



**ASLEF Response to the BIS Consultation on Implementing Employee  
Owner Status – November 2012**

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train drivers' union representing approximately 18,000 members in train operating companies and freight companies as well as London Underground and light rail systems.
2. ASLEF believes that the proposal to create an "Employee Owner" status for workers by attempting to persuade or force staff to forgo basic employment rights in exchange for shares is entirely wrong, counter-productive and will leave the British workforce vulnerable as well as creating an enormous sense of instability.
3. At the outset, ASLEF would like to state its opposition to the view that less employment regulation and a greater ability to fire employees assists economic growth. The consultation echoes the views of the OECD who assert that the UK has the third least regulated workforce in its membership. BIS suggest that this is a strong reason for the workforce "performing well."
4. However when considering at the OECD table there appears to be no link between low employment protection better employment rates as the table below demonstrates.

<b>Countries with stronger employment protection according to OECD and lower unemployment rates than the UK</b>	<b>Countries with stronger employment protection according to the OECD and higher unemployment than the UK</b>
New Zealand	South Africa
Australia	Ireland
Japan	Denmark
Switzerland	Hungary
Russian Federation	Slovakia
Israel	Estonia
Chile	Poland
Sweden	Italy
Iceland	Slovenia
Korea	Portugal
Netherlands	Greece
Brazil	France
Finland	Spain
Czech Republic	Turkey
Austria	
Belgium	
Germany	
India	
Norway	
China	
Indonesia	
Mexico	
Luxembourg	

5. The table shows that only Canada and the United States have less regulation than the UK. They have unemployment rates of 7.4% and 7.8% respectively. This is similar to the UK's current rate of 7.9%.
  
6. There are clearly many macroeconomic factors that affect unemployment rates but ASLEF finds it very difficult to find any evidence to support the Government's assertion that less employment protection leads to stronger employment rates. This view is, in fact, contradicted by the above table in fact suggesting otherwise.

7. ASLEF also opposes the premise that fear of being taken to an employment tribunal is a genuine reason for firms failing to employ people. We'd point out that increasing the time period during which staff are entitled to claim for unfair dismissal has already instantly excluded 3 million workers from protection. Employers are now able to dismiss employees for any reason (other than automatic unfair dismissals) for a two year period. This already seems extremely flexible.
8. Also the Government should reflect on how onerous unfair dismissal cases brought to tribunal are for British businesses. In 2011/12 there were 46,100 unfair dismissal claims with the vast majority of these settled, withdrawn, dismissed or struck out with only 11,200 proceeding to a hearing. Of those cases the majority lost with only 5,100 being upheld.
9. It should also be remembered that of the 5,100 cases which were upheld, 2,600 claimants were awarded no compensation at all. That means that the majority of cases that were upheld by a tribunal received no redress. Despite the employer being guilty of unfair dismissal they owed no financial award to the wronged party.
10. In the instances when compensation was awarded, the actual amounts granted were extremely limited. Of the 2,300 cases that did receive compensation the median figure for awards was just £4,560.
11. Most people going through this process just want to have their job back. It's self-evident that financial compensation is of limited use to those who need employment in order to pay the bills going forward particularly in an economic climate with such a scarcity of jobs. The average employee would feel that the best remedy in unfair dismissal cases would therefore be reinstatement yet this happened in just 5 cases or 0.01% of all cases lodged. That is about 1 in 10,000.

12. ASLEF does not believe that the current situation makes excessive demands on employers. It must also be remembered that the statutory redundancy payments are capped at £12,900 for staff working 20 years or more.

13. ASLEF does not believe that British employers must be freed from the shackles of overly onerous employment protection and are unable to employ staff for fear of expensive unfair dismissal claims or redundancy pay. This notion is far removed from the reality in which most British workers find themselves.

14. It should additionally be recalled that successful unfair dismissal claims by their very nature suggest unfair treatment of an employee. As previously stated, current provisions allow employers to defend their actions very successfully. To remove the right of an employee to have any response to unfair treatment is always wrong. An individual treated unfairly should always be supported by the state to have redress. Otherwise it stands to reason that unfair action will spread.

