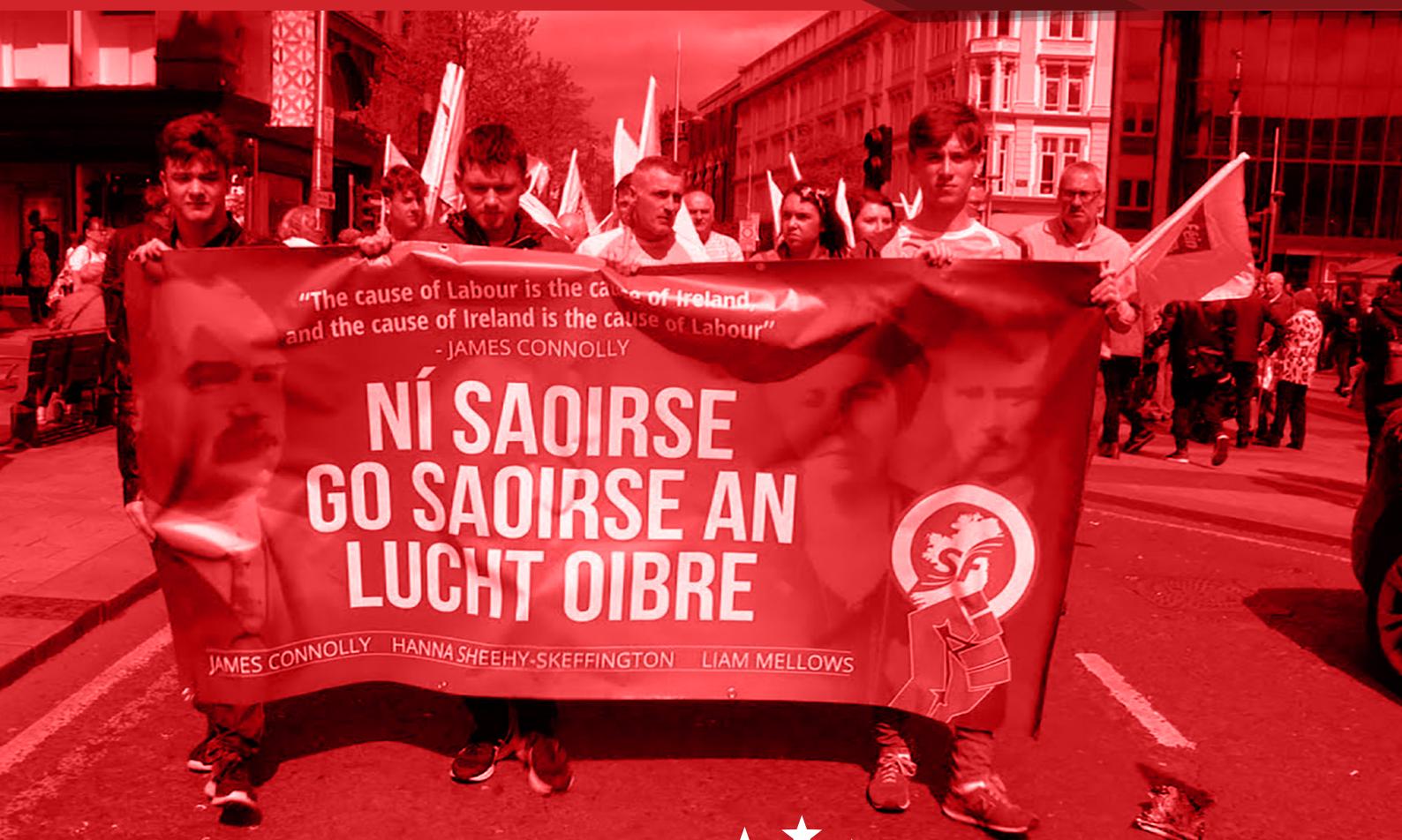




TOWARDS A NEW EMPLOYMENT MODEL:

