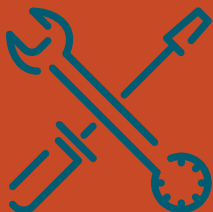


The Good Employment Plan: *Contributing to a more prosperous and fairer society*

NIC ICTU policy briefing

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STRONGER TOGETHER

CONGRESS

Irish Congress of Trade Unions
Northern Ireland Committee



Foreword

by Gerry Murphy

Assistant General Secretary, ICTU

More people are working in Northern Ireland than at any time in the past century.

The debate about work has moved beyond a focus on quantity, to a recognition that we need to focus on quality.

To enable this, our emerging economy must reflect not only the structure and best practice characteristics of the more prosperous European economies, but also incorporate their established and proven industrial relations mechanisms. We need to embrace these changes to secure the economic success and fair society we deserve.

Good jobs are central to the continued evolution of our economy and development of a prosperous society founded on equality and fairness. These Good Jobs are described in the New Decade New Approach Agreement [page 44], as ones *“where workers have a voice that provides a level of autonomy, a decent income, security of tenure, satisfying work in the right quantities and decent working conditions”*.

Fulfilling this pledge represents a necessary step in delivering a more prosperous, fairer, and more productive economy. An economy with working people at its centre that can adapt and better manage the inevitable transformations of the coming years. This process begins with identifying the impediments to progress and then creating solutions through a new employment framework.

We are not alone in thinking that people at work are better off in trade unions. You would expect us to think that, but an increasing consensus is emerging that the whole of society benefits from people at work having access to a union, and unions having access to workers. The international evidence is clear, and there is widespread acceptance that when workers have a strong voice in workplaces, that collective voice works for not only the individual benefit of each worker with better pay and conditions, but also for a wider, fairer, and more productive economy. An economy which can adapt to manage change and the inevitable transformations of the coming years.

New legislation is key to building this new economy.

Northern Ireland has the opportunity to go with the weight of evidence and depart from the failure of anti-trade union and collective regulation rhetoric. It is time to move towards the modern best standards of our European peers, where sectoral collective bargaining is the dominant form of industrial relations. To begin with, it must be recognised that all workers have the right to:

- a voice at work,
- fair remuneration sufficient for a decent standard of living for themselves and their families,
- and to just working conditions which respect equality and their health, safety and dignity.

The ICTU is determined to work with Government and employers towards this common purpose.

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Section 1: Introduction

This paper makes the case for a comprehensive and meaningful Employment Rights Bill for Northern Ireland and sets out the range of proposals which should be included within.

Section 2 begins with an overview of the policy landscape and the trade union movement's priorities for the Bill. Section 3 sets out how we have arrived at our current set of employment arrangements and regulations and the policy decisions that led us to them. We then outline the negative and enduring consequences of these policy choices and why there needs to be change. We outline how poor-quality employment is bad for workers and for society as a whole. We detail how poor-quality work impacts health and well-being and workplace safety. At the broader level we also discuss how it can undermine sustainable economic growth and stable public finances along with other societal impacts.

Section 4 then outlines the picture of job quality in Northern Ireland. This focuses not only on low pay and stagnant wages, but also looks in depth the most extreme examples of insecure employment such as Zero-Hours Contracts, Fire and Rehire and Bogus Self-Employment. We also show how Skills and Training and Employees voice and Representation, key measures of good quality employment, have been allowed to decline in Northern Ireland.

Building upon our assessment of the state of job quality in Northern Ireland, in Section 5 we set out a positive case for a new settlement for Employment Rights. We make the case for secure, decent and flexible employment for all, noting that flexibility belongs equally to employers and employees. We make the case for

strengthened trade unions rights and outline the ways in which these rights can be promoted and vindicated. We also show how boosting trade unions and collective bargaining benefits not only the workers involved, but also the economy as a whole.

Finally, in Section 6, we present a comprehensive framework for a new Employment Rights Bill tailored to the needs of Northern Ireland. Our proposals encompass a wide range of initiatives aimed at broadening trade union rights, strengthening protections for workers, and fostering a more equitable labour market. Drawing upon already existing practices in Great Britain, international best practices, and a large body of emerging research, we offer pragmatic solutions to address the evolving challenges faced by workers in Northern Ireland.

This paper serves as a roadmap for improving the minimum standards of job quality in Northern Ireland. By prioritising the advancement of employment rights and advocating for legislative reforms, we aim to cultivate a more inclusive, resilient, and prosperous economy.



Section 2: Enhanced Employment Rights as a means to Flexible, Secure and Decent Employment for All

Policy Context

In early 2024 the Minister for Economy set out the Department's vision for the future of the Northern Ireland Economy. In doing so he set out to increase the proportion of working-age people in 'Good Jobs' as one of the four key priorities. Increasing the number of Good Jobs is one pillar of four set out in the economic vision, alongside improving productivity, increasing regional balance and helping decarbonisation.

In this Economic Vision Minister Conor Murphy outlined plans to increase the number of people working in Good Jobs. This included:

- investing in affordable childcare and fair pay for childcare workers;
- creating more and better paid apprenticeships and skills academies;
- replacing zero-hour contracts with contracts that provide flexibility and protect workers rights;
- strengthening the role of trade unions, particularly in low-paying sectors;
- altering our economic structure by supporting industries that provide Good Jobs;
- harnessing the unrealised potential of the Social Economy;
- And improving careers advice, including in schools, so that people are fully informed about the opportunities available to them.

On the 1st of July 2024, the Minister launched a consultation on proposals to strengthen employment legislation in order to deliver the departments goal of creating Good Jobs and enhancing worker's rights. The consultation includes terms of employment; pay and benefits; voice and representation; and promoting a healthy work-life balance,

Employment law is devolved to Northern Ireland. Until about fifteen years ago, most statutory employment rights and obligations were largely the same in Northern Ireland as in Great Britain. However, there is now substantial divergence due to various factors.

A crucial component of developing an Employment Rights Bill for Northern Ireland is to level up with the existing

employment laws in Great Britain. It must go further than this however and include proposals outlined such as those in the Labour Party manifesto. The Labour Party is promising reforms to the employment landscape of a greater magnitude than, arguably, any time in the last 40 years.

This alignment ensures consistency across regions within the United Kingdom and with those advocating the advancement

of workers' rights. By integrating these elements into the new bill, Northern Ireland can take significant strides towards enhancing employment protections and fostering a fairer workplace environment.

In addition to advocating for the advancement of employment rights, we also emphasise the need to address other areas of employment-related disparity between Northern Ireland and Great Britain. For instance, the issue of gender pay reporting together with comprehensive measures to address gender pay transparency requires attention and action within Northern Ireland.

An enhanced statutory floor which could be achieved via an Employment Rights Bill is a crucial component of a good job's agenda for several reasons:

- **Ensuring Basic Protections:** Minimum standards establish a baseline of essential protections and rights for workers, regardless of their job or industry. By guaranteeing fundamental rights such as fair wages, safe working conditions, and protection against discrimination, minimum standards create a framework for dignified and respectful employment.
- **Security and Predictability:** Ensuring that workers have a predictable and stable work environment is essential for the financial security of workers, as well as their health and well-being. When workers can rely on predictable and guaranteed hours and decent pay, they are better able to plan for the future, manage their personal and family responsibilities. This predictability reduces stress and anxiety among workers.
- **Fostering Job Quality:** Minimum standards contribute to the enhancement of job quality by putting in place a floor, beyond which the quality of workers' lives cannot fall.
- **Encouraging Innovation and Productivity:** Contrary to common misconceptions, minimum standards

can incentivise innovation and productivity by providing a stable and supportive environment for workers. When employees have secure and valued jobs, they are more likely to be motivated, engaged, and innovative in their work, leading to improved business outcomes, increased productivity and economic growth.

- **Protecting Public Health and Safety:** Inadequate labour standards can have detrimental effects on public health and safety, as workers may be exposed to unsafe working conditions or exploitation. Strengthening minimum standards helps protect workers from harm, and in turn, contributes to the overall well-being and prosperity of society.
- **Reducing Inequality and Support Social Cohesion:** Minimum standards foster fairness and equity in the workplace, enhancing trust between employers and employees. This strengthens social bonds and contributes to a more harmonious society.
- **Ensuring Competitiveness:** In a globalised economy, businesses operate across borders and are subject to international competition. Countries with higher minimum standards often attract skilled workers and investment, as they offer better working conditions and a more favourable business environment. By aligning with international best practices, Northern Ireland can enhance its competitiveness and attractiveness as a destination for talent and investment.
- **Catch up with other countries:** The minimum standards different countries set in their labour markets matter greatly for the lived experience of work. It is imperative for policymakers in Northern Ireland to address the inadequacies in minimum statutory standards and strive towards aligning with international norms and best practices. Doing so not only promotes the well-being and prosperity of workers but also contributes to the overall economic and social advancement of the region.



Section 3: Job Quality matters

Poor Quality and Insecure Work is a Political and Social Choice

Insecure work has become a pervasive feature of the UK's labour market over the past three decades, reflecting broader political and social choices rather than inevitable economic forces. Successive governments have prioritised reducing headline unemployment rates and have largely ignored the wider evidence base of the need to focus on job quality and security. This focus on quantity over quality has led to the expansion of low-paid and precarious work, accompanied by a significant decline in real wages and productivity. The consequence has been an exacerbation of income inequality and poverty, as well as a reduction in state revenues due to lower tax contributions from these low-paid jobs¹.

The roots of the current situation can be traced back to deliberate policy decisions. As Professor Noel Whiteside² of the University of Warwick observes:

"In recent decades, jobs on offer in Britain have become increasingly precarious, a trend particularly noticeable in the aftermath of the Global Financial Crisis (GFC: 2008-9). This change has long been actively promoted by governments of all political stripes. Labour markets have been deregulated; flexibility of employment encouraged. Work is

consistently identified as the sole route out of poverty, a category of 'working poor' has emerged. Such government strategies present as a volte-face to the politics of the early twentieth century, when social investigation exposed irregular work as a cause of poverty, not its cure, and as the major factor explaining a rising incidence of social dependency. The UK's earliest labour market policies sought to eradicate casual work and to encourage permanent employment – policies promoted assiduously for most of the twentieth century" (1).

Historically, the UK had mechanisms to regulate casual and insecure labour, including collective agreements negotiated by trade unions and legislation such as the Dock Workers (Regulation of Employment) Act 1946, which sought to protect workers in specific industries. However, the regulatory framework has been systematically dismantled since the 1980s, particularly under Conservative governments. The repeal of industry-specific legislation and the weakening of trade unions through restrictive laws have undermined collective bargaining. As a result, the UK now has some of the lowest levels of collective bargaining coverage in Europe, particularly in sectors where insecure work is most prevalent³.



1 OECD. (2015). *In It Together: Why Less Inequality Benefits All*. OECD Publishing. <https://doi.org/10.1787/9789264235120-en>

2 Whiteside, N. (2023). *The Changing Nature of Employment: Lessons from the UK's Past*. University of Warwick.

3 Grimshaw, D. (2017). *Making Work More Equal: A New Labour Market Segmentation Approach*. Manchester University Press.



The deregulation of employment protections in the mid-1990s, including the introduction of the ambiguous “worker” status, laid the groundwork for the proliferation of zero-hours contracts and other forms of insecure work. This shift was further entrenched by the labour market dynamics following the 2008 financial crisis, which saw a surge in involuntary casualisation. The emergence of complex employment arrangements, such as those involving employment agencies, payroll companies, and umbrella companies, has become a hallmark of the UK labour market. These arrangements have a common feature: they shift the risk and cost of employment from employers to workers, eroding traditional employment protections⁴.

Public concern over the rise of zero-hours contracts reached a peak in 2013, prompting the Coalition Government to launch a public consultation. However, the government’s response was limited. Apart from banning exclusivity clauses in 2015, the government failed to implement broader protections for workers, effectively endorsing the continued proliferation of insecure work arrangements⁵.

Poor quality and insecure work are a political and social choice that reflects the priorities of successive governments. The UK’s labour market policies have increasingly favoured flexibility delivered via deregulation, often to the detriment of workers’ rights and job security. This approach has not only widened income inequality but has also undermined the social contract, creating “the precariat” who, despite being employed, face insecurity and unpredictability.

The connection between Employment Status and Employment Rights

The prevailing political and social choices have also influenced the structure of employment status and rights in the UK. Unlike the two-tier employment status categories seen in many countries—employees and the self-employed - UK employment law recognizes three distinct types: “employees,” “workers,” and “self-employed contractors.”

Employees are entitled to a broad range of employment rights and protections, which are not afforded to those who are genuinely self-employed. “Workers,” also known as “limb (b) workers,” occupy an intermediary status, benefiting from some but not all statutory rights and protections. Notably, workers lack protections against unfair dismissal, redundancy pay, and the right to request flexible working arrangements (although the Workers (Predictable Terms and Conditions) Act 2023 aims to address this issue when it comes into force). As such, workers are particularly vulnerable to low pay, long hours, exploitation, and insecure contracts, such as zero-hours contracts.

This complex employment status framework is a relatively recent development, emerging from policy changes in the mid-1990s. The Employment Rights Act 1996 and the Trade Union and Labour Relations (Consolidation) Act 1992 established different types of worker status, which contributed to the proliferation of insecure work. Employment status is

4 Taylor, M. (2017). *Good Work: The Taylor Review of Modern Working Practices*. Department for Business, Energy & Industrial Strategy.

5 Department for Business, Energy & Industrial Strategy. (2015). *Zero Hours Contracts: Banning Exclusivity Clauses - Government Response to the Consultation*. Retrieved from <https://www.gov.uk/government/publications/zero-hours-contracts-exclusivity-clauses-government-response>

notoriously complex, with court and tribunal decisions dependent on the specific facts and circumstances of each case. The evolving case law, involving companies like Uber and Deliveroo, highlights the ambiguity surrounding the categorisation of workers versus self-employed individuals.

This overly complex system creates confusion for both employers and workers, necessitating recourse to an already overloaded employment tribunal system for clarification, at the public's expense.

Negative impacts of poor quality employment

In recent years, governments and policymakers across the globe have come increasingly and consistently to endorse the importance of the quality of jobs. They do so because good quality work is identified as one of the principal means for resolving many of the challenges countries confront, including:

- to sustain people's quality of life and well-being;
- insecurity, precarity and poor standards of employment which some workers face;
- inequality including wage; income; and social inequalities;
- the requirement to generate strong, sustainable and inclusive economic growth;
- to provide necessary revenues to support public finances;
- and to underpin democratic institutions and governance.

By the corollary, poor quality work has extensive negative impacts including on the worker, their family, the economy, the public purse and broader society.

Health and Well-Being Impacts

The quality of employment is critically linked to both the psychological and physical health impacts of workers. Research studies consistently show that workers in poor-quality jobs, characterised by high demands and low control, experience higher levels of stress, mental health issues, and physical health problems.

Research by the Mental Health Foundation indicates that among 17 relevant studies, eight found a significant association between zero-hours contracts and mental health difficulties or low well-being. This contrasts with findings from Australia, where such workers benefit from higher protections and wages, and no significant link to poor mental health was identified⁶. The instability and low control inherent in these jobs can lead to anxiety and stress, which in turn affect physical health⁷.

Further to this, workers in insecure jobs face significant barriers to taking sick leave due to low Statutory Sick Pay and high minimum earnings thresholds. This situation was exacerbated during the COVID-19 pandemic, as many workers continued to work while ill, further compromising their health and safety.

6 Mental Health Foundation (2022). *Zero Hours Contracts: Impacts on Mental Health and Well-being*. Retrieved from <https://www.mentalhealth.org.uk/our-work/policy-and-advocacy/zero-hours-contracts-report>

7 Gallie, D. (2013). Economic Crisis, Quality of Work, and Social Inequality. *European Sociological Review*, 29(5), 1026-1037.

Gallie, D., Green, F., & Zhou, Y. (2017). The Impact of Job Quality on Workers' Health and Well-being. *Work, Employment and Society*, 31(2), 243-261.

Green, F. (2006). Demanding Work: The Role of Job Demands in Predicting Workers' Health. *Journal of Occupational Health Psychology*, 11(4), 349-359.

Workplace Safety

The safety of workers in poor quality, insecure employment is also a serious concern. For example, according to the Labour Research Department⁸, an investigation by the Rail Safety and Standards Board into the rail transport sector revealed that the under-reporting of safety incidents was linked to the increased use of zero-hours contracts. As much as 80% of the work was done by contract staff on these contracts. The Office for Rail Regulation described this situation as “not conducive to the development of a safe railway.”

The safety of workers in poor-quality jobs is also at risk. According to the Labour Research Department:

“A good illustration was the under-reporting of safety incidents and near misses uncovered by general union Unite in the rail transport sector in 2011, investigated by the Rail Safety and Standards Board. As part of its wider report, the Board linked this under-reporting to the growing use of ‘zero hours’ contracts, used on the rail network for as much as 80% of the work done by contract staff, a situation described by the Office for Rail Regulation as ‘not conducive to the development of a safe railway’. Zero hours staff were judged

more likely to be put off reporting an incident or near miss, and not wanting themselves associated with the ‘bad news.’ The Select Committee concluded that Network Rail’s use of zero-hours contracts was primarily for cost reduction, not due to any genuine need for flexibility⁹.

Additional research supports this view.¹⁰ Studies by Bercovitz and Mitchell (2007) and Forde and Slater (2005) found that workers in temporary and insecure jobs are less likely to report safety issues, leading to increased workplace accidents and injuries. The Health and Safety Executive (2015, 2017) reports that temporary and agency workers are at higher risk of injuries due to inadequate safety training and unstable work patterns. Similarly, the European Agency for Safety and Health at Work (EU-OSHA, 2019) and the Institute for Work & Health (IWH, 2018) emphasise that precarious employment is linked to higher injury rates and inadequate safety practices.

