EMPLOYMENT RIGHTS BILL

EXPLANATORY NOTES

What these notes do

- These Explanatory Notes relate to the Employment Rights Bill as introduced in the House of Commons on 10 October 2024 (Bill 11).
- These Explanatory Notes have been prepared by the Department for Business and Trade in order to assist the reader to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 The Employment Rights Bill ("the Bill") will deliver the key legislative reforms set out in the Government's Plan to Make Work Pay. The Bill will: update and enhance existing employment rights and make provision for new rights; make provision regarding pay and conditions in particular sectors; and make reforms in relation to trade union matters and industrial action. It further creates a new regime for the enforcement of employment law.

2 The Bill is in six parts and contains 6 schedules.

Part	Summary
Part 1: Employment Rights, including Schedules 1-2	This Part provides for the reform of employment rights in the following areas: • Zero hours workers, etc • Flexible working • Statutory sick pay • Tips and gratuities, etc • Entitlements to leave • Protection from harassment • Dismissal
Part 2: Other Matters Relating to Employment	This Part concerns for the delivery of wider employment law reform and makes provision in relation to: • The procedure for handling redundancies; • Public sector outsourcing • The duties of employers relating to equality;
Part 3: Pay and Conditions in Particular Sectors, including Schedule 3	This Part makes provision in relation to: • Pay and conditions of school support staff in England • The establishment of the Adult Social Care Negotiating Body
Part 4: Trade Unions and Industrial Action	This Part makes provision in relation to trade unions and industrial action, in particular: • To provide a right to a statement of trade union rights • To provide a right of trade unions to access workplaces

	• To make amendments to the conditions for trade union recognition • Trade union finances • Facilities provided to trade union representatives and members; • Blacklists • Industrial action, and ballots, the provision of information to employers, picketing and protection for taking industrial action. • The repeal of provision about strikes and minimum service levels • The functions of the Certification officer.
Part 5: Enforcement of Labour Market Legislation, including Schedules 4-7	This Part provides for the Secretary of State to have the function of enforcing labour market legislation, with enforcement officers to be appointed by him for this purpose. The provisions will bring together existing state labour market enforcement functions as well as some new state enforcement functions. The functions include: • National Minimum Wage enforcement • Enforcement of regulations applying to employment businesses and agencies • The unpaid employment tribunal penalty award scheme • The licensing regime for gangmasters and certain modern slavery protections
Part 6: General	This part sets out general provisions: • Power to make consequential provision • Power to make transitional or saving provision • Regulations • Financial provision • Extent • Commencement • Short title.

Policy background

3 The Government's Plan to Make Work Pay sets out how it is aiming to grow the economy, raise living standards across the country and create opportunities for all. The plan will help more people to stay in work, improve job security and boost living standards. The plan will support employers and businesses across the country, creating a fair and level playing field and modernising the employment rights framework to suit the economy of today.

4 As set out in Next Steps to Make Work Pay, delivery will be approached in phases. The Government has already begun delivering on its commitments; in July the Low Pay Commission's remit was adjusted to ensure cost of living is factored into decisions on minimum wage rates. Discriminatory age bands will also be removed.

5 The Employment Rights Bill will take forward 28 commitments from the Plan to Make Work Pay which will update the legislative framework in relation to employment rights and trade unions in relation to the following areas:

Ending One-Sided Flexibility

6 Variable hours of work can benefit both workers and employers but, without proper safeguards, this flexibility can become one-sided, with workers bearing the financial risk.

7 The Bill will introduce a right to a reasonable notice of shifts and payment for shift cancellation and curtailment at short notice for those on zero and low hours contracts.

8 The Bill will also introduce a right to a guaranteed hours contract which reflects the hours eligible workers regularly work over a reference period.

Family Friendly Rights

9 The Bill contains a number of changes to make sure there is more flexibility and security for working families.

10 Mothers have additional protection from redundancy during the period of pregnancy, when on maternity leave and a period after maternity leave. However, redundancy is only one of five potential reasons to dismiss someone. The Bill will amend existing powers so that regulations can be made to ban dismissals of women who are pregnant, on maternity leave, and during a six-month return-to-work period - except in specific circumstances. It will also expand existing powers in relation to adoption leave, shared parental leave, neonatal care leave and bereaved partners paternity leave to enable regulation of dismissal in the period after a person returns to work after taking one of these forms of leave.

11 Employees have a day one right to request flexible working, but employers can reject these requests for several reasons. The Bill will increase the burden of justification on employers so they must accept a request except where it is not reasonably feasible.

12 To be eligible for paternity leave or parental leave, a parent must have met continuity of service requirements with their employer. For paternity leave, they must have completed 26 weeks of continuous service, while for parental leave a year of service is required. The Bill will ensure that paternity leave and parental leave is a 'day one' right.

13 Currently, paternity leave and pay must be taken before shared parental leave and pay begins. The Bill will remove this restriction, enabling parents to take their paternity leave and pay after their shared parental leave and pay.

14 Parental bereavement leave is the only current statutory entitlement available to employees to grieve. The entitlement is available to those who lose a child who is under 18 years old or have a

stillbirth after 24 weeks of pregnancy. The Bill will introduce a new right to bereavement leave, allowing employees to take leave from work to grieve the loss of other loved ones.

Dismissal

15 The Bill contains a number of measures related to dismissal and redundancy.

16 Currently, employees must generally have worked for their employer for a minimum period of two years before they qualify for the right to claim unfair dismissal at a tribunal. The Bill will repeal this qualification period meaning employers will only be able to be dismiss employees if the reason for dismissal is one of the five potentially fair reasons for dismissal (conduct, capability, redundancy, statutory restriction, or some other substantial reason) and the dismissal for that reason is fair. The measure will provide for regulations to set out an 'initial period' of employment during which a modified version of the right to unfair dismissal will apply to dismissals for some of those reasons.

17 Employers may sometimes need to consider proposing changes to employees' contracts of employment. If employees do not agree to some or all of the changes, the employer may dismiss them and rehire them, or offer to engage other employees, in substantively the same role to effect these changes. This is referred to as "fire and rehire". The Bill will restrict employers' ability to use fire and rehire by amending the law on unfair dismissal so that, where employees are dismissed for failing to agree to a change in their contract of employment, those dismissals will be treated as automatically unfair unless the employer can show evidence of financial difficulties and demonstrate that the need to make the change in contractual terms was unavoidable.

18 Collective consultation and notification requirements apply when an employer is proposing to make 20 or more redundancies at one establishment. The Bill strengthens protections for employees against collective redundancy by amending current legislation to ensure that these obligations apply regardless of whether the redundancies are taking place at one establishment or not.

19 An employer proposing to make 20 or more people redundant at one establishment in a 90-day period must provide notification at least 30 days before the first redundancy takes effect. If the employer is proposing to make 100 or more people redundant, the employer must provide notification at least 45 days before the first redundancy takes effect. However, in respect of a vessel registered to a port outside of Great Britain, the notification must be given to the competent authority of the state where the vessel is registered. The Bill will ensure that operators cannot avoid the notification requirement and meaningful consequences of failing to comply with it by registering their ships outside of the UK.

Equality at Work

20 The Bill contains a number of changes to promote fairness and equality at work.

21 Organisations with 250 or more employees have been required to publish specific gender pay gap (GPG) data annually on a government service since 2017. Government analysis found that, as of June 2019, roughly only half of in-scope employers had published an action plan detailing the concrete steps they were taking to narrow the gap. The Bill will require employers to publish an equality action plan alongside the disclosure required by section 78 of the Equality Act 2010.

22 The Bill will also enable regulations to require the same organisations to inform the government of those organisations, also required to report, which they received outsourced work from.

23 The Equality Act 2010 provides legal protections against sexual harassment in the workplace. Despite this, persistent reports and revelations that have emerged in recent years indicate that it

remains a problem within the workplace. This Bill therefore strengthens protections against harassment by introducing three amendments to the Equality Act 2010's harassment provisions.

24 The Worker Protection (Amendment to the Equality Act 2010) Act 2023 comes into force on 26 October 2024. This introduces a legal duty on employers to take "reasonable steps" to prevent sexual harassment of their employees. This Bill will amend the duty to require employers to take 'all reasonable steps' to prevent sexual harassment of their employees. This will ensure that employers must take "all" reasonable steps rather than simply reasonable steps to fulfil their duty under section 40A of the Equality Act 2010. The amended duty will mirror the existing concept of the "all reasonable steps" defence in section 109(4) of the Equality Act 2010. What steps are deemed reasonable for an employer to have taken will depend on the circumstances of each individual case; however, an employer will have taken all reasonable steps if there are no further steps that they could reasonably have been expected to take.

25 Harassment by third parties (whether related to sex or any other protected characteristic) is not currently prohibited under the Equality Act 2010. This Bill will introduce an obligation on employers not to permit harassment of their employees by third parties.

26 The Equality Act 2010 does not state which steps are reasonable to take to prevent sexual harassment. This Bill will introduce a delegated power enabling a Minister of the Crown to specify steps that are to be regarded as "reasonable" for the purposes of meeting the obligation set out in the Equality Act 2010 to take "all reasonable steps" to prevent sexual harassment. The regulations may also require an employer to have regard to specified matters when taking those steps. An employer that wants to show that it has taken all reasonable steps should take the steps set out in the regulations; as well as all other preventative steps that it is reasonable for them to take in the particular circumstances. This power will allow the Government to make regulations at a later date.

27 For a worker to qualify for protection for blowing the whistle they must make a "protected disclosure", namely, a disclosure of information which they reasonably believe is in the public interest and tends to show a past, present, or likely future relevant failure falling into one or more of the categories listed under section 43B of the Employment Rights Act 1996. This Bill adds sexual harassment to the relevant failures listed under section 43B. Where a worker makes a disclosure qualifying for protection, they will have legal recourse if they are subjected to detriment or, if they are an employee, are unfairly dismissed, as a result of their disclosure.

28 The Government believes that it is essential to prevent the emergence of a two-tier workforce, where employees have worse terms and conditions than those transferred from the public sector but working on the same contract. The Bill will ensure Ministers have the appropriate tools to promote the rights of employees engaged on new public contracts which outsource public services and maintain the quality of public service delivery by ensuring consistent employment standards.

Fair Pay

29 The Bill contains a number of measures which the Government believes will restore the principle of fair pay for a day's work.

30 Currently, there is no legislatively supported or mandated sectoral collective bargaining in the adult social care sector. This Bill will enable the Secretary of State to establish a Fair Pay Agreements (FPA) process in the adult social care sector through secondary legislation. Regulations will follow consultation to define the detailed processes such as the negotiations process for an FPA and its scope.

31 The Employment (Allocation of Tips) Act 2023 ensures that all tips, gratuities and service

charges are passed on to workers, and is accompanied by a statutory Code of Practice on fair and transparent distribution of tips. The Bill builds on this legislation by ensuring that workers receive their tips in full and decide how they are allocated by mandating that employers consult with workers when developing or revising their tipping policies.

32 The Bill establishes the School Support Staff Negotiating Body ("SSSNB"), gives the Secretary of State powers to ratify agreements reached by it on school support staff terms and conditions and makes provision about the effect of ratified agreements. It also gives the Secretary of State a power to issue statutory guidance in relation to school support staff terms and conditions or training and career progression.

33 Statutory Sick Pay ("SSP") is the minimum amount an employer is required to pay to their employee when they are sick, where the employee meets the qualifying conditions. Currently an individual must earn at least the Lower Earnings Limit (currently £123 per week) to be eligible for SSP. The Bill will remove the requirement to earn at least the Lower Earnings Limit in order to be eligible for SSP.

34 Employees are entitled to SSP during a Period of Incapacity for Work ('PIW') which is any period of four or more days when they are sick including non-working days (e.g. weekends etc.). Additionally, SSP is not payable in relation to the first three qualifying days (when an employee would normally work.) The Bill will remove the provision that means SSP is not payable for the first three qualifying days. It will also allow a PIW, and hence eligibility for SSP, to arise where a person is incapable of work for a single day or longer, as opposed to the current requirement for there to be 4 consecutive days of incapacity.

Voice at Work

35 The Bill contains a number of measures to update trade union legislation.

36 The Strikes (Minimum Service Levels) Act 2023 introduced minimum service levels to be applied within certain sectors during strike action, enabling employers to issue a work notice, to require people to work on a day of strike action. The Bill will repeal amendments made by the Strikes (Minimum Service Levels) Act 2023 to the Trade Union and Labour Relations (Consolidation) Act 1992 and any minimum service regulations will lapse once the Employment Rights Bill has Royal Assent.

37 The Bill will repeal amendments made by the Trade Union Act 2016 to the Trade Union and Labour Relations (Consolidation) Act 1992. These changes will remove restrictions on trade unions thereby giving them greater freedom to organise, represent and negotiate on behalf of their workers. Some provisions from the Trade Union Act 2016 will be retained such as, the Certification Officer's freedom from ministerial direction and the ballot mandate expiration date. However, in places this will leave us with a legal framework that is over three decades old. The Government will therefore seek views on several measures to update and reform this framework to hardwire negotiation, engagement and dispute resolution including in relation to ballot requirements, processes on political funds, industrial action and the trade union recognition process.

38 The Government believes the current statutory trade union recognition process makes it too difficult for unions to gain recognition. The Bill will make the recognition process easier by:

a. Removing the requirement at the application stage for a union to demonstrate that there is likely to be majority support for trade union recognition.

b. Removing the 40% support threshold at the recognition ballot stage.

c. Consulting on reducing the 10% application threshold for the Central Arbitration

Committee ("the CAC") to accept a TU recognition case.

39 There are currently no clear and consistent rules regulating access to workplaces for trade union members meeting and representing their members. The Bill will make it easier for unions to gain access to workplaces, to assist individual union members and to help unions to recruit and organise.

40 Union representatives undertake a variety of roles in collective bargaining and in working with management, communicating with union members, liaising with their trade union and in handling individual disciplinary and grievance matters on behalf of employees. The Bill will ensure all trade union representatives have sufficient access to facilities, for example office and meeting space and access to the internet / intranets to carry out their duties, as is reasonable in all the circumstances. The Bill also strengthens the existing right to facility time off that trade union representatives have. In addition, these measures create a statutory right for trade union equality representatives in order to strengthen equality at work

41 In April 2024 the Supreme Court ruled that section 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 was in breach of Article 11 ECHR by failing to provide for any protection for striking union members from detriments imposed by the employer, as our current legislation is silent in this area. The Bill will ensure legislation will be compatible with ECHR and ensure that protections against some forms of detriment for trade union representatives and members extends to industrial action. This will be delivered via secondary legislation. The Bill will also remove the cap under section 238A of the Trade Union and Labour Relations (Consolidation) Act 1992 on the number of weeks that an employee is protected for when taking industrial action, where the reason for the dismissal is taking protected industrial action.

42 There is currently no duty on employers to inform their workers of their right to join a trade union. The Bill will introduce this duty and require employers to:

a. include information about the right to join a trade union in a written statement that workers must receive when they receive the written statement provided to them under section 1 of the Employment Rights Act 1996.

b. regularly inform workers of their right to join a trade union thereafter.

43 Blacklisting in the context of employment law is the practice of compiling information on individuals concerning their trade union membership and activities, with a view to that information being used by employers or employment agencies to discriminate in relation to recruitment or treatment. The Bill will update blacklisting legislation to protect a wider range of people from blacklisting due to trade union membership or activity.

Enforcement

44 Currently most employment rights are enforced by the individual through an employment tribunal, a process that is often challenging for workers with limited resources. A limited number of (mainly pay-related) rights are enforced by the state on workers' behalf.

45 The Bill will allow the establishment of the Fair Work Agency by bringing together existing state enforcement functions including regulations for employment agencies and employment businesses, the unpaid employment tribunal award penalty scheme, enforcement of the National Minimum Wage, statutory sick pay, the licensing regime for businesses operating as 'gangmasters' in certain sectors and enforcement of parts 1 and 2 of the Modern Slavery Act 2015 and incorporates a wider range of employment rights, such as holiday pay.

Legal background

46 The UK's legislative framework in relation to employment rights and industrial relations and rights relating to specific sectors, is governed by a wide range of different pieces of legislation, a number of which are amended by this Act. The principal pieces of legislation, and a brief description of the main changes relevant to each, is listed below to assist the reader in placing some of the details described in these Explanatory Notes in context.

47 The Employment Rights Act 1996 is amended for a number of reasons, but in particular to make changes relating to working hours and the provision of rights in relation to guaranteed hours, notices and payments for cancelled or curtailed shifts; to make changes relating to entitlements to leave, including amending rights to paternity and parental leave and to introduce a right to bereavement leave. This Act is also amended to make changes in relation to the right to request flexible working, and in relation to the right not to be unfairly dismissed, dismissal during pregnancy or following a period of statutory family leave, and for failing to agree to a variation in contractual terms and conditions. It is further amended to add to the list of disclosures which qualify for protection to include those relating to sexual harassment and to provide additional powers in relation to the prohibition on blacklists.

48 The Social Security Contributions and Benefits Act 1992 is amended for the purpose of removing the waiting period and making amendments in relation to the lower earnings limit which apply in relation to statutory sick pay.

49 The Equality Act 2010 is amended for the purpose of making changes relating to the duty on employers to prevent sexual harassment; to make changes relating to harassment by third parties; and to make provision relating to the duties on employers relating to equality.

50 The Trade Union and Labour Relations (Consolidation) Act 1992 is amended for a number of reasons, but in particular to make changes relating to the application of requirements which apply in situations involving collective redundancy; to provide a right to a statement of trade union rights; a right for trade unions to access workplaces; and to make changes to the conditions for trade union recognition; to require employers to provide facilities to trade union officials and learning representatives; and make provision for equality representatives, including the provision of facilities; to amend existing provisions in relation to facility time; to provide protection from detriment for workers taking official industrial action; and to strengthen the current protection from unfair dismissal for those taking such action. The 1992 Act is further amended to remove provisions inserted by the Trade Union Act 2016, and amendments are made to provisions relating to: trade union finances; industrial action (ballot requirements, provision of information to the employer; and picketing); and the Certification Officer. The Strikes (Minimum Service Levels) Act 2023 is repealed, and amendments made to the 1992 Act accordingly.

51 The Procurement Act 2023 is amended to include provision regarding the protection of transferring workers in outsourcing contracts, and those working alongside them.

52 The Education Act 2002 is amended for the purpose of making provision relating to pay and conditions of school support staff in England.

53 The Employment Agencies Act 1974, Employment Tribunals Act 1996, National Minimum Wage Act 1998, Gangmasters (Licensing) Act 2004 and Modern Slavery Act 2015 are all amended for the purposes of abolishing the Gangmasters and Labour Abuse Authority and the Director of

Labour Market Enforcement and transferring functions to the Secretary of State in relation to the enforcement of labour market legislation. A number of other minor consequential amendments are also made in other primary legislation as a result of the establishment of the new functions.

54 Other legislation is repealed, including the Strikes (Minimum Service Levels) Act 2023 and the Workers (Predictable Terms and Conditions) Act 2023.

Territorial extent and application

55 Clause 117 sets out the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect rather than where it forms part of the law.

56 With the exception of clause 25, Parts 1, 2 and 4 of the Employment Rights Bill extend and apply to Great Britain. Employment rights and industrial relations, statutory sick pay and equal opportunities are reserved for Scotland and Wales and transferred in Northern Ireland.

57 Part 3 of the Bill extends to England and Wales. Chapter 1 of that Part makes amendments which apply in relation to school support staff in England and Chapter 2 makes provision which applies in relation to adult social care staff in England only.

58 Part 5 of the Bill extends to England and Wales, Scotland and Northern Ireland. Amendments to legislation made by Part 5 are within the legislative competence of the Northern Ireland Assembly.

59 Repeals and amendments made by the Bill have the same territorial extent as the legislation that they are repealing or amending.

60 Clause 25 (Public sector outsourcing: protection of workers) amends the Procurement Act 2023 which extends to England and Wales, Scotland and Northern Ireland. Procurement is a largely devolved matter in Scotland and Wales and largely transferred in Northern Ireland.

61 There is a convention that Westminster will not normally legislate with regard to mattes that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned and their consent will be sought in relation to these measures.

62 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions.

Commentary on provisions

Part 1: Employment Rights

Zero hours workers, etc

Clause 1: Right to guaranteed hours

63 This clause amends Part 2A of the Employment Rights Act 1996 (zero hours workers). It inserts a new heading for the existing provisions at Part 2A and categorises them into a new Chapter 1 (Exclusivity Terms and other restrictions). It then inserts a new Chapter 2 into Part 2A of the Act, consisting of Section 27BA – Section 27BH.

New Section 27BA

64 New Section 27BA of the Employment Rights Act 1996 outlines the new right to guaranteed hours.

65 Subsection (1) provides that an employer must make an offer of guaranteed hours to a qualifying worker after the end of every reference period (the length of which will be defined in regulations).

66 Subsection (2) explains that Section 27BD makes provision for exceptions to the duty on employers to offer guaranteed hours, including in certain cases where the worker is no longer employed by the employer.

67 Subsection (3) sets out the qualifying criteria for the right to guaranteed hours. A worker is a qualifying worker if:

a. During the reference period, the worker was employed under one or more worker's contract(s). They do not have to have been employed by their employer continuously. The worker's contract(s) must either:

    i. Be a zero hours contract, or be entered into in accordance with a zero hours arrangement, or

    ii. Require the employer, or were entered into in accordance with a zero hours arrangement which required the employer, to make work available to the worker for a number of hours. This number of hours must be no greater than a number of hours set out in regulations – i.e. the worker is on a 'low hours' contract.

b. During the reference period the worker worked under the contract(s) for some hours. These hours are referred to as the 'reference period hours'.

c. Where (a)(ii) applies – i.e. the worker is on a low hours contract(s) – the reference period hours exceeded the minimum number of hours in the contract(s)

d. The hours worked during the reference period satisfy any conditions (which may be outlined in regulations) around regularity and number of hours worked or otherwise.

e. The hours worked during the reference period are not worked as an agency worker or any other excluded category of worker. However, there is a power at Section 27BV for the right to guaranteed hours to be extended and applied to agency workers.

68 Subsection (4) provides that a 'reference period' is either

a. The initial reference period

b. Each subsequent reference period

69 Subsection (5) provides that the initial reference period means the period

70 Beginning with either:

i. the day on which subsection (1) comes into force (the commencement day) if the worker is employed by the employer on the commencement day or

ii. the first day after the commencement day on which the individual is employed by the employer (where the worker is not employed by the employer on the commencement day)

b. Ending at the point defined by regulations. i.e. the length of the initial reference period will be defined in regulations.

71 Subsection (6) provides that the 'subsequent reference period' is a period beginning and ending on days specified in regulations.

72 Subsection (7) defines 'qualifying worker' and 'the relevant reference period' for the purpose of this Chapter 2.

73 Subsection (8) provides that an employer is not restricted from making – if they wish - an offer(s) to the qualifying worker to vary a worker's terms and conditions of employment or enter into a new contract, at the same time as making an offer of guaranteed hours.

74 Subsection (9) provides that the regulations made under subsection (3)(d), (5) or (6) may make provisions around time when an individual is not working, for a reason which is also specified in regulations.

75 Subsection (10) provides that 'excluded worker' will be defined in regulations.

New Section 27BB

76 New Section 27BB of the Employment Rights Act 1996 sets out the requirements relating to guaranteed hours offers, on the employer making an offer of guaranteed hours.

77 Subsection (1) provides that an offer of guaranteed hours must be an offer to either:

a. Vary the worker's existing terms and conditions of employment (subject to the provisions of (5)); OR

b. Enter into a new worker's contract

78 The varied terms and conditions – or new worker's contract – will require the employer to make work available to the qualifying worker for a certain number of hours which reflects those hours worked during the reference period.

79 Subsection (2) allows for regulations to be made to provide that an offer for guaranteed hours is only a valid offer if the conditions at subsection (3) are satisfied.

80 Subsection (3) states the conditions referred to at subsection (2). These are that:

a. The guaranteed hours offer sets out:

i. The days of the week, and the times on those days, when the employer is required to make work available to the worker OR

ii. A working pattern of days – and times of day – which the employer would be required to make available to the worker to work, AND

b. Those days and times – or working pattern – reflect the hours when the qualifying worker worked for the employer during the reference period.

81 Subsection (4) provides that regulations may be made to set out how the number of hours to be guaranteed should be calculated by the employer. It also allows for regulations to be made to outline *when* the guaranteed hours should be worked to reflect the hours worked during the reference period (if regulations have been made under subsection 2).

82 Subsection (5) provides that the offer of guaranteed hours should only take the form of an offer of varied terms and conditions (rather than a new contract) if the worker is working under a worker's contract at the beginning of the reference period and is still working under that contract on the day the offer is made.

83 Subsection (6) makes provisions around the offer of guaranteed hours, where the offer takes the form of varied terms and conditions:

a. Where it is not reasonable for the worker's contract to be of a limited-term – as there is no 'limiting event' justifying termination – the term providing for termination must be proposed to be removed, i.e. the variation must propose the term of the contract to become permanent. An example of a 'limiting event' would be where a worker is providing cover for another worker's leave, and the worker on leave returns.

b. The only terms and conditions which should be varied should be the number of hours and any terms and conditions required under subsections (1) and (2).

84 Subsection (7) makes provisions around the offer of guaranteed offers, where the offer takes the form of a new contract:

a. The offer must not propose that the new contract is a limited-term contract unless it is reasonable for it to be, and

b. The new contract must (in addition to what is required under subsections (1) and (2) propose terms and conditions (i) which are (other than those relating to working hours and length of employment) – on the whole – no less favourable to the worker than the terms and conditions they had when working for their employer during the reference period, or (ii) where section 27BC applies, that comply with that subsection (2) in relation to circumstances in which the employer may propose less favourable terms and conditions.

85 Subsection (8) provides that it is reasonable for the new contract to be a limited-term contract only if:

86 It is reasonable for the worker's employer to consider that the worker is only needed for a specific task, and there is a provision for the worker's contract to be terminated when this task is performed, or

87 It is reasonable for the worker's employer to consider that the worker is only needed until the occurrence of an event (or the failure of a particular event to occur) and there is a provision for the worker's contract to be terminated on the occurrence of the event (or the failure of the event to occur), or

a. It is reasonable for the worker's employer to consider that there is only a temporary work need which may be specified in regulations (not covered by paragraph (a) or (b)) for the worker to do work under the contract, and the contract is to expire at a

time that it is reasonable for the employer to consider that the temporary work need will come to an end.

88 Subsection (9) provides that an offer of guaranteed hours must be made by no later than a specified day following the end of the reference period. This day will be specified in regulations. The guaranteed hours contract must be offered in the form which will be specified in regulations. It must contain information related to the offer, as specified in regulations.

89 Subsection (10) provides that the Secretary of State may make regulations which make provision about when a guaranteed hours offer is treated as having been made.

90 Subsection (11) defines 'reference period hours'.

New Section 27BC

91 New Section 27BC of the Employment Rights Act 1996 makes additional provisions around requirements relating to a guaranteed hours offer, where a worker had more than one set of terms and conditions of employment during the reference period.

92 Subsection (1) provides that Section 27BC applies where:

a. A guaranteed hours offer takes the form of an offer of a new contract, and

b. During the relevant reference period:

i. The worker worked for the employer under more than one contract, and they did not have the same terms and conditions (other than those relating to working hours and length of employment) in each contract – i.e. their terms and conditions varied during the reference period.

ii. The worker worked under a single contract, but their terms and conditions (other than those relating to working hours and length of employment) varied during the reference period.

