



Economic Development and Regeneration Advisory Board

Tuesday 23rd October 2018 at 2.00 pm

www.northeastca.gov.uk

Documents circulated at the meeting

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Contact Officer: Victoria Miller Tel: 0191 211 5118 E-mail: victoria.miller@northeastca.gov.uk

To All Members

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Briefing

TUC
Changing the world
of work for good

23.10.2018

Brexit and employment rights

TUC Briefing

Outline:

As we approach Brexit, the TUC is determined that workers' rights, jobs and livelihoods must be protected. Working people and our communities should not pay a price for Brexit.

Central to these aims is the need to protect all the workplace rights which have been hard won by workers and their unions through our membership of the EU.

These include equality laws protecting women, BME, LGBT+ and disabled workers from discrimination at work; rights to time off for working parents; holiday pay and protections from excessive working hours; equal treatment rights for part-time, fixed term and agency workers; information and consultation rights and health and safety standards.

The TUC is concerned that these rights will be at risk when the UK leaves the EU.

The government has promised to that employment rights from the EU will be protected after Brexit. Ministers point to the European Union (Withdrawal) Act as the vehicle by which these rights are to be incorporated or retained in UK law once we leave the EU.

But, the TUC is concerned **the Act will not provide effective protection for workers' rights. Instead it provides Ministers with wide-ranging powers to repeal, dilute or limit hard-won employment rights (See annex for more detail on the Act).**

Negotiating for Brexit and protecting workers' rights for the long term

It is vital that, after Brexit, workers' rights in the UK do not fall behind the rest of Europe. Workers in the UK deserve the same protections as people working in countries such as Germany, Spain and Ireland.

The TUC believes that the best way to protect workers' rights for the long term would be for the UK to agree to **continue to comply with existing EU social policy and to keep pace with new employment standards adopted in the EU. This commitment should be included in a long-term agreement with the EU.** By providing a level playing field for workers' rights, the UK-EU deal would stop unfair competition and ensure good employers are not undercut by the bad. It will also protect workers' rights for the long term.

The withdrawal agreement should also confirm that EU employment laws will continue to apply in the UK during any transitional period. This will provide certainty for business and reassure working people that their rights will be protected.

EU negotiations and workers' rights

It is vital that, after Brexit, UK employment law should be provided the strongest possible legal protections to ensure that workers' rights in the UK cannot fall behind their counterparts in Europe. The UK government will of course retain the ability to improve workers' rights in the future. But it is also important that any deal with the EU guarantees all

workers can continue to enjoy not only the existing safety net of standards but also future improvements in EU employment rights.

Having tested all the available options for a trade deal against that requirement, the TUC continues to believe that staying in the single market after we leave the EU is currently the only realistic option that will provide a long-term guarantee for our rights at work – and it would protect jobs too.

While the TUC accepts that the single market and the customs union are not perfect, our analysis clearly shows that they are far better for workers' jobs and rights than any other trade models.

If the government is serious about protecting and enhancing workers' rights, then it should put all options back on the table in the next round of negotiations.

Signing up to a guarantee on employment standards in any future UK-EU deal would also provide a level playing field for workers' rights, would stop unfair competition and ensure good employers are not undercut by the bad.

Similarly, the withdrawal agreement should confirm that EU employment law will continue to apply in the UK throughout any transitional period. This will provide much asked for certainty for business and reassurance for working people that their rights will be protected.

EU law protects workers' rights

There is extensive evidence that EU employment, equality and health and safety laws have delivered wide-ranging benefits for working people. Thanks to EU law:

- **Key health and safety standards.** The Health and Safety at Work Act predated EU rules. But EU standards have led to the introduction of broad duties on employers to evaluate, avoid and reduce workplace risks. EU Directives have also led to safeguards in high-risk sectors like construction; addressed workplace risks such as musculoskeletal disorders, noise, work at height or with machinery; and provided safeguards for workers, such as new or expectant mothers and young people. The number of worker fatalities in the UK has declined significantly since EU directives were implemented.
- **Working time rights:** Although UK workers can opt-out of the maximum 48-hour week, since the Working Time Directive (WTD) was implemented in the UK nearly a million fewer workers are working excessive hours. Around 6 million workers also secured rights to paid holidays, with around 2 million getting paid holiday for the first time, including many low-paid part-time women workers. Thanks to the WTD, many in insecure work, including agency workers, freelancers and those on zero-hours contracts, for the first time secured the right to holiday pay.
- **Maternity and pregnancy rights:** EU law has improved protections for pregnant women and new mothers, including day one rights to unfair dismissal rights and protection from discrimination. Pregnant women have also secured rights to paid time off to attend ante-natal appointments.

