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# Brief overview of Employment Rights Bill consultations

From Thompsons Solicitors

## Introduction

This week the government published four consultations on changes to trade union law, remedies against fire and rehire, applying zero hours contracts measures to agency workers and the rate of Statutory Sick Pay for low paid workers.

Following the introduction of the Employment Rights Bill on 10 October 2024, the Government has now launched four separate consultations. The deadline for responding is 2 December 2024 (except in the case of the consultation on Statutory Sick Pay where the deadline is 4 December 2024).

In this briefing we set out a brief overview of each of the four consultations. This document should be read alongside our Employment Rights Bill Full Briefing issued on 11 October.

Thompsons will be considering the detail contained within the four consultations, as well as the impact assessments and fact sheets published alongside them, in order to respond constructively.

It is our intention to share our draft responses to each of the consultations with trade union clients well in advance of the deadline.

However, if in the meantime, you would like any assistance with responding to any of the consultation documents then please do get in touch with us.

## Download Links

[Making Work Pay: creating a modern framework for industrial relations](#)

[Making Work Pay: the application of zero hours contracts measures to agency workers](#)

[Making Work Pay: collective redundancy and fire and rehire](#)

[Making Work Pay: Strengthening Statutory Sick Pay](#)

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## Consultation on creating a modern framework for industrial relations

### Introduction

The introduction says that the Employment Rights Bill and this consultation are the first steps towards modernising trade union law but 'by no means the last step'.

The Government proposes to build a modern, positive industrial relations framework built around the principles of collaboration, proportionality, accountability and balancing the interests of workers businesses and the wider public.

### What are the proposals?

The specific proposals, in six areas, are summarised below:

#### (i) Unfair practices during the Trade Union Recognition process

- Outlawing unfair practices during the entire recognition period (extended from just the ballot period).
- Possible mechanisms to address instances of employers thwarting recognition applications by means of mass recruitment into the bargaining unit - the government proposes requiring the employer to provide the CAC with the number of workers in the bargaining unit within 10 days of the recognition application and this number then being fixed throughout the recognition process - the consultation also asks respondents to suggest alternative mechanisms.

- Introducing a 20 working day window for the parties to reach a voluntary access agreement after which, if there is no agreement, the CAC will directly adjudicate.
- Making it more straightforward for a union to succeed in a complaint of unfair practice against an employer by removing or modifying the requirement for the union to show that the unfair practice changed or was likely to change the way workers voted.
- Extending the time period for complaints of unfair practice to 3 months from the date when the unfair practice occurred.

#### (i) Political Funds

- Abolishing the requirement for unions to ballot their members on the maintenance of a political fund every 10 years.
- Members to be given notice of their right to opt-out of the political fund every 10 years.

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## (iii) Simplifying Industrial Action Ballots

- There are no specific proposals in relation to electronic balloting but the consultation says that the government will be hosting roundtables with cyber security experts, unions and other interested parties 'this coming winter'.
- Simplification of the level of information about workers to be provided in ballot notices and action notices - the proposal is that notices would have to state the total number of workers concerned and include a list of categories of workers and a list of workplaces but the lists would not have to include breakdowns of the number of members in each category/workplace nor an explanation of how the figures were arrived at.
- The Government notes that there have been situations where valid industrial action has been challenged due to disagreements about the specificity of category and asks for views on whether greater specificity in section 226A of the 1992 Act, on categories of worker, would be helpful.
- Changes to the time frame and methods for unions to inform employers and members of the ballot outcome.
- Extending the mandate period for calling industrial action from 6 to 12 months.
- The appropriate time period for notice of industrial action.



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## (iv) Repudiation

- There are proposals in relation to possible options for modifying the requirements a union must comply with in order to repudiate industrial action - including permitting the union to issue a general notice of repudiation on its website instead of writing to members.

## (v) Prior call

- Amending the law on prior call so that it does not apply where trade union members have walked out in emergency situations in fear of their safety.

## (vi) Right of Access

- Setting up an enforcement framework, managed by the CAC, for Right of Access agreements established through the framework provided for in the Employment Rights Bill - including the possibility of penalties for employers who fail to comply - but only if two CAC complaints are upheld.



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## Consultation on strengthening remedies against abuse of rules on collective redundancy and fire and rehire

### What are the proposals?

This consultation contains the following proposals:

- Increasing the level of the protective award from 90 days to 180 days or, alternatively, removing the cap entirely - except for insolvent employers, where the protective award payable by the Insolvency Service will remain capped at 8 weeks' pay.
- Allowing an employee bringing a tribunal claim for a protective award to claim interim relief - i.e. if the claimant can establish that they had a 'pretty good chance' of showing that the employer had breached collective redundancy situations then the employer would have to continue to pay them until the final hearing.
- In a fire and rehire situation, allowing an employee who brings a claim for unfair dismissal, under the new right established in the Employment Rights Bill, to claim interim relief.

The consultation also says that the Government intends to gather further views on strengthening the collective redundancy framework in 2025, including consulting on doubling the minimum consultation period when an employer is proposing to dismiss 100 or more employees from 45 to 90 days.



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## Consultation on the application of zero hours contracts measures to agency workers

### Introduction

This consultation seeks views on how to apply the new rights for workers on zero hours and low hours contracts, set out in the Employment Bill, to agency workers.

The Government says that it believes that these rights will be beneficial for all workers facing insecurity because of uncertainty in their hours but goes on to say that the measures may need to apply in a different way because of the tripartite relationship between end hirers, employment agencies and agency workers.

### What's Included?

The issues covered in this consultation are:

- Whether the offer of guaranteed hours should be made by the employment agency or the end hirer.
- If the offer is made by the end hirer, whether the end hirer should be required to pay the agency a transfer fee.
- If a worker succeeds in a tribunal complaint that they have not been given reasonable notice of a shift, whether the tribunal should apportion liability for compensation, between the agency and the end hirer, according to the extent that each were responsible for the unreasonable notice.

- Whether legislation should prescribe how the end hirer should notify the agency that they have a shift available and of changes to shift availability.
- Whether the agency should be responsible for paying any short notice cancellation or curtailment payments to the worker (and, if so, the arrangements for agencies to recoup these costs from the end hirer).
- Whether there are any other factors that need to be taken into account in applying each of the new rights to agency workers.

The consultation also indicates that the government intends to consult further on issues including: how to define low hours contracts, what constitutes regular hours, how employers should calculate offers of guaranteed hours and what reasonable notice means.

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## Consultation on Strengthening Statutory Sick Pay

### Introduction

This consultation relates solely to the rate at which lower paid workers should be paid SSP. The Lower Earnings Limit is currently £123 per week and the current rate of SSP is £116.75.

### What are the proposals?

The government is proposing a taper system under which an employee would be entitled to whichever is the lower of a specified percentage of their average weekly earnings or the current SSP rate.

The Government has provided some illustrations based on the percentage range 60% to 80%, but has not proposed a specific percentage figure.



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