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**The Enterprise and Regulatory Reform Act 2013:
A trade union view**


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"The Act aims to cut the costs of doing business in Britain, boosting consumer and business confidence and helping the private sector to create jobs." (ERRA 2013, A guide, p. 2).


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Three key areas of reform for trade unions:

1. Employment law
2. Health & safety
3. Equality

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1. **Employment law**

a) Context


ERRA does not contain the most significant changes introduced by Coalition Government in field of employment law.

Introduction of ET fees regime

Extension of qualifying period for Unfair Dismissal claims from 1 year to 2 years

Dilution of TUPE

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1. **Employment law**

b) Early conciliation

We do not object to the concept of early conciliation

We think it unlikely that much early conciliation will take place:

Experience of pilots in Blackburn, Bury and Wirral

Likely that an employer will wait to see if the employee has the backing or resources to pay the fee

Need for robust union systems

Potential benefit from one-month extension of limitation

Potential danger from confusion over limitation deadline


An additional 'hoop to jump through'

Dangers of informality for employees

Involvement of full-time official to avoid member making an agreement that is not in their best interests

Asymmetry of power and expertise between employer and employee

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1. **Employment law**

c) Settlement agreements


Informal discussion and agreement around terminating a contract of employment.

Concern again around imbalance of power and knowledge.

Need for members to access advice and support before making a decision.

Advantage of formality is that the employer can be brought to account.

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1. **Employment law**

d) **Unfair dismissal awards**


"The Act introduces a power to amend the current cap which will provide the Government with flexibility to make changes to the limit to address for example business concerns and the economic climate." (ERRA, Policy Paper, p. 10).

Government has chosen to cap awards at 12 months' pay.

Changes the odds in favour of the employer.

Rationale of 'providing more certainty' seems to be about allowing an employer to make a cost-benefit analysis about whether to comply with the law or risk paying the penalty.

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2. **Health & Safety**

Removal of the right of civil action against employers for breach of statutory duty in relation to health and safety at work regulations.

Addresses concern about 'over-compliance' with the law:


"It will help employers' confidence, allowing them to focus on a sensible and practical approach to health and safety and keep costs down by avoiding over-compliance." (ERRA, Policy Paper. P. 27).

Seemingly based on false premise that health and safety of workers is assured:

- There were 148 workers fatally injured in the workplace in 2012/13
- 646,000 workers had an accident at work in 2012/13 (HSE figures)

Message to employers on 'over-compliance' a concern.

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3. **Equality**

Repeal of provision on equality questionnaires.

We do not share premise that employers were needlessly burdened.

Our experience was that questionnaires were helpful in taking a view on whether to lodge a claim.

Government seeks to tackle "gold-plating and over-compliance", advising SMEs on "what they need to do and don't need to do, in order to comply with the Equality Act 2010" (ERRA, Policy paper, p. 26).

Concern to us again of tone around 'over-compliance'.
