
COVID-19 and Labour Law: United Kingdom

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Abstract

The UK Government provided a tardy response to the coronavirus pandemic. The measures taken are disappointing, being predominantly concerned with protecting business and preserving their confidence, while limited assistance is being provided to the most vulnerable, precarious workers. Crucial issues relating to health and safety have been downplayed, while gender-related issues have been given little attention. The Trades Union Congress (TUC) has engaged with the Conservative Government but seems to have had little influence to date.

Keywords: Covid-19; Labour Law; Statutory sick pay; Unemployment benefits; Job retention scheme; Health and Safety; Gender-related issues.

1. General Framework: An Introduction to the UK Situation.

When a global pandemic was declared on 11 March 2020 by the World Health Organisation (WHO), there were at that time only 460 cases of coronavirus and 8 Covid-19 related deaths. At the time of writing (on 10 April 2020), there are now 65,077 confirmed cases and 7,978 deaths in hospital. Testing has been limited to hospital admissions since 12 March, and the death toll does not include deaths in care homes or in the community. As a result, the official statistics understate the impact of the virus.

Initially, the UK Government message was that the priority was to keep the economy going, build 'herd immunity' in the bulk of the population, and accept that there would be casualties (affecting predominantly the elderly 'with underlying health conditions')¹. It was only when academic modelling predicted that unconstrained transmission could lead to

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¹ Bosley S., 'Coronavirus: health experts fear epidemic will "let rip" through UK', The Guardian 15 March 2020, <https://www.theguardian.com/world/2020/mar/15/coronavirus-health-experts-fear-epidemic-will-let-rip-through-uk>, accessed 10 April 2020.

more than 500,000 deaths and the current policy to 250,000 deaths, that significant further measures were taken².

On 19 March it was formally announced that the elderly and those vulnerable due to pre-existing health conditions or pregnancy should self-isolate for a period of 12 weeks. On 20 March schools were closed (apart from to children of critical workers and vulnerable children receiving free school meals) as were all ‘non-essential’ businesses³. Everyone was required to stay home on ‘lockdown’ from 23 March, if not engaged in critical work. Children could be moved between custodial parents, but the message has been to go out only for personal exercise, shopping, for medical needs or to assist others. If anyone does go out, they should stay 2 metres (6ft) away from other people at all times and wash their hands on return home⁴. These instructions do not apply to ‘critical’ or ‘frontline’ workers in health and social care, schools and childcare, key public services, local and national government, food and other necessary goods, public safety and national security, transport, utilities, communication and financial services⁵.

2. The impact of the spread of the Covid-19 disease and UK Government measures on employment relations and working conditions.

The first empirical study undertaken as to the social effects of the virus was published on 1 April 2020, covering the period up until 25 March 2020 (two days after the lockdown). It found that 57% of workers engaged in less paid work over the past week than usually and that 8% of workers in employment a month ago had already lost their job due to COVID-19. It was the youngest and most precarious low-income workers who were disproportionately affected⁶. It should also be noted that since 23 March 2020, employment tribunals have been providing only preliminary and case management hearings, with substantive matters put on hold for the time being⁷.

² Grey S., MacAskill A., ‘*Special Report: Johnson listened to his scientists about coronavirus - but they were slow to sound the alarm*’ Reuters 7 April 2020, <https://www.reuters.com/article/us-health-coronavirus-britain-path-speci/special-report-johnson-listened-to-his-scientists-about-coronavirus-but-they-were-slow-to-sound-the-alarm-idUSKBN21P1VF>, accessed 10 April 2020.

³ The list of businesses and venues shut is available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876905/300320_Revised_Guidance.pdf, accessed 10 April 2020.

⁴ <https://www.gov.uk/government/publications/coronavirus-outbreak-faqs-what-you-can-and-cant-do/coronavirus-outbreak-faqs-what-you-can-and-cant-do>, accessed 10 April 2020.

⁵ <https://www.gov.uk/government/publications/coronavirus-covid-19-maintaining-educational-provision/guidance-for-schools-colleges-and-local-authorities-on-maintaining-educational-provision>, accessed 10 April 2020.

⁶ Adams-Prassl A., Boneva T., Golin M., Rauh C., *Inequality in the Impact of the Coronavirus Shock: New Survey Evidence for the UK*, in *Cambridge-INET Working Paper Series*, No: 2020/10, 2020.

⁷ <https://www.judiciary.uk/announcements/coronavirus-covid-19-message-from-presidents-of-the-employment-tribunals-in-england-wales-and-in-scotland/>, accessed 10 April 2020.

2.1 Government measures taken and their effects to date.

2.1.1 Statutory sick pay and access to unemployment benefits.

UK statutory sick pay is set at a very low level (£95.85 per week from 6 April 2020) which is less than 30% of the national minimum wage⁸. It is only available to ‘employees’, so not usually those in precarious forms of employment and only those who would normally earn at least £118 per week⁹. Only agency workers who are ‘employees’ of an agency can claim¹⁰. The right now arises from day 1 (not day 4 as previously would be the case) to those self-isolating with suspected coronavirus¹¹. It does not cover those told to isolate for 12 weeks on the basis that they are elderly or otherwise vulnerable¹².

