

# Employment Rights Bill

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Business and Trade, have been ordered to be published as HL Bill 81—EN.

## EUROPEAN CONVENTION ON HUMAN RIGHTS

Baroness Jones of Whitchurch has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Employment Rights Bill are compatible with the Convention rights.



# Employment Rights Bill

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[AS BROUGHT FROM THE COMMONS]

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[AS BROUGHT FROM THE COMMONS]

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Make provision to amend the law relating to employment rights; to make provision about procedure for handling redundancies; to make provision about the treatment of workers involved in the supply of services under certain public contracts; to provide for duties to be imposed on employers in relation to equality; to amend the definition of “employment business” in the Employment Agencies Act 1973; to provide for the establishment of the School Support Staff Negotiating Body and Social Care Negotiating Bodies; to amend the Seafarers’ Wages Act 2023; to make provision for the implementation of international agreements relating to maritime employment; to make provision about trade unions, industrial action, employers’ associations and the functions of the Certification Officer; to make provision about the enforcement of legislation relating to the labour market; and for connected purposes.

**B**E IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART 1

### EMPLOYMENT RIGHTS

#### *Zero hours workers, etc*

#### **1 Right to guaranteed hours**

- (1) Part 2A of the Employment Rights Act 1996 (zero hours workers) is amended as follows.
- (2) In the Part heading, at the end insert “and similar”.

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- (3) Before section 27A insert—

**“CHAPTER 1**

EXCLUSIVITY TERMS AND OTHER RESTRICTIONS”.

- (4) After section 27B insert—

**“CHAPTER 2**

5

RIGHT TO GUARANTEED HOURS

*Guaranteed hours offers*

**27BA Right for qualifying workers to be offered guaranteed hours**

- (1) An employer must make a guaranteed hours offer to a worker in accordance with section 27BB after the end of every period— 10
- (a) that is a reference period in relation to that worker and that employer, and
  - (b) in relation to which the worker is a qualifying worker of the employer.
- (2) Section 27BD makes provision for exceptions to this duty, including in certain cases where the worker ceases to be employed by the employer. 15
- (3) A worker is a qualifying worker of an employer in relation to a reference period if—
- (a) during the reference period the worker was employed by the employer under one or more worker’s contracts (whether or not continuously) and either— 20
    - (i) the worker’s contract was, or the worker’s contracts were, a zero hours contract or entered into in accordance with a zero hours arrangement, or 25
    - (ii) the worker’s contract, or the worker’s contracts (taken together), required the employer, or were entered into in accordance with an arrangement that required the employer, to make work available to the worker during the reference period for a number of hours (“the minimum number of hours”) not exceeding a specified number of hours, 30
  - (b) during the reference period the worker worked under the worker’s contract or the worker’s contracts (taken together) for a number of hours (the “reference period hours”), 35
  - (c) where paragraph (a)(ii) applies, the reference period hours exceeded the minimum number of hours,

- (d) the reference period hours satisfy such conditions (or, where paragraph (a)(ii) applies, such further conditions) as to number, regularity or otherwise as are specified, and
  - (e) when the worker worked the reference period hours, it was not as an excluded worker or an agency worker (but see Part 1 of Schedule A1 for provision about guaranteed hours and agency workers). 5
- (4) In relation to a worker and the worker’s employer, each of the following is a “reference period” –
  - (a) the initial reference period, and 10
  - (b) each subsequent reference period.
- (5) “The initial reference period”, in relation to a worker and the worker’s employer, means the period –
  - (a) beginning with –
    - (i) where the worker is employed by the employer on the day on which subsection (1) comes into force (“the commencement day”), the commencement day, or 15
    - (ii) where the worker is not so employed, the first day after the commencement day on which the worker is employed by the employer, and 20
  - (b) ending with the specified day.
- (6) A “subsequent reference period”, in relation to a worker and the worker’s employer, means a period beginning and ending with the specified days.
- (7) For the purposes of this Chapter – 25
  - (a) references to a “qualifying worker” are to a worker who is a qualifying worker of an employer in relation to a reference period by virtue of subsection (3), and
  - (b) the reference period in relation to which the worker is a qualifying worker of the employer is referred to as “the relevant reference period”. 30
- (8) If, during a reference period –
  - (a) a worker was employed by an employer under one or more worker’s contracts of the type described in subsection (3)(a)(i) and one or more worker’s contracts of the type described in subsection (3)(a)(ii), and 35
  - (b) the hours that the worker worked under the worker’s contract, or the worker’s contracts, that are of the type described in subsection (3)(a)(ii) did not exceed the minimum number of hours, 40

the worker’s contract, or the worker’s contracts, that are of the type described in subsection (3)(a)(ii) are to be disregarded in the application of this Chapter (other than this subsection) in relation to the worker

and the reference period (and accordingly that worker’s contract, or those worker’s contracts, are to be treated as not existing).

- (9) Nothing in this Chapter prevents an employer from making one or more other offers to a qualifying worker, to vary the worker’s terms and conditions of employment or enter into a new worker’s contract, at the same time as making a guaranteed hours offer. 5
- (10) Regulations made under subsection (3)(d), (5) or (6) may, in particular, include provision to take account of time when a worker does not work for a specified reason.
- (11) In this section, “excluded worker” means a worker who is of a specified description. 10

### **27BB Requirements relating to a guaranteed hours offer**

- (1) An offer by an employer to a qualifying worker is a guaranteed hours offer for the purposes of this Chapter if it is an offer –
- (a) to vary the worker’s terms and conditions of employment (but see subsection (6)), or
  - (b) to enter into a new worker’s contract,
- and the terms and conditions as varied or (as the case may be) the new worker’s contract will require the employer to provide the qualifying worker with work, and the qualifying worker to do work, for a number of hours that reflects the reference period hours in the relevant reference period. 20
- (2) The Secretary of State may by regulations provide that an offer by an employer to a qualifying worker is a guaranteed hours offer for the purposes of this Chapter only if it also satisfies the condition in subsection (3). 25
- (3) The condition referred to in subsection (2) is that –
- (a) the offer sets out –
    - (i) the days of the week, and the times on those days, when the offered number of hours are to be provided and worked, or
    - (ii) a working pattern of days, and times of day, by reference to which the offered number of hours are to be provided and worked, and
  - (b) those days and times reflect, or that pattern reflects, when the qualifying worker worked the reference period hours in the relevant reference period. 35
- (4) Where no regulations are in force under subsection (2) that apply in relation to an offer by an employer to a qualifying worker, the offer is a guaranteed hours offer for the purposes of this Chapter only if it also proposes terms and conditions relating to when the offered number of hours are to be provided and worked (which need not be 40

on particular days of the week, or at particular times on those days, or by reference to a particular working pattern of days or times of day).

- (5) The Secretary of State may by regulations make provision about how it is to be determined – 5
- (a) whether an offer reflects the number of hours worked by a qualifying worker during a reference period;
  - (b) where regulations are in force under subsection (2) that apply in relation to an offer, whether the offer reflects when hours were worked by a qualifying worker during a reference period. 10
- (6) A guaranteed hours offer may take the form of an offer to vary a qualifying worker’s terms and conditions of employment (as opposed to an offer to enter into a new worker’s contract) only if –
- (a) the qualifying worker worked for the employer under a worker’s contract at the beginning of the relevant reference period, 15
  - (b) the qualifying worker is still working for the employer under that worker’s contract on the day the offer is made, and
  - (c) the qualifying worker did not work for the employer under any other worker’s contract during the period beginning with the first day of the relevant reference period and ending with the day the offer is made. 20
- (7) A guaranteed hours offer that takes the form of an offer to vary a qualifying worker’s terms and conditions of employment –
- (a) must propose the removal of any term that provides for the contract to terminate by virtue of a limiting event unless, if the contract were entered into on the day the offer is made, it would be reasonable for it to be entered into as a limited-term contract; 25
  - (b) may not propose any other variation of the worker’s terms and conditions of employment (other than what is required by or under subsections (1) and (2) or subsections (1) and (4)). 30
- (8) A guaranteed hours offer that takes the form of an offer to enter into a new worker’s contract –
- (a) must not propose a new worker’s contract that is a limited-term contract unless it is reasonable for it to be entered into as such a contract, and 35
  - (b) must (in addition to what is required by or under subsections (1) and (2) or subsections (1) and (4)) propose terms and conditions of employment – 40
    - (i) that, taken as a whole, are no less favourable than the terms and conditions of employment relating to matters other than working hours and length of employment that the qualifying worker had when working for the employer during the relevant reference period, or 45

- (ii) where section 27BC applies, that comply with subsection (2) of that section.
- (9) For the purposes of this section it is reasonable for a worker’s contract of a qualifying worker to be entered into as a limited-term contract only if—
- (a) it is reasonable for the qualifying worker’s employer to consider that the worker is only needed to perform a specific task and the contract provides for termination when the task has been performed, 5
  - (b) it is reasonable for the qualifying worker’s employer to consider that the worker is only needed until the occurrence of an event (or the failure of an event to occur) and the contract provides for termination on the occurrence of the event (or the failure of the event to occur), or 10
  - (c) it is reasonable for the qualifying worker’s employer to consider that there is only a temporary need of a specified description (not falling within paragraph (a) or (b)) for the qualifying worker to do work under the contract and the contract is to expire at a time when it is reasonable for the employer to consider that the temporary need will come to an end. 15 20
- (10) A guaranteed hours offer—
- (a) must be made by no later than the specified day,
  - (b) must be made in the specified form and manner, and
  - (c) must be accompanied by specified information relating to the offer. 25
- (11) The Secretary of State may by regulations make provision about when a guaranteed hours offer is to be treated as having been made.
- (12) In this section, “reference period hours”, in relation to a qualifying worker and a relevant reference period, has the same meaning as in section 27BA(3). 30

### **27BC Requirements relating to a guaranteed hours offer: supplementary**

- (1) This section applies where—
- (a) a guaranteed hours offer made by an employer to a qualifying worker takes the form of an offer to enter into a new worker’s contract, and 35
  - (b) during the relevant reference period—
    - (i) the qualifying worker worked for the employer under more than one worker’s contract and did not have the same terms and conditions of employment relating to matters other than working hours and length of employment under those worker’s contracts, or 40
    - (ii) the qualifying worker worked for the employer under only one worker’s contract but there was a variation



during the relevant reference period of the qualifying worker's terms and conditions of employment relating to matters other than working hours and length of employment.

- (2) Where this section applies, the guaranteed hours offer may propose terms and conditions of employment (in addition to what is required by or under section 27BB(1) and (2) or section 27BB(1) and (4)) that, taken as a whole, are less favourable than the most favourable terms and conditions of employment relating to matters other than working hours and length of employment that the qualifying worker had when working for the employer during the relevant reference period, but only if –
- (a) those proposed terms and conditions, taken as a whole, are no less favourable than the least favourable terms and conditions relating to matters other than working hours and length of employment that the qualifying worker had when working for the employer during the relevant reference period, and
  - (b) the proposal of those terms by the employer constitutes a proportionate means of achieving a legitimate aim.
- (3) If an employer relies on subsection (2) when making a guaranteed hours offer to a qualifying worker, the employer must give to the qualifying worker a notice that –
- (a) states that the employer has done so, and
  - (b) explains how the proposed terms and conditions constitute a proportionate means of achieving a legitimate aim.
- (4) A notice under subsection (3) must be given by no later than the same day, and in the same form and manner, as the guaranteed hours offer (see section 27BB(10)).

