nipsa

September 2024

Response to the Public Consultation on the 'Good Jobs' Employment Rights Bill

Introduction

1. NIPSA is the largest Trade Union in Northern Ireland representing over 43,000 members, employed across the whole of the public service, in organisations such as the Northern Ireland Civil Service and its Agencies, Local Government, Education, Health and Social Care, the Northern Ireland Housing Executive as well as a host of Non-Departmental Public Bodies (NDBPs). NIPSA also represents a significant number of members in the community and voluntary sector. The following is our response to the Good Jobs Bill Consultation[1].

Fulfilling "New Decade New Approach"

2. The restoration of devolution in January 2020 was based on the principles outlined in the "New Decade New Approach"[2] document. Within this agreement there was a section entitled "**Workers' Rights"** which stated:

> *there will be an enhanced focus within the Programme for Government on creating good jobs and protecting worker's rights. The parties **agree** that access to good jobs, where workers have a voice that provides a level of autonomy, a decent income, security of tenure, satisfying work in the right quantities and decent working conditions, should be integral to public policy given how this contributes to better health and wellbeing by tackling inequalities, building self-efficacy and combating poverty".* [3]

3. Despite the subsequent collapse of the devolved institutions and another "restoration" the latest Programme for Government[4] (currently out for consultation) includes reference to **"**Employment Rights Legislation and a Good Work Charter".[5] It is important therefore to see the Good Jobs Bill as part of a wider, **agreed** aspiration and measure its final form in this context. That is, we need to insist that its previously stated, fullest ambition **is honoured.**

4. There has been much debate over the last few years about how much in our society is "broken" – how widespread the scale of inequality and how little trust there is in "politics" to fix it. Yet, the major contribution to these facts is rarely stated – that the current shape of our society was a deliberate political choice. This allowed neo-liberal

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[1] https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/good-jobs-consultation.PDF
[2] https://assets.publishing.service.gov.uk/media/5e178b56ed915d3b06f2b795/2020-01-08_a_new_decade__a_new_approach.pdf January 2020.
[3] Ibid p.4.
[4] https://www.executiveoffice-ni.gov.uk/topics/making-government-work/programme-government Sept. 2024
[5] Ibid. p.17.

ideologues, who believe "there is no such thing as society", to shape our world and remove the democratic challenge to their reckless profit seeking. In the workplace, where they could, they sought to create an environment where the workforce was de-skilled, de-unionised and precarious (in hours and reward). Successive governments whether New Labour, Tory or a Conservative/Liberal Democrat coalition left this framework untouched to, in effect, "lock in" these restrictions on the trade union movement. Indeed, Tony Blair, when Leader of the Opposition advertised that he had no intention of repealing Tory anti-trade union legislation. As he wrote in the Times in 1997:

> Let me state the position clearly, so that no one is in any doubt. [Under Labour] the essential elements of the trade union legislation of the 1980s will remain…the changes that we do propose would leave British law the most restrictive on trade unions in the Western world.[6]

5. As a consequence of this approach current labour laws, because of their longevity and ideological foundation, are treated as if they weren't man-made or reversible with discussion of justice in the industrial field, too easily focused on **individual** redress. The starting point of changing this, in relation to industrial democracy and fighting inequality, is a recognition that this cannot be done at an individual level i.e. the debate must focus on the benefits of collective redress. We should also recognise that "nothing has contributed more to giving the individual increased freedom in our society over the past hundred years than the collective struggle of the labour movement"[7] and that if we are genuine about full "engagement" in our society we need to link the repeal of anti-trade union law to the development of enhanced civic fora whereby we can create a basis for true accountability and scrutiny across the public sphere.

Resisting the lobby of the privileged

6. We all, not least those at the bottom of the ladder of economic privilege need to be spared the "we can't cope" noises from employers who have had an employment world created in their image for decades and now (over)react to the possibility of moves towards regulatory redress. We've heard this broken record before and the

[6] Quoted in London Review of Books Volume 37 No. 20-22 [On line] Available: http://www.lrb.co.uk/v37/n20/andy-beckett/vuvuzelas-unite October 2015.
[7] Wahl, A. (2011) The Rise and Fall of the Welfare State, London: Pluto Press, p.210.

tactic it follows is well-rehearsed. It begins with a prolonged propaganda offensive threatening how the "heavens will fall" if there is no immediate, dramatic change in a particular policy area. Irrespective of evidence, dramatic proposals to "avert catastrophe" are then presented. These act as "rangefinders" from which, if necessary, some minor concession can still be negotiated with the balance of forces still offering little challenge to or having moved significantly onto the terrain of the corporate elite.

7. A case in point can be found in how the Confederation of British Industry vehemently opposed the very concept of a minimum wage in Britain, subsequently warned the 1997 Labour Government of the "terrible consequences" for the economy should it be set at a rate that would significantly impact on low pay ("Even a low minimum wage would reduce job opportunities and create major problems for wages structures in a wide range of companies") before finally, contentedly, admitting to the Low Pay Commission, six months after it was introduced, that while the measure had not had the impact on wages and prices about which they had warned, the negligible effect was a result of their achievement in having it set so low!"[8] In this context it is essential that the "what next?" on the Good Jobs Bill does not surrender to lobbying from the (already) privileged.

Consultation on Good Jobs Bill

8. NIPSA welcomes the opportunity to contribute to this consultation and given our comments above, it is clear that we **do not believe** that "the current employment status system for employment rights works effectively" (A19). While reference is made to "proper workforce planning strategies" (p. 15), a key point that should dominate discussion is the enormous power that the state, in the form of the Executive's budget, can exert here. For example, the budget for "Health" and its associated direct and indirect forms of employment accounts for 50% of this budget. If the areas this spend reaches was tied to ensuring that the employment within its sphere would not tolerate a culture of inappropriate labour practices and exploitative behaviour, this could be policed out of the system. This gives the state the power to **demand and enforce best practice** throughout the current and future spend it

[8] See NIPSA https://nipsa.org.uk/publications/Myths-and-Facts-web.pdf October 2011, p.3.

distributes - including within a procurement process that should be built on contractual awards only being made to those who adhere to (newly) mandatory principles of trade union recognition/negotiation and sectoral bargaining agreements.