Economic Inefficiencies and Productivity Costs

The economic costs of poor-quality work extend to productivity. Research indicates that poor-quality jobs are more strongly associated with low productivity than good-quality jobs are with high

8 Labour Research Department. (n.d.). “The Under-Reporting of Safety Incidents and Near Misses.” Retrieved from <https://www.lrdpublications.org.uk/publications.php?pub=BK&iss=1733&id=idp1777152>.

9 Labour Research Department. (n.d.). “The Under-Reporting of Safety Incidents and Near Misses.” Retrieved from <https://www.lrdpublications.org.uk/publications.php?pub=BK&iss=1733&id=idp1777152>.

10 Bercovitz, J., & Mitchell, W. (2007). “The Role of Temporary Employment in Employment Relationships.” *Journal of Labor Economics*, 25(3), 477-506. DOI: 10.1086/518068.

European Agency for Safety and Health at Work (EU-OSHA). (2019). *Work-related safety and health in the European Union: Main trends and challenges*. EU-OSHA. Retrieved from <https://osha.europa.eu/en/publications/work-related-safety-and-health-european-union-main-trends-and-challenges>.

Forde, C., & Slater, G. (2005). “Labour Market Flexibility and Workplace Safety: Evidence from the UK.” *Journal of Industrial Relations*, 47(2), 211-230. DOI: 10.1177/0022185605055891.

Health and Safety Executive (HSE). (2015). *Health and Safety Statistics*. Retrieved from <https://www.hse.gov.uk/statistics/>.

Health and Safety Executive (HSE). (2017). *Workplace Fatal Injuries in Great Britain*. Retrieved from <https://www.hse.gov.uk/statistics/fatalinjuries.htm>.

Institute for Work & Health (IWH). (2018). *Precarious Employment and Worker Health*. IWH. Retrieved from <https://www.iwh.on.ca/precarious-employment>.



From an economic perspective, good-quality jobs are associated with higher productivity, innovation, and sustainable economic growth.

productivity. High staff turnover linked with poor-quality jobs incurs significant managerial costs, including recruitment, training, and administrative expenses. These inefficiencies detract from overall productivity. Studies¹¹ show that safer, healthier, and more engaging jobs foster higher motivation and productivity, creating a positive feedback loop between job quality and earnings.

Workers in poor-quality jobs are more likely to face burn-out which impacts engagement, resulting in diminished productivity. Research by Wolfers and Zilinsky¹² found that increasing pay for low-skilled workers can improve organisational performance by enhancing work quality, customer service, and employee motivation. In contrast, poor-quality jobs result in reduced productivity and slower organisational performance.

From an economic perspective, good-quality jobs are associated with higher productivity, innovation, and sustainable economic growth. Conversely, poor-quality work hampers economic development and contributes to stagnation.

Public Finance Implications

The prevalence of poor-quality jobs has significant implications for public finances. A report from the TUC in 2022 titled *The Fiscal Cost of Insecure Work*¹³, reveals that the UK Treasury loses approximately £10 billion annually due to low-paid self-employment and zero-hours contracts. This financial shortfall arises from:

- **Reduced Tax Revenue:** Workers in poor-quality jobs generally earn less, resulting in decreased income tax and national insurance contributions. Additionally, these workers often rely more on social security payments. The differential treatment of self-employed workers further exacerbates this issue, as self-employed individuals contribute less tax compared to employees with similar earnings (Landman Economics).
- **Tax Inefficiencies:** The current tax system's treatment of self-employed workers contributes to further revenue losses. This inefficiency compounds the £10 billion shortfall in Treasury revenue, affecting the government's ability to fund essential public services.
- **Productivity impacts on public finances:** Poor-quality work impacts productivity, leading to reduced economic output. This diminished productivity affects tax revenues and overall economic growth, further straining public finances. The additional costs related to high staff turnover and recruitment further diminish the economic benefits of a productive workforce.

11 Cazes, S., Garnero, A., & Martin, S. (2015). *"The Labour Market Performance of Policies to Improve Job Quality."* OECD Employment Outlook 2015. Paris: OECD Publishing.

Bosworth, D., & Warhurst, C. (2021). *"Bad Work: The Decline of Job Quality in the UK."* Work and Occupations, 48(4), 543-569.

12 Wolfers, J., & Zilinsky, J. (2015). *"Higher Wages for Low-Skilled Workers Can Boost Productivity."* Peterson Institute for International Economics.

13 Trades Union Congress (TUC). (2022). *"The Fiscal Cost of Insecure Work."* TUC Report, UK.



Broader Societal Implications

Poor-quality jobs negatively impact workers' quality of life and exacerbate wage and income inequality. Addressing job quality is essential for improving overall well-being and reducing social inequalities. Investing in good-quality jobs supports strong, sustainable economic growth by fostering higher productivity and innovation. In contrast, poor-quality jobs contribute to economic stagnation and hinder development. The quality of employment affects democratic institutions and governance. Insecure and poor-quality jobs can lead to social instability and erode public trust in institutions. Enhancing job quality is crucial for promoting a stable, equitable society.

Section 4: Job Quality in Northern Ireland: The current position

Earnings: Low Pay & Stagnant Wages

A key measure of the quality of employment that any labour market can provide is remuneration. While pay is only one aspect of the quality of employment, it is one of the most important factors because of its role in determining living standards. At the most basic level, employment should provide a worker with remuneration that guarantees a decent standard of living. Furthermore, employment should provide workers with the opportunity to advance in their career and enjoy compensation commensurate with that progress. Moreover, workers should also share in the success of the enterprise in which they are engaged. If the value of what is being produced by workers increases, this should be reflected in the compensation of the workers involved in creating that value.

Since 2016, the improvements made to the statutory wage have transformed the low pay landscape in the UK, and within it, Northern Ireland is no different. The National Living Wage (NLW) was introduced by the Government on 1 April 2016, as the new national minimum wage rate for workers over the age of 25. The introduction of the National Living Wage represented a significant shift in policy in terms of how the legal wage floor was defined and implemented.

The policy here sought to raise the NLW to 60 per cent of median hourly earnings by 2020. When the NLW hit that target, the Government set a new one for the NLW to reach two-thirds of median hourly earnings. On the 1st of April 2024 the statutory minimum wage for those aged 21 and over rose to £11.44 reaching its target of two-thirds of median earnings. It would be easy for Government to misdiagnose the progress the UK has made on the minimum wage as providing a solution to low pay. This is not the case.

The national living wage only applies to the *hourly pay of employees*, and so has had a limited impact on *weekly pay*¹⁴, it has no direct impact at all on self-employed workers and it does not apply to those aged under the age of 21. Further to this, the evidence shows that substantial proportions of our workers continue to earn below the real living wage. As shown in Table 1 below, the most up-to-date data on low pay for Northern Ireland shows that 7% earned below the national living wage/national living wage, 11% of workers earned below two-thirds of median hourly earnings, and 15.5% of workers earned below the real living wage. In 2023 Northern Ireland was the region with the joint highest proportion of workers earning the national minimum wage. The number of workers earning below the age-specific minimum wage has risen in the latest data by 0.3% to 1.3%.

14 Low Pay Commission (2024) *National Minimum Wage Low Pay Commission Report 2023*, Presented to Parliament by the Secretary of State for Department of Business and Trade by Command of His Majesty, Available online: https://assets.publishing.service.gov.uk/media/65e0b1f93f6945001103601d/E03071356_NMW_LPC_Report_2023_Accessible.pdf

Table 1: Low Pay, 2023

	%
Paid below the National Living Wage/ National Minimum wage	1.3
Paid below the National Living Wage/ National Minimum wage	7
Below two-thirds median hourly earnings	11.2
Paid below the Real Living Wage	15.5

Source: Wilson, L. and Mac Flynn, P. (2024) *Labour market observer: Job Quality in Northern Ireland*, NERI Report (forthcoming).

The Real Living Wage is calculated by the Living Wage Foundation and takes account of both increases in the cost of living, and applies to all workers over 18, in recognition that young people face the same living costs as everyone else. The Real Living Wage is based on the cost of a basket of household goods and services considered by the public as necessary to obtain a minimum acceptable standard of living with many analysts agreeing that this is a much more robust indicator of low pay. It is of course, worth remembering however that a central flaw of this measure is that it does not take account of hours worked and assumes in the setting of the rate that a full-time working week. The Real Living Wage (RLW) is announced in November each year and must be implemented by the following May. As such it is likely that the previous year's living wage was still in place when the survey was completed. The previous year's RLW is therefore used to calculate the percentage earning on or above the RLW. In 2022/23 this was £10.90. The Real Living Wage for 2023/24 is £12.00.

The evidence also shows that particular groups of workers including young workers and female workers face a much higher likelihood of low pay. Furthermore, low pay is much more prevalent in particular sectors, occupations and regions of Northern Ireland.

What is more, low pay is about much more than hourly pay. Weekly, monthly or annual pay arguably is what matters most from a living standards perspective. The evidence shows that despite substantive increases in the hourly wage floor these have had a more muted effect on weekly low pay.¹⁵

Beyond low pay and looking to pay more broadly, the stagnation of wages is a particularly problematic issue in Northern Ireland. Productivity rises are the long-term driver of wage growth and the poor performance of the United Kingdom, and the even poorer performance of Northern Ireland underlines the connection between the two.

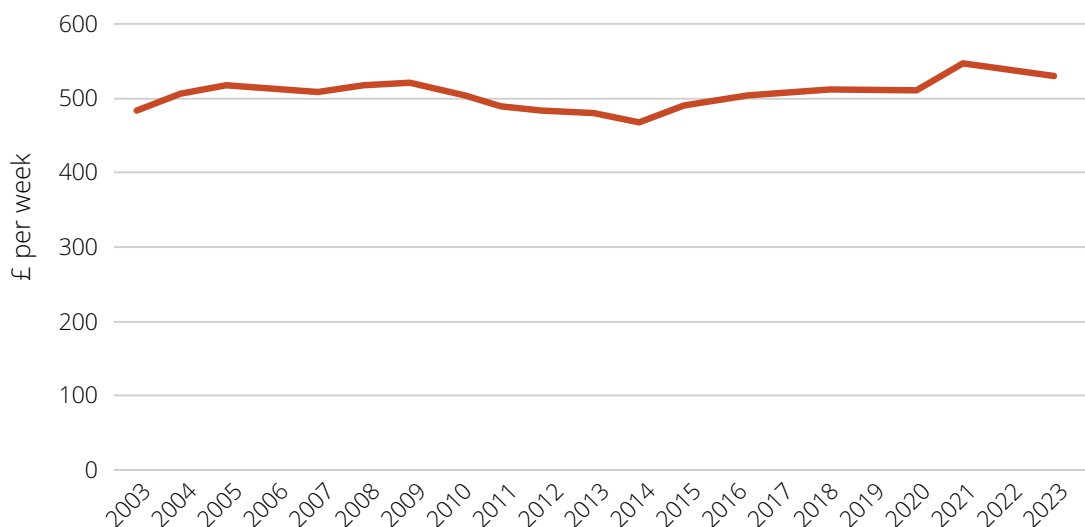
Chart 1 shows the evolution of wages in Northern Ireland over the last 20 years, whereby wages have increased by only 9% in real terms. As the chart shows, there was a considerable jump in 2020, but much of that progress has been eliminated in the last 2 years. Since 2021, wages have fallen just over 3% in real terms.



15 Cominetti et al (2024) *Low Pay Britain*, London: Resolution Foundation. Available online at: <https://economy2030.resolutionfoundation.org/wp-content/uploads/2023/04/LPB-2023.pdf>



Chart 1: Real Median Wages Northern Ireland, 2013-23



Added to subdued real wage growth, since the 2008 financial crash we have witnessed persistent and sustained periods of time where our earnings have not been keeping pace with the cost of living. In 5 of the last 11 years workers have experienced a below inflation change in their weekly earnings¹⁶. This is important for workers, not least because the longer-term real increases in wages have been so subdued, but because what one earns in a particular week, or month, or year is what determines workers current living standards.

Workers find themselves in a perpetual cycle of attempting to catch up, as the gains made during years of above-inflation increases may be eroded by

subsequent periods of below-inflation growth. This ongoing struggle to maintain purchasing power and living standards can lead to financial strain, reduced quality of life, and heightened economic insecurity for workers and their families.

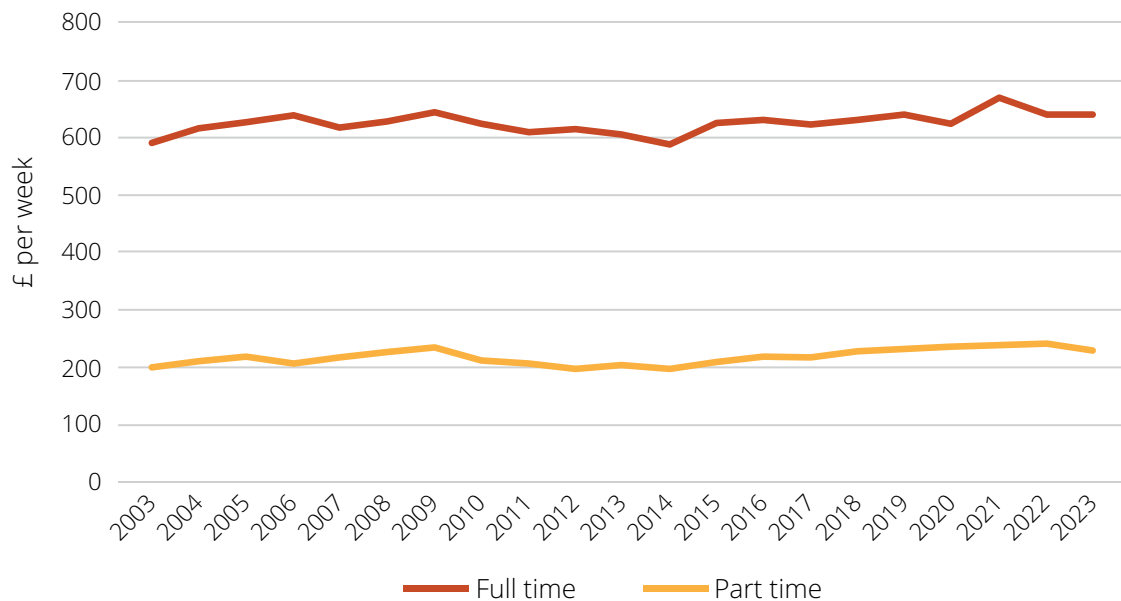
Looking in more detail at how those wage figures are split by different type of workers Chart 2 shows that the part-time employment has seen a 16% increase in real terms over the twenty years 2003 to 2023, while full-time employment has increased by 9% in real terms over the same period. The significant increase in part-time wages begins at the same time as the introduction of the National Living Wage as a greater proportion of part-time jobs were directly affected by it.

Since the 2008 financial crash we have
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of time where our earnings have not been
keeping pace with the cost of living

¹⁶ Wilson, L. (2023) The cost of living crisis: A generation in the making, Presentation to ICTU Workers Demand Better, 21st February 2023.



Chart 2: Real Median Wages NI by Full-time/Part-time status, 2013-23



Over the last 20 years there has also been a significant divergence in average wages by gender. Chart 3 shows that real wages have performed very differently for males and females. While there has been a

considerable increase of just over 20% in female wages, the average male wage in 2023 is actually below the level it was in 2013 in real terms.

Chart 3: Real Median Wages NI by Gender 2013-23

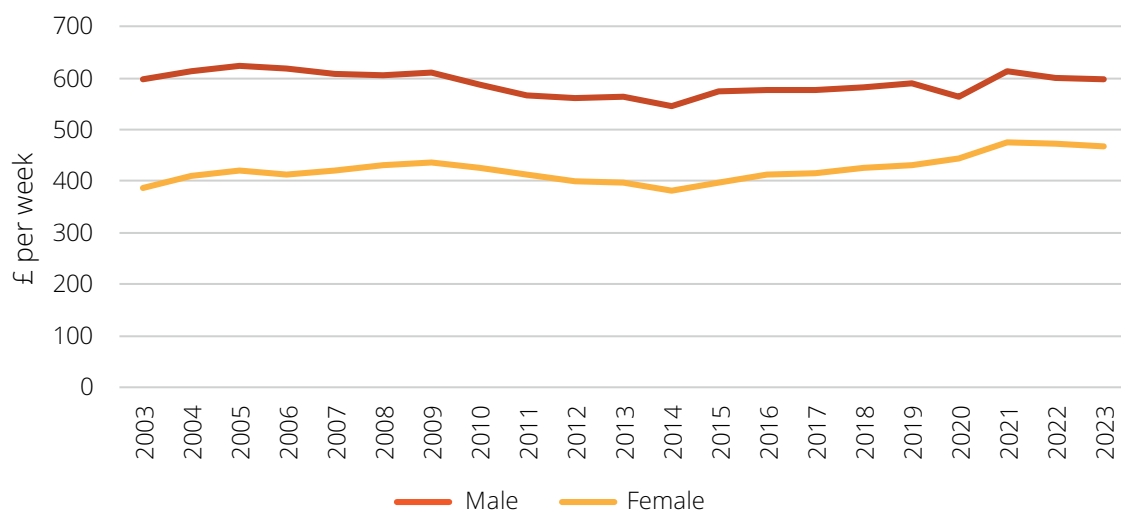
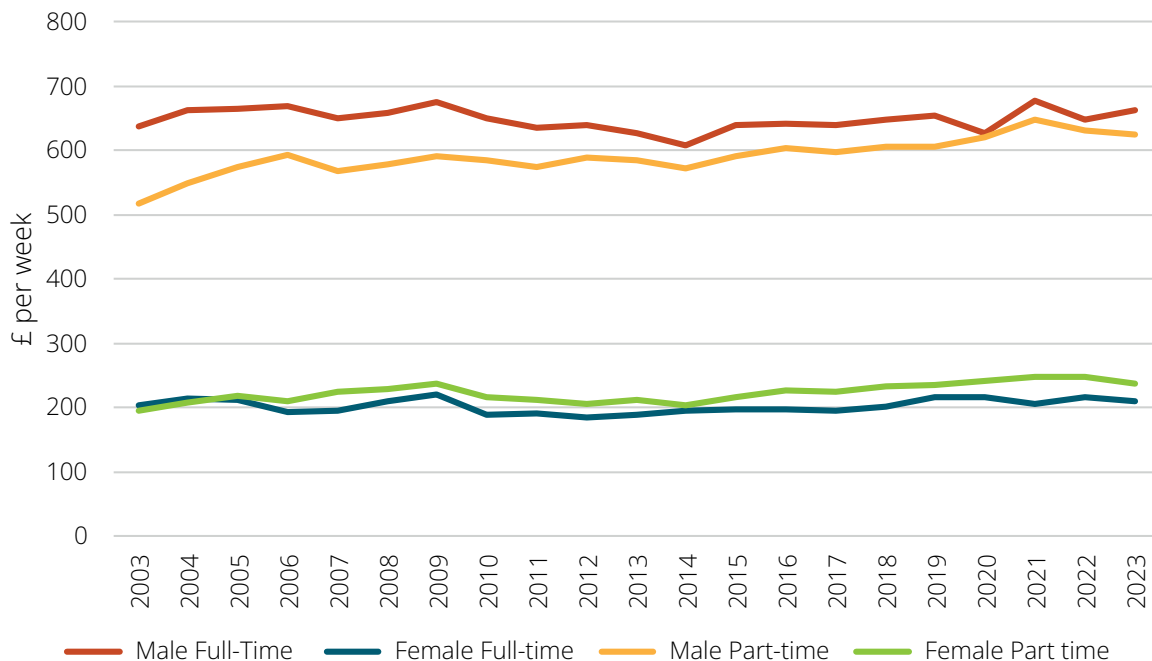


Chart 4 shows that over the past 20 years, female full-time wages have caught up with male full-time wages while female

part-time wages have outgrown male part-time wages over the same time.