**27BD Guaranteed hours offer: exceptions to duty to make offer and withdrawal of offer**

- (1) The duty imposed by section 27BA(1) on an employer in relation to a qualifying worker does not apply if during the relevant reference period or the offer period there is a relevant termination of –
- (a) the worker's contract under which the qualifying worker has been working for the employer, or
  - (b) the arrangement in accordance with the terms of which the qualifying worker has been working for the employer.
- (2) A guaranteed hours offer made by an employer to a qualifying worker is to be treated as having been withdrawn if during the response period there is a relevant termination of –
- (a) the worker's contract under which the qualifying worker has been working for the employer, or

- (b) the arrangement in accordance with the terms of which the qualifying worker has been working for the employer.
- (3) Where a qualifying worker works for an employer under more than one worker's contract, or in accordance with the terms of more than one arrangement, during— 5
- (a) the relevant reference period,
- (b) the offer period, or
- (c) the response period,
- the references in subsections (1) and (2) to the worker's contract or (as the case may be) the arrangement are to the worker's contract under which, or (as the case may be) the arrangement in accordance with the terms of which, the qualifying worker last worked for the employer before the end of the period in question. 10
- (4) There is a relevant termination of a worker's contract entered into between a qualifying worker and an employer if— 15
- (a) the qualifying worker terminates (with or without notice) the worker's contract otherwise than in circumstances in which the worker is entitled to terminate it without notice by reason of the employer's conduct,
- (b) the employer terminates (with or without notice) the worker's contract and— 20
- (i) the employer's reason for doing so (or, if more than one, the employer's principal reason for doing so) is a qualifying reason, and
- (ii) in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acts reasonably in treating the reason (or the principal reason) as a sufficient reason for terminating the contract, or 25
- (c) the worker's contract terminates by virtue of a limiting event and it was reasonable for the contract to have been entered into as a limited-term contract. 30
- (5) There is a relevant termination of an arrangement entered into between a qualifying worker and an employer if—
- (a) the qualifying worker or the employer terminates the arrangement and the termination is equivalent to a termination falling within subsection (4)(a) or (b), or 35
- (b) the arrangement was not intended to be permanent and the termination of it is equivalent to a termination falling within subsection (4)(c). 40
- (6) The Secretary of State may by regulations make provision for the duty imposed by section 27BA(1) not to apply, or for a guaranteed hours offer that has been made to be treated as having been withdrawn, in other specified circumstances.

- (7) Where, by virtue of subsection (2), a guaranteed hours offer made by an employer to a qualifying worker is treated as having been withdrawn, the employer must, by no later than the end of the response period, give a notice to the qualifying worker stating this to be the case. 5
- (8) Where, by virtue of regulations under subsection (6) –
- (a) an employer who would otherwise have been subject to the duty imposed by section 27BA(1) in relation to a qualifying worker and a particular reference period is not required to make a guaranteed hours offer to the qualifying worker, or 10
  - (b) a guaranteed hours offer made by an employer to a qualifying worker is treated as having been withdrawn,  
the employer must give a notice to the qualifying worker that states which provision of the regulations has produced the effect referred to in paragraph (a) or (b) (as the case may be). 15
- (9) A notice under subsection (8) must be given by an employer to a qualifying worker –
- (a) where it is required to be given by virtue of paragraph (a) of that subsection, by no later than the end of the offer period;
  - (b) where it is required to be given by virtue of paragraph (b) of that subsection, by no later than the end of the response period. 20
- (10) The Secretary of State may by regulations make provision about –
- (a) the form and manner in which a notice under subsection (7) or (8) must be given;
  - (b) when a notice under subsection (7) or (8) is to be treated as having been given. 25
- (11) For the purposes of subsection (4)(c) (and subsection (5)(b), which applies subsection (4)(c)) –
- (a) subsection (9) of section 27BB (when it is reasonable for a worker’s contract to be entered into as a limited-term contract) applies as it applies for the purposes of that section; 30
  - (b) it is to be presumed, unless the contrary is shown, that it was not reasonable for the worker’s contract to have been entered into as a limited-term contract if the work done by the qualifying worker under the worker’s contract was of the same or a similar nature as the work done under another worker’s contract under which the qualifying worker worked for the employer – 35
    - (i) where the period in question is the relevant reference period, during that period; 40
    - (ii) where the period in question is the offer period, during that period or the relevant reference period;

- (iii) where the period in question is the response period, during that period, the relevant reference period or the offer period.

(12) In this section—

“the offer period”, in relation to a qualifying worker and the qualifying worker’s employer, means the period beginning with the day after the day on which the relevant reference period ends and ending with— 5

- (a) the day on which a guaranteed hours offer is made to the qualifying worker by the employer, or 10
- (b) if no guaranteed hours offer is made before the day specified under section 27BB(10)(a) as the last day on which the employer may make such an offer to the qualifying worker, that last day;

“qualifying reason” means— 15

- (a) a reason of the type mentioned in section 98(1)(b), or
- (b) in relation to a worker who was not an employee immediately before ceasing to be employed, a reason that would be of the type mentioned in section 98(1)(b) if references in that provision and in section 98(2) and (3) to an employee were references to a worker; 20

“the response period”, in relation to a guaranteed hours offer made to a qualifying worker, means the period—

- (a) beginning with the day after the day on which the offer is made, and 25
- (b) ending with the specified day.

### **27BE Acceptance or rejection of a guaranteed hours offer**

- (1) Where an employer makes a guaranteed hours offer to a qualifying worker and the offer is not treated as having been withdrawn by virtue of section 27BD(2) or regulations under section 27BD(6), the qualifying worker may, by giving notice to the employer before the end of the response period, accept or reject the offer. 30
- (2) Where the guaranteed hours offer takes the form of an offer to vary the qualifying worker’s terms and conditions of employment and the qualifying worker gives notice under subsection (1) accepting the offer, the variation (assuming the worker’s contract that was in force when the guaranteed hours offer was made is still in force) is to be treated as taking effect on the day after the day on which notice is given (but this is subject to subsection (6)). 35
- (3) If the guaranteed hours offer takes the form of an offer to vary the qualifying worker’s terms and conditions of employment but the worker’s contract that was in force when the guaranteed hours offer was made ceases to be in force during the response period— 40

- (a) the qualifying worker may (if the offer is not treated as having been withdrawn by virtue of section 27BD(2) or regulations under section 27BD(6)) still give notice under subsection (1) accepting the offer, and
  - (b) if the qualifying worker does so—
    - (i) the qualifying worker and the employer are to be treated as entering into a worker’s contract on the day after the day on which notice is given (but this is subject to subsection (6)), and
    - (ii) the terms of the contract are to be treated as being the terms of the worker’s contract that was in force when the guaranteed hours offer was made as varied in accordance with the terms of the offer.
- (4) Where the guaranteed hours offer takes the form of an offer to enter into a new worker’s contract and the qualifying worker gives notice under subsection (1) accepting the offer—
  - (a) the qualifying worker and the employer are to be treated as entering into a worker’s contract in the terms of the offer on the day after the day on which notice is given (but this is subject to subsection (6)), and
  - (b) that worker’s contract is to be treated as replacing any other worker’s contract entered into between the qualifying worker and the employer that is in force on that day.
- (5) But where, by virtue of subsection (4)(b), a new worker’s contract replaces another worker’s contract of a qualifying worker who is an employee—
  - (a) that is not to be treated for the purposes of this Act as breaking the continuity of a period of employment of the qualifying worker;
  - (b) the worker’s contract that is replaced is not to be treated for the purposes of Part 10 as having terminated.
- (6) A qualifying worker and an employer may agree, for the purposes of subsection (2), (3) or (4), that the variation of the qualifying worker’s terms and conditions of employment is to be treated as taking effect, or (as the case may be) the new worker’s contract is to be treated as being entered into, on a later day than the day mentioned in the subsection (and, in subsection (4)(b), the reference to “that day” is then to be read as a reference to the later agreed day).
- (7) If a qualifying worker to whom a guaranteed hours offer has been made does not give notice under subsection (1) before the end of the response period, the qualifying worker is to be treated as having rejected the offer.
- (8) The Secretary of State may by regulations make provision about—

- (a) the form and manner in which notice under subsection (1) must be given by a qualifying worker to an employer;
  - (b) when notice given by a qualifying worker to an employer under subsection (1) is to be treated as having been given.
- (9) In this section, “the response period” has the same meaning as in section 27BD. 5
- (10) Where—
- (a) an employer is permitted by section 27BY(3) to withdraw a guaranteed hours offer (withdrawal of offer following incorporation of terms of collective agreement), and 10
  - (b) the employer withdraws the offer by giving notice under that section,
- subsection (1) of this section ceases to apply in relation to the offer when the notice is given.

*Information* 15

**27BF Information about rights conferred by Chapter 2**

- (1) An employer who employs a worker who it is reasonable to consider might become a qualifying worker of the employer in relation to a reference period (whether the initial reference period, or a subsequent reference period, as defined in section 27BA) must take reasonable steps, within the initial information period, to ensure that the worker is aware of specified information relating to the rights conferred on workers by this Chapter. 20
- (2) An employer who is subject to the duty in subsection (1) in relation to a worker must take reasonable steps to ensure that, after the end of the initial information period, the worker continues to have access to the specified information referred to in that subsection at all times when— 25
- (a) the worker is employed by the employer, and
  - (b) it is reasonable to consider that the worker might become (or might again become) a qualifying worker of the employer in relation to a reference period. 30
- (3) “The initial information period”, in relation to a worker and the worker’s employer, means the period of two weeks beginning with— 35
- (a) where the worker is employed by the employer on the day on which section 27BA(1) comes into force (“the commencement day”), the commencement day, or
  - (b) where the worker is not so employed, the first day after the commencement day on which the worker is employed by the employer. 40

- (4) But where, on the day referred to in subsection (3)(a) or (b), it was not reasonable to consider that the worker might become a qualifying worker of the employer in relation to any reference period, subsection (3) is to be read as if it provided for “the initial information period” to mean the period of two weeks beginning with the day on which it becomes reasonable so to consider. 5

*Enforcement*

**27BG Complaints to employment tribunals: grounds**

- (1) A worker may present a complaint to an employment tribunal that—
- (a) the duty imposed by section 27BA(1) applies to the worker’s employer in relation to the worker and a particular reference period, but 10
  - (b) by the end of the last day of the offer period, the employer has not made an offer to vary the worker’s terms and conditions of employment or to enter into a new worker’s contract in compliance (or purported compliance) with that duty (whether because the employer does not consider that the worker is a qualifying worker in relation to the reference period or for any other reason). 15
- (2) A worker may present a complaint to an employment tribunal that— 20
- (a) the duty imposed by section 27BA(1) applies to the worker’s employer in relation to the worker and a particular reference period, but
  - (b) the offer that the employer has made to the worker in relation to that reference period to vary the worker’s terms and conditions of employment or to enter into a new worker’s contract is not a guaranteed hours offer as described in— 25
    - (i) where regulations are in force under subsection (2) of section 27BB that apply in relation to the offer, subsections (1) and (3) of that section (read with any regulations in force under subsection (5)(a) or (b) of that section), or 30
    - (ii) where no regulations are in force under subsection (2) of section 27BB that apply in relation to the offer, subsections (1) and (4) of that section (read with any regulations in force under subsection (5)(a) of that section). 35
- (3) A worker may present a complaint to an employment tribunal that—
- (a) the duty imposed by section 27BA(1) applies to the worker’s employer in relation to the worker and a particular reference period, but 40
  - (b) the guaranteed hours offer that the employer has made to the worker in relation to that reference period—

