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‘Good Jobs’

Survey Results

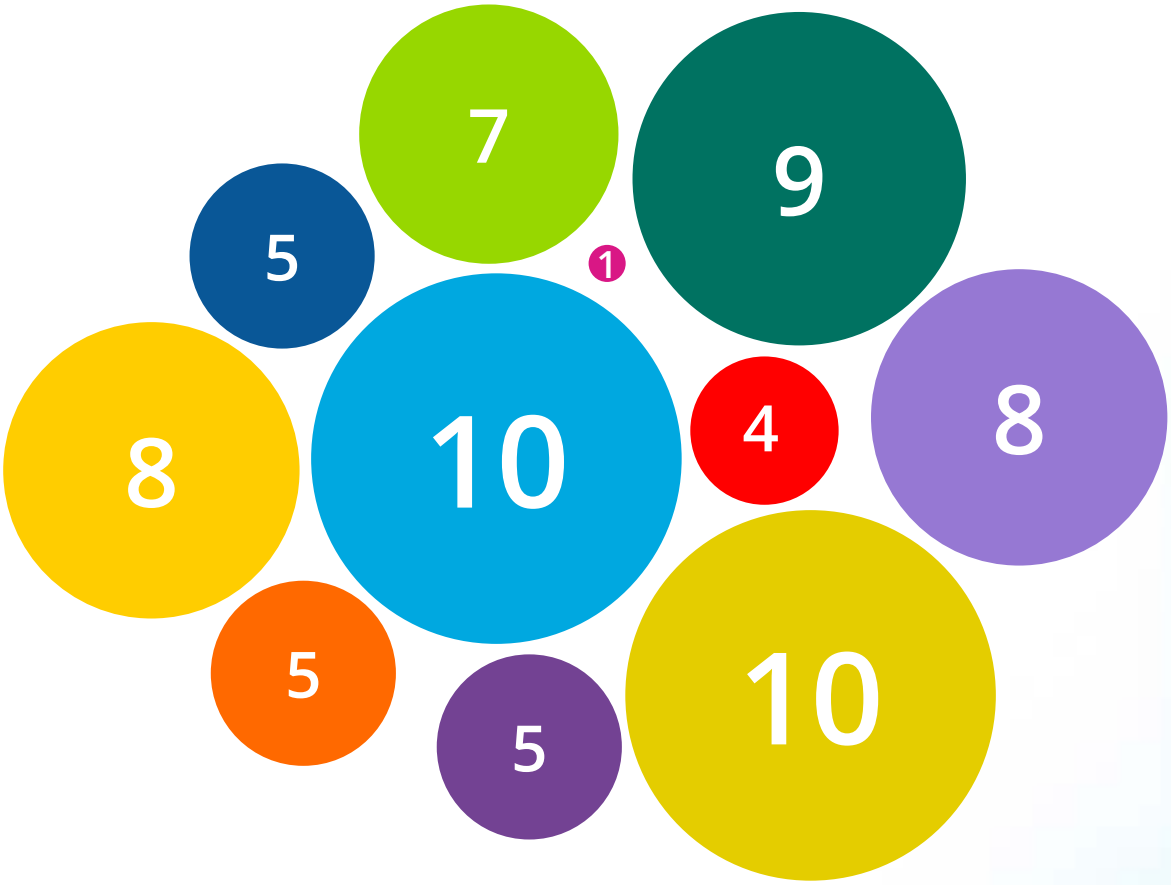
The long anticipated 'Good Jobs' Employment Rights Bill consultation was released by the Department for the Economy in July 2024, setting the scene for, potentially, the biggest wave of employment law reform in Northern Ireland for over 10 years.

We asked stakeholders to participate in our survey regarding the 'Good Jobs' consultation to share their thoughts and insights to help shape our response to the consultation, which closed on 30 September 2024.

The consultation focussed on four key themes and our survey addressed what we believed to be the most significant proposals within each theme. Our survey was conducted between 6 August and 13 September. We had 72 responses across a range of sectors, we also discussed these results with 36 guests at our external insight session where further input to the proposals was gathered from attendees.

This report sets out our findings from the survey and insight event on the key potential areas for reform under the 'Good Jobs' Employment Bill.

Q1. What industry sector do you work in?



- Healthcare
- Education
- Technology
- Finance
- Manufacturing
- Retail
- Government
- Legal Services
- Professional Services
- Non-Profit
- Other (please specify)

Terms of Employment

Zero-Hours Contracts.

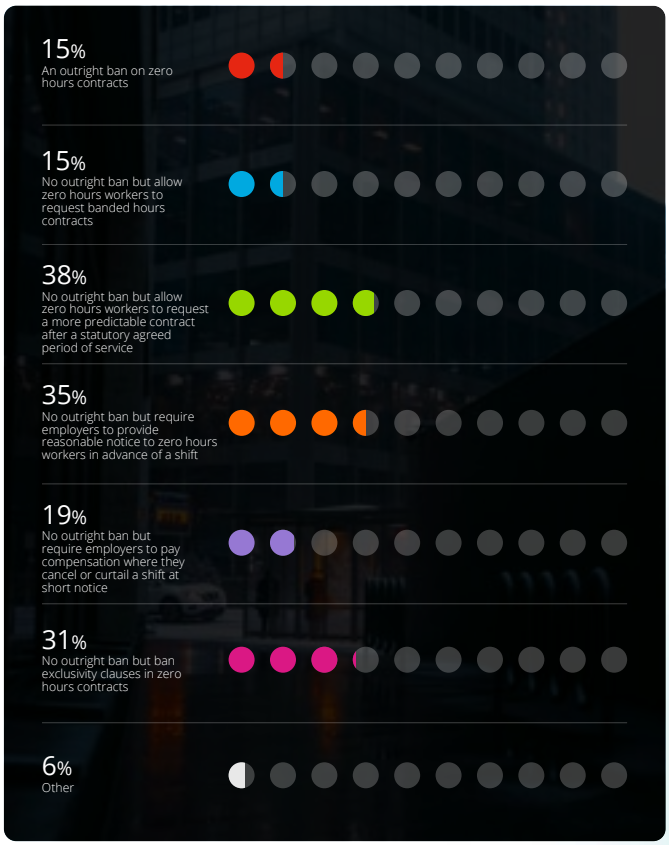
Q2. Do you agree with the objective of replacing zero-hours contracts with contracts that provide flexibility while protecting workers' rights?