Chart 4: Real Median Wages NI by Gender and Full-time/Part-time status 2003-23



Beyond Pay

Job quality is about more than just pay. For example, even if a worker receives good pay, excessive workload or interpersonal conflicts, or insecurity, may still lead to high levels of stress or leave one too exhausted to deal with care responsibilities at the end of the working day. Beyond this, research shows that whilst the majority of jobs have some aspects which could be improved upon and in this way, there is no such thing as a binary good job or bad job,

it is nonetheless the case that workers doing the lowest paid work have a higher likelihood of having multiple other poor aspects of job quality¹⁷.

There is no clear consensus on what constitutes a 'good job', but there is a general agreement in the academic literature that measuring job quality should go beyond pay. There is also strong commonality across many of the theoretical frameworks used to assess job quality about which aspects are important or need to be included in an assessment of the quality of a job¹⁸.

¹⁷ Cominetti, N., McCurdy, C., Thwaites, G. & Vieira-Marques, R. (2023) *Low Pay Britain in 2023: Improving low paid work through higher minimum standards*, The Economy 2030 Inquiry, London: Resolution Foundation;

Geary, J. & Wilson, L. (2023) *Job Quality in Ireland First findings from UCD Working in Ireland survey*, NERI Research report 27, Dublin: NERI. Available online at: <https://www.neriinstitute.net/sites/default/files/research/2023/JOB%20QUALITY%20IN%20IRELAND.pdf>;

Redmond, P., Cirikis, K. and Staffa, E. (2023) *Job quality of minimum wage workers in Ireland*, ESRI Research Series Number 16, Dublin: ESRI.

¹⁸ Wilson, L. (2024) *Good jobs: What are they and how do we get more?*, NERI Report (forthcoming).

Broadly speaking there is agreement that to assess job quality one needs to capture both 'traditional' economic or extrinsic job attributes and other non-economic indicators or 'intrinsic' attributes of a job. Extrinsic attributes include things like pay levels, contract status, working hours and the health and safety environment. Intrinsic attributes include things like flexibility, intensity of work, job security, prospects, skills and training, employee voice and representation, and relationships with other staff and management.

Further to this, there is widespread agreement in the academic literature that job quality is 'the set of work features that foster the well-being of the worker'¹⁹ and so to assess job quality we need to assess job quality from the point of view of the worker and how a worker experiences work 'in the round'.

The following sections provide an overview of job quality across a variety of different aspects of job quality. It should be noted however that these sections do not formalise any particular theoretical conception of job quality, nor is it complete across the indicators that they examine if one is interested in fully understanding job quality.

Terms of employment and Insecurity of employment

The nature of the employment relationship is an important aspect of job quality because it fundamentally shapes the dynamics, rights, responsibilities, and overall experience of work for both employers and employees. Whilst there is no legal definition nor a universally accepted definition of 'standard'

employment arrangements, numerous national and international organisations²⁰, and a large part of the academic research on the issue typically follow the same convention in its conceptualisation. This convention sees all employment arrangements which are full-time and regular, with a single employer, with a contract of permanent indefinite duration conceptualised as 'standard' employment.

Examining the nature of employment arrangements over time for Northern Ireland show that non-standard employment arrangements are a longer term, prominent feature of the labour market. The data on self-employment suggests some evidence of cyclicity, and as the labour market has been tightening in recent years, we are seeing a fall back in self-employment. On the other hand, trends in part-time employment appear to be much more embedded with about 1 in 4 people now working on this basis.

We move next to look at the prevalence of precarious forms of employment and we present data across a number of different indicators. We do this because precarity in the workplace can manifest in many different ways.

From zero-hours contracts to temporary work such as casual, seasonal, or short-term employment, these forms of employment entail uncertainty for workers over hours or the length of employment, as well as fluctuating income. All of these forms of employment feature in our economy. Furthermore, while proponents of zero-hours and temporary contracts laud the flexibility of them, too often this flexibility is one-sided. There remains a lack of evidence to support the notion that employees in sectors and occupations where these contract types are common

19 Green, F. (2006) *Demanding work: The paradox of job quality in the affluent economy*. Princeton University Press.

20 OECD (2015) *In it together: why less inequality benefits all*, Paris: OECD.



actively “choose” these forms of employment at a higher rate than those in other occupations or sectors, rather than it being a circumstance dictated by

the employer. In July-September 2023 just over 5% of workers were employed on a temporary contract while 3.3% were employed on a zero-hours contract.

The impact of Zero-Hours Contracts

Zero Hours Contracts are amongst the most extreme manifestations of insecure work. The Office for National Statistics (ONS) recognise one of the problems with the ZHC data is that it relies on those being surveyed to correctly identify the nature of their employment relationship²¹. Actual ZHCs can be confused with terms like casual contracts, etc. Another problem lies in the fact that there is a prevalence of ZHCs among some groups of workers, particularly migrant workers, that are, too often, beyond the reach of the survey sample that the ONS uses to make its calculations.

Whatever the actual numbers, people on ZHCs can be amongst the most vulnerable of workers, open to exploitation, and may experience a precarious existence. Problems for workers on ZHCs include²²:

- The prevalence of low pay.
- The lack of guaranteed hours and therefore a predictable income can leave workers and their families in serious hardship as they can:
 - struggle to budget, support a family, and pay bills and rent;
 - be unable to qualify for financial products such as a mortgage, accessing credit, or renting a home;
 - find it difficult to claim in-work benefits;
 - live in fear and anxiety which may adversely affect their health.

21 Office for National Statistics (ONS). (2020) *Zero-Hours Contracts in the UK: 2020*. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/zerohourscontractsintheuk/2020> (Accessed: 4 September 2024).

22 Adams, A., Freedland, M. and Prassl, J. (2015) *Zero-Hours Work in the United Kingdom: Law and Policy*, *Industrial Law Journal*, 44(1), pp. 70-103.

TUC. (2022) *Insecure Work and Hidden Exploitation*. Available at: <https://www.tuc.org.uk/research-analysis/reports/insecure-work-and-hidden-exploitation> (Accessed: 4 September 2024).

Migration Advisory Committee (MAC). (2018) *EEA migration in the UK: Final report*. Available at: <https://www.gov.uk/government/publications/migration-advisory-committee-mac-report-eea-migration> (Accessed: 4 September 2024).

Resolution Foundation. (2023) *Low Pay Britain 2023: The future of work and pay in the UK*. Available at: <https://www.resolutionfoundation.org/publications/low-pay-britain-2023/> (Accessed: 4 September 2024).

Department for Business, Energy & Industrial Strategy (BEIS). (2021) *Good Work Plan: Proposals to support families and promote flexibility*. Available at: <https://www.gov.uk/government/publications/good-work-plan-proposals-to-support-families-and-promote-flexibility> (Accessed: 4 September 2024).



- Without a guarantee of work employers can change or cancel shifts at the last minute, making it difficult to balance other commitments such as childcare or other caring responsibilities, social life, and leaving workers out-of-pocket through having to pay for travel, or through having turned down shifts with other employers.
- ZHC workers are more likely not to receive training and miss out on career progression, trapping them in low paid and precarious employment.
- For many it means a working life permanently “on-call.” They can feel obliged to take whatever work is offered, even if it does not suit their need for flexibility, out of fear that the employer will reduce the hours offered, or cease offering shifts.
- They may endure bullying, harassment (including racial, sexual and other forms) and other mistreatment, out of fear that the shifts will stop.
- They may also be unlikely to object to or report unsafe working conditions.
- They may not receive their full holiday entitlement or proper holiday pay.
- They may not receive sufficient hours to qualify for SSP.
- They can miss out on statutory family rights.
- ZHC workers can lose out on basic employment rights protections, because they fail to qualify as employees, lack the necessary continuity of service or because their employer takes advantage of their uncertain employment status to evade employment rights obligations.

ZHC jobs are concentrated in low-paid sectors that are struggling with acute labour shortages, meaning employers also appear to be paying a price for their use of these contracts and the resultant churn. ZHCs are most prevalent in the gig-economy, transport and delivery, hospitality and leisure, agri-foods, arts, admin, health and social sectors and education.

According to The Work Foundation²³, the increase in the experience of severely insecure work is being felt more strongly by workers who experience other forms of labour market disadvantage.

- Black workers are 2.7 times more likely than white workers to be on zero-hour contracts and workers from multiple/mixed backgrounds are 2.3 times more likely than white workers to be on zero-hour contracts
- Women are 1.2 times more likely to be on zero-hour contracts than men
- One in ten young workers in the UK are on these contracts in 2023 (13%). Young workers (aged 16–24) are 5.9 times more likely to be on zero-hour contracts – but these are not just students. Young workers who are not students are still 3.5 times more likely than other age groups to be on zero-hour contracts.

²³ Lancaster University. (2024) *Zero choices: Swapping zero-hour contracts for secure, flexible working*. Available at: <https://www.lancaster.ac.uk/work-foundation/publications/zero-choices> (Accessed: 4 September 2024).

The data examining the extent of involuntary part-time employment and involuntary temporary employment shows that there is an ongoing demand for work from substantial proportions of workers, despite low levels of unemployment and record vacancies. The data presents a cyclical pattern in the upward fluctuations

of both involuntary temporary and part-time employment percentages through the years of the 2008 financial crisis. However, it still remains, that in July-September of 2023 almost 1 in 3 temporary workers could not find a permanent job and over 1 in 10 part-time workers could not find a full-time job.

Zero Hours Contracts vs. Guaranteed Hours: The UK is falling behind

While it can be challenging to directly compare Zero Hours Contracts (ZHCs) across different countries, it's clear that most European Union (EU) countries either heavily regulate, restrict, or outright ban such contracts. In contrast, the UK is one of only a few European nations where zero-hours contracts are both legal and widely used. In many other European countries, these types of contracts are either unknown, strictly regulated, or effectively banned.²⁴

Arguments suggesting that the introduction of employment protection legislation to reduce job insecurity would negatively impact the UK's employment rates—often attributed to a flexible labour market—are not supported by evidence from countries that have banned or severely restricted zero-hours contracts. For example, countries such as New Zealand, Germany and Ireland have implemented strong restrictions on such contracts without suffering adverse economic consequences²⁵. According to the latest comparable OECD data, their employment rates stand at 79.8%, 77.3%, and 73.9% respectively, compared with the UK's 75%.²⁶



24 Work Foundation. (2020). *Zero Choices: Exploring the Limits of Flexibility in the UK's Labour Market*. Lancaster University. Retrieved from <https://www.lancaster.ac.uk/media/lancaster-university/content-assets/documents/lums/work-foundation/reports/ZeroChoices.pdf>

25 Blanchflower, D. G., & Machin, S. (2019). *The Decline of Labour Market Flexibility and its Impact on Employment Rates in Advanced Economies*. LSE. Retrieved from https://eprints.lse.ac.uk/100538/1/nd_gg_sm_march_2019.pdf

26 OECD. (2023). *Employment Rate Data*. OECD. Retrieved from <https://www.oecd.org/en/data/indicators/employment-rate.html>

In the Republic of Ireland, following a five-year campaign by the Irish Congress of Trade Unions (ICTU) and the broader trade union movement, legislation was passed to outlaw zero-hours and low-hours contracts. The Employment (Miscellaneous Provisions) Act 2018, which came into effect on 1 March 2019, introduced four key rights for workers:

1. Workers are entitled to a written statement of their terms of employment, including details of daily and weekly working hours and rate of pay, within the first five days of employment.
2. Zero-Hours Contracts are banned in almost all circumstances.
3. Workers are entitled to a minimum payment if their employer fails to provide them with work.
4. Workers are entitled to guaranteed hours of work that reflect their typical weekly working hours.

It's important to note that these changes did not result in any adverse economic consequences in Ireland. Businesses did not close, and employers did not dismiss workers en masse. Employment flexibility continues to exist.

Similar to the situation in Ireland, introducing a ban on zero-hours contracts in Northern Ireland and the UK would not harm responsible employers. Instead, it would protect them from being undercut by unscrupulous competitors who seek to gain an advantage not through innovation or increased productivity, but by exploiting workers and reducing labour costs, often at great human cost to those workers and their families.

In terms of the share of workers working very long hours (49hrs+) the data suggests a general trend of a decreasing percentage of workers working very long hours over the years, with a notable decline from 2020 to 2023. That being said, very long hours remain a prominent feature within the Northern Ireland labour market with 16.5% of workers working 49 or more hours per week in 2023. Jobs of this type can be thought of as 'greedy jobs' in the sense as conceived by Coser (1974)²⁷ where there is an expectation imposed by an employer or the profession in question that the job becomes the primary investment of an employee.

This is obviously problematic from a work-life balance point of view, but also from an equality and inclusion perspective as it poses particular challenges to workers with caring responsibilities.



27 Coser, Lewis A. (1974). "Greedy Institutions: A Comparative Analysis of Social Organization." In Lewis A. Coser, *Greedy Institutions: A Comparative Analysis of Social Organization* (pp. 1-29). Free Press.



Table 2: Working arrangements, working time and precarious forms of employment, 2005-2023

	2005	2008	2011	2014	2017	2020	2023
	%	%	%	%	%	%	%
Employment arrangement							
Self-employed	16.1	14.8	15.4	14.9	15.2	13.8	12.4
Part-time	21	22.3	24	23.1	24.4	24.2	23.3
Precarious form of employment							
Temporary	6.5	6.1	4.8	7	6.8	5.5	5.3
Zero-Hours Contract						2.9	3.3
Type of temporary work							
Casual work	27.6	27	25.4	26.8	24.7	16.7	22.5
Seasonal work	13.6	7.2	5.7	5.3	8.9	4.6	7.3
Employment agency	5.5	9.9	16.9	16.7	9.7	15.4	18
Fixed period/fixed task							39.6
Some other way							12.6
Involuntary under or temporary employment							
Involuntary temporary employed (% of temporary)	31.6	26.9	60.8	44	36.1	40.9	31.2
Involuntary part-time employment (% of part-time)	9.3	11.5	21.1	18.4	13.4	14.3	11.2
Working hours							
Very Long (49+)	22.6	25.7	23.5	23.4	22.4	21.1	16.5

Very long hours remain a prominent feature within the Northern Ireland labour market



Bogus Self-Employment

Someone who is genuinely self-employed is neither a worker nor an employee and does not qualify for statutory employment rights. Instead, they are a business operating on their own account. The genuinely self-employed include small businesses, and highly-skilled workers and professional individuals providing services direct to clients and customers.

However, for many insecure workers, jobs are conditional upon them offering their services through a “personal company.” The “company” enters a relationship with the employer and services (work) are performed by the sole director of the “company” (the worker).

Often these arrangements are made without the knowledge of the workers involved. Workers can lose out on holiday pay, sick pay, pension and minimum wage entitlements. They also suffer volatility in hours, can be fired without any recourse, without any statutory notice of dismissal and are not entitled to receive redundancy pay. This form of insecure work is termed bogus self-employment.

Bogus self-employment also undermines the public revenue because employers that hire self-employed workers save up to 13.8% of the wage bill because they don’t have to pay any National Insurance. Workers are often enticed to become self-employed because they themselves will pay less tax and national insurance.

Research shows²⁸ that low pay and volatility in working hours are widespread among the self-employed, who do not benefit from the national minimum wage and whose numbers have increased over the past 20 years.

Public attention in recent years has focused on bogus self-employment in the gig economy. But more workers across the economy are being forced to accept self-employment, often bogus, in construction, transport (including taxis and deliveries), hospitality, personal care (including hairdressing), arts, entertainment and recreation, wholesale and retail, education, financial, ICT, and agriculture.

In the construction industry there is the Construction Industry Scheme (CIS), a standalone self-employed taxation scheme, unique to the industry where, unlike other forms of self-employment, workers are taxed at source. However, as workers are officially self-employed, employers are not required to pay employers’ national insurance contributions nor provide employment rights.