- 
- (i) takes the form of an offer to vary the worker’s terms and conditions of employment where that is prohibited by section 27BB(6),
      - (ii) does not comply with section 27BB(7), or
      - (iii) does not comply with section 27BB(8). 5
  - (4) A worker may present a complaint to an employment tribunal that—
    - (a) the duty imposed by section 27BA(1) applies to the worker’s employer in relation to the worker and a particular reference period, but
    - (b) the guaranteed hours offer that the employer has made to the worker in relation to that reference period is on terms requiring the employer to provide, and the worker to do, less work than would have been the case if the employer had not, during that reference period—
      - (i) limited (by whatever means, including termination of a worker’s contract or an arrangement) the number of hours of work made available to the worker, or 10
      - (ii) decided to make work available to the worker in the way that the employer did, 15

for the sole or main purpose of being able to comply with the duty by making such a reduced offer. 20
  - (5) A worker may present a complaint to an employment tribunal that the duty imposed by section 27BA(1) would have applied to the worker’s employer in relation to the worker and a particular reference period if the employer had not, during that reference period—
    - (a) limited (by whatever means, including termination of a worker’s contract or an arrangement) the number of hours of work made available to the worker, or 25
    - (b) decided to make work available to the worker in the way that the employer did, 30

for the sole or main purpose of preventing the worker from satisfying, in relation to that reference period, one or more of the conditions in section 27BA(3)(b) to (d).
  - (6) A complaint under subsection (2), (3) or (4)—
    - (a) may be presented whether or not the offer in question has been accepted by the worker, but 35
    - (b) may not be presented in relation to an offer that is—
      - (i) treated as having been withdrawn by virtue of section 27BD(2) or regulations under section 27BD(6), or
      - (ii) withdrawn in accordance with section 27BY(3) (withdrawal of offer following incorporation of terms of collective agreement). 40
  - (7) A worker may present a complaint to an employment tribunal that the worker’s employer—



- (a) has failed to give to the worker a notice under section 27BD(7) or (8);
  - (b) has given to the worker a notice under section 27BD(7) or (8)(b) in circumstances in which the employer should not have done so; 5
  - (c) has given to the worker a notice in purported compliance with section 27BD(8) that does not refer to any provision of the regulations or refers to the wrong provision.
- (8) A worker may present a complaint to an employment tribunal that the worker’s employer has failed to comply with— 10
- (a) the duty imposed by section 27BF(1);
  - (b) the duty imposed by section 27BF(2).
- (9) In this section “the last day of the offer period”, in relation to a reference period, means the day specified under section 27BB(10)(a) as the last day on which a guaranteed hours offer may be made in relation to that reference period. 15

**27BH Complaints to employment tribunals: time limits**

- (1) An employment tribunal must not consider a complaint under section 27BG(1) unless it is presented before the end of the period of six months beginning with the day after the last day of the offer period (as defined in section 27BG(9)). 20
- (2) An employment tribunal must not consider a complaint under section 27BG(2) unless it is presented before the end of the period of six months beginning with the day after the day when the offer referred to in that provision is made. 25
- (3) An employment tribunal must not consider a complaint under section 27BG(3) or (4) unless it is presented before the end of the period of six months beginning with the day after the day when the guaranteed hours offer referred to in that provision is made.
- (4) An employment tribunal must not consider a complaint under section 27BG(5) unless it is presented before the end of the period of six months beginning with the day after what would have been the last day of the offer period (as defined in section 27BG(9)) if the duty imposed by section 27BA(1) had applied. 30
- (5) An employment tribunal must not consider a complaint under section 27BG(7)(a) relating to a notice unless it is presented before the end of the period of six months beginning with the day after the day on or before which the notice should have been given (see section 27BD(7) and (9)). 35
- (6) An employment tribunal must not consider a complaint under section 27BG(7)(b) or (c) relating to a notice unless it is presented before the 40

end of the period of six months beginning with the day after the day on which the notice is given.

- (7) An employment tribunal must not consider a complaint under section 27BG(8)(a) unless it is presented before the end of the period of six months beginning with the day after the last day of the initial information period (see section 27BF(3) and (4)). 5
- (8) An employment tribunal must not consider a complaint under section 27BG(8)(b) unless it is presented before the end of the period of six months beginning with the day on which the worker first becomes aware of the failure to which the complaint relates. 10
- (9) But, if the employment tribunal is satisfied that it was not reasonably practicable for a complaint under section 27BG to be presented before the end of the relevant period of six months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable. 15
- (10) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsections (1) to (8).

## **27BI Remedies**

- (1) Where an employment tribunal finds a complaint under section 27BG well-founded, the tribunal— 20
- (a) must make a declaration to that effect, and
  - (b) may make an award of compensation to be paid by the employer to the worker.
- (2) The amount of compensation under subsection (1)(b) is to be such amount, not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances to compensate the worker for any financial loss sustained by the worker which is attributable to the matter complained of. 25
- (3) In ascertaining the financial loss sustained, the tribunal must apply the same rule concerning the duty of a person to mitigate their loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland. 30
- (4) For the purposes of subsection (2), “the permitted maximum” is— 35
- (a) where the complaint is under section 27BG(1), (2), (3), (7) or (8), such number of weeks’ pay as the Secretary of State may specify in regulations;
  - (b) where the complaint is under section 27BG(4) or (5), such amount as the Secretary of State may specify in regulations.

- (5) In calculating a week’s pay for the purposes of determining the permitted maximum for an award of compensation to a worker who is not an employee, Chapter 2 of Part 14 is to apply as if—
- (a) references in that Chapter and in section 234 (normal working hours) to an employee were references to a worker; 5
  - (b) references in that Chapter and in section 234 to a contract of employment were references to a worker’s contract;
  - (c) “week” meant—
    - (i) in relation to a worker whose remuneration is calculated weekly by a week ending with a day other than a Saturday, a week ending with that other day, and 10
    - (ii) in relation to any other worker, a week ending with Saturday.”

## 2 Shifts: rights to reasonable notice

After section 27BI of the Employment Rights Act 1996 (inserted by section 1) insert— 15

### “CHAPTER 3

#### SHIFTS: RIGHTS TO REASONABLE NOTICE

##### 27BJ Right to reasonable notice of a shift

- (1) An employer must give to a worker reasonable notice of a shift that the employer requests or requires the worker to work if— 20
- (a) the worker is (or is to be) employed by the employer under a zero hours contract, or
  - (b) the worker is (or is to be) employed by the employer under a worker’s contract of a specified description that requires the employer to make some work available to the worker but does not provide on what days and at what times, or in accordance with what pattern of days and times, that work is to be done by the worker, 25
- and the shift is to be worked under the contract referred to in paragraph (a) or (b). 30
- (2) An employer must give to a worker reasonable notice of a shift that the employer requests or requires the worker to work if—
- (a) the worker is (or is to be) employed by the employer under a worker’s contract of a specified description that requires the employer to make some work available to the worker, 35
  - (b) the contract provides on what days and at what times, or in accordance with what pattern of days and times, that work, or some of that work, is to be done by the worker, and

- (c) the shift is to be worked under that contract but no part of it corresponds to the time of a shift provided for by the contract as described in paragraph (b).
- (3) An employer must give to an individual reasonable notice of a shift that the employer requests the individual to work if— 5
- (a) the individual would, if they worked the shift, be employed by the employer under a worker’s contract, and
- (b) the worker’s contract would be entered into in accordance with a zero hours arrangement that is in place between the employer and the individual. 10
- (4) It is to be presumed, unless the contrary is shown, that notice of a shift is not reasonable notice for the purposes of subsections (1) to (3) if it is given less than a specified amount of time before the shift is due to start.
- (5) Regulations under subsection (1)(b) or (2)(a) may, in particular, specify a description of worker’s contract by reference to— 15
- (a) it being a worker’s contract that entitles a worker to be paid no more than a specified amount;
- (b) it being a worker’s contract that requires an employer to make work available to a worker for no more than a specified number of hours. 20
- (6) Where—
- (a) the conditions in subsection (2)(a) and (b) are met in relation to a worker and a worker’s contract,
- (b) the worker is to work (or is working) a shift under that contract all or part of which corresponds to the time of a shift (a “guaranteed shift”) provided for by the contract as described in subsection (2)(b), 25
- (c) the employer requests or requires the worker to start earlier, or end later, than is provided for by the contract (as described in subsection (2)(b)) in relation to the guaranteed shift, and 30
- (d) the earlier start or later end is to result in an additional number of hours being worked above the number of hours to be worked in the guaranteed shift,
- the additional hours are to be treated for the purposes of this Chapter as a separate shift (and accordingly as one that meets the condition in subsection (2)(c)). 35
- (7) For the purposes of this Chapter—
- “employer”, in relation to an individual and a shift, includes a person by whom the individual would be (or would have been) employed if the individual worked the shift; 40
- “worker”, in relation to a shift, includes an individual who would be (or would have been) a worker if the individual worked the shift.

- (8) In this section, “notice of a shift” means notice of how many hours are to be worked and when the shift is to start and end.

**27BK Right to reasonable notice of cancellation of or change to a shift**

- (1) Subsection (2) applies in relation to an employer and a worker where—
- (a) the employer has given notice of a shift to the worker, 5
  - (b) the shift is one that the worker was entitled to reasonable notice of under section 27BJ(1), (2) or (3), and
  - (c) where the shift is one that the employer has requested (rather than required) the worker to work, the worker has agreed to work it. 10
- (2) The employer must give reasonable notice to the worker of—
- (a) the cancellation of the shift by the employer;
  - (b) any change requested or required by the employer consisting of—
    - (i) a change to when the shift is to start or end; 15
    - (ii) a reduction in the number of hours to be worked during the shift because of a break in the shift;
- (but this is subject to section 27BM).
- (3) It is to be presumed, unless the contrary is shown, that—
- (a) notice of the cancellation of a shift is not reasonable notice for the purposes of subsection (2) if it is given less than a specified amount of time before the shift would have started (if the shift had not been cancelled); 20
  - (b) notice of a change to when a shift is to start is not reasonable notice for the purposes of subsection (2) if it is given less than a specified amount of time before the earlier of—
    - (i) when the shift would have started (if the shift had not been changed), and
    - (ii) when the shift is due to start (having been changed); 25
  - (c) notice of any other change to a shift is not reasonable notice for the purposes of subsection (2) if it is given—
    - (i) less than a specified amount of time before the shift is due to start; 30
    - (ii) on or after the start of the shift.
- (4) In this section, “notice of a shift” has the same meaning as in section 27BJ. 35

**27BL Sections 27BJ and 27BK: supplementary**

- (1) None of the duties imposed by sections 27BJ and 27BK applies in relation to a shift that would be (or would have been) worked, or is being worked, by a worker as an agency worker (but see Part 2 of 40

Schedule A1 for provision about rights of agency workers to reasonable notice in relation to shifts).