93 Subsection (2) provides that – where subsection (1) applies – the offer of guaranteed hours may propose terms and conditions (in addition to the working hours which must be provided under Section 27BB(1) and (2)) – that, taken as a whole, are less favourable than the most favourable terms and conditions the worker has had during the reference period (other than those relating to working hours and length of employment) only if (a) and (b) apply. In other words, the employer does not have to replicate the best terms and conditions of employment the worker ever had during the reference period. However, this only applies if:

94 The proposed terms and conditions – overall – are no less favourable than the least favourable terms and conditions relating to matters other than working hours and length of employment. In other words, an employer cannot propose terms and conditions which are, on the whole, worse than those the worker had during the reference period, and

a. The employer has proposed these terms and conditions as a proportionate means of achieving a legitimate aim.

95 Subsection (3) provides that – if an employer relies on subsection (2) when making an offer of guaranteed hours with less favourable terms, the employer must give the worker a notice that:

a. States that the employer is relying on subsection (2), and

b. Explains how the proposed terms and conditions constitute a proportionate means of achieving a legitimate aim.

96 Subsection (4) provides that a notice under subsection (3) must be given by the same day and in

the same form and manner, as the offer of guaranteed hours.

New Section 27BD

97 New Section 27BD of the Employment Rights Act 1996 makes provisions around exceptions from the duty on employers to offer guaranteed hours. It also makes provisions about circumstances in which the offer of guaranteed hours may be treated as having been withdrawn.

98 Subsection (1) provides that the duty to offer guaranteed hours does not apply if – during the reference period or offer period – the worker's contract, or their working arrangement with their employer – is terminated and t termination is a 'relevant termination'

99 Subsection (2) provides that, where the employer has already given an offer of guaranteed hours, the offer will be treated as having been withdrawn if the worker's contract (or their working arrangement with their employer) is terminated during the response period; and that termination must be a 'relevant termination'.

100 Subsection (3) provides that there is a relevant termination if:

101 The qualifying worker terminated their contract (resigned), in circumstances otherwise than those where the worker would be entitled to terminate their contract because of their employer's conduct,

a. The employer terminated the worker's contract and:

i. They had a qualifying reason(s) for doing so (a reason of the type mentioned in Section 98(1)(b) of the Employment Rights Act 1996)

ii. The employer acted reasonably in the circumstances, in treating the reason as sufficient for terminating the contract, OR

102 The worker's limited-term contract ended due to a limiting event, and it was reasonable for it to have been a limited-term contract.

103 Subsection (4) provides that the termination of an arrangement between a qualifying worker and employer is a relevant termination if the worker or employer terminates the arrangement and the termination is equivalent to a relevant termination of a worker's contract (see subsection 3(a) and (b)), or if the arrangement was not intended to be permanent and the termination is equivalent to a termination under subsection 3(c).

104 Subsection (5) provides that regulations may be made to make exceptions to the duty to offer guaranteed hours (s. 27BA(1)) not to apply, in specified circumstances. Where an offer for guaranteed hours has already been made, these exceptions would mean that the offer of guaranteed hours would be treated as withdrawn.

105 Subsection (6) provides that subsection (8) of Section 27BB – which addresses the circumstances in which it is reasonable for the offer of guaranteed hours to be limited-term – also applies to subsection(3)(c) of Section 27BD.

106 Subsection (7) provides definitions for 'the offer period', 'qualifying reason' and 'the response period'. The offer period begins with the day after the day on which the relevant reference period ends. It ends with the day on which the guaranteed hours offer is made or – if no offer is made – the last day on which the employer may make a guaranteed hours offer. Qualifying reason is a reason of the type mentioned in Section 98(1)(b) of the ERA 1996 (read, if necessary, as if it applied to workers where they are not employees). The response period begins with the day after the day the offer is made, and ends with a day specified in regulations (i.e. the length

of the response period will be specified in regulations).

New Section 27BE

107 New Section 27BE of the Employment Rights Act 1996 makes provisions around the acceptance or rejection of the guaranteed hours offer by the worker.

108 Subsection (1) provides that where a guaranteed hours offer has been made, and is not treated as withdrawn by virtue of s. 27BD(2) or regulations made under 27BD(5), a qualifying worker may accept or reject the offer of a guaranteed hours arrangement by giving notice to their employer before the end of the response period.

109 Subsection (2) provides that where the offer of guaranteed hours takes the form of an offer to vary terms and conditions, and it is accepted by giving the required notice, the variation should be treated as taking effect on the day after the day on which notice is given by the qualifying worker.

110 Subsection (3) provides that where the offer takes the form of an offer to vary terms and conditions – but the worker's contract ceases to be in force during the response period – the worker may still accept or refuse the offer of guaranteed hours, unless the offer has been withdrawn under Section 27BD(2) or regulations made under s. 27BD(5). If the worker does so, the worker and employer are treated as entering into a worker's contract on the day after the day on which notice is given and the terms of the contract should be the same as the terms of the contract that was in place when the offer of guaranteed hours was made.

111 Subsection (4) provides that – where the offer of guaranteed hours takes the form of an offer to enter into a new worker's contract and the worker accepts – the worker and employer are treated as entering into that new contract the day on which the acceptance notice is given. The new worker's contract will replace the existing contract on that day.

112 Subsection (5) provides that where a new contract is entered into further to the offer being made, entering into that new contract will not break a worker's continuity of employment (where they are an employee). Where a new contract is provided, the previous contract should not be treated as having been terminated for the purposes of part 10 of the ERA.

113 Subsection (6) provides that a worker and employer may agree that the variation of the worker's terms and conditions or the new contract may take effect / be entered into on a later day than provided for in sub sections (2), (3) or (4).

114 Subsection (7) provides that if a qualifying worker does not accept or reject the offer of guaranteed hours by giving the required notice before the end of the response period, they are treated as having rejected the offer.

115 Subsection (8) allows regulations to be made regarding the form and manner in which the worker must respond to the employer's offer of guaranteed hours and when an acceptance or rejection of an offer is to be treated as having been given.

116 Subsection (9) defines the term 'the response period' in this section.

New Section 27BF

117 New Section 27BF of the Employment Rights Act 1996 makes provisions for workers to make complaints to an employment tribunal.

118 Subsection (1) provides that a worker may make a complaint to an employment tribunal on the grounds that the duty to make a guaranteed hours offer under s. 27BA(1) applies but their employer has not made an offer by the end of the offer period.

119 Subsection (2) provides that a worker may also make a complaint to an employment tribunal on the grounds that the duty to make a guaranteed hours offer under s. 27BA(1) applies, but the offer made does not constitute an offer as outlined in Section 27BB and regulations made thereunder.

120 Subsection (3) provides that a worker may make a complaint to an employment tribunal on the grounds that the requirement on an employer to offer guaranteed hours under s. 27BA(1) applies but the offer made by the employer:

a. Includes a prohibited variation to the worker's terms and conditions, as described at Section 27BB(5),

121 Does not comply with the requirements outlined at Section 27BB(6), or

a. Does not comply with the requirements outlined at Section 27BB(7).

122 Subsection (4) provides that a complaint under subsections (2) or (3) may be presented by the worker whether or not the offer was accepted by the worker. However, a complaint may not be made relating to an offer which has been withdrawn under Section 27BD(2) or regulations under Section 27BD(5).

123 Subsection (5) defines 'the last day of the offer period'.

New Section 27BG

124 New Section 27BG of the Employment Rights Act 1996 makes provisions around the time limits for complaints to be made to employment tribunals.

125 Subsection (1) provides that a tribunal must only consider a complaint made under Section 27BF(1) if it is presented before three months have elapsed, beginning with the day after the last day of the offer period.

126 Subsection (2) provides that a tribunal must only consider a complaint made under Section 27BF(2) if it is presented before three months have elapsed, beginning with the day after the day when that offer referred to, is made.

127 Subsection (3) provides that a tribunal must only consider a complaint made under Section 27BF(3) if it is presented before three months have elapsed, beginning with the day after the day when the guaranteed hours offer referred to is made.

128 Subsection (4) provides that if a tribunal is satisfied that it was not reasonably practicable for a worker to bring a complaint within three months, the tribunal may still consider the complaint if it is presented within a reasonable time after the three month period.

129 Subsection (5) provides that Section 207B of the ERA 1996 (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsections (1) to (3).

New Section 27BH

130 New Section 27BH of the Employment Rights Act 1996 makes provisions around the awards which may be made by employment tribunals.

131 Subsection (1) provides that – where an employment tribunal finds a case under Section 27BF well-founded – the tribunal must make a declaration to state this and may award compensation to be paid by the employer to the worker.

132 Subsection (2) provides that the amount of compensation must be of an amount which does not exceed the permitted maximum (see subsection (4)) and is an amount which the tribunal considers just and equitable in all the circumstances to compensate the worker for any financial

loss they sustained as a result of the issue complained of to the tribunal.

133 Subsection (3) provides that – in working out how much financial loss has been sustained – the tribunal must apply the same rules around the duty of individuals to mitigate their losses, as apply under the common law of England and Wales, and as the case may be in Scotland.

134 Subsection (4) provides that the maximum award (permitted maximum) which may be awarded by an employment tribunal will be such number of weeks' pay as specified in regulations.

135 Subsection (5) makes provisions around how the weekly pay of a worker who is not an employee should be calculated (for the purpose of calculating the tribunal award amount). It varies the application of the definitions given in Chapter 2 of Part 14 of the Employment Rights Act 1996 for the purpose of these provisions only, so that references to an employee are read as references to a worker, and so that references to a contract of employment were read as reference to a worker's contract and that in the case of a worker whose pay is calculated weekly, a 'week' is taken to end on the same day as in calculating their pay. In other cases, a 'week' is taken to end on a Saturday.

Clause 2: Shifts: rights to reasonable notice

136 This clause inserts a new Chapter 3 into Part 2A of the Employment Rights Act 1996, consisting of new sections 27BI - 27BN, in order to create rights to notice of shifts and changes affecting shifts for individuals on zero hours contracts, zero hours arrangements and other specified contracts.

New Section 27BI

137 Section 27BI creates rights for workers to be given reasonable notice of their shifts.

138 Subsections (1) to (3) require employers to give reasonable notice of shifts to four main categories of individuals.

139 Subsection (1)(a) establishes a duty on employers to give workers employed on a zero hours contract reasonable notice of shifts that they require a worker to work, i.e., that the worker is obliged to undertake, or that they request the worker to undertake.

140 Subsection (1)(b) establishes the same duty on employers but in respect of workers whose contract is of a description to be specified in regulations by the Secretary of State that requires the employer to make some work available to them (and is therefore not a zero hours contract) and the contract does not specify when those shifts will take place.

141 Subsection (2) establishes a similar duty but in respect of workers on contracts of a type specified in regulations by the Secretary of State, which require a worker to work at times specified in the contract, i.e., workers who are guaranteed some work at a time set out in their contract. The duty at subsection (2) provides that employers must give reasonable notice of shifts that an employer requests or requires the worker to undertake where the timings of the shift are not those specified in the contract.

142 Subsection (3) establishes a similar duty so that employers have to give reasonable notice of shifts to individuals who have a zero hours arrangement with the employer and would be employed on a worker's contract if they worked the shift. This ensures that individuals who are not currently a worker because they do not, at the time that notice should be given, have a worker's contract are still entitled to reasonable notice of shifts where they have a zero hours arrangement.

143 What is "reasonable" will depend on all the circumstances of a case. Subsection (4) creates a presumption that notice is not reasonable for the purposes of subsections (1) to (3) where it is given less than an amount of time to be specified in regulations by the Secretary of State prior to

the beginning of the relevant shift.

144 Accordingly, in a claim to a tribunal that notice given to a worker was not reasonable, the tribunal must consider the notice to be unreasonable where it is given within less than the specified timeframe unless the employer can show that it was reasonable.

145 Subsection (5) provides that contracts in scope under subsections 27BI(1)(b) and (2) may be specified by reference to a maximum payment amount or maximum number of hours guaranteed to the worker under the contract.

146 Subsection (6) provides definitions for the purposes of the Chapter in relation to who is an "employer" in relation to an individual and a shift, and who is a "worker" in relation to a shift. This ensures that individuals who do not have a worker's contract at the time the duty applies, for example because they only have a worker's contract when they are working, are still entitled to reasonable notice.

147 Subsection (7) sets out that "notice of a shift" means notice of how many hours are to be worked and from what time on which day.

New Section 27BJ

148 Section 27BJ creates rights for workers to be given reasonable notice of cancellation or change of a shift. Subsection (1) clarifies that subsection (2) applies when the employer has given notice of the shift to the worker, the shift is one that the worker was entitled to reasonable notice of, and the worker has agreed to the shift.

149 Subsection (2) sets out the duty on the employer. It provides that (subject to section 27BL), employers must give workers reasonable notice if they cancel the shift or change the day or time of the shift.

150 Subsection (3) creates a presumption that, unless the contrary is shown, notice of cancelling the shift is not reasonable if given less than a specified amount of time before the shift would have started; notice of change to when a shift will start is not reasonable if it is given less than a specified amount of time before the earlier of when the shift would have started and when the shift will now start; notice of change to when the shift will end is not reasonable notice if it is given less than a specified amount of time before the shift is due to start or on or after the start of the shift.

151 Subsection (4) clarifies that the definition of "notice of a shift" has the same meaning as in section 27BI.

New section: 27BK

152 Section 27BK concerns supplementary provision to clauses 27BI and 27BJ.

153 Subsection (1) clarifies that none of the duties at sections 27BI or 27BJ apply to a shift worked by agency workers. A cross-reference is made to section 27BV for a power to make provision about agency workers.

154 Subsection (2) provides that employers are not required to give reasonable notice of shifts where the worker suggested working the shift or a longer shift, except where the employer agrees to the worker's suggestion and the employer then changes or cancels that shift. In that case, the employer is still required to give reasonable notice of changes to or cancellation of the shift.

155 Subsection (3) provides that the right to reasonable notice of shifts in section 27BI applies even if the employer made a request of multiple workers to work the same shift, but did not in fact need all of them to work that shift. The subsection clarifies that references to request to work a shift

includes this situation.

156 Subsection (4) clarifies that if no worker has yet accepted a shift requested by an employer, the employer can change the timings of the shift, and this will be considered a new shift, as though the initial request had not been made.

157 Subsection (5) provides that the Secretary of State may by regulations make provision about the form and manner in which notice under sections 27BI and 27BJ must be given, and when notice under those sections is to be treated as having been given.

New Section 27BL

158 Clause 27BL explains the interaction with Chapter 4 which introduces a right to payment for cancelled, moved or curtailed shifts.

159 Subsection (1) explains that where an employer is required to make a payment to a worker under section 27BO in relation to a shift that the employer cancels, moves or curtails at short notice, or would have been required to make such a payment but was exempted by section 27BQ(1)(b), then the right to reasonable notice at section 27BJ(2) does not apply to that cancellation, movement or curtailment. In this way, where the employer is required to make a payment for short notice cancellation, movement or curtailment of a shift, the employer will not also be subject to a potential tribunal claim for failure to give reasonable notice of the same cancellation, movement or curtailment.

160 Subsection (2) clarifies that the terms used have the same meaning as in section 27BO.

New Section 27BM

161 Section 27BM makes provision for workers to enforce section 27BI and section 27BJ.

162 Subsection (1) provides that workers can bring a claim to an employment tribunal where they consider that their employer has breached the duty at section 27BI or 27BJ.

163 Subsection (2) provides that tribunals must have regard to such factors set out in regulations made by the Secretary of State as are appropriate in the circumstances when determining whether reasonable notice has been given.

164 Subsections (3) to (5) make provision about time limits for bringing a claim under subsection (1).

165 Under subsection (3), a complaint must be brought within three months of the relevant date. For example, where the complaint is that the employer failed to give reasonable notice of cancellation of a shift, the three months runs from the date on which the shift would have started.

166 Subsection (4) enables a tribunal to extend the time limits at subsection (3) by a reasonable amount where the tribunal is satisfied that it was not reasonably practicable for the claim to be presented before then.

167 Subsection (5) provides that section 207B of the Employment Rights Act 1996 applies so that the time limit at subsection (3) can be extended to allow for conciliation to take place.

New Section 27BN

168 Section 27BN makes provision on the remedies that a tribunal may award where it finds a complaint under section 27BM well-founded.

169 Subsection (1)(a) provides that, where an employment tribunal finds a complaint under section 27BM well-founded, the tribunal must declare that to be the case, i.e., it must make a declaration that the employer provided unreasonable notice in breach of section 27BI or 27BJ.

170 Subsections (1)(b) and (2) enable an employment tribunal to make an order that the employer must pay the worker compensation for financial loss suffered by the worker as a result of the unreasonable notice which the tribunal considers just and equitable in all the circumstances. The compensation may not however exceed an amount to be specified by the Secretary of State in regulations.

171 Subsection (3) requires an employment tribunal when ascertaining the worker's financial loss to apply the principle established at common law requiring the complainant to mitigate their loss.

Clause 3: Right to payment for cancelled, moved and curtailed shifts

172 This clause inserts a new Chapter 4 into Part 2A of the Employment Rights Act 1996, consisting of new sections 27BO - 27BT, to create a right to payment for cancelled, moved and curtailed shifts for individuals on zero hours contracts, zero hours arrangements and other specified contracts.

New Section 27BO

173 Subsection (1) of section 27BO provides for a duty on an employer to make a payment, of an amount to be specified in regulations made by the Secretary of State, to a worker each time there is a cancellation, movement (i.e., a delay or bringing forward of a shift), or curtailment at short notice of a qualifying shift that the worker has agreed to work for the employer. The duty is subject to exceptions set out in section 27BQ.

174 Subsections (2) and (3) outline when a shift is a "qualifying shift". A shift is "qualifying" when it is being worked, is to be worked or would have been worked under one of three types of contracts or arrangements: (a) a zero hours contract, (b) a worker's contract entered into in accordance with a zero hours arrangement, or (c) a worker's contract of a description to be specified in regulations made by the Secretary of State, where the employer is required to make some work available to the worker (but does not specify when that work will take place). Accordingly, where a shift that is being worked, is to be worked or would have been worked by a worker under one of these contracts or arrangements is cancelled, moved or curtailed at short notice, the employer must pay the specified amount to the worker.

175 Subsections (3) and (4) provide that "irregular shifts" are also "qualifying shifts". These subsections cover workers on contracts of a type specified in regulations which require a worker to work at times specified in the contract, i.e., workers who are guaranteed some work at a time set out in their contract. Such workers are entitled to payment where they (are due to) work or are working shifts at a time other than that specified in their contracts and those shifts are cancelled, moved or curtailed at short notice. This provision is made because a cancellation, movement or curtailment of a shift, the timing of which is specified in a contract, would amount to a breach of contract and therefore workers on such contracts would have a separate remedy in relation to those shifts.

176 Subsection (5) concerns when a payment under subsection (1) must be made. The payment must be made by no later than the end of a period to be specified in regulations made by the Secretary of State.

177 Subsection (6) defines what "short notice" means for the purposes of the Chapter in relation to cancellation, movement or curtailment of a shift and therefore the period at which payment becomes due. Subsection (6)(a) provides that "short notice" is notice of less than a period to be specified by regulations made by the Secretary of State prior to the beginning of the relevant shift.

178 Subsection (6)(b) provides that when a shift is moved, "short notice" is notice of less than a specified amount of time before the earlier of when the shift would have started, or when the

shift is now due to start.

179 Subsection (6)(c) provides that the same applies when a shift is curtailed by pushing back the start time.

180 Subsection (6)(d) provides that for any other curtailment, notice given less than a specified amount of time before the shift is due to start or on or after the start of the shift is late notice.

181 Subsection (7) provides that regulations may make provision about when notice of the cancellation, movement or curtailment of a shift is to be treated as having been given by an employer to a worker.

182 Subsection (8) provides further detail in relation to who is an "employer" in relation to an individual and a shift, and who is a "worker" in relation to a shift. This ensures that individuals who do not have a worker's contract at the time the duty applies (for example, if an offer for work was conditional on work being available) are still entitled to payment.

183 Subsection (9) provides that a shift counts as being "moved" if its start time is changed by more than an amount of time specified in regulations. The effect is that regulations can prescribe a maximum amount of time by which employers can move shifts at short notice without having to make a payment under this section.

184 Subsection (10) clarifies that in this section, an employer is regarded as having 'requested' a worker to work a shift even if the employer made a request of multiple workers to work the same shift, but did not in fact need all of them to work that shift.

New Section 27BP

185 Section 27BP provides further detail on how the powers in section 27BO can be exercised.

186 Subsections (1) and (2) provide that regulations made to specify the payment amount under section 27BO(1):

a. May not specify a payment amount greater than what the worker would have earned had they worked the hours that were cancelled, moved or curtailed; and

b. May specify different payment amounts depending on how short the notice given is.

187 Subsection (3) provides that contracts in scope under section 27BO(2)(c) and (3) may be specified by reference to a maximum payment amount or maximum number of hours guaranteed to the worker under the contract.

188 Subsection (4) provides that the period for short notice, to be set in regulations under section 27BO(6), may not be greater than 7 days.

New Section 27BQ

189 Section 27BQ makes exceptions to the duty at section 27BO(1) to make payment for shifts cancelled, moved or curtailed at short notice.

190 Subsection (1)(a) excludes agency workers (as defined in the Agency Workers Regulations 2010) from the duty, but refers to the separate power at section 27BV to make provision about agency workers.

191 Subsection (1)(b) provides a power to the Secretary of State to specify other circumstances where the duty at section 27BO(1) does not apply.

192 Subsection (2) provides a duty on the employer, where an exception provided for in regulations made under subsection (1)(b) applies, to notify a worker of the relevant exception and explain the reason for the short notice cancellation, movement or curtailment. This enables the worker to

understand that they will not receive payment and why.

193 Subsection (3) ensures that employers do not have to disclose information in the notice under subsection (2) that they may otherwise be prohibited from disclosing, including any personal data.

194 Subsection (4) provides a power to the Secretary of State to specify in regulations how and in what form a notice made under subsection (2) must be given and when it is deemed to be given.

195 Subsection (5) details that the duty in sub-section (2) does not apply if, before the day on or before which the notice must be given, the employer has paid to the worker an amount in relation to a number of hours that is at least equal to the amount of the payment that the employer would have been required to make to the worker under section 27BO(1) in relation to the same number of hours but for regulations made under subsection (1)(b).

196 Subsection (6) specifies that subsection (4) of section 27BR applies for the purposes of subsection (5) of this section as it applies for the purposes of subsections (2) and (3) of that section.

New Section 27BR

197 Section 27BR explains how the right to payment for short notice cancellation, movement or curtailment of shifts under section 27BO(1) relates to remuneration due under the worker's contract.

198 Subsection (1) provides that the right to receive such a payment does not affect the worker's contractual rights to remuneration.

199 Subsection (2) provides that where the employer makes contractual payment to a worker in relation to hours for which a payment for short notice cancellation, movement or curtailment is due, the contractual payment goes towards discharging the employer's liability, i.e. is counted towards the payment due.

200 Conversely, subsection (3) provides that if the employer makes a payment for short notice cancellation, movement or curtailment required under section 27BO(1), that counts towards discharging any liability on the part of the employer to pay contractual remuneration for the same hours.

201 Subsection (4) clarifies that the hours to which a payment relates are: where a shift has been cancelled or curtailed, the hours that would have been worked if the shift had not been cancelled or curtailed; where a shift has been moved and no part of the shift as moved corresponds to the time of the shift before it was moved ("the original shift"), the hours that would have been worked during the original shift; where a shift has been moved and part of the shift as moved corresponds to the time of the original shift, the hours that would have been worked during the part of the original shift that does not correspond to the shift as moved.

New Section 27BS

202 Section 27BS enables workers to bring a claim to an employment tribunal where they consider that their employer has breached duties set out in in Chapter 4.

203 Subsection 1(a) enables workers to bring a claim where they consider that their employer has breached the duty to make payment under section 27BO(1) by failing to make the whole or any part of the payment.

204 Subsections 1(b) and (c) enable workers to bring a claim where they consider that their employer has breached the duty to provide notice (of the relevant exception and reasons for the short notice cancellation, movement or curtailment) under section 27BQ(2) where either, under subsection 1(b), they allege that their employer unreasonably failed to provide notice, or, under

subsection 1(c), they allege that the notice given was inadequate or untrue.

205 Subsections (2) to (6) make provision about time limits for bringing a claim under subsection (1).

206 Under subsection (2), a complaint that an employer breached the duty to make payment under section 27BO(1) must be brought within three months from when payment under section 27BO(1) was or should have been made.

207 Under subsection (3), a complaint that an employer unreasonably failed to give notice under section 27BQ(2) must be brought within three months from when notice under section 27BQ(2) should have been given.

208 Under subsection (4), a complaint that the notice given by an employer under section 27BQ(2) was inadequate or untrue must be brought within three months from when notice under section 27BQ(2) was given.

209 Subsection (5) enables a tribunal to extend the time limits at subsections (2) to (4) by a reasonable amount where the tribunal is satisfied that it was not reasonably practicable for the claim to be presented before then.

210 Subsection (6) provides that section 207B of the Employment Rights Act 1996 applies so that the time limits at subsections (2) and (3) can be extended to allow for conciliation to take place.

211 Subsection (7) alters the usual burden of proof to provide that it is for the employer to show that a notice given in purported compliance with section 27BQ(2) is true, where the worker has brought a complaint alleging that it is untrue.

New Section 27BT

212 Section 27BT makes provision on the remedies that a tribunal may award where they find a complaint under section 27BS well-founded.

213 Subsection (1) provides that, where a tribunal finds that the employer has breached the duty to make payment under section 27BO(1), the tribunal must order the employer to pay the amount due. This may either be the full amount of payment due under section 27BO(1) where no payment has been made or any further amount due where the employer has paid too little.

214 Subsection (2) enables tribunals to order the employer to pay the worker an amount to be specified in regulations made by the Secretary of State where a tribunal finds that an employer breached the duty to provide notice under section 27BQ(2).

215 Subsection (3) provides that an employment tribunal may not make an order under subsection (2) where it makes an order under subsection (1) in relation to the same payment.

Clause 4: Amendments relating to sections 1 to 3

216 This clause inserts new Chapter 5 (General) into Part 2A of the Employment Rights Act 1996, consisting of new sections 27BU, 27BV and 27BW, to make provision on interpretation and powers.

217 Subsection (2) inserts Schedule 1 which makes amendments consequential to clauses 1 to 3.

New Section 27BU

218 Section 27BU makes provision for the interpretation of Part 2A of the Employment Rights Act 1996.

219 Subsection (1) provides definitions for agency workers, arrangement, specified, zero hours arrangement and zero hours contract. In particular, the definition of "zero hours contract" that

was previously in section 27A of the Employment Rights Act 1996 is moved to this subsection as the definition will now apply for the whole of Part 2A. The definition of "zero hours arrangement" moves the previous definition of “non-contractual zero hours arrangements” from section 27B of the Employment Rights Act 1996 and clarifies that this can include contractual arrangements (by removing “non-contractual”). Arrangement is also clarified when used by itself and not as part of a zero hours arrangement and means an arrangement whether contractual or not which is not a worker’s contract/s.

220 Subsection (2) provides further definition of what is meant by work, doing work and making work available.

New Section 27BV

221 Section 27BV provides a power for the Secretary of State to make regulations, to make provision in relation to agency workers (as defined in the Agency Workers Regulations 2010) that corresponds with or is similar to the new Chapters 2 to 4 (on the rights to guaranteed hours, notice of shifts and payment for short notice changes to shifts), including to amend or repeal primary legislation.

