

(2) Such notice shall not be valid unless the worker has had the benefit of:
(i) independent advice from an officer of an independent trade union; and
(ii) being accompanied by an official of an independent trade union pursuant to s.10 ERA 1999 at any meeting to discuss the offer.
(3) Any such notice must be in writing and set out the terms of the offer in full and whether the worker accepts or rejects it;
(4) The worker may revoke the rejection of an offer at any time by giving one week's notice to the employer.

[*Without these provisions the lack of formality of the making of the offer and its acceptance or rejection may lead to the appearance of acceptance in circumstances where there is no desire for a ZHC. (4) is modelled on the WTR.*]

72. Clause 1, page 11, line 24, at end insert—

"(c) the length of the response period which shall not be less than one week."

[*This is to guarantee the worker a minimal period to think and consult about the guaranteed hours offer before accepting or rejecting it.*]

8. Flexible work – cl7

73. Add a new subclause (2):

The word 'worker' shall be substituted for the word 'employee' in this Part and the word 'engagement' shall be substituted for the word 'employment'.

[*Until there is a single status of worker it is necessary to broaden the beneficiaries of rights such as this from employees to workers.*]

74. In cl.7(3)(b) add a new sub section (i) before the proposed (i) (and amend s.80H(1)(c) accordingly):

(i) Prior to making a decision to refuse, the employer has consulted with the employee and any trade union representative or work colleague selected by the employee and has provided evidence prior to that consultation in support of any of the matters under (1ZA) on which the employer considers it may rely; and has fairly and reasonable taken into account every reason advanced by the employee for seeking flexible working.

[*This strengthens the flexible working provisions*]

9. Fire and rehire – cls.24 and 25

75. To insert the following Clause—

"**Procedure for handling dismissal and re-engagement**

(1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.

(2) After Chapter I (collective bargaining), insert—

"CHAPTER 1A

PROCEDURE FOR HANDLING DISMISSAL AND RE-ENGAGEMENT

187A Duty of employer to consult representatives

(1) This section applies to an employer where, in an undertaking or establishment with 50 or more employees, in the light of recent events or information and the economic situation affecting the employer, there is a threat to continued employment within the undertaking, and one or both of the following matters apply—

(a) decisions may have to be taken to terminate the contracts of or more employees for reasons other than conduct or capability, or

(b) anticipatory measures are envisaged which are likely to lead to substantial changes in work organisation or in contractual relations affecting or more employees.

(2) The employer shall consult with a view to reaching an agreement to avoid decisions being taken to terminate contracts of employment, or to introduce changes in work organisation or in contractual relations.

(3) The consultations under subsection (2) shall take place with all the persons who are appropriate representatives of any of the employees who are or may be affected by those matters that apply.

(4) The consultation shall begin as soon as is reasonably practicable and in good time for any agreement to be reached so as to avoid decisions being taken to terminate contracts of employment or introduce changes in work organisation or in contractual relations.

(5) The employer shall allow the appropriate representatives access to the affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate.

(6) In this section, "appropriate representatives" has the same meaning as in section 188(1B) (and the requirements for the election of employee representatives in section 188A apply).

(24) If there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of this section, the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.

(45) Where the threat to continued employment emanates from a person controlling the employer (directly or indirectly), or a decision leading to the termination of the contract of an employee for reasons other than conduct or capability or a decision leading to substantial changes in work organisation or in contractual relations is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.

187B Duty of employers to disclose information

(1) An employer to which section 187A applies shall, for the purposes of the consultation provided for in section 187A, disclose to the appropriate representatives, on request, the information required by this section.

(2) The information to be disclosed is all information relating to the employer's undertaking (including information relating to use of agency workers in that undertaking) which is in the employer's possession, or that of an associated employer, and is information—

(a) without which the appropriate representatives would be to a material extent impeded in carrying on consultation with the employer, and

(b) which it would be in accordance with good industrial relations practice that the employer should disclose for the purposes of the consultation.

(3) A request by appropriate representatives for information under this section shall, if the employer so requests, be in writing or be confirmed in writing.

(4) In determining what would be in accordance with good industrial relations practice, regard shall be had to the relevant provisions of any Code of Practice issued by ACAS, but not so as to exclude any other evidence of what that practice is.

(5) Information which an employer is required by virtue of this section to disclose to appropriate representatives shall, if they so request, be disclosed or confirmed in writing.

(6) The employer is not required to disclose any information or document to a person for the purposes of this section where the nature of the information or document is such that, according to objective criteria, the disclosure of the information or document would seriously harm the functioning of, or would be prejudicial to, the undertaking.

(7) If there is a dispute between the employer and an employee or an appropriate representative as to whether the nature of the information or document which the employer has failed to provide is such as is described in subsection (6), the employer, employee or appropriate representative may apply to the Central Arbitration Committee for a declaration as to whether the information or document is of such a nature.

(8) If the Committee makes a declaration that the disclosure of the information or document in question would not, according to objective criteria, be seriously harmful or prejudicial as mentioned in subsection (5) the Committee shall order the employer to disclose the information or document.

(9) An order under subsection (8) shall specify—

(a) the information or document to be disclosed;

(b) the person or persons to whom the information or document is to be disclosed;

(c) any terms on which the information or document is to be disclosed; and

(d) the date before which the information or document is to be disclosed.