- (2) Where a worker suggests working a shift and the employer agrees to the suggestion –
  - (a) the duties imposed by section 27BJ(1), (2) and (3) do not apply in relation to the shift as suggested by the worker, but 5
  - (b) the duty imposed by section 27BK(2) applies (even though the conditions in section 27BK(1) have not been met).
- (3) Section 27BJ(6) applies for the purposes of subsection (2) of this section as if section 27BJ(6)(c) referred to what the worker suggests rather than what the employer requests or requires. 10
- (4) In sections 27BJ and 27BK, references to a request to work a shift made by an employer to a worker include a request (a “multi-worker request”) made by the employer to the worker and one or more others in circumstances where the employer does not need the shift to be worked by all of those to whom the request is made. 15
- (5) For the purposes of section 27BK, where an employer has made a multi-worker request to a worker in relation to a shift, references to the cancellation of the shift include the worker not being needed to work the shift because one or more others have agreed to work it. 20
- (6) The Secretary of State may by regulations make provision about –
  - (a) the form and manner in which notice under sections 27BJ and 27BK must be given;
  - (b) when notice under those sections is to be treated as having been given. 25

#### **27BM Interaction with Chapter 4**

- (1) Where an employer –
  - (a) is required to make a payment to a worker under section 27BP in relation to a shift that the employer cancels, moves or curtails at short notice, or 30
  - (b) would have been required to make such a payment in relation to the shift but for provision made under section 27BR(1)(c), nothing in section 27BK(2) is to be taken to have applied in relation to the cancellation, movement or curtailment of the shift that gave rise to, or would have given rise to, the requirement to make the payment. 35
- (2) Terms used in this section have the same meaning as in section 27BP.

#### **27BN Complaints to employment tribunals**

- (1) A worker may present a complaint to an employment tribunal that the worker’s employer has failed to comply with a duty imposed by section 27BJ or 27BK. 40

- (2) Where, in determining whether a complaint under this section is well-founded, the tribunal must determine whether reasonable notice has been given, the tribunal must have regard, in particular, to such of the specified matters as are appropriate in the circumstances.
- (3) An employment tribunal must not consider a complaint under this section unless it is presented before the end of the period of six months beginning with –
- (a) where the complaint is that the employer failed to comply with a duty imposed by section 27BJ(1), (2) or (3) in relation to a shift, the day on which the shift was due to start; 10
  - (b) where the complaint is that the employer failed to comply with the duty imposed by section 27BK(2) in relation to the cancellation of a shift, the day on which the shift would have started (if the shift had not been cancelled);
  - (c) where the complaint is that the employer failed to comply with the duty imposed by section 27BK(2) in relation to a change to a shift, the day on which the shift as changed was due to start or, where the shift was changed on or after its start, the day on which the shift started. 15
- (4) But, if the employment tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the relevant period of six months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable. 20
- (5) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3). 25

### **27BO Remedies**

- (1) Where an employment tribunal finds a complaint under section 27BN well-founded, the tribunal –
- (a) must make a declaration to that effect, and 30
  - (b) may make an award of compensation to be paid by the employer to the worker.
- (2) The amount of compensation under subsection (1)(b) in relation to a complaint is to be such amount, not exceeding the specified amount, as the tribunal considers just and equitable in all the circumstances to compensate the worker for any financial loss sustained by the worker which is attributable to the matter complained of. 35
- (3) In ascertaining the financial loss sustained, the tribunal must apply the same rule concerning the duty of a person to mitigate their loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland.” 40

**3 Right to payment for cancelled, moved and curtailed shifts**

After section 27BO of the Employment Rights Act 1996 (inserted by section 2) insert—

**“CHAPTER 4****RIGHT TO PAYMENT FOR CANCELLED, MOVED AND CURTAILED SHIFTS**

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**27BP Right to payment for a cancelled, moved or curtailed shift**

- (1) An employer must make a payment of a specified amount to a worker each time that the employer cancels, moves or curtails at short notice a qualifying shift—
- (a) that the employer has informed the worker they are required to work, 10
  - (b) that the employer has requested the worker to work and the worker has agreed to work, or
  - (c) that the worker has suggested working and the employer has agreed to the worker working, 15
- (but see section 27BR for exceptions to this duty).
- (2) A shift is a “qualifying shift”, in relation to a worker and an employer, if it would be (or would have been) worked, or is being worked, by the worker for the employer under—
- (a) a zero hours contract, 20
  - (b) a worker’s contract entered into in accordance with a zero hours arrangement, or
  - (c) a worker’s contract of a specified description that requires the employer to make some work available to the worker but does not provide on what days and at what times, or in accordance with what pattern of days and times, that work is to be done by the worker. 25
- (3) A shift is also a “qualifying shift”, in relation to a worker and an employer, if—
- (a) it would be (or would have been) worked, or is being worked, by the worker for the employer under a worker’s contract of a specified description, 30
  - (b) the contract provides on what days and at what times, or in accordance with what pattern of days and times, that work, or some of that work, is to be done by the worker, and 35
  - (c) no part of the shift corresponds to the time of a shift provided for by the contract as described in paragraph (b).
- (4) Where—
- (a) the conditions in subsection (3)(a) and (b) are met in relation to a shift, 40



- (b) all or part of the shift corresponds to the time of a shift (a “guaranteed shift”) provided for by the contract as described in subsection (3)(b),
  - (c) the employer requests or requires, or the worker suggests, that the worker starts earlier, or ends later, than is provided for by the contract (as described in subsection (3)(b)) in relation to the guaranteed shift, and 5
  - (d) the earlier start or later end is to result in an additional number of hours being worked above the number of hours to be worked in the guaranteed shift, 10

the additional hours are to be treated for the purposes of this Chapter as a separate shift (and accordingly as a “qualifying shift”).
- (5) A payment that an employer is required to make under subsection (1) must be made by no later than the specified day.
- (6) For the purposes of this Chapter, “short notice” means – 15
  - (a) in relation to the cancellation of a shift, notice given less than a specified amount of time before the shift would have started (if the shift had not been cancelled);
  - (b) in relation to the movement of a shift, or the movement and curtailment (at the same time) of a shift, notice given less than a specified amount of time before the earlier of – 20
    - (i) when the shift would have started (if the shift had not been moved, or moved and curtailed), and
    - (ii) when the shift is due to start (having been moved, or moved and curtailed); 25
  - (c) in relation to the curtailment of a shift where there is a change to when the shift is to start (but there is no movement of the shift), notice given less than a specified amount of time before the earlier of – 30
    - (i) when the shift would have started (if there had not been the change), and
    - (ii) when the shift is due to start (the change having been made);
  - (d) in relation to the curtailment of a shift where there is no change to when the shift is to start, notice given – 35
    - (i) less than a specified amount of time before the shift is due to start;
    - (ii) on or after the start of the shift.
- (7) The Secretary of State may by regulations 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. 40
- (8) For the purposes of this Chapter –

“employer”, in relation to an individual and a shift, includes a person by whom the individual would be (or would have been) employed if the individual worked the shift;

“worker”, in relation to a shift, includes an individual who would be (or would have been) a worker if the individual worked the shift.

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(9) In this Chapter, references to the “movement” of a shift (however expressed) are to any change to the day on which or the time at which the shift is to start that is a change of more than a specified amount of time.

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(10) In this Chapter, references to a request to work a shift made by an employer to a worker include a request (a “multi-worker request”) made by the employer to the worker and one or more others in circumstances where the employer does not need the shift to be worked by all of those to whom the request is made.

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(11) For the purposes of this Chapter, where an employer has made a multi-worker request to a worker in relation to a shift, references to the cancellation of the shift (however expressed) include the worker not being needed to work the shift because one or more others have agreed to work it.

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### **27BQ Regulations under section 27BP: supplementary**

(1) Regulations under section 27BP(1) may not specify an amount to be paid to a worker in relation to the cancellation, movement or curtailment of a shift that exceeds—

(a) where the shift is cancelled, the amount of remuneration to which the worker would have been entitled had they worked the hours that will not be worked because of the cancellation;

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(b) where the shift is moved, or moved and curtailed (at the same time), and no part of the shift as moved, or as moved and curtailed, corresponds to the time of the shift (“the original shift”) before it was moved, or moved and curtailed, the amount of remuneration to which the worker would have been entitled had they worked the original shift;

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(c) where the shift is moved, or moved and curtailed (at the same time), and part of the shift as moved, or as moved and curtailed, corresponds to the time of the original shift (but part does not), the amount of remuneration to which the worker would have been entitled had they worked the part of the original shift that does not correspond to the shift as moved, or as moved and curtailed;

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(d) where the shift is—

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(i) curtailed but not moved, or

- (ii) moved and curtailed (at the same time) and the shift as moved and curtailed is to start and end within the time of the original shift,  
the amount of remuneration to which the worker would have been entitled had they worked the hours that will not be worked because of the curtailment, or the movement and curtailment. 5
  - (2) Regulations under section 27BP(1) may, in particular, include provision specifying different amounts depending on the amount of notice that was given of the cancellation, movement or curtailment. 10
  - (3) Regulations under section 27BP(2)(c) or (3)(a) may, in particular, specify a description of worker’s contract by reference to—
    - (a) it being a worker’s contract that entitles a worker to be paid no more than a specified amount;
    - (b) it being a worker’s contract that requires an employer to make work available to a worker for no more than a specified number of hours. 15
  - (4) Regulations under section 27BP(6) may not specify an amount of time that exceeds 7 days.
- 27BR Exceptions to duty to make payment for a cancelled, moved or curtailed shift** 20
- (1) The requirement to make a payment under section 27BP(1) does not apply—
    - (a) in relation to a shift that would be (or would have been) worked, or is being worked, by a worker as an agency worker (but see Part 3 of Schedule A1 for provision about rights of agency workers to payment for cancelled, moved and curtailed shifts); 25
    - (b) in relation to the cancellation, movement or curtailment of a shift that an employer has requested a worker to work, unless the worker reasonably believed, whether on agreeing to work the shift or at some later time before the cancellation, movement or curtailment, that they would be needed to work the shift; 30
    - (c) in other specified circumstances.
  - (2) Where, by virtue of regulations made under subsection (1)(c), an employer is not required to make a payment to a worker in relation to a shift under section 27BP(1), the employer must give a notice to the worker that—
    - (a) states which provision of the regulations has produced the effect that the employer is not required to make the payment, and 40
    - (b) explains why the employer was entitled to rely on that provision.

- (3) But subsection (2)(b) does not require an employer to disclose—
- (a) any information the disclosure of which by the employer would contravene the data protection legislation (but in determining whether a disclosure would do so, the duty imposed by that subsection is to be taken into account); 5
  - (b) any information that is commercially sensitive;
  - (c) any information the disclosure of which by the employer would constitute a breach of a duty of confidentiality owed by the employer to any other person.
- (4) In subsection (3)(a) “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act). 10
- (5) The Secretary of State may by regulations make provision about—
- (a) the form and manner in which a notice under this section must be given; 15
  - (b) the day on or before which it must be given;
  - (c) when a notice under this section is to be treated as having been given.
- (6) The duty in subsection (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 27BP(1) in relation to the same number of hours but for regulations made under subsection (1)(c). 20  
25
- (7) Subsection (4) of section 27BS applies for the purposes of subsection (6) of this section as it applies for the purposes of subsections (2) and (3) of that section.