Strengthening Workers' Rights



Sinn Féin
2019



Contents

Foreword by Declan Kearney MLA	4
Introduction	6
The Living Wage	7
Zero Hour Contracts	8
Bogus Self-Employment	9
Parental and Paternity Leave	10
Redundancy	11
Unfair Dismissal	12
Trade Unions and the Labour Relations Agency	13
Conclusions	14
Summary of Recommendations	15
References	16

Foreword

A decade of British Tory austerity in the north of Ireland has had a devastating impact on the local labour market and living standards. Since 2010 the block grant has been cut in real terms by 10.2%.¹

Research by the Nevin Economic Research Institute (NERI) has found that insecure forms of work have become increasingly prolific, especially since the banking crisis of 2007-08. Low paid and insecure work have also become more common place following the decline in collective bargaining. One fifth of employees in the north are paid less than the living wage. One in every three workers actually consider their work to be insecure. Women and young people are disproportionately affected, especially in the private sector.

Whilst the Sinn Féin proposals in this policy document *Towards a new Employment Model: Strengthening Workers Rights* are specific to the regional context of the north, what is described as the “Precariat” (i.e. those employees who experience zero hour contracts, and precarious, insecure pay and conditions) is characteristic of the island economy.

Sinn Féin believes that secure employment and decent pay is the foundation of a sustainable, productive economy, and a prosperous, fair society.

Precarious employment is bad for the economy. It is linked to high staff turnovers, lower employment rates, reduced consumer spending, and less

productivity. In turn, employers who are committed to good pay and proper working conditions are being undercut by other unscrupulous employers.

We believe that creating good jobs and protecting workers’ rights should be integral to public policy. This document sets out Sinn Féin’s call for government as a major employer to lead the way, along with all public sector bodies, and to pay their own staff the Living Wage. Government action and public policy should encourage and ultimately ensure that private sector companies become Living Wage employers. Zero hours’ contracts are unfair, unproductive and exploitative. They should be banned from the labour market. The stance taken by several local councils in the north by advocating this position and promoting the concept of “Zero Hour Contract Free Zones” is a very welcome development.

Sinn Féin urges all social partners, including employers from the public and private sectors, the trade union movement and other stakeholders to agree a new employment model, which ensures the regional and island economies guarantee at least the Living Wage for all workers. Workers who are valued, and who receive fair pay will be more productive employees: this will pave the way to sustainable economic growth.

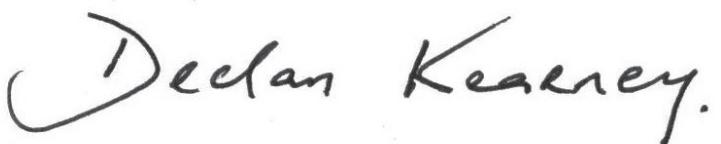
Agreement between employers and employees on the need to promote good jobs and decent pay is in the wider social interest. A decline in collective bargaining has mirrored a rise in low paid and precarious work. Currently restrictions



apply to trade union recognition and the right of employees to engage in collective bargaining in this region. This must change. Active and representative Trade Unions engaged in collective bargaining with employers is the most effective way to improve pay, guarantee working conditions, and make a net contribution to overall economic improvement.

International evidence shows that societies, most notably in the Nordic Countries, where there is a higher level of collective bargaining and strong Trade Union organisation, are not only more equal, but also more innovative and efficient.

Any form of Brexit poses a serious challenge to the rights and living standards of citizens across the island. A new employment model based upon negotiation and collaboration, which guarantees the Living Wage, would represent a progressive bulwark against the economic and social consequences of Brexit.



