

Make Work Pay: Employment Rights Bill

Submission by Prospect to the House of Commons
Business and Trade Select Committee

6 December 2024

www.prospect.org.uk

Introduction and summary

1. Prospect is an independent trade union representing over 150,000 members. Our members work in a range of jobs in both the public and private sectors in a variety of different areas including in aviation, agriculture, broadcasting, entertainment and media, defence, education, energy, environment, heritage, industry, scientific research and telecommunications.
2. We welcome this Inquiry and the opportunity to contribute evidence. Prospect welcomes the introduction of the Employment Rights Bill as the biggest single upgrade to workers' rights in the last fifty years and a long overdue modernisation of employment law.
3. As well as improving the quality of working life for millions of working people, we believe it has the potential to significantly boost our economy's productivity and growth prospects. If you treat your workforce with respect and give them a stake in your success then they will be fully engaged and deliver above and beyond your expectation.
4. Rightly we are seeing extensive consultation and discussion of these measures and there are some areas where we hope to see the legislation strengthened. Most important among these is for the provisions on trade union access to workplaces to be extended to enable reasonable and responsible *digital* communication and engagement with workers where appropriate. In keeping with the spirit of the provisions on physical access, we believe this can be achieved in a proportionate and suitably regulated way, drawing on existing precedent and consistent with the requirements of data protection and GDPR.
5. Other areas where the legislation could be useful are summarised below. In sum, however, our view is that this is a valuable and urgently needed piece of legislation that has the potential to hugely strengthen the UK's businesses, industries and economy at large, as well as bringing far reaching benefits to individuals, families and communities throughout the country.

About Prospect

6. Prospect is an independent trade union representing over 150,000 members. Our members work in a range of jobs in both the public and private sectors in a variety of different areas including in aviation, agriculture, broadcasting, entertainment and media, defence, education, energy, environment, heritage, industry, scientific research and telecommunications.
7. As a union whose members are mostly in the private sector, Prospect is determinedly focused on the challenge of reaching out and demonstrating our relevance to new generations of workers in enterprises and industries where trade union membership is not the norm. In recent years we have achieved sustained increases in our private sector membership, with significant advances in growing areas of the economy such as the tech sector, renewable, creative industries, and among the self-employed.
8. We are a trade union that is strongly committed to constructive dialogue and partnership working, and can point to a strong track record of building positive and productive working relationships with employers and employer bodies that benefit both our members and the enterprises and industries they work in. We have reaffirmed our commitment to this approach in recent joint publications with bodies such as the Involvement and Participation Association and the CIPD which can be accessed here

<https://www.ipa-involve.com/news/lets-start-talking-rebooting-the-partnership-agenda-between-government-unions-and-employers>

<https://www.cipd.org/uk/about/news/government-must-make-good-work-the-norm-cipd-prospect/>

9. Prospect is not affiliated to any political party. But we campaign and engage across the political spectrum for policies at a national level that will benefit our members, from those affecting all members such as rights at work, to sector-specific policies to benefit the industries they work in.

The Bill's impact on workers, businesses and economy

10. Prospect welcomes the introduction of the Employment Rights Bill as the biggest single change to workers' rights in the last fifty years and a long overdue modernisation of employment law. We note that the previous Government repeatedly promised an Employment Bill but failed to bring one forward. It did, however, bring forward new legislation that furthered a long-running trend of removing protections for working people and any checks or balances on arbitrary and unaccountable employer power.
11. Although the current outdated and unbalanced legislative environment makes it far too easy for abuses to go unchallenged or unredressed, our experience is that good employers already seek to apply the principles embodied in this Bill as a matter of good practice. It is to support these efforts and prevent undercutting by irresponsible and short-sighted actors in the economy that this Bill is needed.
12. As well as improving the quality of working life for millions of working people, we believe this Bill has the potential to significantly boost our economy's productivity and growth prospects. If you treat your workforce with respect and give them a stake in your success then they will be fully engaged and deliver above and beyond your expectation.
13. In recent joint work with the CIPD,¹ we highlighted the critical importance of improving the quality of working life and employment relations to advancing cross-party social and economic goals:
 - where it exists, precarious and exploitative work has a deeply damaging impact on places, communities, individual life chances, overall social cohesion and the strength of the wider economy
 - more broadly across the labour market, flexibility and autonomy are often constrained, levels of engagement and quality of management are mediocre, and non-inclusive or toxic working cultures and behaviours that marginalise, deter, disadvantage or abuse women, minorities and workers with disabilities are all too common, with consequent effects on productivity and participation
 - meanwhile government policies aimed at boosting low levels of private sector investment in new ideas and technologies, or managerial and workforce skills have repeatedly disappointed – suggesting that a key missing ingredient may be the working practices and cultures that stimulate and empower individuals and organisations to innovate and improve.
14. Moreover, the challenges we face over the next decade can only be met if we break out of this pattern of poor or increasingly indifferent working experiences and relationships that hold back individuals, places, businesses and industries. These pressing challenges include:

¹ <https://www.cipd.org/uk/about/news/government-must-make-good-work-the-norm-cipd-prospect/>

- Raising productivity, by improving take-up, diffusion and utilisation of interventions focussed on areas such as R&D new technologies and skills
 - Resetting employment relations and repairing trust in the wake of the cost-of-living crisis and associated increase in industrial disputes
 - Improving the quality of work as a key element in individual and community wellbeing, and key to reversing recent declines in labour market participation
 - Navigating technological change, so that the power of new forms of automation and artificial intelligence can be fully harnessed and the benefits fairly shared
15. This Employment Bill has the potential to address many of these challenges. There are however many vital issues still to resolve in this legislation and we welcome this opportunity to contribute our evidence to the Committee's deliberations. The rest of our submission addresses the most important of these from Prospect's point of view.