15. ASLEF believes there are many anomalies and complications that these proposals will lead to and many supposed benefits appear to be spurious. The consultation makes frequent mentions of the “greater attachment” to the success of the worker’s employer due to the stake that they own in the company. In fact the document goes further by explaining that “employee owners will find it easier to discuss working patterns with their employer because they have a vested interest in the business.” The suggestion appears to be that because the employee owns between £2,000 and £50,000 of the business they feel they have a stake in the company. But the simple reality is that this will be a tiny proportion of the company’s wealth with many companies being valued in the tens of millions, or indeed billions of pounds.

16. Additionally, all types of shares will be eligible which means that employee owners may not have rights to dividends, voting rights or rights to a share in the company's assets if it is wound-up. The idea that staff will automatically have a greater attachment to the company due to owning some shares is therefore disingenuous. The shares may therefore be second rate shares with fewer rights than others.
17. Moreover the employer would be allowed to include a clause in contracts which requires the employee to surrender their shares when they leave, are sacked or made redundant. In return the Government will force the employer to buy the shares back at a reasonable value. ASLEF is not clear what reasonable value means in this context?
18. Most redundancies arise as a result of financial difficulties faced by the employer. It is therefore highly likely that should a member of staff face redundancy, the share price of the company will be extremely low leading to the individual having given up redundancy pay whilst having to sell shares of a very low value. This would be an unacceptable situation
19. Currently, many employers offer staff share schemes such as Share Incentive Plans, Save As You Earn Schemes, Company Share Option Plans and Enterprise Management Incentive Schemes. These are offered without the need to forgo employment protection. ASLEF feels that in the future, employees who were going to be offered these benefits may be asked to give up rights and become "Employee Owners" where they previously would not have needed to.
20. By taking away an employee's right to claim unfair dismissal the Government would be giving the employer increasing power to take advantage of staff. Employers already have the ability to make unreasonable requests to workers with the workforce knowing that the threat of dismissal is constantly hanging over them.

21. The consultation actually addresses many of the ludicrous scenarios that could arise from the new scheme. Not only could an employee's request for flexible working be rejected for any reason, "it would not... be automatically unfair for an employer to dismiss an employee owner who requests flexible working." In short a person who has been a long standing member of staff who may need to work flexibly due to caring responsibilities could be sacked for simply having the temerity to ask for flexible working to be considered.

22. It is inevitable that less scrupulous employers will begin to offer posts under this new basis. For a relatively small cost of a modest amount of shares they will be able to hire and fire at will with the result that the balance of power will swing strongly in favour of employers with staff having little or no powers to redress wrongdoing by their bosses.

23. Removing the right to redundancy pay would also be bad news for the taxpayer. Very often it is redundancy pay that helps workers to get by when looking for a new job. Although all workers who are made redundant would automatically be entitled to Job Seekers Allowance, any hardship that derives from a lack of redundancy pay (and the sale of shares from an underperforming company that are worth very little) could lead to many more workers requiring means tested benefits. In other words the burden goes from the employer to the state to look after individuals who lose their jobs.

24. ASLEF does not oppose employee ownership as a concept and would indeed promote it in many industries. The union agrees that employees with a stake in the success or failure of a business will have a greater motivation and more importantly, greater reward for hard work and success. However, to link this to a reduction in employment rights is unnecessary and counterproductive. This is also the view of current

employee owned organisations. The Employee Ownership Organisation which represents employee-owned businesses (such as the John Lewis Partnership) that contribute £30bn to the UK economy each year, has stated, “our Members are very aware that there is no need to dilute the rights of workers in order to grow employee ownership and no data to suggest that doing so would significantly boost the number of employee owners. Indeed all of the evidence is that employee ownership in the UK is growing and the businesses concerned thriving, because they enhance not dilute the working conditions and entitlements of employee owners.”

25. ASLEF agrees with the EOO. We continue to support employee ownership. However the idea that Britain’s economic recovery can only start by ridding workers of basic rights is simply untrue and immoral. British workers already have amongst the weakest employment rights in the developed world. To reduce these rights and leave the workforce in constant fear for their livelihood will push the economy backwards preventing recovery rather than enhancing it.

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