

NIC-ICTU RESPONSE TO THE ‘GOOD JOBS’

EMPLOYMENT

RIGHTS BILL CONSULTATION

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NOTE

This response should be read along with the attached document, *The Good Employment Plan: Contributing to a more prosperous and fairer society NIC ICTU policy briefing, September 2024*

General Comments

The Irish Congress of Trade Unions is the federation for trade unions on the island of Ireland. Nearly 800,000 workers are represented by ICTU, 200,000 of whom live and work in Northern Ireland. ICTU strives to achieve economic development, social cohesion and justice by upholding the values of solidarity, fairness and equality.

The Northern Ireland Committee of the Irish Congress of Trade Unions (NIC-ICTU) directs the work of Congress in NI. NIC-ICTU is the largest civil society organisation in Northern Ireland, representing and campaigning on behalf of some 200,000-working people across the economy in 34 affiliated trade unions. In membership terms, ICTU is the largest civil society organisation in Northern Ireland.

NIC-ICTU speaks with unrivalled workplace-based experience and expertise in industrial relations, health and safety, promoting equality, inclusion, learning and the development of skills, mainly, but not exclusively, from the perspective of workers. Our raison d'être is to represent the interests of working people. There are no other equivalent organisations.

This consultation response is submitted to the Department for the Economy (DfE) on behalf of the unions affiliated to ICTU in NI, although some of our affiliates may provide additional information in their responses.

THEME A

TERMS OF EMPLOYMENT

Replacing Zero Hour Contracts with contracts that provide flexibility and protect workers' rights

A1 Do you agree with the overarching objective to replace zero hours contracts with contracts that provide flexibility while protecting workers' rights?

- Yes
- No
- Don't know
- No opinion

If required, please provide more information

Yes.

NIC-ICTU welcome the intention behind this consultation to bring Northern Ireland into line with the widely held view that the swing of the pendulum, over at least the past 40 years, towards increasing casualisation and precariousness of employment has gone too far, leading to increasing adverse social and economic consequences, and the dramatic rise in in-work poverty, with wages supported by state benefits.

Estimates of the number of people in insecure work at the end of 2023, in the UK, vary, depending on the factors considered, between 3.8 million (*Resolution Foundation*) and 6.8 million (*The Work Foundation*). But there is general agreement that since 2011, the numbers have risen dramatically.

Also, all sources accept that insecure jobs are more often held by young workers, women, people from minority ethnic groups, people with disabilities, and people from low-income households – all are groups known to be already disadvantaged in the labour market.

Insecure work includes:

- those on zero-hours contracts (ZHCs);
- agency workers;
- casual and seasonal workers;
- fixed term workers;
- low-paid self-employed who miss out on key rights and protections that come with being designated as an “employee” (or, to a lesser extent, those designated as a “worker”), and who cannot afford to provide a safety net for when they are unable to work.

Insecure work is low paid in comparison to permanent employment leaving many insecure workers struggling financially. Insecurity and low pay go hand-in-hand. TUC analysis (<https://www.tuc.org.uk/sites/default/files/insecureworkin2023.pdf>) shows that all categories of insecure worker are paid significantly less than employees in general. So not only are many insecure workers vulnerable to the sudden withdrawal of work, but they also have less capacity to withstand shocks to their income because their wages do not allow them to build a savings buffer.

A further analysis by the TUC in 2024 (<https://www.tuc.org.uk/news/number-people-insecure-work-reaches-record-41-million>) showed that the median gross hourly pay for those in casual work in 2023 amounted to £9.38 an hour in 2023, for seasonal work £10.00 and for zero hours workers £9.80. Those working for an employment agency typically received £11.50. But this is well behind the median for all employees which was just above £15.01. The TUC's analysis identifies that the number of people in insecure work has reached a record high of 4.1 million workers in the UK, and that between 2011 and 2023 insecure work rose nearly three times faster than secure forms of employment.

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. And, beyond low pay and looking to pay more broadly, the stagnation of wages is a particularly problematic issue in Northern Ireland where, 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.

A new Good Jobs Employment Bill must aim to create a level playing field by rebalancing worker's rights so that those currently in insecure work move to good jobs with security, decent and predictable pay and conditions.

Insecure Work and Zero-Hour Contracts

ZHCs are amongst the most extreme manifestations of insecure work. According to the Office for National Statistics (ONS) there are over 1 million people on ZHCs in the UK, 3.1% of the workforce. And, according to ONS estimates, 1.9% of the workforce in the NI are currently on ZHCs.

(<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/emp17peopleinemploymentonzerohourscontracts>)

However, the actual figures may be higher. As the ONS admit,

The figures in this analysis are calculated from responses to the Labour Force Survey (LFS). As part of the survey the LFS asks people in employment if their main job has flexible working and, if so, to choose from a list of employment patterns those which best describe their situation. Only those people who select "zero-hours contract" as an option will be included in this analysis. The number of people who are shown as on a zero-hours contract will therefore be affected by whether people know they are on a zero-hours contract and also by how aware they are of the concept.

As the ONS recognise, one of the problems with the ONS data is that it relies on those being surveyed to correctly identify the nature of their employment relationship. 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 include:

- 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.
- 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 suffer 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.

Evidence suggests that feelings of powerlessness and uncertainty about working hours contribute to poor mental health and well-being among people on ZHCs. According to the Mental Health Foundation, (<https://www.mentalhealth.org.uk/our-work/policy-and-advocacy/zero-hours-contracts-report>)

We know that poorly paid and insecure work is linked to poor mental well-being, but there is limited research on the specific mental health effects of a zero-hours contract. We have explored the existing research and found that among 17 relevant studies, eight found a significant link between zero-hours contracts and reporting a mental health difficulty or low well-being. Only two studies could not find any association between being on a zero-hours contract and reporting poorer mental health. Both of these studies were carried out in Australia, where zero-hours contract workers are given greater protection and a higher hourly wage (25% higher than the national minimum wage).

ZHC jobs are concentrated in low-paid sectors, some of which 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.

There will be some, such as, high-skilled workers and professionals, whose high pay can cushion them when they are not working, who welcome the ad-hoc flexibility of insecure employment

contracts. But, for the vast majority, these contracts represent precarity, vulnerability and deny them a healthy work-life balance.

Supporters of zero-hours contracts say that the flexibility offered is attractive to some workers, for example, students who want to work part-time. However, only a small, but growing number of people working under ZHCs fall into the 16-24 age category, 11.5 per cent, according to the latest ONS statistics.

The number of young workers being handed ZHCs has doubled since 2013. An analysis, published in March 2024, by the *Work Foundation*, painted a particularly worrying picture for young workers in the UK with a 23 per cent increase in young people on zero-hour contracts in 2023, compared to 2022.

Whilst workers might want flexibility, they are often required to trade rights and security to get there.

This new analysis also revealed that three in four (73.5%) of the record 1.1 million people (aged 16-65) currently on zero-hour contracts in the UK are in severely insecure work, meaning they face contractual and financial insecurity, and a lack of access to rights and protections. Only 6.1% of the 1.1 million are in secure employment, with a regular income and access to rights. (<https://www.lancaster.ac.uk/lums/research/news/new-analysis-reveals-uk-continues-to-fall-behind-rest-of-world-as-zero-hour-contracts-reach-record-numbers-and-its-young-people-bearing-the-brunt>)

There is concrete evidence that when given the chance freely, workers prefer the certainty of secure work. In 2016, when JD Wetherspoon offered all its 43,000 staff (54 per cent are aged 24 years or under) on ZHCs the opportunity to move to permanent hours, the result was an overwhelming rejection of the supposed ‘flexibility of ZHCs.’ According to their website (<https://www.jdwetherspoon.com/about-us/people/>),

‘Of hourly paid staff, 97% (96.8%) are employed on a guaranteed-hour contract. A minority of employees prefers the flexibility of a contract with no minimum hours. Where these contracts are used, employees receive exactly the same benefits as those on a guaranteed-hour contract, there is no sole-employer restriction and no obligation on employees to accept those hours offered.’

This example suggests that when given a real choice, even among a young workforce, guaranteed hours are preferable.

But it is not just young workers who are being presented with ZHCs. The number of workers over the age of 50 on a ZHC has increased to the highest level for this age group since records began, according to ONS data. An analysis of the figures by *Rest Less* showed a 99 per cent rise in over-50s working on ZHCs between 2013 and 2022. Data also reveals that as of June 2024, 5 per cent of people aged 65 and over are on ZHCs.

Stuart Lewis, Chief Executive of *Rest Less*, commented on the data,

The large rise in the number of people aged 50+ working under zero hours contracts is worrying. Whilst the flexibility they offer is a good fit for some, we know of many individuals who have turned to zero hours contracts as they have been unable to find a more permanent or structured type of work due to age discrimination or a lack of workplace

flexibility. Others are juggling zero hours contracts alongside other part-time roles to top up working hours to make ends meet amidst double digit inflation.

In practice, this “flexibility” by a ZHC all points in one direction, favouring the employer. Very few workers can be genuinely happy about taking on the whole risk as to whether they will have paid work from one day to the next, especially if it is their only source of income.

Interestingly the defenders of insecure employment contracts have yet to provide the results of any survey in which ZHC workers are asked would they prefer to remain as is, or be employed on contracts that provide the flexibility they require while having the full range of employment rights associated with employee status.

Rights of ZHC Workers

Establishing the rights of a person on a ZHC can be a complicated area of employment law, requiring employment tribunals and courts to decide.

Employment rights for people on a ZHC depend on whether they are an “employee” with access to full employment rights, or “worker” with lesser rights. As with other forms of insecure contracts, in most cases they will be either workers or self-employed. As mentioned previously only 6.1% of the 1.1 million on ZHCs are in secure employment according to the Work Foundation.

People on ZHCs who are engaged as “workers” have few legal protections – they are not protected from redundancy or unfair dismissal. At any point an employer can decide to simply stop providing work to people hired in this way.

A lot of the time, the problems ZHC workers face are practical, not legal. Making a complaint to a tribunal may not be an option as workers fear that the employer will slash their hours or stop them altogether if they complain about how they are treated.

The problem for ZHC workers is the chronic imbalance of power and the risk that employers will simply withhold hours if they attempt to assert their rights.

ZHCs – The UK is Falling Behind

Although it is difficult to work out what the exact equivalent to a ZHC is in different countries, most EU countries outlaw these contracts, heavily restrict them, or don’t see them widely used. The UK is one of around half a dozen European countries where zero hours contracts are both legal and common. In many other European countries, such contracts are unknown, heavily regulated or banned (either deliberately or in practice).

(See https://eprints.lse.ac.uk/100538/1/nd_gg_sm_march_2019.pdf and <https://www.lancaster.ac.uk/media/lancaster-university/content-assets/documents/lums/work-foundation/reports/ZeroChoices.pdf>)

Arguments claiming that the introduction of employment protection legislation to reduce insecurity in work would hinder the UK’s employment rates delivered by a flexible labour market, hold little water when we look at countries that have banned or severely restricted zero-hours contracts, such as New Zealand, Germany and Ireland. None have suffered: the latest comparable OECD data (<https://www.oecd.org/en/data/indicators/employment-rate.html>) has their employment rates (the extent to which people available to work are being used) at 79.8, 77.3 and 73.9 per cent respectively, compared with the UK’s 75 per cent.

After a five-year campaign by the ICTU and the wider trade union movement, legislation to outlaw the scourge of zero-hour and low-hours contracts came into effect in the South of Ireland on 1 March 2019.

The Employment (Miscellaneous Provisions) Act 2018 guaranteed four new rights:

- 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.
- Zero-hour contracts are banned in almost all circumstances.
- Workers are entitled to a minimum payment if their employer fails to provide them with work.
- Workers are entitled to guaranteed hours of work that reflect their normal working week, i.e. if they habitually work longer each week than foreseen in their contract.

It must be noted that the South saw no adverse economic consequences after these provisions became law. Businesses did not close, and employers did not dismiss workers. Flexibility in employment still exists.

As in the South of Ireland, introducing a ban on ZHCs will not damage good employers here. It will protect them from being undercut by unscrupulous employers who seek competitive advantage not through innovation or increases in productivity, but through reduced labour costs by exploiting their workers regardless of the human cost to those workers and their families.

A2 Should there be an outright ban on zero hours contracts?

- Yes
- No
- Don't know
- No opinion

If required, please provide more information

Yes.

To examine the extent to which employers use precarious contracts, and their reasons for doing so, the *Resolution Foundation* commissioned a survey of over 750 employers fielded in April 2024 (<https://www.resolutionfoundation.org/app/uploads/2024/04/Firm-foundations.pdf>). The *Resolution Foundation* claim that at the end of 2023, more than one-in-eight (13 per cent) employees in UK were working on some form of flexible contract that can be viewed as 'precarious', accounting for 3.8 million workers. Overall, their survey results suggest that three-quarters of employers – equivalent to 1.7 million firms – used some form of flexible contract over the course of 2023. The *Resolution Foundation* define a flexible employment contract as one that entails significant uncertainty for the worker, either because they do not know how much they will be paid week to week, or because they have a guaranteed income only for a limited period of time. Although the *Resolution Foundation* generously use the term 'flexible', we will use the term insecure contracts to avoid confusion with other, more acceptable forms of working.

According to their research,

There is a substantial share of employers (one-half, 53 per cent) for whom any form of flexible contract accounts for at least one-quarter of their workforce, suggesting flexible contracts are a foundational part of their business model. These 'high-use' firms are most

commonly found in the transport, logistics and communications, retail and wholesale, and hospitality sectors.

When considering why employers use insecure contracts the *Resolution Foundation* found that,

Across the board, firms have a wide range of motivations for using flexible contracts. At the most benign end of the spectrum, one-third (32 per cent) of employers who use flexible contracts say that their staff prefer these types of working arrangements; this share is higher among 'high-use' firms, at 36 per cent, compared to 27 per cent among 'low-use' firms.

Assessing the veracity of claims by these employers that their employees prefer insecure contracts is beyond the scope of the *Resolution Foundation's* survey, but studies into worker's preferences generally indicate that the vast majority of insecure workers would prefer more secure employment contracts (for example see https://www.tuc.org.uk/sites/default/files/great-jobs-with-guaranteed-hours_0.pdf).

The legitimacy of the employers claims in the *Resolution Foundation's* study must be measured against the actual results of the JD Wetherspoon example as mentioned in the answer to question A1.

Worryingly the *Resolution Foundation's* survey found that one of the reasons employers use insecure contracts was costs,

One-quarter (25 per cent) of employers using flexible arrangements report that doing so allows them to reduce their wage bill directly, for example; 13 per cent say it enables them to lower their responsibilities with respect to auto-enrolment and employer NICs; and a similar share report they use such contracts to offset a higher minimum wage. (These figures rise to 26 per cent, 17 per cent and 16 per cent respectively for 'high-use' firms).

Similarly,

In our survey, firms reported that flexible working arrangements lowered their responsibility for non-wage benefits such as sick pay or maternity and paternity pay (13 per cent), National Insurance or automatic enrolment contributions (also 13 per cent), or training and development costs (10 per cent). 'High-use' firms were between 8-9 percentage points more likely to report each of these cost-cutting motivations than 'low-use' firms. And one-in-seven respondents (15 per cent) said that flexible working arrangements allow them to lower their recruitment costs – this could be, for example, because they can keep a pool of contingent labour on hand to meet peaks in demand rather than having to hire new staff.

Another revealing finding was that some firms use insecure contracts simply because it is the norm in their sector.

one-quarter (25 per cent) of firms say that use of flexible working arrangements is normal for businesses like theirs, while 15 per cent of businesses believe that they would not be competitive without using flexible working arrangements. And for some firms, their working arrangements are dictated by the company or service through which they hire workers: one-eighth of respondents (12 per cent) said that they hire their staff through a recruitment agency or other third party, and are provided with temporary or variable-hours staff; for 7 per cent of firms, the same is true of an app or online platform.

The survey discovered that 10 per cent of the firms they surveyed said that at that time they were finding it easy to hire, meaning that they can hire workers on insecure contract types when they may not have been able to otherwise. And also,

Just under a tenth (10 per cent) of employers said that they used flexible contracts for migrant workers, who are only in the UK for a short period of time... One-in-eight (13 per cent) employers say that they use flexible contracts as a recruitment tool, to screen potential permanent staff before committing to a hire.

The *Resolution Foundation* noted that while proponents of zero-hours and temporary contracts laud the flexibility of them, too often this flexibility is one-sided. Their survey of employers discovered that,

among the one-fifth (20 per cent) of employees without fixed weekly hours, only half (48 per cent) get to choose their own working pattern. Workers who are paid by the hour, 30 per cent of whom do not have fixed weekly hours, are even less likely to have agency over their working patterns. Less than three-in-ten (28 per cent) of this group get to choose their own hours – and one-quarter (26 per cent) not only do not choose their hours, but also have no minimum guaranteed hours.

The case for the banning of ZHCs is given strength with the finding that close to half (48 per cent) of the employers surveyed by the *Resolution Foundation* currently using some type of these working arrangements, confirming that it is their intention to increase the share of their workforce on variable-hours contracts over the next five years, compared to just 14 per cent who say they plan to decrease their use. Interestingly the *Resolution Foundation* briefing paper notes that,

Close to two-thirds (63 per cent) of firms would change their behaviour if legislation gave workers a right to a fixed-hours contract or two weeks' notice of their shifts.

Alternatives to Insecure Work

From the above it is clear that there is an urgent need to challenge insecure work and to introduce a framework of policies designed to encourage the creation of Good Jobs, offering security, rights, decent guaranteed hours and pay.

If 63 per cent of the employers surveyed above would change their behaviour if legislation gave workers additional protections it would appear to indicate that many employers recognise that there are credible alternatives to using insecure forms of work. They may have been forced into using such forms of contracts to compete with less scrupulous employers or simply accepted that they have become the norm in the labour market reducing the need for considered workforce planning.

However, taking into account the cost to society and the economy of the proliferation of insecure work it is time for employers to reconsider, review their workforce needs looking at factors such as,

- Whether the fluctuations in workload are predictable, regular and ongoing.
- The nature of the work, and the skills and experience needed to perform the work.
- Whether current employees could perform the work in addition to their normal job role, whether through offering additional hours or voluntary overtime. Employers could engage with representatives of their workforce to explore flexible working arrangements, whether

temporary, or longer-term, to meet business needs while protecting their employee's contractual and statutory rights.

- Whether existing employees could be upskilled to cover new roles.
- Whether they should invest in the future, take on additional employees and aim to grow the business.

Having made such deliberations, if they find that their needs are still not covered, only then should employers look to offer other forms of cover that contractually guarantee predictable hours and employment rights, while providing the cover the employers need.

New technology can also be utilised to reduce insecurity by assisting employers with more accurate and efficient workforce planning. Predictive scheduling uses historical data and demand forecasting to create schedules that optimise labour costs while ensuring adequate staffing. It could minimise under or overstaffing by aligning employee work hours with the actual workload, resulting in cost savings and improved operational efficiency.

Flexible working opportunities can benefit employers, employees and their families. There is a need to support employers to realise the value of this relatively new phenomena, although many already now recognise that it makes good business sense to provide genuinely flexible working opportunities for their employees.

Alternatives to Insecure Work - Genuine flexible working

Workers should not have to accept insecure employment or have to turn to such contracts to manage their non-work commitments. It is possible for decent, secure jobs with good terms and conditions and guaranteed hours to deliver flexible working arrangements which benefit both worker and employer, rather than the one-sided flexibility we see with insecure employment.

Genuine flexible working can benefit both workers and employers and be advantageous for the economy and wider society. It can allow people to balance their work, study and home lives, including caring responsibilities. Genuine flexible working arrangements are important in promoting equality at work and accessibility to the labour market. They encourage training and upskilling and can lead to improved recruitment and retention of workers for employers.

Therefore, improving the accessibility to flexible work is vital for society and the economy.

While some employers are proactively moving away from their use, the overall growth in ZHC and other forms of insecure employment must prompt regulatory intervention to ensure all workers have access to jobs that balance security and employment rights with flexibility.

It is possible to design interventions that protect those who are currently forced to accept insecurity in the labour market, whilst preserving choices for those who are in a position to make those choices in an active, and empowered way.

Banning the unfair use of ZHCs is just one aspect of addressing the larger issue of insecure work.

Ultimately, a comprehensive strategy is required that must include rebalancing power between workers and employers. This is essential for effective enforcement of existing employment law, ensuring loopholes are not exploited, and for reducing insecurity and inequity experienced by those in other forms of insecure employment too, such as temporary contracts, outsourced roles, agency work and bogus self-employment.

Any strategic aim to rebalance power between workers and employers can only really be achieved by acknowledging the role in society of trade unions. The *raison d'être* of unions is to represent the interests of working people. There are no other equivalent organisations. Run by and for their membership, unions speak with unrivalled workplace-based experience and expertise in industrial relations, health and safety, promoting equality and wellbeing, inclusion, learning and the development of skills.

