Parliamentary brief
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BMA briefing – Employment Rights Bill

Public Bill Committee – House of Commons

January 2025

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 much of the detail to be decided in consultation and secondary legislation which the BMA looks forward to scrutinising. Whilst the BMA supports the proposed reforms, the BMA is also 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.

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, as drafted, 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.

The BMA believes the bill should be amended to include:

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 TULRCA rules leaving these doctors without a voice and at risk of unfair treatment
4. **Adding digital access to Central Arbitration Committee access agreements**
5. **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**

Time limits on ballot mandates

The Government is currently consulting on the expiration date of legal mandates for industrial action. Existing provisions within in the bill will remove the current 6-month expiration date. In its consultation the Government has suggested a 12-month expiration date would be the most appropriate. The BMA believes that the Government should not implement a replacement expiration date. The BMA suggests that a legal 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 therefore face significant costs to re-ballot for no good reasons. 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.

If members are no longer in support of a dispute, this will be obvious from non-participation in industrial action. If the members involved in the dispute have substantially changed, the union may choose to ballot again to maintain its own information and leverage. The costs of the independent scrutineer and threat of fines of union included within Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) are disproportionately high, especially for smaller disputes where it is obvious who needs to be balloted, and the risks of members being denied their right to vote is minimal.

Broaden the scope of lawful disputes – legalise secondary action

Currently, various trade union regulations restrict all doctors from using industrial action and entering dispute over all parts of their working lives. The 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. Particularly those working in the private sector are too often unable to take action, especially international doctors whose wages, professional registration and housing and visa status are threatened.

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 and fair pay. 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 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, via the Employment Rights Bill, to relevant legislation 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 CAC access agreements

The Government is consulting on reforms to how the Central Arbitration Committee enforces access agreements in the workplace. The BMA welcomes the proposal which would prevent employers from influencing workers away from union engagement during the early stages of the recognition process.

However, the definition of "access", as drafted within the bill, must include digital access, especially for workers that work at different or multiple sites, or from home some or all the time. Significant numbers of doctors, particularly resident doctors, work at multiple sites across the NHS, and many consultants also work from home. Allowing increased digital access within communication networks would be as important as enforcing access in physical workplaces.

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". As doctors, 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, and similar 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 disqualify unions and members from protection when the formal mandate is obtained. This change would strongly discourage employers from introducing changes without notice, consultation or negotiation, further embedding the principles of Collaboration and Accountability.

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.

We want to hear from you …

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- 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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