New Section 27BW

222 Subsection (1) of new section 27BW provides that regulations under Part 2A of the Employment Rights Act (as amended by clauses 1 to 4) may

a. Make different provision for different purposes

b. Make provision subject to exceptions

223 Section 27BW also makes further provision on what the powers in Part 2A of the Employment Rights Act 1996, as amended above, can be used to do, including to make ambulatory reference to other legislation; along with combining different Parliamentary procedures for regulations where relevant.

Schedule 1 – Consequential amendments relating to section 1 to 3

224 Paragraph 1 amends the Employment Tribunals Act 1996 as to what is considered “relevant proceedings” for the purpose of conciliation.

225 Paragraphs 2 - 15 amend the Employment Rights Act 1996.

226 Paragraph 3 amends Section 27A (exclusivity terms unenforceable in zero hours contracts), to omit subsections 1 and 2.

227 Paragraph 4 amends Section 27B (power to make further provision in relation to zero hours workers) to omit sub sections (4), (7) and (8)

228 Paragraph 5 inserts Section 47H into the Employment Rights Act 1996 to create new rights for workers not to be subjected to a detriment on the grounds outlined below.

229 Paragraph 6 amends section 48 of the ERA 1996 (enforcement) by adding new subsection (1BA), to make provision for a worker to take a complaint to an employment tribunal on the grounds that they have been subjected to a detriment, as outlined in section 47H.

230 Paragraph 7 amends section 49 of the ERA 1996 (remedies). It limits compensation paid when a worker who is not an employee makes a claim under section 48(1BA) because their contract or working arrangement has been terminated, to the amount that would have been payable if they were an employee dismissed for a reason outlined in section 104BA.

231 Paragraph 8 inserts Section 104BA (guaranteed hours) into the ERA 1996.

232 Paragraph 9 amends section 105 (redundancy), by adding the reasons outlined at section 104BA as reasons by which an employee would be unfairly selected for redundancy.

233 Paragraph 10 amends section 108 (qualifying period of employment) to add reference to section 104BA.

234 Paragraph 11 amends section 205 (remedy for infringement of certain rights) to make reference to Part 2A and section 47H of the ERA 1996.

235 Paragraph 12 amends section 225 (calculation date for purposes of working out a week's pay) to account for the calculation of a week's pay where complaints are made to an employment tribunal under section 27BF.

236 Paragraph 13 amends section 227 (maximum amount of week's pay) to make reference to compensation awarded under section 27BH.

237 Paragraph 14 amends section 235 (definitions for purposes of the Act) to amend existing definitions of 'limited-term contract' and 'limiting-event'

238 Paragraph 15 amends section 236 (orders and regulations) to insert at s. 236(3) references to new powers (introduced by clauses 1 to 4) to make regulations, where they are subject to the affirmative procedure.

New Section 47H

239 Subsection (1) of Section 47H makes provision for a worker not to be subject to detriment on the grounds that the worker:

a. Accepted – or proposed to accept – an offer of guaranteed hours

b. Rejected – or proposed to reject – an offer of guaranteed hours

c. Declined to work a shift based on a reasonable belief that the employer failed to comply with a duty under section 27BI or section 27BJ to provide reasonable notice in relation to that shift. For example, an employer must not stop offering the worker hours or reduce the worker's hours on the basis that the worker has refused to work such a shift as this would amount to a "detriment".

d. Brought proceedings against the employer under section 27BF, section 27BM or section 27BS

e. Alleged that there were circumstances which would constitute grounds for bringing such proceedings.

240 Subsection (2) of section 47H provides that the reference at subsection (1)(b) to a worker who rejected an offer includes workers who are treated as having rejected an offer as they have not responded (see section 27BE(7)).

241 Subsection (3) provides that it is immaterial for the purposes of subsection (1)(d) or (e) whether or not the employer has failed to comply with the duties imposed under section 27BA(1), 27BI, 27BJ, 27BO(1) or 27BQ(2). For sub section (1)(d) or (e) to apply, however, the claim must be made in good faith.

242 Subsection (4) provides that sub section (1)(e) may apply if the worker made the nature of the employer's alleged non-compliance reasonably clear to the employer.

243 Subsection (5) provides that section 47H does not apply where the worker is an employee, and the detriment amounts to dismissal within the meaning of Part 10 of the ERA 1996 (unfair dismissal).

244 Subsection (6) provides clarifications on how references to 'worker' and 'employer' in this section, section 48(1BA) and 49 are to be read, in accordance with the modifications set out in s. 27BI(6) and 27BO(8).

New Section 104BA

245 Subsection (1) of Section 104BA makes provision for an employee to be treated as unfairly dismissed if the reason (or principal reason where there is more than one reason) for the dismissal is that the employee:

a. Accepted – or proposed to accept – an offer from their employer of guaranteed hours

b. Rejected – or proposed to reject – an offer from their employer of guaranteed hours

246 Subsection (2) provides that an employee who rejected an offer includes employees who are treated as having rejected an offer as they did not accept the offer during the response period.

247 Subsection (3) provides that an employee who is dismissed is to be regarded as unfairly dismissed if:

a. The duty to offer guaranteed hours applies to their employer

b. The reason (or principal reason if more than one) for the dismissal is that the employer sought to avoid their responsibility to offer the employee guaranteed hours

c. The date of termination falls during the reference period or offer period for the guaranteed hours offer

248 Sub section (4) defines 'offer period' and 'reference period'.

Clause 5: Repeal of Workers (Predictable Terms and Conditions) Act 2023

249 This clause repeals the Workers (Predictable Terms and Conditions) Act 2023, which has not been commenced.

Clause 6: Exclusivity terms in zero hours arrangements

250 This clause amends section 27B of the Employment Rights Act 1996 on exclusivity terms in zero hours arrangements in consequence of the new definition of "contractual zero hours arrangements" provided in clause 4, which will replace the previous definition of "non-contractual zero hours arrangements" in section 27B of the Employment Rights Act 1996 once it is brought into force.

Flexible working

Clause 7: Right to request flexible working

251 This clause amends Sections 80G and 80H of the Employment Rights Act 1996.

252 Subsection (2) amends section 80G of the Employment Rights Act 1996 in accordance with subsections (3) to (5). Section 80G(1) sets out an employer's duty to deal with an application for flexible working made under Section 80F of the Employment Rights Act 1996 in a reasonable manner.

253 Subsection (3) substitutes subsection (1)(b) of the existing legislation to add a requirement that an employer may only refuse a flexible working request if it considers that a specified ground or grounds applies and if it is reasonable to refuse the request on that ground or those grounds. The specified grounds remain the same as the current legislation but are moved to new subsection (1ZA).

254 Subsection (4) adds a new requirement that where a flexible working application is refused, the

notification required under section 80G(1)(aa) must state the ground or grounds for refusing the application and explain why the employer considers that decision is reasonable.

255 Subsection (5) inserts a new subsection (1E) which allows the Secretary of State to specify steps in regulations which an employer must take in order to comply with the requirement to consult before rejecting an application which is contained in subsection (1)(aza) of Section 80G(1) of the Employment Rights Act 1996.

256 Subsection (6) of the Bill amends subsection 80H(1)(a) by substituting "comply with" with "act in accordance with". Section 80H of the Employment Rights Act 1996 sets out the procedure for complaints made to an employment tribunal.

Statutory Sick Pay

Clause 8: Statutory sick pay: removal of waiting period

257 This clause amends Part 11 of the Social Security Contributions and Benefits Act 1992 (Statutory Sick Pay) to make SSP payable to employees for the first three Qualifying Days in a period of entitlement.

258 Subsection (2) and (3)(a) remove the condition that a period of incapacity for work must arise in order for an employer to be liable to make a payment with respect to a day of incapacity. This is a technical change to simplify the legislation given the changes to when a period of incapacity for work arises.

259 Subsection (3)(b) amends the period of incapacity for work so that it commences from the first day of incapacity for work, rather than the fourth consecutive day.

260 Subsections (4) and (5) make minor amendments to reflect the amendments made by subsections (2) and (3)(a), namely that the period of entitlement will be first (rather than second) condition and qualifying days are the second (rather than third) condition.

261 Subsection (6) repeals the provision that SSP is not payable for the first three qualifying days in any period of entitlement ('waiting days').

262 Subsection (7) repeals provision relating to the requirement for employers to be notified of a sickness absence during the waiting day period.

Clause 9: Statutory sick pay: lower earnings limit etc

263 This clause amends the Social Security Contributions and Benefits Act 1992 to remove the prohibition on a period of entitlement for SSP purposes arising where a person earns below the Lower Earnings Limit. This means that all eligible employees, regardless of earnings, will be entitled to SSP.

264 Subsection (2)(a) sets the weekly rate of SSP at £116.75 or a prescribed percentage of the employee's weekly earnings, whichever is lower.

265 Subsection (2)(b) enables the Secretary of State to prescribe, by order (which will be subject to the affirmative procedure), what the percentage, or percentages, should be for the purposes of subsection (1). This means that the percentage can be set by the Secretary of State and changed in the future. This is consistent with the existing power of the Secretary of State to amend, by order, the flat rate of SSP.

266 Subsection (3) repeals, in Schedule 11 Paragraph 2, the requirement for an employee's normal weekly earnings to be more than the lower earnings limit.

Tips and Gratuities, etc

Clause 10: Policy about allocating tips etc: review and consultation

267 Subsection (1) clarifies that the new requirements are added as an amendment to Section 27I of the Employment Rights Act 1996, which requires employers to maintain a written tipping policy where qualifying tips, gratuities and service charges are paid at (or are attributable to) an employer's place of business on more than an occasional or exceptional basis.

268 Subsection (2) inserts new subsection (2A) into section 27I of the Employment Rights Act 1996, introducing the requirement for employers to consult with the representatives of recognised trade unions or worker representatives, or, where there are no such representatives in place, workers likely to be affected by the policy. Such consultation is to be carried out before the employers produce their written tipping policy.

269 Subsection (3) inserts new subsections (3A), (3B) and (3C) into section 27I of the Employment Rights Act 1996. Subsection (3A) introduces the requirement for employers to review their written policy from time to time, where they make a written policy available to workers under section 27I of the Employment Rights Act 1996.

270 Subsection (3B) introduces a review process for the written policy. The first review must take place at least once within three years from the date the initial version of the policy is made, even if that date is before the subsection comes into effect. Following that, reviews must take place at least once within three years after the completion of the previous review.

271 Subsection (3C) clarifies that an employer must consult the appropriate persons described in the new subsection (2A) during every review of the written policy.

272 Subsection (4) inserts new subsections (7) and (8) into section 27I of the Employment Rights Act 1996. New subsection (7) introduces a requirement for employers who have carried out a consultation on their written policy to also make available an anonymised written summary to all workers at the place of business. New subsection (8) clarifies that the term "recognised", when referring to a trade union, carries the same definition as provided in the Trade Union and Labour Relations (Consolidation) Act 1992, specifically in section 178 of that Act.

Entitlements to leave

Clause 11: Parental leave: removal of qualifying period of employment

273 This clause amends section 76 of the Employment Rights Act 1996 (entitlement to parental leave) by omitting paragraph (a) (and the "and" following it) in subsection (1). This removes the power for the Secretary of State to make regulations relating to the duration an employee must be employed before being entitled to be absent from work on parental leave.

Clause 12: Paternity leave: removal of qualifying period of employment

274 This clause amends sections 80A and 80B of the Employment Rights Act 1996.

275 Subsection (1) amends section 80A of the Employment Rights Act 1996 (entitlement to paternity leave: birth) by omitting paragraph (a) in subsection (1) and paragraph (a) in subsection (6A). This removes the power for the Secretary of State to make regulations relating to the duration an employee must be employed before being entitled to be absent from work on paternity leave (birth). It also removes a modification made in relation to bereaved partners paternity leave which is no longer required.

276 Subsection (2) amends section 80B of the Employment Rights Act 1996 (entitlement to paternity leave: adoption) by omitting paragraph (a) in subsection (1) and paragraph (a) in subsection (6C). This removes the power for the Secretary of State to make regulations relating to the duration an employee must be employed before being entitled to be absent from work on

paternity leave (adoption). It also removes a modification made in relation to bereaved partners paternity leave which is no longer required.

Clause 13: Ability to take paternity leave following shared parental leave

277 This clause amends the Employment Rights Act 1996, the Social Security Contributions and Benefits Act 1992, and the Children and Families Act 2014 to remove the restriction on employees taking paternity leave and pay following shared parental leave and pay.

278 Subsection (1) amends section 80A of the Employment Rights Act 1996 (entitlement to paternity leave: birth)) by omitting subsection (4A) and paragraph (c) in subsection (6A). This removes the restriction on taking paternity leave (birth) following shared parental leave and, as a consequence, removes a modification in relation to parental bereavement leave that would no longer have any effect.

279 Subsection (2) amends section 80B of the Employment Rights Act 1996 (entitlement to paternity leave: adoption) by omitting subsection (4A) and omitting paragraph (c) in subsection (6C). This removes the restriction on taking paternity leave (adoption) following shared parental leave and, as a consequence, removes a cross reference in relation to parental bereavement leave that would no longer have effect.

280 Subsection (3) amends section 171ZE of the Social Security Contributions and Benefits Act 1992 (rate and period of paternity pay) by omitting paragraph (b) (and the "or" before it) in subsection (3A). This removes the restriction on paying paternity pay after shared parental pay.

281 Subsection (4) amends section 118 of the Children and Families Act 2014 by omitting subsections (6) and (7), which inserted the restriction on taking paternity leave after shared parental leave into sections 80A and 80B of the Employment Rights Act 1996.

Clause 14: Bereavement leave

282 This clause amends section 80EA of Part 8 of the Employment Rights Act 1996 (parental bereavement leave) to provide an entitlement to bereavement Leave.

283 Subsection (2) amends the title of Chapter 4 of Part 8 from "Parental Bereavement Leave" to "Bereavement Leave".

284 Subsection (3) makes numerous amendments to section 80EA of the Employment Rights Act 1996 to require the Secretary of State to make regulations to give an entitlement to employees who are bereaved to take protected time off work, in addition to already existing provision for parental bereavement leave. A "bereaved person" will be defined in regulations by reference to the employee's relationship with the person who has died. The regulations will be made by affirmative procedure.

285 Subsection (3) subparagraphs (c) to (h) make related amendments to section 80E. These will require that, in the case of bereavement leave in respect of a person other than a child, the regulations must set the duration of leave and when the leave can be taken. The duration of leave must be at least 1 week (which is any period of seven days). The regulations must establish a period within which the leave may be taken, which must extend to at least 56 days after the person's death. The regulations must also specify that, where more than one person dies and the relationship to the employee is captured in regulations, the employee is entitled to leave in respect of each deceased person. Regulations can also make provision for how the leave is to be taken. In a case where a child under the age of 18 has died, the entitlement to statutory parental bereavement pay under Part 12ZD of the Social Security Contributions and Benefits Act 1992 will still apply.

286 Subsections (4) to (11) make other amendments to the Employment Rights Act 1996 for the purposes of the new entitlement. This includes enabling the regulations to provide certain protections for employees who take bereavement leave, such as protection against detriment, protection of contractual rights and for treating a dismissal which takes place for a reason relating to bereavement leave as unfair.

287 Subsections (12) to (14) make amendments to other legislation in consequence of the introduction of statutory bereavement leave.

Protection from Harassment

Clause 15: Employers to take all reasonable steps to prevent sexual harassment

288 This clause will amend section 40A(1) of the Equality Act 2010 (employer duty to prevent sexual harassment of employees), to add the word "all" before "reasonable steps".

Clause 16: Harassment by third parties

289 This clause amends section 40 of the Equality Act 2010 by inserting subsections (1A), (1B) and (1C), which cover harassment of employees by a third party. The provision encompasses all three types of harassment set out under section 26 of the Equality Act 2010. For harassment relating to protected characteristics, this provision extends to all protected characteristics covered by harassment (age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation).

290 Subsection (1A) provides that an employer must not permit a third party (such as a customer or client) to harass an employee.

291 Subsection (1B) explains that an employer permits a third party to harass an employee only in circumstances where an employee is harassed in the course of their employment, and it is shown that the employer failed to take all reasonable steps to prevent the third party from harassing them.

292 Subsection (1C) defines a "third party" as a person other than the employer or a fellow employee.

Clause 17: Sexual harassment: power to make provision about "reasonable steps"

293 This clause amends the Equality Act 2010.

294 Subsection (2) inserts new section 40B, entitled 'Prevention of sexual harassment: power to specify "reasonable steps"' into the Equality Act 2010. This introduces a power to allow a Minister of the Crown to make regulations to specify steps which an employer must take and matters to which they must have regard for the purposes of meeting the obligations set out in the Equality Act 2010 to take all reasonable steps to prevent sexual harassment.

295 Subsection (3) inserts that any regulations made under this power will be subject to the affirmative procedure.

New Section 40B

296 Subsection (1) provides that regulations may specify steps that are to be regarded as "reasonable" for the purpose of determining whether, for the purposes of the Equality Act 2010, an employer has taken, or failed to take, all reasonable steps to prevent sexual harassment of an employee (see sections 40, 40A and 109). The regulations will set out a non-exhaustive list of obligations that are to be regarded as reasonable steps an employer must take in order to prevent workplace sexual harassment. Employers tWo which the duties apply must take these steps while also taking all other steps which are reasonable in the particular circumstances.

297 Subsection (2) lists steps that may be specified in regulations (carrying out assessments of a specified description, publishing plans or policies of a specified description, steps relating to the reporting of sexual harassment, and steps relating to the handling of complaints). This is not an exhaustive list. Subsection (2) makes clear that these steps may be included in regulations, among others.

298 Subsection (3) provides that regulations under this section that specify any steps may require an employer to have regard to specified matters when taking those steps.

299 Subsection (4) explains that:

a. "sexual harassment" means harassment of the kind described in section 26(2) of the Equality Act 2010 (unwanted conduct of a sexual nature); and,

b. "specified" means specified in the regulations.

Clause 18: Protection of disclosures relating to sexual harassment

300 This clause amends Part 4A of the Employment Rights Act 1996 (protected disclosures) to explicitly include sexual harassment as a relevant failure in relation to disclosures qualifying for protection.

301 Subsection (2) adds sexual harassment to the list of relevant failures. It amends section 43B(1), after paragraph (d), to include sexual harassment that has occurred, is occurring or is likely to occur.

302 Subsection (3) sets out a definition of "sexual harassment". It amends section 43L(1) to insert the definition of sexual harassment as harassment of the kind described in section 26(2) of the Equality Act 2010 (unwanted conduct of a sexual nature).

Dismissal

Clause 19: Right not to be unfairly dismissed: removal of qualifying period, etc

303 This clause introduces Schedule 2 to the Bill.

Schedule 2: Right not to be unfairly dismissed: removal of qualifying period, etc.

304 Paragraph 1 amends Part 10 of the Employment Rights Act 1996 (unfair dismissal), by removing section 108 (qualifying period of employment). This means that the current qualification period for bringing most claims for unfair dismissal (including all claims for 'ordinary' unfair dismissal), will be removed.

305 Paragraph 2 inserts new section 108A (Employees who have not yet started work) into the Employment Rights Act 1996.

306 Paragraph 3 inserts, at subparagraph (2), new section 98ZZA into Part 10 of the Employment Rights Act 1996.

307 Paragraphs 4-18 make amendments to other legislation which deems certain reasons for dismissal to be unfair, and disapplies the current two year qualifying period for claiming unfair dismissal in relation to dismissals for those reasons. The amendments have the effect of exempting those claims from the requirement in new section 108A(1) that the employee must have started work before being able to make an unfair dismissal claim:

- Paragraph 4 amends provisions in the Trade Union and Labour Relations (Consolidation) Act 1992 dealing with dismissals relating to trade union membership and activities (sub-paragraphs (2) and (3)); the taking of protected industrial action (sub-paragraph (4)); and trade union recognition processes (sub-paragraphs 5)).

- Paragraph 8 amends section 12 of the Employment Rights Act 1996, dealing with dismissals relating to the right to be accompanied at disciplinary and grievance hearings.

308 The following paragraphs repeal provisions in legislation which currently disapply the two-year qualifying period:

- Paragraph 13 repeals section 13 of the Enterprise and Regulatory Reform Act 2013, concerning dismissals in relation to political opinions or affiliations (see paragraph 318 below).
- Paragraph 14 repeals section 48 of the Defence Reform Act 2014, concerning dismissals relating to membership of a reserve force (see paragraph 318 below).

309 Paragraph 5 makes consequential amendments to the Employment Rights Act 1996.

310 Subparagraph 2 amends section 92 (right to written statement of reasons for dismissal), to remove the two year qualifying period for the employee's right to make a request for written reasons for dismissal. The qualifying period is replaced with a requirement that the dismissal must have occurred after the end of the employee's initial period of employment. New subsection (3A) is inserted into section 92 to clarify when a dismissal occurs during the initial period of employment. Subsections (4) and (4A) are amended to ensure the continuation of the current entitlement (without any qualification period) of employees to receive written statements of reasons when they are dismissed for certain reasons (because they are pregnant, or if the dismissal takes place during maternity leave, or adoption leave).

311 Subparagraphs (3) to (6) make consequential amendments to sections 94, 97, 98 and 192 to reflect the omission of section 108 and insertion of section 108A into the Employment Rights Act 1996, and the insertion of new section 98ZZA.

312 Subparagraph (7) amends section 205A(10) to ensure that employee shareholders can continue to make claims for unfair dismissal where the dismissal is due to certain health and safety reasons. It also amends subsection (10) to provide that employee shareholders can make claims for unfair dismissal where the reason for dismissal relates to the employee's political opinions or affiliations.

313 Subparagraphs (8), (9) and (10) make consequential amendments to section 209 (powers to amend Act), section 213 (intervals in employment) and Schedule 1 paragraph 56(8) by removing references to section 108(1) and section 109 (which has previously been repealed).

314 Paragraphs 6-7, 9 -12 and 15-18 make consequential amendments to legislation in order to reflect amendments made by this Bill.

New Section 108A

315 Subsection (1) prevents an employee from bringing an unfair dismissal claim if, on the effective date of the termination of their employment, they have not yet started work. The 'effective date of termination' is already defined in section 97 of the Employment Rights Act 1996.

316 Subsection (2) exempts from that requirement dismissals for specified reasons. Those reasons include reasons which are deemed to be unfair and which are currently not subject to any period of prior service, including dismissals in connection with:

a. the performance of jury service;

b. pregnancy, childbirth or maternity, or the exercise of statutory family related leave entitlements;

c. certain health and safety related matters;

d. decisions by shop workers and betting workers to opt out of Sunday working or refuse to work additional hours on Sundays;

e. rights relating to working time, the national minimum wage, participation in education or training, or the making of protected disclosures;

f. acting as a trustee of an occupational pension scheme or as an employee representative;

g. the assertion of a statutory right;

h. the receipt of tax credits or statutory pensions enrolment;

i. rights relating to zero hours workers, agency workers, part time workers or fixed term workers;

j. requests for flexible working or for study or training;

k. trade union blacklists;

l. decisions to decline offers of employee shareholder status;

m. variation of contract of employment;

n. selection for redundancy on certain specified grounds; or

o. information and consultation rights relating to European Works Councils, information and consultation bodies, occupational pension schemes or European Public Limited Liability companies.

317 A dismissal is also exempted where section 4(3)(b) of the Rehabilitation of Offenders Act 1974, concerning dismissals in relation to spent convictions and their disclosure, applies.

318 Subsection (3) exempts dismissals relating to an employee's political opinions or affiliations; and subsection (4) exempts dismissals relating to membership of a reserve force.

319 There are further exemptions which are given effect by consequential amendments to other legislation (see paragraphs 313 and 314 of these notes above).

New Section 98ZZA

320 Subsection (1) of new section 98ZZA gives the Secretary of State the power to make regulations modifying the operation of the test for a fair dismissal in section 98(4) of the Employment Rights Act 1996. That power can only be exercised if the conditions set out in subsections (2) and (3) are met.

321 The condition in subsection (2) which must be met is that the effective date of termination of employment must fall either:

- within the 'initial period of employment' (see below), or
- within the three months immediately after the end of that period, if the employer has given notice of termination before the end of that period.

322 The condition in subsection (3) is that the reason for the dismissal must:

- relate either to the employee's conduct, or their capability or qualifications for performing the work for which they have been employed,
- be effected because their continued employment would contravene a statutory duty or restriction, or

- be for some other substantial reason, relating to the employee, of a kind to justify dismissal.

323 Subsection (4) of new section 98ZZA gives the Secretary of State the power to specify in regulations what the 'initial period of employment' is or to make provision for how it should be determined.

324 Subsection (5) of new section 98ZZA provides that the powers in that section may be exercised to:

- set out circumstances where separate periods of continuous employment can be aggregated and treated as a single period;
- specify whether a reason does, or does not, 'relate to' an employee; and
- deem an employee's dismissal to be fair if the employer has taken any steps set out in the regulations, either in combination with other requirements or not.

325 Subparagraph (3) amends section 236 of the Employment Rights Act to require that any regulations made under new section 98ZZA must be made under the affirmative resolution procedure.

Clause 20: Dismissal during pregnancy

326 This clause amends section 49D of the Employment Rights Act 1996 which gives the Secretary of State the power to make provision in regulations about redundancy during or after a protected period of pregnancy.

327 Subsection (2) inserts "or dismissal" into the heading of section 49D after "Redundancy".

328 Subsection (3) inserts new subsection (1A) into section 49D, giving the Secretary of State a new power to make similar regulations to make provision about dismissal, for reasons other than redundancy, during or after a "protected period of pregnancy". For consistency with the existing approach to redundancy protection, detailed provision is to be made in the regulations.

329 Subsection (4) amends subsection (3) of section 49D to insert "or (1A)" after "subsection (1)".

330 Subsection (5) inserts "or dismissal" into the heading of Part 5B of the Employment Rights Act 1996 after "Redundancy".

331 By virtue of these amendments, the existing suite of powers relating to redundancy are made available in relation to dismissals for other reasons. That includes the power, at section 49D(2), to set out in regulations how the protected period of pregnancy is to be calculated and the provision at section 49D(4) that this may include provision for the protected period of pregnancy to commence after the pregnancy has ended. This is to allow, for example, a woman who has miscarried before informing her employer of the pregnancy to access the dismissal protection she would have been entitled to had she first informed her employer.

332 It also encompasses the power to include, in the regulations, provision requiring the employer to offer alternative employment and provision stipulating that a failure to comply with the regulations will result in the dismissal being treated as unfair.

Clause 21: Dismissal following period of statutory family leave

333 This clause amends the provisions in the Employment Rights Act 1996 which grant the Secretary of State powers to make provision in regulations about dismissals during maternity leave, adoption leave, shared parental leave, neonatal care leave and the form of paternity leave available to bereaved parents ("bereaved partners paternity leave").

334 Subsection (2) amends section 74(2) (maternity leave: redundancy and dismissal) which will enable regulations under sections 71 (ordinary maternity leave) and 73 (additional maternity

leave) to make provision about dismissal during "or after" that leave.

335 Subsection (3) makes the equivalent amendment in relation to adoption leave. It amends section 75C(1)(b) (adoption leave: redundancy and dismissal) which will enable regulations under sections 75A (ordinary adoption leave) and 75B (additional adoption leave) to make provision about dismissal during "or after" that leave.

336 Subsection (4) makes the equivalent amendment for shared parental leave, amending section 75J(1)(b) (shared parental leave: redundancy and dismissal) which will enable regulations under sections 75E (shared parental leave: birth) and 75G (shared parental leave: adoption) to make provision about dismissal during "or after" that leave.