187C Complaint to Central Arbitration Committee

(1) An appropriate representative may present a complaint to the Central Arbitration Committee that an employer has failed to comply with a requirement of section 187A or section 187B. The complaint must be in writing and in such form as the Committee may require.

(2) If on receipt of a complaint the Committee is of the opinion that it is reasonably likely to be settled by conciliation, it shall refer the complaint to ACAS and shall notify the appropriate representative and employer accordingly, whereupon ACAS shall seek to promote a settlement of the matter. If a complaint so referred is not settled or withdrawn and ACAS is of the opinion that further attempts at conciliation are unlikely to result in a settlement, it shall inform the Committee of its opinion.

(3) If the complaint is not referred to ACAS or, if it is so referred, on ACAS informing the Committee of its opinion that further attempts at conciliation are unlikely to result in a settlement, the Committee shall proceed to hear and determine the complaint and shall make a declaration stating whether it finds the complaint well-founded, wholly or in part, and stating the reasons for its findings.

(4) On the hearing of a complaint any person who the Committee considers has an interest in the complaint may be heard by the Committee, but a failure to accord a hearing to a person other than the appropriate representative and employer directly concerned does not affect the validity of any decision of the Committee in those proceedings.

(5) If the Committee finds the complaint wholly or partly well-founded, the declaration shall specify-

(a) each failure in respect of which the Committee finds that the complaint is well-founded

(b) the steps that should be taken by the employer to rectify each such failure, and

(c) a period or periods (not being less than one week from the date of the declaration) within which the employer ought to take those steps.

(6) On a hearing of a complaint under this section a certificate signed by or on behalf of a Minister of the Crown and certifying that particular information could not be provided except by disclosing information the disclosure of which would have been against the interests of national security shall be conclusive evidence of that fact. A document which purports to be such a certificate shall be taken to be such a certificate unless the contrary is proved.

187D Application for injunction pending rectification of failure

(1) This section applies if a declaration of the Central Arbitration Committee under section 187C finds a complaint wholly or partly well-founded.

(2) An appropriate representative may apply to the Court for an injunction to subsist until the employer can satisfy the Committee that the steps under section 187C(5)(b) have been completed within the specified period or periods under section 187C(5)(c)—

(a) to compel the employer to take those steps within the period or periods, or

(b) to render void any dismissal or changes in work organisation or in contractual relations.

187E Complaint to employment tribunal

(1) This section applies where an employer—
(a) offers or proposes to offer re-engagement on different terms to an employee—
(i) it has dismissed or proposes to dismiss for reasons other than conduct or capability, or
(ii) in relation to whom it has made or proposes to make substantial changes in work organisation or in contractual relations; or
(b) has failed to comply with any of the obligations set out in sections 187A or 187B.

(2) Any affected employee or their appropriate representative may make a complaint to the employment tribunal.

(3) If the tribunal finds the complaint well-founded it shall make a declaration to that effect.

187F Award of compensation

(1) An employee, or the appropriate representative of an employee, whose complaint under section 187E has been declared to be well-founded may make an application to an employment tribunal for an award of compensation to be paid by the employer.

(2) The amount of compensation awarded shall, subject to the following provisions, be such as the employment tribunal considers just and equitable in all the circumstances having regard any loss sustained by the complainant which is attributable to the dismissal or substantial changes in work organisation or in contractual relations to which the complaint related.

187G Duty of employer to notify Secretary of State in certain circumstances

(1) This section applies to an employer to which section 187A applies in relation to 50 or more employees at one establishment or undertaking.

(2) The employer shall notify the Secretary of State, in writing, of the matters under section 187A(1) that apply and any related proposals not later than the end of whichever is the longer of—

(a) 45 days, or
(b) the notice period necessary to terminate lawfully the employment of all those employees who may be affected by any such matter before any decision to put into effect that matter is reached.

(3) A notice under this section shall—
(a) be given to the Secretary of State by delivery or by sending it by post, at such address as the Secretary of State may direct in relation to the establishment where employees who may be affected are employed,
(b) where there are representatives to be consulted under section 187A(2), identify them and state the date when consultation with them under that section began or will begin, and
(c) be in such form and contain such particulars, in addition to those required by paragraph (b), as the Secretary of State may direct.

(4) After receiving a notice under this section from an employer the Secretary of State may by written notice require the employer to give them such further information as may be specified in the notice.

(5) Where there are representatives to be consulted under section 187A(2) the employer shall give to each of them a copy of any notice given under subsection (3). The copy shall be delivered to them or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.

(6) If in any case there are special circumstances rendering it not reasonably practicable for the employer to comply with any of the requirements of subsections (1) to (5), the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in the circumstances. Where the decision regarding the matters is that of a person controlling the employer (directly or indirectly), a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with any of those requirements.

187H Failure to notify

(1) An employer who fails to give notice to the Secretary of State in accordance with section 187G commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Proceedings in England or Wales for such an offence shall be instituted only by or with the consent of the Secretary of State or by an officer authorised for that purpose by special or general directions of the Secretary of State. An officer so authorised may prosecute or conduct proceedings for such an offence before a magistrates' court.

(3) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, that person as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with their functions of management as if they were a director of the body corporate."