Therefore, any comprehensive strategy to improve working conditions and benefit the economy must encourage employers to accept the expertise of trade unions in this vital area the employment sphere. It must promote an acceptance amongst employers of the value of collective bargaining which can give their workforce a genuinely independent voice, free from fear of retribution should that voice utter uncomfortable truths to some sub-standard employers, in improving the workplace for the benefit of both sides.

Good Jobs Benefit All

The UK's experiment with a low-rights, low-wage, and insecure economy over the past 30 plus years has been a complete failure. Successive government's lack of an economic plan for jobs, growth and living standards has come at a heavy cost for workers, business and the economy.

It is time to embark on a cultural change in the world of work that recognises the value to business and the economy of secure, decently paid workers who enjoy a healthy work life balance.

A 2023 survey, conducted for the Chartered Management Institute, of 3,000 managers from sectors where insecure work is prevalent found that half of managers desire more predictable hours too, and that they recognise the need to provide more security to the wider workforce. (<https://www.lancaster.ac.uk/media/lancaster-university/content-assets/documents/lums/work-foundation/ManagingInsecurity.pdf>)

The report states that this is because insecurity over working hours has knock on impacts throughout an organisation, as well as for people's health and wellbeing.

Good jobs will promote good working relationships. Good relationships between workers and employers can foster the kinds of flexibility required by both the employer and their workers.

Workers want the organisations that they work for to succeed too. Thriving businesses give them employment security and the possibility to increase their pay and conditions. When employers treat their workforce fairly and allow them an independent voice, through collective bargaining with their trade unions, workers will respond positively in times of need, if employers are open and transparent about the situation facing their business and are willing to listen to the ideas of the workforce.

Moving from insecure to good jobs through the implementation of the rights proposed in this document should be seen by employers not as a threat, but as an opportunity. Good employers have nothing to fear from the introduction of the rights NIC-ICTU are proposing. They are aimed at stopping exploitation of workers, particularly vulnerable workers, by bad employers. Such employers base their business model on exploitation to achieve an advantage over their competitors.

The employment protection rights proposed by NIC-ICTU in this document aim to close the opportunities for those who immorally and short-sightedly seek unfair advantage in this way and to create a level playing field where the best employers thrive by encouraging a motivated,

productive and innovative workforce. Through dialogue, employers and workers can still agree mutually beneficial flexible working arrangements that suit both parties.

NIC-ICTU recommend the following:

1. Ban the use of exploitative contracts such as ZHCs, 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).
2. Improve rights to genuine flexibility of working arrangements through,
 - 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. All roles should be deemed suitable for flexibility unless it can be shown that the unavailability is a proportionate means of achieving a legitimate aim, such as an objective business need. The financial cost cannot, by itself, provide a justification.
 - 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.
3. Put an end to the injustice of a three-tier workforce - Ensure that all workers benefit from the same employment rights, including protection from unfair dismissal, by creating a single "worker" status for all but the genuinely self-employed. Create a statutory presumption that all individuals will qualify as 'worker' under the new definition, unless the employer can demonstrate in an employment tribunal, should a dispute arise, that they are genuinely self-employed.
4. Day one employment rights - 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.

A3 Are there circumstances where a zero hours contract may be appropriate?

- Yes
- No
- Don't know
- No opinion

If so, what are they?

No.

As highlighted in the previous answers, workers should not have to accept insecure employment, such as Zero-Hours Contracts, or have to turn to such contracts to manage their non-work commitments. It is possible for decent, secure jobs with good terms and conditions and

guaranteed hours to deliver flexible working arrangements which benefit both worker and employer, rather than the one-sided flexibility we see with insecure employment.

Therefore, NIC-ICTU recommend a ban on the use of exploitative contracts such as ZHCs, by requiring employers to provide guaranteed contractual hours per week for all roles from day one.

Alternatives to the use of ZHCs have been covered in our answer to A2. But further to this, where the work is genuinely casual or it is short-term relief cover, NIC-ICTU would consider the possibility of an option where contracted hours can be presented as hours per month, or annualised (in NHS Scotland for example <https://www.lancaster.ac.uk/media/lancaster-university/content-assets/documents/lums/work-foundation/reports/ZeroChoices.pdf>), 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.

Workers on these contracts must have the same employment rights currently enjoyed by employees, and they should be available to all workers from day one of the contract.

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.

There will be some, such as, high-skilled workers and professionals, whose high pay can cushion them when they are not working, that welcome the ad-hoc flexibility of insecure employment contracts. But they will still be able to utilise other forms of contractual relationships that are agreeable to them and the employer.

However, in addition to the possible exceptions above, NIC-ICTU would consider the right for workers to opt-out of the banded hours system after 12-weeks provided that the worker freely chooses this option without coercion or detriment. The worker must also have the right to opt-into the banded hours system again at every 12-week review period.

A4 Would the right to move to a banded hours contract, unless there is a good reason an employer cannot accommodate the move, be an appropriate way to replace a zero hours contract?

- Yes
- No
- Don't know
- No opinion

If required, please provide more information

Yes.

However, due to the chronic imbalance in power in favour of the employer, NIC-ICTU believe all workers on a Zero-Hours Contract (ZHC), or other forms of insecure work, should be moved onto the banded hours contract system. Merely granting the worker the right to request such a change will leave the most vulnerable workers stuck in their precarious employment situation.

This could be achieved by introducing a banded hours system for those whose contract of employment does not reflect the reality of the hours they habitually work. Workers would be

placed on a band reflecting the average hours they actually work per week (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 after 12-weeks, to amend the contract by moving the worker to a different band that reflects their actual hours taken as an average over the 12-week period.

Given NIC-ICTU's position outlined in previous answers, we do not see a 'good reason' why an employer could not accommodate this move.

NIC-ICTU would consider the right for workers to opt-out of the banded hours system after 12-weeks provided that the worker freely chooses this option without coercion or detriment. The worker must also have the right to opt-into the banded hours system again at every 12-week review period. This opt-out could be acceptable to NIC-ICTU if the recommendations below are also introduced.

NIC-ICTU believe that to address the abuse of workers under such contractual relationships the following recommendations also need to be introduced:

1. Ban the use of exploitative contracts such as ZHCs, 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).
2. Improve rights to genuine flexibility of working arrangements through,
 - 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. All roles should be deemed suitable for flexibility unless it can be shown that the unavailability is a proportionate means of achieving a legitimate aim, such as an objective business need. The financial cost cannot, by itself, provide a justification.
 - 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.
3. Put an end to the injustice of a three-tier workforce - Ensure that all workers benefit from the same employment rights, including protection from unfair dismissal, and statutory redundancy pay, by creating a single "worker" status for all but the genuinely self-employed. Create a statutory presumption that all individuals will qualify as 'worker' under the new definition, unless the employer can demonstrate in an employment tribunal, should a dispute arise, that they are genuinely self-employed.
4. Day one employment rights - 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.

A5 Should the right to move to a banded hours contract apply to other types of contract where the hours worked don't match the reality of the working pattern?

- Yes
- No
- Don't know
- No opinion

If required, please provide more information

Yes.

Whilst NIC-ICTU's recommendations go beyond this with the aim of removing insecurity from work contracts, we must answer yes to this proposal to move workers on other types of insecure work contracts onto a banded hours contract arrangement.

A6 If a banded hours contract system is introduced, on what grounds should an employer be able to refuse a request?

Due to the chronic imbalance in power in favour of the employer, NIC-ICTU believe all workers on a Zero-Hours Contract (ZHC), or other forms of insecure work, should be moved onto the banded hours contract system. Merely granting the worker the right to request such a change will leave the most vulnerable workers stuck in their precarious employment situation.

Should the employer refuse to place a worker on a banded hours contract the only recourse for the worker at the moment would be to take their case to an Employment Tribunal. 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.

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.

An employer should not be able to refuse to move an existing worker from a ZHC, or other forms of insecure work contract, onto a banded hours system reflecting the reality of the hours they habitually work.

The only temporary exceptions to this would be in circumstances where, for example, there was an emergency situation (e.g. the business is temporarily closed due to flooding), or significant adverse changes have impacted on the business (e.g. loss of an important contract).

When recruiting for a position, employers should already be aware of the hours of work required and therefore the new start should be recruited on the appropriate band.

When considering a request from a worker to be moved to a different band, the employer should be required to amend the contract by moving the worker to a band that reflects their actual hours taken as an average over the previous 12-week period. The employer should be able to take into account predictable seasonal peaks when considering the average over the reference period. The employer should only be able to refuse to move a worker to a different band in the temporary circumstances outlined above, or when the actual hours worked do not reflect the workers claim, or when the hours worked were due to a genuinely temporary situation (e.g. sick absence cover).

Employers should advise workers in writing every 12-weeks of the average hours they have worked and workers should have the right to request a change in bands on each occasion.

A7 Would the right to request a more predictable contract be an appropriate way to replace a zero hour contract?

- Yes
- No
- Don't know
- No opinion

If required, please provide more information

No.

As mentioned in the answer to question A6 the 'right to request' is insufficient to address this problem.

While NIC-ICTU agreed with the spirit of the *Workers (Predictable Terms and Conditions) Act 2023*, it was clear that the proposals contained in it were extremely deficient. The Act intended to give workers, and agency workers (provided they met certain conditions) the right to request guaranteed hours and a more predictable work pattern after 26 weeks. However, this right to request was outbalanced with restrictions and broad grounds of refusal available to employers.

NIC-ICTU would be keen to engage with DfE, employer's organisations and employment lawyers to consider the drafting of fairer legislation for NI that would improve workers access to genuine flexible working and grant all workers greater predictability over their work patterns including the number of hours worked, the days of the week and the times worked on those days, and the period they are contracted to work where applicable.

A8 Should any right to request a more predictable contract apply to other contracts which do not provide certainty in terms of hours worked, length of contract or days and times worked?

- Yes
- No
- Don't know
- No

If required, please provide more information

No.

NIC-ICTU are not convinced that introducing a right to request predictable working terms and conditions will make a material difference to workers in precarious employment particularly if the right is structured along the lines of the Workers (Predictable Terms and Conditions) Act 2023. This Act mirrors the right to request flexible working: it requires a worker to have 26 weeks' service and also allows the employer to decline the request on quite broad 'business grounds' including 'the burden of additional cost'. An employer engaging workers on precarious terms and conditions is invariably doing so in order to save cost: thus increased cost is likely to be a commonly cited justification for not granting predictable working terms and conditions.

As stated in the answer to question A7, NIC-ICTU would be keen to engage with DfE, employer's organisations and employment lawyers to consider the drafting of legislation for NI that would improve workers access to genuine flexible working and grant all workers greater predictability over their work patterns including the number of hours worked, the days of the week and the times worked on those days, and the period they are contracted to work where applicable.

NIC-ICTU recommend that a legal duty should be placed on employers to consider for all jobs, the potential for predictability of the work patterns including the number of hours worked, the days of the week and the times worked on those days, and the duration of the contract where applicable. All roles should be deemed suitable for predictability unless it can be shown that the unavailability is a proportionate means of achieving a legitimate aim, such as an objective business need. The financial cost cannot, by itself, provide a justification. An employer engaging workers on precarious terms and conditions is invariably doing so in order to save cost: thus, increased cost is likely to be a commonly cited justification for not granting predictable working terms and conditions.

In addition to this, **NIC-ICTU recommend** that all temporary and agency workers who are working in the same job for more than one year should have the right to request that they become permanent employees of the organisation they have been placed with. The organisation should not be able to refuse the request without objective justification, and it should not have to provide any fees to the agency that provided the worker. Likewise, any employee on fixed-term contracts for one or more years should automatically become a permanent employee if requested.

A9 If a statutory right to request a more predictable contract is introduced, under what grounds should an employer be able to refuse a request?

As referred to previously, the proposed right to request a predictable working pattern (under the *Workers (Predictable Terms and Conditions) Act 2023*) could be rejected by employers on overly broad grounds. These reasons are the same very wide grounds for rejection as allowed for under

the right to request flexible working arrangements. Therefore, in answering this question it is helpful to examine the situation with flexible working requests first.

Currently under employment law there is no right to flexible working, but instead, a right for employees, not workers, to “request” flexible working arrangements from the employer.

Employers can refuse a request for flexible working arrangements for any of the following wide-ranging reasons:

- extra costs that will damage the business
- the work cannot be reorganised among other staff
- people cannot be recruited to do the work
- flexible working will affect quality
- flexible working will affect performance
- the business will not be able to meet customer demand
- there’s a lack of work to do during the proposed working times
- the business is planning changes to the workforce

Low levels of flexibility are in large part due to the individualised nature of the law based in a right to request, with employers being able to reject requests with ease. TUC research in 2019 showed that three in 10 flexible working requests were turned down (<https://www.tuc.org.uk/news/one-three-flexible-working-requests-turned-down-tuc-poll-reveals>).

TUC polling of fathers and partners entitled to paternity leave this year found that 50 per cent did not get any or all of the flexibility they asked for at work (<https://www.tuc.org.uk/news/half-new-dads-dont-get-flexibility-they-ask-work-tuc>).

Further to this, as part of the consultation on flexible working in 2021 the TUC and Flex For All Partners created an online tool which found that out of 5,744 responses received from members of the public, almost nine in ten (87 per cent) believed that employers can turn down flexible working requests too easily and many reported receiving little information on why requests were rejected (<https://www.tuc.org.uk/sites/default/files/2023-10/TUC%20response%20to%20Acas%20consultation%20of%20flexible%20working%20CoP.pdf>).

Given the above, **NIC-ICTU believe** that there is a need to improve the statutory right to request a flexible working arrangement in NI. The grounds on which an employer will be able to refuse a request should be more balanced than those currently allowed. All roles should be deemed suitable for flexible working arrangements unless it can be shown that the unavailability is a proportionate means of achieving a legitimate objective business need. The financial cost cannot, by itself, provide a justification.

The right to request a flexible work pattern should be a day one right for all workers and no restrictions should be placed on the number of requests that can be made. If the employer does not agree to the request at the outset, it must hold a meeting to discuss the application, and the worker should have the right to be accompanied by a trade union representative. Employers should provide within 2-weeks, written detailed information with evidence to demonstrate why the request is being rejected, as well as suggestions regarding any alternative working options that may be available.

Providing additional information to help explain why a request has been rejected would help to demonstrate that a thorough review of the request has taken place and to build trust in the process.

Workers should have the right to appeal a refusal and have the right to be accompanied by a union representative.

Alternatives to Britain's Proposed Right to Request Predictability

Rather than the British Government's proposed right to request predictability, **NIC-ICTU** note how the Irish Government has implemented *EU Directive 2019/1152 on Transparent and Predictable Working Conditions (the Directive)*, with the onus on the employer to provide some minimum level of certainty.

The Directive in Ireland has been implemented as follows:

(i) An employee is entitled to a statement 5 days after commencing employment including a statement of the working hours per normal working day and per normal working week.

(ii) If the working pattern of the employee is completely (or mostly) unpredictable then within one month of commencement of work a further statement must be provided with a reference to the work schedule being variable, the number of guaranteed paid hours and the remuneration for any work performed in addition to those guaranteed hours. There also needs to be detail on the reference hours and days within which the employee may be required to work and the minimum notice period the employee is entitled to before the start of a work assignment.

(iii) The Organisation of Working Time Act 1997 requires employers to notify employees at least 24 hours in advance of their working hours, subject to unforeseen circumstances and for employers to ensure a work assignment takes place within the reference hours and days notified to the employee as part of their written terms. If the notice of a work assignment is not within the minimum notice period of 24 hours or the work assignment takes place outside the reference hours and days, the employee may refuse the work assignment and should not be subjected to adverse treatment for doing so.

(iv) An employee who has more than 6 months continuous service and has completed their probationary period (if applicable) may, once in any 12-month period, request a form of employment with more predictable and secure working conditions, where available. The employee is also entitled to receive a reasoned written reply from the employer within one month of the request.

NIC-ICTU recognise that this is an improvement on what is contained in Workers (Predictable Terms and Conditions) Act 2023, but still regard it as insufficient.

NIC-ICTU would go further and recommend that a legal duty should be placed on employers to consider for all jobs, the potential for predictability of the work patterns including the number of hours worked, the days of the week and the times worked on those days, and the duration of the contract where applicable. All roles should be deemed suitable for predictability unless it can be shown that the unavailability is a proportionate means of achieving a legitimate aim, such as an objective business need. The financial cost cannot, by itself, provide a justification. An employer engaging workers on precarious terms and conditions is invariably doing so in order to save cost: thus, increased cost is likely to be a commonly cited justification for not granting predictable working terms and conditions.

A10 For either a right to make a request to a more predictable contract or a right to move to a banded hours contract, there will be a need for the worker to have been in post for a period of time in order to provide evidence of the reality of the working relationship.

Should this qualifying period be 12 weeks, 26 weeks or 52 weeks?

- 12 weeks
- 26 weeks
- 52 weeks

12 weeks

A11 Should there be a requirement for employers to provide a “reasonable” period of notice to a worker on a zero hour contract in advance of a shift?

- Yes
- No
- Don’t know
- No opinion

If required, please provide more information

Yes.

There is no legislation defining how far in advance workers should be notified of their rotas or a shift change.

Without a reasonable period of notice of the commencement 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. It can also adversely affect family and social life and leave workers out-of-pocket through having to pay for care arrangements, travel, or through having turned down shifts with other employers.

Further to this, in some sectors, particularly hospitality and the agri-food sector, workers can have their shifts cancelled or cut short after they have arrived at the workplace. Public transport may not be available at these times, or it does not cover the worker’s route to the workplace forcing low-paid workers to rely on expensive private taxis. If such shifts occur at night, vulnerable workers, especially women, may have to use taxis for safety reasons.

Compensation should be a legal right for workers where an employer cancels or curtails a shift at short notice.

In 2022, the Mental Health Foundation Scotland, found that, (https://www.mentalhealth.org.uk/sites/default/files/2022-12/MHF_ZHC-Report_Plain-English_Summary.pdf)

There is evidence to suggest that low pay and feelings of powerlessness and uncertainty surrounding people’s hours of work are factors of potential significance in driving poor mental health and wellbeing among people on ZHCs.

And also, that,

Those who were employed on a ZHC were 40 per cent more likely to report experiencing poor mental health than those who were on any other form of contract. The authors of this

study report substantial effects of ZHCs on long-term health conditions, driven largely by mental health.

Employers should recognise the value to their business of investing in good workforce planning and of maintaining the health and well-being of workers by providing enough time for them to organise their lives around the work rota and plan ahead.

Workers are more likely to experience sleep disturbance and fatigue if they can be randomly called in to work with short notice, must work long hours, or work shifts in close succession at different times of the day. This can lead to health problems, a decline in the quality of work and increase the risk of accidents.

The 2023 House of Commons research briefing, *Artificial Intelligence and Employment Law*, (<https://researchbriefings.files.parliament.uk/documents/CBP-9817/CBP-9817.pdf>) identified that the use of automatic shift allocation algorithms, common in the retail and hospitality sectors, is rapidly spreading to other sectors. The briefing paper warned of the potential adverse impact on workers as these algorithms may lead to short notice shift allocation or the division of shifts into micro-shifts.

Therefore, there is an urgent need to legislate now for fair notification periods of work rotas or shift changes for all workers.

New technology can also be utilised to reduce insecurity by assisting employers with more accurate and efficient workforce planning. Predictive scheduling uses historical data and demand forecasting to create schedules that optimise labour costs while ensuring adequate staffing. It could minimise under or overstaffing by aligning employee work hours with the actual workload, resulting in cost savings and improved operational efficiency.

A12 If so, what is considered a reasonable period of notice?

Legislation should state that the minimum notice period for the start of a shift or a change to the shift rota that employers must provide to workers is 3-weeks, unless there is a collective agreement between a trade union and an employer in a workplace providing for longer notice periods.

Exceptions could be considered for safety critical sectors, in healthcare for example.

Such employment protection legislation is proposed to reduce exploitation and does not prevent workers and individual employers from voluntarily agreeing to a lesser period of notice on a case-by-case basis where it is mutually beneficial.

NIC-ICTU recommend that the right to a 3-week notice period should be set out in legislation.

Guidance and codes of practice are not legally binding, and therefore provide no real protection for workers. At best failure to comply with a code of practice can be taken into account by an Employment Tribunal if the worker has another related complaint of a breach of their employment rights. The compensation level, should the Tribunal find in the claimant's favour, is insufficient to motivate an unscrupulous employer to comply with the guidance.

A13 Would guidance or legislation be the most appropriate way of encouraging an employer to provide a reasonable period of notice for work shifts?

- Guidance
- Legislation

Legislation

A14 Should compensation be considered where an employer cancels or curtails a shift at short notice for workers on a zero hour contract?

- Yes
- No
- Don't know
- No opinion

If required, please provide more information

Yes.

While NIC-ICTU recommend the banning of ZHCs, should workers choose to opt-into a ZHC arrangement they must receive compensation where an employer cancels or curtails a shift at short notice. Workers who elect to work under a ZHC must be advised in advance of their entitlements where the employer cancels or curtails a shift at short notice.