Zero-hour contracts have captured significant press coverage over the years because of the perceived disadvantages for workers, and whilst not all businesses use these types of arrangements, they are key for organisations who require flexibility to manage fluctuating demand.

An overwhelming majority of respondents (over 92%) were in favour of replacing zero-hours contracts with other contracts which have flexibility but protect workers' rights. One respondent submitted that there were significant issues with zero-hours contracts if not handled properly, as they are over complicated and misunderstood. However, the consensus in the survey and at our insight session was that many industries with a flexible workforce still require suitable flexible working arrangements.

Q3. In relation to zero-hours contracts, would you prefer:

- An outright ban on zero-hours contracts
- No outright ban but allow zero-hours workers to request banded hours contracts
- No outright ban but allow zero-hours workers to request a more predictable contract after a statutory agreed period of service
- No outright ban but require employers to provide reasonable notice to zero-hours workers in advance of a shift
- No outright ban but require employers to pay compensation where they cancel or curtail a shift at short notice
- No outright ban but ban exclusivity clauses in zero-hours contracts



Approximately 16% of respondents were in favour of an outright ban on zero-hour contracts, but the majority preferred an alternative approach rather than an outright ban.

Of the proposals put forward in the consultation over 33% of respondents were in favour of employers providing reasonable notice to workers in advance of a shift, and around 37% were in favour of allowing workers to request a more predictable contract. 29% were also in favour of banning exclusivity clauses which is relatively uncontroversial and would bring Northern Ireland in line with the approach taken in Great Britain.

Only around 20% felt employers should be required to pay compensation if they cancel or curtail a shift at short notice. Only 16% agreed with allowing employees to request banded hour contracts, perhaps given the administrative burden associated with such practices. This approach was, however, adopted in the Republic of Ireland.

Q4. What would your main objections be to an outright ban?

- **Increased labour costs**
- **Potential resourcing issues**
- **Employee's right to choose zero-hours contracts**
- **Other**

Perhaps surprisingly, over half of respondents (58%) voted that their greatest objection to an outright ban related to the employees' right to choose engagement on a zero-hours basis. Respondents largely agreed that zero-hours contracts suit temporary workers, in particular students, who work whilst balancing studies, as well as workers trying to manage childcare arrangements. Furthermore, the alternative of fixed hours may be a deterrent to employees who seek flexibility or casual work, which may add to a skills shortage issue in some sectors.

Almost half of responses considered potential resourcing problems to be the main objection to an outright ban, given the flexibility associated with zero-hours contracts to meet fluctuating demand. Only 23% considered increased labour costs to be a primary objection.

The general consensus amongst respondents and at our insight session was that zero-hours contracts were beneficial and any reforms need to strike a balance between commercial flexibility and fair working practices.

Fire and Rehire

Q5. Do you agree that there is a need for greater regulation on dismissal and re-engagement (fire and re-hire) practices?

Q6. If so, how would you see this working best for your business in practice?

Respondents were quite evenly split about the need for greater regulation for fire and rehire practices (42% for, 58% against).

This may reflect the fact that, whilst there have been high profile cases relating to this practice in Great Britain, it is not extensively used in Northern Ireland and considered a last resort. Respondents to the survey generally agreed the practice is not encouraged as it would result in poor employee relations. A very small number of attendees at our insight session admitted to having adopted this practice in the past.

42%

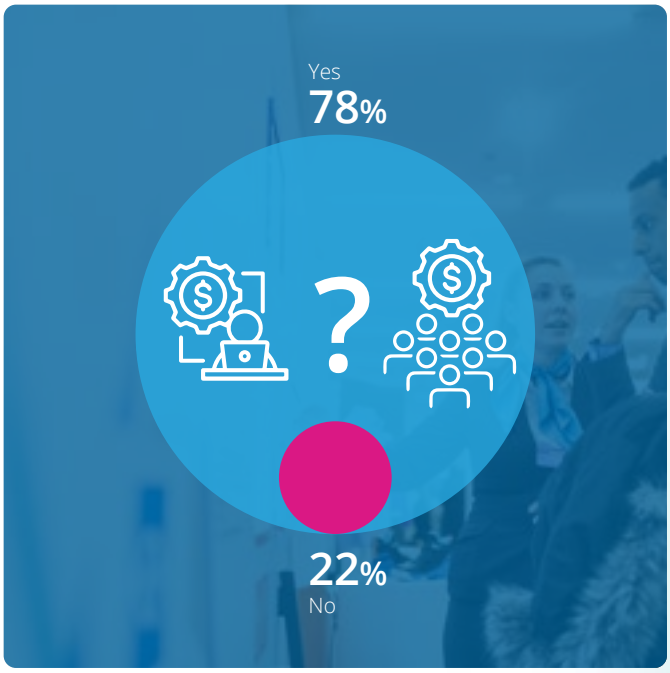
For fire and rehire practices

58%

Against fire and rehire practices

Employment status

Q7. Given current confusion in employment status should this issue be simplified by having only (i) employee (ii) self-employed contractor?



A large majority of 78% of respondents were in favour of simplifying employment status to only 'employed' and 'self-employed', removing the middle 'worker' category, which could potentially reduce 'bogus' self-employment and misclassification risks, as well as align with tax status.

Q8. Would providing a written statement of employment particulars on day one (as opposed to in the first two months) and to all workers (not just employees) cause your business problems?

68% of respondents did not consider it a problem for their business to provide a written statement of particulars on the first day of employment, rather than in the first two months, and to do so for all workers rather than just employees.

However, high staff turnover and high volume of recruitment, pressure on HR time and resourcing issues were cited by respondents as minor or significant problems that could result from reform in this area.

Pay and Benefits

Payslips

Q9. Would providing pay statements to workers (including itemised pay statements to employees and workers where their pay varies) cause you any difficulties?

Currently, employers are only obliged to provide itemised pay statements to employees, and the vast majority (92%) of respondents did not consider there to be difficulties with a requirement to provide pay statements to all workers, including itemised pay statements where pay varies. It is likely most employers are already adopting this approach.

Respondents against this proposal cited costs and logistics as potential issues.

Holiday pay

Q10. Would you like the holiday pay calculation reference period to be changed from 12 weeks to 52 weeks? If so, why?

86% of respondents were in favour of changing the holiday pay calculation reference period should be changed from 12 to 52 weeks, for workers with variable pay.