Theme A -Terms of Employment

9. The following comments on behalf of NIPSA should be viewed in conjunction with the full response from the Northern Ireland Committee of the Irish Congress of Trade Unions (NICICTU) and its background/policy briefings for this consultation. While these documents and our responses explore a range of options/remedies, the key point is that any potential application within current and future areas of trade union operation are subject to full trade union consultation/negotiation and that extant negotiated agreements prevail until such negotiation/agreement takes place.
10. In relation to "Theme A – Terms of Employment" and the discussion of Zero Hours contracts NIPSA **agrees** with the "the overarching objective to replace zero hours' contracts with contracts that provide flexibility while protecting workers' rights" (A1) and for the "outright ban on zero hours' contracts" (A2).
11. While **we do not believe** that there are "circumstances where a zero-hours contract may be appropriate" (A3) how and by what they are replaced returns the question of "good jobs" to a matter of genuine negotiation and free collective bargaining. The starting point is that the status quo is unacceptable. The true measure then becomes how does any alternative best address and redress the current power imbalance in labour law and protect workers from exploitation and insecurity.
12. Some of the discussion of "flexibility" (p.15) as regards ZHCs falsely sets up the protections proposed in a Good Jobs Bill as potentially creating barriers to a life of study or caring. This does not have to be the case if the action on ZHCs is done in conjunction with a genuinely supportive i.e. flexible and imaginative interaction with the social security/educational system and other protections that could be introduced.
13. Reference to agency workers "assigned…but not employed by [the] employer" (p.16) reinforces the necessity of enhancing protection for these workers and the need to enhance clarity of agency responsibilities. This must deal with the current position whereby agencies can profit in the fullest meaning of the word without fulfilling their responsibilities on anything but the most basic level.

14. On the question of "banded hours" (A4) – the key, again, is that legislative change puts the onus on the employer to facilitate the replacement of ZHCs – including the "right" to move to a banded hours contract **if that best suits a new collective agreement under which the employee will be protected**. In this context, the "right to move to a banded hours contract" should be supported in principle however the right to request alone is not enough. This means that notwithstanding a different/better arrangement, all workers on ZHCs should be moved to a system (likely, if it suits the individual workers negotiated position, to be banded hours) that actually reflects the hours they usually/are required to work (as they are currently on contracts that do not spell this out). Those, new "employees" thereafter employed in a post-ZHC world will have a contract of employment stating the hours they are required to work i.e. they **do** have the right (A5) "to move to a banded hours contract…where the hours worked don't match the reality of the working pattern".
15. This means, notwithstanding the emergency situation of a temporary business closure (caused by power failure/flooding for example) an employer should **NOT** "be able to refuse a request" and, as stated above, the right "**merely to request"** a more predictable contract" would **NOT** "be an appropriate way to replace a zero-hours contract" [A7].
16. In terms of the discussion (A10) of the qualifying period "a worker [would have to] have been in post…in order to provide evidence of the reality of the working relationship, this should be shaped by the awareness that those on ZHCs are often in precarious employment situations. We need, therefore, to ensure that by imposing any qualifying period there is no deliberate delay for workers to access the stable, predictable income that is a central goal of moving away from ZHC contracts. If after negotiation, a decision on Banded Hours contracts is the agreed solution, obviously these would need to be underwritten by legislation strong enough to stop employers availing of loopholes to avoid fulfilling their responsibilities.
17. While there may not be a "one size fits all" replacement for Zero Hours Contracts and options such as Guaranteed Minimum Hours contracts or Part -Time permanent contracts may be a matter for negotiation in some sectors, the key point of this change is about establishing/restoring democratic accountability to the workplace.

18. Employers have a tendency to react to any such suggestion as if this is introducing "politics or ideology" within the industrial relations domain. As referenced above, this starts from the privileged position of not seeing how their existing "power" over such matters has arisen for explicitly political/ideological reasons – not least of which to re-write social policy in opposition to trade union organisation and involvement. A new approach, therefore, merely restores in many cases the opportunity for a representative worker's voice to be acknowledged. This would inform **and affirm** "any right to request a more predictable contract" (A8) applicable to contracts "which do not provide certainty in terms of hours worked, length of contract or days and times worked".
19. This approach also requires a change of mindset in relation to other features of the labour market that have accepted worker insecurity as a "fact of life". For this to change we need to enhance genuine "flexible working" to give workers the predictability of work/conditions and income they require with the onus on the employer to demonstrate why predictability cannot be guaranteed /recognised/compensated. This is even more obvious in situations such as the temporary agency workers who have been in such a position for a year or where an individual is on a fixed-term contract of the same duration. Such workers should be able to request being made a permanent employee. It follows therefore that "If a statutory right to request a more predictable contract is introduced" (A9) the default has to change so that "workers" and "employees" have the option of flexibility and that the ability of an employer to deny this has to be subject to challenge and negotiation.
20. The broader consideration of the effect of poor industrial relations, workforce planning etc. on the worker should inform the discussion and confirm the necessity of "a requirement for employers to provide a 'reasonable' period of notice to a worker [currently] on a zero-hour contract in advance of a shift" (A11). In terms of a "a reasonable period of notice" again this must be negotiated, and, given the weakness of "guidance" and "codes of practice" as opposed to legislation, it is the latter that is required to protect workers (A13).
21. This would also be enhanced by compensation "where an employer cancels or curtails a shift at short notice for workers on a zero-hour contract" (A14), the rate of which

(A15) should be subject of collective agreement and properly representative of loss (defined in its fullest sense). While this part of the consultation involves discussion reflective of those currently on ZHCs the questions of appropriate notice and compensation should also apply to those not on ZHCs (A16).

