

Employment Rights Bill

Report Stage, House of Lords

Commencing 11th March

About the BMA

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

Summary

- The Employment Rights Bill proposes extensive and long overdue reforms to trade union regulation and significant changes to employment rights for workers.
- The BMA supports some of the amendments laid by the Government at Report Stage but in general the legislation and proposed government amendments do not go far enough to truly protect workers.
- The BMA is calling for further action that will level the playing field between employers and workers, ensuring all workers are able to be fully represented by their unions, and that unions do not face disproportionate restrictions.

The BMA believe the bill should be amended to address the following key areas.

- 1. Time limits on ballot mandates should be scrapped, allowing the mandate to last as long as the dispute**
- 2. The scope of lawful disputes should be broadened to allow for the:**
 - Legalisation of secondary action
 - Changes to the trade dispute definition so that a dispute could be outside of the prescribed employer
- 3. Empower all workers to take part in industrial action**
 - Currently significant numbers of doctors are not able to legally participate in industrial action due to current Trade Union Labour Relations (Consolidation) Act rules leaving these doctors without a voice and at risk of unfair treatment
- 4. Implementation of prior call reforms, the BMA wants to see all possible protection for those who take action to protect themselves and others from injury or illness**
- 5. The BMA supports the government amendment to add digital access to Central Arbitration Committee access agreements**
- 6. The BMA supports Amendment 271 which makes vital changes to the TULRCA regarding union recognition and balloting.**

Reform of trade union regulation

The BMA welcomes the bill's proposed reforms to the regulation of trade unions. The bill repeals large sections of the Trade Union Act 2016 and repeals the Strikes (Minimum Service Levels) Act. Both the Trade Union Act 2016 and the Strikes (Minimum Service Levels) Act introduced draconian regulations on trade unions.

However, the bill could go further and ensure that all workers are able to take lawful strike action, safeguard workers from adverse consequences from taking industrial, and broaden the scope of lawful disputes to ensure that workers can use industrial action to address all parts of their working lives.

Time limits on ballot mandates (Gov NC43)

The Government proposes to increase the time period for which an industrial action ballot has effect from 6 months (or up to 9 months by agreement between the employer and trade union) to 12 months (without the possibility of extension).

The BMA believes that the Government should not implement a replacement expiration date, the mandate should continue until the resolution of the dispute.

Ballot mandates are a way to restrict the right for a worker to strike. If a ballot has passed on a pay dispute and the dispute remains unchanged one year later, the workers' right to strike is being impeded and unions face significant costs to re-ballot for no good reason. Such restrictions only serve to make industrial action more expensive for the union and perversely incentivises members and unions to accept resolutions they may otherwise not accept. No such restrictions or requirements are applied to employers in industrial disputes. For example, there is no requirement to ballot shareholders.

If members are no longer in support of a dispute, this will be obvious from non-participation in industrial action.

The BMA therefore believes that the Bill should be amended to remove time limits on ballot mandates altogether.

Electronic balloting – Amendment 271

The BMA supports the proposed amendment by Andy McDonald MP which, amongst other things, would introduce electronic balloting. Currently, the costs of balloting, undertaking industrial action for both the union and the individual are disproportionate. For the BMA, who represent resident doctors on fixed term contracts, who must move regularly to progress their careers, it will also enable improved participation compared to postal ballots. The proposed move to electronic balloting is welcome and will move balloting into the 21st century and remove the associated costs for unions. **The BMA urges MPs to support this amendment.**

Broaden the scope of lawful disputes – legalise secondary action

The current prohibition of secondary action stops doctors working together to ensure that contractors and those employed by agencies have a voice and can use industrial action to improve their bargaining power.

To correct this imbalance the BMA is calling for the Employment Rights Bill to repeal the law

preventing secondary action. In various workplaces across the NHS and the private sector, it may be necessary for workers from different employers to collaborate in order to secure safe working conditions, fair pay, terms and conditions. In the private sector, the BMA has found that agencies employing international

doctors create systems of multiple jeopardy: threatening their wages, professional registration, housing and visa status. More settled and empowered workers should be able to take action to protect those who are most exploited and at risk of abuse – currently this is prohibited by laws stopping secondary action.