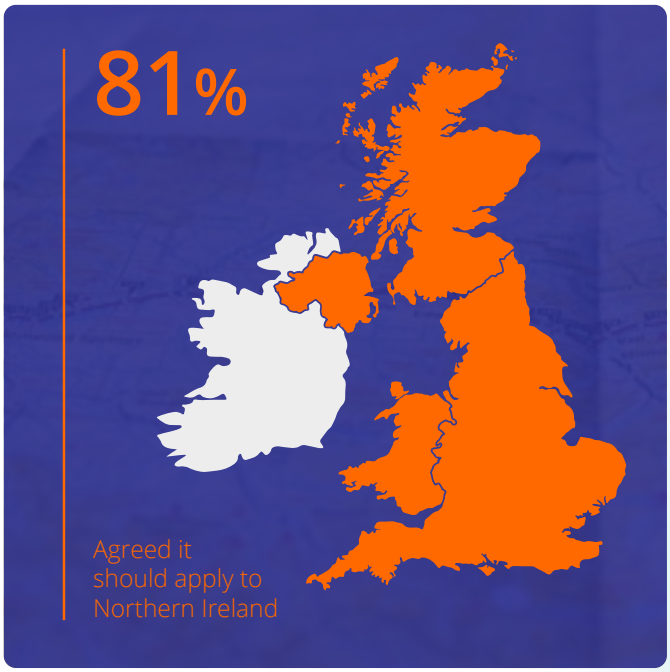
Half of respondents considered dealing with fluctuations in seasonal variance as a reason to make the change, and 41% considered administrative ease, which is not unexpected as the current system can be burdensome and often results in incorrect entitlements not reflective of an employee's normal pay due to seasonal or irregular hours.

For the same reason, 53% of respondents consider it to be more equitable for employees to consider a full year's earnings for the purpose of calculating holiday pay. This approach would also bring Northern Ireland in line with Great Britain which would streamline the approach for employers with employees in both jurisdictions.

Only one attendee at our client briefing with a high volume of temporary staff preferred retaining a 12 week period, which better facilitated holiday pay calculations.

Record keeping for daily hours

Q11. The British Government has legislated to confirm that businesses do not have to keep detailed records of workers' daily working hours if an employer can demonstrate adequate compliance with the Working Time Regulations in other ways. Do you think this approach should apply in Northern Ireland? Or do you think we should adopt a different approach? If so, what?



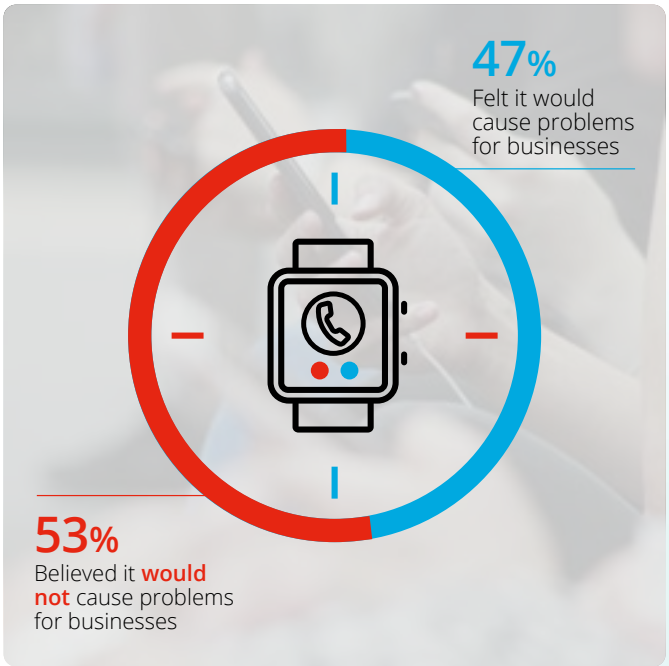
Employers must keep records of staff working hours to comply with the Working Time Regulations, but there is a lack of clarity over specific records that should be maintained and concerns that more rigorous record keeping is particularly impactful on smaller businesses.

The vast majority of respondents (81%) agreed that Northern Ireland should adopt the Great British approach that businesses do not need to keep detailed records of workers' daily working hours.

One argument against the change is that more detailed records protect both employee and employers, particularly in the event of disputes or litigation on working hours and/or pay.

Right to disconnect

Q12. Would government actions to give workers a right to disconnect out of normal working hours cause your business problems, for example, in your industry?



Responses were split on the issue of whether government actions to give workers a right to disconnect outside of working hours could cause problems for businesses. 47% felt it would, 53% believed it would not.

This is, potentially a bigger problem for employers with an international presence, where working across and meeting the needs of different time zones is vital for operational reasons. A common theme amongst survey respondents and at our insight session, was that any regulation in this area needs to reflect current needs and how people live and work, particularly after the COVID pandemic with an increase towards home and/or flexible working.

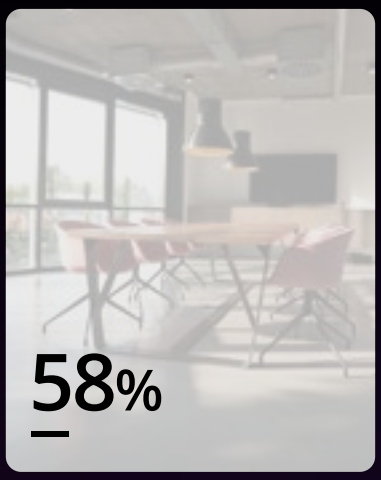
The right to disconnect would also likely pose the greatest difficulties for those in senior roles, or where certain individuals need to be available in the event of issues or emergency, although it was considered that a difference needs to be made between 'on call' and 'contactable'.

One thought on this topic was that it might actually help employers manage budgets and requirements better, being able to monitor hours spent on jobs more closely. It was, however, generally agreed that a common-sense approach would be needed, with clear lines of communication between employers and employees of what is expected of their role and how and when they should be working.

Voice and Representation

Trade union access

Q13. Would you be concerned about a right of access to the workplace for trade union officials or do you think union presence in a workplace is necessary? If so, why?