337 Subsection (5)(a) makes the equivalent amendment for bereaved partners paternity leave, amending section 80D(1A)(b) and (3)(b) to enable regulations to make provision about dismissal during "or after" that leave.

338 Subsection (5)(b) amends the definition of those individuals within scope for bereaved partners paternity leave to clarify that overseas adopters and parental order case parents are eligible.

339 Subsection (6) makes the equivalent amendment for neonatal care leave, amending section 80EH of the Employment Rights Act 1996, which will enable regulations to make provision about dismissal during "or after" that leave.

Clause 22: Dismissal for failing to agree to variation of contract, etc

340 This clause amends the Employment Rights Act 1996 by adding a new section 104I which provides for a new type of automatically unfair dismissal.

341 Subsections (2) and (3) amend Part 10 (unfair dismissal) of the Employment Rights Act 1996 to insert new section 104I which provides that it will be considered an unfair dismissal if an employee is dismissed by their employer for not agreeing to a variation to their contract or if the employer dismisses the employee to replace, or to re-engage them on varied contractual terms, unless the employer can demonstrate they fall within the exemption in new section 104I(4).

342 In this clause references to an employee's 'contract of employment', are references to all an employee's contractual terms, whether these are express or implied and, if express, whether they have been agreed in writing or verbally. In addition to any individual employee's written contract, contractual terms may be found in other sources such as collective agreements, handbooks or letters, provided that these have been expressly or impliedly incorporated into the contract.

343 Subsections (4) and (5) make consequential amendments to add the new s104I into other relevant parts of the Employment Rights Act 1996. Subsection (5) provides that regulations made using the power in subsection (5) will be subject to the affirmative procedure.

New Section 104I

344 Subsection (1) provides that a dismissal will be unfair where an employee is employed for the purpose of a business carried out by the employer and the reason for the dismissal falls within subsection (2) or (3).

345 Subsection (2) provides that a dismissal will be unfair where the reason for the dismissal is that an employer has sought a variation in contract which the employee did not agree to.

346 Subsection (3) provides that a dismissal will be unfair where the reason for the dismissal is to enable the employer to employ someone else or re-engage the employee on a varied contract to carry out substantially the same duties as the employee carried out before the dismissal.

347 Subsection (4) provides that subsection (1) will not apply where an employer can show:

a. The reason for the variation was to eliminate, prevent, significantly reduce or significantly mitigate the effects of financial difficulties which, at the time of the dismissal, were affecting the employer's ability to carry on the business as a going concern. Where an employer cannot demonstrate this because they do not operate on a going concern basis, for example certain public sector bodies, the employer would have demonstrate the reason for the variation was to eliminate, prevent, significantly reduce or significantly mitigate the effects of financial difficulties which, at the time of the dismissal, were affecting the employers ability to carry on activities constituting the business; and:

b. In all the circumstances the employer could not reasonably have avoided the need to make the variation.

348 If an employer can demonstrate that subsection (4) of new section 104I is met, the dismissal will not be automatically unfair, but the employment tribunal will still have to assess whether the dismissal was fair in all the circumstances. Subsection (5) provides that the employment tribunal must consider a number of (non-exhaustive) matters when determining whether the dismissal was fair or unfair, this includes whether any consultation was carried out by the employer with the employee, an independent trade union or another employee representative organisation about the variation of the employee's contract of employment, and whether the employer offered the employee anything in return for agreeing to a variation. Subsection (5) of new section 104I also provides the Secretary of State with a power to specify other factors which must be considered, in secondary legislation.

349 Subsection (6) explains what is meant by independent trade union and what references to a "varied" contract mean in new section 104I.

Part 2: Other Matters Relating to Employment

Procedure for handling redundancies

Clause 23: Collective redundancy: extended application of requirements

350 This clause changes the existing requirements for employers to collectively consult appropriate representatives of affected employees, and to notify the Secretary of State, where an employer is proposing redundancies. It amends the Trade Union and Labour Relations (Consolidation) Act 1992 to remove references to "one establishment" so that the requirements to collectively consult, and to notify the Secretary of State, apply where the employer is proposing to make 20 or more employees redundant.

351 Subsection (2) amends section 188, subsection (1) and subsection (4) paragraph (c) of the Trade Union and Labour Relations (Consolidation) Act 1992 to remove references to "one establishment" so that employers' duty to collectively consult the appropriate representatives of the affected employees is not limited to the number of redundancies proposed at one workplace or unit.

352 Subsection (3) amends section 193, subsection (1), subsection (2) and subsection (4) paragraph (a) of the Trade Union and Labour Relations (Consolidation) Act 1992 to remove references to "one establishment" so that employers' duty to notify the Secretary of State of certain redundancies is not limited to the number of redundancies proposed at one workplace or unit.

353 Subsection (4) amends section 198A subsection (1) paragraph (b) of the Trade Union and Labour Relations (Consolidation) Act 1992 to remove references to "one establishment" and amends section 198A subsection (4) paragraph (a) of the Trade Union and Labour Relations (Consolidation) Act 1992 as a consequence of this change. The effect of this change is that, where

a transfer is taking place under the Transfer of Undertakings (Protection of Employment) Regulations 2006, transferees may collectively consult representatives of affected transferring individuals where the transferee is proposing to dismiss as redundant 20 or more employees (rather than this being limited to the number of redundancies proposed at one workplace or unit). This provision will therefore reflect the revised requirements in section 188 TULRCA, as amended by this clause.

Clause 24: Collective redundancy notifications: ships' crew

354 This clause amends s193A of TULRCA. It will require employers that are proposing to make collective redundancies across crew operating on one or more of its vessels including; any UK registered vessel, any foreign flagged vessel providing a domestic service (i.e. GB to GB), and/or any foreign flagged vessel providing a service calling at a port in Great Britain at least 120 times a year.

355 Subsection (1) provides that subsections (2-5) amend s193A of TULRCA.

356 Subsection (2) replaces the existing heading of s193A of "Duty of employer to notify competent authority of a vessel's flag State of certain redundancies" with the words "Application of section 193 in certain cases involving redundancies of ships' crew". This reflects that s193A no longer only requires notification to the flag state.

357 Subsection (3) amends s193A(1) so that it provides that s193 of TULRCA, applies subject to the modifications set out in s193A where (a) the duties of an employer under s193(1) and s193(2) to notify the Secretary of State if they are making over 20 or over 100 redundancies apply, and (b) some of or all the employees concerned are members of the crew of a seagoing ship which is registered at a port outside Great Britain.

358 Subsection (4) amends s193A(2) to provide that where the vessels are registered outside Great Britain , these clauses require the employer to notify the Secretary of State in addition to the existing requirement for notification to be sent to the competent authority of the state in which the vessel is registered. If the company fails to provide the required notification to the Secretary of State, in the absence of special circumstances, it may be subject to an unlimited fine under s194.

359 Subsection (5) provides that where s193A applies references to a notice in subsections 4 and 6 of s193 should be read as applying to the notice given to the Secretary of State under section 193A. Subsections 4 and 6 of s193set out how a notice should be provided to the Secretary of State and what information should be included and that the employer should give a copy of the notice to representatives that are to be consulted. Subsection 5 also provides that a 'ship' includes any kind of vessel used in navigation and hovercraft.

360 Subsection (6) amends section 285 (employment outside Great Britain) of TULRCA. It expressly includes those employees working on GB-linked ships as ordinarily working in Great Britain for the purposes of sections 193-194. A GB-linked ship is defined as ships providing a specified type of service which either (a) operated between a place in Great Britain and a place elsewhere in the UK or (b) entered a harbour in Great Britain on at least 120 occasions in the 12 months before the redundancy proposal is settled by the employer or, if the service has been provided for less than a year, entered a harbour in Great Britain on at least 10 occasions in each month for which the service has been provided. The specified types of service are services for the carriage of persons or goods, with or without vehicles but excluding, in the case of the second part of the definition, services for the purpose of leisure or recreation and fishing vessels. Subsection (6) also provides a definition of 'harbour' with reference to the Harbours Act 1964, and provides that ship has the same meaning in s285 as in s193A.

Public sector outsourcing: protection of workers

Clause 25: Public sector outsourcing: protection of workers

361 Subsections (1) and (2) amend the Procurement Act 2023 to create a power for a Minister of the Crown to make regulations and to impose a duty to publish a statutory code of practice. These powers are intended to be used to set out measures to avoid the emergence of a workforce consisting of ex-public sector employees and private sector employees, with each group on different terms and conditions, commonly known as a "two-tier workforce". The regulations will be made for the purposes of ensuring that:

a. transferring workers of a specified description are treated no less favourably as workers of the supplier than they were as workers of the contracting authority they were transferred from; and

b. other workers of the supplier who are not transferring workers and are of a specified description are treated no less favourably than transferring workers.

362 Subsection (2) inserts new Section 14A (Protection of transferring workers in outsourcing contracts) into the Procurement Act 2023.

363 Subsection (3) amends section 100 of the Procurement Act 2023 to provide that the obligations imposed on contracting authorities under new section 14A(6) are not enforceable in civil proceedings brought under that Act.

364 Subsection (4) provides that regulations made under this power must use the affirmative procedure.

365 Subsection (5) amends Schedule 9A (procurement by devolved Scottish authorities) of the Procurement Act 2023 to insert the new section 14A. This ensures that a devolved Scottish authority will be subject to the same obligations in respect of any regulations and code of practice where they use a framework or dynamic market (procurement tools) regulated by that Act.

New Section 14A

366 Subsections (1) to (3) specify the contracts to which any requirements set out in the regulations, and the code of practice, apply, known as "relevant outsourcing contracts". These are public contracts, as defined in section 3 of the Procurement Act 2023, which:

a. are contracts, or framework contracts, for the supply of services that include the performance of functions that are, or have previously been, performed by the contracting authority. This would include both the outsourcing of public services and of "back office" functions, and

b. those functions will be carried out by workers who are employed by the supplier to carry out the functions under the contract, and were previously employed by the contracting authority to carry out these functions, as part of that contract. In practice, this means that a "relevant outsourcing contract" must be one in relation to which there are workers transferring from the public sector body undertaking the outsourcing to the supplier.

367 Subsection (4) provides that the regulation-making power may be used to specify provision to be included in relevant outsourcing contracts for the purpose of ensuring that:

a. transferring workers of a specified description are treated no less favourably as workers of the supplier than they were as workers of the contracting authority, and;

b. workers of the supplier who are not transferring workers and are of a specified description are treated no less favourably than transferring workers.

368 These powers could be used to, for example, specify model contract clauses for inclusion in relevant outsourcing contracts. Section 122 of the Procurement Act 2023 allows regulations made under that Act to make different provision for different purposes, meaning that this power can be used to set out different requirements according to, for example, the value of the contract or the sector. As regards the specification of workers, this element of the power could be used to, for example, specify that regulations apply only in respect of workers of the supplier who work exclusively or mainly on the relevant outsourcing contract in question.

369 Subsection (5) places a duty on a Minister of the Crown to publish a code of practice containing guidance to contracting authorities in relation to relevant outsourcing contracts. The code of practice must be for the same purposes as the regulations. This will allow Ministers to publish statutory guidance supplementing any regulations made under clause 14A (4).

370 The code of practice will apply to circumstances in which the regulations apply but may also make provision in respect of circumstances in which they do not, for example where it is not considered feasible to impose requirements to which the stricter legal obligation to take all reasonable steps will apply. It will also allow Ministers to set out guidance on how contracting authorities should seek to achieve these outcomes, including steps which they may take to include and implement any model contract clauses within their contracts.

371 Subsection (5)(c) also provides that a published code must be laid in Parliament.

372 Subsection (6)(a) and (b) in provide that, where a Minister of the Crown has made regulations under subsection (4), a contracting authority must take all reasonable steps to ensure that provision specified in those regulations is included in the contract and ensure that those clauses are complied with.

373 Subsection (6)(c) also provides that contracting authorities must have regard to any code of practice published under subsection (5) in new section 14A.

374 Subsection (7) provides that the duties to "take all reasonable steps" and "have regard" will not apply where the contracting authority or contract is of a description specified in regulations, or in circumstances specified in regulations. This is in order to allow Ministers to make tailored provision across the wide array of outsourcing contracts.

375 Subsection (8) provides that subsection (6), which contains the obligations to "take all reasonable steps" in regards to any regulations made under subsection (4) and to "have regard" to a code of practice published under subsection (5), does not apply to private utilities, to a devolved Welsh authority or transferred Northern Ireland authority (unless they are carrying out procurement under a reserved procurement arrangement) or in relation to a devolved Welsh or transferred Northern Ireland procurement arrangement. Procurement arrangements are defined in section 114 of the Procurement Act 2023.

376 Subsection (9) provides definitions for various terms used in this clause; these are drawn from existing employment law.

Duties of employers relating to equality

Clause 26: Equality action plans

377 This clause amends the Equality Act 2010 to enable obligations to be imposed on employers in

relation to equality action plan.

378 Subsection (1) provides that the Equality Act 2010 is amended.

379 Subsection (2) inserts new section 78A into the Equality Act 2010.

380 Subsection (3) amends section 208 of the Equality Act 2010 in order to specify that a statutory instrument containing regulations under Section 78A will be subject to the affirmative procedure.

New Section 78A

381 Subsection (1) provides that regulations may, require employers to (a) develop and publish an equality action plan showing the steps that they are taking in relation to their employees with regard to matters related to gender equality; and (b) publish prescribed information relating to the plan.

382 Subsection (2) provides that section 78A of the Equality Act 2010 does not apply to an employer with fewer than 250 employees, or a public authority, other than a public authority specified in Part 1 of Schedule 19 to the Equality Act 2010, or a public authority specified in Part 4 of Schedule 19 with the letter "D".

383 Subsections (3) and (4) provide that a matter is related to gender equality if it is related to advancing equality of opportunity between male and female employees. Matters relating to gender equality include

a. addressing the gender pay gap;

b. supporting employees going through the menopause.

384 Subsection (5) provides a non-exhaustive list as to what regulations may include, such as the content of a plan, and when or how frequently a plan or information is to be published or revised.

385 Subsections (6) provides that regulations may not require an employer to publish information more frequently than every 12 months

386 Subsections (7-8) provides that the regulations may make provision about how a failure to comply with the regulations may be enforced and that a failure to comply with the regulations includes a reference to failure by a person acting on behalf of the employer.

387 Subsection (9) provides that a Minister of the Crown must consult the Equality & Human Rights Commission before making such regulations, and the Welsh Ministers before making regulations relating to cross-border Welsh public authorities.

Clause 27: Provision of information relating to outsourced workers

388 Subsection (1) provides that the Equality Act is amended.

389 Subsection (2) amends section 78 of the Equality Act 2010. It enables regulations that are made under section 78 of the Equality Act to require private and voluntary sector employers with at least 250 employees in Great Britain to publish information about the service providers that they contract with for outsourced services.

390 Subsection (3) amends section 153 of the Equality Act 2010, to enable a Minister of the Crown, by regulations, to require public authorities in England to publish information about the service providers they contract with for outsourced services.

391 Subsection (4) amends section 154 of the Equality Act 2010 as above, in relation to cross-border public authorities.

Part 3: Pay and Conditions in Particular Sectors

Chapter 1: School Support Staff

Clause 28: Pay and conditions of school support staff in England

392 Clause 28 introduces Schedule 3 which makes further provision establishing the School Support Staff Negotiating Body.

Schedule 3 – Pay and conditions of school support staff in England

393 Paragraph 1 inserts new Part 8A: School Support Staff in England – The School Support Staff Negotiating Body into the Education Act 2002. Part 8A consists of new section 148A – 148R.

New section 148A The School Support Staff Negotiating Body

394 This section establishes the School Support Staff Negotiating Body and introduces new Schedule 12A to the Education Act 2002.

New section 148B Matters within the SSSNB's remit

395 This section describes the matters that fall within the remit of the School Support Staff Negotiating Body, these matters being the pay; terms and conditions of employment; training; and career progression of school support staff in England. It also allows the Secretary of State to include within or exclude matters from the School Support Staff Negotiating Body's remit by regulations.

New section 148C Meaning of "school support staff"

396 This section defines "school support staff" as persons employed in maintained schools and academies in England who are not qualified teachers or persons of descriptions prescribed in regulations. The Government envisages that the power to make regulations will be exercised so as to exclude from the definition of "school support staff", staff such as unqualified teachers, trainee teachers or executives working within academies and/or persons whose terms and conditions of employment are determined in accordance with agreements of other bodies.

New section 148D Referral of matter to the SSSNB for consideration: general

397 This section enables the Secretary of State to refer a matter to the School Support Staff Negotiating Body for consideration where that matter falls within the remit of the School Support Staff Negotiating Body.

New section 148E Referral of matters relating to remuneration or conditions of employment

398 Subsection (1) provides that this section applies where the Secretary of State refers a matter to the School Support Staff Negotiating Body under section 148D that relates to the remuneration of school support staff, or terms and conditions of employment of school support staff.

399 Subsection (2) enables the Secretary of State to specify factors which the School Support Staff Negotiating Body must have regard to in considering a matter referred to it in relation to the remuneration or terms and conditions of school support staff. It also allows the Secretary of State to specify a date by which the School Support Staff Negotiating Body must submit any

agreement reached about the matter.

400 Subsection (3) requires the School Support Staff Negotiating Body to consider matters referred to it.

401 Subsections (4) and (5) require the School Support Staff Negotiating Body to submit any agreement reached by it to the Secretary of State, or to notify her that it has been unable to reach agreement, by any date specified under subsection (2).

402 Subsection (6) allows the Secretary of State to withdraw or vary the referral, vary the factors the School Support Staff Negotiating Body must have regard to or vary the date by which they are to reach agreement.

New section 148F Referral of matters relating to training or career progression

403 Subsection (1) provides that this section applies where the Secretary of State refers a matter to the School Support Staff Negotiating Body under section 148D that relates to the training or career progression of school support staff

404 Subsection (2) enables the Secretary of State to specify factors which the School Support Staff Negotiating Body must have regard to in considering a matter referred to it in relation to the training or career progression of school support staff. It also allows the Secretary of State to specify a date by which the School Support Staff Negotiating Body must submit a report about the matter to the Secretary of State.

405 Subsection (3) requires the School Support Staff Negotiating Body to consider matters referred to it, having regard to any specified factors.

406 Subsections (4) and (5) require the School Support Staff Negotiating Body to submit a report about the matter (including any recommendations it makes about the matter) to the Secretary of State by any date specified under subsection (2).

407 Subsection (6) allows the Secretary of State to withdraw or vary the referral, vary the factors the School Support Staff Negotiating Body must have regard to or vary the date by which they are to submit a report.

New section 148G Consideration of matters by the SSSNB without a referral

408 Subsection (1) allows the School Support Staff Negotiating Body to consider a matter within its remit that has not been referred to it by the Secretary of State, with the agreement of the Secretary of State.

409 Subsection (2) allows the School Support Staff Negotiating Body to submit any agreement reached about a matter relating to remuneration or the terms and conditions of school support staff to the Secretary of State.

410 Subsection (3) allows the School Support Staff Negotiating Body to submit a report about a matter relating to the training or career progression of school support staff to the Secretary of State.

New section 148H Agreement submitted by SSSNB under section 148E or 148G

411 Subsection (1) provides that this section applies where the SSSNB submits an agreement to the Secretary of State under section 148E(4) or section 148G(2).

412 Subsections (2) and (3) allows the Secretary of State to either make regulations ratifying the agreement (in part or in full) or refer the agreement back to the SSSNB for further consideration. Where the Secretary of State ratifies only part of an agreement, the remainder of the agreement falls away.

New section 148I Reconsideration of agreement by SSSNB

413 Subsection (1) provides that this section applies where the Secretary of State has referred an agreement back to the School Support Staff Negotiating Body for reconsideration under section 148H(2)(b) or section 148J(2)(b).

414 Subsection (2) allows the Secretary of State to specify factors that the School Support Staff Negotiating Body must take into account in their reconsideration of a matter. It also allows the Secretary of State to specify a date by which the School Support Staff Negotiating Body must submit a revised agreement or, if it has not agreed any revisions, resubmit the existing agreement to the Secretary of State.

415 Subsection (3) requires the School Support Staff Negotiating Body to reconsider the agreement.

416 Under subsection (4) and (5) the School Support Staff Negotiating Body must then submit a new version of the agreement to the Secretary of State or, if no revisions are agreed, resubmit the existing version, by any date specified under subsection (2).

417 Subsection (6) allows the Secretary of State to withdraw or vary the referral, vary the factors the School Support Staff Negotiating Body must have regard to or vary the date by which they are to reach agreement.

New section 148J Powers of Secretary of State following reconsideration under section 148I

418 Subsection (1) provides that this section applies where the School Support Staff Negotiating Body has submitted an agreement following reconsideration under section 148I.

419 Subsection (2) gives the Secretary of State powers to (a) make regulations ratifying the agreement in full or partially; (b) refer the agreement back to the School Support Staff Negotiating Body for reconsideration; (c) make regulations requiring prescribed persons to have regard to the agreement in exercising prescribed functions; (d) make regulations in relation to a matter to which the agreement relates, otherwise than in the terms of the agreement. Where the Secretary of State ratifies only part of an agreement, the remainder of the agreement falls away.

420 Subsection (3) provides that the Secretary of State may refer an agreement back to the School Support Staff Negotiating Body for reconsideration under subsection (2) only if it appears to the Secretary of State that one or more of the conditions set out in subsection (5) apply, being that (a) the agreement does not properly address the matter; (b) it is not practicable to implement the agreement; or (c) the School Support Staff Negotiating Body has failed to take into account factors specified by the Secretary of State.

421 Subsection (4) provides that the Secretary of State may make regulations under subsection 2(d) only if it appears to her that one or more of the conditions in subsection (5) applies and there is an urgent need to make such regulations.

422 Subsection (5) sets out the conditions referred to in subsection (3).

New section 148K Powers of Secretary of State in absence of SSSNB agreement

423 Subsections (1) and (2) provide that, where the School Support Staff Negotiating Body has been unable to reach agreement on a matter that has been referred to it in relation to the remuneration or terms and conditions of school support staff or has failed to do so by a specified date, the Secretary of State may extend any such deadline or, if she considers there is an urgent need to do so, make provision by regulations in relation to the matter.

424 Subsections (3) and (4) provide that where, following reconsideration of an agreement, the School Support Staff Negotiating Body fails to submit a revised agreement or resubmit the

existing agreement to the Secretary of State by a specified date, the Secretary of State may extend any such deadline or, if she considers there is an urgent need to do so, by regulations make provision in relation to a matter to which the agreement relates.

425 Subsection (5) requires the Secretary of State to consult the School Support Staff Negotiating Body before making regulations under this section.

New section 148L Powers of Secretary of State where SSSNB fails to submit report

426 Subsections (1) and (2) provide that, where the School Support Staff Negotiating Body has failed to submit a report concerning a matter related to the training or career progression of school support staff, or failed to submit it by a specified date, the Secretary of State may extend that deadline or issue guidance in relation to the matter under section 148P.

New section 148M Effect of regulations ratifying agreement

427 Subsection (1) provides that this section applies where the Secretary of State makes regulations ratifying (to any extent) an agreement submitted by the School Support Staff Negotiating Body.

428 Subsection (2) provides that a person's remuneration is to be determined and paid in accordance with an agreement ratified by regulations.

429 Subsection (3) provides that provisions of a ratified agreement that relate to any other term or condition of a person's employment become a term of the person's contract of employment.

430 Subsections (4) and (5) provide that terms in employment contracts and academy funding agreements have no effect if they are inconsistent with or provide for something that is prohibited by the agreement.

New section 148N Effect of regulations making provision otherwise than in terms of agreement

431 Subsections (1) and (2) provide that regulations made otherwise than in terms of a School Support Staff Negotiating Body agreement, or in the absence of an agreement, must either require prescribed persons to have regard to the regulations when exercising prescribed functions or determine the terms and conditions of employment of the persons to whom the regulations apply.

432 Where the regulations determine the terms and conditions of employment of school support staff, subsections (4) and (5) provide that a person's remuneration is to be determined and paid in accordance with regulations relating to remuneration and provisions in regulations relating to any other terms and conditions are to become a term of the person's contract of employment.

433 Subsections (6) and (7) provide that terms in employment contracts and academy funding agreements have no effect if they are inconsistent with or provide for something that is prohibited by the regulations.

New section 148O Regulations: supplementary

434 Subsections (1) and (2) provide that regulations made under part 8A may apply retrospectively but may not reduce a person's pay or alter their terms and conditions of employment to their detriment retrospectively.

435 Subsection (3) allows regulations made under part 8A to make provision by reference to a School Support Staff Negotiating Body agreement or any other document. Where they do so, subsection (4) provides that they must include provision about the publication of the agreement or other document. .

New section 148P Guidance

436 Subsection (1) allows the School Support Staff Negotiating Body, with the Secretary of State's approval, to issue guidance relating to an agreement ratified by regulations or an agreement which prescribed people are required to have regard to.

437 Subsection (2) allows the Secretary of State to issue guidance relating to an agreement ratified by regulations; an agreement which prescribed people are required to have regard to; regulations made otherwise than in the terms of an agreement or, subject to subsection (3), training and career progression.

438 Subsection (3) provides that the Secretary of State may only issue guidance in relation to training and career progression where they have had regard to the School Support Staff Negotiating Body's report on the matter, save where it has failed to submit that report by a specified date.

439 Subsection (4) provides that local education authorities, governing bodies of schools maintained by local education authorities and proprietors of academies must have regard to guidance issued under this section.

New section 148Q Agreements of SSSNB not to be collective agreements, etc

440 This section provides that negotiations of the School Support Staff Negotiating Body are not collective bargaining for the purposes of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992 and agreements reached by them are not collective agreements for the purposes of that Act.

New section 148R Interpretation of this Part

441 This section defines terms used in the Part.

442 Paragraph 2 of Schedule 3 inserts new schedule 12A into the Education Act 2002. This Schedule makes provision for the constitutional arrangements, membership and proceedings of the School Support Staff Negotiating Body and certain administrative matters relating to the School Support Staff Negotiating Body.

Schedule 12A The School Support Staff Negotiating Body

443 Paragraph 1 of new schedule 12A provides that the School Support Staff Negotiating Body is to be constituted in accordance with arrangements made by the Secretary of State. Under paragraph 1, subsection (2) the Secretary of State must appoint school support staff and school support staff employer representatives to the School Support Staff Negotiating Body in regulations. The Secretary of State must then consult those members before making or revising the arrangements for the body's constitution. Subsection (5) requires the Secretary of State to consult the Trades Union Congress before appointing school support staff representative members of the body.

444 Paragraph 2, new schedule 12A provides that the members of the School Support Staff Negotiating Body must include representatives of the prescribed school support staff and employer organisations and the Secretary of State. They may also include other members who don't represent school support staff or employer organisations.

445 Paragraph 3, new schedule 12A requires the members of the School Support Staff Negotiating Body to include an independent chair.

446 Paragraph 4, new schedule 12A requires only those members representing school support staff or employer organisations to have voting rights.

447 Paragraph 5, new schedule 12A allows the Secretary of State to provide administrative support to the School Support Staff Negotiating Body.

448 Paragraph 6, new schedule 12A requires the constitution of the School Support Staff Negotiating

Body to provide for the School Support Staff Negotiating Body to issue an annual report about the performance of its functions.

449 Paragraph 7, new schedule 12A allows the School Support Staff Negotiating Body's constitution to make provision in relation to the payment of fees to the independent chair and the payment of expenses incurred by the School Support Staff Negotiating Body.

450 Paragraph 8, new schedule 12A defines terms used in the schedule.

451 Paragraph 3, Schedule 3 disqualifies the chair of the School Support Staff Negotiating Body from membership of the House of Commons.