Bogus self-employment undermines training opportunities and can also impact on health and safety. A lack of direct employment is detrimental for apprentice training and stymies the industry’s capacity to adopt new technologies and techniques. A higher staff turnover also means that safety messages are lost or fragmented, and the risk of being dismissed without warning makes a falsely self-employed worker far less likely to raise safety concerns.

While employers may reap a short-term financial gain, the disadvantages for the future of the industry are potentially devastating.

²⁸ Resolution Foundation (2022) *Low Pay Britain*. Available at: <https://economy2030.resolutionfoundation.org/reports/low-pay-britain-2022/>

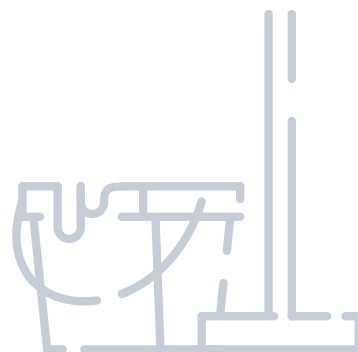
In addition to this, data from NISRA show that only half of workers have flexible work. They define this as employees with a flexible agreed working arrangement of either: flexitime (flexible working hours), annualised hours contract, term time working or job sharing; part time and not underemployed or primarily working at home.

Table 3: Flexible working NISRA definition

Year	Proportion of NI employees with flexible work (percentage)
July 2019 to June 2020	47.7
July 2020 to June 2021	51.7
July 2021 to June 2022	53.6
July 2022 to June 2023	54.3

It is worth restating at this point that the OECD²⁹ has found that countries with policies and institutions that promote a focus on job quality and inclusivity, as well as job perform better than countries where the focus of policy is predominantly on enhancing (or preserving) market flexibility.

only half of workers
have flexible work



²⁹ OECD. (2021). *Negotiating our way out of the crisis: Collective bargaining and employment protection*. OECD Publishing.

Dismissal and Re-Engagement (Fire and Re-Hire)

The dismissal of employees and their replacement by agency workers by P&O Ferries in 2022 dramatically demonstrated that employment law currently does not protect any permanent employee from being thrown onto insecure contracts by unscrupulous employers seeking to increase profits.

The relationship between an employer and an employee is principally governed by the contract of employment. Sanctity of contract would demand that current terms and conditions guaranteed by the employment contract should be protected from unilateral downgrading by the employer.

Sanctity of contract is a general idea that once parties duly enter into a contract, they must honour their obligations under that contract. The sanctity of contract is important because it ensures that parties can rely on the promises made in a contract. If parties could easily back out of contracts, it would be difficult to conduct business and make agreements with others.

The practice of 'fire and rehire' (or 'dismissal and re-engagement') occurs when an employer dismisses an employee and offers to rehire them on new terms more favourable to the employer.

The practice is not unlawful in and of itself. However, as it does involve dismissal, the employer may face claims for unfair or wrongful dismissal. If there are sufficient numbers of employees involved, the employer will also have a legal duty to undertake collective redundancy consultations first.

There are a number of different ways in which an employer can seek to vary the terms and conditions of the employment contract without threatening to fire the workforce. Some contracts will contain a clause that allows an employer to unilaterally vary certain terms. If there is no such clause, an employer could vary the contract with the consent of the employee or the consent of a union for collective agreements.

The UK government has previously proposed a code of practice on dismissal and re-engagement. But a code of practice is not legally binding. It cannot adequately strengthen the UK's current employment law framework. It could not close the legal loopholes that allowed P&O Ferries to evade criminal and financial sanctions, and it cannot strengthen unfair dismissal rights to prevent an employer from sacking their workforce and either re-hiring them on inferior conditions or replacing them with a workforce on insecure contracts.

The UK government has previously proposed a code of practice on dismissal and re-engagement. But a code of practice is not legally binding.





Insecure work in the public sector

Insecure work is not just a problem in the private sector; it is also prevalent in the public sector. In November 2020, public-spending chiefs highlighted the need for a comprehensive review of recruitment practices within the Northern Ireland Civil Service (NICS) due to increasing spending on agency staff. This expenditure had more than doubled to £46 million over the previous two years.³⁰

As of June 2023, there were 3,220 agency staff working in the NICS, including 1,204 on contracts for the Department for Work and Pensions in Great Britain³¹. However, these figures do not include agency workers recruited directly by individual departments, which indicates an even greater reliance on insecure work arrangements³². Meanwhile, Whitehall's spending on agency staff over a three-year period reached £3 billion.³³

A report published by NIPSA in 2016 revealed that over £369 million was spent on agency workers between 2010 and 2016 across three public sector areas: the Northern Ireland Housing Executive, Health/Social Care, and the NICS³⁴. This trend has continued, with agency staffing costs in the Health and Social Care (HSC) sector rising from approximately £69 million in 2012/13 to £320 million in 2021/22, driven in part by the need to maintain services during the COVID-19 pandemic.³⁵

Unions have identified public sector outsourcing as a significant factor contributing to the casualisation of work. For example, UNISON has campaigned successfully to move workers from agency employment to Health Trust contracts. They also advocate for contractors to offer regular, predictable hours with terms and conditions equivalent to those of permanent staff. Despite these efforts, job insecurity remains a critical issue, especially in the health and social care sectors.

The 2023 report by the Northern Ireland Social Care Council (NISCC) highlighted several challenges faced by social care workers. These include inadequate pay, long and unsocial hours, and temporary contracts. Many workers reported being underpaid and working beyond their contracted hours. Zero-hour contracts are also common, leading to difficulties in securing enough hours of work.³⁶ These conditions negatively impact worker morale, team cohesion, and service quality.

Insecure work contracts, including zero-hour contracts, are also widespread in the education sector, particularly affecting supply teachers and staff in further and higher education. These practices are often driven by cost-cutting measures. Unions are actively campaigning for more secure employment forms in education. They also call for greater use of public procurement powers to promote jobs with decent terms and conditions and direct employment.

30 Civil Service World. (2020). Vacancy crisis sees NICS agency staff spending hit £46m a year. Retrieved from <https://www.civilserviceworld.com/professions/article/vacancy-crisis-sees-nics-agency-staff-spending-hit-46m-a-year>

31 Northern Ireland Statistics and Research Agency (NISRA). 2023. *Agency Staff Statistics: June 2023*.

32 NISRA. (2023). Employment in the Northern Ireland Civil Service Quarterly Report July 2023. Retrieved from <https://www.nisra.gov.uk/system/files/statistics/Employment-In-The-Northern-Ireland-Civil-Service-Quarterly-Report-July-2023.pdf>

33 The Independent. (2022). Whitehall spend on agency staff reaches £3 billion over three years. Retrieved from <https://www.independent.co.uk/news/uk/politics/civil-service-agency-workers-casualisation-b2197768.html>

34 NIPSA. (2016). Report on the deployment of agency staff in the public sector. Retrieved from <https://nipsa.org.uk/publications/40097-web.pdf>

35 Northern Ireland Assembly. (2022). Written Ministerial Statement by Robin Swann on Reducing Expenditure on Agency Staff in HSC. Retrieved from <https://www.niassembly.gov.uk/assembly-business/official-report/written-ministerial-statements/department-of-health---reducing-expenditure-on-agency-staff-in-hsc>

36 Northern Ireland Social Care Council. (2023). Making it Better: The Voice of Social Care Workers. Retrieved from <https://niscc.info/app/uploads/2023/09/Making-it-Better-for-SCWs19.5.23.pdf>



Skills, Training & Progression

Training provides workers with opportunities to develop new skills and enhance existing ones. This is essential for keeping up with technological advancements, industry trends, and evolving job roles. By acquiring new skills, employees become more competent and versatile, improving their ability to perform tasks effectively.

Worryingly however, the data shows a general decline in the percentage of workers undergoing job-related training in both Northern Ireland and the UK from 2005 to 2023. The UK overall consistently has a higher percentage of workers participating in job-related training compared to Northern Ireland across most of the years provided. The largest drop off in job-related training happened between 2005 and 2008, however the data for Northern Ireland suggests that the Covid pandemic has caused another hit on the extent of job-related training.

In July-September 2023, 3.8% of workers in Northern Ireland received job related training. This compares to 5.3% who received job-related training in 2020, and 8.3% of workers across the UK who received job-related training in the last 3 months.

In terms of comparisons of training type, the data show that on-the-job training is consistently higher in Northern Ireland compared to the UK throughout the years provided. Off-the-job training shows more fluctuation in Northern Ireland compared to the UK. Furthermore, while with both regions experiencing a decrease, overall significantly lower proportions of workers are offered off-the-job training in NI compared to the UK.

In terms of skills utilisation, NISRA data show that substantial proportions of workers either lack the skills for their current duties or have skills which exceed this. In 2022-23 50.6% were either over- or under-skilled. Further analysis to understand the extent of over-and under-skill utilisation separately is needed.



Table 4: Skills, training & opportunities for career progression, 2023

	2005	2008	2014	2017	2020	2023
Northern Ireland	10.8	5.7	6.5	6.6	5.3	3.8
United Kingdom	13	9.3	9	7.8	8.1	8.3

The UK overall consistently has a higher percentage of workers participating in job-related training compared to Northern Ireland

Table 5: Training type, July-September 2023 Northern Ireland & UK

		2005	2008	2011	2014	2017	2020	2023
NI	On-the-job	50.2	40.3	53.3	54.9	54.8	60.2	64.9
	Off-the-job	32.4	39	36.4	33.1	29.2	31.2	21.6
	Both	17.4	20.7	10.3	12	16	8.6	13.5
UK	On-the-job	38.7	40.8	40.8	54.9	49.1	51	50.4
	Off-the-job	42.6	40.8	40.8	33.1	31	31.4	30.3
	Both	18.7	18.4	18.4	12	19.9	17.6	19.3

Added to this, NISRA data show that substantive proportions of workers lack opportunities for career progression. In 2022-23 only 60% of workers either agreed or strongly agreed that their job offered them opportunities for career progression.

Employee Voice and Representation

Trade union representation plays a crucial role in enhancing job quality by advocating for workers' rights, empowering employees in the workplace, and fostering a supportive and equitable work environment.

Trade union density refers to the proportion of employees who are members of a trade union or covered by collective bargaining agreements. Despite

some fluctuations, the overall trend shows a relatively stable level of trade union density over the years, hovering around the low to mid-30% range. These trends in trade union density continue alongside the substantive increase in employment and the growth of non-traditional sectors.

The stability of trade union density suggests that workers continue to value and seek out representation through trade unions despite changes in the labour market. This indicates that workers perceive trade union representation as a valuable asset in securing favourable working conditions, fair wages, and other benefits associated with job quality.

Beyond this we know that the lack of employee voice is an issue in Northern Ireland with only 58% of workers in 2022-23 saying that they were involved in decision making.

Table 6: Employee Voice & Representation

	2011	2014	2017	2020	2023
Trade Union density	33.9	35.1	34.3	32.3	33.7

Section 5: The benefits of secure, flexible, decent employment for all

The case for secure, flexible employment for all

We need to fundamentally alter the perception of flexibility in the workplace. Flexibility is a good thing, good for workers and good for employers. What needs to change is the method by which we achieve that flexibility.

As outlined previously, for many years the consensus was that in order to achieve flexibility in work, we needed to deregulate our labour markets. Regulations and sectoral agreements were viewed as burdensome obstacles to achieving greater efficiency and agility. When we see the growth of precarious employment and the negative outcomes this has brought for many workers, we can see that deregulation did not work for workers. However, there is also limited evidence that it works for employers either. Deregulation has untethered workers from their workplace and led to the creation of a more transient workforce who feel less invested and less valued in their employment. Deregulation has not just brought flexibility; it has also brought uncertainty and unpredictability. The most extreme elements of insecure work increase management requirements and other personnel costs.

Rather than deregulating to achieve flexibility we need to move toward regulating flexibility so that it works for all involved.

Regulation should not be seen as a burden but should be seen instead as a mechanism to achieve the full potential of flexibility. It is eminently possible to construct a model of flexibility which provides secure and decent employment for workers and certainty and stability for employers.

Alternatives to Insecure Work

The need to address insecure work and establish a framework for creating Good Jobs with security, rights, decent hours, and fair pay is urgent. The data indicates that 63 percent³⁷ of employers would alter their practices if legislation provided additional protections for workers. This suggests that many employers see credible alternatives to insecure work. They may have resorted to such contracts to compete with less scrupulous competitors or because insecure work has become the norm, diminishing the need for thoughtful workforce planning.

Given the significant social and economic costs associated with insecure work, it is essential for employers to reassess their workforce needs. They should consider:

- Whether fluctuations in workload are predictable, regular, and ongoing.
- The nature of the work and the required skills and experience.

³⁷ Resolution Foundation (2024) *Firm foundations: Understanding why employers use flexible contracts*. Available at: <https://www.resolutionfoundation.org/app/uploads/2024/04/Firm-foundations.pdf>



- Whether current employees can take on additional tasks, possibly through extra hours or voluntary overtime.
- The potential for flexible working arrangements, including temporary or long-term options, in collaboration with workforce representatives.
- Opportunities for upskilling existing employees to cover new roles and ensure they are equipped to meet future demands.
- The benefits of investing in future growth by hiring additional staff and providing training to enhance workforce skills.

After considering these factors, if employers still find their needs unmet, they should then explore more secure contractual options that provide predictable hours and employment rights.

Genuine flexible working, which offers both security and flexibility, benefits workers, employers, and society. It allows individuals to balance work, study, and caregiving responsibilities while promoting equality and accessibility in the labour market. Such arrangements support training and upskilling, which can lead to improved recruitment and retention, as well as better overall job satisfaction.

To support this shift, regulatory intervention is necessary to address the overall rise in zero-hours contracts (ZHCs) and other insecure employment forms. While some employers are moving away from these practices, comprehensive strategies are required to balance job security with flexibility. These strategies should protect workers currently in insecure positions and offer options for those able to choose more secure work.

Addressing insecure work requires more than banning ZHCs; it necessitates a comprehensive strategy that rebalances power between workers and employers. This includes enforcing existing employment laws, closing loopholes,

and reducing insecurity across various forms of insecure employment, such as temporary contracts and agency work.

A critical component of this strategy is recognising the role of trade unions. Unions, run by and for their members, possess unique expertise in workplace relations, health and safety, equality, and skill development. Encouraging employers to value and engage with trade unions can lead to improved working conditions and enhance collective bargaining. This approach ensures that workers have an independent voice in improving workplaces, benefiting both employers and employees.

The case for strengthened Trade Union rights

What is Collective Bargaining?

At its most basic, collective bargaining occurs when the workforce comes together, independently of management, to speak collectively through their trade union representatives with their employer to negotiate terms and conditions of their employment. Collective bargaining and representation at firm and workplace level is the core of union activity.

Collective bargaining involves employees negotiating with their employer through union representatives to establish terms and conditions of employment. Successful collective bargaining depends on:

- **Union Recognition:** Employers must acknowledge trade unions to facilitate negotiations.
- **Voluntary Arrangements:** Most UK collective bargaining arrangements are voluntary, and recognizing the benefits of union recognition can lead to better conditions for workers.



Sectoral Collective Bargaining

Collective bargaining also takes place at a sectoral level when negotiations and agreements, for example on minimum levels of pay and conditions, are reached covering all workplaces in a sector of the economy.

Sectoral Collective Bargaining is the dominant form of industrial relations in many successful EU economies (particularly in the strongest economies such as Germany, Sweden and Norway).

And, as highlighted earlier, states with a high collective bargaining coverage rate, above 80%, tend to have a small share of low-wage workers and high minimum wages.

After the second world war, collective bargaining coverage (including sectoral collective bargaining) in the UK stood at 85 per cent. Before the election of the Conservative Government 1979, 82 per cent of UK workforce had their pay and conditions determined by collective agreements or wage council orders. By 2018, 53% of employees in Northern

Sectoral Collective Bargaining: An illustrative example

It is highly likely that sectoral collective bargaining will take a significant while to build given the change in culture required.

An outline sketch for developing sectoral collective bargaining in Northern Ireland could include the introduction of legislation which tasks a body with promoting the Labour Relations Agency with promoting and facilitating sectoral collective bargaining. The legislation would introduce the following.

The establishment of a Sectoral Bargaining Committee (SBC), made up of equal numbers of employer and trade union representatives, for one sector of the economy. The model could be rolled out to other sectors over time.

The SCB would be brought together to discuss matters including:

- Setting minimum pay levels and terms and conditions of employment;
- Establishing mechanisms for the resolution of disputes, individual and collective;
- Developing equality and inclusion policies and strategies, and health and safety standards for the sector as a whole;
- Ensuring appropriate training (including apprenticeships) and skills development of the workforce in the sector;
- The impact of new technology and other developments on the sector;
- Employment and skills retention within the sector.

Sectoral Collective Agreements (SCAs) on minimum pay levels and conditions for example, reached at the SCB would be binding on all workplaces within the sector.

These agreements would not remove the need for minimum standards set down in legislation (on matters such as pay, working time, holidays, discrimination, equality and Health and Safety) but would build upon these statutory standards and ensure that minimum rights do not become the maximum.

Ireland had a trade union that bargained for pay in their workplace³⁸.

Research³⁹ examining whether existing collective bargaining agreements still deliver for workers in Northern Ireland in terms of higher wages found evidence of a significant wage premium. The study concluded that collective bargaining represents a significant policy lever open to the Northern Ireland Executive to encourage a more coordinated and integrated approach to industrial development in the region.

The reasons for the decline in rates of collective bargaining are both political and economic (the decimation of the manufacturing sector in particular). The Conservative governments of the 1980s and 90s dismantled much of the national and sectoral collective bargaining machinery that had been in place throughout the post-war period and in some cases since the late nineteenth century. At the same time, legal restrictions on trade unions made it harder for unions to recruit and represent their members at workplace level.

In Northern Ireland, national collective bargaining (negotiations between unions and employers at NI, or UK level) still plays an important role within public services. However, within the private sector the absence of sector level arrangements (with the exception of the Agricultural Wages Board) means the vast majority of collective bargaining takes place at workplace level.