A15 What rate of compensation would be appropriate in these circumstances?

If an employer cancels or curtails a shift at short notice compensation for the worker should be the 'normal pay due for the shift' as under contractual principles if a worker is ready and available for work, they should be paid for those hours.

While NIC-ICTU recommend the banning of ZHCs, should workers choose to opt-into a ZHC arrangement they must receive compensation where an employer cancels or curtails a shift at short notice. The worker must be compensated by payment for 15 hours, or 25 per cent of the expected hours, whichever is less. The minimum this compensation payment must be is for three hours (for a daily shift), in addition to payment for any hours actually worked where the shift is cut short.

The above compensation rates will apply unless there is a collective agreement between a trade union and an employer in a workplace providing for higher compensation payments.

A16 Should this compensation, where an employer cancels or curtails a shift at short notice, be considered for other types of contracts besides those on a zero hour contract?

- Yes
- No
- Don't know
- No opinion

If required, please provide more information

Yes.

If an employer cancels or curtails a shift at short notice compensation for the worker should be the 'normal pay due for the shift' as under contractual principles if a worker is ready and available for work, they should be paid for those hours. Automatic compensation should be available to all workers on insecure contracts, unless there is a collective agreement between a trade union and an employer in a workplace providing for higher compensation payments.

A17 Should exclusivity clauses in low or zero hours contracts be banned?

- Yes
- No
- Don't know
- No opinion

If required, please provide more information

Yes.

NIC-ICTU support the banning of exclusivity clauses as they are unfair, unjustifiable and they are already banned in Britain.

Further to this, NIC-ICTU recommend a ban on exclusivity clauses should not be limited to those on low earning contracts. Rather, an employer should not be permitted to prevent a worker from undertaking other work save for legitimate objective grounds such as:

- Health and safety,
- Protection of business confidentiality,
- Integrity of public service,
- Avoidance of conflicts of interest.

The above grounds reflect legislation in place in Ireland that prohibits employers from preventing employees from undertaking 'parallel employment' outside of their agreed work schedule save for legitimate objective grounds.

If employers are required to provide predictable work patterns to workers (see A9) this will result in better workforce planning by them and also permit workers to take up other work (either for financial or for career progression).

A18 Have you any other comments on zero hours contracts?

Between 2017 and 2020, NIC-ICTU, along with Ulster University, the Migrant Rights Centre Ireland and the Community Intercultural Programme ran a Peace IV project to assist vulnerable migrant workers mainly in the agri-food sector here. The project, which was also supported by the Executive Office, gathered evidence of the mistreatment and exploitation of large numbers of vulnerable newcomer migrant workers. They were vulnerable as they were new to the country. They were unaware of their rights. They had limited English and no wider family support networks in this country to rely upon.

As mentioned in the oral evidence provided to the Committee for the Economy by the NIC ICTU delegation, on 16th February 2022, the project recorded widespread misuse of ZHCs in the agri-food sector in Northern Ireland. Some employers adopted the use of ZHCs as a normal business model in an effort to undercut competitors. The majority of their workforces were vulnerable migrant workers employed on ZHCs who did not know from day to day whether they would have work, and if they did get working hours, paid at national minimum wage rates, they were unsure how long they would be each day. This business model was used to control the workforce as workers were afraid to complain about mistreatment and racial abuse, denial of their employment rights, or to take health leave when they were sick. This later concern undoubtedly contributed to the spread of Covid-19 within these workplaces.

The project witnessed how the prevalence of ZHC in the agri-food sector, affecting directly employed workers and those employed through agencies, excluded people with caring responsibilities, mainly women, from the workplace. The project also recorded the prevalence of discrimination against pregnant women whose working hours evaporated on telling the employer of their status.

NIC ICTU recognises that the agri-food sector is not the only place where zero-hours contracts have been misused and turned into a normal business model. They have become commonly used in the gig-economy, transport and delivery, hospitality and leisure, agri-foods, arts, admin, health and social sectors and education.

As identified in the previous answers, NIC-ICTU believes that this extreme form of insecure work leaves some workers open to exploitation and abuse. As such, it must be banned through legislation to protect vulnerable workers who are least likely to be able to access their employment rights. However, this on its own would be insufficient to protect vulnerable workers, including women, young and migrant workers.

All workers, including agency workers, ZHC workers and casual workers, should be entitled to the same floor of employment rights currently enjoyed by employees. Therefore, legislation is urgently required to replace the categories of 'employee' and 'worker' with a single status of worker covered by all the employment rights associated with employees. And these rights, including legal protection from unfair dismissal, should be a right from the first day of employment.

NIC ICTU is also of the view that the current employment rights infrastructure does not adequately support access to workplace justice, particularly for vulnerable workers. The focus should be rebalanced towards enforcing employment rights rather than simply settling individual

disputes. The precarity of working life means that for workers, the pursuit of workplace justice can be a daunting process, for fear of upsetting employers or recruitment agencies.

The creation of an adequately resourced and suitably empowered Single Enforcement Body (more details on this will be provided later in this response) could be a step in the right direction to addressing this gap in our employment rights infrastructure.

Good employers have nothing to fear from the changes NIC-ICTU are proposing above. They are aimed at protecting vulnerable workers, creating a basic floor of rights for all workers to make work rewarding, attractive and in balance with workers health and the realities of workers lives.

Workers want the organisations that they work for to succeed too. Thriving businesses give them employment security and the possibility to increase their pay and conditions. When employers treat their workforce fairly and allow them an independent voice, through collective bargaining with their trade unions, workers will respond positively in times of need if employers are open and transparent about the situation facing their business and are willing to listen to the ideas of the workforce.

Good Jobs will promote good working relationships. Good relationships between workers and employers can foster the kinds of flexibility required by both the employer and their workers.

Alternative methods of delivering the flexibility some employers require while protecting the rights and interests of workers are available to employers, as outlined throughout this response.

A19 Do you think that the current employment status system for employment rights works effectively?

- Yes
- No
- Don't know
- No opinion

If not, what changes do you think are necessary?

No.

The current employment status system has facilitated the mushrooming of insecure employment which has been a disaster for working people, the economy and wider society.

Allowing Insecure Work is a Political and a Social Choice.

Insecure work has become an accepted part of the UK's labour market over the last three decades. Successive governments have prioritised reducing unemployment, while paying far less attention to the quality and security of the jobs available. As a result, the sustained employment growth has to a significant extent been through the growth of low paid, insecure forms of employment and has been accompanied by a sharp fall in real wages and productivity, exacerbating income inequalities and poverty, and reduced state revenues.

However, to a certain degree, we have been here before. As Professor Noel Whiteside, of the University of Warwick, reminds us (<https://wrap.warwick.ac.uk/id/eprint/162025/1/WRAP-Before-gig-economy-UK-employment-policy-casual-labour-question-2021.pdf>),

*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.*

Historically, casual and insecure and zero-hours labour were regulated to some extent in the UK through collective agreements with trade unions, and there are also examples of legislation tackling casualisation in specific industries, such as the Dock Workers (Regulation of Employment) Act 1946. However, both these sources of regulation have now been largely undermined by successive Conservative governments. Industry-specific legislation has been repealed, and although trade unions continue to campaign against insecure work and on the issue of ZHCs and seek to limit job insecurity through collective agreements, the low levels of collective bargaining coverage in the UK, particularly in those sectors where insecure work is most concentrated, could until now, not halt their growth.

Government deregulation in the sphere of employment protections in the mid-1990s, which also saw the division of employment status into the “employee” category and “worker” category, facilitated the development of ZHCs and other forms of insecure work.

The aftermath of the 2008 recession produced a fundamental shift in the labour market, with growing levels of involuntary casualisation. A bewildering variety of non-standard employment arrangements has mushroomed over this period, including growing use of intermediaries such as employment businesses and agencies, payroll companies and umbrella companies. All these developments share a common feature in that they shift risk and cost of under-employment and unemployment and the liability for employment rights, away from the employer and on to the worker.

The dramatic increase in the numbers of people on ZHCs drew concerned public attention to them in 2013, when the then Coalition Government was embarrassed into setting up a public consultation. Beyond banning the use of exclusivity clauses in ZHCs in Britain, in 2015, the government failed to recognise that they were a problem and refused to act to protect workers. As a result, ZHCs and other forms of insecure work continued proliferate.

The OECD has found that countries with policies and institutions that promote job quality, job quantity and greater inclusiveness perform better than countries where the focus of policy is predominantly on enhancing (or preserving) market flexibility.

Further to this, in *In It Together: Why Less Inequality Benefits All*, (https://www.oecd.org/en/publications/in-it-together-why-less-inequality-benefits-all_9789264235120-en.html) the OECD found that,

Non-standard workers are worse off in terms of many aspects of job quality. They tend to receive less training and, in addition, those on temporary contracts have more job strain

and have less job security than workers in standard jobs. Earnings levels are also lower in terms of annual and hourly wages.

The OECD report also debunks the idea that non-standard work is always a short-term stopgap, while employees wait for a permanent role to come along.

Non-standard work is not always a stepping stone to stable employment. Temporary contracts increase the chances of acquiring a standard job compared with remaining unemployed, but a part-time job or self-employment does not increase the chances of a transition to a standard job.

Record Rise in Insecure Work

Figures on the current extent of insecure work in the UK economy vary, but it is generally accepted that it continues to rise.

As mentioned previously, according to a new analysis by the TUC published in June 2024 (<https://www.tuc.org.uk/news/number-people-insecure-work-reaches-record-41-million>), the number of people in insecure work in 2023 had reached a record high of 4.1 million.

The analysis of official statistics shows the number of people in precarious employment – such as zero-hours-contracts, low-paid self-employment and casual/seasonal work – increased by nearly one million between 2011 and 2023.

Over that period insecure work rose nearly three times faster than secure forms of employment. While the numbers in insecure work increased by 31%, those in secure employment increased by just 11%.

The TUC estimates that 1 in 8 workers in the UK are now employed in precarious employment.

Growth in insecure work

	2023	2011	change
Total in insecure work	4,144,600	3,157,700	986,900
Total in work	33,193,100	29,405,100	3,788,000
Proportion in insecure work	12.5%	10.7%	1.7%

Growth in insecure work versus overall employment

	2023	2011	change
Total in insecure work	4,144,600	3,157,700	31%
Total in secure work	29,048,500	26,247,400	11%
Total in overall work	33,193,100	29,405,100	13%

Note: The total number in ‘insecure work’ includes agency, casual, seasonal and other workers, but not those on fixed – term contracts. Data on temporary workers and zero-hour workers is taken from the Labour Force Survey Q4 in 2011 and 2023. Double counting has been excluded.

The TUC found that the growth in insecure work since 2011 has been fuelled mainly by lower-paid sectors of the economy. In care, leisure, service occupations and elementary occupations the number of people in precarious employment has rocketed by over 600,000 (+70%) since 2011.

Their analysis also shows that people in insecure work face a severe pay penalty compared to other workers.

People on zero-hours contracts earn over a third (35%) less an hour, on average, than workers on median pay. And the pay gap between workers in seasonal (-33%) and casual (-37%) work and median earners is also stark.

Hourly pay for those in insecure work and median earners

2023	Four quarter average
ZHC	£9.80
Working for an employment agency	£11.50
Casual work	£9.38
Seasonal work	£10.00
Self-employed	£10.00
Median earner	£15.01

Source: Labour Force Survey Average of Q4 2023.

The *Nevin Economic Research Institute* (NERI) have identified that the most up-to-date data on low pay for Northern Ireland shows that 7% of workers 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%. 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. And, beyond low pay and looking to pay more broadly, the stagnation of wages is a particularly problematic issue in Northern Ireland where, 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.

According to *Spare Capacity in the Northern Ireland Labour Market*, by EPIC Futures NI, a policy action group led by Ulster University, (https://www.ulster.ac.uk/epc/pdf/2024/spare-capacity-in-the-northern-ireland-labour-market/NI-spare-capacity_In-work_2024.pdf)

Non-standard forms of employment account for 35% of total workers, its lowest share in almost 25 years. In the decade to 2019, non-standard forms of employment accounted

for almost three-fifths (58%) of total employment growth. However, in the post-Covid recovery, non-standard employment has not yet returned to levels recorded at the end of 2019.

Unfortunately, the dip in the growth of insecure employment caused by the pandemic appears to have been a temporary anomaly. ONS data indicates that insecure forms of work in NI are rising again (e.g. ZHCs have risen from 2.9 per cent to 3.3 per cent). Unless action is taken by government here there is little doubt that this already shocking figure for insecure work here will rise further.

Cost to the Economy of Insecure Work

Insecure work also has an impact on the economic stability of the country and on the public finances. In 2022, the TUC published, *The Fiscal Cost of Insecure Work*, based on the findings of *Landman Economics* (https://www.tuc.org.uk/sites/default/files/2022-05/Fiscal%20gap%20report_May22.pdf). At that time, the TUC had estimated that 3.6 million people were in the various forms of insecure work. *Landman Economics* analysis found that the Treasury takes in around £10 billion less a year from those in low paid self-employment and on zero hours contracts than if they had been employed. There were two components behind this reduction:

Firstly, there is an earnings penalty for insecure work. Self-employed workers and those on insecure contracts like zero-hours contracts earn considerably less than employees more generally.

This feeds through to the public finances because lower earnings mean that the government receives less in income tax and national insurance contributions. Also, workers on lower earnings receive more in social security payments.

Secondly, the treatment of self-employed workers for income tax and national insurance purposes means that a self-employed worker pays less tax than an employee on comparable earnings.

Insecure Work and Safety

Another troubling by-product of increased casualisation is the inevitable reluctance of insecure workers to speak up over issues of importance such as safety, environmental damage, or financial mismanagement, for fear of having their hours reduced, or their employment ended.

According to the Labour Research Department (<https://www.lrdpublications.org.uk/publications.php?pub=BK&iss=1733&id=idp1777152>),

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.”

Reviewing the evidence, the Select Committee concluded that stability of work and funding means that Network Rail “does not have a business need for the flexibility that zero hours contracts provide. Its only justification in using them must therefore be to reduce costs”.

Precarity of employment can be directly linked to the underreporting of work-related injuries and illnesses. Similarly, the risk of not being paid when off sick, or of losing future shifts incentivise workers “to work when not fully fit”. COVID-19 brought this issue to light starkly. The minimum earnings barrier to qualifying for Statutory Sick Pay and low level of the payments exacerbate this problem.

Profile of Insecure Workers

Another analysis of the figures by *The Work Foundation*, a think tank based in Lancaster University’s Management School, estimates that in 2023, 6.8 million people (21.4%) in the UK were in severely insecure work. (<https://www.lancaster.ac.uk/media/lancaster-university/content-assets/images/lums/work-foundation/UKInsecureWorkIndex2024.pdf>)

The Work Foundation has developed a new index based on three dimensions: contractual insecurity, financial insecurity and access to workers’ rights. Within these dimensions, they have identified job characteristics that reflect insecurity and estimated the extent to which each of these characteristics contributes to overall levels of insecurity.

According to *The Work Foundation*, the increase in the experience of severely insecure work is being felt more strongly by workers who experience other forms of labour market disadvantage. (<https://www.lancaster.ac.uk/lums/research/news/new-analysis-reveals-uk-continues-to-fall-behind-rest-of-world-as-zero-hour-contracts-reach-record-numbers-and-its-young-people-bearing-the-brunt>)

- 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.

The Work Foundation have also identified that 1.45 million disabled UK workers are now in severely insecure work.

According to the Nevin Economic Research Institute (NERI), over one in three workers in Northern Ireland are employed in a more insecure form of employment, than that offered by the traditional standard. 20% of workers earn below the real living wage. The accommodation and food sector is particularly at risk of low pay, with 75% of workers earning below the real living wage. (NERI Decent Work in Northern Ireland: The challenge of insecurity and low pay https://www.neriinstitute.net/sites/default/files/research/2019/neri_research_inbrief_low_pay_and_insecure_lw_final.pdf)

Insecure work is most prevalent in the same groups of workers as referred to above, young, women, and workers from minority ethnic communities.

Predictable income is probably the most important aspect of work, as it is the basis for planning life. Not knowing what you will be earning from day to day can be a life lived in fear and anxiety, particularly if you have a family depending on your wage. In such a precarious lifestyle, you are unable to budget, get a mortgage or a bank loan, you struggle to pay bills and rent, you are unable to plan for life outside of work if you have childcare or other caring responsibilities. Fluctuating hours mean that it is difficult to claim in-work benefits, and for many people, when they do get benefits, they are delayed thus intensifying the hardship. In the workplace, you must take whatever work you are offered for fear that you will not be offered another shift. You suffer all sorts of mistreatment, as you are afraid that, if you complain, the shifts will stop. That is the situation that many insecure workers find themselves in today in NI.

In addition to this, insecure workers are left vulnerable as they may 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.

Insecure workers often miss out on training, upskilling and career progression opportunities. Many employers regard insecure contract workers as not being part of the “core business”, and therefore not worth investing in. This can lead to insecure workers being trapped in low-paying, precarious jobs, or worse, forced out of work altogether as technology rapidly changes the world of work.

Insecure Work in the Public Sector

Insecure Work is not just a problem in the private sector.

In November 2020, public-spending chiefs warned (<https://www.civilserviceworld.com/professions/article/vacancy-crisis-sees-nics-agency-staff-spending-hit-46m-a-year>) that a “root-and-branch” review of recruitment into the Northern Ireland Civil Service (NICS) was required to deal with spiralling spending on agency staff, which had more than doubled to £46m over the previous two years.

According to NISRA, (<https://www.nisra.gov.uk/system/files/statistics/Employment-In-The-Northern-Ireland-Civil-Service-Quarterly-Report-July-2023.pdf>

At the end of June 2023, the number of Agency staff working in the NICS was 3,220. This figure includes 1,204 Agency staff working in the NICS on contracts for the Department for Work and Pensions in Great Britain.

But the NICS Workforce Strategy, Data and Analytics Branch records do not include Agency Workers recruited directly by individual Departments.

Meanwhile, Whitehall spend on agency staff over a 3-year period was £3 billion. (<https://www.independent.co.uk/news/uk/politics/civil-service-agency-workers-casualisation-b2197768.html>)

At the end of 2016, NIPSA published a report looking at the scale and cost of the deployment of agency staff in three areas of the public sector – the Northern Ireland Housing Executive, Health/Social Care and the NICS. The report estimates that that between 2010 and 2016 over

£369 million was spent on the provision of agency workers. (<https://nipsa.org.uk/publications/40097-web.pdf>)

In his Written Ministerial Statement, on 13 October 2022, Robin Swan stated,

(<https://www.niassembly.gov.uk/assembly-business/official-report/written-ministerial-statements/department-of-health---reducing-expenditure-on-agency-staff-in-hsc/>)

In 2012/13, the HSC spent approximately £69m on agency staff and by 2019/20 this had risen to £255m. The total expenditure in 2021/22 had increased further to £320m, however much of this increase was driven by the need to sustain services during the Covid-19 pandemic.

Unions have identified public sector outsourcing as a key driver of casualisation. UNISON have successfully campaigned to move workers from agency employment to Health Trust contracts. Unions also campaign and negotiate to encourage contractors and end users to offer only contracts based on regular and predictable hours, with terms and conditions matching those of direct permanent staff.

However, job insecurity is still a significant issue in the health and social care sectors.

For example, according to the Northern Ireland Social Care Council, 2023 report *Making it Better: The Voice of Social Care Workers* (<https://niscc.info/app/uploads/2023/09/Making-it-Better-for-SCWs19.5.23.pdf>),

Pay- this was the number one factor commented on, that the pay is not commensurate with the work and responsibilities of social care. Some respondents also highlighted issues such as using their own car, not being paid for travel time and expenses. Essentially, they reported undertaking work without pay, and incurring costs that should be absorbed by their employers. Some discussed the lack of unsocial hours payments; sickness pay and annual leave entitlement.

Contracts and hours of work- The number of hours worked was reported by some as the worst thing about working in social care. This was expressed more often in terms of having to work long or unsocial hours:

- *Long hours often beyond contracted hours.*
- *Temporary contracts.*
- *Unpaid breaks.*

However, problems with getting enough working hours, particularly for those on zero hours contracts was also of concern. A NISCC employer survey estimates the range of hours worked is 10-60 hours, yet one-fifth of Trust staff and many independent sector workers are on 'as and when required'/bank contracts which provide for no minimum or guaranteed hours.

There are also profound implications for those who depend on the services that ZHC workers provide, given their potential to negatively impact on morale, team cohesion, staff turnover and service quality.

Insecure work contracts, including ZHCs, are also common in the education sector affecting, for example supply teachers. And they have become rife in the further and higher education sectors purely to cut costs. Unions have been campaigning for more secure forms of employment for education staff in the face of these entirely unacceptable practices.

NIC-ICTU and affiliated unions are also calling for far greater use to be made of public procurement powers to promote good jobs with decent terms and conditions and direct employment.

NIC-ICTU recommend using public procurement to improve employment models. Requirements should be introduced to 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.