22. On the question of "Exclusivity clauses" (A17), whether "in low or zero hours contracts", these should be banned. In terms of the invite for further comment (A18) on ZHC there needs to be broader reference in the paper to regulating/limiting the employment framework that the use of Agency workers facilitates. NIPSA has previously highlighted the cost, workforce planning failure and exploitation at the heart of their misuse.[9] Given this is the channeling of public money through Agencies, there can and should be greater control/scrutiny of their operation. If everything else in the public sector in terms of spend is under review in the context of permanent budgetary crisis – why are current/future contracts with agencies not under review across Dept.s? Such a review could be commissioned by the Executive and should explore the possibility of varying existing contracts with providers. Specifically, as well as the real employer (the state) having an obligation to staff their organisation appropriately and not use agency staff to avoid doing so, we can and should be legislating to stop the variety of "transfer fees" ('temp to perm fee etc.') that agencies receive. While the current providers will resist contract variance or new contracts written in this manner – if the Executive hold their nerve they can test how much such organisations want to bite the hand that feeds them.

23. It is acknowledged that "there is no register of recruitment agents" (p.46). This begs the question, "why not?" given placements are being made in areas receiving public money. In this context, a register is essential, with the state not engaging with/funding any agency that does not fulfil any subsequent trade union recognition/facilitation flowing from their activity.

24. Determined intervention of this nature would also address the **clear** "issue of concern" – in relation to "bogus self-employment" (A20) that has been evidenced across a range of sectors – public and private. This has seen the ***real employer*** cut costs, increase profits and left the state to pick up the tab because the bogus self-

[9] See NIPSA (2018) https://nipsa.org.uk/publications/40097-web.pdf.

employed need in-work benefits to support their low wages. In addition, such bogus self-employment has a lethally destructive presence in construction (A21).

25. This issue, like the question of employment within "digital platforms" (A22) should be addressed by ending the inherent exploitation of the three-tier regime of employment status classification (i.e. employee, worker and self-employed)" and the establishment of **day one statutorily enforced employment rights.** This will also address employment status "misclassification" (A24).
26. This policy change can be combined with action in the tax system to correct current incentives that facilitate employers engaging a "contractor" who is not genuinely self-employed (A25). This is done to avoid paying the National Insurance Contributions that would paid if the genuine employment relationship had been established.
27. In relation to the discussion of "Worker and Employee Status" reference is made (p. 27) to the "complexity" of this area of law and its "overlap" with matters which are reserved (such as "tax law or GDPR"). On this and/or any overlapping matter, complexity is not an excuse for inaction i.e. where protection is needed and this can't be dealt with in this Bill – there should be a thorough assessment of how and where such protection can be facilitated. Even if this strays into "reserved" areas the mitigations that could be deployed by a devolved Ministry should be explored.
28. Given the abuses associated with "fire and re-hire" exemplified by the brazen disregard of the law in P&O's actions in 2022, "the need for greater regulation on dismissal and re-engagement (fire and re-hire) practices" (A27) is clearly needed. A "Code of Practice", therefore, would not be sufficient to protect workers' rights" in the context of the question (A28) that frames such action as driven by "businesses in genuine economic distress". The egregious actions of P&O, British Airways etc. are not driven by "distress" – they are motivated by the profit motive outweighing all other considerations. Statutory intervention is therefore essential (A29), must be comprehensive (A31) and involve enough thorough consultation to address genuine concerns of businesses contemplating redundancies or closures (A32).
29. The Northern Ireland Committee of the Irish Congress of Trades Unions (NICICTU) recommendations on this issue outline how the Good Jobs Bill could fulfil these requirements. They propose that the new bill should amend existing legislation to:

- 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."
- 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.
- Consultations must start 90-days before any dismissal process commences.
- State explicitly that that no notices of dismissal can be given until the consultation process is completed.
- 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.
- 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.
- 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.
- Consultations to avoid redundancies/fire and rehire should not be restricted unnecessarily to units within the business enterprise.
- Make protection from dismissal a 'day one' right for employees and workers in cases of dismissal and re-engagement. This can be done ahead of moves to replace both categories with the single status of 'worker' and the removal of qualifying periods for all employment rights.
- Extend the application of 'interim relief' to employees and workers in cases of dismissal and re-engagement, thereby maintaining the contracts in place pending a full tribunal hearing. Where these dismissals are adjudged 'unfair', the primary remedy should be reinstatement (the employee returns to their previous job) or re-engagement (the employee is re-employed by the employer on terms specified by the employment tribunal). The caps on compensation awards should be removed.
- Provide that 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.
- 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.
- Provide independent trade unions the right to access workplaces during working hours to meet, recruit, consult and represent the workforce.
- 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.

- 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.

30. In relation to "Employment Rights: Redundancy - Offence of Failure to Notify" it is clear that legislation is required (A33) to introduce an "offence of personal liability" and that, for breaches of the legislation to have any meaning "the maximum fine" should be raised above "£5000", indeed mirror the "unlimited" provision that exists in Britain (A35).
31. The question of a Written Statement of Particulars is an important one and should be extended to workers (A36) as a day-one right (A37).
32. In terms of the following additional information (A38) that the written statement might include, these appear valid with the exception of the suggestion of "any other training which the employer requires the worker to complete but does not pay for".
33. On "Agency Workers and Recruitment Agencies Pay Between Assignment Contracts – Swedish Derogation", there is clearly a need for government action in this area (A39). This should mean the abolition of the Swedish Derogation (A40) with its misuse widely documented in certain sectors notably agri-food and manufacturing sectors. (A41).
34. There is a need for government action in the area of a "Key Information Document for Agency Workers" (A42).
35. The question of "pay transparency" is an issue for work seekers (A43) and is a well-established means to challenge pay dipartites/discrimination on the basis of gender.
36. In terms of recruitment agencies having "to provide a Key Information Document (A44), it is essential they do so, obviously making "pay related information clearer and easier to understand" (A45).
37. Any challenges "this could create for businesses" (A46) would involve them merely finding a basic IT solution to addressing long overdue questions of transparency.
38. On "Employment Agency Inspectorate Information Sharing" there is clearly "a need for government intervention in this area" (A47) and for "the information sharing powers of the EAI…to be enhanced (A48) with the aim of "information sharing gateways between relevant and appropriate regulators [streamlining] enforcement activity as experienced by recruitment agencies" (A50) to "create efficiencies in enforcement activity" (A51).