### **27BS Contractual remuneration**

- (1) The right of a worker to receive a payment from an employer under section 27BP(1) does not affect any right of the worker in relation to remuneration under a worker’s contract entered into between the worker and the employer (“contractual remuneration”). 30
- (2) Any contractual remuneration paid to a worker by an employer in relation to a number of hours goes towards discharging any liability of the employer to make a payment to the worker under section 27BP(1) in relation to the same hours. 35
- (3) Any payment made by an employer to a worker under section 27BP(1) in relation to a number of hours goes towards discharging any liability of the employer to pay contractual remuneration to the worker in relation to the same hours. 40

- (4) For the purposes of subsections (2) and (3), the hours to which a payment under section 27BP(1) relates are—
- (a) where a shift has been cancelled, the hours that would have been worked if the shift had not been cancelled;
  - (b) where a shift has been moved, or moved and curtailed (at the same time), and no part of the shift as moved, or as moved and curtailed, corresponds to the time of the shift (“the original shift”) before it was moved, or moved and curtailed, the hours that would have been worked during the original shift; 5
  - (c) where a shift has been moved, or moved and curtailed (at the same time), and part of the shift as moved, or as moved and curtailed, corresponds to the time of the original shift (but part does not), the hours that would have been worked during the part of the original shift that does not correspond to the shift as moved, or as moved and curtailed; 10 15
  - (d) where a shift has been—
    - (i) curtailed but not moved, or
    - (ii) moved and curtailed (at the same time) and the shift as moved and curtailed is to start and end within the time of the original shift, 20the hours that would have been worked if the shift had not been curtailed, or moved and curtailed.

### **27BT Complaints to employment tribunal**

- (1) A worker may present a complaint to an employment tribunal that the worker’s employer— 25
- (a) has failed to make the whole or any part of a payment that the employer is liable to make to the worker under section 27BP(1);
  - (b) has unreasonably failed to give to the worker a notice under section 27BR(2); 30
  - (c) has given to the worker a notice in purported compliance with section 27BR(2) that—
    - (i) does not refer to any provision of the regulations;
    - (ii) does not contain an explanation or contains an explanation that is inadequate or untrue. 35
- (2) An employment tribunal must not consider a complaint under subsection (1)(a) relating to a payment unless it is presented before the end of the period of six months beginning with the day after the day on or before which the payment should have been made (see section 27BP(5)). 40
- (3) An employment tribunal must not consider a complaint under subsection (1)(b) relating to a notice unless it is presented before the end of the period of six months beginning with the day after the day

on or before which the notice should have been given (see section 27BR(5)(b)).

- (4) An employment tribunal must not consider a complaint under subsection (1)(c) relating to a notice unless it is presented before the end of the period of six months beginning with the day after the day on which the notice is given. 5
- (5) But, if the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this section to be presented before the end of the relevant period of six months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable. 10
- (6) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsections (2) to (4).

#### **27BU Remedies**

15

- (1) Where an employment tribunal finds a complaint under section 27BT(1)(a) well-founded, the tribunal must—
  - (a) make a declaration to that effect, and
  - (b) order the employer to pay to the worker the amount of the payment under section 27BP(1) which it finds is due to the worker. 20
- (2) Where an employment tribunal finds a complaint under section 27BT(1)(b) or (c) well-founded, the tribunal—
  - (a) must make a declaration to that effect, and
  - (b) may order the employer to make a payment to the worker of such amount, not exceeding the specified amount, as the tribunal considers just and equitable in all the circumstances. 25
- (3) But an employment tribunal may not make an order under subsection (2)(b) relating to a notice given in purported compliance with section 27BR(2) if the tribunal makes an order under subsection (1)(b) relating to the same payment to which the notice related. 30
- (4) In determining—
  - (a) whether to make an order under subsection (2)(b), and
  - (b) if so, how much to order the employer to pay,
 an employment tribunal must have regard, in particular, to the seriousness of the matter complained of.” 35

#### 4 Agency workers: guaranteed hours and rights relating to shifts

- (1) After section 27BU of the Employment Rights Act 1996 (inserted by section 3) insert—

##### “CHAPTER 5

AGENCY WORKERS: GUARANTEED HOURS AND RIGHTS RELATING TO SHIFTS 5

#### 27BV Agency workers

- (1) In this Part, “agency worker” means an individual—
- (a) who has a worker’s contract or an arrangement with a work-finding agency by virtue of which the individual is (or is to be) supplied to work for and under the supervision and direction of another person, 10
  - (b) who does not do (or is not to do) the work under a worker’s contract with the other person, and
  - (c) who is not (or is not to be) a party to a contract under which the individual undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual. 15
- (2) In this Part—
- (a) references to an agency worker include, where the context requires, a former agency worker, and 20
  - (b) where that is the case, references in relation to the agency worker to a work-finding agency, and references (however expressed) to a person for and under the supervision and direction of whom the agency worker works, are to be read accordingly. 25
- (3) An individual is an “agency worker” for the purposes of this Part—
- (a) whether the individual is (or is to be) supplied to work for and under the supervision and direction of another person—
    - (i) by the work-finding agency referred to in subsection (1)(a), or 30
    - (ii) by a person other than the work-finding agency;
  - (b) whether the individual is (or is to be) paid, for work done for and under the supervision and direction of another person—
    - (i) by the work-finding agency referred to in subsection (1)(a), or 35
    - (ii) by a person other than the work-finding agency.
- (4) In this Part, “work-finding agency” means a person carrying on the business (whether or not with a view to profit and whether or not in conjunction with any other business) of finding, or seeking to find, 40

- work for individuals to do for and under the supervision and direction of other persons (but not in the employment of those other persons).
- (5) Part 1 of Schedule A1 contains provision about guaranteed hours and agency workers.
- (6) Part 2 of Schedule A1 contains provision about rights of agency workers to reasonable notice in relation to shifts. 5
- (7) Part 3 of Schedule A1 contains provision about rights of agency workers to payment for shifts that are cancelled, moved or curtailed at short notice.”
- (2) Schedule 1 inserts Schedule A1 into the Employment Rights Act 1996. 10
- 5 Collective agreements: contracting out**
- (1) The Employment Rights Act 1996 is amended as follows.
- (2) After section 27BV (inserted by section 4) insert—
- “CHAPTER 6**
- COLLECTIVE AGREEMENTS: CONTRACTING OUT 15
- 27BW Zero hours workers, etc**
- (1) This section applies in relation to—
- (a) a duty imposed on an employer in respect of a worker, and
- (b) a right conferred on a worker in respect of an employer, w  
by or under any provision of Chapter 2, 3 or 4. 20
- (2) The duty or right is excluded if—
- (a) the worker is employed by the employer under a worker’s contract (“the contract”),
- (b) a relevant collective agreement contains—
- (i) terms that expressly exclude the duty or right, and 25
- (ii) terms that expressly replace the excluded duty or right,
- (c) the terms within paragraph (b)(ii) are incorporated into the contract, and
- (d) the employer notifies the worker in writing of the incorporation and effect of those terms. 30
- (3) A relevant collective agreement is a collective agreement that is—
- (a) in writing, and
- (b) made by or on behalf of—
- (i) one or more trade unions which each have a certificate of independence, and 35
- (ii) the worker’s employer.



### **27BX Agency workers**

- (1) This section applies in relation to—
  - (a) a duty imposed on a hirer or a work-finding agency in respect of an agency worker, and
  - (b) a right conferred on an agency worker in respect of a hirer or a work-finding agency,by or under any provision of Chapter 5 (including Schedule A1). 5
- (2) The duty or right is excluded if—
  - (a) the agency worker is supplied to work for and under the supervision and direction of the hirer by virtue of a worker’s contract (“the contract”) that the agency worker has with another person (“the other party”), 10
  - (b) a relevant collective agreement contains—
    - (i) terms that expressly exclude the duty or right, and
    - (ii) terms that expressly replace the excluded duty or right, 15
  - (c) the terms within paragraph (b)(ii) are incorporated into the contract, and
  - (d) the other party notifies the agency worker in writing of the incorporation and effect of those terms.
- (3) A relevant collective agreement is a collective agreement that is— 20
  - (a) in writing, and
  - (b) made by or on behalf of—
    - (i) one or more trade unions which each have a certificate of independence, and
    - (ii) the other party. 25

### **27BY Supplementary provision**

- (1) For the purposes of sections 27BW and 27BX, it does not matter whether—
  - (a) terms in a collective agreement that expressly replace a duty or right relate to the same subject matter as the duty or right, or 30
  - (b) a collective agreement ceases to be in force after the terms mentioned in section 27BW(2)(b)(ii) or 27BX(2)(b)(ii) are incorporated into the contract (within the meaning of section 27BW or 27BX, as the case may be), provided the terms continue to be incorporated. 35
- (2) Where the duty to make a guaranteed hours offer under Chapter 2 or 5 is excluded by virtue of terms that are incorporated into a contract with a worker or, as the case may be, an agency worker, as mentioned in section 27BW(2)(c) or 27BX(2)(c), during the offer period, the duty ceases to apply. 40

- (3) Where—
- (a) the duty to make a guaranteed hours offer under Chapter 2 or 5 is excluded by virtue of terms that are incorporated into a contract with a worker or, as the case may be, an agency worker, as mentioned in section 27BW(2)(c) or 27BX(2)(c), 5
  - (b) a guaranteed hours offer has already been made in compliance with the duty, and
  - (c) the worker or agency worker has not accepted the offer, the person who made the offer may withdraw it during the response period by giving a notice to the worker or agency worker. 10
- (4) The notice must include a statement to the effect that the offer is withdrawn in consequence of the exclusion of the duty to make a guaranteed hours offer as a result of the incorporation into the worker’s or agency worker’s contract, as mentioned in section 27BW(2)(c) or 27BX(2)(c), of terms contained in a collective agreement that expressly replace that duty. 15
- (5) A worker or an agency worker to whom a notice is given in reliance on subsection (3) may present a complaint to an employment tribunal that subsection (3) did not permit the notice to be given.
- (6) Where a complaint is presented under subsection (5)— 20
- (a) by a worker, sections 27BH and 27BI apply in relation to the complaint as they apply in relation to a complaint under section 27BG(7)(b);
  - (b) by an agency worker, paragraphs 9 and 10 of Schedule A1 apply in relation to the complaint as they apply in relation to a complaint under paragraph 7(7)(b) of that Schedule. 25
- (7) Subsection (8) applies where—
- (a) the duty to make a guaranteed hours offer under Chapter 2 or 5 is excluded by virtue of terms that are incorporated into a contract with a worker or, as the case may be, an agency worker, as mentioned in section 27BW(2)(c) or 27BX(2)(c), and 30
  - (b) the duty ceases to be excluded as a result of the terms ceasing to be incorporated into the contract (including where the contract ceases to be in force).
- (8) In applying Chapter 2 or 5 for the purposes of the duty after it has ceased to be excluded— 35
- (a) in any case where there was a reference period in relation to the duty as it had effect before being excluded, that reference period is to be disregarded,
  - (b) in relation to a worker and the worker’s employer, sections 27BA(5) and 27BF(3) have effect as if the first day on which the worker is employed by the employer is the day after the day on which the terms cease to be incorporated, and 40