452 Paragraph 4 provides that paragraph 8, Schedule 2 Education Act 2002 has effect subject to provision made by regulations under new Part 8A.

453 Paragraph 5 allows the Secretary of State to rely on pre-commencement consultation in relation to the requirement to consult in paragraph 1(5) of new Schedule 12A to the Education Act 2002.

Chapter 2: Adult and Social Care

454 This policy will introduce sectoral agreements in the adult social care sector. It will create a framework for establishing and implementing a legally binding agreement which may be negotiated by a "negotiating body" made up of relevant employer and worker representatives, including trade union officials of trade unions representing the interests of social care workers, as well as other appointed members. This framework will allow for agreements to set out matters relating to pay and other terms for relevant workers in the adult social care sector, or specific types of social care workers.

The Adult Social Care Negotiating Body

Clause 29: Power to establish the Adult Social Care Negotiating Body

455 This clause gives the Secretary of State the power to create an Adult Social Care Negotiating Body ("the Negotiating Body").

456 Subsection (2) sets out that in relation to the Negotiating Body, the Secretary of State has the powers to make provision via regulations for, amongst other things:

a. Appointment of members, termination of appointments, and the number of members;

b. Appointment of a chair of the Negotiating Body;

c. How the Negotiating Body makes decisions;

d. Keeping records of a specified description;

e. Payment of fees or expenses to members of the Negotiating Body;

f. Staff or facilities to be provided to the Negotiating Body; and

g. Reporting requirements for the Negotiating Body.

457 Subsection (3) establishes regulations dealing with membership of the Negotiating Body must provide that members of the Negotiating Body must include:

a. Officials of one or more trade unions that represent the interests of social care workers;

b. Persons representing the interests of the employers of social care workers; and

c. Anyone else of a specified description.

458 Subsection (4) clarifies that the validity of anything done by the Negotiating Body is not affected by a vacancy or defective appointment.

459 Subsection (5) may amend any enactment where the need to do so arises as a consequence of establishing the Negotiating Body. Subsection (6) defines "specified" as referring to something which is specified in the regulations.

Clause 30: Matters within the Negotiating Body's remit

460 Subsection (1) outlines the matters within the remit of the Body, namely the following:

a. The remuneration of social care workers, or of social care workers of a specified description;

b. The terms and conditions of employment for social care workers. or of social care workers of a specified description; and,

c. Any other matters relating to the employment of a social care worker, or of social care workers of a specified description.

461 This means that once the Body has been established, its remit will be (a) remuneration and (b) terms and conditions of employment of social care workers. Subsection (c) also provides the power to add other matters to the Body's remit and these additional matters are confined to "matters relating to employment as a social care worker, or a social care worker of a specified description". Regulations may be made to confine the remit to social care workers of a specified description.

462 Subsection (2) defines "specified" as being specified in regulations made by the Secretary of State.

Clause 31: Meaning of "social care worker"

463 This clause defines the meaning of "social care worker" for the purposes of this Chapter.

464 Subsection (1) defines social care workers as "a person who is employed wholly or mainly in, or in connection with, the provision of adult social care in England"

465 Subsection (2) defines "adult social care" as:

a. including any form of personal care or other practical assistance provided for individuals aged 18 or over who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance; and,

466 not including anything provided by an establishment or agency for which His Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under section 5 of the Care Standards Act 2000.

Consideration of matters by the Negotiating Body

Clause 32: Consideration of matters by the Negotiating Body

467 This clause sets out that the Secretary of State may, amongst other things, make provision about the matters that the Negotiating Body may or must consider when coming to an agreement.

468 Subsection (1) establishes that the Secretary of State may make provision about the consideration by the Body of matters within its remit.

469 Subsection (2) outlines, but does not represent an exhaustive list of, the provisions that may be

made under subsection (1). These include provisions that:

a. Outline circumstances in which the Negotiating Body "may" or "must" consider a matter that is within its remit and the power for the Secretary of State to refer specific matters to the Body for consideration;

b. Specify, or enable the Secretary of State to specify, factors to which the negotiating Body "may" or "must" "have regard to";

c. Specify, or enable the Secretary of State to specify, conditions that any agreement made by the negotiating Body must meet, including conditions relating to funding;

d. Specify any information-sharing requirements that members of the Negotiating Body may be subject to;

e. Require the Negotiating Body to submit agreements about a matter to the Secretary of State; and,

f. Set a specific date for the Negotiating Body to take any steps specified in regulations.

470 Subsection (3) defines "specified" as specified in the regulations.

Clause 33: Reconsideration by the Negotiating Body

471 This clause outlines the powers of the Secretary of State in regulations to specify the circumstances in which the Secretary of State may refer a submitted agreement back to the Negotiating Body for reconsideration.

472 Subsection (1) allows the Secretary of State to specify in regulations that the Secretary of State may refer a submitted agreement back to the Negotiating Body for reconsideration or to specify that they may do so in specified circumstances.

473 Subsection (2) allows the Secretary of State to set out in regulations what happens where an agreement is referred back to the Negotiating Body. Subsection (3) outlines, but does not represent an exhaustive list of, the provisions that may be made under subsection (2). These include provisions that:

a. Require the Negotiating Body to reconsider the agreement;

b. Specify, or enable the Secretary of State to specify, factors that the Negotiating Body "may" or "must" "have regard to";

c. Specify, or enable the Secretary of State to specify, conditions that any agreement made by the Negotiating Body must meet, including conditions relating to funding;

d. Specify any information-sharing requirements that members of the Negotiating Body may be subject to;

e. Specify steps which the Negotiating Body may take following reconsideration, including submitting either the original or a revised agreement to the Secretary of State; and,

f. Set a specific date for the Negotiating Body to take any steps specified in regulations.

474 Subsection (4) defines "specified" as specified in the regulations.

Clause 34: Failure to reach an agreement

475 This clause gives the Secretary of State the power to make provision in circumstances where the Negotiating Body is unable to reach an agreement.

476 Subsection (1) confers power to the Secretary of State to make provisions about cases where the Negotiating Body is unable to reach an agreement on a matter.

477 Subsection (2) outlines, but does not represent an exhaustive list of, what the regulations made under subsection (1) could provide for:

a. To resolve disagreements about any matter;

b. To confer functions on the Secretary of State or a person specified in the regulations; and,

c. To require the Negotiating Body to act in accordance with decisions made by the Secretary of State, or a person specified in the regulations.

Giving effect to agreements of the Negotiating Body

Clause 35: Power to ratify agreements

478 This clause gives the Secretary of State the power to ratify agreements submitted to them by the Negotiating Body (this includes agreements submitted to them following reconsideration).

479 Subsection (1) provides the Secretary of State with the power to ratify an agreement if that agreement has been submitted in accordance with regulations under sections 32 or 33.

480 Subsection (2) allows the Secretary of State to ratify the agreement through regulations either:

a. In full; or

b. To the extent specified in the regulations.

481 Note, that the regulations made under clause 35 may make provision that has retrospective effect (see clause 41).

Clause 36: Effect of regulations ratifying agreement

482 This clause sets out the effect of regulations made by the Secretary of State to ratify agreements under clause 35, ensuring that any changes to a social care workers' remuneration or other terms or conditions set out in an agreement take effect within their contract.

483 Subsection (1) refers to the Secretary of State's power to ratify agreements through regulations under the circumstances outlined in clause 35.

484 Subsection (2) sets out that if the agreement relates to a social care worker's remuneration, that remuneration is to be determined and paid in accordance with the agreement.

485 Subsection (3) sets out that if the agreement relates to any other term or condition of a social care worker's employment, then it has effect as a term of the worker's contract.

486 Subsection (4) sets out that a term of a social care worker's contract has no effect to the extent it makes provision that is prohibited by or otherwise inconsistent with the agreement.

Powers of Secretary of State to deal with matters

Clause 37: Powers of Secretary of State to deal with matters

487 This clause gives the Secretary of State the power to make regulations relating to a social care worker's remuneration, terms or conditions, or any other matters in the event that the negotiating body has been unable reach an agreement regarding such matters.

488 Subsection (1) states this section applies where:

a. The Negotiating Body has been unable to reach an agreement on a matter; and,

b. Any other conditions specified in regulations are met.

489 Subsection (2) sets out that the Secretary of State may by regulations make provision about the matter.

490 Subsection (3) outlines that provisions created under subsection (2) are to have effect for determining the terms and conditions of employment of social care workers to whom the regulations apply to.

491 Subsection (4) outlines that if (3) applies for provisions created, then subsections (5) to (7) will apply.

492 Subsection (5) sets out that if the regulations relates to a social care worker's remuneration, that remuneration is to be determined and paid in accordance with the regulations.

493 Subsection (6) sets out that if the regulations relate to any other term or condition of a social care worker's employment, then it has effect as a term of the worker's contract.

494 Subsection (7) sets out that a term of a social care worker's contract has no effect to the extent it makes provision that is prohibited by or otherwise inconsistent with the regulations.

495 Note, that the regulations made under clause 37 may make provision that has retrospective effect (see clause 41).

Guidance etc

Clause 38: Guidance and codes of practice

496 This clause gives the Secretary of State power to create guidance or codes of practice.

497 Subsection (1) gives the Secretary of State the power to create provisions about issuing guidance or codes of practice in relation to:

a. Agreements submitted by the Negotiating Body in accordance with regulations under clause 32 or clause 33; and,

b. Regulations made under clause 37.

498 Subsection (2) outlines, but does not represent an exhaustive list of things regulations in relation to issuing guidance or codes of practice, may do:

a. Impose duties on specified persons in relation to any provision of guidance or a code of practice; and,

b. Make provisions about the consequences of the failure to comply with duties imposed in subsection (2)(a).

499 Subsection (3) sets out that the provision made in subsection (2)(b) could include provision for a failure to take any such code of practice or guidance to be taken into account in any proceedings before a court or tribunal, for purposes that include determining the amount of any financial award.

500 Subsection (4) sets out that "specified" means specified in the regulations.

Enforcement

Clause 39: Duty of employers to keep records

501 This clause outlines the power of the Secretary of State to create provisions regarding the

keeping of records.

502 Subsection (1) empowers the Secretary of State to create provisions requiring employers to:

a. Keep records of a specified description and in a specified form and manner; and,

b. To preserve those records for a specified period.

503 Subsection (2) sets out that the power to make regulations under this clause may be used to apply the following provisions of the National Minimum Wage Act 1998 (with or without modifications) in relation to the keeping and preservation of records:

a. Section 10 (worker's right of access to records);

b. Section 11 (failure of employer to allow access to records);

c. Section 11A (extension of time limit to facilitate conciliation before institution of proceedings).

504 Subsection (3) defines "specified" as meaning specified in the regulations.

Clause 40: Enforcement of matters relating to pay

505 This clause sets how the Secretary of State may enforce the remuneration terms of an agreement or regulations made under section 37, namely by applying specific provisions in the National Minimum Wage Act 1998 (with or without modifications) in regulations.

506 Subsection (1) empowers the Secretary of State to utilise provisions outlined in subsection (2) of the National Minimum Wage Act 1998 for the purposes of enforcing an agreement ratified by the Body and regulations made under section 37.

507 The provisions of the National Minimum Wage Act 1998 in respect of which regulations may be made under subsection (1) are:

a. Section 17 (non-compliance: worker entitled to additional remuneration).

b. Sections 19 to 19H (notices of underpayment).

c. Section 28 (evidence: reversal of burden of proof in civil proceedings).

d. Section 48 (superior employers).

e. Section 49 (restriction on contracting out).

508 Subsection (3) sets out that regulations made under this section must provide that no amount is recoverable both:

a. Under the National Minimum Wage Act 1998 under purposes mentioned in subsection (1); and,

b. Under the National Minimum Wage Act 1998 for any other purpose.

509 This is intended to prevent double recovery by claimants under both the National Minimum Wage enforcement provisions and corresponding FPA provisions.

Supplementary and general

Clause 41: Regulations under section 35 or 37: supplementary

510 This section provides that regulations made under clauses 35 or 37 may apply retrospectively subject to certain limitations.

511 Subsection (1) sets out that regulations made under clauses 35 or 37 may have a retrospective

effect, subject to subsection 2 of this clause.

512 Subsection (2) sets out the limitations on the retrospective effect of regulations made under clause 35 or 37, preventing any:

a. Reduction of remuneration in respect of a period wholly or mainly before the day regulations are made; and,

b. Alteration of a condition of employment to a person's detriment in respect of such a period.

513 Subsection (3) means that regulations made under section 35 or 37 may make provision by reference to:

a. An agreement submitted to the Secretary of State by the Negotiating Body; and,

b. Any other document,

514 If these regulations do refer to the documents at (a) and (b), then they must include a provision about the publication of the agreement or other document.

Clause 42: Regulations under this Chapter

515 This clause outlines the parameters of regulations created under this Chapter.

516 Subsection (1) allows regulations to confer a discretion on a person when dealing with any matter.

517 Subsection (2) sets out that regulations ratifying an agreement under section 35 are subject to the negative resolution procedure.

518 Subsection (3) sets out that anything else in this chapter is subject to the affirmative resolution procedure.

Clause 43: Status of agreements, etc

519 Subsection (1) empowers the Secretary of State by regulations to provide that:

a. Nothing done by the Body or members of the Negotiating Body when acting in that capacity can be regarded as collective bargaining for the purposes of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992; and,

b. Any agreement reached by the Negotiating Body does not constitute a collective agreement as defined in that Act.

Clause 44: Interpretations of this Chapter

520 This clause outlines the definitions used in this chapter.

521 Subsection (2) sets out how this Chapter applies to "agency workers" that meet the conditions specified at subsection 2(a)-(c). In such cases, by virtue of subsection (3), the provisions of this Chapter have effect as if there was a worker's contract between the agency worker and whoever is responsible for paying the agency worker for their work or, if neither the agent nor the principle is responsible, whichever party does in fact pay the agency worker in respect of the work.

522 Subsection (4) outlines that in subsections (2) and (3) any reference to "work" includes performing services.

523 Subsection (5) this makes clear that any references to a ratified agreements within this Chapter also includes any parts of an agreement that have been ratified.

Part 4: Trade Unions and Industrial Action, etc

Right to statement of trade union rights

Clause 45: Right to statement of trade union rights

524 Subsection (1) of clause 45 specifies that the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA) is amended in accordance with the following subsections (2) to (6).

525 Subsection (2) of clause 45 inserts a new section (136A) into TULRCA. This section is titled "Right to statement of trade union rights".

526 Subsection (3) of clause 45 amends section 284 (exceptions for share fishermen) TULRCA, to insert reference to section 136A. Subsection (4) of clause 45 amends section 285 (exceptions for employment outside Great Britain) to insert reference to section 136A. Subsection (5) of clause 45 amends section 286 (power to provide for other exceptions) to insert reference to section 136A. Subsection (6) of clause 45 amends section 296 (meaning of worker and related expressions), to insert reference to the new section 136A(5) which specifies the definition of worker and employer.

527 Subsection (7) of clause 45 amends section 38 of the Employment Act 2002 (failure to give statement of employment particulars etc) subsections (2) (b) and (3) (b), to include the rights conferred by this part (PART 4 TRADE UNIONS AND INDUSTRIAL ACTION, ETC) of the Employment Rights Bill as a measure under which employment tribunals can to award compensation to an employee where the lack, incompleteness or inaccuracy of the written statement becomes evident upon a claim being made under specified tribunal jurisdictions.

New Section 136A

528 Subsection (1) creates a requirement on an employer to provide to an employee a written statement of the worker's right to join a trade union.

529 Subsection (2) provides for the specific situations in which the written statement of the workers right to join a trade union must be provided.

530 Subsection (2) paragraph (a) establishes that the written statement of the workers right to join a trade union must be provided to the employee by the employer at the same time as the employer provides the worker with a statement of their employment particulars as specified under section 1 of the Employment Rights Act 1996.

531 Subsection (2) paragraph (b) specifies that the written statement of the workers right to join a trade union must also be provided to the employee by the employer 'at other prescribed times'. These 'other prescribed times' will be detailed in secondary legislation.

532 Subsection (3) sets out that the Secretary of State may prescribe the following specifics of the written statement of the workers right to join a trade union. Subsection (3) paragraph (a), the information that must be included in the written statement. Subsection (3) paragraph (b), the form that the written statement must take. Subsection (3) paragraph (c), the manner in which the written statement must be given to the employee.

533 Subsection (4) sets out that the written statement of the workers right to join a trade union may also include information that the employee has rights conferred by this part (4) of the Employment Rights Bill.

534 Subsection (5) sets out that in this section (section 42 of the Employment Rights Bill), the

meaning of the terms "worker" and "employer" have the same meaning as is specified in Section 230 of the Employment Rights Act 1996. This is as follows: Worker: means "an individual who has entered into or works under (or, where the employment has ceased, worked under)— (a) a contract of employment, or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual." Employer: means "in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed."

535 Subsection (6) sets out that under Section 293 of TULCRA, the Secretary of State may by regulations (through the negative statutory instrument process) prescribe anything authorised or required to be prescribed for the purposes of this Act.

536 Subsection (7) refers to section 38 of the Employment Act 2002 in relation to the penalties for failing to give a statement in accordance with this section (i.e. failing to provide to an employee a written statement of the worker's right to join a trade union), and aligns these penalties with those established by the Employment Act 2002 for failing to provide a statement of their employment particulars.

Right of trade unions to access workplaces

Clause 46: Right of trade unions to access workplaces

537 This clause provides for access agreements, between listed trade unions and employers, which make provision for officials from those trade unions, to access the workplace, for specified "access purposes". The clause inserts Chapter 5ZA, Rights of Trade Unions to access workplaces, into TULRCA, sections 70ZA to 70ZL.

New Section 70ZA

538 Section 70ZA (Access agreements), subsection 1 provides that section 70ZA applies for the purposes of the Chapter. Subsections (2) to (6) contain definitions of the following terms for the purposes of the Chapter: "access agreement", "listed trade union", "access" and "access purposes". The access purposes are provided in subsection (5) and include meeting trade union members, recruiting new trade union members, supporting a trade union member with an employment related matter, or to facilitate collective bargaining. Subsection (7) introduces sections 70ZB to 70ZF as making provision about entering into access agreements. Subsections (8) and (9) introduce the remaining sections.

New Section 70ZB

539 Section 70ZB (Access requests and response notices), subsection (1) provides that a trade union may give an access request to an employer for any of the access purposes. Subsections (2) and (4) set out the process for the trade union to make an access request, and for the employer to provide a response notice to that request. Subsections (3) and (5) provide a power for the Secretary of State to set out in secondary legislation the form the information must be in, the information to be provided, and the manner in which the information must be given, for the access request and response notice respectively.

540 Subsection (6) defines an access request as a request given under subsection (1), and in accordance with subsection (3), and defines a response notice as a notice given under subsection (4), and in accordance with subsection (5).

New Section 70ZC

541 Section 70ZC (Response period and negotiation period) provides that the Secretary of State can

prescribe in regulations the length of the "response period" and the "negotiation period" that apply for the purposes of sections 70ZD and 70ZE. The response period starts on the day the access request is given, and the negotiation period starts on the day that the employer gives a response notice.

New Section 70ZD

542 Section 70ZD (Entering into access agreement by negotiation), subsection (1) sets out the conditions that apply for an access agreement to be entered into under the section. Firstly, that a listed trade union gives an access request; secondly, that the employer provides a response notice before the end of the response period. Thirdly, that the union and employer have agreed in writing the terms on which trade union officials are to have access, before the end of the negotiation period. Finally, the union and employer need to notify the Central Arbitration Committee (CAC) jointly of those terms.

543 The Secretary of State can make provision as to the form and manner of that notification to the CAC in secondary legislation under section 70ZD(1)(d). Subsection (2) signposts section 70ZE as providing for cases where access agreements are treated as being entered into following a CAC determination.

New Section 70ZE

544 Section 70ZE (Determinations by the Central Arbitration Committee) makes provision for CAC determinations. Subsection (1) provides that the section applies where a listed trade union has given an access request and either the employer has not responded in time, or the employer has responded but negotiations have not been completed in time. Subsection (2) provides that where an application is made, the CAC can make a determination that officials are, or are not, to have access to the workplace. Subsection (3)(a) provides that where the determination is that union officials are to have access, it must specify the terms of access, including any assistance the employer must provide in relation to the access. An agreement is then treated as being entered into between the employer and trade union, containing only those terms from the CAC determination.

545 Subsection (4) provides that an application for a determination can be made by the union, in cases where the employer has not responded to the access notice, or by the union or employer where negotiations have been unsuccessful.

546 Subsection (5) provides that applications under this section must be in writing and in the form the CAC may require. An application cannot be made after the end of a period beginning with the date on which the access request is given, and that period is to be provided for in regulations made by the Secretary of State. Subparagraphs (6)(a) to (c) provide that when considering applications under this section the CAC may make: such enquiries as it sees fit; reasonable requests to provide information or documents relevant to the application; and so far as reasonably practicable, must give any person who it considers has a proper interest in the application an opportunity to be heard.

547 Subsection (7) provides that a determination must be in writing and state the reasons for that determination.

New Section 70ZF

548 Section 70ZF (Determinations by the Central Arbitration Committee: Further provision), subsection (1) provides that subject to regulations made under this section, (which may for example exempt certain workplaces from the Chapter), the CAC must make determinations under section 70ZE consistent with the access principles. Those access principles are set out at subsection (2) and seek to ensure a balance between the interests of the trade union and

employer respectively.

549 The access principles are: (a) that officials of a listed trade union should be able to access a workplace for any of the access purposes (which are defined under section 70ZA(5)) in any manner that does not unreasonably interfere with the employer's business; (b) an employer should take reasonable steps to facilitate access by officials of a listed trade union to a workplace; and (c) access should be refused entirely only where it is reasonable in all the circumstances to do so.

550 Subsection (3) provides a power for the Secretary of State to provide in regulations the terms of the access agreement that the CAC must consider as not unreasonably interfering with an employer's business; that must be considered as reasonable steps that an employer should take to facilitate access; and must consider as being terms that are reasonable for a union to comply with.

551 Subsection (4) provides a power for the Secretary of State to provide in regulations the circumstances where the CAC must take as reasonable for the purposes of making a determination that officials of a union are not to have access, or where they must have access. Subsection (5) provides a non-exhaustive list of matters that the circumstances provided for in regulations made under the power in subsection (4) may reference. These matters are (a) the number of workers in the workplace that are members of the union; (b) the description of business carried on by the employer; (c) the number of workers employed by the employer; (d) the description of workplace; (e) the ability of the employer to facilitate access to the workplace; (f) avoiding prejudice to the prevention or detection of offences; and (g) national security.

New Section 70ZG

552 Section 70ZG (variation and revocation of agreements), subsection (1) provides that the parties may vary or revoke the agreement. Under subsection (2) this must be done in writing. Subsection (3) provides that where the access agreement is varied it has effect as an access agreement under the Chapter, and similarly subsection (4) provides that where it is revoked it ceases to be an access agreement for the purposes of the Chapter. Subparagraph (5)(a) provides that both parties need to notify the CAC of the variation or revocation in writing, and the Secretary of State has the power to make provision in regulations as to the form and manner of that notification. Subparagraph (5)(b) provides that the variation or revocation only has effect after the CAC has been notified.

New Section 70ZH

553 Section 70ZH (Enforcement of access agreements initial complaint), subsection (1) provides that a party can make a complaint to the CAC on the grounds that the other party has breached the access agreement; a third party has prevented access. Subsection (2) provides that the complaint must be made within three months of the act complained of.

554 Subsection (3) provides that the CAC may vary the agreement, make a declaration that the complaint is well-founded or not, and if making a declaration that the complaint is well founded the CAC may also make an order requiring a person to take any steps specified in the order the purposes of ensuring access takes place in accordance with the agreement. As with access agreements varied by the parties, an access agreement varied by the CAC continues to have effect for the purposes of the Chapter, this is provided for under subsection (4). Subsection (5) provides that the CAC when making an order may make provision that is different from the agreement, where it appears to the CAC it is necessary or appropriate to do so.

555 Subsection (6) provides that determinations and orders under this section must be in writing and include reasons for the declaration or order. Subsection (7) provides that taking steps to do something (for the purposes of this section) includes a reference to not doing something.

New Section 70ZI

556 Section 70ZI (Enforcement of access agreements: subsequent complaint) makes provision where there is a subsequent complaint to the CAC following a declaration that a complaint is well founded under section 70ZH(3).

557 Subsection (2) provides that a party to the agreement may make a complaint to the CAC that the person has, within the relevant period, carried out the conduct complained of again. This complaint can be on any of the grounds set out at subsection 2(a) to (c). Subsection 2(a) provides that a complaint under this section can be made where the person has carried out the conduct complained of under section 70ZH again. Subsection (2)(b) provides that where the complaint under section 70ZH was a breach of the agreement, a complaint can be brought under this section that the agreement has been breached again whether or not the agreement has been breached in the same way as it was originally. Subsection (2)(c) provides that a complaint can be made under this section that an order made by the CAC under section 70ZH(3)(c) has been breached again. Subsection (3) provides that that the relevant period referred to in subsection (2)(a) is 12 months from the date of the original CAC declaration. Subsection (4) provides that a complaint is to be made within three months of the act complained of.

558 Subsection (5) provides that the CAC may make a declaration that the complaint is well founded or not, and if it is well founded order that a penalty is paid to the CAC; which must then be paid into the Consolidated Fund (under subsection (9)).

559 Subsection (6) provides that the Secretary of State can set the maximum amount of the penalty in regulations. Subsection (7) provides that a declaration or order made under this section must be in writing and state the reasons for the declaration or order.

560 Subsection (8) provides that a declaration or order made under section 70ZI(5) may be relied upon and enforced by the CAC or a party to the agreement as if it were made by the court.

561 Subsection (10) provides that for the purposes of this section a reference to conduct also includes a person not doing something.

New Section 70ZJ

562 Section 70ZJ (Enforcement of access agreements: supplementary provision) makes further provision for the enforcement of access agreements. Subsection (1) provides that access agreements (as defined in section 70ZA(2)) are only enforceable under this Chapter and not by any other means, and that it is to be conclusively presumed that there was no intention for the access agreement to be a legally enforceable contract. As set out in subsection (2) this means that even when access agreements are or form part of collective agreements, and that collective agreement is intended to be a legally enforceable contract, that intention does not apply to the access agreement (as defined in section 70ZA(2)), so section 179(2) and (3)(a) are disapplied. Subsection (3) provides that complaints under section 70ZH and 70ZI must be in writing and in such form as the CAC may require.

563 Subsection (4) provides that when considering a complaint under section 70ZH or 70ZI, the CAC may make such enquiries as it sees fit, may make reasonable requests to provide information or documents relevant to the complaint, and so far as reasonably practicable must give any person who it considers has a proper interest in the complaint an opportunity to be heard.

564 Subsection (5) provides that the CAC may draw an adverse inference from a person's failure to comply with any reasonable request to provide information or documents relevant to a complaint under section 70ZH or 70ZI.

New Section 70ZK

565 Section 70ZK (Appeals to the Employment Appeal Tribunal), subsection (1) provides that an appeal on points of law can be made to the Employment Appeal Tribunal (EAT); and under subsection (2) the order made under section 70ZI(5)(b) to pay a penalty can also be appealed to the EAT. Under subsection (3) where the appeal to the EAT is in relation to the penalty, the EAT can quash the order of the CAC or reduce the amount of the penalty. Under subsection (4) if the EAT make an order to pay a reduced amount, any funds that the CAC receive in relation to that order are payable into the consolidated fund.