To insert the following Clause—

"**Protection of contracts of employment**

(1) The Employment Rights Act 1996 is amended as follows.

(2) After Part IIA (zero hours workers) insert—

"PART 2AA

PROTECTION OF CONTRACTS OF EMPLOYMENT

27BA Restrictions on variation of employment contracts

(1) Any variation to an employment contract is void if it—
(a) was obtained under the threat of dismissal, and
(b) is less favourable to the employee than the pre-existing provision,
unless the employer has complied with all its obligations under, and arising from, sections 187A to 187G of the Trade Union and Labour Relations (Consolidation) Act 1992 in relation to any person employed under the contract.

(2) In subsection (1)(b), the definition of "less favourable" shall be determined by the perception of a reasonable employee in the position of the affected employee.

27BB Unilateral variation of employment contracts

(1) Any provision in an agreement (whether an employment contract or not) is void in so far as it purports to permit the employer to vary unilaterally one or more terms within an employment contract where the variation is less favourable to the employee that the pre-existing provision.

(2) In subsection (1), the definition of "less favourable" shall be determined by the perception of a reasonable employee in the position of the affected employee."

(3) In Chapter I (right not to be unfairly dismissed), after section 104G insert—

"104H Refusal of variation of contractual terms

In relation to an employee who claims to have been unfairly dismissed 5 in circumstances in which the reason (or, if more than one, the principal reason) for the dismissal is that the employee has refused to agree to a variation of contractual terms—

(a) section 98(1)(b) shall not apply save that it shall be for the employer to show that the reason for the dismissal fell within section 98(2);

(b) section 108(1) shall not apply.

104I Matters for consultation under section 187C of the Trade Union and Labour Relations (Consolidation) Act 1992

An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if—

(a) the Central Arbitration Committee has made a declaration under section 187C of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of the employer and employee, and the employer has not complied with the steps in that declaration, or

(b) the employer has failed, in respect of the employee, to comply with a provision of a collective agreement applicable to a matter for consultation under section 187A of the Trade Union and Labour Relations (Consolidation) Act 1992."

(4) In section 116 (unfair dismissal: choice of order and its terms), after subsection (3) insert—

"(3A) If an employee has been unfairly dismissed and the reason (or, if more than one, the principal reason) the dismissal is unfair is one specified under section 104H or 104I, the tribunal may only find that it is not practicable for—

(a) the employer to comply with an order for reinstatement under subsection (1)(b), or

(b) the employer (or a successor or an associated employer) to comply with an order for re-engagement if the employer (or if appropriate a successor or an associated employer) would be likely to become insolvent within three months if such an order was made."

(5) In section 128(1)(a)(i) (interim relief pending determination of complaint), for "or 103A" substitute "103A, 104H or 104I".

(6) In section 129(1)(a)(i) (procedure on hearing of application and making of order), for "or 103A" substitute "103A, 104H or 104I".

3 Duties of trade unions

(1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.

(2) In section 219 (protection from certain tort liabilities), after subsection (4) insert—

"(5) But subsection (4) does not have effect in relation to any act in contemplation or furtherance of a trade dispute which relates wholly or mainly to proposals by an employer to vary terms and conditions of employment of two or more employees accompanied by the threat (explicit or implied) of dismissal if that variation is not agreed."

[*These provisions establish duties of disclosure and consultation with effective enforcement measures including High Court injunctions, unlimited compensation for failure to consult or unfair dismissal and relief from the procedural requirements on trade unions prior to industrial action*. They largely reproduce Barry Gardiner's Fire & Rehire Bill, Employment and Trade Union Rights (Dismissal and Re-engagement) Bill (https://bills.parliament.uk/bills/2896.]

76. In cl.24(3) add after the proposed s.104I(4)(b) a new (c):

'(c) the employer:

(i) provided all material information to each union recognised by it in good time prior to negotiation;

(ii) consulted in good time with each union recognised by it to with a view to reaching agreement;

(iii) reduced the remuneration of partners, directors and managers at least to the equivalent extent of the workers subject to variation of contract; ceased so soon as the financial difficulties became apparent, to pay dividends to shareholders, to buy back shares, or to make loans to partners, directors or shareholders; renegotiated to the greatest extent practicable, loans to third parties;

(iv) complied with any procedural requirements for varying contracts of employment or collective agreements contained in any collective agreement either extant or extant prior to the first realisation that there might be financial difficulties ahead.'

[*If financial difficulties are to be prayed in aid the company ought to have taken all reasonable steps prior to cutting the workers' wages*.]

77. In cl. 24(3) add after the proposed s.104I(5) a new sub section (6):

> '(6) In s.98(1) after the following words: 'or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position the employee held', add: 'where that reason is predicated upon conduct by the employee outside the scope of the contract.'

[*This gives effect to the dicta of Lady Hale, President of the Supreme Court in* Reilly v Sandwell MBC *[2018] UKSC 16 at [32]. It removes a potential justification for dismissal (SOSR) which has long been widely regarded as inappropriate and unfair*.]

78. Add after cl.104I(5) new subclauses (6) and (7):

> (6) For the avoidance of doubt, it shall be unfair to dismiss an employee who declines to accept a unilateral variation to his contact.
>
> (7) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports to confer on the employer or a third party the power unilaterally to vary the terms of the agreement.