Declan Kearney MLA

NATIONAL CHAIRPERSON,
SINN FÉIN
MAY 2019



Introduction

Over the last forty years low-paid and insecure work has become increasingly common. 28% of employees in the north of Ireland are paid less than the Living Wage, the hourly rate that would give a full-time worker a reasonable standard of living.ⁱⁱ 38% of workers are in an insecure form of employment such as self-employment, part-time work, or a temporary contract.ⁱⁱⁱ

Such precarious employment is bad for workers and their families who, without a stable wage, struggle to make ends meet. The majority (60%) of adults in poverty are in households in which someone works.^{iv} Precarious employment is bad for conscientious companies that are undercut by unscrupulous employers who don't pay their workers a decent wage. Precarious employment is bad for the economy as it is linked to high staff turnover rates, increased household debt, lower consumer spending, and lower productivity.^v Precarious employment is bad for taxpayers who have to top up poverty wages through tax credits and other subsidies. Precarious employment is bad for social cohesion, creating a stark divide between people in bad and good jobs.

Good Jobs, meaning secure jobs that pay at least the Living Wage, are a vital part of a good economy and a good society. Public policy must focus not only on creating jobs, but on creating Good Jobs. That is why Sinn Féin secured a target to increase Good Jobs as part of the Executive's draft *Programme for Government*.

This paper sets out proposals to create Good Jobs by strengthening workers' rights. It includes recommendations to promote the Living Wage, ban zero hour contracts, tackle bogus self-employment, and strengthen collective bargaining. Together, these proposals can tackle the scourge of low paid and insecure employment, and help create an inclusive society in which everyone shares in the benefits of prosperity.





The Living Wage

Each year the Living Wage Foundation calculates the hourly rate that would give a full-time worker a reasonable standard of living. As of April 2019 the Living Wage in the north is £9.00 per hour compared to the Minimum Wage (set by the British Government) of £8.21 per hour. According to the most recent estimate 28% of employees are paid less than the Living Wage.

As demonstrated by the introduction of the Minimum Wage in 1999, increases in the minimum wage do not, as is often claimed, necessarily lead to companies collapsing and unemployment increasing. On the contrary, firms often respond in positive ways such as by increasing productivity. A study carried out by Oxford Economics estimated that paying all workers the Living Wage would boost consumer spending by £124m, reduce social security expenditure by £83m, and create 1,200 jobs. There is therefore a strong economic and social case for promoting the Living Wage and the British government should require all employers that are capable of paying the Living Wage to do so.

As a major employer the government in the north can pay its own workers the Living Wage. The public sector, including Councils, should audit its staff pay and identify workers paid less than the Living Wage. It should then agree a time-limited action plan to bring the pay of these workers up to at least the Living Wage rate.

Government can also use its purchasing power to promote the Living Wage in the private sector. Each year the government spends £3bn procuring goods, services and works from businesses. Often the lowest price tender is successful, promoting a race to the bottom on pay and conditions. Accounting for social value alongside price and quality would give companies that pay the Living Wage a better chance of winning government contracts. This in turn would improve household incomes and reduce poverty. The introduction of a Social Value Act could make the incorporation of social value mandatory in public procurement exercises, importantly including in the scoring of tenders.

More broadly government support for the private sector could incentivise businesses to pay the Living Wage. For example, government-funded training, financial aid, or rates relief could be conditional on a company being, or planning to become, a Living Wage employer.

RECOMMENDATIONS

- Legally require private sector companies that can pay the Living Wage to do so.
- Pay all public sector staff at least a Living Wage.
- Introduce a Social Value Act to incorporate social value, including the Living Wage, in public procurement contracts.
- Use government support for the private sector to promote the Living Wage.

Zero Hour Contracts

A person on a zero hour contract is officially regarded as employed, but there is no guarantee they will actually work any hours or receive any pay. ONS estimates that 22,500 workers were on these contracts in 2016.^{vi} However the actual figure is likely to be higher, given that some people are unsure what type of employment contract they are on.

The uncertain nature of Zero-Hour contracts makes it difficult to manage a household budget and make long-term financial commitments such as taking out a mortgage for a home impossible. A constant state of financial precariousness can mean constant stress and anxiety, which impacts on people's health.