58% of respondents voted that enhancing these rights

42% of respondents felt trade union presence

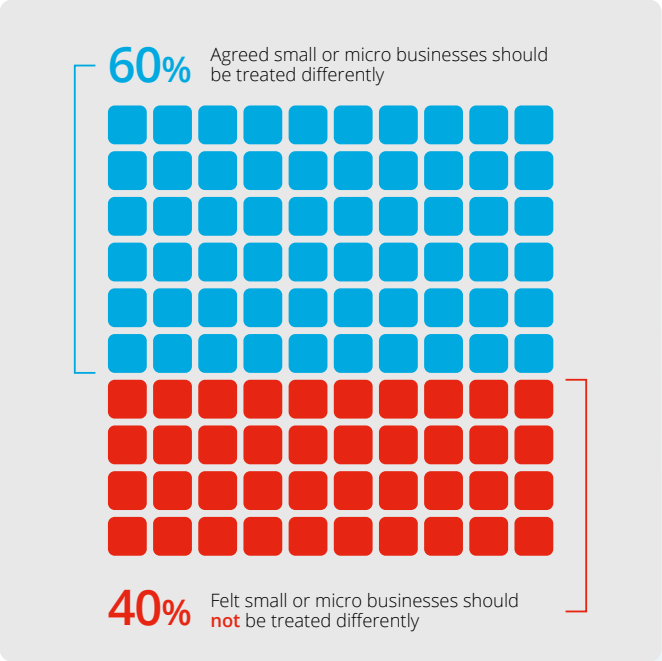
Currently trade union officials have only a limited statutory right to access workplaces, and 58% of respondents voted that enhancing these rights was a concern. 42% felt trade union presence was necessary.

Some respondents felt a need for clearly defined rules around access rather than this being an 'on demand' right. There is also concern employees may ultimately lose their voice as employee representatives could be replaced by trade union officials. There were also thoughts that whilst public sector businesses benefit from trade union presence, it is unsuitable for private businesses.

The greatest area of concern amongst respondents and within our insight session, related to behaviour of trade union representatives, with concerns of intimidation of staff and managers. There was a view that any further rights in this area would also require a code of practice or standard of behaviour to be clearly set out.

Exemption for small businesses

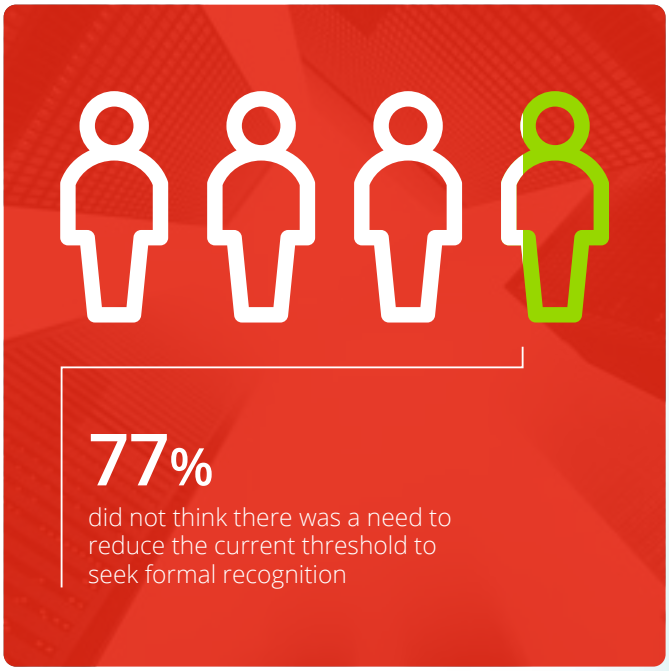
Q14. Do you think small (10-49 employees) or micro businesses (fewer than 10 employees) should be treated differently?



60% of respondents agreed that small (10-49) or micro (fewer than 10 employees) businesses should be treated differently in relation to trade union access. The common feeling amongst respondents and in the client briefing was that increased union access could create additional costs for smaller businesses who would lack the skill and administrative support to deal with union activity.

Trade union recognition

Q15. Do you think there is a need to reduce the current threshold of 21 employees for a trade union to seek formal recognition?



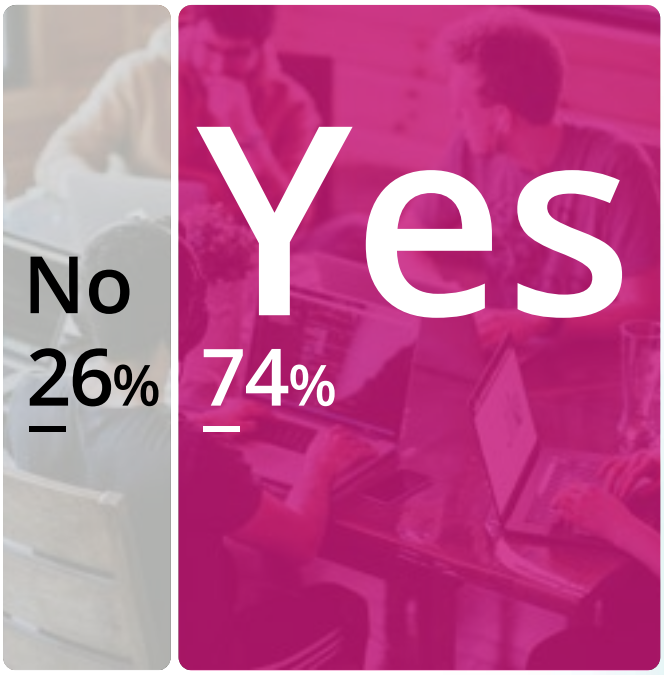
Trade unions can request to be 'recognised' by employers so they can negotiate agreements on pay and other matters, but if employers don't voluntarily recognise the union, they must apply to the Industrial Court for recognition. An employer must employ at least 21 workers for an Industrial Court to accept an application.

Such changes could naturally make it easier for unions to secure recognition, particularly in combination with any new rights of access, which may lead to in an increase in the number of employers having to respond to statutory recognition applications from unions.

77% of respondents felt that there was not a need to reduce the current threshold to seek formal recognition this was also the consensus at our insight session.

Sectoral bargaining

Q16. Do you think sectoral bargaining would work in your sector?



Currently, no meaningful collective sectoral bargaining exists in the private sector. This could result in sectoral collective agreements which have the potential to set minimum standards on matters such as pay and working hours and reduce movement of staff between employers.

74% of respondents felt sectoral bargaining would not work in their sector. The general view within our insight session was that it did not substantively add anything to the current legal framework.