[*(6) is to give a worker who is sacked for insisting on the terms of their contract a claim for unfair dismissal. (7) is based on s.203 ERA outlaw employers' reservation of the unilateral power to vary contracts as in* Bateman v ASDA *[2010] IRLR 370 thus enabling them to contend the varied contract is binding and hence there is no basis for consultation or an unfair dismissal claim*.]

10. Equality (both ERB & E(R&D) Bill

79. After clause 18 of the Employment Rights Bill insert:

"18A **Harassment of contract workers**

In the Equality Act 2010, s.41 (contract workers), after section 41(2) ('A principal must not, in relation to contract work, harass a contract worker'), insert:

> 41(2A) (1) A principal must take all reasonable steps to prevent sexual harassment of a contract worker in relation to contract work.
> (2) 'Sexual harassment' in subsection (1) means harassment of the kind described in section 26(2) (unwanted conduct of a sexual nature).
>
> (2B) A principal must not permit employees or third parties to harass a contract worker in relation to contract work.
> (2C) For the purposes of subsection (2B), a principal permits an employee or third party to harass a contract worker in relation to contract work only if—
>
> > (a) the employee or third party harasses the contract worker in relation to contract work, and
> > (b) The principal failed to take all reasonable steps to prevent the employee or third party from doing so.

[*This gives contract workers the same protection as employees in relation to sexual harassment and harassment. It means that where an employer has both employees and contract workers working for them, the same duties apply to both, and fulfils the commitment to include outsourced workers in non-discrimination protections.*]

80. 18B **Discrimination against Contract Workers**

In the Equality Act 2010, Section 41 (contract workers), after s.41(1) (discrimination by the principal against the contract worker) insert:

41(1A) (1) A principal must not permit a contract worker to be paid less for contract work than an employee of the principal who is employed -

(a) on the same work as the contract worker; or

(b) on work which is of equal value as the work performed by the contractor in relation to the contract.

(2) For the purposes of this section, 'work of equal value' means contract work by the contract worker which is equal to work done by an employee of the principal in terms of the demands made on the worker by reference to factors such as effort, skill and decision-making.

(1B) For the purposes of subsection (1A), a principal permits a contract worker to be paid less for contract work which is the same as or is of equal value with employees of the principal unless -

(a) The principal has included a term in any supply contract with the contract worker's employer requiring workers supplied to the principal under the supply contract (the contract worker) to be entitled to equal pay with employees of the principal employed on work which is the same or of equal value as the work performed by the contract worker in relation to the contract; and

(b) The difference in pay between the contract worker and an employee of the principal doing work of equal value in relation to contract work

i. Is not because of one or more protected characteristics of the contract worker, and

ii. Does not put contract workers who share one or more protected characteristics at a particular disadvantage compared with employees of the principal who do not share that protected characteristic or that combination of protected characteristics.

(c) A principal will not be liable under subsection (1B)(ii) if they can prove that any difference in pay is necessary to achieve a legitimate aim. For these purposes, cutting costs will not constitute a legitimate aim.

(d) For the purposes of this section, 'protected characteristic' refers to sex, race or disability.

(1C) (1) For the purposes of this section, 'intermediary' means a natural or legal person that, for the purpose of supplying work to a principal:

(a) establishes a contractual relationship with the principal and with the worker; or
(b) is in a subcontracting chain between the principal and the worker.

(2) When a principal makes use of intermediaries, both the principal and the intermediary must ensure that workers who have a contractual relationship with the intermediary are entitled to equal pay in relation to contract work with the principal as employees of the principal doing the same work or work of equal value as the contract worker in relation to the contract.
(3) A principal or intermediary is liable under this section unless the difference in pay between the contract worker and an employee of the principal doing work of equal value in relation to contract work:
(a) Is not because of one or more protected characteristics of the contract worker; and
(b) Does not put contract workers who share one or more protected characteristics at a particular disadvantage compared with employees of the principal who do not share that protected characteristic or that combination of protected characteristics.

(4) A principal or intermediary will not be liable under subsection (3)(ii) if they can prove that any difference in pay is necessary to achieve a legitimate aim. For these purposes, cutting costs will not constitute a legitimate aim.

(5) For the purposes of this section, 'protected characteristic' refers to sex, race or disability.

(6) For the purposes of this subsection, the principal and the intermediary are jointly and severally liable for any breach.

[*This fulfils the manifesto commitment to extend equal pay protection to outsourced workers. It requires the principal to provide for equal pay for like work or work of equal value of contract workers in relation to the contract work. It extends the principle in the Fair Wages Clauses and ILO Convention 94 (1949) which required all government contracts to include a clause requiring the contractor to pay rates of wages and observe hours and conditions of labour not less favourable than those observed by other employers in similar trades or industries. It requires the principal to include a clause in all contracts for the supply of contract workers requiring the employer of the contract worker to provide equal pay in relation to contract work with directly employed workers doing like work or work of equal value. It provides a defence for the principal where the principal can show that the difference in pay is not because of the race, sex or disability of the contract worker, and does not put workers of a particular race or sex at a particular disadvantage (indirect discrimination). The provisions on intermediaries are adapted from the EU Platform Work Directive which provides similar liability for intermediaries.*]

81. In cl.28 (Equality action plans) in proposed s.78A Equality Act 2010 after subsection (2), insert:
(2A) For the purposes of this section 'employer' and 'employee' have the same meaning as in Equality Act 2010, s. 83(4).

