

HOUSE OF LORDS

Select Committee on the Constitution

7th Report of Session 2024–25

Employment Rights Bill

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Select Committee on the Constitution

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Seventh Report

EMPLOYMENT RIGHTS BILL

Introduction

1. The Employment Rights Bill was introduced in the House of Lords on 14 March 2025, and received its second reading on 27 March. Committee stage of the Bill has been provisionally scheduled for 29 April.
2. The Bill was promised in the Government’s 2024 election manifesto and the King’s Speech contained a commitment to “legislate to introduce a new deal for working people to ban exploitative practices and enhance employment rights.”¹ The Government describes the core objectives of the Bill as being “to strengthen employment rights and other protections in relation to employment matters, make provision in relation to pay and conditions in particular sectors, update the law relating to trade unions and industrial action, and enable the Secretary of State for transform employment rights enforcement.”²

Delegated powers and a lack of policy detail

Reliance on delegated powers

3. The Bill contains a significant number of delegated powers, including 12 provisions identified as Henry VIII clauses.
4. Clauses 1 to 4 cover “Zero hours workers”. These clauses rely on a large range of delegated powers and leave much of the policy detail to be specified by the Secretary of State in regulations—the Delegated Powers Memorandum accompanying these four clauses encompasses over 70 delegations of power.³
5. The Government justifies these powers on the basis that the allocated rights are novel and there may be a need for flexibility in the dynamic labour market.⁴
6. In their impact assessment, the Government acknowledges that “final policy decisions taken at secondary legislation will alter the number of workers in scope of protections.”⁵ The Government appears to concede, therefore, that regulations made under these powers could have significant policy implications.
7. We have previously expressed concern about the extent to which bills rely on delegated powers in lieu of policy details.

1 Labour Party, *Change: Labour Party Manifesto 2024* (13 June 2024), p. 45: <https://labour.org.uk/wp-content/uploads/2024/06/Labour-Party-manifesto-2024.pdf> [accessed 3 April 2025]; HL Deb, 17 July 2024, col 7

2 *Delegated Powers Memorandum to the Employment Rights Bill* [Bill 81 (2024–25)], para 3

3 *Delegated Powers Memorandum to the Employment Rights Bill* [Bill 81 (2024–25)], paras 27–605

4 For example, see *Delegated Powers Memorandum to the Employment Rights Bill* [Bill 81 (2024–25)], paras 14, 16

5 UK Government, *Employment Rights Bill: Economic Analysis* (October 2024), para 62: <https://bills.parliament.uk/publications/59798/documents/6233> [accessed 3 April 2025]

8. In our report on the delegation of powers, we concluded:

“It is essential that primary legislation is used to legislate for policy and other major objectives. Delegated legislation, which is subject to less parliamentary scrutiny, should only be used to fill in the details. There has been an upward trend in the seeking of delegated powers in recent years and this should cease.”⁶

9. **The volume of these delegated powers allows the possibility for significant influence over the policy implemented under the Bill, which would be effected without the parliamentary scrutiny which primary legislation would receive. This inhibits proper scrutiny of the policies proposed in the Bill. Therefore, in our view, this represents an inappropriate delegation of powers. *The House may wish to consider whether the delegation of powers in clauses 1 to 4 of the Bill provides Parliament with sufficient detail to effectively scrutinise the proposed policies.***

Henry VIII clauses and ongoing consultation

10. A distinct issue arises from clauses 24 (dismissal during pregnancy) and 25 (dismissal following a period of statutory family leave). These clauses contain and extend Henry VIII powers that effectively act as placeholders while the Government consults further on the specifics of the measures to be implemented.⁷
11. While we accept that delegated powers may allow for consultation on the implementation of a policy, we have previously concluded that “[i]t is constitutionally objectionable for the Government to seek delegated powers simply because substantive policy decisions have not yet been taken.”⁸
12. The basic purpose of these powers is discernible, and the Government has stated the powers will be used to broaden protection for workers. However, the Government’s plan to consult further on these issues means that these provisions cannot offer adequate clarity about the operation of the relevant powers in practice. Such uncertainty is particularly concerning given these provisions enable the modification of primary legislation.
13. **We believe that the use of Henry VIII powers to accommodate intended consultation leaves a constitutionally inappropriate degree of uncertainty. *The House may wish to consider whether these clauses are an appropriate use of Henry VIII powers.***

