

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT EMPLOYMENT RIGHTS ACT 1996
(PROTECTION FROM DETRIMENT IN HEALTH
AND SAFETY CASES) (AMENDMENT) ORDER 2021

Wednesday 28 April 2021

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Sunday 2 May 2021

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The Committee consisted of the following Members:

Chair: PHILIP DAVIES

Andrew, Stuart (*Treasurer of Her Majesty's Household*)

Champion, Sarah (*Rotherham*) (Lab)

Cruddas, Jon (*Dagenham and Rainham*) (Lab)

† Davies, David T. C. (*Parliamentary Under-Secretary of State for Wales*)

Fellows, Marion (*Motherwell and Wishaw*) (SNP)

Freer, Mike (*Comptroller of Her Majesty's Household*)

Gideon, Jo (*Stoke-on-Trent Central*) (Con)

† Higginbotham, Antony (*Burnley*) (Con)

† Hussain, Imran (*Bradford East*) (Lab)

Jones, Mr Marcus (*Vice-Chamberlain of Her Majesty's Household*)

McKinnell, Catherine (*Newcastle upon Tyne North*) (Lab)

Pursglove, Tom (*Corby*) (Con)

Ribeiro-Addy, Bell (*Streatham*) (Lab)

† Rimmer, Ms Marie (*St Helens South and Whiston*) (Lab)

† Sambrook, Gary (*Birmingham, Northfield*) (Con)

† Scully, Paul (*Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy*)

† Tomlinson, Michael (*Lord Commissioner of Her Majesty's Treasury*)

Bradley Albrow, *Committee Clerk*

† **attended the Committee**

Sixth Delegated Legislation Committee

Wednesday 28 April 2021

[PHILIP DAVIES *in the Chair*]

Draft Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021

9.25 am

The Chair: Before we begin, I remind Members to observe social distancing and to sit only in places that are clearly marked. I also remind Members that Mr Speaker has stated that masks should be worn in Committee. *Hansard* colleagues would be most grateful if Members could send their speaking notes to hansardnotes@parliament.uk.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): I beg to move,

That the Committee has considered the draft Employment Rights Act 1996 (Protection from Detriment in Health and Safety Cases) (Amendment) Order 2021.

It is a pleasure to serve under your chairmanship, Mr Davies. I will begin with some important background to the draft order, which was laid before the House on 17 March 2021. The UK is unique in having three employment statuses for employment rights—self-employed, limb (b) worker, and employee—when most other countries, including within the EU, have just the self-employed and employee categories.

Limb (b) workers have a more casual employment relationship than employees and are entitled to a basic set of rights, such as minimum wage and holiday pay. Limb (b) status allows for much needed flexibility in the labour market. Sections 44(1)(d) and 44(1)(e) of the Employment Rights Act 1996, which implements the EU health and safety directive into domestic law, give employees the right not to be subject to detriment by their employer for leaving or refusing to return to their workplace and the right not to be subject to detriment for taking steps to protect themselves or others in circumstances of danger which they reasonably believe to be serious and imminent.

In May 2020, the Independent Workers Union of Great Britain brought a judicial review against the Secretaries of State for Work and Pensions and for Business, Energy and Industrial Strategy. Following comprehensive proceedings, the High Court found in November 2020 that the UK had not fully implemented the EU health and safety framework directive into section 44 of the 1996 Act and that some protections applied only to employees, while the Court held that they should also extend to limb (b) workers.

The claim succeeded only in part, and the Court accepted that the UK was not required to extend unfair dismissal to limb (b) workers and had properly implemented the general obligations of the health and safety framework directive. The Government accepted the judgment and therefore proposes this draft order, which will extend

the protection from detriment in health and safety cases to all workers, not just employees, as has previously been the case.

The Court also held that the Personal Protective Equipment at Work Regulations 1992 should also be extended to limb (b) workers, and I am assured by officials at the Health and Safety Executive that work is under way to consult on the regulations and to extend them to all workers through an additional statutory instrument due to be laid later in the year.

These important protections have proved even more essential for employees who have continued to work through the pandemic and for those returning to work as businesses emerge from the lockdown. They ensure that employees have the legal protection they need to act to ensure their own safety and the safety of others without fear of suffering detriment for doing the right thing. That includes protecting them against being denied promotion or training opportunities.

Having considered the Court judgment, we agree that limb (b) workers should also benefit from the protections. That does not represent a major change as limb (b) workers represent a small share of the workforce. However, it does not make it any less important, as such workers undoubtedly have a significant role to play in our economic recovery from the covid-19 pandemic. That is why the Government want to clarify the UK's understanding of the health and safety framework directive by amending section 44 of the 1996 Act. We are committed to protecting workers' rights and supporting workers through the challenges created by the pandemic, ensuring that the UK remains the best place in the world to work. Clarifying our interpretation of the directive in the light of the High Court judgment will mean that more people are protected by the provisions.