Zero Hour Contracts can also disrupt access to social security. For example, due to the unreliable and unpredictable nature of these contracts it is difficult for workers to estimate whether they will receive enough hours throughout the year to qualify for Income Support. This difficulty will be exacerbated with forthcoming Universal Credit procedures which require recipients to show how much they earn and how much they work on an ongoing monthly basis in order to receive payment.

Some employment rights are time bound and only apply after a qualifying period of service. For example employees are only granted the right to not be unfairly dismissed after one year of 'continuous service'. Given their sporadic nature, workers on Zero Hour Contracts are often denied such rights.

An alternative form of flexible employment is a Banded Hour Contract. Originally proposed by Sinn Féin in 2015, legislation providing for these contracts was finally accepted by the Irish government in March 2019. Employees on short hour contracts now have a statutory entitlement (with limited exceptions) to a Banded Hour Contract if the number of hours they have actually worked in the previous 12 months does not reflect their contracted hours. The legislation sets out eight bands of weekly hours worked, three to six, six to eleven, eleven to sixteen and so on up to 36 hours and over. For example, an employee may be on a 15 hour contract but usually works on average 30 hours each week. After a period of 12 months the worker can request to be placed in a band (weekly hours worked) that reflects the actual hours worked in that period. The employer must then place the worker in the revised band within four weeks of the request.

In practical terms this ends the practice by some rogue employers of in effect keeping their full time permanent staff on short-hour insecure contracts. Workers can better plan childcare arrangements for the week ahead and manage their household budgets. Their capacity to plan their finances and take out credit improves as their contractual core hours accurately reflect the hours they work.

RECOMMENDATIONS

- **Abolish Zero Hour Contracts.**
- **Introduce Banded Hours Contracts.**





Bogus Self-Employment

Bogus self-employment is a situation in which a person is to all intents and purposes a company employee, but are designated as “independent contractors”. While it is difficult to calculate, it is estimated that over 50,000 people here are on bogus self-employment contracts.^{vii}

Workers who are falsely categorised as self-employed lose their entitlement to the minimum wage, sick pay, maternity pay, paid parental leave, holiday pay, National Insurance Contributions and Employer Pension contributions. Companies that employ people on decent terms and conditions face being undercut by unscrupulous employers, while public services miss out on National Insurance revenue. The Office for Budget Responsibility estimate bogus self-employed workers in the north alone costs public services €105 million (€120 million) per year.^{viii}

A number of recent employment tribunals have awarded Independent Contractors “rights”

equivalent to those enjoyed by employees, based on an assessment of the actual work undertaken.^{ix} Stronger legislation, banning bogus self-employment, would reduce the need for workers to resort to the cost and delay of a tribunal. It is important that the law is clear that a company cannot bogusly employ people as independent contractors, and that the penalties for violating the law serve as an effective deterrent.

Some companies have attempted to get workers to sign ‘indemnity clauses’ preventing them from taking legal action against their employer.^x Even if these clauses are legally unenforceable they can still deter people from taking their case to a tribunal.

RECOMMENDATIONS

- Outlaw bogus self-employment.
- Ban indemnity clauses which prevent workers from realising their rights.



Parental and Paternity Leave

Parental Leave gives parents time off work to spend with their children. This time can be used for emergency situations, such as if a child is ill, or simply to allow families to spend quality time together. Paternity Leave helps fathers and children bond and leads to fathers contributing more to child care.^{xi}

Fathers are entitled to two weeks of statutory paid leave, known as Paternity leave. This must be taken within the first year of their child's birth. At present these two weeks must be taken as two consecutive weeks, and cannot be taken as odd days or even as two separate weeks. Allowing fathers to take this Leave on individual days and across separate weeks (provided they give sufficient notice) would provide more flexibility to meet the demands and responsibilities of parenthood.