Areas for improvement: the importance of digital access

16. We warmly welcome the Bill's provision to extend, under appropriate and regulated circumstances, a right of access to trade unions. We accept that this right needs to be exercised in a proportionate and responsible way, and that the CAC may have a role to play in applying fair rules and adjudicating complaints and disputes that may arise. However the current draft suffers from a crucial weakness in restricting the meaning of "access" to "physical entry into the workplace".
17. This restriction would effectively result in the exclusion of a large and increasing proportion of the working population from the rights and benefits intended by the provision. This is primarily because a large and growing proportion of the working population spend much or all of their working time away from any workplace and so could not be reached or communicated with by trade unions allowed only physical entry to physical workplaces. Recent ONS data suggests that 13% of workers work entirely from home and 28% work according to a hybrid pattern, with less than half of workers travelling to a physical workplace on a regular basis.²
18. Restricting the right of access to "physical entry" to physical workplaces would therefore in our view go against the spirit and purpose of the Bill's provisions in this area, and risk nullifying its relevance and value to a large and, in today's fast changing economy, increasingly important segment of the workforce.
19. A further damaging result of the restriction of "access" to "physical entry" is that in some cases workers may feel intimidated about being seen to seek information from or engage with a trade union in a physical space where this may be visible to colleagues or managers, if they are not fully confident that this will not be seen negatively by their employer. Sadly this is not always the case.
20. This serious shortcoming of the Bill could be rectified by extending the definition of "access" to include "digital access", meaning communication and engagement through digital or electronic technologies. Depending on industry this may include for example emails, Intranet pages, online inductions, whether "live" or pre-recorded, or messaging systems (like Slack, Yammer or Teams) which are widely used
21. As with physical access, trade unions' digital communication and engagement with workers should be proportionate and responsible, which could be ensured through appropriate regulation or guidance and adjudication by the CAC.

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<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/whoarethehybridworkers/2024-11-11>

22. It is important to recognise that this is not uncharted or untested territory for employment and trade union law. The possibility of digital access is already provided for, and regulated by, the current law and regime for “access” during statutory recognition ballots.³ The statutory Code of Practice on “access and unfair practices during recognition and derecognition ballots” further states that

“Where they are suitable for the purpose, the employer’s typical methods of communicating with his workforce should be used as a benchmark for determining how the union should communicate with members of the same workforce during the access period”.

23. We believe that a broadly similar set of principles and regime of regulation could be applied to situations envisaged by the Bill in which a union is seeking “access” to a group of workers “to meet, represent, recruit or organise workers (whether or not they are members of a trade union)” or “to facilitate collective bargaining”.
24. Employers often use concerns about data protection (GDPR) to restrict the ability of trade unions to communicate electronically with workers. Trade unions well understand their data protection obligations given trade union membership is considered special category data. This means these concerns can be addressed in a number of ways, all of which should be available for unions to pursue:
- Direct access to personal data like email addresses can be addressed through a data sharing agreement between employer and union. The data sharing agreement would naturally place restrictions on issues such as the purposes for which personal data could be used, the time period for which it could be retained, how it would be secured; breach of which would leave the trade union subject to complaint and investigation by the ICO.
 - The process described in the Guidance on Part I of Schedule A1 Trade Union and Labour Relations (Consolidation) Act 1992⁴ using a suitable independent person could be replicated for these communications, particularly where a data sharing agreement could not be reached;
 - Digital access that does not require direct access to personal for example being able to present at digital inductions for new staff and placing information from the union prominently on intranets etc.
25. For these reasons we would strongly resist and rebut attempts to cite GDPR or data privacy as an excuse for dismissing the idea of digital access without serious consideration. In fact, providing for digital access in appropriate circumstances, subject to reasonable regulation and oversight, in a way that is compliant with the spirit of data privacy and the letter of the GDPR, is eminently feasible.

Other areas for amendment

26. Other areas where we believe the package could be helpfully clarified or strengthened include:
- The scope for provisions on trade union access to be rendered nugatory by ministerial fiat or catch-all “security” considerations need to be reduced, and the availability of these rights to trade unions that are already recognised needs to be ensured

³ <https://www.legislation.gov.uk/ukpga/1999/26/schedule/1>

⁴ <https://www.gov.uk/guidance/statutory-recognition-guidance-on-part-i-of-schedule-a1#union-communications-with-workers-after-acceptance-of-application>

Written submission from Prospect (ERB0064)

- To be practicable and effective, the removal of the qualifying period for the right not to be unfairly dismissed needs to be combined with an overall reform of protections against unfair dismissal
 - To be effective, provisions intended to prevent “fire and rehire” and extend collective redundancy protections should be combined with more effective consultation rights
 - The right to a statement of trade union rights should be strengthened by adding a requirement that it be provided at least annually using the employer’s “typical methods of communicating with its workforce”.
 - Reforms to the rules governing trade union recognition should be enhanced by rebalancing the considerations the CAC is required to take into account when adjudicating disputes over prospect bargaining units.
 - Complimentary to the intention of measures provided for in Part 4 of the Bill, ACAS should be given a statutory duty to promote collective bargaining, as was originally set out in the 1992 Trade Union and Labour Relations (Consolidation) Act.
27. We would be happy to provide further detail in support of any of the points above in further written or oral evidence should the Committee desire it.