Submission from the National Union of Journalists

The National Union of Journalists (NUJ) comprises 40,000 members in the United Kingdom and the Republic of Ireland. These members cover the full range of editorial work – staff and freelance, writers and reporters, editors and sub-editors, photographers and illustrators. Around 7,000 are registered with the union as freelance members.

They work across all media: broadcasting, newspapers, magazines, books, online and in public relations.

In the media industries, the word ‘freelance’ is used to describe a multiplicity of ways of working. Some freelances work ‘casual’ shifts with a starting and finishing time, whereas others are commissioned to write words or produce pictures and are paid for each piece of work provided they meet a deadline.

There are others who work on a retainer, whereby they are paid monthly in return for supplying work throughout that month.

It is in the light of the above that we will address the questions contained in the Green Paper.

Q1. What would you consider to be the priorities for a meaningful law reform agenda?

In the constant drive to reduce costs and maximise income, media organisations are year-by-year reducing their numbers of employed staff – those who work under a contract of employment of indefinite duration and are entitled to the full range of statutory rights.

This headlong rush to ‘casualisation’ will, if unchecked, result in an industry in which hugely profitable corporations exist on the backs of poorly paid workers with few or no workers’ rights. Two hundred years of improvements in working conditions are in danger of being reversed in two decades.

The priority, then, must be to prevent this by providing rights for those workers who do not meet the traditional definition of ‘employee’.

It is our belief that to tackle the abuses that go on day in day out we should adopt a broader definition of the working relationship – to extend coverage of protective legislation to workers who are currently excluded or whose status is in doubt.
In the UK, in the Equal Pay Act, Sex Discrimination Act, Race Relations Act, Health and Safety at Work Act there is a broad definition of employment status and in none of this legislation is there a concept of continuity of service or a minimum period of employment.

So why do we protect people against race or sex discrimination but fail to protect them against unfair dismissal or redundancy?

An extended concept of worker can form the basis for a more effective, generally applicable concept of the employment relationship. The core of rights contained in labour legislation should apply to an employment relationship defined for this purpose to be anyone who undertakes personally to execute work or labour for another and is economically dependent on the business of the other.

The second hurdle – the qualifying period of continuous service should be abolished. Employment rights should generally apply from day 1 of the employment relationship.

Such employment legislation would place no more ‘administrative burdens’ or ‘unnecessary costs’ on good employers – it would impose significant penalties on bad employers.

Q2. Can the adoption of labour law and collective agreements contribute to improved flexibility and employment security and a reduction in labour market segmentation? If yes, then how?

Our freelance members would affirm that ‘flexibility’ is synonymous with ‘insecurity’ – laws that are weighted heavily towards the employer/client, leaving the freelance with too few rights.

It is not uncommon for a freelance to contribute a weekly column to a newspaper for many years. This is usually well paid and forms the majority of the freelance’s income. The freelance regards this as ‘security’. Often, the freelance is expected to provide this service on an exclusive basis.

However, fashions change and columns are terminated, leaving the freelance with no income and no entitlement to compensation.

Employment status is currently a minefield, and only the EU can provide a workable definition that could be applied throughout the Union. The impetus should be to embrace more workers, rather than fewer.

Collective agreements help to provide minimum protections for workers – and as such should be just as relevant and apply equally to freelance and other atypical workers.

Q3. Do existing regulations, whether in the form of law and/or collective agreements, hinder or stimulate enterprises and employees seeking to
avail of opportunities to increase productivity and adjust to the introduction of new technologies and changes linked to international competition? How can improvements be made in the quality of regulations affecting SMEs, while preserving their objectives?

This gets to the heart of the matter of so-called ‘flexicurity’. ‘Flexibility’ is management-speak for limited statutory and contractual rights and low pay. Workers should be cheap to hire, cheap to dismiss and so desperate for work they will be available when required. If this view is adopted it will be not only socially unacceptable but bad business. Some goods and services are beyond the means of most workers, who increasingly rely on credit. This is a major cause of insolvency among individuals and businesses. In the UK the problem is being addressed by making it easier to write off debt. A society founded on a promise must eventually crash.

While statutory rights are required as a floor, they should exist to underpin collective bargaining rights. Workers must have hope of improving their position or we will have a demoralised, docile society with no incentive towards effort or creativity.

Q4: How might recruitment under permanent and temporary contracts be facilitated, whether by law or collective agreement, so as to allow for more flexibility within the framework of these contracts while ensuring adequate standards of employment security and social protection at the same time?

Q5: Would it be useful to consider a combination of more flexible employment protection legislation and well-designed assistance to the unemployed, both in the form of income compensation (i.e. passive labour market policies) and active labour market polices?

These two questions are addressed together because they are virtually the same question. The suggestion is that it should be made easier to sack workers and then pay them higher benefits once they are unemployed. It is difficult to see how this helps anyone except the employer.

It certainly does not help the workers, as there is no security in knowing you could be on the dole at the employer's whim. It is no help to the taxpayer, who will have to pay for the unemployment benefit.

