
BMA briefing – Employment Rights Bill

Second Reading – House of Commons

21 October 2024

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.

Introduction

The Employment Rights Bill proposes extensive and long overdue reforms to trade union regulation and significant changes to employment rights for workers. The skeleton nature of the Bill leaves a lot of the detail to be decided in consultation and secondary legislation which the BMA looks forward to scrutinising.

Key provisions

- Repeal of the Strikes (minimum service levels) Act.
- Repeals virtually all of the Trade Union Act 2016.
- Introduces extensive changes to employment rights which will provide additional protections for workers.

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, which subsequently amended the Trade Union and Labour Relations (Consolidation) Act 1992, 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: restricting their ability to effectively ballot their members, organise in the workplace and constrained the legal right to take legitimate strike action.

These changes will lift restrictions on trade unions, granting them greater freedom to organise, represent, and negotiate on behalf of their members. The BMA supports the aim of this legislation to refocus employers to negotiation, engagement and dispute resolution.

Clause 61: Repeal of Strikes (Minimum Service Levels) Act

The proposed repeal of the Strikes (Minimum Service Levels) Act is a very welcome measure, the Act was cynically introduced by the previous government in the face of their refusal to meaningfully engage with unions and find resolutions to trade disputes. Rather than listening to and working with staff groups across sectors, the previous government's preferred course of action was to legislate to force staff, via the threat of dismissal and huge fines on unions, back to work to undermine theirs and their colleagues' strike action. It is right that such legislation is removed from the statute book.

For far too long the previous Government refused to negotiate or delayed addressing the multiple pay disputes which only prolonged strike action. Instead of putting its efforts in to finding a solution to the disputes, the Government exacerbated poor relations by seeking to restrict the right to strike by via the Strikes (Minimum Service Level) Bill. The BMA welcomes the governments new stated direction to "hardwire negotiation, engagement and dispute resolution" which will hopefully reduce the chances of industrial action by doctors in the future.

Part 4 – Clauses 45 – 60: Repealing large sections of the Trade Union Act 2016

Clauses 45 – 60 repeal key sections of the Trade Union Act 2016, another piece of cynical and draconian legislation that restricted trade unions from organising in the workplace and effectively balloting their members.

The bill proposes that the law will revert to requiring a simple majority of those voting for a ballot conducted by a trade union for industrial action to be successful, without further thresholds for specified sectors.

The bill also removes the requirement for two weeks' notice of industrial action given to employers – in effect this means that if the Bill is enacted, the notice period for industrial action will return to just one week. This will make it harder for employers to negate the impact of industrial action and thus make them more likely to negotiate rather than prepare for industrial action. It also reduces the ability of employers to fully implement changes such as redundancies before employees have time to respond.

The BMA also welcomes the proposed removal of the 6-month time limit on a ballot for industrial action, this will further encourage employers to solve disputes rather than drag them out (as the BMA saw with the previous government), in the hope a re-ballot is not successful. Re-ballots are also extremely costly for trade unions and this fact is regularly used against unions by employers and government.

One of the most cynical measures of the previous government was to restrict electronic balloting for trade unions, this bill paves the way for electronic balloting by removing the current restrictions to its introduction. The fact that trade unions still must use paper-based ballots is a completely unnecessary and is an intentional drain on unions resources. It will also improve trade union members' ability to vote, even when living in insecure housing, or moving regularly as resident doctors are required to. The previous government refused to proceed with electronic balloting even after a government commissioned review in 2017 recommended piloting of electronic balloting. Combined with the removal of ballot thresholds, this represents an important step into the modern age which is well

overdue. Following passage of the legislation the government must follow through on this commitment and ensure it is made a reality for those unions that wish to adopt it.

Proposals to remove restrictions on picketing and unnecessary requirements for additional information on industrial action on ballot papers signifies a clear direction towards a fairer more modern approach to trade union regulation.

Changes to employment rights

Part 1 – Changes to employment rights

The Bill proposes extensive changes to employment rights through Part 1 of the Bill, many of which will apply to doctors, including the proposed changes to entitlement to leave (parental, paternity and bereavement), dismissal rights and reforms to statutory sick pay. The BMA is actively analysing the proposals and considering the impact on members and will provide further briefing ahead of Committee Stage.

Although some of these protections already exist for doctors via their contract of employment, such as the right to request flexible working from day one of employment, the proposed changes are welcome reforms for the wider workforce.

The proposed changes to the “Entitlements to leave” are welcome and do improve the provisions already included in many doctors’ contracts. The bill also includes welcome protections for women and new mothers against unfair dismissal. We also welcome the provision that large employers will be required to make action plans to address gender pay gaps and support employees through menopause which we know are prevalent issues in the NHS.

Clause 16: Harassment by third parties

Clause 16 contains provision to strengthen protections against harassment in the workplace.

The BMA welcomes Clause 16 which amends the Equality Act 2010 to cover harassment of employees by a third party. This is a provision the BMA sought in the soon to be implemented Worker Protection Act 2023, which introduces a new preventative duty on employers to proactively take steps to stop sexual harassment from taking place.

The prevalence of sexual harassment in the NHS remains shockingly high and many doctors do not feel like they work in an environment that is safe from unwanted sexual behaviours. We have argued that employers are not currently meeting their duty of care to their employees demonstrating the need for further legislative measures.

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