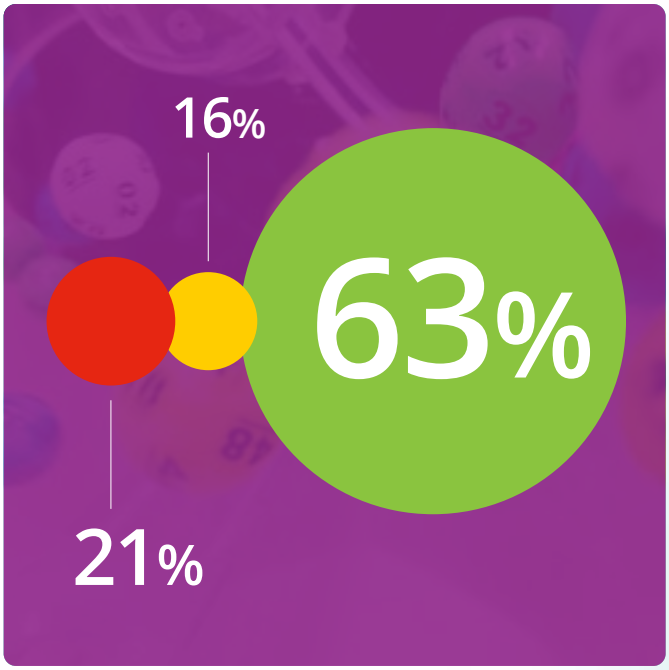
Balloting and Notice

Q17. Should the period of notice provided to an employer of industrial action be reduced from seven days to five?

91% of respondents disagreed with the proposal to reduce the period of notice provided to an employer of industrial action from seven days to five. This could potentially be significantly disruptive particularly in areas such as schools, hospitals and public transport.

E-balloting

Q18. Do you think e-balloting should be permitted and/or the requirement for an independent scrutineer of ballots removed?



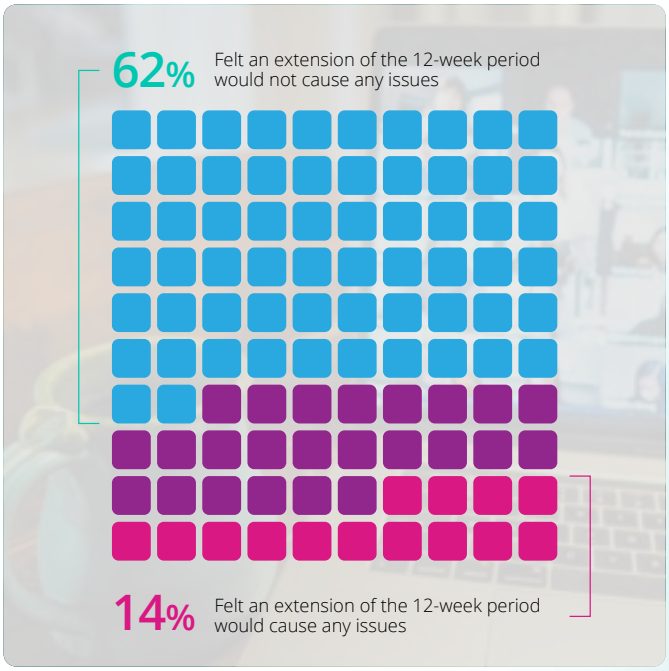
Currently ballots on industrial action must be issued and returned by post, which can be costly and make the voting process lengthy.

62% of respondents thought that e-balloting should be permitted but, with the requirement for an independent scrutineer.

Respondents generally considered that e-balloting would be cheaper, and speed up and modernise the process.

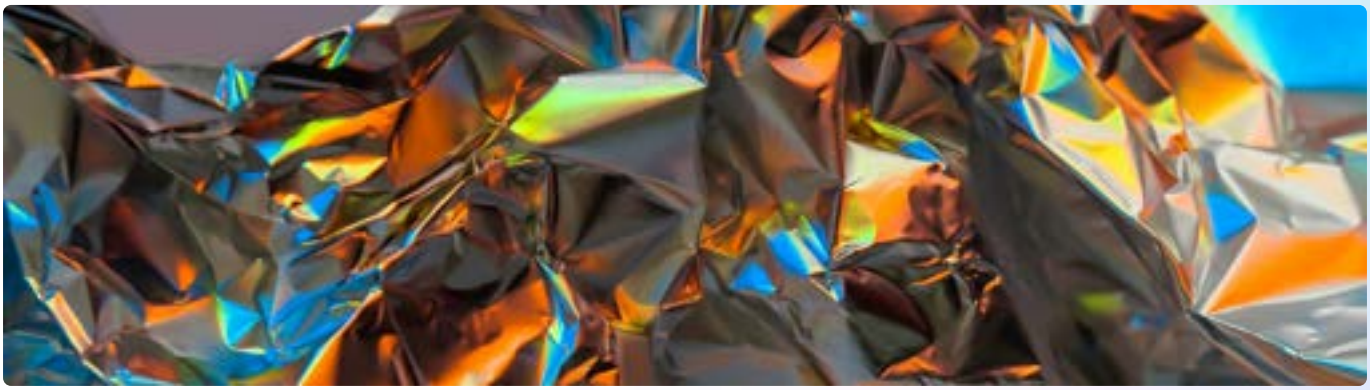
Enhanced protection for employees taking part in industrial action

Q19. Would an extension of the 12-week protected period for employees taking part in Industrial Action against dismissal cause your business issues?



63% of respondents did not think an extension of the 12-week protected period against dismissal for employees taking part in industrial action would cause their business issues.