Insecure work – Temporary Agency Workers

As temporary agency workers fall into the ‘worker’ employment status, they are only entitled to some basic employment rights (excluding, for example, protection from unfair dismissal or redundancy pay), although they can be entitled to some of the workplace conditions offered to direct employees in their job placement. As agency workers lack of entitlement to protection from unfair dismissal means that they can be sacked at any time – a main feature of their insecurity.

In NI, where the “Swedish Derogation” still applies (unlike Britain), after 12 weeks of working in the same role, agency workers should gain the same rate of pay (and other benefits) as equivalent employees in the organisation where they are placed.

Any **employee** on fixed-term contracts for 4 or more years has the right to become a permanent employee, unless the employer can show there is a good business reason not to do so.

However, temporary agency workers do not qualify for this right and as such can remain in the same job, doing the same work as permanent employees, for years without employment security and without entitlement to the full spectrum of employment rights. Unfortunately, this is the case for many temporary agency workers across the NI public sector.

NIC-ICTU recommend that the Swedish Derogation and the accompanying ‘pay between assignments contracts’ be abolished. NIC-ICTU believe that there is not justification for workers to be on insecure temporary agency contracts for multiple years in the same job placement. **NIC-ICTU, therefore, recommend** that all temporary and agency workers who are working in the same job for more than one year should have the right to request that they become permanent employees of the organisation they have been placed with. The organisation should not be able to refuse the request without objective justification, and it should not have to provide any fees to the agency that provided the worker.

Likewise, **NIC-ICTU recommend** that any employee on fixed-term contracts for one or more years should automatically become a permanent employee if they request it.

NIC-ICTU recommend that the right to a written statement and to itemised payslips should be extended to all workers. But these rights, by themselves, will not change the balance of power in the workplace or provide workers with increased choice over the type of work available to them.

Enforcement of Employment Rights

An argument could be made that here 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 North of 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 North of 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 workers (https://webapps.ilo.org/public/english/revue/download/pdf/s3_weil.pdf)

The UK is potentially breaching 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”.

Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, Article 388. (https://assets.publishing.service.gov.uk/media/608ae0c0d3bf7f0136332887/TS_8.2021_UK_EU_EAEC_Trade_and_Cooperation_Agreement.pdf)

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 North of 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 North of 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 North of Ireland.
- As there is no licensing for recruitment agencies in the North of 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.
- 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.

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 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.

The priority for policy makers 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 thereby reducing poverty levels.

NIC-ICTU believe that in addition to reform of the employment tribunal system, we 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.

Also, 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 recommend the following:

1. Put an end to the injustice of a three-tier workforce - Ensure that all workers benefit from the same employment rights, including protection from unfair dismissal, and statutory redundancy pay, by creating a single "worker" status for all but the genuinely self-employed. Create a statutory presumption that all individuals will qualify as 'worker' under the new definition, unless the employer can demonstrate in an employment tribunal, should a dispute arise, that they are genuinely self-employed.
2. Day one employment rights - 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.
3. Improve rights to genuine flexibility of working arrangements through,
 - 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.
4. Recognise the Role of Trade Unions in promoting Good Jobs - Introduce the measures referred to at Theme C of this response, that will loosen the restrictions on trade unions and allow them access to workers to stimulate collective bargaining. And also, look to develop models of sectoral collective bargaining.
5. Temporary Workers to Become Permanent - The Swedish Derogation and the accompanying 'pay between assignments contracts' be abolished. All temporary and agency workers who are working in the same job for more than one year should have the right to request that they become permanent employees of the organisation they have been placed with. The organisation should not be able to refuse the request without objective justification, and it

should not have to provide any fees to the agency that provided the worker. Likewise, any employee on fixed-term contracts for one or more years should automatically become a permanent employee if requested.

6. Using Public Procurement to Improve Employment Models - 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.
7. Enforcing rights- 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 recommend that the employment bill should contain the following:
 - Extend the time limits for lodging tribunal cases to at least 6 months.
 - Introduce the power for employment tribunals to make recommendations where appropriate when employers are found to have breached statutory employment rights.
 - 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.

A20 Do you consider that bogus self-employment is an issue of concern?

- Yes
- No
- Don't know
- No opinion

If so, please provide details.

Yes.

Someone who is genuinely self-employed is neither a worker nor an employee and does not qualify for statutory employment rights, and health and safety protections are weak. Instead, they are a business operating on their own account.

The genuinely self-employed include small businesses, and highly-skilled workers and professional individuals (whose high pay can cushion them when they are not working) 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).

In other cases, unscrupulous employers insist that those working for them must regard themselves as self-employed, or they produce documents that attempt to show that someone is self-employed, when in fact they are a worker.

These practices are often deliberate to deny the workers statutory rights, such as the National Minimum/Living Wage, holiday pay, sick pay, pension, family friendly benefits, personal protection equipment, and other rights. 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 viability of the tax system on which the very existence of the welfare state is based - providing the educated, skilled and healthy workers that employers rely on.

There is an immediate saving of 13.8% of the wage bill for employers that hire self-employed workers, because they don't have to pay any National Insurance for them. Self-employed workers themselves pay a reduced rate on National Insurance Contributions.

Immoral employers extol the tax and national insurance benefits of self-employment to entice workers into self-employment. Instead of wages, “company directors” (workers) can pay themselves in dividends, which are taxed at a lower rate than earned income.

While some people move into self-employment as a positive choice, others are forced into low-paid self-employment because they cannot find suitable work.

According to the *Resolution Foundation*, low pay (below two-thirds of the median) and volatility in working hours is widespread among the self-employed, who do not benefit from the national minimum wage and whose numbers have increased over the past 20 years. (<https://economy2030.resolutionfoundation.org/reports/low-pay-britain-2022/>)

In the 2019-20, 38 per cent of self-employed workers had low hourly pay (on the two-thirds of median measure), compared to 14 per cent of employees. This amounts to 1.6 million self-employed workers on low hourly pay, a third of the total low hourly paid workforce. This share has grown rapidly over the past 20 years. And while low pay is falling for employees, it is flat among the self-employed – and rising when it comes to low weekly pay.

Bogus self-employment boosts employers' profits, but society ends up supporting people on low wages through in-work welfare benefits.

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. (Another relatively new and complicated aspect of this model is the 'platform economy' referring to transactions that take place through digital means, for example translation work.)

Even the public sector has been caught utilising bogus self-employment. In March 2019 an employment tribunal ruled that a group of 27 educators involved in a legal case with the National Gallery in London were employed as "workers" and not self-employed as the National Gallery tried to claim.

Much like the emerging gig economy, the construction industry has been allowed to utilise an insecure self-employment labour model for decades, leading to rampant bogus self-employment within the sector.

In 2023, a Freedom of Information request by Unite the Union, (<https://www.unitetheunion.org/news-events/news/2023/august/shock-rise-in-bogus-self-employment-in-construction>) revealed that 1,206 million construction workers were paid via the Construction Industry Scheme (CIS) during 2022/23. This was a 15 per cent increase on the figure for 2021/21 when 1,047 million workers were paid via the scheme, a 7.5 per cent increase on the previous year. According to Unite, a very large percentage of the workers operating under CIS are bogusly self-employed, and the alarming, the increase in CIS workers is not reflective of any increase in employment in the industry.

CIS is a standalone self-employed taxation scheme, unique to the construction industry. Unlike other forms of self-employment, workers are taxed at source. The big advantage for employers is that as workers are officially self-employed, they are not required to pay employers' national insurance contributions nor provide employment rights, as outlined above.

The very high levels of self-employment and bogus self-employment in the industry affects training, skills development and productivity across the sector, as a direct result of constantly engaging and then dismissing workers once a particular job has been completed.

Bogus self-employment also has serious implications for construction site safety. The union claims that sites using bogus self-employment often have higher accident rates. These sites tend not to have independent safety reps. A higher staff turnover also means that safety messages are lost, not heard, or fragmented, and the risk of being fired without warning makes a falsely self-employed worker far less likely to raise safety concerns.

But a report by Professor Howard Gospel, commissioned by the Joint Industry Board, shows that the steady growth in non-direct employment in the UK's construction industry has been the result of choices, not by accident (*Direct Employment, a Study of Economic, Business and Social Outcomes Based on the Electrical Contracting Sector*).

(see

<https://www.lrdpublications.org.uk/printarticle.php?pub=WR&iss=2078&id=idm139690097191728> and <https://www.ier.org.uk/comments/the-original-gig-workers-the-fight-against-bogus-self-employment-in-the-construction-industry/>)

Gospel argues that it cannot be explained away as some sort of “natural” phenomenon or the “inevitable” consequence of increased market competition. It is the result of specific actions and decisions taken over many years by industry clients, contractors, and successive governments – not least in the key policy areas of procurement, tax, social security, and employment law.

Gospel also points out that, while there may be short-term financial gains for employers by using self-employment models, the disadvantages for the future of the industry are potentially devastating. He warns that a lack of direct employment is disastrous for apprentice training (which is the industry's lifeblood), stunts career progression and stymies the industry's capacity to adopt new technologies and techniques.

Gospel's solutions are two-fold. Firstly, clients and large contractors need to show leadership, by only awarding contracts to companies that directly employ their workforce and that the same rules are maintained throughout the supply chain.

Secondly, the government needs to intervene to make changes to the tax system to remove the artificial incentive of bogus self-employment.

At the moment the ways for workers to challenge being falsely designated as self-employed are extremely limited. Taking a case to an employment tribunal can be beyond the reach of many low paid vulnerable workers, as mentioned elsewhere in this document. As the cases of the *Uber drivers*, *Pimlico Plumbers* and *Deliveroo* demonstrate legal claims can be resisted by employers with considerable resources and litigation can be complex, protracted and very costly.

A better solution is to change the law.

Bogus self-employment is made more common by the lack of consistency and clarity around the definition of self-employment: employment and tax law take different approaches. As referred to elsewhere in this document, **NIC-ICTU are recommending** that the new bill should legislate to ensure that all workers benefit from the same employment rights, including protection from unfair dismissal, and statutory redundancy pay, by creating a single “worker” status for all but the genuinely self-employed. It should also create a statutory presumption that all individuals will qualify as ‘worker’ under the new definition, unless the employer can demonstrate in an employment tribunal, should a dispute arise, that they are genuinely self-employed.

The adoption by the EU of the *Platform Workers Directive*, is a welcome move in this direction.

Government also needs to make greater use of its public procurement powers to prevent the abuse of 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.

Tackling bogus self-employment will help the government by ensuring it receives the tax and National Insurance it is due; it will help responsible businesses who are undercut by rivals; and it will ensure that workers get the basic protections they are legally entitled to.

Self-employment should be a choice made by the worker, not the employer.

A21 Are there sectors where bogus self-employment might be particularly prevalent?

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. (Another relatively new and complicated aspect of this model is the ‘platform economy’ referring to transactions that take place through digital means, for example translation work.)

Prior to the onset of the coronavirus pandemic, self-employment in the UK had been steadily increasing, peaking at 5 million people in October to December 2019, amounting to 15.3% of total employment. Understandably, during the pandemic and after the numbers fell back to below 4.2 million. However, they are increasing again.

According to the NI Assembly briefing paper, *Government data reporting on self-employment trends from 2019–2024* (<https://www.niassembly.gov.uk/globalassets/documents/raise/publications/2022-2027/2024/economy/1424.pdf>),

At the Northern Ireland level, over the same period, the Northern Ireland Statistical Research Agency (NISRA) reported that self-employment also declined steadily. However, due to the lack of available data, it is not possible to say with any degree of certainty, that reclassification into “employee” status out of “self-employed” status to take advantage of the Furlough Scheme was a factor in this decline.

And,

However, the available governmental data for Northern Ireland shows a small recovery in the numbers of people self-identifying as self-employed since June 2021.

Despite the huge growth of self-employment, and bogus self-employment, setting aside the impact of the pandemic, there has been very little research on self-employment in NI relating to where it is growing, the pay and conditions of people falling into this category, and the extent of bogus self-employment where workers and the Exchequer end up subsidising unscrupulous employers. There is an urgent need for research of this type.

In 2021 the Communications Workers Union (CWU) ran a survey of drivers (both employed and self-employed) to examine their experiences. (<https://cwunitb.org/you-should-know/cwu-report-bogus-self-employment-in-the-parcel-industry/>)

In the postal/courier sector, due to sustained growth in the parcel delivery business and the liberalisation of the postal market, there has been a marked increase in competition from low-cost competitors entering the market. This, in its turn, has led to an increase in atypical employment relationships such as self-employment, sub-contracting and casualisation.

The CWU's survey found that,

While self-employed drivers were slightly more likely than their employed counterparts to rate their job as flexible, it was overwhelmingly clear that this flexibility operates in a very constrained environment.

Drivers routinely told of unilateral cuts to their pay, broken promises by management, unfair dismissals in their workplace and blatant disregard for drivers' wellbeing. Lack of sick pay, guaranteed hours and holidays meant that drivers were routinely left with no option to work whilst ill, injured or during family crises. CWU interviewees told horror stories of working through broken bones or the deaths of close family members.

It was clear from the survey and the interviews that many of the tensions that self-employed drivers faced was a function of their employment status. Pay-per-delivery or per-stop incentivises intense workloads and reckless driving; many drivers spoke of having no choice but to speed to keep up with demand. The implementation of the SE (Self-Employed) -plus model in Hermes has led to confusion amongst drivers, with many reporting being "blackmailed" into signing up to this new scheme.

A22 Do you have any comments about the employment relationships of those working on digital platforms?

The rise of the platform economy owes at least as much to the ability of operators to exploit inadequate labour law as it is on clever new technology.

Previously, gig economy platforms relied on complex, artificial contracts to conceal a true employment relationship to deny statutory protections. Today, they conceal the relationship in opaque algorithmic management controls.

The current legal system requires workers to prove they are in an employment relationship if they seek to challenge for employment classification. The complexity has meant businesses and workers are reliant on lengthy legal processes to resolve issues. Workers had no choice but to litigate because there has simply been no government enforcement. However, most workers are not in a position to mount these long, costly and complicated legal challenges.

NIC-ICTU believes that the recommendations within this response and our accompanying policy document will help improve the situation for platform workers, specifically,

- 1. Put an End to the Injustice of a Three-Tier Workforce** - Ensure that all workers benefit from the same employment rights, including protection from unfair dismissal, and statutory redundancy pay, by creating a single "worker" status for all but the genuinely self-employed. Create a statutory presumption that all individuals will qualify as 'worker' under the new definition, unless the employer can demonstrate in an employment tribunal, should a dispute arise, that they are genuinely self-employed.
- 2. Day One Employment Rights** - 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.

Both recommendations are in line with policy proposals of the Labour Government, and the first point aligns with the EU Platform Work directive. **NIC-ICTU also recommend** that all the provisions of the Platform Work directive should be adopted in NI.

NIC-ICTU would be keen to engage with DfE, employer's organisations, employment lawyers and experts to examine the impact of platform working and what AI and new technologies mean for work, jobs and skills, and how to promote best practice in safeguarding against the invasion of privacy through surveillance technology, spyware and discriminatory algorithmic decision making.

A23 Do you have any comments about the three-tier regime of employment status classification? (i.e. employee, worker and self-employed).

Unlike the two-tier employment status categories seen in many countries of employees and the self-employed, UK employment law recognises three types of employment status: "employees", the "workers" and "self-employed contractors."

Employees are entitled to a wide scope of employment rights (after relevant qualifying periods) and protections not afforded to those who are genuinely self-employed. "Workers" also known as "limb (b) workers", are an intermediary category that benefit from some but not all of the statutory rights and protections afforded to employees. Crucially workers are not protected from unfair dismissal, redundancy pay, and do not have the right to request flexible working arrangements (although the *Workers (Predictable Terms and Conditions) Act 2023* aims when it comes into force in Britain to address this). As such, workers are vulnerable to low pay, long hours, exploitation, and insecure contracts, such ZHCs.

This retrograde step in employment legislation is a relatively recent phenomenon. The Employment Rights Act 1996 and the Trade Union and Labour Relations (Consolidation) Act 1992 helped establish different types of worker with a varying degree of rights. The introduction of "worker" status allowed for the proliferation in insecure work.

Employment status is a notoriously complex legal area and court and tribunal decisions very much depend on the facts and circumstances of each case. This is evidenced by evolving case law involving companies like Uber and Deliveroo over whether people are categorised as workers or self-employed.

This overly complex employment status framework confuses both employers and workers, meaning that they must turn to already overloaded employment tribunal system to provide clarity at the expense of the public purse.

The inadequacies of the existing legal framework have encouraged the development of insecure forms of work. Technological advances, and the emergence of digital platforms acting as intermediaries between workers and their principals or customers, have further fragmented an already complex modern labour market.

NIC-ICTU believe that it is in the interests of everyone to clarify, simplify and expand the scope of the application of employment law statutes 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. The new definition should also cover other workers currently classified or misclassified as self-employed, as long as they are not genuinely operating a business undertaking on their own account. NIC-ICTU also recommend the creation of a statutory presumption that all individuals will qualify as 'worker'

under the new definition, unless the employer can demonstrate in an employment tribunal, should a dispute arise, that they are genuinely self-employed.

The British 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.

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 would like to see replicated in the North of Ireland, the British 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.

However, currently under employment law in Britain there is no right to flexible working, but instead, a right for employees, not workers, to “request” flexible working arrangements from the employer.

Low levels of flexibility are in large part due to the individualised nature of the law based in a right to request with employers being able to reject requests with ease. TUC research in 2019 showed that three in 10 flexible working requests were turned down (<https://www.tuc.org.uk/news/one-three-flexible-working-requests-turned-down-tuc-poll-reveals>).

TUC polling of fathers and partners entitled to paternity leave this year found that 50 per cent did not get any or all of the flexibility they asked for at work (<https://www.tuc.org.uk/news/half-new-dads-dont-get-flexibility-they-ask-work-tuc>).

This lack of access to decent flexible work is a reason that some workers turn to insecure employment as this is the only way they can manage their work hours alongside their other commitments. 14 per cent of workers on a zero-hour contract polled by the TUC in 2021 said the flexibility to care for children or other people was the reason they worked a ZHC, and we know anecdotally from teaching and healthcare unions that a lack of flexibility is pushing them out of the profession into supply or agency work with worse terms and conditions.

NIC-ICTU believes that for the North of Ireland all roles should be deemed suitable for flexible working a day one. A right to request flexible working arrangements should not be rejected by an employer unless it can be shown that the unavailability of flexible working is a proportionate means of achieving a legitimate aim, which is a higher hurdle for employers to meet than currently with the British legislation. Thus, flexible working legislation would reflect ‘objective justification’ as set out in the Equality Act 2010 (currently only applicable in Britain).

Potentially, the proposal to remove the unfair dismissal qualifying period, as part of the introduction of ‘day one’ employment rights, will be the most controversial. It should be noted that, the British government has said, on the issue of day one employment rights, that employers

will still be able to use probationary periods while they assess new hires, although it is not clear yet how this will work in practice.

Concerned employers should take comfort in the fact that if protection from unfair dismissal becomes a day one right it will still be relatively easy to dismiss a worker, if the procedures are followed correctly, on the grounds of conduct and capability to do the job, amongst other reasons.

Some employers have already indicated a positive response to the proposal. According to data from the CIPD's spring 2024 Labour Market Outlook survey. (<https://www.peoplemanagement.co.uk/article/1882113/labours-plan-day-one-rights-%E2%80%93-getting-balance-right>)

half of employers (48 per cent) surveyed also reported potential positive impacts of reducing the qualifying period. For example, a quarter (25 per cent) said it would encourage them to improve how they manage performance and a similar proportion thought that it would prompt them to improve how conflict is prevented and managed (24 per cent).

A further 23 per cent of businesses said it would encourage them to invest more in training managers to manage people properly, and a fifth (20 per cent) said it would prompt them to enhance the support they provide for the health and wellbeing of their people.

A24 Do you think legislative intervention is required to address any aspects of employment status misclassification?

- Yes
- No
- Don't know
- No opinion

If so, what would this look like?

Yes.

NIC-ICTU recommend that the new bill put an end to the injustice of a three-tier workforce by ensuring that all workers benefit from the same employment rights, including protection from unfair dismissal, by creating a single “worker” status for all but the genuinely self-employed. It should also create a statutory presumption that all individuals will qualify as ‘worker’ under the new definition, unless the employer can demonstrate in an employment tribunal, should a dispute arise, that they are genuinely self-employed.

NIC-ICTU also recommends that those in self-employment, whilst not qualifying for full employment protection, should still benefit from an improved safety-net of work-related benefits, including statutory maternity, paternity and adoption pay, statutory sick pay and auto-enrolment into pensions.

A25 Do you think there might be any adverse consequences to legislating on employment rights status, without any further alignment with the tax system?

NIC-ICTU recognises that the existence of different but overlapping statuses in employment, tax and social security legislation can cause confusion and uncertainty for employers, workers and unions. But the NIC-ICTU does not currently support the alignment of the tests.