- **Rights for parents and carers:** Due to the Parental Leave Directive, parents can take up to 18 weeks' unpaid leave to care for a child. 8.3 million working parents qualify for this right in the UK. The right is used most by single parents who find balancing paid work and care most difficult and who are most likely to face barriers to employment. Around one in five single parents rely on this leave each year. The Directive also provides a right to reasonable time off to deal with family or domestic emergencies. This right is used by one in four working parents and three in ten carers each year.
- **Equal pay:** Thanks to EU law, women in the UK secured the right to equal pay for work of equal value which is key to tackling the gender pay gap. EU equal pay law also resulted in part-time women workers gaining access to occupational pensions.
- **Protection from discrimination:** The UK had race, sex and disability discrimination laws before the EU required them, but EU law still led to improvements. For example, it led to the removal of the exemption for small businesses to discriminate on grounds of disability and ensured victims of discrimination receive proper compensation. The EU Framework Equal Treatment Directive introduced the first rights equality on grounds of sexual orientation, religion or belief and age in the UK.
- **Equal treatment rights for part-time, fixed-term and agency workers** have created significant benefits for UK workers. It was estimated that around 400,000 employees benefitted from equal treatment rights for part-time workers (around three quarters of whom were women). The Fixed Term Employee Regulations led to significant improvements in pay and conditions and better access to occupational pensions for many temporary staff in the UK, particularly in the education sector. Temporary staff are also no longer required to waive their unfair dismissal rights. The Agency Workers Regulations also led to some agency workers receiving a pay rise and improved holiday entitlements. However, problems with the so-called 'Swedish derogation' in the UK mean many agency workers lose out on pay, with some earning up to £135 a week less than directly employed staff doing the exact same job.
- **Protections for outsourced workers:** EU TUPE rights introduced important protections for workers affected by contracting out, company buy-outs and even the privatisation of public services. Without TUPE rights employees could be dismissed, have their pay and conditions cut, or be placed on zero-hours contracts in place of their permanent secure jobs. It is estimated that nearly 1 million (910,000) people benefit from TUPE rights every year.
- **Rights to be consulted on collective redundancies,** and for unions to present an alternative to employers, thereby saving jobs. According to Workplace Employment Relations Survey 2011, in 40 per cent of workplaces that engaged in redundancy consultations, managers' original proposals were altered, leading to fewer redundancies, and extra help and pay for individuals facing redundancy. Weakening these rights post-Brexit could mean that it is cheaper and easier to lay off UK workers. This would also put UK workers at further risk of losing out when decisions are made by transnational companies about where to locate plants and jobs.

- **Protections for migrant and posted workers:** migrant workers are guaranteed equal treatment whilst posted workers who work temporarily in another country are guaranteed core workplace rights.

Rights at risk

The TUC is concerned that these rights and protections may be placed at risk once we leave the EU.

Whilst the government has repeatedly claimed workers' rights will be protected and even enhanced once we leave the EU, recent statements on working time rights by senior Ministers, including Michael Gove and Boris Johnson suggest that there are plots to shred workers' rights once we leave the EU.

Employers' groups and lawyers have also called for weaker employment standards once we leave the EU. The Daily Telegraph is running a campaign to "Cut EU red tape" as part of the negotiations and has called on the Conservative Party to promise a "bonfire of EU red tape".

The TUC does not anticipate that the government will start of bonfire of all workplace rights immediately. But we are concerned Ministers will adopt a salami slicing approach once we leave the EU - limiting, hollowing out or even removing specific workplace rights which are unpopular with those on the right and some employers' organisations.