[*This is necessary because 'employee' in the Equality Act currently has a wider meaning than in the Employment Rights Act, covering 'employment under a contract of employment, a contract of apprenticeship or a contract personally to do work' (s.83(2)(a) Equality Act 2010. The lower threshold of 250 employees should at least include workers under a contract personally to do work.*]

82. In cl.28 (Equality action plans) in proposed s.78A of the Equality Act 2010 (Equality action plans) after subsection (5)(g), insert:

(h) Requirements for targets and timetables for addressing the matters specified in subsection (4)(a) and (4)(b);

(i) When and how the steps referred to in subsection (1) will be taken (for the first publication of information) and (for second and subsequent publications of information) what steps have been taken in the period since the previous publication, an evaluation of the effectiveness of the steps taken, what steps will be taken in the subsequent reporting period and how they have been adjusted to reflect the evaluation of the steps taken in the previous period.

[*This is necessary because there is at present no requirement to set any targets or timetables or to report on steps taken or not taken. The requirement to evaluate effectiveness of steps taken is adapted from the EU Pay Transparency Directive.*]

83. In cl.28 (Equality action plans) in proposed s.78A of the Equality Act 2010 (Equality action plans) amend subsection (7) as follows (added words underlined):

(7) The regulations may make provision for a failure to comply with the regulations, <u>including a failure to take the steps referred to in subsection (1),</u> to be enforced, otherwise than as an offence, by such means as are prescribed.

[*This is necessary because at present failure to comply with the regulations would simply be failure to publish a plan, whereas it is necessary to enforce the obligation to take steps as set out in the plan.*]

84. Insert new clause 29A after clause 29:

Access to statutory maternity pay

30. In regulation 21 of the Statutory Maternity Pay (General) Regulations 1986 insert:

'(11) Paragraph 12 applies where for all or part of the relevant period:

(a) a woman is an employee;

(b) the woman is suffering or has suffered a medical condition related to their pregnancy; and

(c) the woman's earnings are lower than they would otherwise have been, by reason of that medical condition.

(12) Where this paragraph applies, the woman's normal weekly earnings are to be calculated as if, during the parts of the relevant period when the woman suffered from that medical condition, she was entitled to be paid the amount which she would have received from her employment but for that medical condition.'

[*This amendment would allow low or no earning weeks to be left out of the calculation of statutorymaternity pay where, due to a pregnancy-related medical condition, a worker was sick or worked fewer hours or restricted duties.*]

11. Collective Redundancy – cls.25-26

85. In cl.25(2) add a new subclause (a): in subsection (1) after '20 or more employees' add 'or more than 10% of the employees whichever is the smaller number'.

[*This reduces the number of employees triggering the duty to consult.*]

86. After cl.25(2) add a new subclause (3):

(3) After section 189 (complaint and protective award) add a new section 189A:

189A Where the employer has failed to comply with a requirement of section 188 or section 188A, every purported dismissal to put into effect partly or wholly the proposal to dismiss employees as redundant shall be void and of no effect.

[*This increases the sanction for failure to consult by rendering the dismissal ineffective.*]

87. After cl.25(3) add a new subclause (4):

(4) In section 189(4) ERA delete: 'but shall not exceed 90 days'

[*This removes the cap on protective awards and leaves it to the tribunal to assess what is just and equitable in the circumstances - thus making the P&O Ferries computation virtually impossible.*]

88. In Schedule 2 paragraph 6 after sub-paragraph (5) insert:

In section 139(1) after (b)(ii) insert a new subsection (c):

'(c) the fact that the requirements of that business—

(i) for employees with their existing contractual entitlements to carry out work of a particular kind, or

(ii) for employees with their existing contractual entitlements to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished'.

[*This will mean that workers dismissed by a process of fire and rehire in order to reduce wages or other terms and conditions will rank as redundant.*]

89. In Schedule 2 paragraph 6 after sub-paragraph (5) delete s.155.

[*This removes the denial of the right to a redundancy payment to those employed for less than 2 years*].

90. In Schedule 2 paragraph 6 after sub-paragraph (5) amend s.162(1) ERA by deleting the word 'week' and substituting 'month'.

[*This will substantially increase the amount of redundancy pay, though still far less than in many European countries. It will still be significantly cheaper to lay off British workers than their European equivalents.*]

91. In Schedule 2 paragraph 6 after sub-paragraph (5) amend s.162 ERA by deleting (3).

[*This will remove the arbitrary and ungenerous 20 year cap on entitlement to a redundancy payment*.]

92. In Schedule 2 paragraph 6 after sub-paragraph (5) amend s.162 ERA by adding a new subclause (7):
'(7) for the avoidance of doubt the expression 'year of employment' shall mean 'year of employment or part year of employment'.