The various tests serve different policy objectives and there is a risk that aligning tests could have negative policy outcomes. For example, the current binary status tests in tax law have proved a relatively blunt tool. They tend to lack the wider nuances found in employment related case law. Extending the existing tax status tests to employment law could mean workers would inadvertently lose out on rights.

There are also legitimate reasons why some workers may be classified as 'self-employed' for tax purposes but should still qualify for employment rights, for example in the entertainment industry.

However, NIC-ICTU also recognises that the current tax system creates clear incentives for employers to hire staff on a self-employed basis. Self-employment is taxed significantly more lightly than employment. The tax liabilities for employers hiring the self-employed is also far lower, with those choosing to take on an employee paying employer National Insurance Contributions (NICs) of 13.8 per cent, while those employing someone as a contractor pay no NICs at all.

Employers can also achieve significant cost advantages by hiring staff on a zero-hours or short-hours basis. For example:

- The lower earnings limit for the payment of employer NICs (known as the secondary threshold) can be got around if employers employ staff for fewer than 20 hours a week on the National Living Wage they will be exempt from paying any NICs.
- Employers who pay staff less than the lower earnings limit can avoid certain social security benefits, including sick pay and maternity and paternity pay.

The UK government should carry out a dedicated review of the tax and benefits system with a view to:

- Removing any financial incentives which are driving the growth in self-employment and insecure forms of work, including zero hours contracts and short hours working.
- Ensuring that all forms of employment are fairly taxed.

A26 Would greater guidance on the different employment status classifications assist employers in determining the correct employment status classification [and help workers enforce their rights?](#)

- Yes
- No
- Don't know
- No opinion

Employment Rights: Dismissal and Re-Engagement (Fire and Re-Hire)

A27 Do you agree that there is a need for greater regulation on dismissal and re-engagement (fire and re-hire) practices?

- Yes
- No
- Don't know
- No opinion

Yes.

The sacking 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.

However, as Professor Alan Bogg, Professor of Law at the University of Bristol, has argued, that under the current law the balance of power lies too much with the employer (<https://researchbriefings.files.parliament.uk/documents/CBP-9556/CBP-9556.pdf>):

In short, a determined employer with the right legal advice can achieve its goal of reducing terms and conditions with relative ease. English law provides the signposts to navigate the way, abetted by a wide scope for legally compliant business reorganization dismissals. In other words, the contractual bargain is sacrosanct in English law except when it runs up against the employer's powers of dismissal, the totemic managerial prerogative of the English common law.

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 Labour Relations Agency (LRA) advisory guide, *Agreeing and Changing Contracts of Employment* (<https://www.lra.org.uk/sites/default/files/2020-05/Advisoryguide-varyingacontractofemployment%20May%202020%20Final.pdf>) provides a detailed overview of the different ways in which a contract of employment can be changed, along with advice for both employers to consider when dealing with contract changes.

While many unions here report that threats to fire and rehire workers are commonplace, we do not have accurate data on the extent of fire and rehire practices in NI (although the *P&O Ferries* case alone should be enough reason to legislate to stop such practices). As the *Department for the Economy* consultation document helpfully provides,

A Trade Union Congress (TUC) report from January 2021¹² stated that one in 10 workers in the UK had been affected. A CIPD survey in the same period found that, of 2000 employers surveyed, 19%, "...changed terms and conditions through consultation, negotiation and voluntary agreement", with 3% of employers changing the above through dismissing staff and rehiring them on new terms.

Some recent high-profile cases are worth drawing attention to.

In June 2020, the House of Commons Transport Committee published a report criticising the use of fire and rehire tactics by British Airways as "a national disgrace". The Government response to the inquiry in September 2020 stated that:

Ultimately, private businesses will need to make their own decisions on how they adjust their businesses. However, the Government has been clear that employers should always treat employees fairly and in a spirit of partnership.

Another long running case which started in 2021 when GMB union members took strike action to protect workers threatened with fire and rehire by *Centrica (British Gas)*.

Other attempts at fire and rehire of staff that received significant media coverage include *Jacobs Douwe Egberts* and *Tesco's*.

It should be noted that all the above companies are highly profitable organisations that had no justification for behaving as they did.

Then there was P&O Ferries who sacked 786 of its permanent employees without notice or prior consultation, on 17 March 2022. The company announced plans to move to a new operating model using third-party insecure agency workers to crew its ships.

As Professor Alan Bogg described it:

There is no question—this isn't a fire and rehire situation, but this is fire and rehire on steroids. These are things that are on the same spectrum of contractual deregulation.

The previous British government attempted to escape the public outrage over the actions of P&O Ferries by proposing a code of practice on dismissal and re-engagement. But codes of practice are guidelines and rules that employers are expected to implement in the workplace. Legislation, on the other hand, refers not to suggestions or recommendations but laws that must be followed. A code of practice 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 current position is far too permissive in allowing fire and rehire without effective independent scrutiny of the employer's decision-making. If we are to take contractual bargains seriously, this must hold good for employees as much as employers.

A28 Do you think that a Code of Practice would be sufficient to protect workers' rights, and balance the needs of employers who find businesses in genuine economic distress?

- Yes
- No
- Don't know
- No opinion

No.

The previous British government attempted to escape the public outrage over the actions of P&O Ferries by proposing a code of practice on dismissal and re-engagement. But codes of practice are guidelines and rules that employers are expected to implement in the workplace. Legislation, on the other hand, refers not to suggestions or recommendations but laws that must be followed. A code of practice 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 *Labour Relations Agency* (LRA) already has a advisory guides on redundancy consultations and changing contracts which should be followed. *Agreeing and Changing Contracts of Employment* (<https://www.lra.org.uk/sites/default/files/2020-05/Advisoryguide-varyingacontractofemployment%20May%202020%20Final.pdf>) provides a detailed overview of the different ways in which a contract of employment can be changed, along with advice for both employers to consider when dealing with contract changes.

A29 If no to question A28, do you think that the use of statutory provisions would be sufficient to protect workers' rights, and balance the needs of employers who find businesses in genuine economic distress?

- Yes (see question A31 below)
- No (see question A30 below)

Yes.

NIC-ICTU would emphasise that in the examples provided to question A27, all the employers are highly profitable organisations who were not in 'genuine economic distress' when they tried to fire and rehire their workers, or in the case of P&O Ferries sacking workers and replacing them with agency workers.

The amendments to the statutory provisions recommended by NIC-ICTU at A31, will help to protect workers from fire and rehire practices. They are also aimed at helping employers who find their businesses in genuine economic distress.

NIC-ICTU believes that if good employers are honest and transparent with their workforce and engage early and meaningfully with them, solutions that are mutually acceptable can be found when the business is in genuine distress.

This is one of the benefits of trade unions and collective bargaining. Unions have vast experience and expertise of working with employers to save businesses, jobs and skills. Combining this knowledge with ideas from the workforce and having employers who are receptive to exploring novel suggestions at times of need can save the business while protecting workers terms and conditions.

Workers want the organisations that they work for to succeed too. Thriving businesses give them employment security and the possibility to increase their pay and conditions. When employers treat their workforce fairly and allow them an independent voice, through collective bargaining with their trade unions, workers will respond positively in times of genuine business crisis.

Through building trust with the workforce by recognising and working with unions, employers can find that, at times when the existence of the business is threatened and all other options have been fully exhausted, the workforce may consider unpalatable solutions such as a temporary variation of contracts until the business stabilises, as alternative to closure.

Early and full awareness of the business situation allows for effective intervention to explore alternative strategies.

The recommendations NIC-ICTU make at A31, regarding rights to meaningful and timely consultations, are aimed at protecting workers jobs, terms and conditions in businesses that do not yet see the value of such a relationship with their workforce and its trade union.

However, if the employer is refusing to genuinely consult to find solutions, or is unscrupulously simply attempting to increase profits at the expense of the workers by threatening to fire and rehire or replace, as was the case in the examples referred to at A27, then workers need the legislative changes proposed by the rest of NIC-ICTU's recommendations to protect them.

A30 If no to question A29, please provide details of other actions you suggest should be taken?

A31 If yes to question A29, please indicate what statutory provisions should be introduced to protect workers from 'fire and rehire' practices?

NIC-ICTU believe that it is time to legislate to close the loopholes that allow such crooked behaviour and create 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.

NIC-ICTU recommend that the legislative changes at points 1 to 8, 11, and 12, below, should also apply to all potential redundancy situations as well as in cases where hire and rehire is threatened.

Early awareness of the business situation allows for effective intervention to explore alternative strategies to avoid redundancies/fire and rehire and thereby, retain skills. Case law has

established that redundancies are “proposed” when the employer “contemplates” a strategic or commercial decision which, if taken, would inevitably lead to redundancies. Knowledge of caselaw is not widespread and all too often the decision to implement redundancies is taken before the consultation process begins. The literal meaning of the word proposing suggests the employer has reached a later stage in the planning process than if the employer is merely contemplating.

NIC-ICTU recommend that the new bill should amend existing legislation to:

1. Ensure that the duty of an employer to consult representatives of employees must commence when the employer is “contemplating” redundancies/fire and rehire rather than “proposing to dismiss as redundant/fire and rehire.”
2. 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 redundancy/dismissal and re-engagement cases.
3. Consultations must start 90-days before any dismissal process commences.
4. State explicitly that that no notices of dismissal can be given until the consultation process is completed.
5. Likewise, state explicitly that no workers should be identified through, for example the introduction of selection criteria or the defining of roles, until the consultation process is completed.
6. Consultations must be thorough, meaningful, and in good faith with a view to reaching an agreement with the requirement on the employer to adequately demonstrate a business case for failing to accept proposals made by employee representatives to avoid compulsory redundancies/fire and rehire.
7. All information must be provided to the representatives on the economic state of the organisation without which the representatives would be to a material extent impeded in carrying on meaningful consultation with the employer.
8. Consultations to avoid redundancies/fire and rehire should not be restricted unnecessarily to units within the business enterprise.
9. 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.
10. 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.
11. Provide that the redundancy/fire and rehire 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. It should be highly relevant to a decision as to fairness for a tribunal to consider upon whom of the workforce those cuts would fall.
12. Provide that when assessing the reasonableness of the dismissal it is relevant to consider whether the employer had genuinely consulted with representatives in good faith with a view to reaching an agreement and had made available to the representatives all information on the economic state of the organisation without which the representatives would be to a material extent impeded in carrying on meaningful consultation with the employer.

13. Provide independent trade unions the right to access workplaces during working hours to meet, recruit, consult and represent the workforce.
14. 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.
15. Introduce the offence of personal liability as it relates to the statutory redundancy notification process with no maximum fine cap.

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

A32 How can government ensure that the interventions it adopts in this area do not result in business closure or mass redundancies with no option for rehire and survival of the business(es)?

The amendments to the statutory provisions recommended by NIC-ICTU at A31, will help to protect workers from fire and rehire practices. They are also aimed at helping employers who find their businesses in genuine economic distress.

NIC-ICTU believes that if good employers are honest and transparent with their workforce and engage early and meaningfully with them, solutions that are mutually acceptable can be found when the business is in genuine in distress.

This is one of the benefits of trade unions and collective bargaining. Unions have vast experience and expertise of working with employers to save businesses, jobs and skills. Combining this knowledge with ideas from the workforce and having employers who are receptive to exploring novel suggestions at times of need can save the business while protecting workers terms and conditions.

Workers want the organisations that they work for to succeed too. Thriving businesses give them employment security and the possibility to increase their pay and conditions. When employers treat their workforce fairly and allow them an independent voice, through collective bargaining with their trade unions, workers will respond positively in times of genuine business crisis.

Through building trust with the workforce by recognising and working with unions, employers can find that, at times when the existence of the business is threatened and all other options have been fully exhausted, the workforce may consider unpalatable solutions such as an agreed temporary variation of contracts until the business stabilises, as alternative to closure.

Early and full awareness of the business situation allows for effective intervention to explore alternative strategies.

The recommendations NIC-ICTU make at A31, regarding rights to meaningful and timely consultations, are aimed at protecting workers jobs, terms and conditions in businesses that do not yet see the value of such a relationship with their workforce and its trade union.

However, if the employer is refusing to genuinely consult to find solutions, or is simply and unscrupulously attempting to increase profits at the expense of the workers by threatening to fire and rehire or replace, as was the case in the examples referred to at A27, then workers need the legislative changes proposed by the rest of NIC-ICTU's recommendations to protect them.

NIC-ICTU would also recommend that the new bill includes measures to protect jobs and skills for the benefit of the economy and society by providing for occasions when an employer seeks to wind up a business or can no longer continue a business, for whatever reason, that could still be viable.

Many European countries have legal provisions and support mechanisms for business transfers to employees under the form of a cooperative. Worker cooperatives' key mission is to create and maintain sustainable jobs, in a strong local development and wealth generation perspective.

NIC-ICTU would be keen to engage with DfE and others to develop such provisions.

Employment Rights: Redundancy - Offence of Failure to Notify [No Room For Comments]

A33 Should this offence of personal liability, as it relates to the redundancy notification process be introduced?

- Yes (see question A34 below)
- No
- Don't know
- No opinion

Yes.

A34 If yes to question A33, should the maximum fine remain at £5000?

- Yes
- No
- Don't know
- No opinion

No.

A35 If no to question A33, should the maximum fine become unlimited as in Britain?

- Yes
- No
- Don't know
- No opinion

Yes.

Employment Rights: Written Statement of Particulars

A36 Do you agree that the right to a written statement of particulars should be extended to workers?

- Yes
- No
- Don't know
- No opinion

Yes.

A37 Do you agree that a written statement should be a day one right?

- Yes
- No
- Don't know
- No opinion

Yes.

A38 Do you agree that a written statement should include the following additional information:

- How long a job is expected to last, or the end date of a fixed-term contract;
- How much notice an employer and worker are required to give to terminate the agreement;
- Details of eligibility for sick leave and pay;
- Details of other types of paid leave, e.g. maternity leave and paternity leave.
- The duration and conditions of any probationary period;
- All remuneration (not just pay) - contributions in cash or kind, e.g. vouchers and lunch;
- Which specific days and times workers are required to work;
- Any training which the employer pays for and requires the worker to complete; and
- ~~Any other training which the employer requires the worker to complete but does not pay for.~~
- All of the above.

All except – 'Any other training which the employer requires the worker to complete but does not pay for.'

Agency Workers and Recruitment Agencies Pay Between Assignment Contracts – Swedish Derogation

A39 Do you agree there is a need for government action in this area?

- Yes
- No
- Don't know
- No opinion

Yes.

A40 If yes, based on what you have read, do you agree with the abolition of the Swedish Derogation?

- Yes
- No
- Don't know
- No opinion

Yes.

A41 Are you aware of this legal loophole being used?

- Yes
- No

If so, provide examples.

Yes.

We are aware of its misuse in the manufacturing and agri-food sectors.

Key Information Document for Agency Workers

A42 Do you think there is there a need for government action in this area?

- Yes
- No
- Don't know
- No opinion

Yes.

A43 Is pay transparency an issue for workseekers?

- Yes
- No
- Don't know
- No opinion

If so, please provide examples.

Yes.

Increasing pay transparency is a key part of the fight against unfair pay, helping to expose the many different forms of pay discrimination and inequality workers face.

In countries like Sweden and Finland people can find out what their colleagues earn through publicly accessible tax returns. The EU pay transparency directive will cause a shift in how companies talk about pay internally and externally helping to reduce the gender pay, earnings and pensions gaps.

A number of studies have identified that pay transparency is an issue for work seekers. For example see below.

<https://hrnews.co.uk/jobseekers-cite-lack-of-salary-transparency-as-biggest-gripe-when-job-hunting/>

New research by job search engine Adzuna has revealed that not including salary details on job ads is one of the biggest gripes when it comes to job hunting.

Jobseekers are wasting nearly six hours applying for positions they need to turn down because of the wrong salary, over 70 million hours in total, causing additional headaches during cost-of-living crisis.

It is an issue helping perpetuate inequality and the gender pay gap, with women finding lack of salary transparency a far bigger issue than men.

A44 Do you think that recruitment agencies should have to provide a Key Information Document?

- Yes
- No
- Don't know
- No opinion

Yes.

A45 Do you believe that a KID would help to make pay related information clearer and easier to understand?

- Yes
- No
- Don't know
- No opinion

Yes.

A46 What challenges do you think this could create for businesses?

None. Good employers will find it easy to manage once set up on their IT systems.

Employment Agency Inspectorate Information Sharing Call for Information

A47 Do you think there is a need for government intervention in this area?

- Yes (see question A48 below)
- No (see question A49 below)
- Don't know
- No opinion

Yes.

A48 If yes to question A47, do you think that the information sharing powers of the EAI need to be enhanced?

- Yes
- No

Yes.

A49 If no to question A47, why not?

If no to question A47 ignore questions A50, A51, A52, A53 & A54.

A50 Do you think that creating information sharing gateways between relevant and appropriate regulators would help to streamline enforcement activity as experienced by recruitment agencies?

- Yes
- No
- Don't know
- No opinion

Yes.

A51 Do you think that opening information sharing gateways between regulators will create efficiencies in enforcement activity?

- Yes
- No
- Don't know
- No opinion

Yes.

A52 Do you think that the information sharing capabilities of the EAI should be broadly similar to the information sharing capabilities of its British counterpart, the EASI?

- Yes
- No
- Don't know
- No opinion

No.

Currently, there are close working relationships between employment rights enforcement agencies, including EASI, and immigration enforcement. Intelligence sharing and joint investigations are commonplace. The UK government's recent single enforcement body consultation commits to closer working between immigration enforcement, the benefits fraud office and enforcement agencies. This is counterproductive as there is clear evidence (Barnard, C, Ludlow, A, Fraser-Butlin, S. (July 2018). "Beyond Employment Tribunals: Enforcement of Employment Rights by EU-8 Migrant Workers", Industrial Law Journal) that workers are deterred from making complaints as they fear being referred to immigration enforcement. Joint working should cease and a firewall between immigration enforcement and employment rights enforcement agencies should be established.

A53 If yes to question A52*, is it your view that the EAI should be able to share information with the EASI, Pensions Regulator and the Regulation and Quality Improvement

Authority (RQIA)?

- Yes
- No
- Don't know
- No opinion

NIC-ICTU have concerns about information sharing with the EASI as, currently there are close working relationships between employment rights enforcement agencies, including EASI, and immigration enforcement. Intelligence sharing and joint investigations are commonplace. The UK government's recent single enforcement body consultation commits to closer working between immigration enforcement, the benefits fraud office and enforcement agencies. This is counterproductive as there is clear evidence (Barnard, C, Ludlow, A, Fraser-Butlin, S. (July 2018). "Beyond Employment Tribunals: Enforcement of Employment Rights by EU-8 Migrant Workers", Industrial Law Journal) that workers are deterred from making complaints as they fear being referred to immigration enforcement. Joint working should cease and a firewall between immigration enforcement and employment rights enforcement agencies should be established.

A54 There are also circumstances where the EAI may need to provide information to the PSNI particularly in cases where the use of modern slavery may be suspected.

Do you agree that the EAI should have clear powers to share information with the PSNI when appropriate to do so?

- Yes
- No
- Don't know
- No opinion

Yes.

EAI Enforcement Powers: Labour Market Enforcement Undertakings & Labour Market Enforcement Orders

A55 Do you think there is a need for government action in this area?

- Yes
- No
- Don't know
- No opinion

Yes.

A56 If no to question A55, what alternative approach should be considered to improve the enforcement powers of the EAI, if any?

While NIC-ICTU's answer is yes to question A55, this is the only area in the consultation document that provides room for further comment on this issue.

NIC-ICTU recommend that legislation needs to be introduced which requires all employment agencies to be licenced. The EAI needs to be better resourced to carry out unannounced inspections and greater powers to ensure that agencies are complying with their workers employment rights. Further to this, NIC-ICTU recommend that the EAI should be combined with other statutory enforcement agencies to create a single enforcement body adequately resourced and empowered to enforce workers employment and health and safety rights.

NIC-ICTU also recommend that requirements should be introduced into public sector contracts for the supply of goods and services; to incentivise companies/agencies to improve their workforce policies and practices ensuring they are compliant with employment rights legislation and best practice. Companies/agencies that do not meet the requirements should not be awarded a public contract.

A57 If yes to question A55, do you agree that aligning the EAI enforcement provisions with the EASI provisions in Britain would be appropriate? i.e. the introduction of Labour Market Enforcement Undertakings and Labour Market Enforcement Orders.

- Yes
- No
- Don't know
- No opinion

Yes.

THEME B:

PAY AND BENEFITS

Fair and Transparent Allocation of Tips, Gratuities and Service Charges

B1 Do you work for, own or manage a business where the payment of tips, gratuities or service charges is commonplace, or represent the workers or owners of such a business?

- Yes
- No

Yes.

B2 In your experience, do employers that receive tips pass them on to their workers in full?

- Yes
- No
- Don't know
- No opinion

No.

B3 Where tips are received or controlled by the employer, should workers receive tips without deduction by the employer?

- Yes
- No
- Don't know
- No opinion

Yes.