The initial target appears to be working time protections, even though scrapping the Working Time Regulations could mean that:

- 7 million workers could lose rights to paid holidays – 4.7 million of them women, and many on zero-hours or part-time contracts
- More workers could be forced by bosses to work weeks longer than 48 hours. Following the implementation of the Regulations, nearly a million fewer workers work excessive hours.
- Workers could lose the right to lunch and rest breaks.
- Night workers could lose some health and safety protections.

Other early potential targets for repeal could include equal treatment rights for agency workers, which have always been considered controversial amongst some employers and TUPE protections.

Keeping pace with improvements in EU law

The TUC believes not only that existing employment standards should be protected.

It is also vital that the rights of people working in the UK do not fall behind those of their counterparts in the EU.

We are therefore calling for the withdrawal agreement and the future UK-EU deal to include a commitment that UK employment law will keep pace with improvements in EU social and employment policy.

Proposals already on the EU's agenda include:

- Improved assistance for working parents, including rights to paid parental leave.
- Improved rights for posted workers, ensuring that employers cannot exploit migrant workers and use them to drive down pay and conditions.
- New rights for those in insecure jobs. The EU Commission recently published proposals for a Directive on Transparent and Predictable Working Conditions in place of the current Written Statement Directive. The Commission's proposals will particularly benefit those in insecure work, including ZHC workers, agency workers, freelancers and gig economy workers, by:
 - Guaranteeing all workers (not just employees) the right to receive a written statement of pay and other conditions on day one of employment
 - Ensuring all workers are told about training provided by their employer, meaning that those in insecure work are less likely to miss out. Work related training, required by law, must be cost free for workers.
 - Those in non-guaranteed hours would have a right to advance notice of shifts, meaning they will not be left at the beck and call of employers.

The TUC believes that people working in the UK should benefit from these new proposals.

Ending the jurisdiction of the ECJ

The government is proposing to end the jurisdiction of the Court of Justice of the European Union (CJEU) in the UK

The CJEU has also played a central role in improving the rights of working people. Thanks to decisions of the CJEU:

- The Equal Pay Act was reformed to introduce the right to equal pay for equal value work.
- Women have secured equal access to occupational and state pensions.
- Pregnant women can succeed in a claim for direct sex discrimination without needing to identify a sick man comparator.
- Workers must be properly compensated if they experience discrimination at work. UK caps on compensation had to be removed.
- UK workers secured day one rights to holiday pay and have the right to be paid in full including receiving commission, bonuses and overtime pay, and not just basic pay, when on holiday.
- During mass redundancies, employers must negotiate with unions over ways of avoiding or reducing job losses. Redundancy notices cannot be handed out until consultation has been completed.

If UK courts are no longer required to take new decisions of the CJEU into account, UK workers could lose out on future advances in workplace rights.

The TUC is not alone in raising these issues. The Equality and Human Rights Commission has similarly expressed concern that if UK courts are not required to follow ECJ judgements, UK law may not keep pace with European standards on equality and human rights.

Removing EU protections from UK law

The government has also decided that certain key protections should be removed from law

- The EU Charter of Fundamental Rights
- UK citizens will no longer be able to bring a free-standing legal challenge in UK courts on the basis that UK law breaches the principles of EU law
- UK citizens will also not be able to seek *Francovich* damages, where the UK government fails to continue to respect rights derived from EU law.

Each of these proposals will mean working people will lose key rights and protections when the UK leaves the EU.

EU Charter of Fundamental Rights

The EU Charter currently provides important protections for rights that fall within the scope of EU law, such as non-discrimination rights in employment, rights to fair treatment at work and to collective bargaining.

The government has **claimed** that '*the removal of the Charter from UK law will not affect the substantive rights from which individuals already benefit in the UK.*' The TUC does not agree. Several Charter rights - for example, rights relating to children and the free-standing right to non-discrimination - have no equivalent protection in UK law.

Principles of EU law

In recent years, UK workers have increasingly relied on the principles of EU law to defend and enforce their workplace rights. For example:

In 2017, John Walker **successfully relied** on general principles of EU law to close a loophole in UK law which meant that employers could refuse to pay same-sex partners the same pension benefits as those paid to heterosexual couples if the funds were paid in before December 2005 – when civil partnership became lawful in the UK.