New Section 70ZL

566 Section 70ZL (Regulations under this Chapter) provides that where Regulations prescribe anything for the purpose of this Chapter, they may make different provision for different purposes.

Trade union recognition

Clause 47: Conditions for trade union recognition

567 This clause makes numerous amendments to Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 by removing the requirement that a union demonstrates that it has 10% membership of the proposed bargaining unit on application to the Central Arbitration Committee and replaces this with references to the 'required percentage test'. This clause also removes all references in Schedule A1 that also required a union to demonstrate on application to the CAC that it was likely to obtain a majority in a recognition ballot.

568 Subsection (2) paragraphs (a-d) therefore insert in paragraph 14 (acceptance of applications) of Schedule A1 the "required percentage test" instead of the "10 per cent test".

569 Subsection (3) gives effect to the policy of only requiring unions to obtain a simple majority in a trade union recognition ballot. Subsection (3) therefore amends paragraph 29 of Schedule A1 by substituting a new subparagraph 3 requiring the CAC to declare a trade union as recognised for collective bargaining purposes where the result of the ballot shows that a majority of those voting were in favour of union recognition (the additional requirement for the union to have at least 40% support in the bargaining unit has been deleted).

570 Subsection (4) substitutes in paragraph 36 (admissibility of applications) that an application under paragraphs 11 or 12 of Schedule A1 is inadmissible unless the union has the "required percentage" in the bargaining unit.

571 Subsection (5) substitutes in paragraph 45 (validity of applications) that an application to the CAC will be invalid unless it comprises the "required percentage" of the bargaining unit.

572 Subsection (6) amends paragraph 51 (competing applications) by inserting the "required percentage test" in paragraph 51 subparagraph (2)(c) instead of the "10 per cent test".

573 Subsection (7) amends paragraph 86 (new bargaining unit: assessment of support) by inserting the required percentage. This subsection also clarifies that the CAC can only assess and reject an application on the sole criterion as to whether the required percentage on application has been met (i.e. the second requirement on application that a union demonstrates that it is likely to have majority support in a recognition ballot has been removed).

574 Subsection (8) amends paragraph 87 (new bargaining unit: majority of workers union members) solely in so far as to reference to paragraph 86(2) where the CAC assesses an application solely on one criterion (i.e. whether the application meets the required percentage test). The rest of paragraph 87 in Schedule A1 remains unchanged and the substance of this paragraph remains unchanged.

575 Subsection (9) similarly amends paragraph 88 (new bargaining unit: majority of workers not union members) solely by replacing subparagraph 1 with a new paragraph that references paragraph 86(2) where the CAC assesses an application solely on the criterion whether the union has met on application the required percentage. The rest of paragraph 88 and its substance remains unchanged.

576 Subsection (10) inserts after paragraph 171A of Schedule A1 a new paragraph, paragraph 171B.

a. Subparagraph 1 of new paragraph 171B defines the "required percentage" as 10%.

b. Subparagraph 2 gives the Secretary State the power to amend by Regulations the "required percentage" to be no greater than 10% and no less than 2%.

c. Subparagraph 3 sets out that the Regulations referred to in sub-paragraph 2 can only be made by Statutory Instrument; may include supplementary, incidental, saving or transitional provisions; and may make provision for different cases.

d. Subparagraph 4 requires that the Regulations can only be made if they are presented and approved by both Houses of Parliament (affirmative procedure).

Trade union finances

Clause 48: Requirement to contribute to political fund

577 This clause repeals the requirement for trade unions to opt out their members from contributions to political funds, unless they have expressly requested to opt in. This will return (in substance) to the position before the passage of the Trade Union Act 2016, trade union members being automatically opted in to contribute to a political fund, unless they expressly opt out. In particular, it amends section 82 and 84 of the Trade Union and Labour Relations (Consolidation) Act 1992.

578 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) to (7), set out below. Subsection (2) amends section 82 (1)(ca)(i) of the Trade Union and Labour Relations (Consolidation) Act 1992 to change it to reflect the opt out regime.

579 Subsection (3) sets out replacement text for section 84 of the Trade Union and Labour Relations (Consolidation) Act 1992, to update the requirements for an opt-out process in relation to political funds.

580 Subsection (4) removes section 84A of the Trade Union and Labour Relations (Consolidation) Act 1992, which sets out the information requirements a trade union should meet when notifying their members about contributing to a political fund.

581 Subsection (5) retains an amended requirement for the employer to not deduct a contribution from the member where they are not a contributor to the fund or where their opt out notice has been given but is not yet in force.

582 Subsections (6) and (7) make consequential amendments to section 94 and 299 of the Trade Union and Labour Relations (Consolidation) Act 1992.

583 Subsection (8) repeals subsections (1), (2) and (5) to (8) of section 11 of the Trade Union Act 2016. It also repeals paragraph (7)(3) and paragraph (9) of Schedule 4 to that Act.

New Section 84

584 Subsection (1) sets out a definition of a "contributor" to political funds as a trade union member unless they have given an opt-out notice.

585 Subsection (2) defines an "opt-out notice".

586 Subsection (3) sets out the notice requirements for a trade union to follow if a political resolution is passed under section 73. The trade union must alert members (a) they have a right not to contribute to the political fund, and (b), a member can choose not to contribute by giving an opt-out notice.

587 Subsection (4) sets out that the trade union must follow rules for giving notice under subsection (3) approved of by the Certification Officer.

588 Subsection (5) sets out that the Certification Officer must consider the existing practice and character of the union when deciding whether to approve the rules of the trade union.

589 Subsection (6) provides that an opt-out notice applies from the "relevant day" unless the member withdraws that notice.

590 Subsection (7) defines a "relevant day". The relevant day is the date on which the opt-out notice is given following a political resolution being passed and within one month of the union providing notice under subsection (3) to the member. Otherwise, the relevant day is the 1 January after the opt-out notice is given.

591 Subsection (8) describes the process for withdrawing an earlier opt-out notice through a "withdrawal notice".

592 Under subsection (9), an opt-out notice or a withdrawal notice can be delivered personally, by post, by email, by completing an electronic form provided by the trade union or other electronic means.

Clause 49: Deduction of trade union subscriptions from wages in public sector

593 This clause repeals section 116B of the Trade Union and Labour Relations (Consolidation) Act 1992 as inserted by section 15 of the Trade Union Act 2016. Section 15 placed requirements on public sector employers in relation to providing a check off service. Check off involves the employer deducting trade union subscriptions from a union member's pay on behalf of that union and transferring the money deducted to the union. The Trade Union Act 2016 only permitted public sector employers from providing a check off service if their workers have the option to pay their union subscriptions by other means and arrangements have been made for the union to make reasonable payments to the employer in respect of making the deductions.

594 Subsection (1)(b) makes a consequential amendment to section 296, to remove the reference to section 116B(10).

595 Subsection (2) removes section 15 of the Trade Union Act 2016.

Facilities provided to trade union representatives and members

Clause 50: Facilities provided to trade union officials and learning representatives

596 This clause amends the Trade Union and Labour Relations (Consolidation) Act 1992 in accordance with subsections (2)-(6).

597 Subsection (2) amends section 168 (time off for carrying out trade union duties) inserting subsection 3A to provide that an employer that permits an employee to take time off as required by this section must, where requested by the employee, provide the employee with accommodation and other facilities for carrying out the duties or undergoing the training for which the employee takes time off as is reasonable in all the circumstances, having regard to any relevant Code of Practice issued by ACAS. Subsection (2) also substitutes section 168(4) to state that an employee may present a complaint to an employment tribunal that the employer has

failed to permit the employee to take time off or to provide the employee with facilities, and inserts 168(5) which provides that on complaint to the employment tribunal, it is for the employer to show that the amount of time off which the employee proposed was not a reasonable amount.

598 Subsection (3) makes the equivalent amendments to section 168A (time off for learning representatives), inserting subsection 8A, substitutes section 168A(9) and inserts section 168A(9A).

599 Subsections (4-6) make consequential amendments to sections 172 (remedies), 199 (issue of Codes of Practice by ACAS), and 200 (procedure for issue of Code by ACAS).

600 Subsection (7) makes consequential amendments to section 10 (right to be accompanied) of the Employment Relations Act 1999.

Clause 51: Facilities for equality representatives

601 This clause inserts new Section 168B into the Trade Union and Labour Relations (Consolidation) Act 1992 .

602 Subsections (3)-(10) make consequential amendments to sections 169 (payment for time off), 170 (time off for trade union activities), 171 (time off: time limit for proceedings), 173 (interpretation and other supplementary provisions), 199 (issue of Codes of Practice by ACAS), 200 (procedure for issue of Code by ACAS) and 203 (issue of Codes of Practice by Secretary of State) of the Trade Union and Labour Relations (Consolidation) Act 1992 as a result of new section 168B.

603 Subsection (11) makes consequential amendments to section 18 (conciliation: relevant proceedings) of the Employment Tribunals Act 1996 as a result of new section 168B.

604 Subsection (12) makes consequential amendments to section 104 (unfair dismissal for assertion of statutory rights) of the Employment Rights Act 1996 as a result of new section 168B,

New section 168B

605 Subsection(1) of new section 168B requires that an employer must permit an employee who is a member of an independent trade union recognised by the employer and an equality representative of the trade union to take time off during the employee's working hours for the following purposes.

606 Sub section (2) specifies those purposes are:

a. Carrying out activities for the purpose of promoting the value of equality in the workplace;

b. Arranging learning or training on matters relating to equality in the workplace;

c. Providing information, advice or support to qualifying members of the trade union in relation to matters relating to equality in the workplace;

d. Consulting with the employer on matters relating to equality in the workplace;

e. Obtaining and analysing information on the state of equality in the workplace;

f. Preparing for any of the things mentioned in paragraphs (a) to (e).

607 Subsection (3) states that subsection (1) applies only if the trade union has given the employer notice in writing that the employee is an equality representative of the union, and the training condition is met in relation to the employee.

608 Subsection(4) states that the training condition is met if the employee has undergone sufficient

training to enable the employee to carry out the activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact; the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training; or within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so and the trade union has given the employer notice of that fact.

609 Subsection(5) states that only one notice under subsection (4)(b) may be given in respect of any one employee.

610 Su section (6) clarifies that sufficient training is training that is sufficient for the purposes of subsection (2), having regard to a relevant Code of Practice issued by ACAS or the Secretary of State.

611 Subsection (7) states that the employer must also permit the employee to take time off during working hours to undergo training relevant to their role as an equality representative

612 Subsection(8) states that the amount of time off, purposes, the occasions and conditions to which time off may be taken are those that are reasonable in all the circumstances having regard to a Code of Practice issued by ACAS or the Secretary of State.

613 Subsection (9) states that an employer must, where requested by the employee, provide the employee with accommodation and other facilities in relation to the purposes of fulfilling their role as an equality representative, having regard to any relevant provisions in a Code of Practice issued by ACAS.

614 Subsections (10) and (11) provide that an employee may present a complaint to an employment tribunal if the employer has failed to permit the employee to take time off or provide the employee with facilities as required. On complaint, it is for the employer to show that the amount of time off the employee proposed was not reasonable.

615 Subsection (12) defines an equality representative and equality in the workplace.

Clause 52: Facility time: publication requirements and reserve powers

616 This clause repeals sections 172A and 172B of the Trade Union and Labour Relations (Consolidation) Act 1992 as inserted by sections 13 and 14 of the 2016 Act. This repeals the power in section 172A to enable a Minister of the Crown to make regulations requiring some or all public sector employees with one or more trade union representatives to publish information relating to time off taken by those representatives for trade union duties and activities (referred to as facility time).

617 Repealing section 172B removes the power for a Minister of the Crown to make regulations exercising reserve powers after 3 years from when the regulations under section 172A come into force, where the Minister considers it appropriate to do so having regard to information published in accordance with publication requirements, the cost to public funds of facility time in relation to each employer, the nature or any particular features of the various undertakings carried on by those employers and any other matters the Minister thinks relevant.

618 Subsection (1) removes sections 172A and 172B from the Trade Union and Labour Relations (Consolidation) Act 1992.

619 Subsection (2) removes sections 13 and 14 of the Trade Union Act 2016.

Blacklists

Clause 53: Blacklists: additional powers

620 This clause amends section 3 of the Employment Relations Act 1999 to extend prohibitions to lists that are not prepared for the purposes of discrimination, but that subsequently are used for that. This will enable secondary legislation to be brought in to ensure that where AI compiles a list (and a person with a view to discriminate is not involved in compiling that list); where that list is subsequently used or sold or supplied by a person with a view to discriminate – that list becomes a prohibited list at that point.

621 Subsection (1) specifies that the clause amends section 3 of the Employment Relations Act 1999 (blacklists).

622 Subsection (2) removes reference in subsection (1)(b) of the Employment Relations Act 1999 to employers or employment agencies, thereby widening the scope of the existing power so that regulations can strengthen protections in relation to third parties compiling blacklists.

623 Subsection (3) inserts a new section (2A). This enables the Secretary of State to make regulations that prohibit the use, sale or supply of lists containing the details of trade union members or those who have taken part in trade union activities for the purposes of discrimination in relation to recruitment or the treatment of workers. This broadens the existing power to make regulations providing protections against blacklisting.

624 Subsection (4)(a) amends section 3(3) of the Employment Relations Act 1999 by adding that the Secretary of State may make regulations in relation to third party use of blacklists.

625 Subsection (4)(b) enables regulations to be made in relation to the new section 2A to include provision in relation to dismissal of an employee.

Industrial action: ballots

Clause 54: Industrial action ballots: turnout and support thresholds

626 This clause repeals sections 2 and 3 of the Trade Union Act 2016 and makes consequential amendments to Schedule 4 to that Act. Section 2 required at least 50% of the trade union members entitled to vote to do so in order for the industrial action ballot to be valid. Section 3 required, in important public services as defined, for trade unions to obtain the support of at least 40% of all union members entitled to vote in the ballot. The law will revert to requiring a simple majority of those voting for a ballot conducted by a trade union for industrial action to be successful, with no requirements for any level of turnout.

627 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) to (4), set out below.

628 Subsection (2) amends section 226 (2)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 to remove (iia), the requirement for a trade union to meet the 50% turnout threshold of those entitled to vote, in order for the industrial action to have the support of a ballot. It also updates subsection (2)(a)(iii) to make clear that a simple majority of persons voting in the ballot is needed for an industrial action ballot to be successful. (2)(b) removes sections (2A) to (2F), which therefore removes the additional requirement for ballots in important public services to have the support of at least 40% of those entitled to vote.

629 Subsection (3) consequentially removes section 297A of the Trade Union and Labour Relations (Consolidation) Act 1992 which defines the meaning of "voting" to include those who return spoiled or invalid ballot papers.

630 Subsection (4) makes a consequential amendment to remove the entry for "voting" from section 299 of the Trade Union and Labour Relations (Consolidation) Act 1992 which provides for where the expression is defined.

631 Following the above changes, subsection (5) removes sections 2 and 3 of the Trade Union Act 2016 and changes to Schedule 4 to remove paragraphs 12 and 17.

Clause 55: Industrial action ballots: provision of information to members

632 This clause amends the Trade Union and Labour Relations (Consolidation) Act 1992 to reverse the effect of sections 5 and 6 of the Trade Union Act 2016.

633 Section 5 set out the information a union must include on the ballot paper. This included requiring the trade union to:

a. provide a summary of the issues that are in dispute between the employer and the trade union

b. specify the type of industrial action that amounts to action short of a strike and to provide an indication of the time period during which it is expected that those specific types of action are to take place.

634 Repealing this means the law will revert to requiring a trade union to ask its members on the ballot paper which type of industrial action they want to take part in, expressed in terms of whether this is strike action or action short of a strike. The type of action that a majority of members vote for will then (assuming other legal requirements are met) be protected and immune from legal action by the employers or others.

635 Section 6 requires trade unions to specify how many members were entitled to vote and whether the minimum thresholds (as required under section 226 of the Trade Union and Labour Relations (Consolidation) Act 1992) have been met. It also required trade unions to provide this information to employers. Section 6 also required trade unions to provide employers with information about the ballot result.

636 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended according to subsections (2) and (3) below.

637 Subsection (2) removes subsections (2B) to (2D) which sets out information requirements for the voting paper, removing the need for the voting paper to include:

a. A summary of the trade dispute

b. The type of industrial action, if other than a strike

c. The period of time when the industrial action is expected to take place.

638 Subsection (3) reduces the information to be shared with those eligible to vote in the ballot to the number of votes cast in the ballot, numbers answering yes and no to the question and the number of spoiled voting papers.

639 Subsection (4) sets out that as a consequence of the amendments made by subsections (2) and (3), sections 5 and 6 of the Trade Union Act 2016 are to be removed.

Clause 56: Electronic balloting

640 This clause repeals section 4 of the Trade Union Act 2016. Section 4 required the Secretary of State to commission an independent review of electronic balloting for all industrial action ballots within 6 months of Royal Assent of the Trade Union Act 2016, to consider the report, and publish a response and laying it before each House.

641 Subsection (1) removes section 4 of the Trade Union Act 2016.

642 Subsection (2) makes clear that removal of section 4 from the Trade Union Act 2016 does not affect the power of the Secretary of State under section 54 of the Employment Relations Act 2004

to widen the means of voting that are to be available in industrial action ballots conducted under the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992.

Industrial action: provision of information to employer

Clause 57: Industrial action: provision of information to employer

643 This clause reverses the effect of section 8 of the Trade Union Act 2016. Repealing section 8 means that the notice a trade union must give the employer of industrial action after it has secured a ballot mandate and before any such action is taken will reduce from 14 to 7 days.

644 Subsection (1) amends section 234A of the Trade Union and Labour Relations (Consolidation) Act 1992 to replace the 14 day notice period with a 7 day notice period.

645 Subsection (2) consequentially removes section 8 of the Trade Union Act 2016.

Industrial action: picketing

Clause 58: Union supervision of picketing

646 This clause repeals section 220A of the Trade Union and Labour Relations (Consolidation) Act 1992 as inserted by section 10 of the Trade Union Act 2016. Section 10 placed additional requirements on trade unions to ensure they are protected from certain tort liabilities. The relevant torts are inducing another person to break or interfere with a contract, or threatening that a contract will be broken or interfered with. Section 10 required trade unions to appoint a picket supervisor, who is familiar with the Code of Practice on Picketing. The union is required to give the police the supervisor's name, the location where the picketing is taking place and how the police should contact the supervisor. The picket supervisor should have a letter confirming that the picket is approved by the union and where the employer, or the employer's agent, asks to see the letter, it should be shown, as soon as reasonably practicable. The supervisor should be present at the picket or be readily contactable by the union or the police and be able to attend the picket at short notice. When the supervisor is attending the picket, they should wear something so that they are readily identifiable.

647 Subsection (1)(a) amends the Trade Union and Labour Relations (Consolidation) Act 1992 to remove the requirement to meet the requirements for union supervision of picketing in order to have protection from certain tort liabilities as set out in section 10 of the Trade Union Act 2016.

648 Subsection (1)(b) removes section 220A of the Trade Union and Labour Relations (Consolidation) Act 1992 thereby removing the requirements for union supervision of picketing.

649 Subsection (2) consequentially removes section 10 of the Trade Union Act 2016.

Protection for taking industrial action

Clause 59: Protection against detriment for taking industrial action

650 This clause amends Part V (Industrial Action) of the Trade Union and Labour Relations (Consolidation) Act 1992 to widen protections for workers from detriment as a result of taking official and protected industrial action.

651 Subsection (2) inserts new sections 236A (detriment on ground of industrial action), 236B (time limit for proceedings), 236C (consideration of complaint) and 236D (remedies) into the Trade Union and Labour Relations (Consolidation) Act 1992.

652 Subsection 3 makes consequential amendments to section 296 (meaning of "worker") of the Trade Union and Labour Relations (Consolidation) Act 1992.

653 Subsection (4) makes consequential amendments to section 18 (conciliation: relevant proceedings) of the Employment Tribunals Act 1996.

654 Subsection (5) makes consequential amendments to section 104 (unfair dismissal for assertion of statutory rights) of the Employment Rights Act 1996.

New section 236A

655 Section 236A, subsection(1) provides that a worker has the right not to be subject as an individual to detriment of a prescribed description by an act, or any deliberate failure to act, by the worker's employer, if the act or failure takes place for the sole or main purpose of preventing or deterring the worker from taking protected industrial action, or penalising the worker for doing so.

656 Subsection (2) defines protected industrial action.

657 Subsection (3) provides that regulations may prescribe detriment of any description.

658 Subsection (4) provides that subsection (1) does not apply where the worker is an employee and the detriment in question amounts to dismissal, and signposts that in those circumstances the relevant sections are sections 237 to 239.

659 Subsection (5) provides that a worker or former worker may present a complaint to an employment tribunal on the ground that the worker or former worker has been subject to a detriment by an employer in contravention of this section. Subsection (6) provides that a worker or former work has no other remedy for infringement of the right conferred by this section.

660 Subsection (7) defines "worker" and "employer".

New section 236B

661 Section 236B, subsection (1) provides that an employment tribunal may not consider a complaint under section 236A unless it is presented within 3 months of the detriment occurring, beginning with the date of the act or failure to which the complaint relates or where that act or failure is part of a series of similar acts or failures. Alternatively, the tribunal may consider a complaint under section 236A if the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that time period in which case the complaint must be presented within a period the tribunal considers reasonable.

662 Subsection (2) provides that where an act extends over a period, the reference to the date of the act is a reference to the last day of that period and a failure to act is to be treated as done when it was decided on. Subsection (3) provides that, in the absence of evidence establishing the contrary, an employer is to be taken to decide on a failure to act when the employer does an act inconsistent with doing the failed act or when the period expires within which the employer might reasonably have been expected to do the failed act if it was done.

663 Subsection (4) provides that section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a).

New section 236C

664 Section 236C states that on a complaint under section 236A, it is for the employer to show what was the sole or main purpose for which the employer acted or failed to act.

New section 236D

665 Section 236D, subsection (1) provides that where the employment tribunal finds that a complaint under section 236A is well-founded, the tribunal must make a declaration to that effect and may make an award of compensation to be paid by the employer.

666 Subsection (2) provides that the amount of compensation should be what the tribunal considers just and equitable in all the circumstances including having regard to the infringement complained of and to any loss sustained by the complainant. Subsection (3) provides that the loss includes any expenses reasonably incurred as a consequence of the act or failure and loss of any benefit which the complainant might reasonably be expected to have had if the act or failure had not occurred. Subsection (4) provides that in ascertaining the loss, the tribunal must apply the same rule concerning the duty of a person to mitigate loss for England, Wales and Scotland. Subsection (5) provides that where the tribunal finds that the act or failure complained of was caused or contributed to by action of the complainant, it must reduce the amount of compensation by the proportion it considers just and equitable.

Clause 60: Protection against dismissal for taking industrial action

667 This clause amends the Trade Union and Labour Relations (Consolidation) Act 1992 so that protection under section 238A against dismissal will apply for the length of the strike action. This removes the current protected period, which includes the basic period of 12 weeks provided for under section 238A(7A) to (7D).

668 Subsections (2)-(4) makes consequential amendments to section 229 (industrial action ballots: voting paper), 238A (protection for employees taking part in official industrial action) and section 238 (conciliation and mediation: supplementary provisions) of the Trade Union and Labour Relations (Consolidation) Act 1992.

669 Subsection (5) makes consequential amendments to section 26 (dismissal where employees locked out); section 27 (date of dismissal); section 28 (dismissal after end of protected period) and Schedule 1 (minor and consequential amendments) to the Employment Relations Act 2004.

Strikes: minimum service levels

Clause 61: Repeal of provisions about minimum service levels

670 This clause repeals the Strikes (Minimum Service Levels) Act 2023 and makes consequential amendments. That Act provides for the Secretary of State to set minimum service levels to be provided during strikes affecting certain essential services and for an employer to be able to give a "work notice" requiring the trade union calling the strike to take reasonable steps to ensure its members comply with the work notice.

671 Subsection (1) repeals provisions of the Trade Union and Labour Relations (Consolidation) Act 1992, as inserted by Section 1 of the Strikes (Minimum Service Levels) Act 2023. The following sections of the Trade Union and Labour Relations (Consolidation) Act 1992 will fall away completely as a result: 234B, 234C, 234D, 234E, 234F and 234G. As a result, all associated powers, regulations and defined terms related to minimum service levels, will also fall away completely.

672 Subsection (2) paragraphs (a)-(h) make consequential amendments to other sections of the Trade Union and Labour Relations (Consolidation) Act 1992. In particular, certain amendments made by the Trade Union Act 2016 to section 238A of that Act, which provides certain protections for employees taking protected industrial action, are reversed.

673 Subsection (3) states that the Strikes (Minimum Service Levels) Act 2023 is repealed.

Certification Officer

Clause 62: Annual returns: removal of provision about industrial action

674 This clause repeals section 32ZA as inserted by section 7 of the Trade Union Act 2016. Section 32ZA required a trade union to include details of any industrial action taken in the reporting period in its annual return to the Certification Officer. This includes the nature of the trade

dispute relating to the industrial action, the type of industrial action, when the industrial action was taken, as well as confirmation that the relevant thresholds introduced to section 226 of the Trade Union and Labour Relations (Consolidation) Act 1992 have been met. It also required that where a trade union held a ballot in respect of industrial action, the union's return under section 32 for that period, shall contain the information mentioned in section 231 (number of votes cast, the number of those who voted yes, the number who voted no, etc.).

675 Subsection (1) removes section 32ZA from the Trade Union and Labour Relations (Consolidation) Act 1992 which sets out the information on industrial action the trade union needs to report for the Certification Officer through the annual return.

676 Subsection (2) consequentially removes section 7 of the Trade Union Act 2016.

Clause 63: Annual returns: removal of provision about political expenditure

677 This clause repeals section 12 of the Trade Union Act 2016 which required trade unions to provide details of their political expenditure in their annual return to the Certification Officer. This information must be provided where a union spends more than £2000 per annum from its political fund.

678 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended according to subsections (2) to (6) below.

679 Subsection (2) removes section 32ZB of the Trade Union and Labour Relations (Consolidation) Act 1992 which sets out the information to be included in the trade union's annual return on political expenditure.

680 Subsection (3) removes references to section 32ZB from section 32ZC which provided the enforcement mechanism for the Certification Officer if a trade union failed to comply with the requirement to provide information about their political expenditure.

681 Subsection (4) removes the reference to section 23ZB from section 45 of the Trade Union and Labour Relations (Consolidation) Act 1992, so that failure to comply with the requirement to provide information about political expenditure is no longer an offence.

682 Subsection (5) removes reference to section 32ZB in section 131 so the requirement to provide information about political expenditure no longer applies to employers' associations.

683 Subsection (6) removes reference to section 32ZB so the requirement to provide information about political expenditure no longer applies to federated employers' associations.

684 Subsection (7) consequentially removes section 12 from the Trade Union Act 2016.

Clause 64: Removal of powers to enforce requirements relating to annual returns

685 This clause repeals section 18 of the Trade Union Act 2016. This allowed the Certification Officer to enforce annual return requirements and gave the Certification Officer the power to make a declaration that a trade union has failed to comply with the Trade Union Act 2016 annual return requirements in relation to details of industrial action and political expenditure.

686 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended with subsections (2) to (5) below.

687 Subsection (2) removes section 32ZC of the Trade Union and Labour Relations (Consolidation) Act 1992, removing the Certification Officer's powers to enforce the requirement for details of political expenditure (32ZB of the Trade Union and Labour Relations (Consolidation) Act 1992) and industrial action (32ZA the Trade Union and Labour Relations (Consolidation) Act 1992) to be included in the annual return.