B4 Where tips are received or controlled by the employer, should the employer have a written policy on dealing with tips and make it available to workers?

- Yes
- No
- Don't know
- No opinion

Yes.

B5 Should an employer be prohibited from using tips to make up contractual rates of pay of workers?

- Yes
- No
- Don't know
- No opinion

Yes.

B6 Where tips are received or controlled by the employer, and the employer hires agency workers, should those agency workers also receive a fair allocation of tips?

- Yes
- No
- Don't know
- No opinion

Yes.

B7 Where a Tronc system is used for the distribution of tips, should that be considered to provide for a fair distribution of tips where the management of the Tronc is independent of the employer?

- Yes
- No
- Don't know
- No opinion

Yes.

B8 Is legislation needed so as to require employers to pass on tips in full, while ensuring the distribution is fair and transparent?

- Yes
- No
- Don't know
- No opinion

Yes.

B9 Should a Code of Practice be published to advise on and promote fairness and transparency in the distribution of tips?

- Yes
- No
- Don't know
- No opinion

Yes.

Payslips

B10 Do you agree that the right to a pay statement should be extended to workers?

- Yes
- No
- Don't know
- No opinion

Yes.

B11 Do you agree that an itemised pay statement should contain information regarding the number of paid hours worked by the employee or worker in situations where the employee's pay varies as a consequence of the time worked?

- Yes
- No
- Don't know
- No opinion

Yes.

Working Time Regulations - Holiday Pay Reference Period

B12 Do you agree that there should be a change in the holiday pay calculation reference period from 12 weeks to 52 weeks?

- Yes
- No
- Don't know
- No opinion

Yes.

B13 If no to question B12, why not?

Working Time Regulations: Record Keeping Requirements – Call for Information

B14 Do you believe there is a need for government action in this area?

- Yes
- No
- Don't know
- No opinion

Yes.

B15 Do you agree with the approach adopted in Britain?

- Yes
- No
- Don't know
- No opinion

No.

B16 Do you think the British approach would work here?

- Yes
- No
- Don't know
- No opinion

No.

B17 Is greater regulation around record keeping required?

- Yes (see question B18 below)
- No
- Don't know
- No opinion

Yes.

B18 If yes to question B17, please provide details as to how you think this can be achieved. i.e. do you think the EU approach should be adopted?

Rules for employer recording of working hours need to be strengthened

In a 2019 the European Court of Justice ruled that employers should establish an “objective, reliable and accessible system” for recording hours. However, in Britain employers are only required to keep “adequate” records of hours worked.

NIC-ICTU recommend the EU approach, particularly in light of the on-going holiday pay cases flowing from the Agnew and others decisions.

B19 Please detail any issues that have arisen in your workplace due to a lack of adequate record keeping.

Unpaid overtime is a problem for millions of workers. According to the TUC (<https://www.tuc.org.uk/news/uk-workers-put-26-billion-worth-unpaid-overtime-during-last-year-tuc-analysis>) 3.8 million people did unpaid overtime in 2023, putting in an average of 7.2 unpaid hours a week. For those workers, that's equivalent on average to £7,200 a year of wages going unpaid for work done.

NIC-ICTU's Migrant Workers Support Unit (MWSU) recorded frequent and recurring issues with BME and migrant workers including agency workers being paid for less hours than they had actually worked, and also with holiday entitlements which often, led to disputes with agencies with workers requiring representation from the MWSU. Piece rate workers in the agri-food sector also suffer from inadequate record keeping by employers and agencies.

Working Time Regulations: Right to Disconnect – Call for Information

B20 Is there a need for government action in this area?

- Yes
- No
- Don't know
- No opinion

Yes

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.

B21 Do you have any examples/evidence of workers feeling unable to switch off outside normal working hours? If so, please provide further information.

B22 Would a statutory Code of Practice on the 'Right to Disconnect' achieve the right balance between the need to protect employees and support economic development?

- Yes
- No
- Don't know
- No opinion

No, this must be a right defined in regulation.

B23 If not, what other actions would you like the Department to consider? For example, would advisory guidance from bodies such as the LRA or HSENI be more effective?

THEME C:

VOICE AND REPRESENTATION

Workplace Access – Call for Information

C1 What do you think are the main barriers faced by trade unions when trying to access a workplace?

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.

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 general 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 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.

NIC-ICTU 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 Zealand, 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.

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.

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

1. 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).
2. 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.
3. 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).
4. Where organisations are broken up and services outsourced, union representatives should have the right to represent workers and access workplaces across the new structures.
5. 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.
6. 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. This must include a “digital right of access”.
7. 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.
8. 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.

C2 In your view, what are the main reasons why employers would not want to grant access to a trade union?

There has been a culture of hostility towards trade unions promulgated by successive Conservative Party governments over at least the last 45 years, which has been echoed in most parts of the mainstream media.

On the rare occasions unions make it on to the media it is normally at times when they are involved in an industrial or legal dispute.

The positive and beneficial role unions play in the workplace rarely, if ever, gets mentioned in the media.

There are many academic studies which show that union reps make a real difference in workplaces. They improve workers’ pay, terms and conditions; enable access to skills and training; promote equality, fairness, and social cohesion; ensure safer working environments;

and reduce workplace conflict which means savings to the employer and the public purse. This, in turn, promotes economic success through helping to create high-trust workplaces where workers are healthier, better skilled, and more able to resolve grievances – which can lead to greater staff retention and a more committed, innovative, and productive workforce.

For example, in 2009 the Confederation of British Industry, the Trades Union Congress (TUC) and the UK government (Department for Business, Enterprise and Regulatory Reform) jointly commissioned research from Leeds University Business School. Their publication *Reps in Action: How Workplaces Can Gain from Modern Union Representation* ([Reps in action: how workplaces can gain from modern union representation - GOV.UK \(www.gov.uk\)](http://www.gov.uk)) found that well trained on-site union representatives can help to articulate the views and ideas of the workforce to improve working practices and workplace performance, lower recruitment costs and a loss of skills. This can result in raised employee motivation and productivity, leading in turn to reduced staff turnover.

Further to the answers in other parts of this response, trade union reps help deliver the following benefits for employers and employees:

i. Build trust and efficient dialogue

Union reps provide an efficient a single point of contact mechanism for dialogue between workers and employers, which helps build trust and commitment among the workforce and ensures that problems can be identified and resolved informally, quickly and fairly. This can bring productivity and performance benefits for employers. Early identification of problems can lead to significant savings, for example by reducing workplace conflict and the costs employers face as a result of ill health (including reduced productivity, sick pay, temporary staff cover, and compensation payments from accidents).

ii. Improve staff retention

Union reps negotiate on their members' behalf with employers to find solutions that meet business needs, while ensuring that workers are treated fairly. Having a voice in work, along with better pay and conditions in unionised workplaces provides a powerful incentive to employees to remain in their jobs, be more productive, and reduces absenteeism. This can reduce the costs for employers associated with recruiting and retraining. Well trained and informed union reps can work with employers to find alternatives to compulsory redundancies in a difficult business environment.

iii. Enhance innovation, reduce costs and improve business decisions

The broad perspective unions have on many workplace issues, and industry knowledge can be very useful to companies. Informing and consulting with informed and experienced union representatives can help companies take better-informed business decisions, for example in relation to identifying efficiencies and cost savings, or methods of work organization, or investment in new technologies. Unionised workplaces are also more likely to employ 'high performance' methods of work organisation, such as team working and problem-solving groups.

iv. Increase productivity

Effective union reps help build high-trust workplaces where workers are healthier, better skilled and trained, and more able to resolve conflict, all of which lead to a more committed and productive workforce. Union reps can also help maintain productivity during periods of employer

innovation. Collective bargaining arrangements provide an important means of consulting with the workforce over change, reducing anxieties and the possibility of staff resistance. Higher wages in unionised workplaces can also be positive for productivity since higher wage levels can attract and retain more productive workers, as well as motivating them to work harder. Furthermore, by creating conditions in which workers are less likely to leave, unions can create the conditions for higher employer investments in developing their skills and qualifications, which should also lead to higher productivity.

v. Supporting employees, legislative compliance, and best-practice

Union reps who receive up-to-date training are a good source of information on legal and workplace best-practice. They can work with employers to keep policies compliant with legislative developments and produce best-practice policies to ensure workplace inclusion. Union reps have the trust of the workforce and provide a route for employees to report breaches without fear of reprisal. Likewise, they can be a trusted source of support and advice for employees experiencing problems, for example with harassment, discrimination or mental health concerns.

vi. Safety and Wellbeing

The presence of fully trained union Health and Safety (H&S) reps prevents thousands of major injuries at work every year. Union reps help to lower accident rates at work by ensuring safe working practices and reducing stress-related ill health caused by, for example, working long hours, being bullied or working in poor quality environments. The more trade union training the reps get, the more marked the "union safety effect." Trained reps are at the forefront when it comes to addressing the new hazards of the 21st century. According to an HSE evaluation ([CRR 2001/321 - The impact of trade union education and training in health and safety on the workplace activity of health and safety representatives \(hse.gov.uk\)](#)), trade union safety training is "an important stimulus for taking up 'new issues' in health and safety." It found that trained H&S reps were leading on issues including, gender sensitive strategies, stress surveys, representing workers offsite, participatory risk assessment and work organisation.

Properly trained H&S reps,

- Help reduce injuries at work
- Lead to reductions in the levels of ill-health caused by work
- Encourage greater reporting of injuries and near-misses
- Make workers more confident
- Help develop a more positive safety culture in the organisation.
- Save the economy many millions of pounds.

In January 2007 the Department of Trade and Industry published a report which concluded that H&S reps at 2004 prices save the economy between £181m and £578m each year from lost time due to the reduction of occupational injuries and work-related illnesses of between 286,000 and 616,000 days (*Workplace representatives: A review of their facilities and facility time, DTI 2007*). In 2016, a further analysis ([Report title \(tuc.org.uk\)](#)) of figures from the Workplace Employment Relations Survey calculated the savings delivered by unions across the economy fell in a range between £476m and £1,250m at 2014 prices. Prevention of workplace injuries and work-related ill-health contributed over half of the overall union-related savings (£219m-£725m a year).

The evidence is clear that unionised workplaces are safer workplaces, which has the added benefit for employers of significantly reducing the costs of ill health and accidents.

vii. Promote learning and skills

Helping members to access education and training is a key priority for unions. Research shows that union recognition has a consistently positive effect on the amount and range of training that is provided to employees (https://www.tuc.org.uk/sites/default/files/Skills_and_training.pdf). In turn, higher skilled employees bring productivity benefits for employers.

Central to the successful promotion in the workplace of learning and training has been the Union Learning Reps (ULRs) who have been trained to provide support, encouragement, advice and guidance that many co-workers (whether members or non-union members) have needed to re-engage with learning and skills development.

ULRs have demonstrated that one of their greatest strengths is their ability to engage and support learners. Workers are far more open to talking to ULRs about their struggles with English, maths or digital skills rather than their supervisors, managers or HR staff.

vii. Promote equality and social inclusion

It is generally acknowledged that trade unions have had a significant impact in the promotion of fair treatment at work, and in advancing the interests of disadvantaged workers. Studies have shown that equal opportunities practices are more likely to have been adopted in unionised than non-union workplaces, and outcomes such as pay rates have been found to be more equitable in unionised workplaces than elsewhere (https://www.bayes.city.ac.uk/data/assets/pdf_file/0005/353732/role-impact-trade-union-equality-britain-cass-knowledge.pdf).

Union reps actively fight discrimination and help to promote social inclusion and equality at work.

Effectively trained union reps are well placed to identify barriers to inclusion and incidences of discrimination, and to work with employers to ensure their workplaces are inclusive and that anti-discrimination policies are properly implemented. This helps to make workplaces more attractive to workers, improving staff retention, absenteeism and productivity, as well as reducing employer's time spent addressing grievances.

Many contemporary employers may have little experience of trade unions and so lack an understanding of their positive role. Many also lack the knowledge and range of skills needed to develop strong joint working relationships with unions and their representatives at a senior and management level.

NIC-ICTU believe that there is an urgent requirement to promote the value of trade unions amongst employers and to provide assistance to employers on building effective working relationships with trade unions.

Another reason why some employers would not want to grant access to a trade union, is simply that they are not interested in having Good Jobs for their workforce. Some shortsighted or unscrupulous employers exploit their workers and are opposed to them having access to the rights and protections that trade union membership provides. It is because such employers exist in NI that trade unions need the right to access workplaces, to protect the workers and to engage with these employers to improve working conditions and relationships for the benefit of all.

C3 Please outline any experiences (good or bad) you have of trade union officials accessing workplaces.

NIC-ICTU are deeply concerned with the one-sidedness and leading nature of this question. Nor do we see the benefit in asking it.

A question framed in this way invites unsubstantiated and partial stories of individual experiences that should have no impact on a general right of trade unions to access the workplace.

NIC-ICTU notes the views of Blair McPherson, former director, author and blogger, writing on the HR Director website (<https://www.thehrdirector.com/features/hr-in-business/organisation-gets-trade-union-deserves/>),

“An organisation gets the TU it deserves”. It was an experienced HR manager, a veteran of many industrial disputes, who said this to me as a young manager wanting to change things and feeling the local trade union rep was being obstructive. This was a time when union membership was high, and the unions were strong. She was right then, and it would still hold true today but for different reasons.

Her view was if you try and impose changes, if you don't think you need to explain the thinking behind decisions, if you work on a need-to-know basis and talk about managers right to manage it's hardly surprising if employees distrust management and the relationship with the TU is confrontational. She was an advocate of partnership, mutual respect and cooperation.

C4 Do you think trade union presence in a workplace is necessary to ensure employees have a voice and are listened to by their employer?

There are many academic studies which show that professionally trained on-site union reps make a real difference in workplaces. They improve workers' pay, terms and conditions; enable access to skills and training; promote equality, fairness, and social cohesion; ensure safer working environments; and reduce workplace conflict which means savings to the employer and the public purse. This, in turn, promotes economic success through helping to create high-trust workplaces where workers are healthier, better skilled, and more able to resolve grievances – which can lead to greater staff retention and a more committed, innovative, and productive workforce. See the other answers in Theme C.

Union reps provide an efficient single point of contact mechanism for dialogue between workers and employers, which helps build trust and commitment among the workforce and ensures that problems can be identified and resolved informally, quickly and fairly.

Trade union reps are members of the workforce who volunteer to represent their colleagues and act as a channel of communication with management. Union reps have the trust of the workforce as it is the workers alone who get to choose who they wish to represent them via an election, normally annually.

Reps receive professional accredited trade union training to perform their duties and are linked into the wider experiences, knowledge and services of the trade union movement which will

benefit both the employer and the workers. See the answer to C2. NIC-ICTU can also provide good industrial relations training to both management and reps to build effective working relationships.

Collective bargaining between union reps and employers gives the workforce a genuinely independent voice, free from fear of retribution, should that voice utter uncomfortable truths to employers on occasions. But union reps are trained to seek solutions at such times of difference, for the benefit of all.

People are not always comfortable speaking truth to power. Particularly when they know that their livelihood could be threatened by that power.

Statutory rights and protections are there to allow union reps to reflect the actual views of the workforce openly and honestly without fear of reprisals from an employer. Receiving the genuine opinions of the workforce through reps should be seen by employers as a major benefit.

Engaging with reps in this way and considering the views and suggestions of the workers can lead to innovative solutions to problems particularly when the business is facing difficulties or change.

Collective bargaining arrangements between union reps and employers provide an important means of consulting with the workforce over change, reducing anxieties and the possibility of staff resistance.

As the CIPD recognise (<https://www.cipd.org/uk/knowledge/guides/working-trade-unions/>)

Often trade unions will be the most effective form of collective employee voice. Where unions are recognised in a workplace, they will typically have the trust of their membership and can act as a powerful feedback mechanism.

The unique trust relationship between union reps and workers can bring other benefits to the employer. Workers are far more open to talking to reps regarding deficiencies in skills or education, divulging personal issues, including mental health problems, that may adversely impact their performance, and other confidential problems affecting them that they fear may threaten their continuing employment. On receipt of such information, reps can assist workers, and, with the consent of the worker, engage discreetly with the employer to resolve the worker's concerns.

As referred to in the answer to C2, fully trained union reps lower accident rates at work by ensuring safe working practices, reducing stress-related ill health, and working with the employer to ensure safe working environments. Reps can also advise employers on introducing reasonable adjustments to make the workplace accessible to workers with disabilities and inclusive for minority ethnic workers.

Union reps are also invaluable in reducing and resolving individual disputes in the workplace, and in ensuring that employers policies and procedures are compliant with legislation and best practice.

Recognising a trade union and working directly with union reps does not preclude the employer from having other methods of communicating directly with workers. There are distinct areas in the employment relationship when collective bargaining is the appropriate vehicle for communications between employers and workers.

Effective voice is much more than just having a channel of communication available between workers and employers. Effective voice requires a safe environment where dialogue and

challenge are dealt with constructively and where worker's genuine views are sought out, listened to and can make a difference in the workplace. With the imbalance of power between the worker and the employer, only trade union reps can provide that safe environment for constructive dialogue when it is most needed.

NIC-ICTU would again refer to the experience of a former business Director, Blair McPherson when he highlights the problems that can be associated with seeking workers voice through non-union vehicles (<https://www.thehrdirector.com/features/hr-in-business/organisation-gets-trade-union-deserves/>):

There are those today who think just because TU membership has declined that there is no need to play nice. I moved from a large organisation where most employees were members of a union to another large organisation that didn't recognise TU's instead claiming the staff associating made it unnecessary. You might think it would be easier to manage change in such an organisation. It wasn't.

The staff association reps although locally elected had no credibility, considered to be in management's pocket and dismissed as spokes persons for senior management. As such they were ineffective as a sounding board or a restraining hand on the more rash and impulsive actions of management. One consequence was the number of employees who took the organisation to an Industrial Tribunal for constructive dismissal. HR and legal were tasked with agreeing financial settlements to avoid hearings. At best it was a paternalistic management style but if challenged it didn't take much for senior management to get macho.

C5 Based on the information provided, do you think a change in the law to replicate the provisions in place in New Zealand would be suitable in the context of the north of Ireland?

Yes. NIC-ICTU recommend the introduction of the provisions for trade unions to access the workplace as exist in New Zealand. Please see the answer to C1.

C6 Are there other examples of effective trade union access policies which the Department should examine?

Sweden has, since 1974, implemented a very successful model where union health and safety reps appointed outside of the workplace have the right to access workplaces. 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. It also shows that employers should have nothing to fear from such a right for trade unions.

C7 Given the prevalence of small and micro businesses in the north of Ireland, do you think that exemptions should apply regarding the potential enhancement of trade union access in the workplace?

- Yes
- No
- Don't know
- No opinion

If required, please provide more information

No.

Currently employment legislation applies to all businesses regardless of size and provides workers/employees with broadly equal access to the same framework of employment rights and responsibilities. Although, NIC-ICTU have previously recommended in this response that those currently designated as workers should be entitled to the same rights as those in the employee status.

Given the scale of SME and micro businesses in our economy, NIC-ICTU believe that to reverse this position by granting exemptions based on the size of a business, thereby undermining the broadly level regulatory playing field, would be unjust and contrary to the Minister's ambition to promote Good Jobs. Excluding a large percentage of the workforce from the possibilities of Good Jobs would be unacceptable to NIC-ICTU.

Every worker in NI is legally entitled to join a trade union and is protected from discrimination for being a trade union member. It is a worker's human right to join trade unions for the protection of their interests.

It would be a contravention of these rights to deny workers their full entitlements to the protections of being a trade union member simply because of the size of the business they work in. The size of the operation does not impact upon the employment problems that workers can face. That is why workers in micro businesses seek the benefits and protections of trade union membership.

As the DfE Small and Micro Business Impact Assessment points out,

Applying an exemption would have the potential to significantly and negatively impact the effectiveness of the policy aim of increasing the proportion of the working age population in good jobs, as it would exclude many workers from any enhanced framework of employment rights and responsibilities.

Also, why would you deny the benefits of a trade union to a business simply due to its size? It could be argued that unionisation would be of greater benefit to the owner of a micro business who does not have HR support.

Instead, the positive value of unions should be promoted to such employers and support should be provided to assist them in working with trade unions. This role should naturally sit with the LRA, but NIC-ICTU would be keen to engage with DfE, the LRA, employer's organisations and others to explore how to support micro businesses in this regard.

C8 For example: should all micro businesses be exempt from granting access?

- Yes
- No
- Don't know
- No opinion

No.

Please see the answer to question C7

C9 What considerations should be given to small businesses? Should any exemptions apply?

- Yes
- No
- Don't know
- No opinion

If required, please provide more information

No.

Please see the answer to question C7, and the other answers in Theme C.

Collective Bargaining: Recognition – Call for Information

C10 Do you think there is a need to reduce the current threshold of 21 employees for a trade union to seek formal recognition?

- Yes
- No
- Don't know
- No opinion

Yes.

C11 If yes to question C10, what number of employees do you think a business should have for a trade union to be able to seek recognition?

