

Employment Relations (Flexible Working) Bill

Memorandum from the Department for Business and Trade to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Employment Relations (Flexible Working) Bill (“the Bill”), as introduced in the House of Lords on 27 February 2023. This memorandum identifies the provision of the Bill that confer powers to make delegated legislation. It explains why the power has been taken and explains the nature of, and the reason for, the procedure selected.
2. The Bill contains a single provision concerning delegated powers. It is not a Henry VIII power. The provision allows the Secretary of State to commence the measures in the Bill by regulations.
3. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

B. PURPOSE AND EFFECT OF THE BILL

4. In September 2021, the Government consulted on changes to the statutory right to request flexible working, an employment right under Part VIIIA of the Employment Rights Act 1996. The Government published its response to the consultation in December 2022. This committed to legislative change in this area, focussed on encouraging a better dialogue about flexible working opportunities, increasing the frequency of requests and speeding up the administrative process.
5. The Employment Relations (Flexible Working) Bill gives effect to several of the changes that were consulted on and subsequently committed to in the Government response.

C. DELEGATED POWERS

6. The Bill contains two clauses, the first covering the changes to the right to request flexible working and the second covering the power to commence the first clause by regulations.
7. This memorandum deals with the provision for delegated legislation.

Summary of delegated powers

8. Clause 2 confers new powers on the Secretary of State to commence clause 1 by regulations.

Reference	Power
Clause 2	Makes provision for a power allowing the Secretary of State to commence clause 1 by regulations.

9. The power is consistent with the standard approach to commencement orders.

Clause 2

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: None

Context and purpose

10. Clause 2 contains a standard power for the Secretary of State to bring the provisions of the Bill into force by commencement regulations.

Justification for taking the power

11. Allowing provisions in the Bill to be brought into force by regulations will afford the necessary flexibility to commence the provisions of the Bill at the appropriate time, having regard to the need to make any related secondary legislation, issue guidance and undertake appropriate training, as the case may be.

Justification for the procedure

12. As is usual with commencement powers, regulations made under clause 2 are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at a convenient time.

Department for Business and Trade

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