688 Subsections (3)-(5) remove references to 32ZA, 32ZB and 32ZC.

689 Subsection (6) consequentially removes section 18 of the Trade Union Act 2016 and subsections (3) and (4) of clause 63 of this Bill (which provide for surviving references to section 32ZA of the Trade Union and Labour Relations (Consolidation) Act 1992 in relation to details of industrial action).

Clause 65: Removal of investigatory powers

690 This clause repeals subsections 1 and 2 of section 17 of the Trade Union Act 2016 which gave the Certification Officer specific investigatory powers.

691 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 will be amended by sections (2) to (6) below.

692 Subsection (2) removes subsection (6A) of section 25 of the Trade Union and Labour Relations (Consolidation) Act 1992, which was inserted by the 2016 Act to enable more time in determining an application where the delay is caused by the exercise of powers to require the production of documents etc and to appoint inspectors.

693 Subsections (3) and (4) remove references to paragraph 5 of Schedule A3, which relates to the enforcement of paragraphs 2 and 3 of Schedule A3 by the Certification Officer.

694 Subsection (5) removes section 256C of the Trade Union and Labour Relations (Consolidation) Act 1992 so that Schedule A3 no longer has affect.

695 Subsection (6) removes Schedule A3 from the Trade Union and Labour Relations (Consolidation) Act 1992 which sets out the details of the Certification Officer's investigatory powers including requiring the production of documents, investigation by inspectors and enforcement by the Certification Officer.

696 Subsection (7) removes section 43, subsection (4) from the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. This removes the requirement for the Certification Officer to specify in its declaration:

a. the steps taken by a trade union to remedy the failure on the duties etc. relating to the register of members, or to prevent the failure happening again;

b. or that the union has agreed to take such steps.

697 Subsection (7) also consequentially removes from the Trade Union Act 2016:

a. Subsections (1) and (2) from section 17, which inserted Schedule A3 into the Trade Union and Labour Relations (Consolidation) Act 1992.

b. Schedule 1 from the Trade Union Act 2016 which sets out the investigatory powers for the Certification Officer.

c. Paragraphs 2 and 3(b) of Schedule 4.

Clause 66: Powers to be exercised only on application

698 This clause removes the powers of the Certification Officer to be able to investigate without having first received a complaint from a member of a trade union.

699 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) to (9) below.

700 Subsections (2) and (3) remove references to the Certification Officer being able to exercise the powers in relation to union positions not being held by certain offenders and elections for union

positions, where they have received no complaint from a member.

701 Subsection (4) reverts back to the Certification Officer only being able to consider a complaint from a member in relation to elections for union positions, and not to commence an investigation proactively.

702 Subsection (5) and (6) remove references to the Certification Officer being able to investigate where no member has complained from section 72A and 79 of the Trade Union and Labour Relations (Consolidation) Act 1992, in relation to political funds.

703 Subsection (7) and (8) removes the ability of the Certification Officer to proactively investigate in relation to political ballot rules and political funds, reverting back to only considering an issue following a complaint from a member.

704 Subsection (9) removes the ability for the Certification Officer to proactively investigate in relation to the passing of an amalgamation or transfer resolution by the trade union, reverting back to considering only if a complaint is made by a trade union member.

705 Subsection (10) consequentially amends section 17(3) and Schedule 2 of the Trade Union Act 2016 to remove reference to the Certification Officer being able to proactively investigate.

Clause 67: Removal of power to impose financial penalties

706 This clause omits section 19 (1) to (3) of the Trade Union Act 2016 and removes Schedule 3 to remove the power for the Certification Officer to impose financial penalties.

707 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) and (3) below.

708 Subsection (2) removes section 256D of the Trade Union and Labour Relations (Consolidation) Act 1992 which inserted Schedule A4 to give effect to the power to impose financial penalties.

709 Subsection (3) removes Schedule A4 which sets out the detail of the power to impose financial penalties.

710 Subsection (4) consequentially amends the 2016 Act to remove subsections (1)-(3) of section 19 and removes Schedule 3 which inserted into the Trade Union and Labour Relations (Consolidation) Act 1992 the power for the Certification Officer to impose financial penalties.

Clause 68: Removal of power to impose levy

711 This clause removes the power of the Certification Officer to impose a levy by repealing the effect of section 20 of the Trade Union Act 2016.

712 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) and (3) below.

713 Subsection (2) removes section 257A of the Trade Union and Labour Relations (Consolidation) Act 1992 which set out the requirements for a levy to be paid to the Certification Officer by trade unions and employers' associations.

714 Subsection (3) removes the requirement for the Certification Officer to report on the levy in their annual report to the Secretary of State.

715 Subsection (4) consequentially removes section 20 of the Trade Union Act 2016 which brought in the power for the Certification Officer to impose a levy.

Clause 69: Appeals to Employment Appeal Tribunal

716 This clause returns the right of appeals against decisions of the Certification Officer to the

Employment Appeal Tribunal to be on questions of law rather than law and fact. This reverses the position created by the Trade Union Act 2016.

717 Subsections (2)-(6) amend the Trade Union and Labour Relations (Consolidation) Act 1992 to refer to appeals arising on questions of law.

General

Clause 70: Regulations subject to the affirmative resolution procedure

718 This clause amends section 293 of the Trade Union and Labour Relations (Consolidation) Act 1992 to require that regulations made under sections 70ZC, 70ZE, 70ZF, 70ZI and 236A should be subject to the affirmative procedure.

Clause 71: Devolved Welsh authorities

719 This clause makes consequential amendments to the Trade Union (Wales) Act 2017 to repeal section 1. Section 1 of the Trade Union (Wales) Act 2017 Act disapplied certain Trade Union Act 2016 amendments to the Trade Union and Labour Relations (Consolidation) Act 1992 in relation to "devolved Welsh authorities". Section 1 disapplied section 116B (the restriction on deduction of union subscriptions from wages in the public sector), section 172A (publication requirements in relation to facility time) and section 226 (the 40% ballot threshold for important public services). As these provisions inserted by the Trade Union Act 2016 will no longer exist in the Trade Union and Labour Relations (Consolidation) Act 1992, section 1 can be repealed. In addition, this clause removes the definition of "devolved Welsh authority".

720 Subsection (a) removes the definition of a devolved Welsh Authority from the Trade Union and Labour Relations (Consolidation) Act 1992 at section 297B and from the list of definitions at section 299, which was inserted by the Trade Union (Wales) Act 2017.

721 Subsection (b) removes section 1 from the Trade Union (Wales) Act 2017.

Part 5: Enforcement of Labour Market Legislation

General

Clause 72: Enforcement of labour market legislation by Secretary of State

722 This clause grants the Secretary of State the overarching responsibility to enforce specific labour market legislation, as listed in Part 1 of Schedule 4. The enforcement role is primarily vested in the Secretary of State, but it also allows for the delegation of this role to enforcement officers.

723 Subsection (1) sets out that the Secretary of State has the function of enforcing labour market legislation listed in Part 1 of Schedule 4 to this Bill.

724 Subsection (2) clarifies that for the purposes of enabling the Secretary of State to perform the enforcement function, Part 5 of this Bill confers powers both on the Secretary of State and on enforcement officers.

725 Subsection (3) defines "enforcement officer" as a person appointed by the Secretary of State under this section.

726 Subsections (4) and (5) read together provide for enforcement officers appointed by the Secretary of State to be able to exercise any of the Secretary of State's functions as well as any powers conferred on enforcement officers, in line with what is set out in their terms of appointment.

727 Subsection (6) limits the scope of the Secretary of State's enforcement authority such that the Secretary of State will not be permitted to bring proceedings in Scotland for an offence.

Schedule 4 – Legislation subject to enforcement under Part 5

728 Part 1 of Schedule 4 sets out the relevant labour market legislation that the Secretary of State has overarching responsibility to enforce. Specifically:

- The Employment Agencies Act 1973 and regulations made under section 5 of that Act.
- Part 11 of the Social Security Contributions and Benefits Act 1992.
- Part 2A of the Employment Tribunals Act 1996.
- Certain provisions of the National Minimum Wage Act 1998: entitlement, duty of employers to keep records, worker's right to access to records, underpayments, right to not suffer detriment, and offences.
- Provisions in the Working Time Regulations 1998 that relate to the right to payment in respect of leave payment and rolled-up holiday pay for irregular hours workers and part-year workers.
- Provisions in the Gangmasters (Licensing) Act 2004 that relate to prohibition of unlicensed activities, rules relating to licensing, licensing and offences.
- Provisions of the Modern Slavery Act 2015 that relate to the offence of slavery, servitude and forced or compulsory labour (part 1) and slavery trafficking prevention and risk orders (part 2) and relevant offences.
- Provisions of the Employment Rights Act 2025 related to LME undertakings and orders, and offences relating to part 5.

729 Paragraph 23, in Part 2 of Schedule 4 gives the Secretary of State powers to amend the list of relevant labour market legislation in Part 1 of that Schedule.

730 Subparagraph (1) provides for Secretary of State to make regulations to add to the list of labour market legislation in Part 1 of the Schedule or vary the references that are already included in the list. Adding legislation to Part 1 of Schedule 4 would bring enforcement of that legislation in scope of the Secretary of State's enforcement functions.

731 Subparagraph (2) places limits on the regulation making power in subparagraph (1). The Secretary of State can only exercise this power to amend part 1 of this Schedule if the legislation relates to the following: rights or entitlements of employees or workers; the treatment of employees or workers; requirements, restrictions or prohibitions on employers; or trade unions, employers' associations, industrial action or labour relations.

732 Subparagraph (3) provides that regulations made to amend Part 1 of Schedule 4 may also make the necessary changes to the enforcement functions of the Secretary of State, their ability to delegate functions and the meaning of non-compliance with labour market legislation.

733 Subparagraph (4) provides that regulations to add to, or vary references in, the list in Part 1 of Schedule 4 are to be subject to the affirmative resolution procedure.

Clause 73: Enforcement functions of the Secretary of State

734 This clause specifies the functions that fall within the meaning of any reference to an enforcement function in Part 5, and those which do not.

735 Subsection (1) outlines that the enforcement functions of the Secretary of State include: functions granted under Part 5 of this Bill, functions provided under other relevant labour market legislation and any additional function carried out to enforce relevant labour market legislation.

736 Subsection (2) explicitly states the following functions are not enforcement functions of the Secretary of State: the power to appoint enforcement officers under clause 72, functions related to delegation under clause 74, functions relating to the Advisory Board under clause 75, the creation and submission of strategies and reports under clauses 76 and 77, any function related to transfer schemes under Part 1 of Schedule 7, and any powers related to making subordinate legislation.

Clause 74: Delegation of functions

737 This clause provides for the Secretary of State to make arrangements with a public authority to carry out delegable functions on their behalf. The clause also provides for the Secretary of State to make arrangements for officers or other staff of a public authority to be appointed as enforcement officers.

738 Subsection (1)(a) provides for the Secretary of State to make arrangements for public authorities to exercise enforcement functions on their behalf to the extent set out in the arrangement between the bodies. Subsection (1)(b) also allows the Secretary of State to make arrangements with a public authority for officers or other staff of that authority to be appointed as enforcement officers.

739 Subsection (2) defines a "delegable function" as being any of the Secretary of State's enforcement functions defined under this Bill or the Secretary of State's functions related to the licensing scheme for gangmasters which are set out in the Gangmasters (Licensing) Act 2004.

740 Subsection (3) states that where a public authority exercises an enforcement function in accordance with an arrangement with the Secretary of State, any reference to the Secretary of State in the legislation related to that function should be read as a reference to the public authority now performing it.

741 Subsection (4) provides for the Secretary of State to make payments to public authorities in respect of performing any function on their behalf.

742 Subsection (5) provides that the Secretary of State retains the right to perform enforcement functions even if they have been delegated to a public authority, ensuring that the delegation does not strip the Secretary of State of responsibility or control.

743 Subsection (6) defines a "public authority" as a person whose functions are of a public nature. and do not relate to private business or commercial interests.

Advisory Board

Clause 75: Advisory board

744 This clause requires the Secretary of State to establish an Advisory Board to provide advice regarding their function of enforcing labour market legislation and establishes requirements for the Board's composition.

745 Subsection (1) requires the Secretary of State to create the Advisory Board, which will provide advice on matters related to the enforcement of labour market legislation. Subsection (1) also provides for the Secretary of State to specify the matters on which the Advisory Board advises.

746 Subsection (2) specifies that the Board must consist of at least nine members appointed by the Secretary of State

747 Subsection (3) provides that board members hold and vacate their position in accordance with the terms and conditions of their appointment.

748 Subsection (4) provides for the composition of the Board. It must include an equal number of representatives of the interests of trade unions and employers as well as individuals appearing to the Secretary of State to be independent experts who meet the criteria set out in subsection (5).

749 Subsection (5) defines the term "independent expert" for the purposes of the Secretary of State making appointments to the Advisory Board under subsection (4)(c).

750 Subsection (6) gives the Secretary of State the power to determine and provide remuneration or allowances for Board members.

Strategies and reports

Clause 76: Labour market enforcement strategy

751 This clause requires the Secretary of State to prepare and publish a labour market enforcement strategy within specified timescales. This should give an assessment of levels of non-compliance with labour market legislation as well as what activity will be undertaken to address it.

752 Subsection (1) mandates the Secretary of State to produce and publish a strategy before every relevant three-year period.

753 Subsection (2) outlines certain topics that an enforcement strategy should cover, which includes an assessment of the scale and nature of non-compliance with labour market laws in the previous three years, a forecast of future non-compliance and a proposal for how the Secretary of State will exercise their enforcement functions to address this. Subsection (2)(c) allows the Secretary of State to specify other matters they consider appropriate for the strategy to cover.

754 Subsection (3) allows the Secretary of State to revise the enforcement strategy at any time and requires any revision to be published.

755 Subsection (4) mandates the Secretary of State to consult the Advisory Board when preparing or

revising the enforcement strategy.

756 Subsection (5) requires the strategy to be laid before Parliament.

757 Subsection (6) defines "relevant three-year period" and "strategy period" to provide clarity on when each enforcement strategy should be issued.

Clause 77: Annual reports

758 This clause sets out the requirement for the Secretary of State to prepare and publish an annual report about the enforcement of labour market legislation. It also provides details on what each annual report should include and when each report should be issued.

759 Subsection (1) provides that the Secretary of State must prepare and publish an annual report as soon as reasonably practicable after the end of each financial year.

760 Subsection (2) sets out the contents of the Annual Report, including: an assessment of how labour market enforcement functions were exercised, how effectively they were aligned with the applicable strategy for the year and an assessment of the impact the strategy had on the scale and nature of non-compliance in the labour market.

761 Subsection (3) requires the Secretary of State to consult the Advisory Board while preparing the annual report and before it is published.

762 Subsection (4) requires a copy of every annual report to be laid before Parliament.

763 Subsection (5) defines the terms "applicable strategy" and "financial year" to provide clarity on when each annual report should be published and the years it relates to.

Powers to obtain documents or information

Clause 78: Power to obtain documents or information

764 This clause is about the Secretary of State's power to obtain documents or information. Investigatory powers are necessary to ensure that the Secretary of State and enforcement officers can fulfil their functions and have the information required to allow them to reach decisions regarding breaches of the labour market legislation listed in Part 1 of Schedule 4.

765 Subsection (1) gives the Secretary of State the power to issue a notice to a person requiring them to provide information by answering questions at a meeting, to take place at a specified time and place. The Secretary of State may also require a person to provide specified information or specified documents, in each case by a specified date. "Specified" means as specified in the notice.

766 Subsection (2) sets out the circumstances in which the Secretary of State may give a notice to a person. The Secretary of State must have reasonable grounds to believe that a person required to attend a meeting to answer questions is able to provide information for any enforcement purpose. Where a person is required to provide specified information or documents, the Secretary of State must have reasonable grounds to believe that it is necessary to obtain the document or information for any enforcement purpose and that the person can provide it.

767 Subsection (3) defines 'enforcement purpose'.

Clause 79: Power to enter business premises in order to obtain documents, etc

768 This clause gives an enforcement office the power to enter any business premises to obtain documents. Under subsection (1), the power may be exercised for any enforcement purpose.

769 Subsection (2) sets out the powers that an enforcement officer may exercise on business premises. These are to (a) inspect or examine any documents on the premises, (b) require any

person on the premises to produce any documents which the officer has reasonable grounds to believe are on the premises and within the person's possession or control and, (c) access and check the operation of any computer or equipment used for processing or storing information or documents.

770 Subsection (3) provides that this power may only be exercised at a reasonable time, unless the officer thinks there is reason to suspect that the purpose of entry may be frustrated if the officer seeks to enter at a reasonable time.

771 Subsection (4) gives an enforcement officer the power to seize any documents produced, inspected or examined.

772 Subsection (5) defines 'business premises', 'enforcement purpose' and 'equipment'.

Clause 80: Supplementary powers in relation to documents

773 This clause provides for additional powers in relation to documents.

774 Subsection (1) relates to powers under clauses 78 or 79 that are exercised in relation to documents stored in electronic form. It provides a further power to require electronic documents to be produced or provided in a form in which they can be taken away, and in which they are visible and legible (or can readily be made visible or legible).

775 Subsection (2) gives the Secretary of State the power to inspect or examine any documents under clause 78.

776 Subsection (3) gives the Secretary of State or an enforcement officer the power to take copies of any documents which are provided under clause 78 or inspected, examined or produced under clause 79.

Clause 81: Retention of documents

777 This clause sets out the circumstances in which documents may be retained.

778 Subsection (1) applies this clause to any document provided in response to a requirement under clause 78 or seized under clause 79.

779 Subsection (2) provides that a document may be retained so long as is necessary in all the circumstances. In particular, a document may be retained for use as evidence in a trial for a labour market offence, or for forensic examination or investigation in connection with a labour market offence.

780 Subsection (3) makes clear that no documents may be retained for either of the purposes in subsection (2) if a photograph or copy would be sufficient for that purpose.

Other powers to investigate non-compliance

Clause 82: Powers of enforcement officers under the Police and Criminal Evidence Act 1984

781 This clause concerns the ability of enforcement officers in England and Wales to exercise specific police powers in relation to the investigation of labour market offences. These powers include search, arrest and suspect interviews in relation to labour market offences. The clause indicates that provision is made under section 114B of the Police and Criminal Evidence Act 1984.

Clause 83: Offences relating to gangmasters: power to enter premises with warrant

782 This clause provides for a warrant to be obtained in specified circumstances for an enforcement officer to enter relevant premises for the purposes of determining whether there has been a

contravention of section 6 of the Gangmasters (Licensing) Act 2004, which prohibits unlicensed activities, in England, Wales or Scotland. It does not apply to enforcement officers who are authorised under Section 114B of the Police and Criminal Evidence Act 1984 to use their powers under Part 2 of that Act to investigate such a contravention.

783 A justice of the peace and a sheriff or a summary sheriff in Scotland may issue a warrant if they are satisfied that there are reasonable grounds for an enforcement officer to enter the relevant premises for the purpose of determining whether there has been a relevant contravention.

784 Subsection (2) specifies they must also be satisfied: (a) that entry has already been refused or is expected to be refused, and the occupier has been notified of the intention to seek a warrant; (b) that application for admission, or giving such a notice, would defeat the object of the entry; (c) that the case is one of extreme urgency; or (d) that the premises are unoccupied or the occupier is temporarily absent. The warrant would allow the enforcement officer to enter the property without the occupier's consent, if necessary, using reasonable force. The mention in subsection (2) of being satisfied that there are reasonable grounds means, in the context of England and Wales, being satisfied based on written information given under oath (subsection (3)).

785 Subsection (4) provides that the warrant grants the enforcement officer authority to bring any necessary individual or equipment to assist with inspection. It also enables them to conduct inspections to determine if any unlicensed activities are taking place and the officer can take and seize items as evidence.

786 Subsection (5) requires that when an enforcement officer leaves a property they entered with a warrant, if no one is there or the occupier is temporarily away, the officer must ensure the property is locked and secured from trespassers, just as it was when they arrived.

787 Subsection (6) requires that when an enforcement officer seizes an item from a property under subsection (4) (c), they must leave a statement at the property listing what was seized and stating that the officer has seized it.

788 Subsection (7)(a) provides that documents seized by enforcement officers under subsection (4) can be retained by enforcement officers under clause 81. Subsection (7)(b) provides that other items seized by enforcement officers under subsection (4) can be retained as long as the officer considers necessary to determine whether there has been a contravention.

789 Subsection (8) explains the meanings of certain terms used in this section. In particular-

a. "relevant premises" means any premises which an enforcement officer has reasonable grounds to believe are (a) premises where a person acting as a gangmaster, or a person supplied with workers or services by a person acting as a gangmaster, carries on business, or (b) premises which such a person uses in connection with the person's business; and

b. "worker" has the same meaning as in the Gangmasters (Licensing) Act 2004 (see section 26 of that Act).

790 Subsection (9) states that definition in section 4 of the Gangmasters (Licensing) Act 2004 of acting as a gangmaster also applies to this section, just as it does in that Act.

Labour market enforcement undertakings

Clause 84: Power to request LME undertaking

791 This clause gives the Secretary of State the power to request a labour market enforcement (LME)

undertaking where the Secretary of State believes that a person has or is committing a labour market offence (as defined in clause 112).

792 Subsection (2) allows the Secretary of State to give the person a notice: (a) identifying what labour market offence the Secretary of State believes has or is being committed (b) giving the Secretary of State's reasons for that belief, and (c) inviting the person to give the Secretary of State an LME undertaking in the form attached to the notice.

793 Subsection (3) defines an LME undertaking as an undertaking by the person giving it to comply with any prohibitions, restrictions and requirements set out in the undertaking (see section 85).

Clause 85: Measures in LME undertakings

794 This section sets out what a measure is in relation to an LME undertaking and the purposes for which it may be included in an LME undertaking.

795 Subsection (1) provides that an LME undertaking may include a prohibition, restriction or requirement, each of which is a "measure". A measure must fall within subsection (2) or (3) (or both) and (b) the Secretary of State must consider that the measure is just and reasonable.

796 Subsection (2) states that the purpose of a measure is either to prevent or reduce the risk of non-compliance with the relevant enactment; or to bring to the attention of interested parties the existence of an undertaking, the circumstances in which it was given, and any remedial action taken.

797 Subsection (3) allows the Secretary of State to add measures through regulations.

798 Subsection (4) requires regulations under subsection (3) to be subject to the affirmative resolution procedure.

799 Subsection (5) sets out that the Secretary of State may not (a) invite a person to give an LME undertaking, or, (b) agree to the form of an undertaking unless the Secretary of State reasonably believes that at least one measure in the undertaking is necessary for the purpose mentioned in subsection (6).

800 Under subsection (6), that purpose is to prevent and reduce the risk of the subject: (a) committing a further labour market offence under the relevant enactment or, (b) continuing to commit a labour market offence.

801 Subsection (7) states that an LME undertaking must set out how each measure is expected to achieve that purpose.

802 Subsection (8) defines 'relevant enactment' as the enactment under which the Secretary of State believes the labour market offence concerned has been or is being committed.

Clause 86: Duration of LME undertakings

803 This clause sets out the duration of an LME undertaking, including when the undertaking has effect from, the maximum period and release of an undertaking.

804 Subsection (1) explains that an undertaking has effect from (a) the time when it is accepted by the Secretary of State, or (b) any later time specified in the undertaking for this purpose.

805 Subsection (2) states that an LME undertaking has effect for the period specified in the undertaking.

806 Subsection (3) states that the maximum period for the LME undertaking is two years.

807 Subsection (4) gives the Secretary of State the power to release the subject from an LME undertaking, meaning effectively to terminate the undertaking.

808 Subsection (5) requires the Secretary of State to release a subject from an LME undertaking if at any point during the period for which the undertaking has effect the Secretary of State believes that no measures are necessary for the purpose in clause 85(6).

809 Where the Secretary of State releases the subject from an LME undertaking, subsection (6) requires the Secretary of State to take appropriate action to bring that fact to the attention of (a) the subject, and (b) any other persons likely to be interested.

Clause 87: Means of giving notice under section 84

810 This clause explains how a notice requesting an LME undertaking may be given.

811 Under subsection (1), a notice may be given by (a) delivering it to the person, (b) leaving it at the person's proper address, (c) sending it by post to the person's address or, (d) subject to subsection (6), sending it to the person by electronic means.

812 Subsection (2) states that a notice to a body corporate may be given to any officer of that body.

813 Subsection (3) states that a notice to a partnership may be given to any partner.

814 Subsection (4) states that a notice to an unincorporated association (other than a partnership) may be given to any member of the governing body of the association.

815 Subsection (5) explains that the proper address of a person is the person's last known address. In the case of a body corporate or an officer of the body, the proper address is the body's registered or principal office in the United Kingdom. In the case of a partnership or partner, or an unincorporated association or a member of its governing body, the proper address is the principal office of the partnership or association in the United Kingdom.

816 Subsection (6) allows a notice to be sent to a person by electronic means only if: (a) the person has indicated that notices under section 84 may be given to the person by being sent to an electronic address and in an electronic form specified for that purpose, and (b) the notice is sent to that address in that form.

817 Subsection (7) states that a notice sent by electronic means is deemed to have been served on the working day after the day on which it was sent

818 Subsection (8) defines 'electronic address', 'officer', and 'working day'.

Labour market enforcement orders

Clause 88: Power to make LME order on application

819 This clause is about the court's power to make an LME order on application by the Secretary of State.

820 Subsection (1) states that the court may issue an LME order in relation to a person if the court is satisfied, on the balance of probabilities, that the person has committed, or is committing, a labour market offence, and the court considers it just and reasonable to issue the order.

821 Subsection (2) states that an LME order may either prohibit or restrict a person from doing anything, or require them to do anything, set out in the order.

822 Subsection (3) explains that an application for an LME order is to be made by complaint.

823 Subsection (4) defines the appropriate court as a magistrates' court, sheriff or summary sheriff, or a court of summary jurisdiction, according to where the conduct constituting the relevant offence took or is taking place.

Clause 89: Applications for LME orders

824 This clause sets out the process for applying for LME orders.

825 Under subsection (1), the Secretary of State may apply for an LME order to be made under clause 88 relating to a person (the "proposed respondent") where the Secretary of State has given the proposed respondent a notice under clause 84, and the proposed respondent either refuses to give an LME undertaking or fails to provide it within the negotiation period.

826 Under subsection (2), the Secretary of State can also apply for an LME order if the proposed respondent has given an LME undertaking but has not complied with it.

827 Subsection (3) provides that, in subsection (1), "the negotiation period" refers to the 14 days following the notice, or a longer period if agreed between the Secretary of State and the proposed respondent.

Clause 90: Power to make LME order on conviction

828 This clause is about the court's power to make an LME order where a person is convicted of a labour market offence.

829 Under subsection (1), this clause applies where a court deals with someone in respect of a conviction for a labour market offence.

830 Subsection (2) provides that the court may make an LME order if the court considers it is just and reasonable to do so.

831 LME orders can only be made in addition to either: (a) a sentence imposed for the offence, or (b) an order that conditionally discharges the person, or, in Scotland, an order that discharges the person absolutely.

Clause 91: Measures in LME orders

832 This clause makes provision about measures that may be included in LME orders. It mirrors the provisions for measures in an LME undertaking (see clause 85).

Clause 92: Further provision about LME orders

833 Subsection (1) provides that LME orders last for the time period stated in the order.

834 Subsection (2) sets the maximum duration for an order at 2 years.

835 Subsection (3) prevents an order being made in respect of an individual who is under 18.

836 Subsection (4) gives the court the power, if making an LME order, to release the respondent from any previous LME undertaking given in relation to the labour market offence concerned and to discharge any other LME order against the respondent made by that court or any other court in the same part of the United Kingdom.