A parent can also take 18 weeks of unpaid leave for each child up until that child's 18th birthday. Employees must give their employer 21 days of notice in order to take Parental Leave. This long notice period does not cater for circumstances in which parents need to take parental leave for sudden and unexpected reasons.

If a father seeks additional paid paternity leave this can only be accessed if the mother sacrifices it from her maternity leave. This is known as shared parental leave. In contrast, in 2018 the Irish Government gave fathers two additional weeks Paternity Leave as a non-transferable right. In other words, it does not have to be deducted from Maternity Leave. Making the additional two weeks of Paternity Leave non-transferable in the north would encourage fathers to spend more time with their family, without affecting mothers.

RECOMMENDATIONS

- Allow parental leave to be taken at short notice in sudden and unexpected circumstances.
- Allow Paternity Leave to be taken on a flexible basis.
- Allow fathers to take two weeks of additional Paternity Leave without detriment to mothers.





Redundancy

Redundancy is a legal process in which an employee loses their job after an employer decides the post is no longer needed. Redundancy Pay varies depending on an employee's age. Employees under the age of twenty two are entitled to half a week's pay for each full year of service. Those aged between twenty two and forty one years are entitled to one week's pay, whilst those over the age of forty one are entitled to one and a half weeks pay per year of service. This system means that workers who have worked for the same length of time will receive different entitlements depending on their age.

Entitling all workers to three weeks Redundancy Pay per year of service would treat all age groups equally and standardise payment across the island as the south of Ireland already grants workers three weeks of redundancy pay per year of service, capped at twenty years' service. Currently Redundancy Pay is only calculated on the basis of workers' flat weekly wage, excluding overtime pay. Taking into account the individual's average weekly wage, including overtime and any additional premium, would give a more accurate indication of a worker's salary.

The current rules require at least thirty days of consultation before an employee is made redundant. This is extended to ninety days where the employer intends to make more than one hundred employees redundant. During the consultation period the employer is required to consider alternative arrangements such as short-time working or temporary working arrangements. Extending this consultation period to ninety days in all cases would give employees and employers more time to prepare for redundancy or to seek alternatives.

RECOMMENDATIONS

- **Introduce Redundancy payments of three weeks per year of service for all age groups.**
- **Extend the minimum consultation period to ninety days in all cases.**



Unfair Dismissal

Workers can legally lose their job in the case of redundancy, misconduct or failure to perform the role. An unfair dismissal is when a worker loses their job without good reason or without due process being followed. Examples include dismissal because a worker of pregnancy, trade union activity, whistleblowing, or seeking to exercise their rights. Proscribing such examples of unfair dismissal in law would provide more clarity for employers and employees alike.

Workers who believe they have been unfairly dismissed can bring their case to an Industrial Tribunal. In cases of automatic unfair dismissal, such as dismissing an employee for taking maternity leave or exercising another legal entitlement, a claim can be made regardless of length of service. In other cases recourse to the Industrial Tribunal is only available to employees who have completed one years' service. This makes workers employed on short term contracts more vulnerable to unfair dismissal. Lowering this threshold from twelve months to six months of service would enhance protection from unfair dismissal.

RECOMMENDATION

- Clarify in law examples of unfair dismissal.
- Reduce the qualifying period for Unfair Dismissal protections to six months' service.





Trade Unions and the Labour Relations Agency

It is no coincidence that the decline of collective bargaining over the last four decades has gone hand in hand with the rise of low-paid, insecure work. Trade Unions play a vital role in protecting workers' rights. However at present Trade Union recognition is limited to companies with more than twenty employees. As a result they are not legally entitled to engage in Collective Bargaining over pay and conditions. This leaves workers in smaller companies, which make up the vast majority of businesses in the north, at a disadvantage. Removing this threshold would entitle all workers to Trade Union recognition and collective bargaining rights.