- (c) in relation to an agency worker and a hirer for and under the supervision and direction of whom the agency worker works, paragraphs 1(5) and 6(3) of Schedule A1 have effect as if the first day on which the agency worker so works is the day after the day on which the terms cease to be incorporated. 5

### **27BZ Regulations**

- (1) The Secretary of State may by regulations make further provision for the purposes of section 27BW or 27BX.
- (2) The regulations may, in particular, make provision about—
  - (a) the effect on a duty in Chapters 2 to 5 of terms being or ceasing to be incorporated as mentioned in section 27BW(2)(c) or 27BX(2)(c), 10
  - (b) the form and manner in which a notice under section 27BY(3) is to be given, and
  - (c) when a notice under section 27BY(3) is to be treated as having been given. 15

### **27BZ1 Interpretation**

- (1) Terms used in this Chapter that are used in—
  - (a) Chapters 2 to 4 (rights relating to zero hours workers, etc), or
  - (b) Chapter 5 (including Schedule A1) (rights relating to agency workers), 20have the same meaning as in those Chapters or that Chapter (including that Schedule).
- (2) In this Chapter, “certificate of independence” means a certificate issued under section 6 of the Trade Union and Labour Relations (Consolidation) Act 1992.” 25
- (3) In section 203 (restrictions on contracting out), in subsection (2), before paragraph (a) insert—
  - “(za) does not apply to terms of a collective agreement or contract that exclude a duty or right by virtue of provision made by or under Chapter 6 of Part 2A,”. 30

**6 Amendments relating to sections 1 to 5**

- (1) After section 27BZ1 of the Employment Rights Act 1996 (inserted by section 5) insert—

**“CHAPTER 7****GENERAL**

5

**27BZ2 Interpretation**

- (1) In this Part—

“agency worker” has the meaning given by section 27BV;

“arrangement” (when used by itself and not as part of the expression “zero hours arrangement”) means an arrangement (whether contractual or non-contractual) other than a worker’s contract; 10

“specified” means specified in, or determined in accordance with, regulations made by the Secretary of State;

“zero hours arrangement” means an arrangement under which— 15

(a) an employer and an individual agree terms on which the individual will do any work where the employer makes it available to the individual and the individual agrees to do it, but

(b) the employer is not required to make any work available to the individual, nor the individual required to accept it, 20

and in this Part “employer”, in relation to a zero hours arrangement, is to be read accordingly;

“zero hours contract” means a contract of employment or other worker’s contract under which— 25

(a) the undertaking to do work is an undertaking to do so conditionally on the employer making work available to the worker, and

(b) there is no certainty that any such work will be made available to the worker. 30

- (2) For the purposes of this Part—

(a) a person who is, or is treated as, an employer makes work available to a worker or other individual if they request or require the individual to do it; 35

(b) references to work and doing work include references to services and performing them.

**27BZ3 Regulations**

- (1) Regulations under this Part may—

(a) make different provision for different purposes; 40

(b) make provision subject to exceptions.

(2) Regulations under this Part may provide that a reference in the regulations to a provision of legislation is to be read as a reference to that provision as amended from time to time.”

(2) Schedule 2 contains consequential amendments relating to sections 1 to 5. 5

## 7 Repeal of Workers (Predictable Terms and Conditions) Act 2023

The Workers (Predictable Terms and Conditions) Act 2023 is repealed.

## 8 Exclusivity terms in zero hours arrangements

(1) Section 27B of the Employment Rights Act 1996 (power to make further provision in relation to zero hours workers) is amended as follows. 10

(2) In subsection (1), for “their contracts or arrangements” substitute “their worker’s contracts or their arrangements”.

(3) In subsection (2)(b), omit “non-contractual”.

(4) In subsection (4)–

(a) in the words before paragraph (a)– 15

(i) omit “non-contractual”;

(ii) after “arrangement”, in the second place it occurs, insert “(whether contractual or non-contractual)”;

(b) in the words after paragraph (b), omit “non-contractual”.

(5) In subsection (5)(a)(ii), omit “non-contractual”. 20

(6) In subsection (6)–

(a) after “provision for” insert “–

(a)”;

(b) after “does not apply” insert–

“(b) exclusivity terms in prescribed categories of zero hours arrangements that are contractual arrangements to be unenforceable”; 25

(c) at the end of the subsection insert “or (as the case may be) an individual is restricted from doing any work otherwise than under a worker’s contract entered into in accordance with the zero hours arrangement.” 30

## *Flexible working*

## 9 Right to request flexible working

(1) Part 8A of the Employment Rights Act 1996 (flexible working) is amended in accordance with subsections (2) to (6). 35

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- (2) Section 80G (employer’s duties in relation to application for change to working hours, etc) is amended in accordance with subsections (3) to (5).
- (3) In subsection (1), for paragraph (b) substitute—
- “(b) may refuse the application only if—
- (i) the employer considers that the application should be refused on a ground or grounds listed in subsection (1ZA), and
- (ii) it is reasonable for the employer to refuse the application on that ground or those grounds.
- (1ZA) The grounds mentioned in subsection (1)(b) are—
- (a) the burden of additional costs;
- (b) detrimental effect on ability to meet customer demand;
- (c) inability to re-organise work among existing staff;
- (d) inability to recruit additional staff;
- (e) detrimental impact on quality;
- (f) detrimental impact on performance;
- (g) insufficiency of work during the periods the employee proposes to work;
- (h) planned structural changes;
- (i) any other grounds specified by the Secretary of State in regulations.”
- (4) After subsection (1ZA) insert—
- “(1ZB) If an employer refuses an application under section 80F, the notification under subsection (1)(aa) must—
- (a) state the ground or grounds for refusing the application, and
- (b) explain why the employer considers that it is reasonable to refuse the application on that ground or those grounds.”
- (5) After subsection (1D) insert—
- “(1E) The steps which an employer must take in order to comply with subsection (1)(aza) include, among others, any steps specified in regulations made by the Secretary of State.”
- (6) In section 80H (complaints to employment tribunals), in subsection (1)(a), for “comply with” substitute “act in accordance with”.
- (7) In section 202 of the Employment Rights Act 1996 (national security), in subsection (2), after paragraph (e) insert—
- “(eza) Part 8A.”

*Statutory sick pay*

**10 Statutory sick pay in Great Britain: removal of waiting period**

- (1) Part 11 of the Social Security Contributions and Benefits Act 1992 (statutory sick pay) is amended as follows.
- (2) In section 151(1) (employer’s liability), for “sections 152 to 154” substitute “sections 153 and 154”. 5
- (3) In section 152 (period of incapacity for work) –
  - (a) omit subsection (1);
  - (b) in subsection (2), for the words from “any” to “is” substitute “a period of one day which is, or of two or more consecutive days each of which is,”. 10
- (4) In section 153(1) (period of entitlement), for “second” substitute “first”.
- (5) In section 154(1) (qualifying days), for “third” substitute “second”.
- (6) In section 155 (limitations on entitlement), omit subsection (1).
- (7) In section 156(2) (notification of incapacity for work), omit paragraph (b) (and the “or” at the end of paragraph (a)). 15

**11 Statutory sick pay in Great Britain: lower earnings limit etc**

- (1) Part 11 of the Social Security Contributions and Benefits Act 1992 (statutory sick pay) is amended as follows.
- (2) In section 157 (rates of payment), for subsection (1) substitute – 20
  - “(1) The weekly rate of statutory sick pay that an employer must pay to an employee is the lower of –
    - (a) £118.75, and
    - (b) 80% of the employee’s normal weekly earnings.”
- (3) In Schedule 11 (circumstances in which periods of entitlement to statutory sick pay do not arise), in paragraph 2, omit paragraph (c) (lower earnings limit). 25

**12 Statutory sick pay in Northern Ireland: removal of waiting period**

- (1) Part 11 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (statutory sick pay) is amended as follows. 30
- (2) In section 147(1) (employer’s liability), for “sections 148 to 150” substitute “sections 149 and 150”.
- (3) In section 148 (period of incapacity for work) –
  - (a) omit subsection (1);

- (b) in subsection (2), for the words from “any” to “is” substitute “a period of one day which is, or of two or more consecutive days each of which is,”.
- (4) In section 149(1) (period of entitlement), for “second” substitute “first”.
- (5) In section 150(1) (qualifying days), for “third” substitute “second”. 5
- (6) In section 151 (limitations on entitlement), omit subsection (1).
- (7) In section 152(2) (notification of incapacity for work), omit paragraph (b) (and the “or” at the end of paragraph (a)).
- 13 Statutory sick pay in Northern Ireland: lower earnings limit etc**
- (1) Part 11 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (statutory sick pay) is amended as follows. 10
- (2) In section 153 (rate of payment), for subsection (1) substitute—
- “(1) The weekly rate of statutory sick pay that an employer must pay to an employee is the lower of—
- (a) £118.75, and 15
- (b) 80% of the employee’s normal weekly earnings.”
- (3) In Schedule 11 (circumstances in which periods of entitlement to statutory sick pay do not arise), in paragraph 2, omit paragraph (c) (lower earnings limit).
- Tips and gratuities, etc* 20
- 14 Policy about allocating tips etc: consultation and review**
- (1) Section 27I of the Employment Rights Act 1996 (written policy about allocation of tips etc) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) Before producing the first version of the written policy for a place of business, an employer must consult— 25
- (a) representatives of an independent trade union recognised by the employer in respect of workers who are likely to be affected by the policy, or representatives appointed or elected by those workers and having authority to receive information and to be consulted about the policy on behalf of those workers, or 30
- (b) if there are no such trade union or worker representatives, workers who are likely to be affected by the policy.”



- (3) After subsection (3) insert—
- “(3A) Where an employer makes a written policy available to workers at a place of business under this section, the employer must review the policy from time to time.
- (3B) A review must be carried out— 5
- (a) at least once during the period of three years beginning with the first day on which the first version of the policy is made available (including where that day precedes the coming into force of this subsection), and
- (b) after that, no more than three years after the completion of the previous review. 10
- (3C) An employer must consult persons as described in subsection (2A) as part of every review of the written policy.”
- (4) After subsection (6) insert—
- “(7) An employer who has carried out a consultation required by this section in relation to a written policy for a place of business must make a summary of the views expressed in the consultation available in anonymised form to all workers of the employer at the place of business. 15
- (8) In this section “recognised”, in relation to a trade union, has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992 (see section 178 of that Act).” 20

*Entitlements to leave*

**15 Parental leave: removal of qualifying period of employment**

In section 76 of the Employment Rights Act 1996 (entitlement to parental leave), in subsection (1), omit paragraph (a) (and the “and” after it). 25

**16 Paternity leave: removal of qualifying period of employment**

- (1) In section 80A of the Employment Rights Act 1996 (entitlement to paternity leave: birth)—
- (a) in subsection (1), omit paragraph (a); 30
- (b) in subsection (6A), omit paragraph (a).
- (2) In section 80B of that Act (entitlement to paternity leave: adoption)—
- (a) in subsection (1), omit paragraph (a);
- (b) in subsection (6C), omit paragraph (a).