Collective Bargaining Rights

Right to Access Workers

Although many thriving companies have built their success on working with their workforce through constructive collective bargaining with trade unions, this is by no means the norm. Currently, it is all too easy for some employers to oppose the human right of workers to be represented by unions.

As highlighted earlier, collective bargaining is reliant on strong, independent trade unions. The strength of unions depends upon their ability to recruit members, and effectively represent their interests. Collective bargaining can provide a genuinely free voice for workers, improve information sharing, understanding and buy-in which can improve company performance.

However, due to an outdated misconception of trade unions, the instinctive response of many employers is to frustrate unions' attempts to access new members at their place of work. There is no right of access to the workplace for trade unions to meet, recruit, consult and represent the workforce. This has forced unions to adopt alternative and less effective approaches to organising, such as handing out leaflets outside businesses' premises and hosting information sessions at nearby venues.

The only exception to this position is after the Industrial Court has accepted a claim for statutory recognition. At this stage, the Industrial Court can direct that a union can meet a workforce for a short period under strict conditions. By this stage in the

³⁸ Mac Flynn, P. (2020) *The Impact of Collective Bargaining on pay in Northern Ireland*, NERI Working Paper Series, NERI WP 2020/NO 66, Belfast: NERI.

³⁹ Mac Flynn, P. (2020) *The Impact of Collective Bargaining on pay in Northern Ireland*, NERI Working Paper Series, NERI WP 2020/NO 66, Belfast: NERI.

process the employer, if they so choose, will have had the time to challenge the union's claim and take action to obstruct union organising in the workplace, which can involve engaging the services of "union-busting" firms.

Even after the Industrial Court has made a declaration that the union is entitled to recognition, the absence of a statutory right to access the workplace to organise, meet and represent their members and potential members, can be used to undermine the workplace organisation.

We are aware of workplaces in NI where vulnerable and migrant workers are forced to work in unsafe conditions and denied basic employment rights under precarious employment contracts. Individual workers who speak out, find that they no longer have a job. The many and high hurdles such workers face should they try to assert their individual employment rights through the Tribunals, and for little reward, are prohibitive. Without a right to access such workers to meet and represent them, unions are struggling to protect them.

New legislation is needed, like the law existing in New Zealand⁴⁰, to give unions rights to access workplaces, represent working people on all aspects of their employment and establish collective bargaining arrangements. The weight of evidence clearly demonstrates that employers and the state will also benefit from this new model.

Vulnerable and migrant workers are forced to work in unsafe conditions

Sweden has, since 1974, implemented a very successful model where union health and safety reps appointed outside of the workplace can have the right of access. The Swedish model amply demonstrates that the introduction of a right for union access to workplaces can play a significant role in reducing workplace accidents and improving health and safety conditions at work.

In their manifesto, *A New Deal for Working People*⁴¹, the Labour Party have stated that they will strengthen trade unions' right of entry to workplaces to organise, meet and represent their members and potential members, and to contact remote workers.

Statutory Trade Union Recognition

While NIC-ICTU would prefer that employers reach voluntary recognition agreements with their workforces choice for a trade union to collectively bargain on their behalf, unfortunately the need for a statutory recognition process remains.

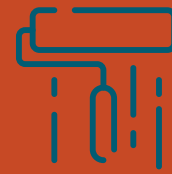
After decades of Conservative government's hostile policies on unions, the Labour government's introduction of a statutory union recognition process, through the Employment Relations Act 1999 (ERA99), demonstrated a clear shift in the attitude at the time.

However, as it turned out, the ERA99 and its NI equivalent, brought unnecessary complexity to the recognition process. Also, the legislation has a deep basic design flaw in that it only grants recognition for trade unions after the employer has been given a number of opportunities to weaken the union's position.

At the moment, the statutory process puts many time-consuming and legally complex hurdles in the way of trade

40 New Zealand Government. (2000). *Employment Relations Act 2000*.

41 UK Labour Party (2024) *A New Deal for Working People, the Labour Party Manifesto*, Labour Party Employment Rights Green Paper. Available online at: <https://labour.org.uk/wp-content/uploads/2022/10/New-Deal-for-Working-People-Green-Paper.pdf>.



unions, even when the union has recruited more than half of a workforce and those workers want the union recognised to represent their voice.

Statutory recognition requires that 10% of the workers in a proposed bargaining unit (the group of employees that will be represented by the union) be members of the union, and that there is the likelihood of the union winning majority support in a ballot.

There is no right of access to the workplace for the union until a valid application for recognition has been accepted by the Industrial Court (IC). During this time, the employer has had the opportunity to challenge the number of union members and raise technical objections to the proposed bargaining unit.

The Industrial Court will seek verification of the percentage of workers in the bargaining unit who are union members and if that number is below 50%, it will order that a secret ballot be conducted.

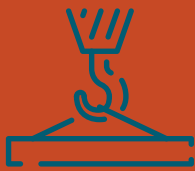
The legislation requires a majority of those voting in a ballot to vote in favour of recognition and for that majority to represent at least 40% of all workers eligible to vote. Therefore, anyone who abstains, for whatever reason, from the ballot is counted as a vote against.

Trade unions have experienced a range of unacceptable conduct by employers who are attempting to frustrate the unions claim for recognition including:

- Discriminating against, dismissing, or making redundant workers because the union is organising in the workplace or has made an application under the procedure.
- Discriminating against or dismissing workers because of their activities in support of a trade union organising campaign or an application under the statutory procedure.
- Pressurising or offering incentives to workers to vote in a particular way, or to renounce the union.
- Changing the number of workers in the bargaining unit.
- Denying unions access to information necessary to pursuing recognition.
- Using misleading, false or defamatory material against the union.
- Using threatening or intimidatory behaviour in relation to trade union membership or recognition.
- Changing terms and conditions of employment during a trade union recognition drive to discourage support for trade union recognition.
- Initiating petitions or surveys of workers to demonstrate that trade union members do not support recognition, and pressurising or inducing workers to sign such petitions or surveys.
- Interfering with or disrupting trade union access arrangements or refusing to participate in bargaining about such arrangements.
- Surveillance of workers or the trade union in connection with organisation and/or recognition
- Establishing a non-independent trade union, works council or similar body in order to frustrate representation of workers by an independent trade union.
- Closing or threatening to close the business in response to an application or a proposed application under the procedure.

The imbalance of power in the employment relationship against workers and their unions must be recognised in the wording of the legislation, and the existing rules to combat employer's use of such unfair practices need to be enhanced to protect workers who are simply seeking to exert their legal and human rights.

The imbalance of power must be recognised



Another major flaw in the current legislation lies in its extremely narrow definition of collective bargaining. Should the IC issue a decision that the union should be recognised by an employer the scope of the collective bargaining is restricted to 'pay, hours and holidays'. A restricted scope of collective bargaining such as this is of limited benefit to workers, employers, the economy and society. As the evidence amply demonstrates, to reap the benefits of collective bargaining, this form of dialogue must cover a wide range of issues including, but not limited to;

- pay;
- working time;
- holidays;
- pensions;
- health and safety;
- equality and inclusion;
- training and workforce development;
- work organisation and any decisions likely to lead to substantial change;
- recent and probable development of the undertaking's activities and economic situation;
- the situation, structure and probable development of employment within the undertaking;
- and the deployment of new technologies.

Rights and Protections for Trade Union Representatives

Trade union organisation in the workplace relies fundamentally on workers who take on union representative positions.

The relationship between employer and worker is fundamentally unequal, giving the employer considerable power over the individual worker. It is only through coming together and speaking and acting as one that workers can reduce this imbalance of power.

Collective bargaining happens when the workforce comes together, independently of management (out of concern of retribution), to speak collectively through their trade union representatives, and negotiate with their employer.

Union representatives are volunteers who in addition to their regular employment take responsibility for making the workplace better for their colleagues and more productive for employers. They provide advice and representation on employment rights, equality issues and other terms and conditions; they represent workers in disciplinary and grievance cases; they make workplaces safer; they provide opportunities for learning and skills development; they promote equality policies in the workplace.

Good employers recognise the value of union representatives in promoting a collaborative approach. Union reps can provide an efficient and genuine communication vehicle between the employer and the workforce encouraging information sharing, understanding and buy-in. This is particularly beneficial during challenging times for businesses as collective bargaining can deliver flexibility and creative mutually beneficial solutions.

The most effective tool to ensuring good health, wellbeing and safety at work are union Health and Safety (H&S) Representatives. There is a multitude of research, both quantitative and qualitative, that demonstrates that involving workers in health and safety through H&S Reps leads to healthier and safer workplaces and produces a range of benefits for workers and managers⁴².

Good employers recognise the value of union representatives in promoting a collaborative approach

⁴² See: Health and Safety Executive. (n.d.). *Research and involvement*. Health and Safety Executive. Retrieved September 4, 2024, from <https://www.hse.gov.uk/involvement/research.htm>

Workplaces with H&S reps and joint union-management safety committees have major injury rates less than half of those without. H&S reps reduce injuries, improve ill-health and help change the safety culture within an organisation.

Regrettably, not all employers recognise the value of having a unionised workplace.

When faced with the possibility of a union seeking recognition, the default position of some employers is opposition, to varying degrees, rather than engaging to explore the benefits of unions and collective bargaining. This is unsurprising given the culture of hostility towards unions promulgated by UK governments over at least the past 45 years.

For employers who wish to stop unions organising or operating in their workplace, threats, harassment, and dismissal of union representatives is the most effective way to achieve their goal. Currently, the law does not provide genuine protection against the undermining of unions through the dismissal of union reps.

Unfair dismissal claims pursued through the OITFET, will only, if the claimant manages to surmount the high legal hurdles, result in the award of limited financial compensation.

If their dismissal can be linked to their trade union activities (a difficult task in many cases), the rep can apply to an employment tribunal for reinstatement of employment and/or compensation. However, successful reinstatement orders from employment tribunals in NI for unfairly dismissed union reps are rarer than 'hen's teeth.' The employer's defence against reinstatement is simple and effective. All they need do is claim that relations between the union rep and employer have broken down irretrievably, or there has been a "breakdown of trust and confidence."

It should be noted that the adversarial nature of the tribunal system itself does not facilitate good relations between the parties. Given that there is a long period between cases being lodged with the tribunal and the actual hearing, employers can also successfully argue that they had to engage a permanent replacement. The rep who has won their case against unfair dismissal is left with limited financial compensation, but without a job!

Such dismissals function as powerful deterrents to the remaining union members considering taking on the vacant union rep's position. Without a replacement rep, or the right for the union to access the workplace, the union organisation withers away.

Providing better protections for union reps in the workplace is as essential to the operation of trade unions, as is reducing the legal barriers faced by unions in the statutory recognition process.

The threat of immediate industrial action has traditionally been the only effective mechanism trade unions can use to defend their representatives. The legal procedural restrictions placed on unions since the 1980s have greatly undermined the promptness, and therefore, the effectiveness of this defensive action.

The Labour Party have stated in *A New Deal for Working People*⁴³ that, *Labour will create new rights and protections for trade unions to undertake their work, strengthening protections of trade union representatives against unfair dismissal and union members from intimidation, harassment, threats, and blacklisting. The manifesto also states that, Labour will examine how the requirement to give notice of industrial action should be simplified and ensure it reflects the dynamic nature of disputes.*

⁴³ Labour Party. *A New Deal for Working People*. 2024. Available at: <https://labour.org.uk/updates/stories/a-new-deal-for-working-people/>.

It is also worth considering in the proposed new employment bill the commitment of the Labour Party to *introducing statutory rights for trade union equalities reps*.

Threats to union reps posed by employers contravenes freedom of association and is addressed by ILO Convention 98 and by the ECHR, Article 11(1). In recent years the European Court of Human Rights (ECtHR) has made it clear that governments have a duty to take steps to protect trade unions and trade unionists from threats by employers.

ILO Recommendation 143 (The Workers' Representative Recommendation, 1971) provides that workers' representatives *'should enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities'*. It is specifically recommended that there should be *'a requirement of consultation with, an advisory opinion from, or agreement of an independent body, public or private, or a joint body, before the dismissal of a workers' representative becomes final'*.

Right to Action - Industrial Action Ballots and Procedural Restrictions

Workers do not take industrial action lightly. They cannot afford to, as they lose pay and potentially other benefits, and working relationships can be damaged. When they participate in strike action it is in a 'final straw' scenario having considered the facts of the situation and given their consent through a democratic vote.

The ability to collectively withdraw services, i.e. strike, is ultimately the only leverage trade unions have, to improve pay, terms and conditions of employment, and to defend jobs and conditions.

A collective agreement is not legally enforceable between a union and an employer unless it is in writing and

expressly provides that it, or a part of it, shall be a legally enforceable contract. As such a provision is rare, most collective agreements are binding "in honour only", which means that neither party may enforce the agreement's terms in court. This means that industrial action is a trade union's only recourse for an employer's breach of their agreement.

However, as certain terms of a collective agreement may become incorporated into individual employees' contracts of employment. An employee may then seek to enforce those terms against their employer through employment tribunal. A daunting process for low paid, vulnerable and migrant employees, or those on precarious employment contracts.

Today, in Northern Ireland and Britain trade union members have fewer rights to take industrial action than in 1906 when the current system of industrial action law was introduced. Those participating in lawful industrial action remain vulnerable to dismissal and victimisation. UK law on industrial action also places heavy financial and bureaucratic responsibilities on trade unions, leaving them open to legal challenges by employers, and fails to reflect economic changes and the restructuring of the labour market.

As any objective reading of history will confirm, these unjust legal restrictions on industrial action, trade union autonomy and activities, were introduced by Conservative Party governments who were ideologically opposed to trade unions. They were not designed for the purpose of improving industrial relations, but instead with the intention of emasculating unions.

In the UK industrial action is unlawful unless it is covered by the statutory protection. Legality operates as an exception to illegality, a situation that would not be acceptable were it to apply to any other human right.



In many European countries (including Germany, France, Spain, Italy, Sweden, and Finland) the right to strike is protected by constitutional obligation, whether directly or indirectly⁴⁴.

Enforcement of Employment Rights and Reform of Employment Tribunals

There is little point in introducing new employment protections for workers if existing employment rights are not being enforced effectively. The labour market enforcement system in the Northern Ireland is inadequate both through the individual route via the tribunal system and through the various under-resourced enforcement bodies. For too many workers, basic employment rights are illusory.

The current, disjointed system is difficult for workers and employers to navigate, and difficult for authorities to manage efficiently. As things currently stand, the UK falls short of international standards on labour inspections. This leaves workers vulnerable to exploitation. It also means that unscrupulous employers can act with impunity, driving down standards across the board.

There are not enough labour market inspectors in the Northern Ireland to effectively and proactively investigate and enforce breaches of employment rights (including health and safety) in the labour market.

The International Labour Organisation (ILO) benchmark for inspectors, which it recommends all countries meet, is one labour market inspector per 10,000 workers⁴⁵.

The UK is potentially breaching Article 388 of the UK-EU Trade and Cooperation Agreement. The agreement stipulates that “each Party shall have in place and maintain a system for effective domestic enforcement and, in particular, an effective system of labour inspections in accordance with its international commitments relating to working conditions and the protection of workers”.

There is an urgent need to address the current inadequate funding of the state-led enforcement system. The system needs further long-term resources, more inspectors, more proactive investigations and more enforcement actions. At the moment,

- Underpayment of the National Living/ Minimum Wage remains rife in the Northern Ireland.
- The Gangmasters and Labour Abuse Authority’s (GLAA) remit has been significantly expanded to give it responsibility for tackling exploitation across the labour market. Although the GLAA statutory functions in Scotland and the Northern Ireland are narrower in scope than those the GLAA has in England and Wales, we understand that the GLAA has only one officer responsible for the Northern Ireland.
- As there is no licensing for recruitment agencies in the Northern Ireland we do not know the exact number of them. However, in 2009 it was estimated that there were 270. It is reasonable to assume that the current figure is significantly higher. It is estimated that there are approximately 40,000 recruitment agencies operating in the UK. It is not possible for the very small number inspectors to effectively monitor all the agencies here.

44 European Trade Union Institute. (2021). *The right to strike in Europe: Legal frameworks and practices*. Available at: <https://www.epsu.org/article/right-strike-country-factsheets>

45 Weil, D. (2005). *The changing nature of work: The role of labour market institutions in regulating employment relations*. International Labour Organization. Retrieved from https://webapps.ilo.org/public/english/revue/download/pdf/s3_weil.pdf

- The scale of non-compliance with health and safety rules during the Covid-19 pandemic has exposed serious deficiencies in the resources of the HSENI.

When it comes to employment tribunals, the precarity of working life means that for insecure workers, the pursuit of workplace justice can be a daunting process, for fear of upsetting employers or recruitment agencies. A lack of English, the complexity of the legal process and proceedings, limited resources and other barriers preclude migrant and other vulnerable workers from bringing breaches of their employment rights to employment tribunals.

The adversarial nature of the tribunal system itself does not facilitate the maintenance of good relations between the parties and frequently the claimants end up out of their jobs after the case. The long period between cases being lodged with the tribunal and the actual hearing, also put insecure workers off trying to assert their employment rights.

The many and high hurdles such workers face should they try to assert their individual employment rights through the tribunals, and for little reward, are prohibitive.

In addition to this, the problem for insecure workers is the chronic imbalance of power and the risk that employers will simply withhold hours if they attempt to assert their rights.

Without a right to access such workers in the workplace to meet and represent them, trade unions are struggling to protect them. The priority for policymakers interested in improving the effectiveness of employment regulation and strengthening workers' rights should be reforming and improving the labour market enforcement system.