[*This clarifies that someone who has worked for, say, 10 years 6 months is entitled to a redundancy payment based on 11 years' service rather than 10.*]

12. Unfair dismissal – cls.21-24 and Schedule 2

93. Remove from Schedule 2 paragraph 3(2) and (3).

[*This removes the SoS's power to introduce Regulations to degrade the application of unfair dismissal law (s.98(4) ERA) by lessening the burden on employers during the an initial period of employment to be specified in the Regulations, presumably in response to the proposed universal probationary period (not specified in the Bill).*]

94. Add to Schedule 2 paragraph 3(2): add a new subsection (5) to section 98ZZA:
'(5) The initial period of employment specified in, or determined in accordance with the regulations shall in relation to a contract for a fixed or reasonably ascertainable term shall not be longer than ten percent of the duration of that term.'

[*This is intended to make the length of the initial period proportionate to the length of the contract where that is known.*]

95. Add to Schedule 2 a new paragraph 3(2A):
'(2) Amend s.98(1)(b) by adding at the end: 'some other substantial reason' the words 'relating to the employee'.

[*This amendment deploys the phrase qualifying the SOSR justification for dismissal found in the ERB s98ZZA(3)(b) in relation to unfair dismissal during a probationary period and applies it to unfair dismissal generally. It gives effect to the dicta of Lady Hale, President of the Supreme Court in* Reilly v Sandwell MBC *[2018] UKSC 16 at [32]. By limiting SOSR as a potential justification for dismissal which has long been widely regarded as inappropriate and unfair*.]

96. Add to Schedule 2 a new paragraph 3(2A):
'(2) Amend s.98(4)(b) by adding at the end: 'in the view of the employment tribunal'.

[*This is to remove the current test imposed by the Courts as a gloss on the statute by which the tribunal has to assess whether the dismissal is fair or unfair by deciding whether the reason for it falls within the 'band of reasonable responses' of employers, rather than applying its own expert judgment as to what is fair or unfair.*]

97. Add to Schedule 2 a new paragraph 3(2A):
'(2) Add to s.98(4) a new (c) as follows :
'(c) The tribunal shall take into account whether there has been a fair investigation and a fair appeal both of which accord with the Rules of Natural Justice.'.

[*This removes the doubt about the importation of the well established Rules of Natural Justice into unfair dismissal law, a proposition which has at times been applied by the Court of Appeal and rejected on other occasions.*]

13. Minimum notice – not currently a day one right and not otherwise dealt with

98. Add to Schedule 2 a new paragraph 3(2A):
Amend s.86(1) by deleting 'for more than one month or more'.

[*This will change the entitlement to minimum notice to a day one right from the requirement to have been employed for at least one month.]*

99. Add to Schedule 2 a new paragraph 3(2A):
Amend s.86(1)(b) by deleting 'one week's notice' and substituting 'one month's notice'.

[*This will increase the minimum of notice of not less than one week for each year's work up to 12 years.*]

100. Add to Schedule 2 a new paragraph 3(2A):
Amend s.86(1)(c) by deleting 'twelve weeks' notice' and substituting 'twelve months' notice'.

[*This will increase significantly the minimum 12 weeks' notice for those who have worked in excess of 12 years.*]

14. Statutory sick pay – cls.8-11

101. Amend cl.9(2)(a)(1) by deleting £116.75 and substitute:
'shall be no less than £116.75 and at least the equivalent of the National Minimum Wage in respect of each hour during which the worker would have worked but for sickness.'

[*This addresses the absurdly small amount of SSP which led to workers continuing to work through illness thus exposing others to increased risk of infection.*]

15. Fair work agency, enforcement, and H&S – Part 5

~~Insert a new cl.72:~~

~~[A clause which amends every provision in the TULR(C)A 1992 and ERA 1996 which currently fixes the time limit for applying to an employment tribunal to 3 months and substitutes 6 months.]~~

This amendment is no longer required since the government have introduced amendments to this effect.

102. Insert a new cl.72:

[A clause which removes all the statutory limits on awards of compensation by an employment tribunal in every place where a limit is specified, e.g. s126 ERA.]

[*This will give effect to Labour's commitment in the New Deal for Working People (p12) 'that workers will receive full compensation, without statutory limits, if they suffer loss because of employers' breaches of the law.'*]

103. Insert a new cl.72:

[A clause which permits cases to be pursued and evidence to be given from abroad in circumstances where the worker is not able to be present – e.g. and, in particular, where the worker has been on a limited six month work visa.]

104. In cl.112 under the definition of 'labour market offence' add a new (c):

'(c) any breach of a right granted by statute to an employee, worker or self-employed person (or a prospective or former employee, worker or self-employed person) in that capacity'.

[*This will extend the jurisdiction of the FWA over all statutory employment rights and not just the very few which constitute criminal offences under the Gangmasters and Immigration legislation. The FWA could thus seek enforcement orders against companies like P&O Ferries which flouted employment rights and duties.*]

105. Add a new clause 114:

Offence of non-compliance with at tribunal order

A person commits an offence if a financial order or an order of reinstatement or re-engagement made by an employment tribunal against a body corporate is not fulfilled by the date specified by the tribunal without reasonable excuse.