In the recent **Unison landmark victory**, on employment tribunal fees, the Supreme Court concluded that ET fees not only breached the common law principle of access to justice. It was also inconsistent with the principle of effectiveness in EU law which means that domestic law must not make it impossible or excessively difficult to enforce any EU right.

The principles of EU law have also played a vital role in ensuring working people are fully compensated if they face discrimination at work. UK workers have been able to rely on the principles of effectiveness and equivalence in EU law to challenge previous caps on compensation in equality cases. The TUC is concerned that measures in the Bill could create the opportunity for a **future government to reintroduce a cap on compensation in discrimination claims.**

Francovich damages

The Bill would remove the right in domestic law to seek *Francovich* damages where the government has failed to comply its obligations under EU law. This would mean:

The government can no longer be held to account for past breaches of EU obligations, which only come to light once we leave the EU.

Individuals or communities would have no right to legal redress if a future government decides not to comply with EU environmental standards.

Similarly, workers would have no legal remedy if the government were to renege on promises to protect their workplace rights, for example, by removing rights to holiday pay or equal treatment rights for part-time workers or agency workers.

Annex: EU Withdrawal Act

EU Withdrawal Act

In summary, the EU Withdrawal Act:

- Will repeal the European Communities Act 1972 (ECA 1972), which underpins the UK's membership of the European Union on 'exit day' –currently set to be 29 March 2019 at 11.00 p.m.
- Will retain EU law as part of UK law we leave the EU, much of which would otherwise disappear overnight when the ECA 1972 is repealed.
- Will mean that EU-derived equality, employment and health and safety standards will remain in place on the day we leave the EU. But there is nothing in the Bill to prevent a future government from repealing or watering down workers' rights in the future.
- Will mean the EU Charter of Fundamental Rights would no longer form part of UK law when we leave the EU. Individuals would no longer be able to rely on the general principles of EU or to seek damages from the government if it removes or weakens their EU derived rights.
- Creates unprecedented powers for Ministers to amend, repeal or weaken retained EU law including Acts of Parliament, without the need for full Parliamentary scrutiny.
- Will end the jurisdiction of the Court of Justice of the European Union (ECJ) in the UK.
 - UK courts will continue to take decisions of ECJ judgements made *before* exit day into account when interpreting retained EU law.
 - But UK courts will not be required to follow new ECJ decisions made *on or after exit day*.



The Great Jobs Agenda

Introduction

Everyone at work deserves a great job. A great job is one where the worker is paid and treated fairly. And it's one where workers get opportunities to progress, to learn and to have a voice on what matters.

That's why we've created the Great Jobs Agenda. The agenda will give the trade union movement a common set of bargaining asks in workplaces. And it sets out what we want the government to do to ensure that every worker has a great job with fair pay, regular hours and the opportunity to progress.

Frances O'Grady, TUC General Secretary

Voice at work

"If you complain they would gang up and lessen your hours [...] I am scared if I raise anything, they would stop all the good things about my job."

Fair and decent pay

"Changeable income makes paying bills and budgeting hard. Can't afford to take holidays or be off sick as it means a lower wage that month."

Regular hours

"I don't get a rota for the coming week till the Friday if I am lucky – this makes planning anything but work difficult. During quiet periods I will have no shifts so making ends meet is hard but then if it's busy I'm expected to work 70+ hours."

Learning and progression

"Told me I would be trained to do everything, never got proper training and they had a go at me for doing things wrong when I hadn't done that particular thing before."

Fair treatment and respect

"I get shouted at constantly, treated like I'm nothing, and get yelled at for taking time off."

Healthy workplaces

"They do not follow health and safety standards and the building had no running water, we wash up in a bin before putting things through the dishwasher and the place is freezing and covered in mould."

Voice at work

Why it matters

While an employer can ignore the views of a single worker, when workers come together in a union, employers have to listen. Collective bargaining raises pay and improves terms and conditions of work too.

And if we want an economy that works for everyone, workers need a voice in the boardroom to promote long-term thinking.