Anyone not eligible for statutory sick pay and without work can claim for Universal Credit, the current unemployment benefit. The Government has changed official guidance so: ‘those affected by coronavirus ... can receive up to a month’s advance up front without physically attending a jobcentre’¹³. The usual threshold income level has also been temporarily changed to enable readier access for precarious workers, whether termed ‘workers’ or self-employed. The Government is also changing requirements for those already covered by the scheme but having to self-isolate due to coronavirus. However, levels of income under this scheme (although increased from a standard rate of £317.82 to £409.89 per month) remain very low. As at 1 April 2020, 950,000 people had applied for Universal Credit¹⁴.

2.1.2 Coronavirus Job Retention Scheme.

On 17 March 2020, the Chancellor set out various measures for business to assist them in a package totalling £330 billion¹⁵. On 20 March, he announced a further Job Retention Scheme,¹⁶ which enables an employer to ‘furlough’ its workers, namely to suspend them so that they do no further work, while the Government pays 80% of their wages up to a

⁸ John Hendy QC, *The Gaps in the Government’s Coronavirus Income Protection Plans*, Institute of Employment Rights, 2020, 1-2.

⁹ See the UK Employment Rights Act 1996, s.230 for the distinction under UK law between ‘workers’, ‘employees’ and (by implication) the self-employed.

¹⁰ See the Government guidance which does not acknowledge how rare this is: <https://www.gov.uk/statutory-sick-pay/eligibility>.

¹¹ See the Social Security Contributions and Benefits Act 1992 (amended by the Coronavirus Act 2020); and the Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020.

¹² See Art. 3 of the Regulations. Also, Ferguson, D. ‘FAQs: Coronavirus Job Retention Scheme’ House of Commons Briefing Paper, 9 April 2020, 21.

¹³ <https://www.understandinguniversalcredit.gov.uk/coronavirus/>.

¹⁴ Booth R., Rawlinson K. ‘950,000 apply for universal credit in two weeks of UK lockdown’, in *The Guardian*, 1 April 2020, <https://www.theguardian.com/society/2020/apr/01/950000-apply-for-universal-credit-in-two-weeks-of-uk-lockdown>, accessed 6 April 2020. There are no more recent statistics yet available.

¹⁵ <https://www.gov.uk/government/speeches/chancellor-of-the-exchequer-rishi-sunak-on-covid19-response>.

¹⁶ <https://www.gov.uk/government/speeches/the-chancellor-rishi-sunak-provides-an-updated-statement-on-coronavirus>, accessed 10 April 2020.

maximum of £2500 per month (and additional tax-related costs). The worker in question needs to have been an ‘employee’ under UK tax laws, hired by that employer as at 28 February 2020. Partial reduction of hours or tasks under the scheme is not possible. Much was made of the fact that this could include precarious workers on zero hours contracts, or casual or gig workers, although it has been pointed out that this is in practice highly unlikely¹⁷. This is not simply a job protection scheme. It enables the employer to *choose* whether to furlough, retaining the option for the sake of convenience to dismiss an employee (or initiate redundancies). The limitations of UK dismissal laws have been exposed in this process¹⁸. The Job Retention Scheme has yet to be placed on a statutory footing, will only allow for retrospective claims by employers for wage costs at the end of April 2020, and has now been revised for a third time¹⁹.

2.1.3 Self-employed Income Support Scheme.

The Self-employed Income Support Scheme (SISS) was announced on 26 March. It is formally comparable to the Job Retention Scheme in that 80% of a self-employed person’s profits will be paid by the Government for up to three months, capped at £2,500 per month. This requires the claimant to have received less than £50,000 in profits either the previous year or averaged over three years and to have been self-employed for three years. The Inland Revenue will contact those eligible and make a complete one-off payment in June 2020. While this might seem to help those precarious workers who do not qualify for protection under the Job Retention Scheme, but nothing would be paid to them for three months²⁰. Nor will the Scheme apply to those who do not make more than half their income through being self-employed or who have changed the basis on which they work in the past three years. It has been predicted that this will mean that it only covers 62% of self-employed people²¹.

¹⁷ Hendy, n.8 above, 8 – 10.

¹⁸ For three excellent blogs on the subject by Bogg, A., Ford, M.:

<https://uklabourlawblog.com/2020/03/23/legislating-in-times-of-crisis-the-coronavirus-job-retention-scheme-by-alan-bogg-and-michael-ford/>; <https://uklabourlawblog.com/2020/03/31/not-legislating-in-a-crisis-the-coronavirus-job-retention-scheme-part-2-by-michael-ford-and-alan-bogg/>; and <https://uklabourlawblog.com/2020/04/06/furloughing-and-fundamental-rights-the-case-of-paid-annual-leave-by-alan-bogg-and-michael-ford/>.

¹⁹https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme?utm_source=22073d98-c3f4-47e3-b012-3fa9f1a81e4e&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate#payroll-consolidation.

²⁰ Hendy, n.8 above, 13 – 17.

²¹ Discussed in Hirst D et al, ‘Coronavirus: support for businesses’, House of Commons Briefing Paper, 3 April 2020, 13-14.