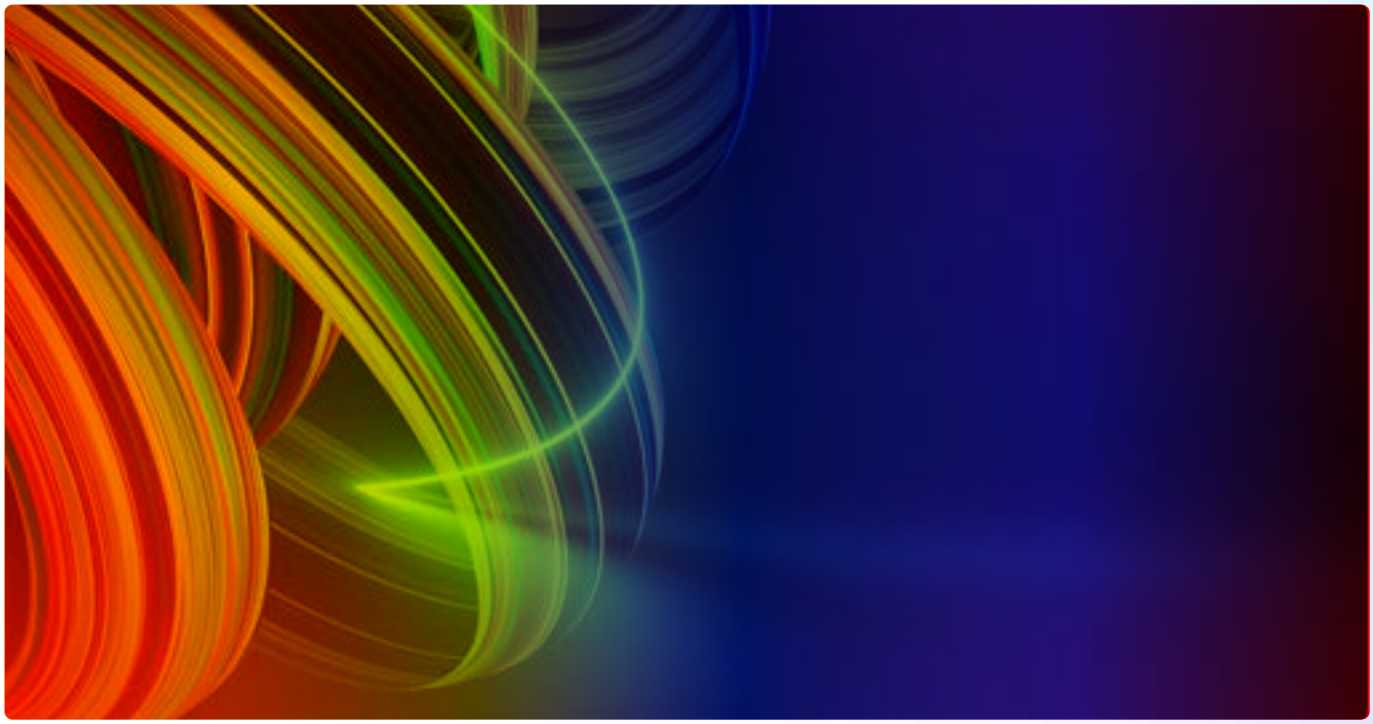
However, the potential for concern or unrest, or financial and economic consequences, presumably as a result of unfair dismissal claims, were cited as potential minor or significant issues that could arise.



Enhanced protection for TU officials from detriment and dismissal

Q20. What impact would additional protections for trade union officials against detriment and dismissal have on your business?

A small number of respondents listed issues, including concerns that the employee in question could not be targeted in a restructuring exercise at that specific time, and that it could be complicated to distinguish or separate conduct issues or actions of an employee who happens to be a trade union official, as well as potentially creating a 'them/us' culture.



ICE thresholds

Q21. At what threshold do you think an employer should be obliged to put in place an Information and Consultation of Employees (ICE) to advise employees about the business' economic situation, employment prospects and need for change?

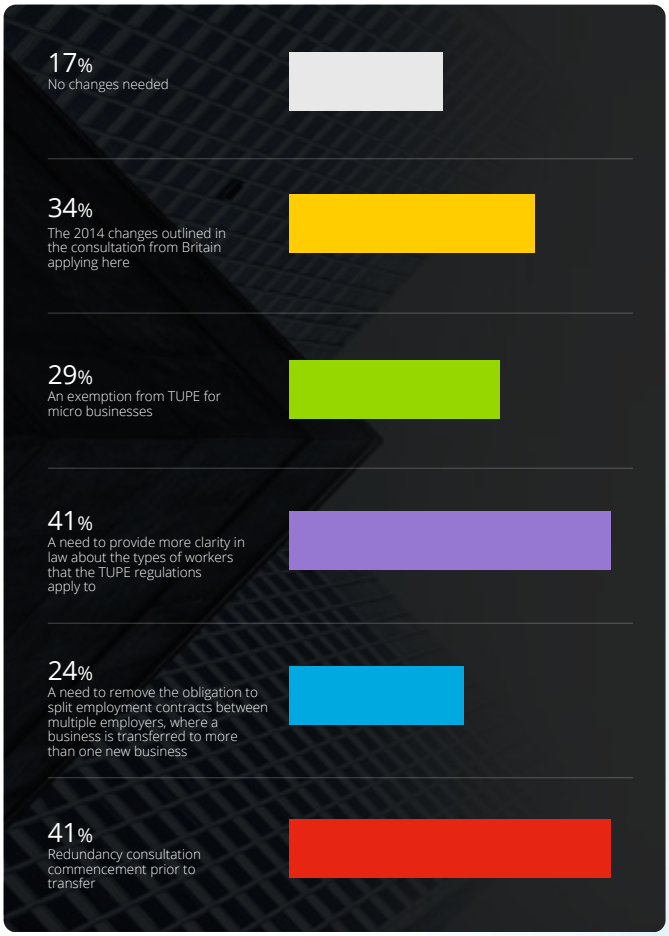
The ICE Regulations provide for employers to inform employees on a regular basis about the employer's economic situation, employment prospects and decisions likely to lead to changes in work organisation. The consultation proposes reducing the threshold for initiating the rights conferred by the ICE Regulations from 10% to 2% of employees.

The majority of respondents (74%) voted that this should remain at the higher threshold of 10%, with a small number of respondents (14%) voting for a reduction to 2%. There is currently limited use of this right, so any changes may have limited effect in practice.

TUPE

Q22. Is there a need for change in the TUPE regulations relating to consultation of affected staff? If so, would you like to see:

- **No changes needed**
- **The 2014 changes outlined in the consultation from Britain applying here**
- **An exemption from TUPE for micro businesses (businesses with between 10-49 employees)**
- **A need to provide more clarity in law about the types of workers that the TUPE regulations apply to**
- **A need to remove the obligation to split employment contracts between multiple employers, where a business is transferred to more than one new business**
- **Redundancy consultation commencement prior to transfer**



Although no specific proposals were outlined by the Department, only a minority of responses (18%) felt that no change at all was needed to the existing TUPE regulations in Northern Ireland.