We want employers to:

- Recognise a trade union for collective bargaining on pay and conditions.
- Agree collective consultation arrangements.
- Establish the representation of elected workers on company boards (or highest management body).

We want politicians to:

- Give unions a right to access workplaces to tell individuals about the benefits of joining a union
 - Ensure more employers consult on important changes.
 - Let workers speak for themselves on company boards.
 - Get businesses, unions and government together to discuss pay, training and conditions in low paid industries.
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Fair and decent pay

Why it matters

In 2016, average real annual pay for UK workers was over £1,000 less than it was in 2008. Real wages are set to fall by 1.1% next year.

Working people need their pay to start rising again – and to have access to a high-quality workplace pension.

We want employers to:

- Negotiate pay settlements with a recognised union.
- Pay all workers at least the real Living Wage.
- Work towards total pension contributions of at least 15% of wages.
- Ensure that pay policies do not widen the ratio between top and bottom pay, and reduce the gender pay gap by carrying out regular pay audits.

We want politicians to:

- Increase the National Minimum Wage to £10 as quickly as possible, and make sure younger workers can benefit too.
 - End the loophole that means agency staff can be paid less
 - End restrictions on public sector pay.
 - Make sure everyone benefits from a decent pension.
 - Crack down on gender and ethnicity pay gaps, and make sure employers publish the gap between top and bottom pay.
-

Regular hours

Why it matters

Over three million people – one in ten of the UK workforce – now face insecurity at work.

They often miss out on rights and protections that most take for granted. And they often get little notice of their shifts and rotas meaning it is difficult to plan their lives – particularly for working parents.

We want employers to:

- Avoid zero hours contracts (ZHCs). Give staff who want them contracts with guaranteed hours that reflect their normal working patterns.
- Agree a minimum notice period for allocating and changing shifts.
- Report on the use of ZHCs, short-hours contracts, and agency work in annual reports, and explain why they are using them.

We want politicians to:

- Make sure everyone gets a written statement of their pay and conditions from the first day of the job.
 - Ban the regular use of ZHCs, and ensure all workers receive premium pay for any non-contracted hours and compensation when shifts are cancelled at short notice.
 - Make sure companies and public bodies report on how many people they employ in agency work, ZHCs and short hours, including through supply chains in their annual reports.
-

Fair treatment and respect

Why it matters

All workers deserve basic rights, respect, and the chance to get justice when something has gone wrong.

But almost one in three workers have been bullied in the workplace. Many of the 3.2 million people in insecure employment also lack basic rights including statutory redundancy pay and family friendly rights.

And the introduction of employment tribunal fees of up to £1200 has made it harder for people treated unfairly at work to seek justice. Claims have dropped by more than half since the fee was introduced.

We want employers to...

- Work with unions to put in place a zero-tolerance approach to all forms of discrimination, harassment and bullying at work.

We want politicians to...

- Scrap employment tribunal fees to ensure all workers have access to justice
 - Ensure all workers have the same rights currently enjoyed by employees.
 - Ensure all individuals automatically qualify as employees, unless the employer proves they are genuinely self-employed.
 - Strengthen protection from harassment at work, and introduce rights for union equality reps
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Healthy workplaces

Why it matters

A good working environment is vital to people's physical and mental health. But more than one million workers suffer from ill health that they think is related to their employment and around 23 million working days are lost each year due to injury or illness in the workplace.

We want employers to:

- Have an active joint health and safety committee and trade union health and safety representatives.
- Implement a policy for workplace well-being.

We want politicians to:

- Make sure employers with 50+ employees have a joint health and safety committee.
 - Place a duty on company directors to ensure good health and safety.
 - Develop health and safety regulations on stress and a maximum temperature at work.
-

Learning and progression

Why it matters

In many occupations it is now essential for workers to acquire new skills as established ones become obsolete. So lifelong learning is vital if people are to maintain their earning potential and to ensure the country has a skilled workforce.

Every £1 of government investment into the Union Learning Fund generates a total economic return of £12.30.

We want employers to:

- Negotiate with unions on quality apprenticeships and providing learning and progression opportunities for all.
- Make all employees aware of training and development rights, including the right to request time off for training or study.
- Recognise the rights of trade union learning reps and give employees time off to pursue union-led learning.

