

Call for evidence by Human Rights (Joint Committee):
Human Rights at Work
Response by Just Fair

March 2023

Introduction

Just Fair¹ is a UK charity that is working to realise a fairer and more just society by monitoring and advocating for economic, social and cultural rights (ESCR) in the UK.

We welcome this opportunity to respond to the call for evidence by the Human Rights (Joint Committee) on human rights at work.

In our submission we make 2 key points:

- 1. The UK Government must shore up current human rights protections in the workplace by ensuring that decisions made about our post-Brexit trajectory (including in relation to the current Retained EU Law (Revocation and Reform) Bill) do not undermine rights and equalities protections people currently enjoy.**
- 2. In January 2023 we submitted an [independent parallel report](#) to the United Nations Committee on Economic, Social and Cultural Rights ([CESCR](#)) on behalf of civil society in England and Wales. As evidenced in this report, the current legislative landscape is not adequately protecting rights. Therefore, the UK Government must take further steps and bring international human rights protections, including those within the International Covenant on Economic, Social, and Cultural Rights ([ICESCR](#)), into our domestic legislation in the UK.**

¹ <https://justfair.org.uk/>

1. Retained EU Law and workers' rights

- *To what extent is the UK's compliance with its human rights obligations, in relation to the protection of workers, currently dependent on retained EU law?*

On 31 January 2020 the United Kingdom exited the European Union (EU). The political decisions made by the UK Government in terms of the way we exited the EU is already having an impact on the rights and equalities standards that workers in the UK enjoy.

The EU Charter

Most notably, the protection of the [EU Charter of Fundamental Rights](#)² has already been lost, it was drawn as a red line by the UK Government in its White Paper on the Repeal Bill in March 2017 and was not carried over into retained EU law.

Unlike for example, the [European Convention on Human Rights](#), the Charter reflects the indivisibility of civil, political, economic and social rights. Title IV (Solidarity) for instance provides protections for a number of workers' rights including collective bargaining and action (Article 28), fair and just working conditions (Article 31), and prohibition of child labour and protection of young people at work (Article 32). In addition, unlike the Human Rights Act, the Charter contains a free-standing right to prohibition of discrimination (Article 21).

REUL (Revocation and Reform) Bill

On 22 September 2022 the [Retained EU Law \(Revocation and Reform\) Bill](#) was introduced to the UK Parliament. The Bill seeks to expire all retained EU law contained in domestic secondary legislation and retained direct EU legislation on [31 December 2023](#), unless otherwise preserved. This means that the UK Government could quickly unpick various human rights and equality standards, including those related to human rights in the workplace.

The laws of the EU have done much to realise human rights in practice in the UK – including human rights at work. Employment law directives at an EU level provide for issues important to achieving just and favourable conditions of work (article 7 ICESCR) including:

- health and safety in the workplace [Directive 89/391/EEC](#) and [Directive 92/85/EEC](#)
- rights of employees when ownership of a company is transferred ([Directive 2001/23/EC](#))
- a wide range of anti-discrimination measures (including [Directive 2000/43/EC](#), [Directive 2000/78/EC](#) and [Directive 2006/54/EC](#))

In addition, the current call for evidence cited the Working Time Regulations 1998 as an example of a statutory right which provides specific protection to workers in the UK. In its current format, the Retained EU Law (Revocation and Reform) Bill could very easily scrap or significantly amend each of these rights protections.³

² The Charter brings together the fundamental rights of everyone living in the EU, including the rights protected by the European Convention on Human Rights (Article 52(3)), the constitutional traditions of the Member States, and the rights contained in other international conventions to which the EU or its Member States are parties.

³ For more, read, '[Future developments in the UK-EU relationship- Just Fair submission to the call for evidence: House of Lords European Affairs Committee](#)' October 2022

Falling behind

Further, we are now falling behind the EU in terms of protection for workers' human rights. An example of this is the [Work-life Balance Directive](#), which will not be implemented in the UK. The directive introduces a set of legislative actions with aims including:

- better supporting a work-life balance for parents and carers.
- encouraging a more equal sharing of parental leave between men and women.

Recommendation

The UK Government must shore up current human rights protections in the workplace by ensuring that decisions made about our post-Brexit trajectory do not undermine rights and equalities protections people currently enjoy. This should include abandoning the flawed REUL (R&R) Bill and launching a scheme of work to ensure we keep pace with human rights and equalities protections offered to people working in the EU.