An effective labour market enforcement system is important because it:

- Upholds the framework of employment rights. Employment rights that exist on paper, will be rendered meaningless if they are not enforced.
- Gives workers a speedy, affordable route to enforcing their employment rights and supports those workers who are unable to take a case to employment tribunal.
- Will reduce the cost to the public purse of the employment tribunals.
- Creates a level playing field for employers, by making sure that rogue employers can't flout employment laws to undercut other employers and gain an unfair advantage.
- Facilitates proactive investigations into labour market offences so labour market inspectors investigate situations where workers might be too afraid to raise complaints. It's likely that the most egregious exploitation is occurring where workers are being intimidated and are afraid of raising complaints.
- Can lead to higher productivity, a decline in the number of accidents and an increase in the motivation of the labour force.
- Reduce exploitation and help promote Good Jobs reduce poverty levels.

International Framework for Collective Bargaining

Whilst the NI and GB law has an instrumental role in determining industrial and employment relations, it is important to highlight that there are also international laws which regulate these matters. The UK has ratified a series of international treaties which establish the minimum legal standards applicable to the

workplace. These human rights treaties are the foundational building blocks of the rule of law, established after the Second World War.

International labour standards are legal instruments drawn up by the International Labour Organisation's constituents (governments, employers and workers – including the UK) and setting out basic principles and rights at work. They are either Conventions and Protocols, which are legally binding international treaties, or Recommendations, which serve as non-binding guidelines.

There are a range of ILO Conventions (and Recommendations) that legally oblige the UK to facilitate the right to join trade unions, implement protections for union reps and members. They enshrine the right of unions to take industrial action, to organise and engage in collective bargaining, to protect the autonomy of trade unions, to allow picketing and protest, and permit union access to workplaces.

Article 8 of the International Covenant on Economic, Social and Cultural Rights, a multilateral treaty adopted by the United Nations General Assembly, of which the UK is a signatory, establishes both the right to join a trade union and the right to strike.

Likewise, Article 11 of the European Convention on Human Rights, provides that everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests. It also asserts the right to collective bargaining, and European Court of Human Rights (ECtHR) jurisprudence makes plain that strike action is protected by Article 11 ECHR (see for example *RMT v UK* [2012] ECHR 1717).

While the UK has left the EU through Brexit the requirements of the UK-EU Trade and Co-operation Agreement (TCA) requires that the UK keeps up with EU levels of employment protection. Article 8 of Title XI, of the TCA commits both parties to respect, promote and effectively implement the internationally recognised core labour standards, as defined in the International Labour Organisation Conventions, including the right to freedom of association and the effective recognition of the right to collective bargaining. The TCA also commits the parties to occupational health and safety standards; fair working conditions and employment standards; information and consultation rights at company level; and restructuring of undertakings protections.

Also, Article 2 of the Northern Ireland Protocol/Windsor Framework provides that there should be no diminution of the rights, safeguards and equality of opportunity provisions set out in the Good Friday Agreement as a result of the UK leaving the EU. This provides important equality and anti-discrimination protection for individuals in NI, including the Good Friday Agreement rights to freedom and expression of religion and the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity.

Unfortunately, there is a problem enforcing such international law. This is why, for many years, the UK has been able to escape any meaningful sanction for persistent breaches of many of its obligations in international labour law. Heavily and repeatedly criticised by international agencies which supervise States' compliance with the treaties they have ratified, UK governments have simply shrugged off the adverse findings of these bodies. NI now has the chance to end this disregard for the international rights of workers here.

Collective Bargaining as a force for Good

Since the 2008 global financial crisis, economic policymaking has undergone a profound transformation, particularly concerning the role of trade unions, collective bargaining, and workers' rights. Historically, deregulation and the dismantling of collective bargaining structures were heralded as essential for economic growth. For instance, the 1994 Organisation for Economic Cooperation and Development (OECD) Jobs Strategy⁴⁶ significantly influenced the push for labour market flexibility, often at the expense of workers' rights. However, this perspective has shifted considerably in recent years, with governments and think tanks now recognizing the economic benefits of collective bargaining.

Reversing the Trend: Acknowledging the Economic Benefits of Collective Bargaining

The 2018 OECD Jobs Strategy⁴⁷ marked a pivotal change in the organization's advice to governments, underscoring the importance of social dialogue and collective bargaining. This was further reinforced by the 2019 report *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*,⁴⁸ which highlighted the critical contributions that collective bargaining and employee voice make to employment growth, labour market inclusiveness, and job quality. The research suggests that the UK's decentralised collective bargaining system yields inferior economic performance compared to the

more organized systems in countries like Austria, Denmark, Finland, Germany, the Netherlands, Norway, and Sweden. The OECD⁴⁹ *Negotiating our Way Up* paper makes clear that well-functioning collective bargaining institutions, particularly when associated with high coverage, are useful for enhancing productivity. They allow for more differentiation in terms of wages and working conditions than statutory rules, can foster skills development and skills use in the workplace, and allow for the effective dissemination of good working practices."

Despite the recognised benefits, many countries have experienced a decline in collective bargaining coverage and trade union membership over the past few decades. This decline is due not only to government regulations that have constrained unions but also to new challenges, such as the rise of non-standard employment (e.g., temporary, part-time, and self-employment) that often excludes workers from collective bargaining protections.

The OECD's *"Negotiating Our Way Up"* report identifies these challenges and suggests that governments may need to intervene to ensure bargaining systems remain fit for purpose. This could include adapting regulations to extend collective bargaining rights to workers in non-standard employment and those in ambiguous employment situations who share vulnerabilities with salaried employees.

46 OECD (1994), The OECD Jobs Study: Facts, Analysis, Strategies, OECD Publishing, Paris, <https://www.oecd.org/els/emp/1941679.pdf> (accessed on 25 September 2018).

47 OECD (2018) Good jobs for all in a changing world of work, Paris: OECD. Available online at: https://www.oecd.org/employment/emp/long%20booklet_EN.pdf

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

49 OECD (2019) *Negotiating our way up: Collective bargaining in a changing world of work*, Paris: OECD. Available online at: <https://www.oecd.org/employment/negotiating-our-way-up-1fd2da34-en.htm>



Collective Bargaining: A Catalyst for Economic Growth

Trade unions and collective bargaining are not merely protective mechanisms for workers; they are also powerful drivers of economic growth. There are four main avenues through which collective bargaining enhances economic performance:

Enhancing Productivity: Well-functioning collective bargaining institutions, particularly those with broad coverage, can significantly boost productivity. By allowing for greater differentiation in wages and working conditions than statutory rules, collective bargaining fosters skills development and promotes the dissemination of best practices in the workplace. As a result, productivity growth, the ultimate engine of sustainable economic expansion, is achieved.

Managing Industrial Change: Collective bargaining structures are vital in managing structural changes within the economy. At the firm level, effective representation can facilitate the successful introduction of new technologies and work practices. On a broader scale, collective bargaining provides a framework for managing transitions across entire industries, ensuring stability and adaptability in the face of economic shifts.

Boosting Employment: Contrary to the belief that collective bargaining leads to higher unemployment, evidence suggests it strengthens employment, particularly for marginalized groups such as young people, women, and low-skilled workers. Coordinated collective bargaining systems are associated with higher employment rates and lower unemployment, as seen in Scandinavian countries with high bargaining coverage.

Reducing Inequality: Collective bargaining plays a crucial role in reducing economic inequalities by broadening access to fair wages and improving working conditions for workers across the income distribution. Research from the International Monetary Fund (IMF) and other organizations indicates that stronger union presence and collective bargaining are linked to lower income inequality, which, in turn, fosters economic stability and growth.

Productivity growth is the ultimate engine of sustainable growth in output, wages and living standards. Collective bargaining has a positive impact on long-run economic performance because it removes downward wage competition and incentivises firms to improve productivity in order to pay wages. Collective bargaining also creates a more collaborative and inclusive approach to growth. If employers and workers can establish a constructive relationship then employers can benefit from a more cooperative, motivated and ultimately more productive workforce, while workers can benefit from better pay and conditions.

McDonnell (2021)⁵⁰ highlights previous studies which demonstrate “countries with stronger participation rights, such as collective bargaining, tend to perform better on a number of productivity related measures”. More recent studies, indicate that “increases in union density were associated with improved productivity and wage performance”.

Scandinavian or Nordic economies are often touted for their superior economic outcomes, but this is also firmly based on their model of wage bargaining. Very high rates of collective bargaining are complemented by very high employment rates and high average levels of productivity. Their dynamism and stability is driven by

50 McDonnell, T. (2021) *Collective Bargaining – Trade unions, economic performance and inequality*, NERI Long Read, NLR 5. Available online at: <https://www.neri.institute.net/research/collective-bargaining-trade-unions-economic-performance-inequality>.



the input of unions and employers with broad-based membership focused on the long-term health of the economy⁵¹. This represents a 'high-road' approach to competitiveness that is based on driving productivity, rather than the 'low road' alternative of simply cutting labour and other costs⁵².

Collective bargaining structures are key to managing structural changes in our economy. Those changes can be at firm level, where effective representation can provide for the successful introductions of new technology and work practices. It can also be at the macro level where collective bargaining can provide a framework for managing the transitions of entire industries.

*"One of the most salient features of successful collective bargaining systems may be their ability to adapt gradually to changing economic conditions within their national industrial-relations tradition. This depends crucially on the quality of industrial relations, but also on a government that provides space for collective bargaining and social dialogue, while setting the boundaries."*⁵³

Research⁵⁴ using Eurofound company data shows that the adoption of technology not only increases when the company performs collective bargaining, the link is even more significant the more widespread the collective bargaining arrangements are.

Boosting and retaining employment

The OECD⁵⁵ argue that co-ordinated systems are linked with higher employment and lower unemployment, also for young people, women and low-skilled workers than fully decentralised systems.

Rather than being associated with higher unemployment, collective bargaining has been shown to strengthen employment. Moreover, collective bargaining structures also play a role in promoting greater access to employment for groups that would otherwise struggle. Studies have shown that collective bargaining can be efficient in designing family friendly work arrangements that encourage much greater female employment⁵⁶. Once again, Scandinavian countries with very high collective bargaining coverage tend to have much greater outcome where "migrants who enter the labour market are more equally distributed among economic sectors, have more chance for equal wages and upward mobility than in other countries".

Tackling Inequality: In a Jobs Strategy published in 2019 the OECD⁵⁷ shows that collective bargaining institutions and social dialogue can help promote a broad sharing of productivity gains, including with those at the bottom of the job ladder, provide voice to workers and endow employers and employees with a tool for addressing common challenges.

51 ICTU (2022) *Realising the Transformative Effect of Social Dialogue and Collective Bargaining in Ireland*, Dublin: ICTU.

52 OECD (2017) *Better Use of Skills in the Workplace: Why It Matters for Productivity and Local Jobs*, Paris: OECD. Mac Flynn, P. (2017) *A Low skills equilibrium in Northern Ireland?*, NERI WP 2017/No 49, Belfast: NERI.

53 International Labour Organization. (2021). *Collective bargaining and economic transitions: Adapting to change*. International Labour Organisation.

54 da Silva Bichara, J., Monsueto, S. and Vinas, A. (2023) 'Collective bargaining and technological innovation in the EU15: An analysis at establishment level', *The World Economy*, 46(9): 2891-2924.

55 OECD (2019) *Negotiating our way up: Collective bargaining in a changing world of work*, Paris: OECD. Available online at: <https://www.oecd.org/employment/negotiating-our-way-up-1fd2da34-en.htm>

56 Corradini, V., Lagos, L. and Sharma, G. (2022) *Collective bargaining for women: How unions can create female friendly jobs?*, Bravo Working Paper, 2022-005.

57 OECD (2019) *Negotiating our way up: Collective bargaining in a changing world of work*, Paris: OECD. Available online at: <https://www.oecd.org/employment/negotiating-our-way-up-1fd2da34-en.htm>

Collective bargaining reduces unnecessary economic inequalities within society by broadening access to workers across the income distribution. Collective bargaining is designed to prevent egregious differences in wages both within and between firms.

Added to this research from the International Monetary Fund⁵⁸ (IMF) finds that less prevalent trade union presence and collective bargaining are indeed associated with higher market inequality. Evidence⁵⁹ from both Europe and the United States shows that despite significant differences in labour market structures and institutions, collective bargaining and trade union density are associated with lower income inequality.

Reducing inequality is not only of benefit to individual workers, and a wide body of international evidence now bears this out⁶⁰. McDonnell (2021) notes greater “inequality also intensifies distributional conflicts, thereby making societies inherently unstable, and reduces demand in the economy by shifting income to savers”.⁶¹

While the economic benefits of collective bargaining are now being acknowledged by governments and think-tanks, in many countries there has been a relative decline in collective bargaining coverage and trade union membership over the last few decades. Beyond government regulations which have constrained trade unions and frustrated collective bargaining structures, new challenges have emerged during this time period as well.

In Negotiating Our Way Up the OECD⁶² found that ‘Collective bargaining faces old challenges (such as declining collective bargaining coverage and falling union density) as well as new ones, such as the increasing prevalence of workers in non-standard employment (i.e. temporary part-time and self-employment) who might not have access to collective bargaining’.

It therefore advises that:

In this context, governments might need to intervene to keep bargaining systems fit for purpose.

The OECD *Negotiating Our Way Up* paper also identifies a further problem for a significant number of workers where genuine ambiguity exists about their employment status and recommends that:

Regulations might need to be adapted to extend collective bargaining rights to those workers, who share vulnerabilities with salaried employees, and to some self-employed workers in unbalanced power relationships.

Since then, the OECD’s policy counsel has continued in a similar vein as labour markets face deep and rapid transformations. The widespread slow-down in productivity and wage growth and high levels of income inequality in many countries are coupled with structural changes linked to the digital revolution, globalisation, and demographic changes.

58 Jaumotte, F. and Osario Buitron, C. (2015) *Inequality and labour market institutions*, IMF Staff discussion note, SDN15/14.

59 Darvas, Z., Gotti, G., and Sekut, K. (2023) *Trade unions, collective bargaining and income inequality: a transatlantic comparative analysis*, Transatlantic Expert Group on the Future of Work.

60 Cingano, F. (2014) “Trends in Income Inequality and its Impact on Economic Growth”, OECD Social, Employment and Migration Working Papers, No. 163, OECD Publishing.

61 McDonnell, T. (2021) *Collective Bargaining – Trade unions, economic performance and inequality*, NERI Long Read, NLR 5. Available online at: <https://www.nerinstitute.net/research/collective-bargaining-trade-unions-economic-performance-inequality>.

62 OECD (2019) *Negotiating our way up: Collective bargaining in a changing world of work*, Paris: OECD. Available online at: <https://www.oecd.org/employment/negotiating-our-way-up-1fd2da34-en.htm>

The evidence gathered by the OECD, is reinforced by the findings of the International Labour Organisation (ILO)⁶³, the European Commission⁶⁴ and others. They all demonstrate that countries with a strong social dialogue and collective bargaining are characterised by better economic performance and a more equal distribution of income. For example, the EU⁶⁵ have recently identified that member states with a high collective bargaining coverage rate, above 80%, tend to have a small share of low-wage workers and high minimum wages.

The result of such research clearly indicates that social dialogue and collective bargaining has been identified as a key driver for economic and social resilience, competitiveness, fairness and sustainable growth.

Likewise, improved worker rights have been shown to offer a solid foundation for strong and stable economic growth by supporting demand and economic growth.

According to the ILO⁶⁶, the enabling conditions which must exist for social dialogue to take place are,

- Strong, independent workers' and employers' organizations with the technical capacity and the access to relevant information to participate in social dialogue.
- Political will and commitment to engage in social dialogue on the part of all the parties.
-

- Respect for the fundamental rights of freedom of association and collective bargaining; and,
- Appropriate institutional support.

The case for Work/Life Balance

The term Work Life Balance is usually understood to mean how workers are able to combine their employment with their home life and caring responsibilities and can include legislative measures – such as rights to flexible working, family leave entitlements including parental leave, carers leave etc. and non-legislative measures which may include government guidance and employer strategies and policies to encourage a culture of good work life balance.

Good work life balance is recognised as positive for both the workforce and the economy as well as having far reaching advantages for the well-being of the wider community.

According to an ILO report, *Working Time and Work-Life Balance Around the World*⁶⁷, reduced working hours and more flexible working time arrangements, such as those used during the COVID-19 crisis, can benefit economies, enterprises and workers, and lay the ground for a better and more healthy work-life balance.

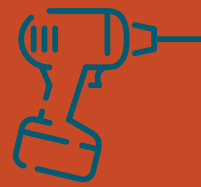
63 International Labour Organisation (2022) *Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery*, Switzerland: ILO.

64 European Commission (2023) *Social Dialogue*, Luxembourg: European Commission. Available online at: <https://www.europarl.europa.eu/factsheets/en/sheet/58/social-dialogue>

65 Official Journal of the European Union (2022) DIRECTIVE (EU) 2022/2041 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on adequate minimum wages in the European Union. Available online at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32022L2041>.

66 International Labour Organisation (2019) *Social Dialogue*, Available online at: <https://www.ilo.org/resource/social-dialogue-0>

67 <https://www.ilo.org/resource/news/flexible-working-hours-can-benefit-work-life-balance-businesses-and>



A Comprehensive Review of Work-Life Balance Measures

We have long argued that tinkering around the edges of Work Life Balance policy will fail to solve enduring inequalities in the labour market between women and men, as well other disadvantaged groups. It will also result in the failing to tackle the inequality of caring responsibility which falls disproportionately on women.

A family leave system which properly addresses work life balance, and which works for parents and carers, employers and the economy must include significantly enhanced pay and leave entitlements as well as being available to everyone, regardless of employment status. It must also address weaknesses in the current model of flexible working. Achieving this will require a longer term and incremental approach as well as partnership working from employers, trade unions and policy makers. However, this does not mean that these issues should be kicked down the road.

The UK Government has committed to reviewing the parental leave system within the first year of this Parliamentary session⁶⁸, the Northern Ireland Executive must do likewise.

