

# WORKERS (PREDICTABLE TERMS AND CONDITIONS) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Workers (Predictable Terms and Conditions) Bill as brought from the House of Commons on 27 March 2023 (HL Bill 126).

- These Explanatory Notes have been produced by the Department for Business and Trade with the consent of Baroness Anderson of Stoke-on-Trent, the Peer in charge of the Private Member's Bill, in order to assist the reader in understanding the Bill. 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 Bill makes new provisions in Part 8A of the Employment Rights Act 1996 to introduce a new statutory right for workers to request a predictable working pattern. The provisions will also set out:
  - the eligibility criteria for exercising the right to request a more predictable working pattern
  - duties on employers, agencies and hirers when an application for a predictable working pattern is made, and
  - the circumstances under which a worker may make a complaint to an employment tribunal and the remedies an employment tribunal may award.

## Policy background

- 2 In 2015, the Government legislated to make exclusivity clauses unenforceable in zero hours contracts, ensuring that workers on zero hours contracts can look for work elsewhere to boost their income if they do not get enough hours from their employer. In December 2022, the ban on exclusivity clauses was extended to all workers earning below the Lower Earnings Limit (currently £123 per week).
- 3 The 2017 Taylor Review of Modern Working Practices<sup>1</sup> found that many workers on zero hours contracts struggle with one-sided flexibility, where workers have to be available to their employer with no guarantee of work. It found that employers can schedule or cancel shifts with little notice, leading to insecurity of hours and income for workers. The Review recommended that the Government should introduce a right to request a direct contract of employment for agency workers who have been placed with the same hirer for 12 months. It also recommended that the Government should introduce a right for zero hours contract workers to request a more predictable contract after they have worked for their employer for 12 months.
- 4 In the Good Work Plan (2018)<sup>2</sup> the Government committed to bring forward legislation to introduce a right for all workers to request a more predictable and stable contract after 26 weeks of service.
- 5 The Government consulted on the right to request a more predictable contract in 2018.<sup>3</sup>
- 6 The right to request a more predictable contract was included in the 2019 Conservative Manifesto.<sup>4</sup>
- 7 In 2019, the Government consulted on separate measures to address the issue of one-sided flexibility.<sup>5</sup> This consultation sought views on proposals to provide a right to reasonable notice of working hours and provide workers with compensation for shifts cancelled without reasonable notice. The Government will respond to this consultation in due course.

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<sup>1</sup> <https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>

<sup>2</sup> <https://www.gov.uk/government/publications/good-work-plan>

<sup>3</sup> <https://www.gov.uk/government/consultations/increasing-transparency-in-the-labour-market>

<sup>4</sup> <https://www.conservatives.com/our-plan>

<sup>5</sup> <https://www.gov.uk/government/consultations/good-work-plan-one-sided-flexibility-addressing-unfair-flexible-working-practices>

## Legal background

- 8 There is currently no statutory right to request a more predictable working pattern.

## Territorial extent and application

- 9 Employment law is reserved in relation to Scotland and Wales but is a transferred matter in relation to Northern Ireland. It will be for the Northern Ireland Assembly to decide whether similar provisions should apply in Northern Ireland.
- 10 The clauses extend and apply to England and Wales, and Scotland.
- 11 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

## Commentary on provisions of the Workers (Predictable Terms and Conditions) Bill

- 12 Clause 1 of the Bill inserts new Chapter 2 into Part 8A of the Employment Rights Act 1996 to introduce a new right for workers to request a more predictable working pattern.
- 13 It also inserts new Chapter 3 into the same Act, to introduce the right for agency workers to request a more predictable working pattern.

### Chapter 2: Introduction of the right to request a more predictable working pattern for non-agency workers

- 14 Clause 1 inserts sections 80IA – 80IE (new Chapter 2 of Part 8A) into the Employment Rights Act 1996.
- 15 Section 80IA sets out the circumstances under which a worker could apply for this right. A qualifying worker can make an application if their working pattern lacks predictability (for example if they are on a zero hours contract and do not have a guaranteed number of hours), and if the change requested relates to the worker's work pattern. The work pattern refers to the number of hours the worker works, the days of the week and times the worker works and the length of the worker's contract. A fixed term contract of 12 months or less is presumed to lack predictability. Section 80IA also clarifies what the worker's application must include. It must state that it is an application for a more predictable working pattern and specify the change being requested.
- 16 Section 80IB sets out the restrictions on requests being made under Section 80IA. It refers to section 80IM (which regulates how many applications can be made in total under these provisions and the existing provisions in section 80F which give the right to request flexible working). It also sets out how long a worker must have been with their employer before they can make a request – a worker may only make an application under section 80IA to their employer if they were employed by the same employer (whether or not under the same worker's contract) at some point during the month immediately preceding a prescribed period, ending with the making of the application. The length of this period will be specified in regulations made by the Secretary of State.
- 17 Section 80IC sets out the employer's duties in relation to requests for a more predictable working pattern. Employers must deal with the request in a reasonable manner, notify the worker of their decision within one month, and may only refuse a request on one of the

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specified grounds, for example the burden of additional costs, or if there would not be sufficient work during the periods the worker has asked to work. Section 80IC also sets out the way in which an application must be dealt with if the worker ceases employment with the employer after the application has been made, and the circumstances under which a worker's request may be treated as withdrawn.