Clause 93: Variation and discharge of LME orders

837 This section sets out the circumstances in which either the respondent or Secretary of State may apply to the court to vary or discharge an LME order.

838 Subsection (2) explains who may make such an application. This is: the respondent or the Secretary of State.

839 Subsection (3) explains that an application is to be made by complaint.

840 Subsection (4) explains which court may vary or discharge an LME order as appropriate in England, Wales Scotland, and Northern Ireland.

Clause 94: LME orders: appeals

841 This clause sets out the circumstances in which a respondent can appeal against an LME order.

842 Subsection (1) explains that the respondent can appeal against the making of an LME order on application or the making of or refusal to make an order varying or discharging an LME order.

843 Subsection (2) explains that the appeal will be heard by the Crown Court in England and Wales, Sheriff Appeal Court in Scotland and County Court in Northern Ireland.

844 Subsection (3) allows the court hearing the appeal to make any orders which may be necessary to give effect to the decision on the appeal or any incidental or consequential orders that appear to it to be just and reasonable.

845 Subsection (4) states that if an LME order is changed under subsection 3, it is still considered an order from the court that first made the order for the purpose of clause 93.

846 The person affected by an LME order can appeal it in the same way as if it were a sentence for a labour market offence.

Safeguards

Clause 95: Evidence of authority

847 This clause creates a requirement to provide evidence of authority to carry out enforcement functions under Part 5.

848 Subsection (1) applies the requirement to any person exercising an enforcement function of the Secretary of State or any power of an enforcement officer appointed by the Secretary of State.

849 Subsection (2) provides that a person must produce identification showing their authority to act, if required to do so. Persons referred to in subsection (1) are not required to provide this evidence proactively.

Clause 96: Items subject to legal privilege

850 This clause provides safeguards regarding the protection of legal professional privilege.

851 Subsection (1) provides that nothing in Part 5 of the Bill requires a person to produce any document, or provide any information, which the person would be entitled to refuse to produce or provide in High Court proceedings on the grounds of legal professional privilege, or in Court of Session proceedings on the grounds of confidentiality of communications.

852 Subsection (2) defines "communications" for the purpose of this safeguard.

Clause 97: Privilege against self-incrimination

853 This clause is about protection against self-incrimination.

854 Subsection (1) provides that the clause applies where a person provides information in response to a requirement under section 78 (power to obtain documents or information).

855 Subsection (2) makes provision about criminal proceedings against a person who has provided such information. It provides that no evidence relating to such information may be introduced, and no questions may be asked about the information, either by or on behalf of the prosecution.

856 Subsection (3) provides that subsection (2) does not apply if the evidence is introduced by the person providing the information, or if a question about the information is asked by or on behalf of that person.

857 Under subsection (4), subsection 2 also does not apply if the proceedings are for certain offences listed in paragraphs (a) to (d).

Disclosure of information

Clause 98: Disclosure of information

858 Subsection (1) provides definitions for the terms "enforcing authority" and "enforcement function" prior to references to these throughout the clause.

859 Subsection (2) permits a person to share information with an enforcing authority for the purpose of exercising an enforcement function.

860 Subsection (3) provides that information obtained by an enforcing authority in connection with carrying out an enforcement function can be used by an enforcing authority in connection with the exercise of any other enforcement function, or by the Secretary of State in connection with a function of the Secretary of State under this Part.

861 Subsection (4) allows the Secretary of State to share information obtained by an enforcing authority in connection with the exercise of an enforcement function with a person, where doing so is relevant to carrying out an enforcement function or a function of the Secretary of State under this Part.

862 Subsection (5) permits the Secretary of State to disclose information obtained in connection with the exercise of an enforcement function to a person specified in Schedule 5 if the disclosure is made for the purpose of the exercise of that person's own function.

863 Subsection (6) allows the Secretary of State to amend Schedule 5 by regulations.

864 Subsection (7) provides that regulations under subsection (6) are subject to the affirmative resolution procedure.

865 Subsection (8) provides that clauses 99 to 101 contain further provision about disclosure of information under this clause.

Schedule 5 – Persons to whom information may be disclosed under section 98

866 This Schedule lists the persons that the Secretary of State may disclose information to under clause 98. These persons are listed under the following headings in the Schedule: authorities with functions in connection with the labour market or the workplace, law enforcement and border security, local government, health bodies, and other persons. Under subsection (6) of clause 98, this list of persons may be amended by regulations.

Clause 99: Disclosure of information: supplementary provision

867 Subsection (1) states that information disclosed under clause 98 does not breach an obligation of confidence owed by the person making the disclosure or any other restriction on disclosure of information.

868 Subsection (2) outlines that information provided under clause 98 must not contravene the data protection legislation or be a disclosure prohibited by Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

869 Subsection (3) provides that in subsection (2), "data protection legislation" holds the same meaning as in section 3 of the Data Protection Act 2018.

870 Subsection (4) states that clause 98 does not limit circumstances where information may be

disclosed, except as provided by that clause.

Clause 100: Restriction on disclosure of HMRC information

871 Subsection (1) states that for an enforcing authority to share HMRC information, authorisation must be obtained from the Commissioners for His Majesty's Revenue and Customs ("the Commissioners").

872 Subsection (2) states that any person with whom the enforcing authority has shared HMRC information must also obtain authorisation from "the Commissioners" in order to share the information any further.

873 Subsection (3) provides that subsections (1) and (2) do not apply to national minimum wage information.

874 Subsection (4) refers to a contravention of subsections (1) or (2) where a person's identity is stated or can be identified from information disclosed. If such a contravention occurs, section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies as it does in relation to a contravention of section 20(9) of that Act.

875 Subsection (5) provides definitions of terms used in subsections (1)-(4) above.

Clause 101: Restriction on disclosure of intelligence service information

876 This clause places restrictions on disclosure of intelligence service information. Subsection (1) provides that clause 98(2) does not permit a person serving in an intelligence service to disclose information to an enforcing authority. However, this provision does not affect any disclosure of information in accordance with intelligence service disclosure arrangements.

877 Subsection (2) states that an enforcing authority must not disclose intelligence service information without authorisation from an appropriate service chief, defined at subsection (4).

878 Subsection (3) provides that, if an enforcing authority has shared intelligence service information with a person, that person cannot further share the information without authorisation from an appropriate service chief.

879 Subsection (4) defines an “appropriate service chief” and other terms referred to in the clause.

Offences

Clause 102: Offence of failing to comply with LME Order

880 This clause provides for the offence of not complying with an LME order (subsection (1)).

881 Subsection (2) sets out the penalties that may apply if a person is found guilty of this offence. Penalties depend on whether convictions are summary or on indictment and on the relevant legal jurisdiction (i.e. England and Wales, Scotland or Northern Ireland).

Clause 103: Offence of providing false information or documents

882 This clause provides for the offence of providing false information or documents in response to a request for information made under this part.

883 Under subsection (1), an offence is committed if a person produces, or knowingly causes or allows to be produced, any information or document that is materially false, and the person providing it is either aware that it is false or has not taken reasonable action to confirm its accuracy. The offence relates to any information or document provided in response to a reasonable requirement made by a person exercising enforcement powers under Part 5.

884 Subsections (2) and (3) set out the penalties that may apply in England and Wales, Scotland and

Northern Ireland.

Clause 104: Offence of obstruction

885 This clause provides for the offence of obstruction.

886 Subsection (1) provides that a person commits an offence through intentional obstruction or, without reasonable excuse, failing to comply with requirements imposed by a person carrying out an enforcement function.

887 Subsection (2) defines "enforcement function" as (a) an enforcement function of the Secretary of State, or (b) a power of an enforcement officer.

888 Subsections (3) and (4) set out the penalties that may apply if a person is found guilty of this offence. In all cases, guilty persons may be subject to imprisonment, fines or both, but the exact length of any imprisonment, or level of any fine, will depend on whether the conviction is in England and Wales, Scotland or Northern Ireland

889 Subsection (5) provides that a person is not required to answer questions or provide information if that would lead to self-incrimination.

Supplementary

Clause 105: Offences by bodies corporate

890 This clause provides that where an offence is committed by a body corporate, officers of the body may also be found guilty of that offence in certain circumstances.

891 Subsection (1) provides that an officer may also be guilty of the offence if proved that the offence was committed with the consent or connivance of the officer, or because of the officer's neglect. The officer is liable to prosecution and punishment.

892 Subsection (2) defines an officer in relation to a body corporate for the purposes of establishing an offence under subsection (1).

893 Subsection (3) applies subsection (1) to members of a body corporate where they manage its affairs.

Clause 106: Application of this Part to partnerships

894 This clause explains how an offence committed under Part 5 applies to partnerships.

895 Subsection (1) means that where a partnership is not regarded as a legal person and an offence is committed by a partner, another partner shall be guilty of the offence if it is proved that the offence was committed with the consent or connivance of that other partner or was attributable to their neglect. Both partners are liable to prosecution and punishment.

896 Subsection (2) explains that where an offence is alleged to have been committed by a partnership that is a legal person, proceedings may be brought against the partnership in the firm name.

897 Subsection (3) applies certain elements of criminal procedure, including court rules about service of documents, to a partnership as if it were a body corporate.

898 Subsection (4) requires fines imposed on a partnership on its conviction of an offence to be paid out of the funds of the partnership.

899 Subsection (5) provides that a partner as well as the partnership is guilty of an offence where it is proved that the offence was committed with the consent or connivance of that partner, or where it was attributable to the partner's negligence. The partner is liable to prosecution and punishment.

900 Subsection (6) defines "partner" for the purposes of this clause. It applies this clause to a person purporting to act as a partner.

901 Subsection (7) explains that explains that a partnership is not regarded as a legal person if it is not regarded as such under the law of the country under which it was formed.

Clause 107: Application of this Part to unincorporated associations

902 This clause explains how offences apply to unincorporated associations.

903 Subsection (1) provides that an unincorporated association is to be treated as a legal person for the purposes of this Part if a case falls within subsection (2).

904 Subsection (2) provides that cases fall within scope of this provision when they relate to labour market offences (as defined in clause 112) for which it is possible to bring proceedings against unincorporated associations in the name of the association.

905 Subsection (3) explains that offences allegedly committed by an unincorporated association may be brought against the association in the name of the association.

906 Subsection (4) applies certain elements of criminal procedure, including the rules of court relating to the service of documents, to an unincorporated association as if it were a body corporate.

907 Subsection (5) requires fines imposed on an association following its conviction of a labour market offence to be paid out of the funds of the association.

908 Subsection (6) explains that an officer as well as an unincorporated association corporate is guilty of an offence where it is proved that the offence was committed with the consent or connivance of that officer, or where it was attributable to the officer's negligence. The officer is liable to prosecution and punishment.

909 Subsection (7) defines "officer" in relation to an association for the purposes of this clause.

Clause 108: Application of this Part to the Crown

910 This clause establishes that the provisions of Part 5 of the Bill are binding on the Crown but makes clear that no contravention of any provision in this Part by the Crown makes the Crown criminally liable. It also provides for certain exemptions in relation to the exercise of powers of entry into His Majesty's private estates and the Palace of Westminster, and also provides that the Secretary of State may certify that the powers of entry are not exercisable in relation to Crown premises for reasons of national security.

911 Subsection (1) provides that the provisions in Part 5 of the Bill apply to the Crown as far as they are specified in this clause and that provisions apply to Crown premises in the same way as other premises.

912 Subsection (2) defines crown premises for the purposes of this clause.

913 Subsection (3) provides that no contravention of any provisions in this Part makes the Crown criminally liable but provides for actions or omissions of the Crown to be declared unlawful by the High Court or the Court of Session in Scotland.

914 Subsection (4) clarifies that the general immunity for the Crown from criminal liability does not apply to employees of the Crown and that the provisions of Part 5 apply to them as they do to other employees.

915 Subsection (5) provides for the Secretary of State to exempt Crown premises from being subject to the powers of entry in this Bill where they deem this in the interest of national security.

916 Subsection (6) clarifies that the powers of entry in the Bill are not exercisable in relation to His Majesty's private estates or the parliamentary estate.

917 Subsection (7) states that His Majesty's private estates have the definition set out in section 1 of the Crown Private Estates Act 1862 for the purposes of exempting them from being subject to the powers of entry in this Bill.

Clause 109: Abolition of existing enforcement authorities

918 Subsection (1) of this clause abolishes two existing public bodies currently involved in labour market enforcement.

919 Paragraph (a) of subsection (1) abolishes the Gangmasters and Labour Abuse Authority, which was created under the Gangmasters (Licensing) Act 2004, as amended by the Immigration Act 2016. As a consequence, paragraph (a) of subsection (2) of this clause repeals section 1 of the Gangmasters (Licensing) Act 2004.

920 Paragraph (b) of subsection (1) abolishes the Office of the Director of Labour Market Enforcement – a statutory office holder created under the Immigration Act 2016. As a consequence, paragraph (b) of subsection (2) repeals section 1 of the Immigration Act 2016.

Clause 110: Consequential and transitional provision

921 This clause points to the relevant provisions in the Bill that contain consequential amendments and transitional provisions.

922 Subsection (1) establishes that Schedule 6 contains the consequential amendments relating to Part 5.

923 Subsections (2) introduces part 1 of Schedule 7, which provides for the making of schemes in relation to the abolition of the Gangmasters and Labour Abuse Authority and the Office of the Director of Labour Market Enforcement. These schemes would provide for the transfer of staff, property, rights and liabilities to the Secretary of State.

924 Subsection (3) sets out that part 2 of Schedule 7 provides other transitional and savings provisions in relation to Part 5.

Schedule 6 – Consequential amendments relating to Part 5

925 Schedule 6 sets out the consequential changes made to various Acts of Parliament as a result of Part 5 of the Bill. This Part provides for the creation of a new labour market enforcement body to enforce labour market legislation that will be an executive agency of the Department for Business and Trade. This will involve the abolition of an existing non-departmental public body (the Gangmasters and Labour Abuse Authority – GLAA) and the Secretary of State taking responsibility for enforcement of relevant labour market legislation set out in Part 1 of Schedule 4.

926 Part 1 of Schedule 6 sets out consequential changes to the following Acts in relation to existing powers under relevant labour market legislation:

- Employment Agencies Act 1973.
- Part 2A of Employment Tribunals Act 1996.
- National Minimum Wage Act 1998.
- Gangmasters (Licensing) Act 2004. The amendments to the Gangmasters (Licensing) Act 2004 include preserving the current position for enforcing the prohibitions in that Act in relation to Northern Ireland.

the Modern Slavery Act 2015.

927 Part 2 of Schedule 6 sets out additional consequential changes to the following Acts:

- Public Records Act 1958.
- Parliamentary Commissioner Act 1967.
- Superannuation Act 1972.
- House of Commons Disqualification Act 1975.
- Northern Ireland Assembly Disqualification Act 1975.
- Employment Protection Act 1975.
- Police and Criminal Evidence Act 1984.
- Companies Act 1985.
- Trade Union and Labour Relations (Consolidation) Act 1992.
- Deregulation and Contracting Out Act 1994.
- Employment Relations Act 1999.
- Immigration and Asylum Act 1999.
- Finance Act 2000.
- Regulation of Investigatory Powers Act 2000.
- Freedom of Information Act 2000.
- Police Reform Act 2002.
- Employment Relations Act 2004.
- Civil Partnership Act 2004.
- Pensions Act 2004.
- Serious Organised Crime and Police Act 2005.
- Natural Environment and Rural Communities Act 2006.
- Regulatory Enforcement and Sanctions Act 2008.
- Employment Act 2008.
- Equality Act 2010.
- Financial Services Act 2012.
- Modern Slavery Act 2015.
- Small Business, Enterprise and Employment Act 2015.
- Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.
- Immigration Act 2016.
- Investigatory Powers Act 2016.
- Police and Crime Act 2017.

- Data Protection Act 2018.
- Procurement Act 2023.

Schedule 7 - Transitional and saving provision relating to Part 5

928 This Schedule sets out the transitional and savings provisions relating to Part 5. Part 1 of this Schedule provides powers to make transfer schemes in relation to the abolition of the Gangmasters and Labour Abuse Authority (GLAA) and Part 2 provides for other transitional and savings provisions.

929 Part 1, paragraph 1 provides for the Secretary of State to make a staff transfer scheme to enable GLAA employees to become members of the Secretary of State's staff, which can provide for, amongst other things, the terms and conditions of employment and for calculating continuous employment.

930 Sub-paragraphs (3) to (5) provide for specific circumstances in which a member of staff may or may not be transferred.

931 Part 1, paragraph 2 provides for the for the Secretary of State to make a property transfer scheme to enable the property, rights and liabilities of the GLAA and of the Director of Labour Market Enforcement to be transferred to the Secretary of State.

932 Part 1, Paragraph 3 makes provision to ensure continuity where staff, property, rights and liabilities are transferred under either a staff transfer scheme or a property transfer scheme.

933 Part 1, Paragraph 4 provides for either type of scheme to include supplementary, incidental, transitional and consequential provision.

934 Part 2, Paragraph 6 makes provision to allow the continuity of labour market enforcement functions. Under this paragraph, any such work already being undertaken by a relevant person prior to commencement of the relevant clauses may continue as if done by the Secretary of State. Sub-paragraph (4) defines "relevant person" for the purpose of this paragraph. Paragraph 6(4)(e) defines an enforcement officer acting for the purposes of the Gangmasters (Licensing) Act 2004 as a relevant person, apart from functions done by or in relation to enforcement officers in Northern Ireland appointed under paragraph 15 of Schedule 2 to the Gangmasters (Licensing) Act 2004.

935 Part 2, Paragraph 7 provides for continuity of requests for, and retention of, information. Under this paragraph any existing requests for information made under a repealed provision immediately before the commencement day are to be considered as being made by the Secretary of State under the corresponding provision of the Bill. Similarly, any information retained under a power of a repealed provision before commencement is to be considered as retained under the power of this Bill.

936 Part 2, Paragraph 8 relates to the continuity of LME undertakings and provides that any such existing undertakings will be treated as an LME undertaking under this Bill.

937 Part 2, Paragraph 9 relates to the continuity of LME orders and provides that any such existing undertakings will be treated as an LME order under this Bill.

938 Part 2, Paragraph 10 makes provision for the continuity of any order made under section 14 of the Modern Slavery Act before the coming into force of paragraph 20(2)(b) of Schedule 4.

939 Part 2, Paragraph 11 provides that the consequential amendments made by Schedule 6 to the National Minimum Wage Act 1998 do not affect any provision of the National Minimum Wage Act 1998 for the purpose of legislation relating to agricultural wages in England, Scotland, Wales and Northern Ireland.

940 Part 2, Paragraph 12 provides that consequential amendments made by sub-paragraph 49(5) of Schedule 6 do not affect, before the coming into force of that amendment, regulations made by the relevant Northern Ireland department in relation to appeals, using powers contained in paragraph 11 of Schedule 2 to the Gangmasters (Licensing) Act 2004.

Interpretation of this Part

Clause 111: Meaning of "non-compliance with relevant Labour Market legislation"

941 This clause defines what constitutes "non-compliance with relevant labour market legislation" for the purposes of this Part of the Bill. It sets out the different actions or omissions that would be considered non-compliant under relevant labour market legislation.

942 Subsection (1) provides three categories of non-compliance: failure to comply with any requirement, restriction, or prohibition imposed by relevant labour market legislation, breaching conditions of a licence granted under section 7 of the Gangmasters (Licensing) Act 2004 and committing a labour market offence.

943 Subsection (2) states that non-compliance includes the failure to pay a relevant sum as required by Part 2A of the Employment Tribunals Act 1996.

Clause 112: Interpretation: general

944 This clause provides definitions of key terms used throughout Part 5 of the Bill.

945 Subsection (1) defines the "Advisory Board" to refer to the Board established under clause 75, which provides advice to the Secretary of State regarding labour market enforcement.

946 It also defines "ancillary offence" as a range of secondary offences connected to labour market offences, including attempts to commit, conspiracy, incitement, or aiding and abetting such offences. It also includes offences under Part 2 of the Serious Crime Act 2007.

947 The subsection also defines ''business'' as a trade or profession, and any activity carried on by a body of persons.

948 The subsection defines "enforcement function" and "enforcement officer". "Enforcement function" refers to the Secretary of State's enforcement responsibilities as defined in clause 73. "Enforcement officer" means a person appointed by the Secretary of State under clause 72(3) to carry out enforcement functions.

949 The subsection defines "labour market offence", "LME order", "LME undertaking" and "non-compliance with relevant labour market legislation". "Labour market offence" is defined to include both direct offences under labour market legislation and any ancillary offences related to such offences. "LME order" and "LME undertaking" refer to specific enforcement measures as defined under clauses 88(2) and 84(3), respectively. "Non-compliance with relevant labour market legislation" is defined by section 111 and includes a failure to meet statutory requirements, breaches of licence conditions, and labour market offences.

950 "Worker", except as used in clause 83, adopts the definition given in the Employment Rights Act 1996, as set out in section 230 of that Act. Therefore, "worker" means an individual who has entered into or works under a contract of employment or any other contract.

951 Subsection (2) clarifies the meaning of "premises" for enforcement purposes.

952 Subsection (3) provides definitions for terms used in subsection (2).

Part 6: General

Clause 113: Power to make consequential amendments

953 This clause confers a power on the Secretary of State to, by regulations, make provision that is consequential on any provision made by the Bill. This includes the ability to amend provisions made by or under primary legislation (but only in relation to primary legislation passed or made before the end of the Parliamentary session in which this Bill is passed as an Act). Primary legislation in this context means an Act of the UK Parliament, measures or Acts of the National Assembly for Wales or an Act of Senedd Cymru, an Act of the Scottish Parliament and Northern Ireland legislation.

954 This power is exercised by way of regulations. The use of this power to amend or repeal primary legislation is subject to the affirmative Parliamentary procedure, otherwise the negative procedure applies.

Clause 114: Power to make transitional or saving provision

955 This clause allows the Secretary of State to, by regulations, make such transitional or saving provisions as the Secretary of State considers appropriate in connection with the coming into force of any provision in the Bill.

956 Any regulations made under this clause may make provision in addition to or different from that made by the Bill; and make any adaptations for provisions of this Bill which are appropriate because of other provisions of this Bill not yet having come into force.

Clause 115: Regulations

957 This clause sets out various procedural aspects relevant to the making of regulations under the Bill by statutory instrument (except for commencement regulations made under clause 118).

958 Subsection (2) sets out that regulations made under the Bill may, make different provision for different purposes and may contain supplementary, incidental, consequential, transitional or saving provision.

959 Subsections (4) and (5) explain what is meant by references in the Bill to the negative procedure and the affirmative procedure. Under the negative procedure, regulations must be laid after making and can be annulled by resolution in either House.

960 References to "the affirmative procedure" are to the draft affirmative procedure, whereby regulations must be debated and affirmed by both Houses of Parliament before they can be made.

961 Any provision that may be included in an instrument under this Bill subject to the negative procedure may also be made regulations subject to the affirmative procedure.

Clause 116: Financial provisions

962 This clause sets out that expenditure incurred under the terms of this Bill is to be met from supplies provided by Parliament.

Clause 117: Extent

963 This clause sets out the territorial extent of the Bill.

964 With the exception of clause 25, Parts 1, 2 and 4 of the Bill extend to England and Wales and Scotland;

965 Part 3 of the Bill extends to England and Wales only.

966 Clause 25, and Parts 5 and 6 of the Bill extend to England and Wales, Scotland and Northern Ireland.

967 Amendments or repeals made by the Bill have the same extent as the provision amended or repealed.

Clause 118: Commencement

968 This clause sets out the manner in which provisions in the Bill will be commenced.

969 Subsections (1) and (2) set out which provisions of this Bill come into force on Royal Assent and 2 months after Royal Assent respectively. In respect of all other provisions, subsection (3) allows the Secretary of State to make regulations setting out the days such provisions come into force.

Clause 119: Short title

970 This clause provides that the short title of the legislation will be the Employment Rights Bill.

Commencement

971 Clause 118 provides for the commencement of the provisions in this Bill.

972 Clause 61(repeal of minimum service levels legislation) and clauses 113 to 119 come into force on Royal Assent.

973 Clauses 48, 49, 52, 53, 54, 55, 56, 57, 58, 63, 65, 66, 67, 69 and 71 come into force two months after the day on which Royal Assent is given.

974 The remaining provisions of this Act will come into force on such day as the Secretary of State may appoint by regulations. Different days may be appointed for different purposes.

Financial implications of the Bill

975 The Government will produce an impact assessment for the Bill, which will estimate the costs and benefits to stakeholders. Full details of the financial implications of the Bill will be set out in the Impact Assessment.

Parliamentary approval for financial costs or for charges imposed

976 A money resolution will be needed in respect of the Bill. A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new public expenditure. There is potential government expenditure in respect of (a) clause 8 – statutory sick pay: removal of waiting period (b) clause 9 – statutory sick pay: lower earnings limit etc (c) clause 25 – public sector outsourcing: protection of workers (d) Part 3 – the School Support Staff Negotiating Body and the Adult Social Care Negotiating Body (e) clause 46 – right of trade unions to access workplaces and (f) Part 5 – the Fair Work Agency. The House of Commons will be asked to agree that such expenditure is to be paid out of money provided by Parliament.

977 No ways and means resolution is required as the Bill does not authorise any new taxation or similar charges. However, the money resolution authorises the paying in of money to the Consolidated Fund that arises as a result of (a) the amendments made by clause 46 (rights of

trade unions to access workplaces), and (b) the amendments made to section 15 of the Gangmasters (Licensing) Act 2004 by paragraph 40 of Schedule 6.

Compatibility with the European Convention on Human Rights

978 The Government does not consider that the Bill raises any significant issues in relation to the European Convention on Human Rights. Accordingly, the Secretary of State for Business and Trade has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

Compatibility with the Environment Act 2021

979 The Secretary of State for Business and Trade is of the view that the Bill as published does not contain provisions which, if enacted, would be considered environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Duty under Section 13C of the European Union (Withdrawal) Act 2018

980 As required under the Windsor Framework (Constitutional Status of Northern Ireland) Regulations 2024 which amend the European Union (Withdrawal) Act 2018 the Minister in charge of a Bill will need to make a written statement about the consistency of that Bill with the UK internal market.

981 The Secretary of State for Business and Trade is of the view that the Bill as published does not contain provisions which affect trade between Northern Ireland and the rest of the UK. Accordingly, no statement under that section has been made.

Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
1 Employment Rights Clause 1 - 22 Schedules 1 and 2	Yes	Yes	No	Yes	No	No	No
2 Other Matters Relating to Employment Clauses 23 - 24	Yes	Yes	No	Yes	No	No	No
2 Other Matters Relating to Employment Clause 25	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2 Other Matters Relating to Employment Clause 26 – 27	Yes	Yes	No	Yes	No	No	No
3 Pay and Conditions in Particular Sectors Clause 28 Schedule 3	Yes	No	No	No	No	No	No
3 Pay and Conditions in Particular Sectors Clauses 29 – 44	Yes	No	No	No	No	No	No
4 Trade Unions and Industrial	Yes	Yes	No	Yes	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
Action etc. Clauses 45 – 72							
5 Enforcement of Labour Market Legislation Clauses 73 – 111 Schedules 4 to 7	Yes	Yes	No	Yes	No	Yes	Yes
Part 6 General Clauses 112 – 119	Yes	Yes	No	Yes	No	Yes	No

EMPLOYMENT RIGHTS BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Employment Rights Bill as introduced in the House of Commons on 10 October 2024 (Bill 11).

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