39. By pooling data, regulators could identify patterns of non-compliance across different sectors and regions, enabling them to focus their efforts on high-risk areas. For example, if one agency identifies that a particular employer consistently violates employment standards, this information can be shared with other agencies, allowing them to monitor the employer for other potential violations, such as health and safety breaches or tax evasion.
40. Opening information-sharing gateways would allow for near real-time communication between regulatory bodies. This could lead to faster responses to violations, especially in cases where immediate action is necessary e.g., when workers are at immediate risk due to unsafe working conditions or when employment agencies are found to be engaging in illegal practices like modern slavery.
41. Obviously, careful consideration must be given to the challenges in relation to data privacy, legal barriers, and interagency collaboration. Enforcement powers can be used responsibly, effectively, and fairly, without undermining the benefits that amended labour laws would aim to deliver. In this way, the regulatory framework should protect the rights of individuals and organisations to advocate for their interests without fear of government retaliation or suppression. For example, government should not interfere excessively in the internal operations of trade unions or other civil society organisations, allowing them to operate independently as a check on both private and public power.
42. As government expands enforcement capabilities, particularly through digital means, limitations must be placed on surveillance and data collection to protect individual privacy. This is particularly important in the context of labour enforcement, where monitoring workers or businesses could lead to intrusive data collection. In this way, the EAI or other regulatory bodies should be restricted from gathering excessive personal information about workers or businesses unless it is directly relevant to an investigation, and there should be strict guidelines on how data is stored and used.
43. Emergency powers should be used sparingly and only for legitimate crises, with clear limitations and sunset clauses to prevent permanent expansions of government authority. This ensures that governments do not use emergencies as a pretext for eroding democratic norms or gaining unchecked power e.g. Labour regulations introduced in response to a specific economic crisis (e.g. during a pandemic) should automatically expire after a set period unless renewed through the proper legislative

process, ensuring that emergency measures do not become permanent without scrutiny.

44. If the EAI has more robust enforcement powers, such as the ability to issue fines, revoke licenses, or impose other sanctions, it creates a stronger deterrent for employment agencies that might otherwise violate regulations. Agencies will be more likely to comply with labour laws, knowing that there are real consequences for violations.

45. As discussed above, employment agencies, particularly those dealing with vulnerable workers such as migrants/or low-income workers, may engage in exploitative practices. Stronger enforcement powers would enable the EAI to intervene more effectively and prevent exploitation, such as underpayment, lack of proper contracts, or failure to provide adequate working conditions. With expanded powers, the EAI could take immediate action against non-compliant agencies without having to rely solely on other government departments or lengthy legal processes. For example, the ability to issue on-the-spot fines or suspend operations could address issues quickly, thereby reducing harm to workers.

46. Enhanced powers could allow the EAI to carry out more proactive inspections rather than reacting to complaints. This would enable the regulator to identify and address issues before they escalate into more significant problems, creating a more preventative approach to enforcement. If the EAI has more enforcement authority, workers would have a more reliable avenue to seek recourse when their rights are violated. This is especially important in cases where workers may not have the resources or knowledge to pursue legal action independently.

47. Many workers in temporary or agency-based employment may be unaware of their rights or afraid to report violations due to fear of losing work. Stronger EAI enforcement powers could provide an additional layer of protection, ensuring that these workers are not left vulnerable to unscrupulous practices. There would also be greater consistency in how regulations are enforced across different sectors. This would help create a level playing field for businesses and ensure that employment agencies are held to the same standards as other employers. Such action is, of course, fully underwritten by the development of sectoral bargaining advocated elsewhere in this response.

48. In terms of its “information sharing capabilities” being “broadly similar to the information sharing capabilities of its British counterpart the EASI (A52) and other questions of

"information sharing" (A53/A54) there needs to be some caution that protections introduced in this context do not generate vulnerability in relation to other aspects of workers' lives for example in relation to creating a deterrent effect on migrant workers who in challenging their employment treatment become subject to investigation in relation to their immigration status.

49. As outlined above, therefore, we support the NICICTU call for "government action in the area of EAI Enforcement Powers: Labour Market Enforcement Undertakings & Labour Market Enforcement Orders" (A55) with:

- legislation introduced which requires all employment agencies to be licensed.
- The EAI…better resourced to carry out unannounced inspections and greater powers to ensure that agencies are complying with their workers' employment rights.
- The EAI…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.
- Requirements…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.
- Following from this "aligning the EAI enforcement provisions with the Employment Agency Standards Inspectorate (EASI) provisions in Britain *would* be appropriate i.e. the introduction of Labour Market Enforcement Undertakings and Labour Market Enforcement Orders." (A57).

Theme B: Pay and Benefits

50. We are familiar (B1) with the needs for action in these areas and our response to the specific questions raised by this theme is informed by our own formal/direct experience, our work with Trades Councils and the solidarity action taken to challenge the problems we discuss below.
51. B2 - In our experience employers that receive tips pass do not pass them on to their workers in full.
52. B3 - Where tips are received or controlled by the employer, workers should receive tips without deduction by the employer.
53. B4 - Where tips are received or controlled by the employer, they should have a written policy on dealing with tips and make it available to workers.
54. B5 - An employer should be prohibited from using tips to make up contractual rates of pay of workers.
55. B6 - Where tips are received or controlled by the employer, and the employer hires agency workers, those agency workers also receive a fair allocation of tips.
56. B7 - Where a Tronc system is used for the distribution of tips, this should be considered to provide for a fair distribution of tips where the management of the Tronc is independent of the employer.
57. B8 - Legislation is needed to ensure employers pass on tips in full and that the distribution is fair and transparent.
58. B9 - A Code of Practice should be published to advise on and promote fairness and transparency in the distribution of tips.
59. B10 - The right to a pay statement should be extended to workers.
60. B11 - 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.
61. B12 - There should be a change in the holiday pay calculation reference period from 12 weeks to 52 weeks.
62. B13 - 52 weeks provides an average which avoids "gaming" by either employer or employee.
63. B14 - There is a need for government action in the area of Working Time Regulations.