**17 Ability to take paternity leave following shared parental leave**

- (1) In section 80A of the Employment Rights Act 1996 (entitlement to paternity leave: birth) –
- (a) omit subsection (4A);
  - (b) in subsection (6A), omit paragraph (c). 5
- (2) In section 80B of that Act (entitlement to paternity leave: adoption) –
- (a) omit subsection (4A);
  - (b) in subsection (6C), omit paragraph (c).
- (3) In section 171ZE of the Social Security Contributions and Benefits Act 1992 (rate and period of statutory paternity pay), in subsection (3A), omit paragraph (b) (and the “or” before it). 10
- (4) In consequence of the amendments made by subsections (1)(a) and (2)(a), in section 118 of the Children and Families Act 2014, omit subsections (6) and (7).

**18 Bereavement leave**

15

- (1) The Employment Rights Act 1996 is amended in accordance with subsections (2) to (11).
- (2) In Chapter 4 of Part 8, in the heading, for “Parental bereavement leave” substitute “Bereavement leave”.
- (3) In section 80EA (parental bereavement leave) – 20
- (a) in subsection (1), for “bereaved parent” substitute “bereaved person”;
  - (b) for subsection (2) substitute –
    - “(2) For the purposes of subsection (1) an employee is a “bereaved person” if the employee satisfies conditions specified in the regulations as to relationship with a person who has died.”; 25
  - (c) in subsection (3), for “The conditions” substitute “In a case where the person who has died is a child, the conditions”;
  - (d) in subsection (4)(a), for “child” substitute “person”;
  - (e) after subsection (5) insert –
    - “(5A) Provision under subsection (4)(a) must secure that, where an employee is entitled to leave under this section in respect of a person other than a child, the employee is entitled to at least one week’s leave.”; 30
  - (f) in subsection (6), for “child’s” substitute “person’s”;
  - (g) for subsection (7) substitute – 35
    - “(7) The regulations must secure that, where an employee is eligible under subsection (1) as the result of the death of more than one person, the employee is entitled to leave in respect of each person.”;

- (h) in the heading, for “Parental bereavement” substitute “Bereavement”.
- (4) In section 47C (rights not to suffer detriment: leave for family and domestic reasons), in subsection (2)(cb), omit “parental”.
- (5) In section 75I (rights during and after shared parental leave), in subsection (3)(f), omit “parental”. 5
- (6) In section 80C (rights during and after paternity leave), in subsections (2)(bb) and (4)(bb), omit “parental”.
- (7) In section 80EG (rights during and after neonatal care leave), in subsection (2)(f), omit “parental”.
- (8) In section 88 (termination of employment: employments with normal working hours) – 10
- (a) in subsection (1)(c), for “parental bereavement leave,” substitute “bereavement leave,”;
- (b) in subsection (2), for “parental bereavement pay”, in the first place it occurs, substitute “bereavement pay”. 15
- (9) In section 89 (termination of employment: employments without normal working hours) –
- (a) in subsection (3)(b), for “parental bereavement leave,” substitute “bereavement leave,”;
- (b) in subsection (4), for “parental bereavement pay”, in the first place it occurs, substitute “bereavement pay”. 20
- (10) In section 99 (unfair dismissal: leave for family reasons), in subsection (3)(cb), omit “parental”.
- (11) In section 235(1) (other definitions) –
- (a) before the definition of “business” insert – 25
- ““bereavement leave” means leave under section 80EA;”;
- (b) omit the definition of “parental bereavement leave”.
- (12) In Schedule 5 to the Income Tax (Earnings and Pensions) Act 2003 (enterprise management initiatives), in paragraph 26(3)(b), for “parental bereavement leave” substitute “bereavement leave”. 30
- (13) In the Income Tax Act 2007 –
- (a) in section 186A (enterprise investment schemes: the number of employees requirement), in subsection (4)(b)(i), for “parental bereavement” substitute “bereavement”;
- (b) in section 257DJ (seed enterprise investment schemes: the number of employees requirement), in subsection (4)(b)(i), for “parental bereavement” substitute “bereavement”; 35
- (c) in section 257MH (tax relief for social investments: the number of employees requirement), in subsection (4)(b)(i), for “parental bereavement” substitute “bereavement”; 40

- (d) in section 297A (venture capital trusts: the number of employees requirement), in subsection (4)(b)(i), for “parental bereavement” substitute “bereavement”.
- (14) In the Schedule to the Parental Bereavement (Leave and Pay) Act 2018, omit paragraphs 25(2), 26(2) and 28(a). 5

*Protection from harassment*

**19 Employers to take all reasonable steps to prevent sexual harassment**

In section 40A of the Equality Act 2010 (employer duty to prevent sexual harassment of employees), in subsection (1), before “reasonable steps” insert “all”. 10

**20 Harassment by third parties**

In section 40 of the Equality Act 2010 (employees and applicants: harassment), after subsection (1) insert –

- “(1A) An employer (A) must not permit a third party to harass a person (B) who is an employee of A. 15
- (1B) For the purposes of subsection (1A), A permits a third party to harass B only if –
- (a) the third party harasses B in the course of B’s employment by A, and
  - (b) A failed to take all reasonable steps to prevent the third party from doing so. 20
- (1C) In this section “third party” means a person other than –
- (a) A, or
  - (b) an employee of A.”

**21 Sexual harassment: power to make provision about “reasonable steps”** 25

- (1) The Equality Act 2010 is amended as follows.
- (2) In Part 5 (work), in Chapter 1 (employment, etc), after section 40A insert –

**“40B Prevention of sexual harassment: power to specify “reasonable steps”**

- (1) Regulations may specify steps that are to be regarded as “reasonable” for the purpose of determining whether, for the purposes of this Act, an employer (A) has taken, or failed to take, all reasonable steps to prevent sexual harassment of an employee of A (see, in particular, sections 40 and 40A and section 109). 30
- (2) The steps that may be specified in regulations under this section include, among others – 35
- (a) carrying out assessments of a specified description;

- (b) publishing plans or policies of a specified description;
    - (c) steps relating to the reporting of sexual harassment;
    - (d) steps relating to the handling of complaints.
  - (3) Regulations under this section that specify any steps may require an employer to have regard to specified matters when taking those steps. 5
  - (4) In this section –
    - “sexual harassment” means harassment of the kind described in section 26(2) (unwanted conduct of a sexual nature);
    - “specified” means specified in the regulations.”
  - (3) In Part 16 (general and miscellaneous), in section 208(5) (regulations subject to affirmative procedure), after paragraph (a) insert – 10
    - “(aa) regulations under section 40B (prevention of sexual harassment: power to specify “reasonable steps”);”.
- 22 Protection of disclosures relating to sexual harassment**
- (1) Part 4A of the Employment Rights Act 1996 (protected disclosures) is amended as follows. 15
  - (2) In section 43B (disclosures qualifying for protection), in subsection (1), after paragraph (d) insert –
    - “(da) that sexual harassment has occurred, is occurring or is likely to occur;”. 20
  - (3) In section 43L(1) (other interpretative provisions), after the definition of “the relevant failure” insert –
    - ““sexual harassment” means harassment of the kind described in section 26(2) of the Equality Act 2010 (unwanted conduct of a sexual nature).”
- Dismissal* 25
- 23 Right not to be unfairly dismissed: removal of qualifying period, etc**
- Schedule 3 contains provision –
- (a) repealing section 108 of the Employment Rights Act 1996 (unfair dismissal: qualifying period of employment), and
  - (b) making further amendments of that Act in connection with that repeal. 30
- 24 Dismissal during pregnancy**
- (1) Part 5B of the Employment Rights Act 1996 (redundancy during a protected period of pregnancy) is amended as follows.
  - (2) Section 49D (redundancy during a protected period of pregnancy) is amended in accordance with subsections (3) to (5). 35

- (3) In the heading, after “Redundancy” insert “or dismissal”.
- (4) After subsection (1) insert –  
 “(1A) The Secretary of State may, by regulations, make provision about dismissal (other than by reason of redundancy) during, or after, a protected period of pregnancy.” 5
- (5) In subsection (3), after “subsection (1)” insert “or (1A)”.
- (6) After section 49D insert –  
**“49E Section 49D: supplemental**  
 Regulations under section 49D may –
- (a) make provision about notices to be given, evidence to be produced and other procedures to be followed by employees and employers; 10
  - (b) make provision for the consequences of failure to give notices, to produce evidence or to comply with other procedural requirements; 15
  - (c) make provision for the consequences of failure to act in accordance with a notice given by virtue of paragraph (a);
  - (d) make special provision for cases where an employee has a right which corresponds to a right under section 49D and which arises under a contract of employment or otherwise; 20
  - (e) make provision modifying the effect of Chapter 2 of Part 14 (calculation of a week’s pay) in relation to an employee who is or has been absent from work during, or after, a protected period of pregnancy;
  - (f) make provision applying, modifying or excluding an enactment, in such circumstances as may be specified and subject to any conditions specified, in relation to a person during, or after, a protected period of pregnancy; 25
  - (g) make different provision for different cases or circumstances.”
- (7) In the heading of Part 5B, after “Redundancy” insert “or dismissal”. 30

## 25 Dismissal following period of statutory family leave

- (1) Part 8 of the Employment Rights Act 1996 (leave for family reasons) is amended as follows.
- (2) In section 74 (maternity leave: redundancy and dismissal), in subsection (2), after “during” insert “, or after,”. 35
- (3) In section 75C (adoption leave: redundancy and dismissal), in subsection (1)(b), after “during” insert “, or after,”.
- (4) In section 75J (shared parental leave: redundancy and dismissal), in subsection (1)(b), after “during” insert “, or after,”.

- (5) In section 80D (paternity leave: special cases)—
- (a) in subsection (1A)(b), after “bereaved employee” insert “, or dismissal of a bereaved employee (other than by reason of redundancy),”;
  - (b) in subsection (3)(b), for the words from “where” to the end substitute “where the relevant person dies. 5

In paragraph (b) “the relevant person” means the person by reference to whom the employee satisfied the conditions specified by virtue of subsection (1)(c) of that section so as to entitle the employee to that leave.”