- 18 Section 80ID sets out how a worker making a request for a more predictable working pattern may make a complaint to an employment tribunal. A worker may make such a complaint if their employer has failed to fulfil their duties (as set out in Section 80IC) in relation to considering their request, or has made a decision to reject the application which was based on incorrect facts.
- 19 Section 80IE sets out the remedies available to an employment tribunal. If it finds a complaint made under Section 80ID to be well founded, it must make a declaration and may also order the employer to reconsider the application, and may award compensation to the worker, to be paid by the employer.

### Chapter 3: Introduction of the right to request a more predictable working pattern for agency workers

- 20 Chapter 3 (containing sections 80IF – 80IL) is inserted into the Employment Rights Act 1996.
- 21 Section 80IF provides that an agency worker may apply to a temporary work agency with which they have a contract to perform work or services to request a more predictable working pattern. An agency worker may also apply to the hirer under whose supervision and direction they are working for either a contract of employment, or other worker's contract, which is more predictable than their current working pattern. To make an application, there must be the same kind of unpredictability in relation to their work pattern as is set out in Section 80IA.
- 22 Section 80IG sets out the restrictions which apply to a worker requesting a more predictable working pattern. In relation to an application to a temporary work agency, the worker must have had a contract with the agency at some point in the month immediately before a period which will be prescribed in regulations. In relation to an application to a hirer, the worker must have worked in the same role with the same hirer continuously for 12 weeks within a period which will be prescribed in regulations. There is also reference to the further restrictions in section 80IM on the number of requests which can be made within a 12 month period.
- 23 Section 80IH sets out the duties of the hirer or temporary work agency when considering a request, which mirror those in Section 80IC.
- 24 Section 80II clarifies when and how Section 80IH applies in cases where, after an application has been made but before a decision has been reached the contract the agency worker has with the temporary work agency comes to an end (in the case of applications to temporary work agencies) or the agency worker ceases working under the direction and supervision of a hirer (in the case of applications to hirers).
- 25 Section 80IJ provides for an agency worker who has made a request for a more predictable working pattern to be able to make a complaint to an employment tribunal.
- 26 Section 80IK sets out the remedies available to an employment tribunal if it finds that an agency worker's complaint is well founded. These are the same as in Section 80IE.
- 27 Section 80IL defines the meaning of 'agency worker', 'assignment', 'hirer' and 'temporary worker agency' in sections 80IF - 80IL.

## Chapter 4: Restrictions on making multiple requests

- 28 Chapter 4 (sections 80IM and 80IN) is inserted into Part 8A of the Employment Rights Act 1996.
- 29 Section 80IM restricts the number of applications for changes to terms and conditions which can be made by a worker, to the same person, under Part 8A. A worker cannot make more than two applications for a more predictable working pattern within any 12 month period. This includes any applications made under Chapters 2 or 3, as well as any application for flexible working made under Chapter 1, if it is for a change in terms and conditions which would have the effect of delivering a more predictable working pattern. In addition, there is a limit of two applications to the same person per 12 month period under Chapter 1, for changes to terms and conditions which would not have the effect of increasing the predictability of the individual's working pattern.
- 30 Section 80IN provides that a worker may not make a further request to vary their terms and conditions to the same person (whether a request for a more predictable working pattern or for flexible working) if another request is already in process.

## Schedule

- 31 The Schedule contains a list of amendments of other legislation which result from this Bill, as follows:
- 32 It amends the *Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52)* to add claims which can be made to employment tribunals, under the provisions in the Bill, to the list of complaints in relation to which ACAS can establish an arbitration scheme.
- 33 It amends the *Employment Tribunals Act 1996 (c. 17)* to add the complaints which can be made to employment tribunals, under the provisions in the Bill, to the list of claims which are subject to the ACAS mandatory early conciliation framework.
- 34 It amends the *Employment Rights Act 1996 (c. 18)* to extend protection from detriment in Part 5, and unfair dismissal in Part 10, to workers exercising their rights under the new provisions in the Bill; to make provision in relation to the extension of the provisions in the Bill to certain groups of workers (such as Parliamentary staff, mariners and employee shareholders); and to amend the way in which a "week's pay" is calculated for the purposes of these provisions.
- 35 It also makes provision to deal with the potential passage through Parliament of the *Employment Relations (Flexible Working) Act 2023* at the same time as this Bill.

## Commencement

36 Clause 4 provides that the main provisions in the Bill are to come into force on a date to be appointed by the Secretary of State.

## Financial implications of the Bill

37 The Government has produced an impact assessment for the Bill, which estimates that the policy will result in a net cost to business of £16.9 million per year.

38 Parliamentary approval for financial costs or charges is not required.

39 A money resolution was not required.

## Compatibility with the European Convention on Human Rights

40 This Bill is considered not to engage any of the Convention rights.

## Related documents

41 The following documents are relevant to the Bill and can be read at the stated locations:

- Impact Assessment - <https://bills.parliament.uk/bills/3237>

## Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	Yes	No	No	No	Yes	No
Clause 2	Yes	Yes	Yes	No	No	No	Yes	No

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