Currently there is a twelve week restriction on industrial action. This means that once employees have carried out strike action for a period of twelve weeks they can be dismissed. Removing this time limit, which does not apply in the south of Ireland, would allow workers across the island to protect their rights through industrial action.

The Labour Relations Agency (LRA) plays an important role in safeguarding workers' rights. Currently the LRA helps resolve disputes through its conciliation, mediation and arbitration services. It is up to both parties to voluntarily agree to use the LRA. Broadening this remit to require all unfair dismissal cases to be sent to the LRA in the first instance could help avoid the cost and delay of a Tribunal. LRA decisions are relatively quick and typically last one day. The Tribunal would remain as an option of last resort.

RECOMMENDATIONS

- Remove the 20 employee threshold for statutory recognition of trade unions.
- Abolish the twelve week restriction on workers taking Industrial Action.
- Make the Labour Relations Agency the first port of call for industrial disputes.



Conclusion

Sinn Féin is calling for a new progressive consensus to be agreed among social partners in the north which supports the need for better, decent pay; and more secure work, pay and conditions.

We believe agreement on the Living Wage is in the mutual interest of all employers and workers.

We want those examples of best employment practices and industrial relations north and south forged into a progressive, all island employment model.

Better work, better pay, improved investment in public services, and enabling proper collective bargaining without hindrance, are the essential elements of such a step change.

Sinn Féin is committed to working closely with trade unions, all the main employers' organisations, and other social partners to help bring about such new policy and practice.





Summary of Recommendations

THE LIVING WAGE

- Legally require private sector companies that can pay the Living Wage to do so.
- Pay all public sector staff at least a Living Wage.
- Introduce a Social Value Act to incorporate social value, including the Living Wage, in public procurement contracts.
- Use government support for the private sector to promote the Living Wage.

ZERO HOUR CONTRACTS

- Abolish Zero Hour Contracts.
- Introduce Banded Hours Contracts.

BOGUS SELF-EMPLOYMENT

- Outlaw bogus self-employment.
- Ban indemnity clauses which prevent workers from realising their rights.

PARENTAL AND PATERNITY LEAVE

- Allow parental leave to be taken at short notice in sudden and unexpected circumstances.
- Allow Paternity Leave to be taken on a flexible basis.
- Allow fathers to take two weeks of additional Paternity Leave without detriment to mothers.

REDUNDANCY PAY

- Introduce Redundancy payments of three weeks per year of service for all age groups.
- Extend the minimum consultation period to ninety days in all cases.

UNFAIR DISMISSAL

- Clarify in law examples of unfair dismissal.
- Reduce the qualifying period for Unfair Dismissal protections to six months' service

TRADE UNIONS AND THE LABOUR RELATIONS AGENCY

- Remove the 20 employee threshold for statutory recognition of trade unions.
- Abolish the twelve week restriction on workers taking Industrial Action.
- Make the Labour Relations Agency the first port of call for industrial disputes.

References

- i Belfast Telegraph (2017) *It's time to end low skills and low pay cycle.*
- ii NERI (2018) *The Quality of Employment in NI.*
- iii NERI (2018) *The Quality of Employment in NI.*
- iv This refers to 'relative poverty' which is living in a household with less than 60% of the UK median income. DfC (2018) *Households Below Average Income: NI 2016/17.*
- v NERI (2018) *Bad Jobs and Productivity.*
- vi NICVA (2014) *An Economic Analysis of the Living Wage in NI.*
- vii Citizens Advice Bureau (2015) *Neither one thing nor the other.*
- viii HMRC (2014) *Onshore Employment Intermediaries: False Self-Employment.*
- ix The Guardian (2018) *Hermes couriers are workers, not self-employed, tribunal rules.*
- x The Guardian (2016) *Deliveroo workers' contracts ban access to employment tribunals.*
- xi Anita Haataja (2009) *Fathers' use of paternity and parental leave in the Nordic countries.*