We want politicians to:

- Promote ways for people to learn throughout their lives, including new learning accounts.
 - Give people new rights to a mid-life career review, and face-to-face careers guidance.
 - Provide free retraining programmes to targeted groups and make sure that further education is properly funded to deliver this.
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Take action

Encourage everyone to complete the Great Jobs Audit

Do you want to know how your job matches up to the Great Jobs Agenda? Then do the Great Jobs Audit!

It's a series of easy questions that will tell you how well your workplace is doing – and where it needs to get better.

It's for individual workers and union branches too – and it will help everyone see what needs to change for every job to be a great job. The Great Jobs Audit is at tuc.org.uk/greatjobsquiz.

Tell us about your successes

We know that union reps do great work – and we'd love to tell those stories.

- Have you won a payrise, better benefits or more rights for people to have a say in your workplace?
- Or, maybe you've won the right to regular hours for everyone?

Whatever your success story, please tell us at the TUC! We're always looking for great stories of unions delivering for their members.

Email us at campaigns@tuc.org.uk or tweet us at [@the_TUC](https://twitter.com/the_TUC).

UK Shared Prosperity Fund

Economic Development & Regeneration Advisory

Board Discussion

23 October 2018

Sarah McMillan

Contents

- Background & policy direction
- Consultation Preparation
- Key Issues
- Key Messages for agreement

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Background

- **Conservative Manifesto (May 2017)**
 - creation of the UKSPF, to reduce inequalities and deliver sustainable, inclusive growth
 - Targeted where needed
 - Less bureaucratic
 - Consult with partners
- **Industrial Strategy White Paper (November 2017)**
 - commitment to tackle the challenges of low productivity and inequality in the UK

Policy Direction

- **Strengthening Local Enterprise Partnerships (July 2018)**

- Recommendations to strengthen LEPs in the context of their responsibility for economic growth funds, such as UKSPF;
- NELEP in the next wave of LEPs to develop a Local Industrial Strategy (LIS)

- **Soft consultation**

- **Formal consultation** expected late Autumn

Consultation Preparation

- NE Brexit Group led:
 - Intelligence sharing
 - Informal consultations
 - Opportunities and Issues
 - Northumbria University research: over 20 years of EU funding into the NE
 - All Party Parliamentary Group on Post-Brexit Funding response.

Key Issues

- **Scale**

- Roll in wider domestic funds?
- Reflect the scale of the funds being replaced
- And the scale of ambition set out in the SEP

- **Allocation vs Competition**

- Allocated on a needs-based analysis, targeted to reflect economic conditions

- **Scope**

- Growth vs Inclusion
- NE inclusion is an important element of driving productivity

Key Messages (1)

The UKSPF should be developed to:

1. To **reduce inequalities** and promote **sustainable and inclusive growth**, including long term economic growth, improved employment and economic rebalancing
2. To be a long-term, **fully devolved** funding programme, **aligned** to the regional strategic economic framework, currently the **Strategic Economic Plan (SEP)**
3. To be at least at a **scale** of the current EU structural fund programme and reflect the level of resource it is replacing
4. To be an **allocated fund, based on economic need**, and not on a competitive basis, which could risk to further deepen economic disparities
5. As a **long-term, multi-year funding** programme (minimum 7 year) which allows strategic management and long term, multi-phase programming

Key Messages (2)

6. To start in **2020/2021** to ensure continuity in activity

7. **Less bureaucratic**; enabling mixed **capital/revenue** allocations; investment into **innovative funding** vehicles; flexibility to deliver **leverage** from private or other public funds

8. Flexible **across the key programmes** such as innovation, skills, business growth, regeneration, and employment support, to fit the needs of the area and objectives of the SEP.

9. Respond to both **large scale**, multi-year, infrastructure projects as well as **smaller scale** projects.

10. **LIS** to become the framework to focus **national industrial development and productivity** support e.g sector deals

Comments & Next Steps

- Comments from the Advisory Board.
- Once published, develop a north east response to the Government consultation based on views and input from EDRAB

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