[*This amendment adds to the jurisdiction of the labour market authority the power to prosecute companies which fail to comply with tribunal awards, bearing in mind that two thirds of financial awards are currently unpaid or only paid in part.*]

106. To insert the following Clause—

"**Personal Liability for breach of tribunal orders**

(1) Where, in relation to a body corporate—

(a) a financial order made by an employment tribunal or agreed by the claimant and the body corporate; or

(b) an order of reinstatement or re-engagement made by an employment tribunal or agreed by the claimant and the body corporate,

has not been fulfilled by the date specified in the order or agreement, without reasonable excuse, and that failure is proved—

(a) to have been committed with the consent or connivance of an officer of the body, or

(b) to be attributable to any neglect on the part of such an officer,

that officer shall be personally liable to reimburse the claimant in whose favour the order had been made or agreed.

(2) An officer found liable for reimbursement under subsection (1) may be disqualified as a director or prevented from becoming a director.

[*This amendment imposes personal liability on company officers for breaching tribunal orders.*]

107. In Schedule 6 insert: [A provision which amends LASPO to extend Legal Aid to potential claimants for advice on and representation in employment tribunals.]

[*This is necessary to ensure that these rights are made effective.*]

16. **Outsourcing – cl.27**

108. Add a new cl.27(8) to insert a new paragraph 43A in Schedule 6 of the Procurement Act 2023:

43A(1) A mandatory exclusion ground applies to a supplier if—

(a) the supplier or a connected person has been found by a court or tribunal wilfully or recklessly to have breached a right granted by statute to an employee, worker or self-employed person (or a prospective or former employee, worker or self-employed person) in that capacity;

(b) facts have been found by a court or tribunal (or may reasonably be inferred from admission or conduct on the part of the supplier or a connected person) which establish on the balance of probabilities that the supplier or a connected person wilfully or recklessly breached in relation to an employee, worker or self-employed person (or a prospective or former employee, worker or self-employed person) in that capacity a fundamental labour right protected by a treaty ratified by the United Kingdom.

[*This would deploy the procurement legislation to uphold statutory rights and rights protected by ILO Convention and the European Social Charter etc and would also prevent outfits like P&O Ferries from getting government contracts whilst harbouring the intention to defy the law should it be profitable to do so.*]

109. To insert the following Clause—

"**Public sector contracting: trade union recognition**

(1) The Procurement Act 2023 is amended as follows.
(2) In Part (2) (principles and objectives), after section 14A insert –

"**14B Obligations of contractors to recognise trade unions**

(2) The Secretary of State has a duty to ensure that any contract entered into after the coming into force of this Act by a—
    (a) government department;
    (b) executive agency of government;
    (c) non departmental public body; or
    (d) non Ministerial department,
is compliant with the requirements set out in subsection (2)
(3) A contract under subsection (1) must require the contractor to such a contracting authority to —
    (a) recognise an independent trade union for the purposes of collective bargaining, and
    (b) takes steps to ensure that any sub-contractor to the contractor which carries out any obligation under the public contract recognises an independent trade union for the purposes of collective bargaining.
(4) For the purposes of this section, "recognises", "independent trade union" and "collective bargaining" have the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.
(5) An independent trade union may make a complaint against a contracting authority, which is a party to a public contract, that it or a contractor or sub-contractor which carries out any obligation under the public contract is in breach of the term in subsection (2).
(6) The complaint may be made to the Central Arbitration Committee.
(7) If the Central Arbitration Committee finds the complaint to be well founded, it shall grant a declaration to that effect.
(8) Where the Central Arbitration Committee makes a declaration in accordance with subsection (6), it shall order that the respondent contracting authority shall take whatever steps appear to the Central Arbitration Committee as necessary to ensure that the contracting authority and every contractor or sub-contractor which carries out any obligation under the public contract comply with the implied term in subsection (2).
(9) The steps that may be taken under subsection (7) include termination of the contract, which shall not be regarded as a breach of contract by the contracting authority concerned if a principal reason for the termination is compliance with an order of the Central Arbitration Committee under (7).

(10) An appeal lies on a point of law to the Employment Appeal Tribunal by either party to proceedings brought under subsection (5)."

[*Explanatory Note: This clause is designed to ensure that all public contractors comply with the duty to recognise a trade union for the purposes of collective bargaining and that such contractors take steps to ensure that any sub-contractors do the same. The terms 'contracting authority' and 'public contract' are defined in ss.2 and 3 of the Procurement Act*.]

110. After clause 25 insert a new clause 25A:

25A Public Sector contracting: UN Guiding Principles

(1) The Procurement Act 2023 is amended as follows.

(2) In Part (2) (principles and objectives), after section 14A [and 14B, above] insert –

14C Obligations of contractors to abide by the UN Guiding Principles on Business and Human Rights

(1) It shall be an implied term of any public contract that the contractor to the contracting authority-
(a) abide by the UN Guiding Principles on Business and Human Rights, and
(b) takes steps to ensure that any sub-contractor to the contractor which carries out any obligation under the public contract abides by the UN Guiding Principles on Business and Human Rights.
(2) An independent trade union may make a complaint against a contracting authority, which is a party to a public contract, that it or a contractor or sub-contractor which carries out any obligation under the public contract is in breach of the implied term in subsection (1).
(3) The complaint may be made to the High Court of Justice.
(4) If the High Court finds the complaint to be well founded, it shall grant a declaration to that effect.
(5) Where the High Court makes a declaration in accordance with subsection (5), it shall order that the respondent contracting authority shall take whatever steps appear to the High Court as necessary to ensure that the contracting authority and every contractor or sub-contractor which carries out any obligation under the public contract comply with the implied term in subsection (1).
(6) For the avoidance of doubt the steps that may be taken under subsection (6) include termination of the contract, which for the avoidance of doubt shall not be regarded as a breach of contract by the contracting authority concerned.