And how will this extra burden on taxation be addressed? Do the employers wish governments to increase taxes to cover the cost? Will such an increase cover corporation tax? And how long will it be before politicians seek election on the basis of attacking the ‘benefits scroungers’, who should be forced back to work?

Q6: What role might law and/or collective agreements negotiated between the social partners play in promoting access to training and transitions between different contractual forms for upward mobility over the course of a fully active working life?
Technological innovation in the media industry will continue for the foreseeable future. Who would have imagined podcasting a few years ago? Digital photography has radically changed the skills requirements for photographers. The convergence of print and online operations is proceeding apace. The print and broadcast media have shed jobs, and are likely continue to shed jobs for many years. Those who become unemployed are forced to re-train. The need for training, then, often coincides with a time when a worker is vulnerable. Collective agreements have a role to play, but a statutory obligation on employers to provide funds for training is essential. Freelances need access to lifelong training in order to remain ‘employable’ within the media industry. The UK audiovisual/broadcasting industry is a good example of where a levy on employers operates for the collective good of workers in the sector and the employers – ensuring a highly skilled workforce whilst not placing the ‘burden’ for training on a single employer.

Q7: Is greater clarity needed in Member States’ legal definitions of employment and self-employment to facilitate bona fide transitions from employment to self-employment and vice versa?

This poses the wrong question. Instead of trying to clarity exactly what is employment – an impossible task, in any case – the EU should consider a definition of ‘worker’ that is more comprehensive. We could then discuss ‘workers rights’ in a way that embraces more workers, instead of perpetuating the chasm between employed and self-employed.

This principle already works very well in Sweden. In the UK, tribunals are now defining ‘employment’ more widely than before. See: Thickness v Times Newspapers and McCallum v Middleton.

The EU should strive to distinguish between ‘workers’ and ‘service providers’, so that employees and the economically dependent ‘self-employed’ would be covered by the category of ‘worker’.

Q8: Is there a need for a ‘floor of rights’ dealing with the working conditions of all workers regardless of the form of their work contract? What, in your view, would be the impact of such minimum requirements on job creation as well as on the protection of workers?

Some people react to the notion of a ‘floor of rights’ for fear that it will become a ceiling. Yet the minimum wage in the UK has not proved to be a ceiling. The reality is that if you do not provide workers with something to break their fall you condemn them to plunge down the abyss.

The argument against this is that it would be a burden on employers. But if rights were acquired and accrued on a pro rata basis, this would not be the case. Employers have coped with the terms of the Working Time Regulations by providing holiday pay pro rata. In fact, many workers receiving holiday pay are false freelances and de facto employees.
Rights could also be portable and cumulative. The worker who works one day per week for one employer and is made redundant could receive one day’s pay for each year of service or four days, depending on the collective agreement. This is hardly a burden on the employer, but nor is it a windfall for the worker.

If we follow the Austrian model, this money could then be placed in a bank account. Over the years, the balance would grow each time the worker is made redundant. At some point, the worker could draw on the money when it is needed most. This would also spread the burden over various employers.

All workers should have the right to negotiate collective agreements.

**Q11: How could minimum requirements concerning the organisation of working time be modified in order to provide greater flexibility for both employers and employees, while ensuring a high standard of protection of workers’ health and safety? What aspects of the organisation of working time should be tackled as a matter of priority by the Community?**

The existing Working Time Regulations adopted by the UK weaken the intentions of the original Directive. It is crucial that there is no further erosion of rights. Allowing an ‘opt-out’ was a serious error, as there is always the risk that workers will be bullied into accepting it. Legislation should fix absolute limits, avoiding such loopholes.

**Q12: How can the employment rights of workers operating in a transnational context, including in particular frontier workers, be assured throughout the Community? Do you see a need for more convergent definitions of ‘worker’ in EU Directives in the interests of ensuring that these workers can exercises their employment rights, regardless of the Member State where they work? Or do you believe that member states should retain their discretion in this matter?**

As suggested previously, we would like to see a EU-wide definition of ‘worker’. This would allow workers to acquire the rights of workers in whichever country they happen to be working.

**Q13: Do you think it is necessary to reinforce administrative cooperation between the relevant authorities to boost their effectiveness in enforcing Community labour law? Do you see a role for social partners in such cooperation?**

Following the logic of our argument, the answer would have to be ‘yes’. If a common definition of ‘worker’ were accepted, it would be necessary to enforce the rights of workers in each nation. This would be in the interests of the social partners in order to ensure competition is fair throughout the Community.
Addendum: proposed minimum rights for all workers

The right to organise in a union and by collective work seek to improve the situation for non-permanent staff

The same rights regarding information and consultation

The right to a written contract

The right to equal protection by social security institutions on equal terms with permanent staff such as:
   a) sick pay
   b) retirement pension
   c) unemployment allowance
   d) maternity/paternity allowance equivalent to a comparable employee
   e) work accident pension and other forms of work accident benefits

The right to equal treatment and to receive decent fees and thus not undermine the positions of staff through providing cheap work

Same protection when it comes to resiliation (termination) of contract

The right to take part in training offers

The right to adequate representation in work councils, if those are established according to the law of a member state.

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