64. B15 - We do not agree with the approach adopted in Britain (B16) as we do not think this approach would work here.
65. B17 - Greater regulation around record keeping is required.
66. B18 - It is clear that there should be a change in how employers are required to record "working hours". This should move beyond the "adequate" requirements expected of British employers to the "objective, reliable and accessible system" for recording hours" that the European Court of Justice ruling stated employers should use.
67. B19 - Issues brought to trade union reps as a consequence of "a lack of adequate record keeping" include, inter alia, a failure by employers to pay for hours worked; to pay (overtime) for hours worked beyond this and to not recognise/improperly recognise holiday entitlement that has been overtime.
68. B20 - There is a need for government action in the area of the "Right to Disconnect" and "a statutory Code of Practice on the 'Right to Disconnect' required to achieve this right.

Theme c: voice and representation

69. The question of "voice and representation" is a vital one as it provides the key, practical conduit through which the full ambition of the Good Jobs Bill can be realised and the removal of barriers for trade union access expedited (C1). The main barrier, manifest in many forms is that the starting point of trade union access is not established as of right – leaving workers silenced, vulnerable, unsafe (given the Union could facilitate Health and Safety intervention) and exploited. As NICITU has outlined "for trade unions, collective bargaining and strengthening unions rests upon four pillars: the ability to access the workplace to recruit, consult and represent workers; recognition of the union by employers to negotiate on all terms and conditions of employment; protections for workplace union representatives against harassment and detrimental treatment including dismissal; 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".
70. The exclusion of trade unions (C2) springs from the cultural norms (in some sectors) shaped by an ideological framework opposed to any manifestation of industrial democracy that might challenge the primacy of the "market" and employers exercising unchallenged power over their workers. The question that reduces this challenge to that of an individual good/bad experience of TU officials visiting workplaces (C3) trivialises the fact that a "trade union presence" is not only "necessary" (C4) but essential to "ensure employees have a voice and are listened to by their employer".
71. There *is* "a need to reduce the current threshold of 21 employees for a trade union to seek formal recognition (C10)" and for reform that simplifies/removes the range of restrictions that have hampered trade union access/recognition and are loaded in favour of employers' ability to establish legal and organisational impediments to even the *potential* of trade union activity and have a intimidatory, deliberately disruptive effect on such attempts. Evidence on its employment specific and societal benefits are rife and to some extent questions around these issues (C16) or its particular, future shape locally, if this Bill makes the changes necessary (C17), merely reinforces how out of step the free market Anglo/US exceptionalism is in comparison to more modern developments. This is also shown by the fact that organisations such as the IMF, World Bank etc. that, historically have not been known to be supportive of organised labour's

influence, in some of their policy proposals belated, grudgingly, now recognise the damage **not** hearing a trade union voice facilitates. This has led to an acceptance of a trade union presence as an essential one that contributes towards building a modern economy.

72. There is also the need to remove the limited definition on what trade union access, if achieved, can address. At the moment this is limited to "pay, hours and holidays". The comprehensive change recommended by the Irish Congress of trade Unions on this issue should be the template for future access:

- The 21-minimum employee threshold should be removed, allowing more enterprises to be covered by the statutory recognition rights.
- Unions should have access to the workplace to communicate with, meet, consult, recruit, and represent the workforce. The Industrial Court (IC) should be empowered to enforce such access (potentially with the threat of automatic recognition) at the earliest stage of the statutory recognition process.
- 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.
- Where ballots are to be held, the 40% requirement to vote for recognition of the overall bargaining unit should be removed. A simple majority of workers voting in the recognition ballot should suffice.
- Ballots should have the facility to be held electronically, by post or at the workplace.
- Where the IC issues a declaration granting recognition to a union with an employer, recognition should not be rescinded other than by the mutual consent.
- Unions should have the right to relevant information from the employer in order to determine an appropriate bargaining unit (potentially with the threat of automatic recognition).
- Unions should have the right to propose reasonable adjustments, where material conditions have changed since the application was made, to the bargaining unit during the recognition process.
- In large, multi-site organisations, unions that have recognition within one bargaining unit should have the ability to organise and ballot in other potential bargaining units across the organisation without reaching the 10% membership threshold within the additional unit or workforce group.
- As referred to above, an 'unfair practice' constitutes a practice used during a union recognition ballot that would unfairly influence the result of the ballot. These rules should be reformed to ensure that any actions of an employer to frustrate a unions recognition bid are covered, they should only apply to employers.
- The current requirement on unions to demonstrate a causal link between unfair labour practices and workers' decisions on how to vote should be removed.
- 'Unfair practices' by employers opposing recognition should be more vigorously prohibited. The only recourse, at present, open to workers is to take Tribunal claims. The relevant legislation needs to be amended to ensure that Employment Tribunals can 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.

- Remove the existing three-year rule which restricts a union from re-submitting an unsuccessful application.
- The effective management criteria should be removed; employers have tried to argue that in effect collective bargaining is incompatible with effective management. The litmus test should be 'is effective bargaining possible' and not whether collective bargaining is compatible with effective management. No consideration should be given to supposed bargaining units outside of the one specified by the union in its application.
- The existing scope of collective bargaining defined in legislation should be broadened to mandate employers who recognise a trade union to negotiate on 'all terms and conditions of employment and work organisation.'
- Currently, under the Trade Union and Labour Relations (Northern Ireland) Order 1995, the Industrial Court is required to 'have regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace'. This should be reformed so that the IC is required to: 'promote collective bargaining in the workplace, while having regard to the object of encouraging and promoting fair and efficient practices and arrangements in the workplace', as per the ILO Committee on Freedom of Association.
- In judging a proposed bargaining unit, the IC should be required to take account of 'the fact that workers having a collective voice in the workplace is desirable'.