[*Explanatory Note: This clause is designed to ensure that all public contractors comply with the UN Guiding Principles on Business and Human Rights, which will require the government to ensure that all companies respect the International Bill of Rights (1966 Covenants) and the ILO Declaration on Fundamental Principles and Rights at Work, 1998 and amended in 2022. It also sets out what companies are expected to do by way of policies, scrutiny of*

supply chains, due diligence and remediation. It is a relatively simple way of dealing with a complex problem, especially in the light of the fact that the EU due diligence obligations no longer applies to the UK - though they continue apply to UK companies trading in the EU which will be familiar to those trading there.]

17. Surveillance technology and the use of AI

111. Insert after clause 24, a new clause 24A headed 'Surveillance technology and the use of AI' and add:

(1) It shall be unlawful for an employer to process the personal data of workers of his by means of automated monitoring systems or automated decision-making systems, in particular and without prejudice to the generality of the foregoing: personal data on the emotional or psychological state of workers; data in relation to private conversations, including exchanges with other workers and their representatives; data of workers gathered while they are not performing work; data from which it can be inferred or predicted that the worker or workers intend or contemplate the exercise of their fundamental rights, including freedom of association, the right to bargain collectively, the right to take industrial action, and the right to information and consultation; data to infer the racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability, state of health, including chronic disease or HIV status, emotional or psychological state, trade union membership, sex life or sexual orientation of the worker or workers.

(2) Workers and trade union representatives shall be informed and consulted in good time whenever the introduction of, or a significant change to, automated monitoring systems and automated decision-making systems in the workplace is contemplated, regardless of purpose.

(3) Any automated monitoring system or automated decision-making system in relation to workers shall be overseen by dedicated and suitably trained and protected workers with the power to override the surveillance or decisions.

(4) Workers and union representatives shall be entitled to receive detailed explanations regarding any decision taken or supported by an automated decision-making system without undue delay, and shall have the right to request the employer to review and, where reasonable, rectify any such decision without delay, and compensate any consequential loss.

(5) Automated monitoring systems and automated decision-making systems shall be subject to regular assessments of the impact of individual decisions on the workforce, including, where applicable, on working conditions and equal treatment at work.

(6) These provisions may be modified or extended by collective agreements.

[*These provisions are necessary because the Bill currently makes no provision to regulate surveillance technology and the use of AI.* Labour's Plan to Make Work Pay *contained a section on 'Technology and Surveillance' that committed the Government to:*

- *safeguard against discrimination;*

- *examine what AI and new technologies mean for work, jobs and skills, and how to promote best practice in safeguarding against the invasion of privacy through surveillance technology, spyware and discriminatory algorithmic decision making;*
- *ensure, at a minimum, that proposals to introduce surveillance technologies would be subject to consultation and negotiation, with a view to agreement with unions or representatives.*

The contemporaneous EU Directive 2024/2831 on improving working conditions in platform work, to be implemented by December 2026 provides (along with EU Regulation 2024/1689) for regulation of AI in the workplace. It does not, of course, apply in the UK (though the AI Regulation has some important extraterritorial effects as it regulates conditions for 'market access'). The UK should aspire to these benchmarked rights.]

18. **Working Time Regs – not in Bill**

112. Add after cl.29 a new cl.29A:

Working Time Regulations

29A. Regulation 16A of the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023 is hereby revoked.

[*This removes the Conservative government's reintroduction, after Brexit, of a right of employers to pay irregular hours workers and part-year workers their holiday pay by way of rolled-up pay, i.e. an uplift to their weekly or monthly pay – the effect of which will be, as before the CJEU outlawed it, that many will no longer enjoy paid holidays since the uplift will be treated as a wage increase by another name subsequently reduced by inflation. It is to be noted that the Tories sought in Committee to amend the Bill by revoking the Working Time Regulations*.]

113. Add after cl.29 a new cl.29A:

Working Time Regulations

29A. Regulation 9 of the Working Time Regulations 1998 shall be amended by deleting paragraphs (2) and (3) and substituting:

'(2) The records referred to in paragraph (1)(a) may be created, maintained and kept in such manner and format as the Secretary of State may prescribe.'

[This is to remove the discretion given to employers in 2023 to keep records in any form they choose or not at all in relation to each worker's daily working hours. The government have proposed NC35 which requires records which are 'adequate'.]

19. **Other amendments**

114. [An amendment is needed to section 172 Companies Act 2006 to elevate the requirement to 'have regard … to the interests of the company's employees' to be on a par with their duty 'to promote the success of the company for the benefit of its members [i.e. shareholders] as a whole'.]

115. [An amendment is needed to the Companies Act 2006 to put workers on boards of Directors (similar to the provision in the Pensions Act 2004).]

116. [An amendment is required to provide facility time to worker directors and pension trustees.]

5 March 2025

Proposed by the officers of the IER