Flexible working

Whilst anyone can request flexible working, the law in Northern Ireland only grants the statutory right to request flexible work patterns to some employees. To be eligible, you must be employed by the same employer for 26 consecutive weeks. Clearly this disadvantages vulnerable and low paid workers who often work in low or zero hour contracts and who may be in most need of flexibility in work patterns. Evidence also indicates that many flexible leave requests are

turned down by employers, despite the positive duty placed on them to seriously consider requests. Polling from the TUC indicates that as many as one in three requests for flexible working are turned down by employers⁶⁹.

We note the measures around flexible working included within the scope of this Employment Bill and that they amount to catch up with the rest of GB.

Our policy in relation to flexible working is much more comprehensive than the proposed changes within the consultation. We recommend that flexible working introduce a duty on employers to publish flexible working options in job adverts and give workers the right to take up the advertised flexibility from day one. If employers feel that a role cannot accommodate any form of flexibility, they should be required to transparently set out the exceptional circumstances that justify this. These measures would also go some way to addressing potential discrimination against applicants, many of whom are women, who have to ask about flexible working options at interview.

Introducing a duty on employers to make flexible working the default would mean that applicants would be able to take this into consideration without fear of being singled out.

Leave

Whilst the issue of parental leave is not covered in the consultation, we believe that this is a area which must be considered if the Department is to truly deliver on the Good Work agenda.

There are a number of crucial issues with regards to parental leave in Northern Ireland. Firstly, not every worker is eligible under the current statutory framework

⁶⁸ <https://labour.org.uk/change/break-down-barriers-to-opportunity/>

⁶⁹ [https://www.tuc.org.uk/news/one-three-flexible-working-requests-turned-down-tuc-poll-reveals#:~:text=One%20in%20three%20flexible%20working%20requests%20turned%20down%2C%20TUC%20poll%20reveals,-Issue%20date&text=One%20in%20three%20\(30%25\),poll%20published%20today%20\(Monday\).](https://www.tuc.org.uk/news/one-three-flexible-working-requests-turned-down-tuc-poll-reveals#:~:text=One%20in%20three%20flexible%20working%20requests%20turned%20down%2C%20TUC%20poll%20reveals,-Issue%20date&text=One%20in%20three%20(30%25),poll%20published%20today%20(Monday).)



which means that the growing number of people who work in low or zero hour contracts, agency workers etc may not be covered. This is simply wrong and must be changed. Workers who fall outside of the 'employee' classification are, in many cases, more vulnerable and require more support to be able to balance their work and family life. The right to parental leave should be available to all workers, regardless of their employment status and should be available as a day one right.

The other hugely significant issue is the fact that parental leave is unpaid. The evidence strongly shows that uptake of parental leave among fathers and second parents is shown to be much higher when the leave is paid at a rate which families can afford to live on, and without financial penalty as ICTU recommends. Furthermore, parental leave should be an individual and non-transferable right – that is, it cannot be transferred to the baby's mother.

Unpaid parental leave entitlement has a number of serious consequences – clearly many families will be unable to take the financial hit of taking unpaid leave so may be forced to use a combination of paid holidays which should be used as crucial down time, relying on family members where available and even leaving work.

Being either ineligible for parental leave or unable to take it because of financial constraints impacts disproportionately on single parents, the majority of whom are women. It also serves to reinforce gender stereotypes. As women are still more likely to earn less than a male partner, women will be more likely to take unpaid parental leave as families try and preserve a higher income. If a portion of leave isn't specifically designated for fathers/second parents and remunerated at a rate they and their families can afford to live on, few men will take it, placing the responsibility for caregiving overwhelmingly on women and thereby reinforcing inequalities at home and at work.

Under the Parental Bereavement (Leave and Pay) Act (Northern Ireland) 2022, a parent can take two weeks' leave from the first day of their employment for a child who has died or was stillborn (after 24 weeks of pregnancy) which becomes a paid entitlement after 26 weeks of continuous employment by an employer.

In December 2022, the Economy Minister launched a public consultation asking for views on whether or not this should be extended to people who experience miscarriage (before 24 weeks of pregnancy) and whether or not the current paid entitlement, and any future entitlement that may be established on the basis of miscarriage, should be a day one right. The consultation document stated that "for the purposes of this consultation, the term miscarriage refers to an unintentional miscarriage".

The Women's Policy Group and NIC-ICTU both endorsed the recommendation from the Royal College of Midwives that "unintentional" be removed from the definition of miscarriage.

ICTU welcomes the proposal to introduce carers leave. It is our policy that this must be paid leave, be properly remunerated to be an effective support to workers who are also caregivers and be made available to all workers, regardless of employment status.

Right to Disconnect

The Right to Disconnect is based on the principle of the Workers' right to switch off from work outside of working hours without suffering any negative consequences for doing so.

ICTU welcomes the proposal to introduce a right to disconnect. Trade unions have long advocated for concrete actions to achieve work-life balance including the regulation of hours of employment. Winning the short working day was one of the earliest and most far-reaching achievement of the trade

union movement. It has benefited generations of workers. However, existing checks on excessive working hours have become increasingly strained by advances in information communication technology, an always-on work culture and boom in remote working. ICTU supports in principle the introduction of new provisions on workers' right to switch off from work outside of working hours without suffering any negative consequences for doing so.

It does not imply an automatic obligation to disconnect from work; employees can use digital tools and perform other work after hours in exceptional circumstances, as long as such circumstances have been previously defined (discussed below). The health and safety basis of the right to disconnect must be emphasised in a Code as well as the risks for the employee's wellbeing and the business's performance if the right is not upheld. Merely referring to a legal obligation on maximum working time is likely to cause some to view the right to disconnect as only having formal purpose without any substantive objective.

Workers with caring responsibilities and some workers with a disability may need more flexibility to reconnect. Equally, they may not be in a position to stay connected outside the working day even if they wanted to. This is particularly the case for workers parenting alone, for whom a right to disconnect is likely to be most beneficial.



Section 6: Recommendations for an Employment Rights Bill

Promote Collective Bargaining & Strengthen Trade Union Rights

Four Pillars for Strong Collective bargaining

Rebuilding strong unions, has been identified by the ILO as one of the enabling conditions for social dialogue and collective bargaining.

For trade unions, collective bargaining and strengthening unions, rests upon four pillars:

1. The ability to access the workplace to recruit, consult and represent workers.
2. Recognition of the union by employers to negotiate on all terms and conditions of employment.
3. Protections for workplace union representatives against harassment and detrimental treatment including dismissal.
4. The ability to collectively withdraw services for the purposes of negotiating terms and conditions, and in defence of their member's interests and the workplace organisation.

Boosting Coverage

NIC ICTU believes that the new employment bill should contain the following provisions which place duties on the Department for the Economy to increase collective bargaining coverage and facilitate the right to collectively bargain.

- Promote the building and strengthening of the capacity of the social partners (employers and trade unions) to engage in collective bargaining on wage-setting and other terms and conditions of employment, in particular at sector or cross-industry level.
- Encourage constructive, meaningful and informed negotiations on wages and other terms and conditions of employment between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out such negotiations.
- Take measures, as appropriate, to protect the exercise of the right to collective bargaining and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on the matters referred to above.



- For the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
- Provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them.
- Establish an action plan to promote collective bargaining after consulting the social partners. The action plan shall set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage, in full respect for the autonomy of the social partners.
- Review its action plan regularly, at least every five years, and update it if needed after consulting the social partners or by agreement with them.

Sectoral collective bargaining should be complemented by workplace level bargaining between an employer and a trade union to improve on the minimum SCA where conditions allow and to deal with specific issues relevant to the firm.

- The role of the Industrial Court (IC) should be reformed so that the IC is required to promote collective bargaining in the workplace, rather than being neutral.
- The simplified framework above is offered purely to aid discussion on possible models of sectoral collective bargaining that could be applied here.

Rights to Access

NIC-ICTU recommend that the following rights should be covered in the new employment bill:

- Where a union member requests the support of their union on an employment-related matter, the union representative should have an automatic right to access the workplace (following the legislation in New Zealand).
- Independent unions should have the right to access workplaces during working hours to meet, recruit, consult and represent the workforce, and to ensure compliance with health and safety and employment legislation. This should include atypical workplaces.
- Union access to workplaces where they currently have no members would require seeking employer consent, which could not be unreasonably withheld. A failure to respond within two days would be treated as consent (again following the New Zealand model).
- Where organisations are broken up and services outsourced, union representatives should have the right to represent workers and access workplaces across the new structures.
- As it is increasingly common for people to work remotely, or across multiple workplaces, rather than being based in a single site, unions need new rights to access workers digitally. Otherwise, there is a danger that these workers will lose out on the protection of union membership and collective bargaining. Therefore, the following should also be in the bill.



- New rights should be created that protect the ability of unions, members and working people to use social media, digital and other tools as part of workplace campaigns. A digital right of access would give unions the right to reasonable electronic communication with workers. Employers would be required to forward union communications to the workforce but would not pass workers' contact details to the union without their permission.
- All employers should be required to provide a physical and/or digital notice board where union materials can be displayed that can be accessed by all workers.
- Unions should have access to the workplace to communicate with, meet, consult, recruit, and represent the workforce. The Industrial Court should be empowered to enforce such access (potentially with the threat of automatic recognition) at the earliest stage of the statutory recognition process.
- Where ballots are to be held, the 40% requirement to vote for recognition of the overall bargaining unit should be removed. A simple majority of workers voting in the recognition ballot should suffice.
- Ballots should have the facility to be held electronically, by post or at the workplace.
- Where the IC issues a declaration granting recognition to a union with an employer, recognition should not be rescinded other than by the mutual consent.
- Unions should have the right to relevant information from the employer in order to determine an appropriate bargaining unit (potentially with the threat of automatic recognition).
- Unions should have the right to propose reasonable adjustments, where material conditions have changed since the application was made, to the bargaining unit during the recognition process.

Rights to Recognition

NIC-ICTU recommend that the following changes should be introduced in the new NI employment bill:

- The 21-minimum employee threshold should be removed, allowing more enterprises to be covered by the statutory recognition rights.
- Where a union can establish that over 10% of the bargaining unit is in trade union membership and evidence of majority support for recognition, automatic recognition should be granted, with no requirement for a ballot.
- In large, multi-site organisations, unions that have recognition within one bargaining unit should have the ability to organise and ballot in other potential bargaining units across the organisation without reaching the 10% membership threshold within the additional unit or workforce group.
- As referred to above, an 'unfair practice' constitutes a practice used during a union recognition ballot that would unfairly influence the result of the ballot. These rules should be reformed to ensure that any actions of an employer to frustrate a unions recognition bid are covered, they should only apply to employers.

A digital right of access

- The current requirement on unions to demonstrate a causal link between unfair labour practices and workers' decisions on how to vote should be removed.
- 'Unfair practices' by employers opposing recognition should be more vigorously prohibited. The only recourse, at present, open to workers is to take Tribunal claims. The relevant legislation needs to be amended to ensure that Employment Tribunals can enforce reinstatement of workers dismissed in relation to the union recognition process. The IC should be given the power to grant automatic recognition if such practices occur, with the burden of proof being on the employer to show that the practice complained of is not unfair.
- Remove the existing three-year rule which restricts a union from re-submitting an unsuccessful application.
- The effective management criteria should be removed, employers have tried to argue that in effect collective bargaining is incompatible with effective management. The litmus test should be 'is effective bargaining possible' and not whether collective bargaining is compatible with effective management. No consideration should be given to supposed bargaining units outside of the one specified by the union in its application.
- The existing scope of collective bargaining defined in legislation should be broadened to mandate employers who recognise a trade union to negotiate on 'all terms and conditions of employment and work organisation.'
- Currently, under the Trade Union and Labour Relations (Northern Ireland) Order 1995, the Industrial Court is required to '*have regard to the object of encouraging and promoting fair and*

efficient practices and arrangements in the workplace'. This should be reformed so that the IC is required to: '*promote collective bargaining in the workplace, while having regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace*', as per the ILO Committee on Freedom of Association.

- In judging a proposed bargaining unit, the IC should be required to take account of '*the fact that workers having a collective voice in the workplace is desirable*'.
- In addition, the IC membership process should ensure that the tripartite model is more clearly enshrined in the regulations to reflect the community it serves, with the chair being from a legal background with a panel containing one member with experience as a trade union trade representative and one with experience as an employer representative.

Protecting Trade Union Representatives

NIC-ICTU recommends that the following rights should be covered in the new employment rights bill:

- It should not be lawful to dismiss a union representative except for good cause, requiring the prior approval of an independent body which has considered the facts, and whose decision would be subject to review at an employment tribunal. Dispute resolution mechanisms established through sectoral collective bargaining structures could provide for such an independent body.
- Where a 'trade dispute' relates to the dismissal or imminent dismissal of a trade union rep, the procedural restrictions on trade unions taking industrial action should be relaxed

to allow for early defensive action to facilitate the protection of union reps, thereby potentially reducing the 'cost to the public purse' of tribunal proceedings.

- The powers of Employment Tribunals to enforce reinstatement and re-engagement orders of unfairly dismissed trade union reps must be increased to close the loophole that allows employers to refuse to comply with these orders.
- Introduce statutory rights for trade union equalities representatives.
- Ensure there is sufficient facilities time for all trade union representatives so that they have capacity to represent and defend workers, negotiate with employers and train.
- There is also a need for legislation to extend the protections provided by Health and Safety Representatives (H&S) across workplaces to enhance the right of workers to participate in health and safety matters, including:
- In the absence of a recognised trade union, an appropriate trade union should have the right to appoint health and safety representatives even though the union is not recognised by the employer for any other purpose. 'Roving H&S Reps' would have the power to gain entry to any workplace and carry out their health and safety functions. Such a right currently exists for two unions in the entertainment sector. Research for the HSE has found that the use of union-appointed safety representatives in agriculture (and associated rural businesses) in a "roving" or peripatetic capacity and on a national basis is both practical and feasible.⁷⁰ A recognised or appropriate trade union should have rights of

access to workplaces in which it has members and to undertake inspections where there are reasonable grounds to suspect that there may be non-compliance with health and safety laws.

- Trade union officials and/or safety representatives should be empowered to issue provisional improvement notices and to stop work they deem to be dangerous.
- Trade unions should have the power to initiate private prosecutions in respect of suspected health and safety offences, the costs in doing so recoverable from the State or the employer.
- Extend H&S protections to those in non-standard employment by reforming the general duty imposed by the Health and Safety at Work (NI) Order 1978 so that obligations are imposed on 'persons conducting a business or an undertaking', rather than 'employers.' Extending this new duty so that it applies not only to employees, but to workers 'engaged, or caused to be engaged', by such persons and to those 'whose activities in carrying out work are influenced or directed' by them.

Right to Take Action

It is time to change the default legislative position on the right to strike in line with international obligations, so that a right to strike is established in domestic law, which will apply unless there are any lawful restrictions to the contrary. Lawful industrial action should not be regarded as a breach of the contract of employment or service, but as a temporary suspension only. The action should not therefore be regarded as grounds for dismissal without some other form of culpable behaviour, such as violence or damage to property.

⁷⁰ <https://www.hse.gov.uk/Research/rrpdf/rr417.pdf>



NIC-ICTU recommends that the proposed employment bill should include, the following.

Before conducting lawful industrial action or strike action trade unions must comply with extensive rules on notices and ballots which place heavy financial and bureaucratic burdens on unions. They impose a significant burden on unions to keep meticulous records of their members' addresses, jobs, and workplaces and often expose unions to applications for injunctions by employers to prevent industrial action taking place, even where a clear majority have voted in a ballot to support of the action.

- The current requirement on trade unions to give an employer notice that a ballot is to take place and notice of the action unnecessarily duplicates the bureaucratic duties on trade unions without serving any clear policy objective. Therefore, remove the requirement on unions to give employers notice of a ballot. Unions would still be normally required to give five days' notice of the proposed start of industrial action.
- Remove the requirement that a sample voting paper be provided to the employer in advance of the ballot and reduce the notice period for industrial action from seven days to five.
- To reduce the burden on unions and to protect them from injunctions due to administrative errors, unions should only be required to provide information relating to the category of workers being called to take action; the nature of the industrial action, i.e. whether it will be a strike or action short of a strike; and when action will commence and whether it will be continuous or discontinuous.
- For the same reason, a new duty should be introduced for employers, when requested, to supply unions with information which they need to comply with notice and balloting requirements. This duty is similar to current duties in the statutory recognition scheme. Where the employer refuses to supply the necessary information, any subsequent application for an interim injunction to prevent industrial action should fail.
- At the moment, a trade union will not lose its protection from taking industrial action where it accidentally fails to ballot an insignificant number of those it intends to induce to take industrial action. This provision should be extended to the effect that a union would not lose its immunity for taking industrial action where it accidentally includes an insignificant amount of inaccurate information in a notice to the employer.
- Broaden the range of options by which union members can vote in an industrial action ballot, including workplace voting, including through the provision of electronic voting. This complements the option of a voting paper being sent to a member by means other than post, where required for reasons of personal safety.
- *A New Deal for Working People*⁷¹, the Labour manifesto, under Fire and Rehire, suggests a loosening of the legislation around industrial action to ensure that notice and ballot requirements on trade union activity do not inhibit defensive action to protect terms and conditions of employment in situations where fire and rehire tactics are being implemented. It also commits Labour

⁷¹ UK Labour Party (2024) *A New Deal for Working People, the Labour Party Manifesto*, Labour Party Employment Rights Green Paper. Available online at: <https://labour.org.uk/wp-content/uploads/2022/10/New-Deal-for-Working-People-Green-Paper.pdf>.



will examine how the requirement to give notice of industrial action should be simplified and ensure it reflects the dynamic nature of disputes.