2. International human rights treaties

- *Does the UK effectively comply with its international obligations to protect workers' rights under the International Covenant on Civil and Political Rights, International Covenant on Economic and Social Rights, and International Labour Organisation Conventions? If not, what improvements should be made?*

ICESCR protects several rights which are pertinent to the current call for evidence.⁴

In January 2023 we submitted an [independent parallel report](#) to CESCR on behalf of civil society in England and Wales. The evidence in this report points to workers' human rights being violated across England and Wales. We have included some highlights of this evidence below but would encourage the reader to refer to the [full report](#) (particularly pages 3-7) and read the submission of evidence linked to in this document.⁵

Access to work

Our report noted that access to work is unequal. Unemployment continues to disproportionately affect disadvantaged and marginalised individuals and groups because of both UK Government policy and inaction.⁶

Just and favourable conditions of work

Our report found that that insufficient progress has been made on taking all appropriate measures to fully guarantee labour rights of workers in law and practice in respect of just and favourable conditions of work. Low pay and insufficient number of hours were highlighted as key drivers of in-work poverty ([SUB 22](#), p. 9).⁷

⁴ Progressive realisation (article 2(1)), non-discrimination (article 2(2)), right to work (article 6), right to just and favourable conditions of work (article 7), trade union rights (article 8)

⁵ The report was countersigned by 48 civil society organisations and endorsed by 12 more. The report was evidence led. We held an open call for evidence and received over 70 submissions of evidence, both written and oral. Evidence was submitted from a very wide range of organisations, in terms of size, geography and remit.

⁶ For instance:

- People seeking asylum are effectively prohibited from working while their claim is being processed which places them under acute financial pressure and may increase risk of exploitation, ([SUB 41](#)) including, modern slavery ([SUB 17](#), p. 2).
- Black communities experience racial and social class barriers in employment ([SUB 38](#), p. 2 and 7). The proportion of the Black population unemployed is double the national average at 8% and this has been exacerbated by factors such the Covid-19 pandemic.
- 63% of respondents to the [Trans Lives Survey](#) reported experiencing transphobia while seeking employment and this rose to 73% of Black people and People of Colour (BPOC) respondents and 69% of disabled people for whom the question was relevant ([SUB 6](#), p. 2).
- 50% of respondents to the Greater Manchester Disabled People's Panel Big Disability Survey 2022 were not in employment ([SUB 23](#), Headline Findings).
- In 2017 only 5.8% of people with a learning disability in England were in paid employment ([SUB 34](#), p. 2).

⁷ Issues relating to decent work and safe working conditions include:

- A prevalence of low-paying work ([SUB 22](#), p. 1) with long hours and multiple jobs are said to be commonplace ([SUB 40](#), p. 2).
- A lack of compliance with health and safety protections. For example, minimum break times not being provided ([SUB 40](#), p. 1) and, during the pandemic, claims that Covid-19 policies and procedures were not being adhered to, placing workers' health and finances at risk ([SUB 26](#), p.2 & [SUB 40](#), p. 1).
- Increasingly widespread use of 'fire and rehire' practices where employers require workers to reapply for their jobs on worse terms and conditions ([SUB 5](#), p. 6) or 'fire and replace' practices in which workers are dismissed and replaced by workers on lower terms and conditions.

Pay

Our report noted that low wages are prevalent and do not ensure a decent standard of living resulting in in-work poverty.⁸

Discrimination

Our report evidenced that discrimination at work and the vulnerability of some workers to rights violations persists.⁹

Trade union rights

The UK Government's [claim](#) (para. 75) to CESCR in May 2022 that the treatment of trade unions is compliant with international conventions and that trade union rights are sufficiently protected to ensure that workers enjoy trade union rights without undue restrictions or interference is not correct. Indeed, numerous concerns have been raised by the International Labour Organization (ILO) Committee of Experts regarding violations by the UK, including outstanding violations of ILO Convention 87 dating back to 1989 ([SUB 20a](#), p. 3-5).¹⁰

We also challenge the UK Government's further [claim](#) (para. 75) that all workers have the right to join a trade union and be represented by that union in collective bargaining with employers. There is no legal right to be represented by a trade union in collective bargaining except by way of a flawed statutory recognition procedure ([SUB 20a](#), p. 7-11).