Creation of criminal liability by delegated legislation

14. Clause 54 amends the Merchant Shipping Act 1995 to allow for regulations to be made by the Secretary of State to give effect to specified international agreements. This clause includes that “regulations may provide for the contraventions of any provision of the regulations to be a criminal offence.”

6 Constitution Committee, *The Legislative Process: The Delegation of Powers* (16th Report, Session 2017–19, HL Paper 225), para 25

7 *Delegated Powers Memorandum to the Employment Rights Bill* [Bill 81 (2024–25)], paras 679 and 692

8 Constitution Committee, *The Legislative Process: The Delegation of Powers*, paras 9, 15 and 26

15. The Government’s Delegated Powers Memorandum offers no specific justification supporting the creation of offences by regulations.⁹ The Human Rights Memorandum states the Government “considered that to create offences on the face of the Bill would require making any contravention of the regulations an offence [...] such an approach would not be proportionate, and would not reflect policy intention that only select contraventions are serious enough to constitute an offence.”¹⁰
16. We have previously stated that criminal offences should be “as clear as possible on the face of statute”, to ensure both legal clarity for those bound by the law, and to allow “proper and full parliamentary scrutiny.”¹¹ We therefore consider the creation of criminal liabilities under delegated powers to be “constitutionally unacceptable”.¹²
17. **We do not consider the Government’s explanation to provide sufficient justification for the creation of criminal liability by regulations, and reiterate our view that criminal offences ought to be the product of primary, and not secondary, legislation.**¹³ *Clause 54 should be amended to remove the power to create criminal offences by regulations.*

Enforcement powers

18. Part 5 of the Bill allows the Secretary of State to appoint “enforcement officers” and allocates powers to those officers, including powers to obtain documents and enter premises.¹⁴ Clause 98 also allows these enforcement officers to be granted additional powers in accordance with the Police and Criminal Evidence Act 1984.¹⁵
19. In our report on the Ivory Bill, we stated:
- “Powers to enter and search premises and to seize property represent a significant interference with individual liberty. They are ordinarily vested only in recognised legal officials who typically operate independently of, or at least at arm’s length from, the government.”¹⁶
20. Given the range of enforcement powers potentially exercisable under the Bill on behalf of the Secretary of State, we are concerned that the Government has not provided sufficient reassurances about the safeguards for this regime regarding, for example, the qualification of enforcement officers to exercise such powers.

9 [Delegated Powers Memorandum to the Employment Rights Bill](#) [Bill 81 (2024–25)], paras 865–867

10 [Human Rights Memorandum to the Employment Rights Bill](#) [Bill 81 (2024–25)], para 17

11 Constitution Committee, [Co-operative and Community Benefit Societies and Credit Unions Bill](#) (19th Report, Session 2008–09, HL Paper 158), para 12; and Constitution Committee, [Children and Social Work Bill \[HL\]](#) (2nd Report, Session 2016–17, HL Paper 10), para 8

12 Constitution Committee, [The Legislative Process: The Delegation of Powers](#), para 50; Constitution Committee, [Product Regulation and Metrology Bill](#), (2nd Report, Session 2024–25, HL Paper 24), para 25: “... new criminal offences should be made by primary legislation.”

13 Constitution Committee, [Product Regulation and Metrology Bill](#), (2nd Report, Session 2024–25, HL Paper 24), para 25

14 [Employment Rights Bill](#), clauses 87, 93, 94 and 96–97 [Bill 81 (2024–25)]

15 [Explanatory Notes to the Employment Rights Bill](#) [Bill 81 (2024–25)-EN], para 1561. The explanatory notes describe clause 98 as “concern[ing] 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”.