- The requirement to provide employers five days' notice of the proposed start of industrial action should be relaxed where the trade dispute relates to the dismissal or imminent dismissal of any category of trade union representative, and to protect terms and conditions of employment in situations where fire and rehire tactics are being implemented by an employer.
- As it stands, the law permits employers to gain an injunction against industrial action where they can demonstrate that there is a serious issue to be tried. As a result, injunctions against unions are often granted without serious consideration to the merits of the case.
- Amend the law to provide that employers would only be able to gain an injunction to stop industrial action where they have demonstrated that they are more likely to succeed than the union once the legal action is considered by a court. Currently only 'employees' are protected from unfair dismissal for 12 weeks of strike action. If dismissed for taking part after the end of the 12 weeks the dismissal will only be unfair if, at the time of your dismissal, the employer has not followed reasonable steps to settle the dispute with the union, e.g. if the employer has unreasonably refused a request by the union to involve a third party to conciliate a settlement.
- Existing protections for those taking part in lawful industrial action only apply to those who legally qualify as 'employees'. As a result, agency workers, 'casuals' and freelancers are all excluded from protection when taking industrial action, despite the fact that an increasing proportion of the working population are in non-standard employment relationships,
- Introduce measures which ensure that all workers have the right to take official industrial action free from the fear of dismissal or victimisation. Any dismissal of a worker would be void and ineffective unless the employer can show that the reason for the dismissal was not connected to the industrial action. Workers would be able to enforce these rights through the courts. [This action would become unnecessary should the proposed employment bill introduce a single status of 'worker', in place of the current distinct categories of employee and worker].
- Strengthen unfair dismissal protection for employees who have participated, are participating, or are proposing to participate in official industrial action regardless of the length of the industrial action. Workers would have the right to automatic reinstatement where they request it.
- Introduce the right for all workers not to be subjected to any detriment because they have participated, are participating, or are proposing to participate in official industrial action.
- Employers may prolong industrial action, by hiring replacement labour, rather than entering into early and genuine negotiations in order to reach a sensible resolution to a dispute. As the existing law only places duties on agencies not to supply agency workers during industrial action, place equivalent duties on employers not to use agency workers to replace striking workers.
- Remove the current bar on industrial action where there has been a prior call. The Midlands Mainline Ltd vs RMT case highlighted that currently a union cannot rectify a prior unofficial call to take industrial action by repudiating the call and then seeking to conduct a proper ballot.

- In recent years, business restructuring and contracting out have become more prevalent but the law on industrial action has not evolved to respond to these changes. The provisions of a new employment bill should permit lawful industrial action, having complied with statutory notice and balloting requirements, between workers and their employer and any associated employer in certain circumstances such as TUPE transfers (as was the case in *University College Hospital NHS Trust v UNISON* [1999] ICR 204), where a second employer has directly intervened contributing to the circumstances surrounding a dispute (where work is outsourced to break the strike), or, where groups of workers are employed by associated employers, i.e. employers with common management or decision-making structures.
- Remove the bar on prison officers taking industrial action.

Ensuring Worker Security, Flexibility and Enforcing Rights

To create the conditions where all workers have a right to good work with guaranteed hours, flexible working, decent pay and conditions, and benefit from all statutory employment rights NIC-ICTU are **recommending** the following:

Ensuring Worker Security

Put an End to the Injustice of a Two-Tier Workforce

Recommendations

Ensure that all workers benefit from the same employment rights, including protection from unfair dismissal, and statutory redundancy pay, create a single

“worker” status for all but the genuinely self-employed.

NIC-ICTU believe that it is in the interests of everyone to simplify the situation by introducing a single employment status category of worker with the same floor of employment rights and protections currently enjoyed by those designated as employees. Such a move would be a serious blow to insecure forms of work as amongst other rights, workers would be protected from unfair dismissal should they be in employment for more than one year which is the current qualifying period.

The UK government have made clear their intention to create a single “worker” status for all but the genuinely self-employed, ensuring the same rights for everyone regardless of sector, wage or type of contract, although NIC-ICTU notes that such a move will not be part of their employment rights commitments to be introduced within the first one hundred days of government.

However, should the will be there, such a change could be made relatively quickly. In the previous parliamentary term, a Private Members Bill brought forward in the House of Lords to make provision for the creation of a single status for workers by amending the meaning of “employee”, “worker”, “employer” and related expressions in the Trade Union and Labour Relations (Consolidation) Act 1992, the Employment Rights Act 1996 and cognate legislation; and for connected purposes.

Further to this, NIC-ICTU welcomes, and wants to see replicated in the Northern Ireland, the UK Government’s commitment to give all workers full employment rights from day one of employment. At the moment, employment rights are not always obtained immediately with some rights only accruing after qualifying period. This will also be a major step away from the UK’s insecure employment model and open the potential for genuine flexible employment for millions of workers.

Day One Employment Rights

Recommendations

Remove the arbitrary and unfair qualifying time periods that restrict access to employment rights, particularly for insecure workers. Introduce a day one right to the protections and benefits of statutory employment rights.

Guaranteed Hours

Recommendations

Unlike a traditional contract of employment, a zero-hours contract offers no guarantee of work. NIC-ICTU recommends clauses in the new bill which ban the use of zero-hours contracts by requiring employers to provide guaranteed contractual hours per week for all roles from day one. This could be achieved by introducing a banded hours system with workers placed on a band reflecting the average hours they actually work (for workers already on a contract that does not stipulate guaranteed hours) or will be required to work (for new starts).

Employers will be required, if requested by the worker, to amend the contract by moving the worker to a different band that reflects their actual hours taken as an average over a three-month period.

Where the work is genuinely casual or it is short-term relief to cover routine absences, contracted hours can be presented as hours per month, or annualised, meaning shift patterns can change to allow for periods of changing demand, whilst still enabling pay predictability. This would not prohibit on-call work but means that a contractual arrangement must be in place between an employer and a worker that stipulates a minimum number of hours to be worked over a defined period.

With this requirement for guaranteed hours, forms of bank work, such as that in the NHS, can continue without

change for workers who already have an NHS contract and are using the bank as overtime.

Statutory Notice Period and Right to a Minimum Payment

Recommendations

Employers of people working irregular hours should be required to provide a three-week notice period of their shifts ensuring the right to compensation for a changed or cancelled shift at late notice. Exceptions could be considered for safety critical industries, such as healthcare, or in exceptional circumstances such as short-term relief.

If a worker is called into work but sent home without work the worker must be compensated by payment for 15 hours, or 25 per cent of the expected hours (minimum 3 hours), whichever is less.

Agency Worker Regulations

Recommendations

NIC-ICTU agree with proposals to ban on the Swedish Derogation - pay between assignments contract that means workers don't have an entitlement to equal pay post 12 weeks of assignment.

Working Time Regulations – Holidays

Recommendations

Whilst it is important that EU rights relating to pay and carryover have been put into legislation, it's disappointing that the amending regulations have retained the two 'pots' of leave – 4 weeks and 1.6 weeks. It would be better for workers if there was a 5.6-week entitlement without it being split between 'annual leave' and 'additional annual leave' and would be simpler for employers to administer (ie when calculating pay and carry- over).



If there were one 5.6-week pot of leave then the issue of the order in which leave is taken would be greatly simplified (although you would still have contractual leave versus statutory leave). The Supreme Court in the Agnew and other cases suggested leave be in a composite pot.

NIC-ICTU call for the new employment law bill to include the following: Introduce a single 5.6-week entitlement without it being split between 'annual leave' and 'additional annual leave'. Ban 'rolled up holiday pay' as it leaves low paid workers without any payments when they take annual leave.

Information and Consultation of Employees Regulations

Recommendations

NIC-ICTU supports the proposal to amend the Information and Consultation of Employees Regulations to reduce from 10% to 2% the percentage of employees required for a valid request to start negotiating an agreement on informing and consulting employees.

Right to Particulars of Employment

Recommendations

NIC-ICTU consider that the new bill should require employers to ensure 'workers' are issued with a written statement of particulars of employment together with associated enforcement provisions.

Itemised Payslips

Recommendations

NIC-ICTU supports the proposal to provide all workers with an itemised payslips which include the number of hours employees are being paid, where pay varies by reference to time worked.

Tips and Gratuities

Recommendations

NIC-ICTU support the proposal to bring NI into line with Britain on tips, gratuities & service charges.

Costs Awards for Certification Officer Procedure

Recommendations

Amend Part IX of the Industrial Relations (Northern Ireland) Order 1992 to allow for costs to be awarded in circumstances analogous to the Industrial Tribunal (Art 73 of the Rules of Procedure).

Enhancing and Enforcing Rights

Monitoring to Improve Employment Models

Recommendations

To monitor and improve employment standards, introduce the requirement for public, private, and voluntary sector organisations, with a workforce of 250 and over, to report annually on key employment data such as employee turnover and employment types used, including employee or worker status, full-time or part-time, permanent or temporary, and those hired via agencies or outsourced via third-party contracts.



Using Public Procurement to Improve Employment Models

Recommendations

Introduce requirements into public sector contracts for the supply of goods and services, to incentivise companies to improve their workforce policies and practices ensuring they are compliant with employment rights legislation and best practice, minimise the use of non-standard, temporary and agency contracts, and promote permanent employment. Companies that do not meet the requirements should not be awarded a public contract.

Single Status of Worker access to Employment Rights

Recommendations

NIC-ICTU believes that the proposed new employment bill should also:

Create a single status of 'worker' for all but the genuinely self-employed.

Give all workers day one rights on the job.

Stamp Out Bogus Self-Employment

Recommendations

NIC ICTU recommends that the NI Executive amend public procurement rules to discourage bogus self-employment. Private sector construction, and other companies, should not be given contracts for public works and projects unless they are prepared to commit to direct employment.

NIC ICTU recommends that the NI Executive push the UK government to make changes to the tax system to remove the artificial incentive of bogus self-employment.

Dismissal and Re-Engagement (Fire and Re-Hire)

Recommendations

NIC-ICTU firmly believe that it is time to legislate to close the loopholes that allow such crooked behaviour. Therefore, NIC-ICTU recommends that the NI Assembly should amend existing legislation to:

- Make protection from dismissal a 'day one' right for employees and workers in cases of dismissal and re-engagement. This can be done ahead of moves to replace both categories with the single status of 'worker' and the removal of qualifying periods for all employment rights.
- Extend the application of 'interim relief' to employees and workers in cases of dismissal and re-engagement, thereby maintaining the contracts in place pending a full tribunal hearing. Where these dismissals are adjudged 'unfair', the primary remedy should be reinstatement (the employee returns to their previous job) or re-engagement (the employee is re-employed by the employer on terms specified by the employment tribunal. The caps on compensation awards should be removed.
- Provide that dismissal and re-engagement will be unfair if the employer had reasonable economic alternatives, and that the statutory specification of relevant factors a tribunal must consider when assessing 'fairness' should include the 'equity' of the proposed contractual changes, i.e. when assessing fairness, the Tribunal should consider whether the burden of the changes are shared across the entire workforce.
- Provide that when assessing the reasonableness of the dismissal it is relevant to consider whether the employer had genuinely consulted with unions in good faith with a view to reaching an agreement and

had made available to the union all information on the economic state of the organisation without which the union representatives would be to a material extent impeded in carrying on meaningful consultation with the employer.

- Remove the statutory numerical thresholds for triggering (redundancy) consultations, include workers as well as employees in the process and extend the consultation period to 90-days at least in all dismissal and re-engagement cases.
- State explicitly that that no notices of dismissal can be given until the consultation process is completed.
- Make it easier for trade unions to take immediate action by relaxing the procedural requirements on unions before they can take lawful industrial action where the trade dispute relates to the protection of terms and conditions of employment in situations where fire and rehire tactics are being implemented by an employer.

The NI Assembly should also introduce legislation that prohibits the use of wide contractual powers that enable employers to vary terms and conditions unilaterally.

Enforcement of Employment Rights and Reform of Employment Tribunals

Recommendations

In recognition of the vital role that unions perform ensuring compliance with employment rights in the workplace, NIC-ICTU believes that unions should be given new powers (as outlined above) including access to workplaces and responsibilities that would help them to drive up and enforce workplace terms and conditions.

NIC-ICTU also believe that the Industrial and Fair Employment Tribunals system is a necessary, but not ideal system

for accessing employment rights and workplace dispute resolution. However, NIC-ICTU consider that the employment bill should contain the following:

- Extend the time limits for lodging tribunal cases to at least 6 months.
- The government should introduce the power for employment tribunals to make recommendations where employers are found to have breached employment standards. The power to make recommendations should apply to all statutory employment rights. This would require employers to take remedial action that would change the terms and conditions for the whole of the workforce and remove the burden on individuals to bring claims against their employers.
- The government should introduce the power for employment tribunals to provide greater enforcement measures for reinstatement and reengagement orders.
- Remove the caps that limit the compensation workers can receive.
- Amend the legislation to ensure that the tripartite model is more clearly enshrined in the regulations to reflect the community the tribunal system serves, with the panel containing one member with experience as a trade union trade representative and one with experience as an employer representative sitting alongside a legally qualified judge.
- The current system for enforcing employment tribunal awards is not fit for purpose. Successful claimants must take further action to receive their award if the employer chooses not to pay. There should be proactive enforcement of unpaid tribunal awards. Empowering employment tribunals themselves, to monitor and enforce the payment of tribunal awards would be an effective solution.

New powers should be introduced enabling employment tribunals to recover compensation owed to workers and to impose sanctions on employers who do not pay tribunal awards.

Alternatively, power to enforce tribunal awards could be given to a new single enforcement body.

Single Enforcement Agency

Recommendations

Further to the proposals for reform of employment tribunals, NIC-ICTU would support the creation of an adequately resourced well designed Single Enforcement Body (SEB) to transform the fragmented labour enforcement system and prevent labour exploitation by providing end-to-end protection for workers.

This SEB should have powers to enforce a wider range of employment rights than the existing enforcement bodies would act as a deterrent to rogue employers, as they would fear being investigated and sanctioned for non-compliance with basic workplace rights.

This new body could bring greater consistency across all areas of enforcement and should focus on both compliance and deterrence. An SEB could give a more comprehensive intelligence picture on the labour market and provide a more effective use of resources.

Trade unions and employer's groups should be involved in the design of the SEB, as well as changes to it and evaluations of it. The statutory governance body of the SEB should likewise be tripartite in nature.

Further to this trade unions should be actively involved in labour market inspections and any new enforcement body. There should be tripartite labour inspection audits (involving union and employer representatives as well as state regulatory bodies) to help governments

identify and remedy weaknesses in labour inspection.

NIC-ICTU welcomes the Labour Party's manifesto pledge to establish a Single Enforcement Body and transform the fragmented labour enforcement system in the UK. NIC-ICTU believes that the new employment bill should contain provisions for the creation of such a body.

A Comprehensive Review of Work-Life Balance Measures

We are recommending that the Department for the Economy commit to a comprehensive and timely review of Work Life Balance measures, building on the Employment Bill, to include a review of pay and leave entitlements as well as strengthened rights to flexible working.

Congress recommends the following measures:

- Enabling a cultural shift in the workplace
- Tackling inequalities in the labour market
- Ensuring that availing of work life balance measures do not come at the cost of financial security. Accessing family leave in it's broadest sense should not impose financial penalties or discriminate against families who cannot afford to lose income.
- Cutting the gender, disability and race pay gap
- Ensuring parental leave is accessible for single parent families and other disadvantaged families
- Reducing pregnancy and maternity discrimination
- Enable fathers/partners to spend significant time as primary carers for their children.

Recommendation:

NI Executive to undertake a comprehensive review of WLB measures, including strengthened flexible leave entitlements as well as access to family leaves (maternity, paternity, parental, carers leave, bereavement leave/s) pay and entitlements.

Flexible working

Recommendations:

- A change in the law so that employers must publish flexible working options in job adverts, or justify why the job can't be done flexibly
- A right for successful candidates to take up the advertised flexibility from day one
- All workers to get the right to request flexible working at any stage in their employment
- Introduce a formal "right to return" to the original working pattern at the end of an agreed period where the flexible working arrangements are limited in duration, and a right to request to return to the original pattern earlier in the event of a change of circumstances
- An appeal process should be introduced that allows individuals and their trade union to scrutinise and challenge the reasons given for rejecting a request.

Consideration to be given to affording rights to the self-employed and to enhanced support for small businesses.

Paternity Leave

Recommendations

ICTU recommends a period of mandatory paternity leave for fathers and second parents who will only be able to take this period of leave if it is remunerated fairly. At a rate which ensures families do not incur a major financial penalty and to meet the objective of increasing paternal involvement in the early years.

This mandatory period of leave should be considered as separate and distinct to a parent's right to leave. The purpose of this mandatory leave would be to provide support to their partner and for the father/partner to bond with and care for their baby.

Whilst we have recommended rates of pay of 90% of AWE, we would suggest that this should be the minimum and should be with a clear objective of progressing to a system of maternity, paternity and parental leave which does not impose a pay penalty.

Carers Leave

Recommendations

We recommend that the Minister for the Economy consider further proposals about how to support working carers.

Such as an entitlement to paid carers leave made available to all workers.

Parental Bereavement Leave and Miscarriage Leave

Recommendations

NIC-ICTU recommended that miscarriage be defined in regulations as "a spontaneous loss of pregnancy before 24 weeks and includes all pregnancy losses from the time of conception until 24 weeks gestation" as this would include ectopic pregnancies, non-viable pregnancies, pregnancies through assisted conception such as IVF as well as the termination of pregnancies for any other reason.

Given that these regulations have not yet been progressed, we recommend that this provision is included in the scope of the Employment Bill. We further recommend that the definition of miscarriage is as above and that the word 'unintentional' is removed from the definition.

Right to Disconnect

The right to disconnect has three main elements:

1. The right of an employee to not perform work outside agreed working hours.
2. The right to not suffer any negative consequences for doing so.
3. The duty to respect others' right to disconnect (e.g. by not emailing or calling out-of-hours).

Congress recommends a Code be gender and equality proofed to maximize the benefits, to avoid unintended negative consequences, and to promote family co-responsibility.

STRONGER TOGETHER

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