73. In terms of "what the collective sectoral bargaining would look like" (C17) NICICTU has outlined how this could be advanced by establishing Sectoral Bargaining Committees (SBC), made up of equal numbers of employer and trade union representatives and that the SBC would be on a sector-by-sector basis. In this way, the SBC would be brought together to:

- Set minimum pay levels and terms and conditions of employment;
- Establish mechanisms for the resolution of disputes, individual and collective;
- Develop equality and inclusion policies and strategies, and health and safety standards for the sector as a whole;
- Ensure appropriate training (including apprenticeships) and skills development of the workforce in the sector;
- Assess the impact of new technology and other developments on the sector;
- Examine Employment and skills retention within the sector.
- Develop 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.
- Complement Sectoral collective bargaining 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.

74. The current system of providing notice of industrial action to employers **is not** fit for purpose (C21). In terms of what is required (C22), the framework put in place by successive Governments with the sole aim of weakening trade union presence and ability to act needs to be removed. For example, as NICICTU has pointed out:

> 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... 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."

75. We also support NICICTU's call for legislative change so that "the right to strike… is established in domestic law" with "lawful industrial action…not…regarded as a breach of the contract of employment or service, but as a temporary suspension only. i.e. should not be regarded as "grounds for dismissal without some other form of culpable behaviour, such as violence or damage to property". In addition, we support NICITU's proposals for removing the restrictions on Trade Unions in relation to industrial action and increasing the protections for workers by, inter alia:

- Removing 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.
- Ditto 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.
- Unions should only be required to provide information relating to the category of workers being called to take action; the nature of the industrial action, i.e. whether it will be a strike or action short of a strike; and when action will commence and whether it will be continuous or discontinuous.
- For the same reason, a new duty should be introduced for employers, when requested, to supply unions with information which they need to comply with notice and balloting requirements. This duty is similar to current duties in the statutory recognition scheme. Where the employer refuses to supply the necessary information, any subsequent application for an interim injunction to prevent industrial action should fail.
- At the moment, a trade union will not lose its protection from taking industrial action where it accidentally fails to ballot an insignificant number of those it intends to induce to take industrial action. This provision should be extended to the effect that a union would not lose its immunity for taking industrial action

where it accidentally includes an insignificant amount of inaccurate information in a notice to the employer.

- Broaden the range of options by which union members can vote in an industrial action ballot, including workplace voting, including through the provision of electronic voting. This complements the option of a voting paper being sent to a member by means other than post, where required for reasons of personal safety.
- 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.
- 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.
- Introduce measures which ensure that all workers have the right to take official industrial action free from the fear of dismissal or victimisation. Any dismissal of a worker would be void and ineffective unless the employer can show that the reason for the dismissal was not connected to the industrial action. Workers would be able to enforce these rights through the courts. [This action would become unnecessary should the proposed employment bill introduce a single status of 'worker', in place of the current distinct categories of employee and worker]
- Strengthen unfair dismissal protection for employees who have participated, are participating, or are proposing to participate in official industrial action regardless of the length of the industrial action. Workers would have the right to automatic reinstatement where they request it.
- Introduce the right for all workers not to be subjected to any detriment because they have participated, are participating, or are proposing to participate in official industrial action.
- Employers may prolong industrial action, by hiring replacement labour, rather than entering into early and genuine negotiations in order to reach a sensible resolution to a dispute. As the existing law only places duties on agencies not to supply agency workers during industrial action, place equivalent duties on employers not to use agency workers to replace striking workers.
- Remove the current bar on industrial action where there has been a prior call. The Midlands Mainline Ltd vs RMT case highlighted that currently a union cannot rectify a prior unofficial call to take industrial action by repudiating the call and then seeking to conduct a proper ballot.
- In recent years, business restructuring and contracting out have become more prevalent but the law on industrial action has not evolved to respond to these changes. The provisions of a new employment bill should permit lawful industrial action, having complied with statutory notice and balloting requirements, between workers and their employer and any associated employer in certain circumstances such as TUPE transfers (as was the case in University College Hospital NHS Trust v UNISON [1999] ICR 204), where a second employer has directly intervened contributing to the circumstances surrounding a dispute

(where work is outsourced to break the strike), or, where groups of workers are employed by associated employers, i.e. employers with common management or decision- making structures.

76. The necessity of the changes outlined above, shows how far employment law has been deliberately shifted to mitigate against organised labour. Even the discussion of the period of notice provided to an employer in the context of industrial action and whether this be reduced from seven days to five (C24) does not recognise how, internationally there is debate is on whether there should be notice **at all** rather than a proposal merely to "reduce" it. While the latter ***is*** progress, we should note that in France, Spain or Portugal notice is 5 days, in the Netherlands it is 48 hours while Germany has no formal period though notice to ballot is linked to a failure of conciliation. In Greece notice is 24 hours for General Strikes and 48 hours for public service strikes.
77. As referenced above, current legislation should be updated to allow e-balloting (C25). Any "concerns (C26) …about the introduction of e-balloting" – likely to involve security of the process - can be dealt with by negotiation to provide guarantees that there are no impediments to participation in such a ballot (technical or otherwise).
78. The "independent scrutineer" would still be required even with e-balloting (C27) but this should be the subject of future discussion with the Department for the Economy in relation to extending the "restricted market" and related high costs that can arise in relation to their use.
79. While, as discussed above, trade union access is key for this to have fullest meaning – the protection of officials who avail of such access will be the foundation of progress on this issue. In short we need to address the fact that "current legislative protections for trade union officials against detriment and dismissal in relation to trade union activities **are not** sufficient (C31).
80. What is needed to address this are the protections offered by ILO Convention 98 and by the ECHR, Article 11(1). The International Labour Organisations 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".