16 Constitution Committee, [Ivory Bill](#) (12th Report, Session 2017–19, HL Paper 178), para 5

21. *The Government should set out what appropriate safeguards it will put in place for the exercise of potentially wide-ranging enforcement powers under this Bill.*

Access to justice

22. The Explanatory Notes to the Bill state it will “update and enhance existing employment rights and make provision for new rights.”¹⁷ In many cases, the enforcement of these rights would be through proceedings in the employment tribunals. Clause 149 also increases the time limit for making claims in employment tribunals from three to six months.
23. The impact assessment on employment tribunals time limits notes that the increase in time limits is intended to provide “greater access to the justice system”.¹⁸ However, it also states that the Government is “aware of the existence of a current backlog in the [Employment Tribunals] system with a one year wait period, and the impacts of time limit extensions are uncertain but likely to add to the pressure to the system.”¹⁹ The Government has not provided an assessment of the impact that the expansion in employment rights in this Bill could have on backlogs in the employment tribunals, but estimates that this could increase the volume of individual enforcement cases by 15 per cent.²⁰
24. In the most recent quarterly employment tribunal statistics, there was a 31 per cent increase in open caseloads from the previous quarter.²¹ The Government has acknowledged that “improvements in the system’s efficiency and/or greater capacity will be required to enable [the Bill] to operate and ensure that employees rights are enforced.”²²
25. We understand that in response to the current backlogs, the Government is taking steps to improve the capacity of the employment tribunals. In March, the Government announced it was funding 33,900 sitting days in employment tribunals.²³ There is also a campaign to recruit 36 full-time salaried Employment Judges.²⁴ These are, however, existing measures and not specific mitigations for the policies proposed in the Employment Rights Bill.
26. **We acknowledge that limitation periods for legal proceedings represent a balance between litigants’ rights to seek redress, and defendants’ rights to have cases brought promptly and resolved quickly. This balance is a policy matter, and not in and of itself a constitutional issue. However, in this instance, a potential increase**

17 [Explanatory Notes to the Employment Rights Bill](#) [Bill 81 (2024–25)-EN], para 1

18 [Impact Assessment: Employment Tribunals – Time Limits for the Employment Rights Bill](#) [Bill 81 (2024–25)], para 92

19 [Impact Assessment: Employment Tribunals – Time Limits for the Employment Rights Bill](#) [Bill 81 (2024–25)], para 92

20 UK Government, *Employment Rights Bill: Economic Analysis* (October 2024), para 61: <https://bills.parliament.uk/publications/59798/documents/6233> [accessed 3 April 2025]

21 Ministry of Justice, *Official Statistics: Tribunal Statistics Quarterly: October to December 2024* (13 March 2025): <https://www.gov.uk/government/statistics/tribunals-statistics-quarterly-october-to-december-2024/tribunal-statistics-quarterly-october-to-december-2024> [accessed 28 March 2025]

22 [Impact Assessment: Employment Tribunals – Time Limits for the Employment Rights Bill](#) [Bill 81 (2024–25)], para 97

23 HC Deb, 5 March 2025, [col 28WS](#)

24 Judicial Appointments Commission, ‘*Could you become a salaried Employment Judge?*’: <https://judicialappointments.gov.uk/could-you-become-a-salaried-employment-judge/> [accessed 1 April 2025]

in the number of claims seeking redress in employment tribunals combined with the extension of applicable time limits could have a significant impact on the existing backlogs in the employment tribunals and therefore on the constitutional principle of access to justice.

27. **We are therefore concerned that the Government has not fully considered the impact of the Bill on the ability of employment tribunals to effectively enforce the proposals.**
28. *The Government should provide further information about the potential impact on backlogs in employment tribunals likely to result from the projected increase in cases as a result of this Bill.*
29. *Furthermore, the Government should set out any additional measures it will put in place to ensure that the Bill's implementation will not adversely impact the efficient administration of justice or exacerbate the existing backlogs. The House may wish to satisfy itself that these mitigations are sufficient.*

APPENDIX 1: INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the Employment Rights Bill, Members and Legal Advisers declared no interests.