Additionally, the BMA believes that the current definition of trade disputes as only being related to an “employer” is too narrow. To address this the BMA believes that the Employment Rights Bill should amend TULRCA to widen the definition of “employer” in a trade dispute.

This change would allow workers to engage in trade disputes with those organisations that have direct influence on them and would allow them to use their trade unions to change the parts of their working lives aren’t decided by their direct employer. For example, for resident doctors, recruitment bodies manage entrance exams, conduct interviews and allocate jobs; the statutory education health bodies conduct annual reviews of competency and progression and can end doctors’ employment; “host” NHS Trusts or Health Boards are the site of work and management instruction. Whilst in some cases, “worker” status could be afforded to doctors regarding these bodies, none could be subject to a trade dispute, leaving doctors without this avenue to leverage important changes to their working lives.

Empower all workers to take part in industrial action

Many of the BMA’s members working in the healthcare sector are currently unable to or heavily restricted from taking industrial action. The BMA is calling for amendments to be made to the Bill that would enable medical students, independent contractors and self-employed doctors to legally participate in industrial action.

In the case of medical students, they do not have formalised contracts with NHS employers which means they are unable to participate in industrial action, because of this they cannot use industrial action to reject decisions made by their employers/ the Government on pay and terms and conditions which will determine their future earnings.

For independent contractors/ GP partners, to take industrial action they are restricted in what action they can take to improve conditions and services, as they will very likely break their service agreement with the NHS. This means that if a GP took part in industrial action, they would breach their contract with the NHS and the NHS would be able to issue a breach remediation notice and potentially terminate the contract. Current competition law and trade union regulation also restricts self-employed workers from collectively organising industrial action. Reforms to competition law and TULRCA that would enable both independent contractors to organise industrial action without breaching their contracts, and self-employed doctors to collectively organise industrial action would be warmly welcomed by the BMA.

Add digital access to Central Arbitration Committee (CAC) access agreements – Gov amendment 163

The BMA supports the government amendment which proposes to add digital access to CAC access agreements. This proposal would prevent employers from influencing workers away from union engagement during the early stages of the recognition process.

Implement prior call reforms

Doctors work in safety critical workplaces, however, current legislation restricts doctors from taking industrial action in response to an “emergency situation”. The BMA wants to see all possible protection for those who take action to protect themselves and others from injury or illness. Therefore, the BMA welcomes the proposal to amend the law on ‘prior call’. This would allow doctors to take industrial action to highlight and challenge “emergency situations” as defined in S44 (1A) of the Employment Rights Act.

The BMA would also like to see changes to the law on ‘prior call’ where detrimental changes are imposed on workers without notice, consultation or negotiation. Major changes to working hours, place of work and job plans, extracontractual pay etc frequently occur at only days or no notice to our members. Responding formally, with a ballot and notice for industrial action takes weeks. Prior calls for appropriate action, such as cancellation of extracontractual and optional shifts (overtime), which could be considered as action short of strike, should not prevent unions and members from protection once the official mandate is received. This change would strongly discourage employers from introducing changes without notice, consultation or negotiation.

The BMA believes that protecting workers who take urgent action in response to health and safety concerns, as is their duty under the Health and Safety at Work Act 1974, and the unions representing them, should be paramount. This protects the lives and health of workers and the public. Any risk of unofficial action can be ameliorated by maintaining high standards of Health and Safety, including urgent resolution of problems. Maintaining ongoing collaboration and accountability will also help employers avoid unofficial action.

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- Get in touch to arrange a meeting with our public affairs team if you’d like to know more about this / another topic: publicaffairs@bma.org.uk
- You can find the BMA’s other parliamentary briefings here: <https://www.bma.org.uk/what-we-do/working-with-uk-governments/governments/uk-consultations-briefings-and-legislation>

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