2.2 Government omissions.

Apart from these obviously identifiable limitations in the coverage of Government measures, there have been further notable omissions in regulatory engagement, including health and safety and gender-related issues.

The most prominent health and safety concerns have arisen for critical frontline workers. A disproportionate number of nurses and doctors started dying from Covid-19, having raised concerns regarding shortages of adequate personal protective equipment (PPE).²² This is also an issue for care workers, and there is growing evidence of an increasing incidence of coronavirus in residential care homes²³. Care workers also fear that, with a lack of PPE, they are spreading the virus in home care settings²⁴. Transport workers have also died, including London bus drivers²⁵. Concerns regarding the viability of social distancing at a range of worksites has been raised, including the House of Commons following the diagnosis of the Prime Minister, Boris Johnson, with Covid-19²⁶. Only 'employees' can refuse to work on health and safety grounds, and nothing has been done by the Government to extend this entitlement to more precarious workers and the self-employed, or indeed to facilitate such refusals where appropriate²⁷. Notably, the Independent Workers Union of Great Britain is now bringing judicial review proceedings to challenge the inadequacy of the Government schemes for those in precarious work, as well as the Government's treatment of health and safety at work²⁸.

There are also gender-related issues that have not been addressed. When the schools closed and everyone who could do so was told to work from home, many parents (especially women) ended up carrying a double shift of home-schooling and working responsibilities. Of these, single parents and those who have smaller accommodation experience greater difficulties²⁹. Pregnant women have also been placed in a difficult position because they have been instructed to stay home. The evidence is that it is harder to perform lower income jobs at home, so that those who are poorest will have reduced

²² Weaver M., 'Doctor who pleaded for more hospital PPE dies of coronavirus' *The Guardian* 9 April 2020, <https://www.theguardian.com/world/2020/apr/09/consultant-who-pleaded-for-more-nhs-hospital-ppe-dies-of-coronavirus>, accessed 10 April 2020.

²³ Booth R., 'Hundreds of UK care home deaths not added to official coronavirus toll' *The Guardian* 9 April 2020, <https://www.theguardian.com/world/2020/apr/09/covid-19-hundreds-of-uk-care-home-deaths-not-added-to-official-toll>.

²⁴ Hayes L., 'They Don't Really Care About Our Carers', in *Tribune* 27 March 2020, <https://tribunemag.co.uk/2020/03/they-dont-really-care-about-our-carers>, accessed 10 April 2020.

²⁵ Reynolds R., 'London bus drivers are dying from coronavirus. Demands to protect them better are growing', in *CNN* 8 April 2020, <https://edition.cnn.com/2020/04/08/uk/coronavirus-london-bus-driver-deaths-gbr-intl/index.html>, accessed 2 April 2020.

²⁶ 'Coronavirus: Calls for better workplace social distancing guidance' *BBC News*, 28 March 2020, <https://www.bbc.co.uk/news/uk-52076504>, accessed 10 April 2020.

²⁷ See the Employment Rights Act, ss 44 and 100; also Bales, K., 'COVID19 and the Future of Work', <https://legalresearch.blogs.bris.ac.uk/2020/04/covid19-and-the-future-of-work/comment-page-1/>, accessed 10 April 2020.

²⁸ <https://iwgb.org.uk/en/post/iwgb-to-sue-uk-government-over-its-failure-to-protect-precarious-workers>, accessed 10 April 2020.

²⁹ Day A., 'This Is How Coronavirus Is Affecting Single-Parent Families', in *Huffpost* 23 March 2020, https://www.huffingtonpost.co.uk/entry/coronavirus-single-parents-hit-hard-financially_uk_5e75062bc5b63c3b64900ef6, accessed 10 April 2020.

entitlements to maternity benefits as a result³⁰. The Trades Union Congress (TUC) is calling for improved access to sick pay, but also ‘support for parents who need to take time out of work to care for kids’ and ‘more help for families’³¹. However, there is no indication that the Government will take such measures.

3. The Role of the Social Partners

When announcing the Job Retention Scheme, the Chancellor put on record his ‘thanks to the Trades Union Congress, the CBI and other business groups, for our constructive conversations’³², and the TUC certainly did welcome the Scheme at the time³³. It was also announced that the SISS was ‘designed after extensive engagement with stakeholders including the TUC’ and representatives of small business³⁴. However, the limitations of these schemes may indicate the limited influence the TUC wields with this Conservative Government. These remain measures which, like most of the current Government policies, are primarily aimed at maintaining business confidence, not protection for the most vulnerable at work.

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³⁰ Adams-Prassl et al n.6; and Ferguson n.11 above, 19 – 20.

³¹ <https://www.tuc.org.uk/CoronavirusProtectingWorkers>, accessed 10 April 2020.

³² <https://www.gov.uk/government/speeches/the-chancellor-rishi-sunak-provides-an-updated-statement-on-coronavirus>, accessed 10 April 2020.

³³ See Ferguson n.11, 4.

³⁴ <https://www.gov.uk/government/news/chancellor-gives-support-to-millions-of-self-employed-individuals>, accessed 10 April 2020.