While NIC-ICTU would prefer that employers reach voluntary recognition agreements with their workforce 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 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, in 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.

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.

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

1. The 21-minimum employee threshold should be removed, allowing more enterprises to be covered by the statutory recognition rights.
2. As referred to earlier in this document, 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.
3. 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.
4. 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.
5. Ballots should have the facility to be held electronically, by post or at the workplace.
6. 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.
7. 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).
8. 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.
9. 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.
10. 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.
11. The current requirement on unions to demonstrate a causal link between unfair labour practices and workers' decisions on how to vote should be removed.
12. '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 award financial penalties and enforce reinstatement of workers dismissed in relation to the union recognition process. The Industrial Court 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.
13. Remove the existing three-year rule which restricts a union from re-submitting an unsuccessful application.
14. 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.
15. 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.'

16. 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.
17. 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.

NIC-ICTU note that the Labour Party’s manifesto, *Labour’s Plan to Make Work Pay: Delivering A New Deal for Working People*, has committed to,

Labour will simplify the process of union recognition and the law around statutory recognition thresholds, so that working people have a meaningful right to organise through trade unions. We will ensure workers in precarious and gig-economy sectors have a meaningful right to organise through trade unions, modernising rules to ensure they are fit for an economy with growing platform sectors and a rise in remote and home working. Labour will review the process for statutory recognition claims, with existing thresholds presenting too high a hurdle in modern workplaces that are increasingly fragmented, and we will remove the antiquated rule that means that unions must show that at least 50% of workers are likely to support their claim before the process has even begun. Labour will also modernise the rules governing the final ballot in which workers vote on whether to recognise a trade union, requiring unions to gain a simple majority to win.

C12 What impact would reducing the threshold have on small and micro businesses?

NIC-ICTU recommend that the 21-minimum employee threshold should be removed, allowing more enterprises to be covered by the statutory recognition rights.

Currently employment legislation applies to all businesses regardless of size and provides workers/employees with broadly equal access to the same framework of employment rights and responsibilities. Although, NIC-ICTU have previously recommended in this response that those currently designated as workers should be entitled to the same rights as those in the employee status.

Given the scale of SME and micro businesses in our economy, NIC-ICTU believe that to reverse this position by granting exemptions based on the size of a business, thereby undermining the broadly level regulatory playing field, would be unjust and contrary to the Minister’s ambition to promote Good Jobs. Excluding a large percentage of the workforce from the possibilities of Good Jobs would be unacceptable to NIC-ICTU.

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It would be a contravention of these rights to deny workers their full entitlements to the protections of being a trade union member simply because of the size of the business they work in. The size of the operation does not impact upon the employment problems that workers can face. That is why workers in micro businesses seek the benefits and protections of trade union membership.

As the DfE Small and Micro Business Impact Assessment points out,

Applying an exemption would have the potential to significantly and negatively impact the effectiveness of the policy aim of increasing the proportion of the working age population in good jobs, as it would exclude many workers from any enhanced framework of employment rights and responsibilities.

Also, why would you deny the benefits of a trade union to a business simply due to its size? It could be argued that unionisation and sectoral collective bargaining would be of greater benefit to the owner of a micro business who does not have HR support.

Instead, the positive value of unions should be promoted to such employers and support should be provided to assist them in working with trade unions. This role should naturally sit with the LRA, but NIC-ICTU would be keen to engage with DfE, the LRA, employer's organisations and others to explore how to support micro businesses in this regard.

C13 Do you think that micro businesses should be exempt from the trade union recognition process?

- Yes
- No
- Don't know
- No opinion

No.

C14 Is a reduced threshold limit of 10 employees a reasonable number?

- Yes
- No
- Don't know
- No opinion

No.

Collective Bargaining: Introduction of Collective Sectoral Bargaining – Call for Information

C15 With the information provided in this consultation, do you feel that the introduction of sectoral collective bargaining would be beneficial to the local economy?

- Yes
- No
- Don't know
- No opinion

Yes.

C16 Please explain the reasons for your answer to question C15.

Over the years since the 2008 global financial crisis, we have witnessed a sea change in economic policymaking regarding the value of trade unions, collective bargaining, and employment rights for workers.

Prior to this, deregulation and the dismantling of collective bargaining structures were widely promoted as the requisites of economic growth. For example, the first Organization for Economic Cooperation and Development (OECD) (*Jobs Strategy*, published in 1994 OECD (1994), The OECD Jobs Study: Facts, Analysis, Strategies, OECD Publishing, Paris, <https://www.oecd.org/els/emp/1941679.pdf>), was seen as influential in driving the idea of labour market flexibility, which was used by national governments to justify the undermining of collective bargaining and worker's rights.

However, the economic benefits of collective bargaining are now being acknowledged by governments and think-tanks. The *OECD Jobs Strategy 2018* (https://www.oecd.org/employment/emp/long%20booklet_EN.pdf), marked a significant reversal in the OECD's advice to governments by recognising the importance of social dialogue and collective bargaining. This was followed up in 2019 with a report *Negotiating Our Way Up Collective Bargaining in a Changing World of Work* (<https://www.oecd.org/employment/negotiating-our-way-up-1fd2da34-en.htm>) on the contribution that CB and employee voice can make to employment growth, labour market inclusiveness and job quality. The OECD's research also suggests that the United Kingdom system of collective bargaining will tend to produce inferior economic performance compared to the organised decentralised systems in place in countries like Austria, Denmark, Finland, Germany, the Netherlands, Norway and Sweden.

Trade unions and collective bargaining can therefore be seen as a level of growth and a key to unlocking potential within the economy. There are four main routes through which collective bargaining can boost economic performance.

- Enhancing productivity
- Managing industrial change
- Boosting employment
- Reducing inequality
- Enhancing productivity

The OECD 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.”

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, <https://www.nerinstitute.net/research/collective-bargaining-trade-unions-economic-performance-inequality>) 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 the input of unions and employers with broad-based membership focused on the long-term health of the economy (ICTU (2022) *Realising the Transformative Effect of Social Dialogue and Collective Bargaining in Ireland*, Dublin: ICTU). 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 costs (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).

Managing industrial change
“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.”

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.

Research 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 (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).

Boosting and retaining employment
In Negotiating Our Way Up Collective Bargaining in a Changing World of Work, the OECD 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 employment (Corradini, V., Lagos, L. and Sharma, G. (2022) *Collective bargaining for women: How unions can create female friendly jobs?*, Bravo Working Paper, 2022-005). 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 OECD 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.

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 Fund (IMF) finds that less prevalent trade union presence and collective bargaining are indeed associated with higher market inequality (Jaumotte, F. and Osorio Buitron, C. (2015) *Inequality and labour market institutions*, IMF Staff discussion note, SDN15/14). Evidence 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 (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).

Reducing inequality is not only of benefit to individual workers, and a wide body of international evidence now bears this out (Cingano, F. (2014) “Trends in Income Inequality and its Impact on Economic Growth”, OECD Social, Employment and Migration Working Papers, No. 163, OECD Publishing). 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” (<https://www.nerinstitute.net/research/collective-bargaining-trade-unions-economic-performance-inequality>).

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 OECD 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.

The evidence gathered by the OECD, is reinforced by the findings of the International Labour Organisation (ILO) (International Labour Organisation (2022) *Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery*, Switzerland: ILO), the European Commission (<https://www.europarl.europa.eu/factsheets/en/sheet/58/social-dialogue>) 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 EU(<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32022L2041>) 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 International Labour Organisation (ILO) (<https://www.ilo.org/resource/social-dialogue-0>), 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.

With the proposal for a new employment rights bill, 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.

As highlighted by the ILO (International Labour Organisation (2022) *Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery*, Switzerland: ILO), this will require political will and a cultural transformation, commencing at the state's administrative level to ensure appropriate institutional support to promote social dialogue and collective bargaining. Afterall, the decline in union membership and collective bargaining in the UK since the 1980s can, in part, be directly linked to the state's dismantling of national and sectoral collective bargaining machinery that had been in place throughout the post-war period, the introduction of legal restrictions on trade unions and the deregulation of employment protections.

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. To ensure the effective exercise of this right, all workers must also have the right to freely organise in independent trade unions for the protection of their economic and social interests, and the right to bargain collectively through their trade unions with employers, or their respective organisations, to negotiate and conclude collective agreements at the appropriate levels (enterprise, sectoral and national).

C17 What could collective sectoral bargaining look like?

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 is only possible where an employer recognises a trade union (union recognition) and between them they decide on the scope of negotiations.

Most collective bargaining arrangements in the UK are voluntary. Good employers recognise the benefits that come from voluntary union recognition, such as being able to negotiate wages and other terms and conditions collectively for large groups of workers at the same time.

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 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 Ireland had a trade union that bargains for pay in their workplace.

Research (Mac Flynn, P. (2020) *The Impact of Collective Bargaining on pay in Northern Ireland*, NERI Working Paper Series, NERI WP 2020/N0 66, Belfast: NERI) 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 and more coordinated and integrated approach to industrial development in the region.

The reasons for this decline 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 union 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.

There is role that Government Departments and Non-Departmental Public Bodies could play in promoting collective bargaining, given the significant numbers of workers who are delivering public services or working on public contracts within the private sector, but who do not benefit from collective bargaining. This would follow from the 'Scoring Social Value' public procurement policy and could place responsibility for increasing collective bargaining coverage more squarely on Government and public bodies who commission or procure services.

An outline sketch for developing sectoral collective bargaining in Northern Ireland could include the introduction of legislation tasking the Department for the Economy 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;
- 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.

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.

Therefore, **NIC-ICTU recommend** that the new employment rights bill should contain the following provisions which place actions on the Department for the Economy with the aim of increasing collective bargaining coverage and of facilitating the exercise of the right to collective bargaining:

1. 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.
2. 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.
3. 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.
4. For the purpose of promoting collective bargaining on wage-setting and other terms and conditions, 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.
5. Provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them.
6. 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.

7. Review its action plan regularly, at least every three years, and update it if needed after consulting the social partners or by agreement with them.

Four Pillars for Strong Collective bargaining

The reversal of many of the pieces of Conservative government's legislation restricting trade unions is key to rebuilding strong unions, as 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.

NIC-ICTU believe that the new bill should facilitate these rights.

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 the 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.

C18 Are there specific sectors in which you think it would operate more effectively than others?

NIC-ICTU believe that there is an urgent need for Sectoral Collective Bargaining (SCB) across most sectors of the NI economy, including manufacturing (and within it sectors such as aerospace), construction, retail, etc.

However, NIC-ICTU believe that the social care sector would be a good sector in which to commence SCB for two reasons. Firstly, the social care sector has experienced low pay and insecure work, both of which are issues this proposed Good Jobs Bill is seeking to address.

Secondly, both Scotland and Wales have already developed models of SCB in their social care sectors which we could examine and replicate in NI relatively quickly.

C19 If introduced, are there any sectors that you think should be exempt from sectoral collective bargaining?

NIC-ICTU believe that sectors where enterprise level collective bargaining is widespread and working effectively should be exempt.

C20 What impact would the introduction of sectoral collective bargaining have on employer and worker relations?

NIC-ICTU believe that the introduction of Sectoral Collective Bargaining will greatly improve employer and worker relations as referred to in the answers to C16 and C17. There are many international models currently in place that evidence this view.

Building Sectoral Collective Bargaining will take time and goodwill and NIC-ICTU are keen to engage, at the earliest opportunity, with DfE, the LRA, employer's organisations and others to explore how and where to introduce Sectoral Collective Bargaining.

Balloting & Notice – Call for Information

C21 Is the current system of providing notice of industrial action to employers fit for purpose?

- Yes
- No
- Don't know
- No opinion

No.

C22 If no, what changes do you think are required?

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 indirectly.

It should now be 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.

While NIC-ICTU consider that introducing the positive right to strike would best meet Northern Ireland's obligations under international conventions and bring us into line with the rights of our European colleagues, NIC-ICTU recommend that the proposed employment bill should include, at least, 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.

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

6. 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.
7. 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.

8. 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 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,

9. 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]
10. 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.
11. 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.
12. 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.

13. 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.
14. 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.
15. Remove the bar on prison officers taking industrial action.

C23 How would amending the legislation affect employer and worker relations?

Amending the legislation as recommended by NIC-ICTU in the answer to C22, will improve relations, when they have been damaged by an impasse in negotiations, by reducing the duration of the dispute and help to focus minds on the grounds for a solution.

As stated previously, 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.

Currently, ill-feelings are unnecessarily protracted over the postal ballot period. When both sides are potentially "in trenches" and hostility in the air, the business can be adversely affected. Legal challenges to the conduct of the postal ballot do not resolve the dispute. Instead, they harden attitudes, making it less likely that an atmosphere conducive to compromise will appear.

C24 Should the period of notice provided to an employer of industrial action be reduced from seven days to five?

- Yes
- No
- Don't know
- No opinion

Yes.

Electronic Balloting – Call for Information

C25 Do you agree that current legislation should be updated to allow e-balloting?

- Yes
- No
- Don't know
- No opinion

Yes.

C26 What concerns, if any, do you have about the introduction of e-balloting, and what can be done to mitigate them?

Electronic forms of vote casting would help bring union balloting into the modern age. Other UK voting systems have moved with the times, but union ballots are firmly stuck in the last century. Regulated by the outdated legislation, unions still have to consult their members via a letter mainly sent to their home addresses. This unfair requirement has become extremely expensive over the years.

Balloting in this costly and outdated way works for some, but for many workers leading busy lives, it's all too easy for the ballot envelope to be put to one side – at best only opened after the deadline or, as is more likely, simply recycled.

Legislation requires unions to use ballots for a wide range of issues including elections to leading bodies, trade union mergers, industrial action and the maintenance of a political fund.

Whilst any strike ballot where a majority of members in a workplace vote for action is a legal and legitimate result, unions would clearly prefer to see more people participating. But to do that we need to update the legislation and let people vote on their digital devices.

Workers who want to continue voting using traditional postal methods would of course still be able to do so. But electronic communication via a secure online link which union members could access either at home or at work, or when they're out and about via their smartphone or tablet, would be a simple and inexpensive way of increasing turnout.

Before conducting lawful industrial action or strike action trade unions must comply with stringent and extensive rules on notices and ballots which place heavy financial and bureaucratic burdens on unions. They impose a significant and costly 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.

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.

If unions were allowed to go digital, strike votes would still be secure, organised by independent scrutineers. There of course might be initial problems – some workplace firewall systems can sometimes block emails relating to e-ballots – but these could be solved easily enough. Independent balloting organisations could also offer electronic voting kiosks to allow a secret vote on site in the workplace.

NIC-ICTU would be keen to engage with DfE and others to ensure that such systems are thoroughly explored and tested. And also, that the legislation permitting the use of e-balloting is appropriately drafted.

C27 If e-balloting was introduced, do you think there is still a requirement for an independent scrutineer?

- Yes
- No
- Don't know
- No opinion

Yes.

C28 If yes to question C27, why?

NIC-ICTU are not opposed to the use of independent scrutineers for union ballots as they can help ensure confidence in the veracity of the outcome of the ballot and reduce potential legal challenges by some employers which prolong disputes and have an adverse impact on workplace relations.

However, the legislation also requires union to appoint an Independent Scrutineer for statutory ballot processes. A body specified by name may be appointed as a scrutineer of a ballot or election provided that the trade union has no grounds for believing— (a) that the person or body will carry out his functions less than competently; or (b), that the independence of the person or body in relation to the union, or the ballot or election, is open to question.

Scrutineers can only be selected from a Government approved and published list of providers. Currently there are around six such bodies listed in the NI legislation that unions must choose from. Such a restricted market leaves unions vulnerable to unnecessarily high charges for the services of Independent Scrutineers.

NIC-ICTU believes that that there are fairer alternatives for the provision of independent scrutineers and would be willing to engage with DfE and others to explore them ahead of any legislative changes.

C29 What evidence would the independent scrutineer need from an e-balloting system for their report?

In addition to their normal duties, an Independent Scrutineer must provide evidence that the e-balloting system is secure and that the results can not be tampered with.

C30 If no to question C27, why not?

Protections for Representatives – Call for Information

C31 Are the current legislative protections for trade union officials against detriment and dismissal in relation to trade union activities sufficient?

- Yes
- No
- Don't know
- No opinion

No.

C32 If no to question C31, what additional legislative protections are required?

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 reps 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 managers (for example see, <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 most 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 therefore 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.

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*'.

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

1. 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.
2. 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.
3. 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.
4. Introduce statutory rights for trade union equalities representatives.
5. 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.

NIC-ICTU believe that 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:

6. 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 (<https://www.hse.gov.uk/Research/rrpdf/rr417.pdf>).
7. 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.

8. Trade union officials and/or safety representatives should be empowered to issue provisional improvement notices and to stop work they deem to be dangerous.
9. 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.
10. 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.

C33 Are you aware of any challenges faced by trade union officials in the workplace in relation to the conduct of their trade union duties?

- Yes
- No

Yes.

C34 If yes to question C33, please provide examples.

NIC-ICTU consider that this question does not assist the purpose of the consultation. We have provided scenarios in previous answers elsewhere in Theme C without going into actual examples.

Having said this, a review of the cases of dismissal of trade union reps and detrimental treatment of them lodged with the OITFET over the last 40 years will provide sufficient evidence alone of the need for the introduction of the recommendations made by NIC-ICTU.

Should DfE deem it necessary to provide detailed examples, NIC-ICTU will provide a long and extensive list mainly, but not exclusively, from the private sector of our economy.

Unfortunately, some employers believe that it is better to get rid of a genuine voice of the workforce if it does not echo the employers. Currently, legislation makes this a relatively easy option for them.

NIC-ICTU believe that this proposed Good Jobs Bill and the discussions it has generated provide employers, unions and policy makers with a valuable opportunity to review how we do business here. NIC-ICTU are seeking to encourage a cultural change in the employment sphere to base relations on social dialogue and collective bargaining for the benefit of workers, employers, the economy and wider society.

As mentioned previously social dialogue and collective bargaining relies upon strengthening trade unions based through 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.

C35 What impact would a change in protections for trade union officials against detriment and dismissal have on businesses?

NIC-ICTU believe that a change in the protections as recommended by NIC-ICTU would not have adverse impact on business. When considered, as it should be, in the totality of NIC-ICTU's recommendations in Theme C, the impact will overall be positive.

The protections NIC-ICTU are recommending are to stop unscrupulous employers from undermining their workforce's choice, and right, to be represented by a trade union. And also, to protect the volunteers who courageously take on the role as representatives of the workforce.

Such a volunteer workplace union rep would still be subject to disciplinary action by the employer and dismissal on objectively fair grounds provided that the reasons for the action were unrelated to the rep's trade union role.

Protections for Workers taking part in Industrial Action – Call for Information

C36 Is the 12-week protected period for workers taking part in Industrial Action against dismissal sufficient/fair?

- Yes
- No
- Don't know
- No opinion

No.

C37 If not, how long should the protection last?

NIC-ICTU believe that the protection should be indefinite.

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 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, even though an increasing proportion of the working population are in non-standard employment relationships.

NIC-ICTU recommend the following:

1. Introduce measures which ensure that all workers have the right to take official industrial action free from the fear of dismissal or victimisation for the full duration of the industrial action. 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.
2. 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.
3. 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.
4. 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.

C38 What potential impact would an extension to the protected period have on employers?

It should have no potential impact on good employers. However, it will hinder the unscrupulous employers who favour macho management styles. They will hopefully realise that they must engage early to seek a resolution to the dispute, rather than sitting back and ‘watching the clock’ until the period of protection is exhausted, and the workers involved in the dispute become vulnerable.

C39 What potential impact would an extension to the protected period have on workplace relationships?

None. Relationships will be already damaged, hence the dispute.

However, NIC-ICTU’s recommendations are aimed at encouraging parties to reach agreement at the earliest possible moment, and then work to rebuild relationships.

Facilitating Productive Workplace Relationships – Call for Information

C40 Do you agree that an agreed set of principles and expected behaviours for employers and trade unions to sign up to and adopt would help to improve workplace relationships?

- Yes
- No
- Don't know
- No opinion

Yes.

C41 If yes to question C40, do you believe that a New Zealand style code of practice would be beneficial?

- Yes
- No
- Don't know
- No opinion

Yes.

C42 If yes to question C41, what areas or subjects would you like to see included in such a code?

NIC-ICTU would welcome discussions with DfE, employer's organisations and other stakeholders to review the New Zealand *Code of Good Faith in Collective Bargaining*, which we regard as a good starting point.

C43 What should the consequence be if a party is found to have acted in breach of that agreed code?

NIC-ICTU recommend that there should not be legally enforceable penalties associated with such a code, as this could defeat the aim of building productive relationships. Experience demonstrates that some parties will decide to go for the easy option through litigation as opposed to working together to find a mutually beneficial consensus solution.

Sectoral Collective Bargaining (SCB) can facilitate the adoption of agreed principles and expected behaviours for employers and trade unions. SCB can also establish alternative dispute resolution bodies.