27% were in favour of introducing an exemption from the existing information and consultation obligations for small (10-49 employees) and micro (fewer than 10 employees) businesses, in line with 2014 and 2023 reforms to TUPE in Great Britain.

Similarly, and although not specifically referenced in the consultation document, 40% of respondents were in favour of reforms permitting the new employer to consult with the current employer's employees about proposed collective redundancies prior to the transfer taking place. There was also a notable preference by respondents for more clarity in law about the types of workers the TUPE regulations apply to.

25% of respondents agreed there was a need to remove the obligation to split employment contracts between multiple employers where a business is transferred to more than one new employer.

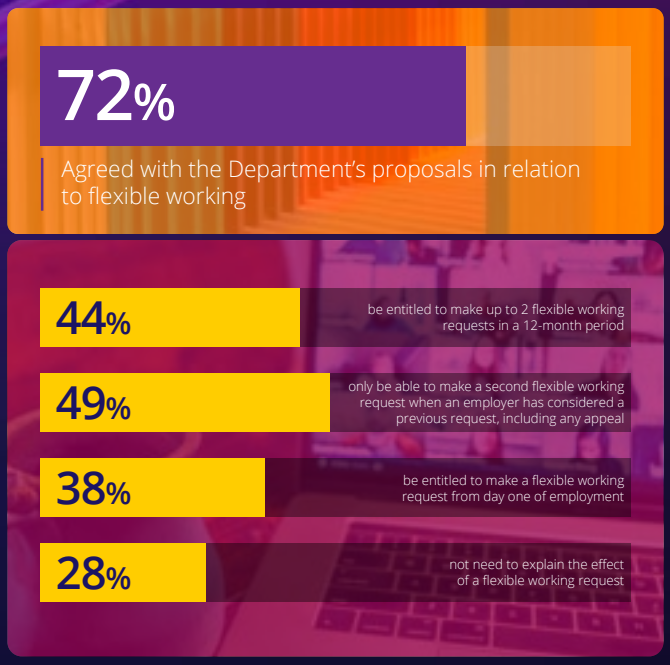
Work-life Balance

Flexible Working

Q23. Do you agree with the Department's proposals in relation to flexible working?

Q24. Regarding the Department's proposals in relation to flexible working, do you agree that an employee should:

- **be entitled to make up to 2 flexible working requests in a 12-month period**
- **only be able to make a second flexible working request when an employer has considered a previous request, including any appeal**
- **be entitled to make a flexible working request from day one of employment**
- **not need to explain the effect of a flexible working request**
- **Responses**
- **Other**



72% of respondents agreed with the Department's proposals relating to enhancing flexible working rights. Similar rights were introduced in Great Britain in April 2024, and in practice, businesses with employees in both jurisdictions often adopt the flexible working changes implemented in Great Britain for their Northern Irish employees as a matter of best practice.

Of the proposals set out in the consultation, half of respondents voted that employees should only be able to make a second flexible working request when an employer has considered a previous request.

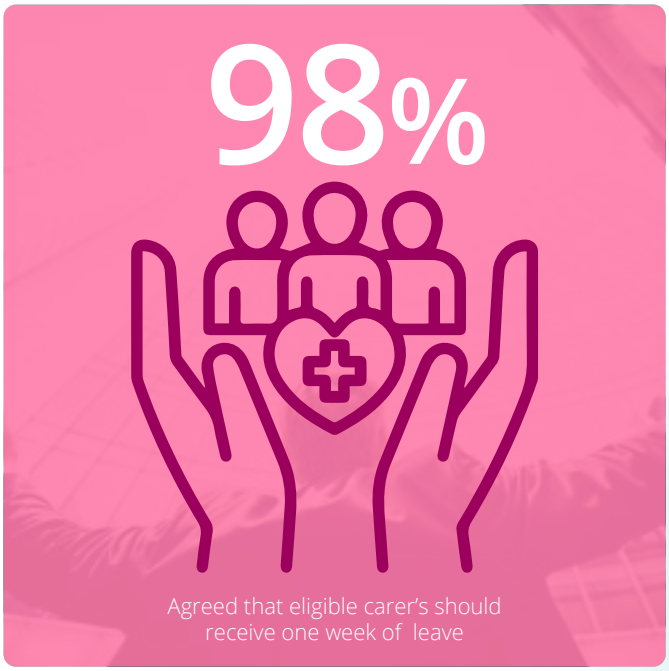
44% voted that employees should be entitled to make two (increased from one at present) flexible working requests in a 12-month period, and 38% agreed this should be a day one right, rather than as is currently the case, a right acquired after 26 continuous weeks of employment. Only 28% of respondents considered that an employee should not have to explain the effect of a flexible working request.

Concerns about the proposed changes at our briefing event centred around this becoming a day one right. This may be particularly relevant in the context of a position being advertised for a specific working pattern to address a specific business need which could be undermined if, on day one, the successful candidate has the right to immediately request a change to their working pattern. Further, whilst this is an enhanced right to request flexible working only, there was a feeling refusing requests may lead to loss of staff which would add to recruitment and retention issues.

There was also, however, a general feeling that businesses need to adapt to modern working practices, which is being open to more fluid working arrangements which suit home and family life as well as meeting business needs.

Carer's Leave

Q25. Do you agree with the Department's proposals to give eligible carers one week of unpaid carer's leave? Should this be paid?

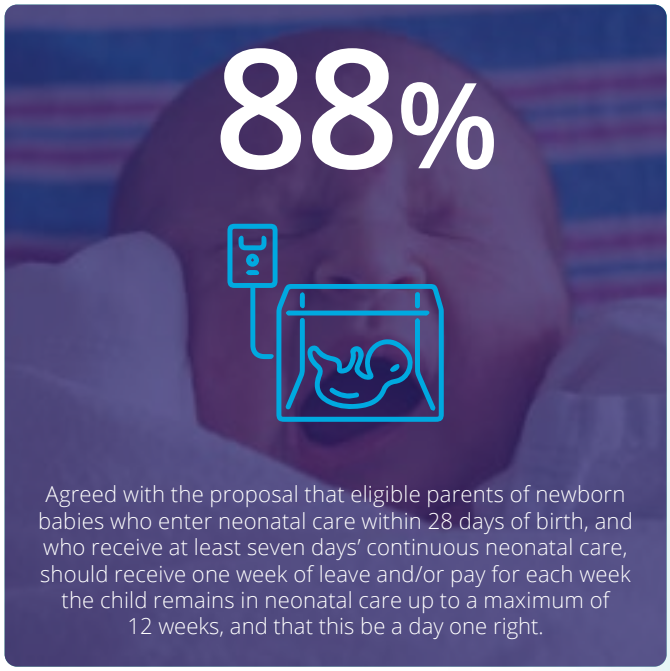


98% of respondents agreed with the proposal to give eligible carers one week of carer's leave. This leave was introduced in Great Britain in April 2024 but is unpaid. The consultation is seeking views on whether this should be a paid leave; it is currently undetermined whether this would be a statutory payment or paid by the employer, or indeed, what the rate of pay should be.