Turning to the scope of the SI, the changes made to section 44 of the 1996 Act will apply in England, Scotland and Wales, because employment law is devolved in Northern Ireland. We have, however, discussed this SI with the Northern Ireland Administration, who have laid legislation to the same effect, which will come into operation in parallel subject to the Northern Ireland Assembly's procedure.

Given that the limb (b) workers represent a small share of the workforce, the direct cost to business of the change is expected to be very low. We also do not expect the amendment to have a significant and disproportionate cost or impact in any region across England, Scotland and Wales.

This is a necessary change in order to clarify the Government's interpretation of the health and safety framework directive. It will ensure that all workers are covered by the protections and that we build back better from the pandemic by maintaining the highest standards when it comes to workers' rights in the UK labour market.

9.30 am

Imran Hussain (Bradford East) (Lab): It is, as always, a pleasure to serve under your chairmanship, Mr Davies. I start by paying tribute to the campaigning and work of the Independent Workers Union of Great Britain, as acknowledged by the Minister. It has been instrumental to the introduction of this amendment to the Employment

Rights Act through its legal challenge on behalf of thousands of members in insecure work and the gig economy.

It was only through the IWGB's work that these vital fundamental employment rights that most employees take for granted have been extended to limb (b) workers and those in the gig economy, because without the High Court ruling in the union's favour, it is extremely doubtful that the Government would implement this extension. Indeed, the Secretaries of State for BEIS and for Work and Pensions challenged the IWGB's case in the High Court instead of extending the rights that should be afforded to workers under EU directives, as agreed under the withdrawal agreement, only to be defeated. As a result of the challenge and the delay that it created between concerns first being raised by the IWGB at the start of the pandemic and the High Court's ruling in November 2020, many months have been lost in which the protections could have been extended, leaving working people without adequate rights or protections regarding health and safety matters during the height of the coronavirus pandemic.

The pandemic has been devastating for all, but particularly for those in insecure work and the gig economy, who do not share the same employment rights as those with employee status, to which the Minister alluded. For months they continued to work because they had no rights to fall back on and because they needed to work in order to make enough to get by, often putting in long hours in public-facing roles or jobs that brought them into contact with large numbers of people. According to the TUC, covid-19 mortality rates were twice as high for these workers than for those in secure employment.

Today is International Workers' Memorial Day, on which we remember all those who have lost their lives in the workplace or in the course of their job, and it is worth noting that the Government have acted far too slowly to protect many thousands of workers in insecure work and in the gig economy.

This instrument clearly demonstrates once more just how much we need a new employment rights settlement that provides a clear universal definition of employment status, which the latest Labour manifesto called for, so that employment rights are afforded to all workers from day one and that the bogus self-employment that is used by many employers in the gig economy to exploit their workforces can be brought to an end. A universal definition would give certainty, security and stability to working people at a time when insecure, precarious employment runs rampant in our economy unchecked by this Government, who are happy to let the courts step in to deliver justice for working people rather than taking action themselves. Such a definition would strengthen people's rights at work.

Despite being promised well over a year ago in 2019 Queen's Speech, the long-awaited, much-delayed employment rights Bill is yet to materialise. It seems trapped in a permanent state of "in due course" according to official responses from this Minister and others. Such a Bill would offer us the chance to deliver a real, positive change and strengthen workers' rights. It would allow us to correct the inconsistencies and injustices that the IWGB and others have highlighted. The Minister should be able to commit to its inclusion in next month's Queen's Speech, and I hope he acknowledges that today.

In conclusion, we support this instrument today, but we lament the Government's decision to challenge the matter in the High Court and the length of time it has taken them to correct this injustice—a delay which will have cost the lives of many workers during the covid-19 pandemic. I urge the Minister to ensure that the Government introduce their promised instrument relating to the PPE directive—I hope that it is not also left in a state of "in due course"—and, hopefully, a robust employment rights Bill without delay.

9.35 am

Paul Scully: I appreciate the spirit in which this debate has taken place and the agreement on the reason for the court case. It is right that the courts were able to consider all the details of the case before coming to a clear conclusion. As I said, the claim succeeded only in part, with the High Court accepting that the UK was not required to extend unfair dismissal, for example, to limb (b) workers and had properly implemented the general obligations of the health and safety framework directive, and we chose not to appeal that judgment. It is important that the Court can do its work on interpretation to build up the case law. As I mentioned before, officials at the Health and Safety Executive assure me that work is much under way to extend protections under the personal protective equipment directive to limb (b) workers as well. To align with the Court ruling, there is no reason for further delay.

As for the employment Bill, I look forward to debating it with the hon. Gentleman and to working through the Bill when parliamentary time allows. We will see when that discussion happens. I do not have the Queen on speed dial, so we will have to see what happens on 11 May.

In conclusion, I underline once more that the draft order will help workers across the country during the coronavirus pandemic and beyond, providing all limb (b) workers and employees with the right not to be subjected to detriment in health and safety cases. I commend the statutory instrument to the Committee.

Question put and agreed to.

9.37 am

Committee rose.