81. We support NIC-ICTU's statement on the following protections that require legislation:

- It should not be lawful to dismiss a union representative except for good cause, requiring the prior approval of an independent body which has considered the facts, and whose decision would be subject to review at an employment tribunal. Dispute resolution mechanisms established through sectoral collective bargaining structures could provide for such an independent body.
- Where a 'trade dispute' relates to the dismissal or imminent dismissal of a trade union rep, the procedural restrictions on trade unions taking industrial action should be relaxed to allow for early defensive action to facilitate the protection of union reps, thereby potentially reducing the 'cost to the public purse' of tribunal proceedings.
- The powers of Employment Tribunals to enforce reinstatement and re-engagement orders of unfairly dismissed trade union reps must be increased to close the loophole that allows employers to refuse to comply with these orders.
- Introduce statutory rights for trade union equalities representatives.
- Ensure there is sufficient facilities time for all trade union representatives so that they have capacity to represent and defend workers, negotiate with employers and train.
- 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:
- 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).
- A recognised or appropriate trade union should have rights of access to workplaces in which it has members and to undertake inspections where there are reasonable grounds to suspect that there may be non-compliance with health and safety laws.
- Trade union officials and/or safety representatives should be empowered to issue provisional improvement notices and to stop work they deem to be dangerous.
- Trade unions should have the power to initiate private prosecutions in respect of suspected health and safety offences, the costs in doing so recoverable from the State or the employer.
- Extend H&S protections to those in non-standard employment by reforming the general duty imposed by the Health and Safety at Work (NI) Order 1978 so that obligations are imposed on 'persons conducting a business or an undertaking', rather than 'employers.' Extending this new duty so that it applies not only to employees, but to workers 'engaged, or caused to be engaged', by such persons and to those 'whose activities in carrying out work are influenced or directed' by them.

82. The 12-week protected period for workers taking part in Industrial Action against dismissal **is not "**sufficient or fair" (C36).

83. In terms of addressing what "protections for workers taking part in industrial action" what is needed is, again a culture-shift to facilitate trade union activity - including the extension of protections to more than those legally defined as "employees".

84. We echo ICTU's call for reform as follows:

- 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.
- Strengthen unfair dismissal protection for employees who have participated, are participating, or are proposing to participate in official industrial action regardless of the length of the industrial action. Workers would have the right to automatic reinstatement where they request it.
- Introduce the right for all workers not to be subjected to any detriment because they have participated, are participating, or are proposing to participate in official industrial action.
- 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.

85. While we believe 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" (C40) and there may be some merit in exploring the New Zealand example (C41), it should only be considered among a range of options and **must not** generate any further legal hurdles for trade unions to deal with. The coverage and principles underlying new sectoral collective bargaining (outlined above) would be the most effective method of entrenching best practice and this can further inform such engagement/training (including at Departmental, employer, LRA etc.)

86. This would mark the step change of required government action on information and consultation definitions and thresholds (C44/C47) including the definition of "undertaking" changed to include 'establishment' or similar wording to more accurately reflect modern day working practices (C45).

87. In relation to "Information and Consultation (ICE) Thresholds" government action is required in this area (C47) with "the percentage threshold required for employees to make a valid request, for an ICE agreement, from 10% to 2%" appropriate**.**

88. Given, as the consultation points out “60% of businesses have fewer than 10 staff…” the current minimum number of employees (15) should not be retained (C50) and should better reflect “the make-up of the local economy” (C52).
89. In relation to Transfer of Undertakings (Protection of Employment) Regulations, there is no need, in the context of the question asked within the consultation (C53) to change the regulations and specifically we should not follow the 2014 changes in Britain. (C54).
90. The key to creating greater clarity (C62) about to whom TUPE applies will be addressed by our support for removing the three tier workforce and giving to all (bar the genuinely self-employed) the classification of “worker”.
91. There is also a clear need (C63) to “remove the obligation to split employment contracts between multiple employers, where a business is transferred to more than one new business”. The implications of a transfer that “splits” an employment contract across employers necessitates full engagement between employer(s) and the trade union movement that protects the terms and conditions (having ended the three-tier regime of employment status classification) of all “workers”. This means that any changes in TUPE legislation (C64) must not diminish the coverage offered by the Acquired Rights Directive and does not exempt a business on the basis of their (micro) size.
92. There is a need for government action in the area of Public Interest Disclosure (Whistleblowing): Annual Duty to Report (C65) and Prescribed Persons required to produce an annual report to the Department (C66) with “reports…collated by the Department and laid at the Assembly (C68). It would have been helpful if the reason(s) why the existing powers have not been used was discussed in the consultation.

Theme D - Work-life balance

93. The suite of questions relating to Theme D – work-life balance reinforces how such a balance is only feasible within the context of a genuine negotiation and that, in terms of sectoral coverage, inclusivity and "on the ground" expertise this would require the involvement of trade unions.
94. This would mean not only the democratisation of the workplace but the fullest enhancement of workers' lives – in or out of the workplace – with all that flows from a "good job" properly rewarded with negotiated terms and conditions and in "balance" with their entire lived experience in terms of reward and autonomy.
95. In terms of the specific issues raised, on (D1) we strongly Agree that an employee should be entitled to make up to "two statutory flexible working requests within a 12-month period." It should be obvious that flexibility around major life changes that might necessitate an adjustment to working arrangements (e.g., the birth of a child, a health condition, or caring responsibilities) are recognised. Again, it should be noted that in Australia, Sweden, Finland, Germany, Denmark and New Zealand for example there are no limits.
96. We do not agree, indeed strongly disagree 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. Such a timescale is too loaded in favour of the employer and is an incentive for delay (D2)
97. We strongly agree that an employee should be entitled to make a flexible working request from the first day of their employment and that 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. (D3/D4).
98. We strongly disagree that the definition of caring relationships for the purpose of Carer's Leave should mirror that used for dependent relationships as it is too narrow and agree with the NICICTU view that it should be widened to "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 [with] employers…asked to interpret this flexibly". (D7). Again the contrast with some international provision is striking. For example:

- In Sweden: Employees can take up to 100 days of leave per ill relative. The leave is paid at approximately 80% of their regular salary, funded through social insurance.
- In Germany: Short-Term Care Leave: Employees can take up to 10 days of paid leave for sudden, unforeseen caregiving needs. Long-Term Care Leave: Employees can take up to six months of unpaid leave to care for a dependent relative, but financial support (interest-free loans) is available from the government to cover lost wages.
- In Canada: The Compassionate Care Leave program under the Employment Insurance (EI) system provides employees with up to 28 weeks of leave to care for a gravely ill family member. The leave is paid at 55% of the employee's average insurable weekly earnings, up to a maximum weekly amount. This leave can be taken consecutively or split over a period, providing flexibility.
- In France: A Paid Carer Leave (Congé proche aidant) scheme was introduced in 2020. Under the paid leave scheme, carers receive approximately €52 per day for a maximum of three months. This payment is funded through the French social security system.
- In Japan a Child Care and Family Care Leave Law allows employees to take 93 days of carer leave per dependent relative. The leave is paid at 40% of the employee's salary, and it can be taken in instalments.

99. We strongly disagree with the proposal at 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, etc.) as the reference to 3-months is unnecessary and risks being exploited for problems of less than 3-months.

100. We strongly agree "the reasons for taking Carer's Leave should be broadly defined (D9).

101. We strongly disagree "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. (D10)

102. We strongly agree that the leave should be available to be taken as individual days or half days up to one whole week with both options should be pro-rated for part-time employees (D11).

103. Offering paid leave for short-term caregiving needs, including childcare, is a best practice that benefits both employees and employers. It supports work-life balance, enhances productivity and engagement, reduces absenteeism, and helps attract and retain staff. By addressing a wide range of personal and family needs, a more supportive, inclusive, and positive work environment can be created. We echo NICICTU's position 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".

104. The question of notice (D12) does not properly address the question of emergency and therefore notice re Carer's Leave is not applicable in this context.

105. We strongly 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" (D13).

106. We strongly agree that "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" (D15).

107. We strongly 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" (D16).

108. We strongly disagree "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 (D17). The time delay on pay/leave proposed only compounds the stress of this situation.

109. We strongly agree "that neonatal care leave should be a 'day one right' in line with maternity leave, adoption leave and parental bereavement leave" (D19).

110. We strongly disagree "that the qualifying conditions for statutory neonatal care pay should mirror the qualifying conditions for other family-related statutory pay as the access to neonatal leave and pay should be a day one right (D20).

111. We strongly 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 (D21).

112. We strongly disagree "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" as

stated above the timeline is inappropriate as and the stay should not have to last a period of 7 days (D22).

113. The question of "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" should be a matter of flexible discussion i.e. as reasonably practicable (D23).

114. We do not agree "that employers should be allowed to ask for a declaration of entitlement to neonatal care leave and/or pay" (D24).

115. We strongly 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" (D25).

116. We strongly agree "that parents on neonatal care leave should have the same protections as employees on other family-related leave (D26).

117. While we accept the premise that "that neonatal care pay should be paid at the same rate as existing family related statutory payments (D27), the actual, low rate of statutory pay and relationship with benefit system should also be brought into the discussion of WLB.

118. On the question of "the redundancy protections period during pregnancy [applying] from the point that the employee informs their employer that they are pregnant, whether orally or in writing we concur with the NICICTU's position that "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 the it has not been taken as a result of pregnancy" (D29).

119. We Strongly agree that "that protections from redundancy during relevant family leave should be extended to include a period after the employee returns from leave (D30) and "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". (D31)

120. In relation to "those taking shared parental leave, there should be a minimum six-week threshold of continuous leave before enhanced protections from redundancy can apply (D32) we concur with NICICTU that "there should be a minimum of six-week threshold for enhanced protections to apply and we would suggest that this should be reduced to four weeks. As SPL is flexible in nature, it is unrealistic to apply it to continuous period of leave – this should be reviewed."

121. We 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" (D34) but again flexibility is the key and also available in days/half days.

122. We agree "that paternity leave should be available to be taken at any time within the first 52 weeks following birth or adoption" (D35).

123. We disagree that "the notice requirements for paternity leave related to birth and surrogacy should be 28 days for each period of leave" as it is unnecessarily restrictive (D36).

124. In relation to "whether paternity leave should be available for up to four weeks in the north of Ireland" (D37) we strongly agree with this proposition and agree with the ICTU recommendation – that a comprehensive review of all family leave is undertaken by the Department. This should include rates of remuneration.

125. We Strongly Agree that paternity leave should be a day 1 right (D38).

Conclusion

126. It is essential that, given the **central aim** of the consultation process is to explore how to "discourage unscrupulous behaviour and unfair practices" (p. 30) the "what next?" is rooted how we – on the ground - reach, support and enhance the lived experience and reward offered to the most vulnerable "worker". If this is achieved we will, as a consequence raise the standard for all other workers, with the related positives that follow in relation to wider societal goals such as the reduction in poverty, exploitation and discrimination.

127. This is the ambition that should inform the **necessity** of statutory action, sectoral collective bargaining and the repeal of legislation that currently prevents any worker availing of such protections. An honest appraisal of why a worker cannot currently establish their rights will point to the imbalance of power that our current labour laws are built upon. In this way, for a re-balancing, a true re-set we must start from a position

that guarantees trade union access, the protection of such activity thereafter and workers' fullest participation in the industrial relations process. If it was said that "taxation is the price we pay to live in a civilised society",[10] the facilitation and delivery of full employment rights on this basis of the changes we recommend above, is a policy investment that can offer a significant material contribution to building a more democratic and inclusive society.

[10] Oliver Wendell Holmes, Jr. (1841-1935) a US jurist and Supreme Court Justice (1902-1932).