Business and human rights

Despite the UK Government's [assertion](#) (para. 9) that the UK was first UN member state to develop a National Action Plan to implement UN Guiding Principles on Business & Human Rights, updated in 2016, they are not mandatory. Nor did they prove sufficient to address issues which arose in the

⁸ This includes:

- The hourly rate is not high enough to achieve a minimum acceptable standard of living ([SUB 22](#), p. 6).
- Workers are not always paid for all the hours they work, for instance, workers in the social care sector not being paid for their travel time persists as an issue.
- The measure adopted by the UK Government to provide workers with payslips is not sufficient to provide the necessary information required to understand if their pay has been calculated correctly. The lack of adequate pay transparency also places a barrier for enforcement bodies, with the statutory enforcement body HM Revenue & Customs (HMRC) stating that a lack of clarity and inadequate minimum wage record keeping prevents action on their part ([SUB 5](#), p. 1-5).
- Wage inequality persists, in particular in relation to gender and ethnicity pay gaps and for LGBTQ and disabled workers.

⁹ Including, specifically:

- The misuse of repayment clauses by employers in respect of migrant workers who are required to repay the costs of training and education if they leave their role: this can leave workers facing threats and exploitation in the absence of enforceable rights relating to international recruitment ([SUB 5](#), p. 6).
- A lack of representation of Black people in senior roles ([SUB 38](#), p. 7).
- High levels of reported transphobia from colleagues, with 80% of non-binary respondents to the Trans Lives Survey reporting transphobia at work and 73% of Trans men and 73% of Trans women experiencing transphobia. This increased to 88% for BPOC ([SUB 6](#), p. 2).

¹⁰ In addition, The UK has been found to be in breach of 10 out of 13 obligations relating to labour rights in the European Social Charter as examined by the European Committee of Social Rights when last assessed in 2019 ([SUB 20a](#), p. 6-7).

high-profile P&O Ferries case, which raises questions regarding a lack of remedy and accountability in place ([SUB 20.b](#), p. 2-8).¹¹

Conclusion

Under international human rights law, the UK Government has legally binding duty to respect, protect, and fulfil the rights contained within ICESCR including those relating to work. However, while rights are not domestically enforceable, there are multiple issues with their realisation including:

- laws that do exist are not being properly applied
- laws that do exist are under threat
- enforcement and oversight bodies are unable to effectively carry out their functions
- large gaps in protections mean that rights are being experienced in an unequal way, particularly for those with protected characteristics, and even more so for those with intersecting protected characteristics.

Human rights must have a role to play in the regulation of all employment relationships. As evidenced above, the failure to adequately protect human rights at work in the UK has led to multiple issues, including in relation to being properly compensated for work, discrimination faced in undertaking and in seeking employment, trade unions rights, just and favourable conditions of work, and in relation to how businesses approach human rights.

Recommendation

We believe that the effective enforcement of ICESCR in domestic legislation across the UK could help future-proof against failings such as those noted above. This could have three main, interrelated impacts:

1. **Better decisions:** legally enforceable economic, social, and cultural rights (ESCR) would mainstream human rights into the decision-making processes of public authorities, to ensure compliance with these rights so that people in greatest need of support to realise their rights are prioritised.
2. **Better laws:** if lawmakers had to actively consider the ESCRs when making laws and regulations, this ‘pre-legislative scrutiny’ would highlight particular risks and ensure another route was taken or that mitigations were built in.
3. **Better accountability:** as a matter of last resort, positively framed ESCRs could provide people experiencing unequal access ESCRs (including those evidenced above) with a means for redress through taking legal action.

We recommend that the Committee advises the UK Government to take further steps to protect rights by bringing international human rights protections, including those within the International Covenant on Economic, Social, and Cultural Rights ([ICESCR](#)), into our domestic legislation in the UK.

¹¹ A legal requirement that directors must consider the interests of their employees and the impact on the community of the company’s operations did not prevent P&O Ferries flouting the law (as they publicly accepted doing before the [House of Commons Transport Committee & Business, Energy and Industrial Strategy Committee](#)) in summarily dismissing 786 employees, breaking collective agreements and statutory duties to inform and consult workers’ representatives ([SUB 20.b](#), p. 3 and 8).

Further information and contact

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