The respondents were split on the issue of pay, with 54% voting that it should, and 44% voting that it should not.

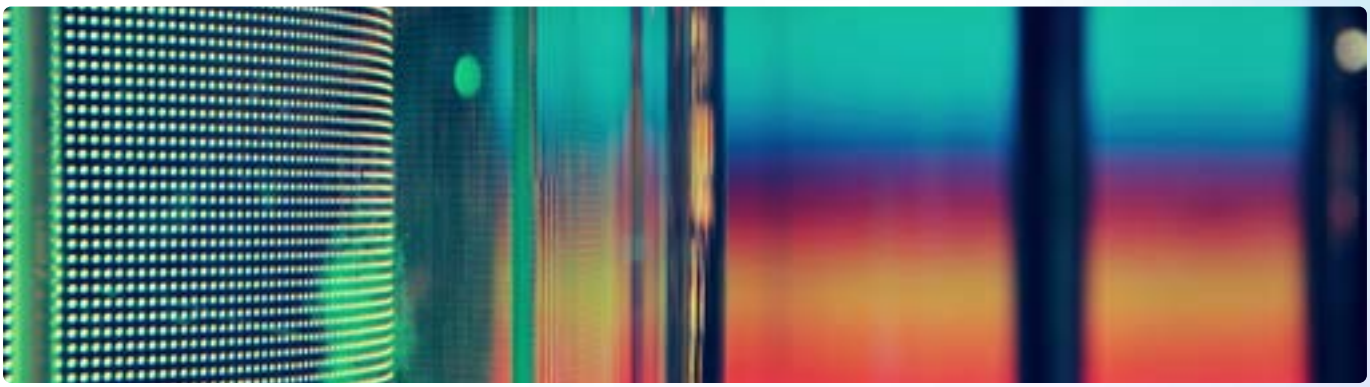
Neonatal leave

Q26. Do you agree with the Department's proposals to give eligible working parents of newborn babies who enter neonatal care within 28 days of birth, and who receive at least seven days' continuous neonatal care, to receive one week of leave and/or pay for each week the child remains in neonatal care up to a maximum of 12 weeks (which is proposed to be a day-one right?)



There are currently no specific rights to neonatal leave if an employee's child requires neonatal care. In practice this is taken as part of maternity, paternity, adoption or shared parental leave.

88% of respondents agreed with the proposal that eligible parents of newborn babies who enter neonatal care within 28 days of birth, and who receive at least seven days' continuous neonatal care, should receive one week of leave and/or pay for each week the child remains in neonatal care up to a maximum of 12 weeks, and that this be a day one right.



Protection from redundancy – pregnancy and family leave

Q27. Do you agree with the Department's proposals to give new redundancy protection rights for pregnant employees and returners from family leave (with protection lasting for 18 months from birth/adoption)?

Q28. Do you agree that these rights should also apply to employees returning from at least six weeks' shared parental leave?

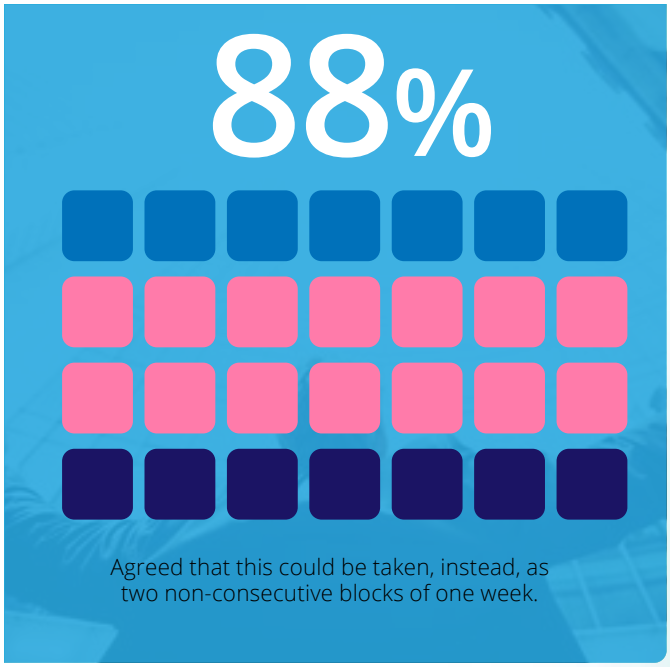
A slight majority of respondents (59%) agreed with the proposal to extend redundancy protection rights for pregnant employees and returners from family leave, for 18 months from the point of birth/adoption. Previously, this right had applied only to parents on maternity, adoption or shared parental leave, and lasted only for the duration of the period of leave. This will only apply to parents returning from at least six weeks of shared parental leave, and a small majority of 55% agreed with this approach.

This is not protection against selection for redundancy, rather, it relates only to the offer of suitable alternative roles, yet the consequence being those with priority status in an organisation at any one time would very likely increase and additional selection processes between all individuals with priority status would need to take place. This would not apply to returners from paternity leave, so uptake of shared parental leave would also likely increase given the additional redundancy protection.

Whilst the intention is to protect women, concerns at our client briefing focused on whether this may be a deterrent for recruiting or retaining women given the further enhanced protections they would receive under this proposal.

Paternity Leave

Q29. Do you agree that paternity leave should be available to be taken as a single block of two weeks or two non-consecutive blocks of one week?



At present, paternity leave must be taken in a single block within the first eight weeks of the baby's birth. The vast majority of respondents (88%) agreed that this could be taken, instead, as two non-consecutive blocks of one week. As the total of paternity leave available is not increasing, this change would have a minimal impact on employers.

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