NIC-ICTU are willing to engage with DfE, employers and other relevant organisations, such as the LRA, to explore how to develop productive workplace relationships.

Information and Consultation Definitions – Call for Information

C44 Do you think there is a need for government action in this area?

- Yes
- No
- Don't know
- No opinion

Yes.

C45 Should the definition of 'undertaking' be changed to include 'establishment' or similar wording to more accurately reflect modern day working practices?

- Yes
- No
- Don't know
- No opinion

Yes.

C46 Are there other aspects of this matter which you feel also need to be considered?

Information and Consultation Thresholds – Call for Information

C47 Do you think that government action is required in this area?

- Yes
- No
- Don't know
- No opinion

Yes.

C48 Do you think that reducing the percentage threshold required for employees to make a valid request, for an ICE agreement, from 10% to 2% is appropriate?

- Yes
- No
- Don't know
- No opinion

Yes.

C49 If no to question C48, what should the percentage threshold be?

C50 In the north of Ireland, 60% of businesses have fewer than 10 staff. Do you agree that the current minimum number of employees (15) should be retained?

- Yes
- No
- Don't know
- No opinion

No.

C51 If no to question C50, what level should the minimum figure be?

Three.

C52 Do you think reducing this minimum number of employees would better reflect the make-up of the local economy?

- Yes
- No
- Don't know
- No opinion

Yes.

Transfer of Undertakings (Protection of Employment) Regulations Consultation - Call for Information

C53 Is there a need for change in the TUPE regulations relating to consultation of affected staff?

- Yes
- No
- Don't know
- No opinion

No.

C54 Would you like to see the 2014 changes outlined from Britain apply here? i.e. an exemption to the requirement to follow the consultation and information requirements of TUPE for micro businesses?

- Yes
- No
- Don't know
- No opinion

No.

C55 If yes to question C54, do you think that this exemption for micro businesses should be extended to small businesses? (businesses with between 10-49 employees)

- Yes
- No

C56 Would this be effective in the context of the local economy?

- Yes
- No
- Don't know
- No opinion

No.

C57 What difficulties are faced by employers required to follow the current TUPE regulations, if any? Please provide examples

Not applicable.

C58 Have you been a part of a TUPE process as either an employee or business?

- Yes
- No

Not applicable.

C59 If yes to question C58, what was your TUPE experience like?

C60 Did the legislation provide you with the protections you required?

- Yes
- No
- Don't know
- No opinion

Not applicable.

C61 If no to question C60, what additional protections are required?

See answer at C64.

C62 Do you think there is a need to provide more clarity in law about the types of workers that the TUPE regulations apply to? i.e. it is for employees only.

- Yes
- No
- Don't know
- No opinion

No.

NIC-ICTU are recommending that the new bill ensures that all workers benefit from the same employment rights, including protection from unfair dismissal, by creating a single “worker” status for all but the genuinely self-employed. We also note that the Labour Party document Labour’s Plan to Make Work Pay states: “We will carry out full and detailed consultation on our plans to move towards a single status of worker.”

While acknowledging that there is unhelpful uncertainty as the law stands about the applicability of TUPE to those currently designated as ‘workers’, NIC-ICTU believe that it would be inappropriate to exclude workers from the protections afforded by the TUPE regulations as they stand.

As NIC-ICTU highlight throughout this response, ‘workers,’ particularly insecure workers need more rights, not less.

NIC-ICTU are concerned that removing those currently falling under the status of ‘worker’ from the scope of TUPE could have a particular impact on vulnerable workers in our society

C63 Do you think there is a need to remove the obligation to split employment contracts between multiple employers, where a business is transferred to more than one new business?

- Yes
- No
- Don't know
- No opinion

Yes.

In 2020, the Court of Justice of the European Union ruled in *ISS Facility Services NV v Govaerts and Atalian NV* ruled that a full-time employment contract can be split between multiple employers when a business transfers to multiple transferees.

NIC-ICTU recognise that splitting roles between multiple transferees can cause problems for workers.

The British Government's proposal that an employment contract should only be transferred to one employer and should not be split between multiple employers, is in most cases a sensible approach. Instead, the employers taking over the business or service would be required to agree who should be responsible for each employee's contract.

NIC-ICTU believe that at the very least there should be stronger guidance, produced in consultation with trade unions, on how transfers to multiple transferees are conducted. This should encompass how a split of employees or liabilities is to be determined in terms of functions, time spent and, situations where such a division is not possible or will have an adverse impact on the employee's working conditions.

This should be accompanied by strengthened rights to consultation for trade unions when the TUPE regulations are engaged to ensure that the consultation is undertaken in good faith, and that employers comply with the need to elect representatives to consult with.

C64 Do you think there are other changes regarding the TUPE legislation that should be considered? Please provide details in the box below.

NIC-ICTU are oppose the exemptions to the consultation and information aspect of TUPE that are proposed in this consultation which are inconsistent with the Acquired Rights Directive. The Directive applies equally to all workplaces, regardless of the number of staff employed. It does not allow for exemptions for micro businesses.

Consultation is most effective where it involves independent trade union representatives who are trained and have extensive experience of negotiating with employers. It is therefore essential that the right for recognised trade unions always to be consulted on transfers in micro firms is retained. Failure to do so is likely to conflict with the government's obligations under the Directive and under Article 11 of the European Convention on Human Rights.

NIC-ICTU are concerned that the proposed changes to TUPE protections, lack a reliable evidence-base to assess the impact of the proposals or to demonstrate the changes are necessary or justified.

As NIC-ICTU highlight throughout this response, workers need more rights, not less. The Good Jobs sought after by the Minister will not be delivered by undermining workers protections.

NIC-ICTU believe there are some significant problems with the TUPE legislation that need to be addressed:

- Trade union recognition only transfers to the new employer if the transferring employees keep a separate identity within the new employer's organisation. This weakens the collective voice of workers at a time when they are particularly vulnerable.
- The exemption of occupational pension rights from TUPE means that workers often have a vital benefit cut.
- The permissibility for an employee's dismissal ahead of a transfer for economic, technical or organisational reasons provides a significant loophole for employers to evade TUPE protections.
- Employers often fail to carry out their consultation duties properly, which reduces the scope for unions to provide input so the process works for both employers and workers.
- The effect of the Alemo Herron case in denying outsourced workers the benefits of evolving collective agreements.

NIC-ICTU recommend that these issues are addressed in the TUPE legislation and are willing to engage with DfE and others on these matters.

Public Interest Disclosure (Whistleblowing): Annual Duty to Report

C65 Do you think there is a need for government action in this area?

- Yes
- No
- Don't know
- No opinion

Yes.

C66 If yes to question C65, do you agree that it would help to improve transparency, consistency and awareness if Prescribed Persons were required to produce an annual report to the Department?

- Yes
- No
- Don't know
- No opinion

Yes.

C67 Some Prescribed Persons have no regulatory or investigatory powers, such as MPs. As they can only refer complaints to regulatory or investigatory bodies, should they be exempt from producing an annual report?

- Yes
- No
- Don't know
- No opinion

Yes.

C68 Do you agree that the reports should be collated by the Department and laid at the Assembly?

- Yes
- No
- Don't know
- No opinion

Yes.

THEME D

WORK-LIFE BALANCE

General Comments

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.

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 failure to tackle the inequality of caring responsibility which fall 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 session, the Northern Ireland Executive must do likewise.

We recommend that the NI Executive undertakes 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. This review should be undertaken without delay and should fully involve trade unions and employers in a co-design process.

Flexible working

D1 Do you agree that an employee should be entitled to make up to two statutory flexible working requests within a 12-month period?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly Agree

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 employers.

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 the introduction of 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.

D2 Do you agree that an employee should only make a second flexible working request when an employer has considered a previous request, including when an appeal against the outcome of that request has been made?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Disagree. We believe that the current timeframe for employers to consider flexible working requests is too long. They have up to 28 days to consider a request but if they turn it down, and we know that 1 in three applications are refused, there is a further stage of 14 days that the employer has to write to inform the outcome of an appeal. This effectively means that an employee could be waiting for over 8 weeks for a decision. The circumstances of the employee may well have changed in that period and they may be making an application for a different reason because of that change in circumstances. We are concerned that the reforms to flexible working rights do not go far enough and would urge the Department to consider the recommendations we have made in our accompanying policy document.

D3 Do you believe an employee should be entitled to make a flexible working request from the first day of their employment?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly agree

D4 Do you agree that an employee should no longer be required to explain the effect a flexible working request would have on their employer when making such a request?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly agree

D5 Additional Information

Please provide additional information or clarification to any response in the space below.

Carer's Leave

D6 We would welcome your views on whether carer's leave should be a paid right; and, if so, who should be responsible for making the payment and what the rate of pay should be. In answering these questions, we would be grateful if you would provide reasoning for your responses and identify any issues or benefits with your suggested approach.

It is ICTU policy that Carers Leave should be a paid right. This should be funded in the same way as other leave entitlements but should be included in the comprehensive review of Work Life Balance arrangements which we have recommended.

As stated in the Department's consultation paper, the 2021 Census identified that there were in excess of 220,000 unpaid carers in Northern Ireland, 83% of whom are of working age. A substantial number of those who provide unpaid care are not eligible for Carers Allowance, this number is likely to increase. Unpaid, informal care disproportionately affects women and is associated with high rates of labour market exit.

D7 Do you agree that the definition of caring relationships for the purpose of Carer's Leave should mirror that used for dependant relationships?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly disagree

We do not agree that the definition provided is appropriate and believe that it needs to be expanded to cover the necessary breadth of caring relationships. Many people who care for others have multiple caring responsibilities. In addition to caring for their parents and grandparents, older women often provide childcare for their grandchildren.

We believe that the list of those able to take carers leave should be widely drawn and include the following *a child/step child, partner or parent of the employee, someone else who lives with employee as a member of their family, or someone who relies on the employee in an emergency.* Employers should be asked to interpret this flexibly

D8 Do you agree a carer providing care for an individual with physical or mental health

problems likely to last for more than three months, or a disability, or who requires care for a reason connected with their old age should be entitled to Carer's Leave?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly disagree.

We do not believe that a caveat of 'lasting longer than three months' should be imposed on this type of leave and believe that this undermines the intention. This could be interpreted by unscrupulous employers as meaning that a person whose spouse has certain debilitating medical conditions, such as endometriosis, could be regarded as ineligible for carers leave because the period of their spouses incapacity could last for far less than 3 months.

D9 Do you agree the reasons for taking Carer's Leave should be broadly defined?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly agree. We also do not agree that short term care should be out of scope.

D10 Do you agree that caring for a person with short-term care needs and childcare (other than where the child has a disability or other long-term caring needs) should be out of scope for Carer's Leave?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly disagree.

We believe that childcare, particularly in the absence of a right to paid parental leave, should be in scope for carers leave. We further believe that short term care should not be out of scope – see above answer.

D11 Do you agree that the leave should be available to be taken as individual days or half days up to one whole week (both options to be pro-rated for part-time employees)?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly agree

D12 Do you agree that an individual should be required to give their employer notice ahead of taking Carer's Leave?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Agree

However it should be recognised that whilst some carers will be able to plan their need for carers leave, it will be the case that others may have to take leave at very short notice to deal with an emergency situation. Employees should therefore be required to give notice as soon as is reasonably practicable.

D13 Do you agree an employee exercising their right to request or take unpaid Carer's Leave should have the same protections as those taking other forms of statutory leave?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly agree

D14 Additional Information

Please provide additional information or clarification to any response in the space below.

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.

We further believe that workers should be able to self-certify their eligibility for carer's leave, this could mirror the process for self-certification for sickness.

Neonatal Care Leave and Pay

D15 Do you agree that parents of babies who enter neonatal care in the first 28 days following birth and who spend at least 7 continuous days in neonatal care should have an additional week of statutory leave and/or pay from work for each week that their child is in hospital, up to a maximum number of 12 weeks?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly agree, this must be paid.

D16 Do you agree that employees who would have had the main responsibility for caring for the child, had their baby not been admitted to neonatal care, should be eligible to receive neonatal care leave and/or pay?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly agree

D17 Do you agree that access to neonatal care leave and/or pay should be open to parents whose babies have spent a minimum of 7 continuous days in neonatal care, i.e. are seriously ill or likely to be in hospital for an extended period of time?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly Disagree – parents of babies who are seriously ill should not have to wait 7 days before knowing if they will be eligible for leave and pay. This will mean extra anxiety at a time of huge distress.

D18 Are there other circumstances that you think should be considered for inclusion within the scope of neonatal care leave and/or pay?

- Yes
- No

If yes, what are they?

There may be special circumstances, for example a single parent of a sick baby, where the parent needs additional support from a grandparent/relative or friend. In these circumstances, there should be the possibility of these nominated people availing of neo-natal leave and care.

D19 Do you agree that neonatal care leave should be a 'day one right' in line with maternity leave, adoption leave and parental bereavement leave?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly agree

D20 Do you agree that the qualifying conditions for statutory neonatal care pay should mirror the qualifying conditions for other family-related statutory pay?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly disagree. Access to neonatal leave and pay should be a day one right.

D21 Do you agree that the entitlement to neonatal care leave and/or pay should be available for up to 12 weeks (each week to be comprised of 7 continuous days) that a baby is in neonatal care?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly agree

D22 Do you agree that a father/partner should be required to give notice as soon as is reasonably practicable after their child is admitted to neonatal care, and has a stay of at least 7 continuous days, in order to take neonatal care leave and/or pay?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

The stay should not have to last a period of 7 days, see above.

D23 Do you agree that a person taking neonatal care leave and/or pay after maternity/adoption leave should be required to give notice, akin to that which is required for taking annual leave, in order to take neonatal care leave and/or pay?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Notice should be given as soon as is reasonably practicable.

D24 Do you agree that employers should be allowed to ask for a declaration of entitlement to neonatal care leave and/or pay?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Whilst we recognise that some employers may wish to see evidence of entitlement, we believe that this should not be mandatory and could be dealt with in guidance rather than regulations. It is unlikely that parents will pretend that their baby is seriously ill in order to avail of extra leave. This could best be dealt with by parents providing a declaration once their baby is out of hospital care.

D25 Do you agree that when and how neonatal care leave and/or pay is to be taken should be sufficiently flexible to accommodate other periods of pre-booked family-related leave

- and in a way that balances the needs of parents and employers?
- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly agree although we would agree with Maternity Action in their recommendation that neonatal leave be available on a part-time basis and/or in discontinuous blocks, to allow parents to manage a phased return to work and sharing of care, given that the baby may still not be as healthy and robust as other children of the same age and any pre-existing formal childcare setting may not be suitable.

D26 Do you agree that parents on neonatal care leave should have the same protections as employees on other family-related leave?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly agree

D27 Do you agree that neonatal care pay should be paid at the same rate as existing family-related statutory payments?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Agree although we recommend that a review of WLB arrangements take consideration of the low rate of statutory pay.

D28 Additional Information

Please provide additional information or clarification to any response in the space below

Protection from Redundancy – Pregnancy and Family Leave

D29 Do you agree that the redundancy protections period during pregnancy should apply from the point that the employee informs their employer that they are pregnant, whether orally or in writing?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

There are circumstances where an employee does not inform her employer of an early pregnancy – these include health related concerns as well as discrimination faced by women in the

workplace. We recommend that the protected period begins at the start of a woman's pregnancy. If instances occur where a woman is selected for redundancy and she has not informed her employer about her pregnancy, the redundancy decision should be reviewed to ensure it has not been taken as a result of pregnancy. This could be, for example, when a woman has been absent because of pregnancy related reasons but has not disclosed this on her sickness absence record and the record is subsequently used in selection for redundancy.

D30 Do you agree that protections from redundancy during relevant family leave should be extended to include a period after the employee returns from leave?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly agree

D31 Do you agree with the principle that the period of protection should be 18 months from when the child is born, stillborn, expected to be born, or is placed for adoption?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Agree

D32 Do you agree that, for those taking shared parental leave, there should be a minimum six-week threshold of continuous leave before enhanced protections from redundancy can apply?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly disagree

D33 Additional Information

Please provide additional information or clarification to any response in the space below

We do not believe that there should be a minimum of six week threshold for enhanced protections to apply and we would suggest that enhanced protections should apply to anyone who has taken a minimum period of SPL (i.e. one week). As SPL is flexible in nature, it is unrealistic to apply it to continuous period of leave – this should be reviewed.

Paternity Leave

D34 Do you agree that paternity leave should be available to be taken as a single block of two weeks or two non-consecutive blocks of one week?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Agree although we recommend that paternity leave should also be available in days/half days.

D35 Do you agree that paternity leave should be available to be taken at any time within the first 52 weeks following birth or adoption?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Agree

D36 Do you agree that the notice requirements for paternity leave related to birth and surrogacy should be 28 days for each period of leave?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Agree, provided there is flexibility should there be complications such as a premature birth.

D37 We would welcome your views whether paternity leave should be available for up to four weeks in the north of Ireland. In answering this question, we would be grateful if you would provide reasoning for your responses and identify any issues or benefits with such an approach.

We strongly agree that paternity leave should be extended to at least four weeks. The opportunity for both parents to spend time with their baby after a birth allows them to properly bond and disrupts the notion that fathers are somehow secondary care-givers.

However, this will only be effective if the leave is adequately paid. If the leave is unpaid or only paid at the statutory rate fathers will simply not use it. This is well evidenced internationally.

Studies show that the paternal quota works, as measured by how many men take leave. Uptake among dads increased in several EU countries after the introduction of a dedicated well-paid leave entitlement for fathers (so called 'daddy quotas'):

- In Iceland, dads averaged 39 days of leave in 2001. After the fathers' quota was introduced on a 'use it or lose it' basis, this rose to 103 days by 2012
- In Sweden and Iceland, which offer a non-transferable fathers' quota, men's uptake is much higher (90%) than in Denmark (24%) and Slovenia (6%), which don't.
- In Sweden parents are given 480 days leave, 420 days of which are paid at 80% of average weekly earnings (AWE).

If a portion of leave isn't specifically designated for dads 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.

As stated above, ICTU recommends that a comprehensive review of all family leave is undertaken by the Department. This should include rates of remuneration.

D38 Do you agree that paternity leave should be a day 1 right?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Don't know
- No opinion

Strongly Agree

D39 Additional Information

Please provide additional information or clarification to any response in the space below

We would highlight to the Department that there are additional gaps in employment legislation between GB and NI which have not been addressed.

In the UK, the new Worker Protection Act, which comes into effect in October 2024, creates a duty on employers to take reasonable steps to prevent sexual harassment of their employees in the workplace. This will only apply to England, Scotland and Wales which means that workers in Northern Ireland will have fewer protections than their counterparts.

The Department will be aware that ICTU and the LRA recently launched Guidance on Eliminating Sexual Harassment from the workplace. The Minister for the Economy launched this Guidance earlier in 2023. Given the prevalence of sexual harassment and the resultant devastation on individuals' lives and negative impact on the workplace, we would recommend that the Department seek to remedy this gap and consider urgently in conjunction with trade unions and employers.

NEXT STEPS

1 This consultation seeks views on a range of potential policy avenues which will inform decisions about which should proceed to legislation stage. What issues do you think should be a priority for consideration by the Department?

NIC-ICTU believe that the following issues should be priority for consideration:

1. Introduce the right of access to workplaces for trade unions as per the recommendations of NIC-ICTU.
2. Introduce NIC-ICTU's recommendations to increase collective bargaining coverage and of facilitating the exercise of the right to collective bargaining.
3. Introduce measures to establish sectoral collective bargaining.
4. Introduce NIC-ICTU's recommendations to improve protections for trade union representatives in the workplace.
5. Put an end to the injustice of a three-tier workforce - Ensure that all workers benefit from the same employment rights, including protection from unfair dismissal, by creating a single "worker" status for all but the genuinely self-employed. Create a statutory presumption that all individuals will qualify as 'worker' under the new definition, unless the employer can demonstrate in an employment tribunal, should a dispute arise, that they are genuinely self-employed.
6. Day one employment rights - 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.
7. Introduce a comprehensive review of Work Life Balance arrangements.
8. Ban Fire & Rehire practices and improve consultation rights prior to redundancies.
9. Ban Zero-Hours Contracts and improve rights to genuine flexibility of working arrangements.
10. All temporary and agency workers who are working in the same job for more than one year should have the right to request that they become permanent employees of the organisation they have been placed with. Likewise, any employee on fixed-term contracts for one or more years should automatically become a permanent employee if requested.

2 What assistance should the Department offer to businesses in understanding and implementing any future employment legislation?

NIC-ICTU would welcome the opportunity to engage with DfE, the LRA, and employer's organisations to consider how best to provide assistance to businesses, micro businesses and trade unions in understanding and implementing any future employment legislation.

3 What specific considerations should be given to small and micro businesses in assisting them in dealing with legislative changes?

NIC-ICTU would welcome the opportunity to engage with DfE, the LRA, and employer's organisations to consider how best to provide assistance to businesses, micro businesses and trade unions in understanding and implementing any future employment legislation.