- (6) In section 80EH (neonatal care leave: special cases), in subsection (1)(b), after “during” insert “or after”. 10

## 26 Dismissal for failing to agree to variation of contract, etc

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) Part 10 (unfair dismissal) is amended as set out in subsections (3) and (4).
- (3) Before section 105 insert— 15

### “104I Variation of contract of employment

- (1) An employee who is dismissed is to be regarded for the purposes of this Part as unfairly dismissed if—
  - (a) the employee was employed for the purposes of a business carried on by the employer, and 20
  - (b) the reason (or, if more than one, the principal reason) for the dismissal is a reason within subsection (2) or (3).
- (2) The reason within this subsection is that—
  - (a) the employer sought to vary the employee’s contract of employment, and 25
  - (b) the employee did not agree to the variation.
- (3) The reason within this subsection is to enable the employer to employ another person, or to re-engage the employee, under a varied contract of employment to carry out the same duties, or substantially the same duties, as the employee carried out before being dismissed. 30
- (4) Subsection (1) does not apply in relation to an employee if the employer shows that—
  - (a) the reason for the variation was to eliminate, prevent or significantly reduce, or significantly mitigate the effect of, any financial difficulties which at the time of the dismissal were affecting, or were likely in the immediate future to affect, the employer’s ability to carry on the business as a going concern or otherwise to carry on the activities constituting the business, and 35

- (b) in all the circumstances the employer could not reasonably have avoided the need to make the variation.
- (5) Where the employer shows that the conditions in paragraphs (a) and (b) of subsection (4) are met, the matters that must be considered in determining the question whether the dismissal is fair or unfair include the following – 5
- (a) any consultation carried out by the employer with the employee about varying the employee’s contract of employment;
  - (b) if the employee is of a description in respect of which an independent trade union is recognised by the employer, any consultation carried out by the employer with that trade union; 10
  - (c) if the employee is not of a description in respect of which an independent trade union is recognised by the employer, any consultation carried out by the employer with any other person representing the interests of the employee that, at the time of the dismissal, had authority to receive information and to be consulted about the dismissal on the employee’s behalf; 15
  - (d) anything offered to the employee by the employer in return for agreeing to the variation;
  - (e) any matters specified for the purposes of this subsection in regulations made by the Secretary of State. 20
- (6) In this section –
- (a) “recognised”, in relation to a trade union, has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992 (see section 178 of that Act); 25
  - (b) a reference to a “varied” contract of employment is to a contract of employment the terms of which are not the same as the terms of the contract of employment under which the employee worked before being dismissed, and, in a case where subsection (3) applies, any reference in this section to “the variation” is to be read accordingly.” 30
- (4) In section 108 (qualifying period of employment), in subsection (3), before paragraph (h) insert –
- “(go) subsection (1) of section 104I (read with subsection (4) of that section) applies.”. 35
- (5) In section 236 (orders and regulations), in subsection (3) (regulations subject to affirmative procedure), after “99,” insert “104I(5)(e),”.



## PART 2

### OTHER MATTERS RELATING TO EMPLOYMENT

#### *Procedure for handling redundancies*

#### **27 Collective redundancy: extended application of requirements**

- (1) Chapter 2 of Part 4 of the Trade Union and Labour Relations (Consolidation) Act 1992 (procedure for handling redundancies) is amended as follows. 5
- (2) In section 188 (duty of employer to consult representatives)—
- (a) before subsection (1) insert—
- “(A1) Subsection (1) applies where an employer is proposing to dismiss as redundant within a period of 90 days or less— 10
- (a) at least the threshold number of employees (see section 195A), or
- (b) 20 or more employees at one establishment.”;
- (b) in subsection (1), for the words from “Where” to “the employer” substitute “The employer”; 15
- (c) in subsection (1A), for “(1)” substitute “(A1)”;
- (d) after subsection (2) insert—
- “(2A) This section does not require the employer to—
- (a) consult all of the appropriate representatives together, or 20
- (b) undertake the consultation with a view to reaching the same agreement with all of the appropriate representatives.”;
- (e) in subsection (4)—
- (i) in paragraph (c), at the beginning insert “where the employees whom it is proposed to dismiss as redundant are at only one establishment,”; 25
- (ii) after paragraph (c) insert—
- “(ca) where the employees whom it is proposed to dismiss as redundant are at more than one establishment— 30
- (i) the total number of employees of any such description employed by the employer, and
- (ii) details of the establishments at which those employees are employed,”. 35
- (3) In section 193 (duty of employer to notify Secretary of State of certain redundancies)—
- (a) omit subsection (1);

- (b) before subsection (2) insert—
- “(1A) Subsection (2) applies where an employer is proposing to dismiss as redundant within a period of 90 days or less—
- (a) at least the threshold number of employees (see section 195A), or 5
- (b) 20 or more employees at one establishment.”;
- (c) in subsection (2)—
- (i) for the words from “An employer” to “period” substitute “The employer”;
- (ii) omit paragraphs (a) and (b); 10
- (d) after subsection (2) insert—
- “(2A) The notice must be given—
- (a) before the employer gives notice to terminate an employee’s contract of employment in respect of any of the dismissals; 15
- (b) at least 30 days before the first of the dismissals takes effect, or, where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1A), at least 45 days before the first of the dismissals takes effect.”; 20
- (e) in subsection (3), for “(1) or (2)” substitute “(1A)”;
- (f) in subsection (4)(a), omit the words from “in relation to the establishment” to the end;
- (g) in subsection (6), omit “(1) or”;
- (h) in subsection (7), for “(1)” substitute “(2)”. 25
- (4) In section 193A (redundancies of ships’ crew)—
- (a) in subsection (1)(a), omit “193(1) or”;
- (b) in subsection (2), for “section 193(1) or (2)” substitute “section 193(2)”.
- (5) After section 195 insert—
- “195A Construction of references to threshold number of employees 30**
- (1) In this Chapter references to the threshold number of employees are references to the number of employees determined in accordance with regulations made by the Secretary of State under this section.
- (2) Regulations under this section may (among other things) provide that the number is— 35
- (a) a specified number;
- (b) a number determined by reference to a specified percentage of employees;
- (c) a number that is the highest or lowest of two or more numbers, whether those numbers are specified numbers, determined by reference to a specified percentage of employees, or determined in another way specified in the regulations. 40

- (3) But the regulations may not provide in any case for the threshold number of employees to be lower than 20.
- (4) For the purposes of determining a number by reference to a specified percentage of employees, the regulations may make provision for determining how many employees an employer has, including (among other things) –
  - (a) provision about the time by reference to which that determination is to be made;
  - (b) provision excluding employees of a specified description from being taken into account in that determination.
- (5) Regulations under this section may make different provision for different purposes, including (among other things) –
  - (a) different provision in respect of different provisions of this Chapter;
  - (b) different provision in respect of different descriptions of employer.
- (6) Regulations under this section may contain such incidental, supplementary or transitional provision as appears to the Secretary of State to be necessary or expedient.
- (7) Regulations under this section are to be made by statutory instrument.
- (8) A statutory instrument containing regulations under this section (whether alone or with other provision) may not be made unless a draft of the instrument is laid before and approved by a resolution of each House of Parliament.
- (9) In this section “specified” means specified in the regulations.”
- (6) In section 197 (power to vary provisions), in subsection (1) –
  - (a) in paragraph (a), for “188(2) and 193(1)” substitute “188(1A) and 193(2A)(b)”;
  - (b) in the words after paragraph (b), for “188(2) and 193(1)” substitute “188(1A) and 193(2A)(b)”.
- (7) In section 198A (employees being transferred to the employer from another undertaking) –
  - (a) in subsection (1)(b), for the words from “20 or more employees” to “or less,” substitute “within a period of 90 days or less –
    - (i) at least the threshold number of employees (see section 195A), or
    - (ii) 20 or more employees at one establishment,”;
  - (b) in subsection (4)(a) –
    - (i) for “and as if” substitute “and, where relevant, as if”;
    - (ii) for “(1)(b)” substitute “(1)(b)(ii)”.

**28 Collective redundancy consultation: protected period**

- (1) Chapter 2 of Part 4 of the Trade Union and Labour Relations (Consolidation) Act 1992 (procedure for handling redundancies) is amended as follows.
- (2) In section 189 (duty to consult representatives: complaint and protective award), in subsection (4), in the words after paragraph (b), for “90” substitute “180”. 5
- (3) In section 197 (power to vary provisions), in subsection (1)(b), for “periods” substitute “period”.

**29 Collective redundancy notifications: ships’ crew**

- (1) In the Trade Union and Labour Relations (Consolidation) Act 1992, section 193A is amended in accordance with subsections (2) to (5). 10
- (2) For the heading substitute “Application of section 193 in certain cases involving redundancies of ships’ crew”.
- (3) In subsection (1)—
  - (a) in the words before paragraph (a), for “has effect subject to this section” substitute “applies with the modifications set out in subsections (2) and (3)”; 15
  - (b) in paragraph (b)—
    - (i) at the beginning insert “some or all of”;
    - (ii) for “vessel” substitute “ship”. 20
- (4) In subsection (2)—
  - (a) before “to the competent authority” insert “, so far as relating to the members of crew of a ship within subsection (1)(b),”;
  - (b) for “vessel” substitute “ship”;
  - (c) for “instead of” substitute “as well as”. 25
- (5) After subsection (2) insert—
  - “(3) Where this subsection applies, section 193 is to be read as if references in subsections (4) and (6) to a notice were to the notice that is required to be given to the Secretary of State.
  - (4) In this section “ship” includes— 30
    - (a) any kind of vessel used in navigation, and
    - (b) hovercraft.”
- (6) In section 285 of the Trade Union and Labour Relations (Consolidation) Act 1992 (employment outside Great Britain)—
  - (a) in subsection (1B), after “United Kingdom” insert “or a GB-linked ship”; 35

- (b) after subsection (2) insert—
- “(3) In this section, “GB-linked ship” means a ship providing a service—
- (a) for the carriage of persons or goods, with or without vehicles, and 5
  - (b) that is within subsection (4) or (5).
- (4) A service is within this subsection if it is operated between a place in Great Britain and another place in the United Kingdom.
- (5) A service is within this subsection if—
- (a) ships providing the service entered a harbour in Great Britain on at least 120 occasions in the period of 12 months ending with the day when the redundancy proposal in question is settled by the employer, or 10
  - (b) if the service has been provided for less than 12 months before that day, ships providing the service entered a harbour in Great Britain on at least 10 occasions in each month for which the service has been provided. 15
- (6) But a service is not within subsection (5) if the service—
- (a) is for the purpose of leisure or recreation, or
  - (b) is provided by a fishing vessel. 20
- (7) In this section—
- “harbour” has the same meaning as in the Harbours Act 1964;
  - “ship” has the same meaning as in section 193A (see subsection (4) of that section).” 25

*Public sector outsourcing: protection of workers*

**30 Public sector outsourcing: protection of workers**

- (1) The Procurement Act 2023 is amended as follows.
- (2) After Part 5 insert—

**“PART 5A** 30

OUTSOURCING: PROTECTION OF WORKERS

**83A Application of this Part**

- (1) This Part provides for a Minister of the Crown, the Scottish Ministers and the Welsh Ministers to make provision for the protection of workers in relation to relevant outsourcing contracts (see section 83B). 35
- (2) Accordingly, in this Part, “appropriate authority”—

- (a) means—
- (i) a Minister of the Crown,
  - (ii) the Scottish Ministers, or
  - (iii) the Welsh Ministers, and
- (b) does not include a Northern Ireland department. 5
- (3) In addition to the restrictions in section 113, a Minister of the Crown—
- (a) may exercise a power under this Part for the purpose of regulating devolved Scottish authorities only in relation to joint or centralised procurement under a reserved procurement arrangement; 10
  - (b) may not exercise a power under this Part for the purpose of regulating joint or centralised procurement under a devolved Scottish procurement arrangement.
- (4) The Scottish Ministers—
- (a) may only exercise a power under this Part for the purpose of regulating— 15
    - (i) devolved Scottish authorities, or
    - (ii) procurement under a devolved Scottish procurement arrangement;
  - (b) may not exercise a power under this Part for the purpose of regulating— 20
    - (i) joint or centralised procurement under a reserved procurement arrangement, or
    - (ii) joint or centralised procurement under a devolved Welsh procurement arrangement. 25
- (5) In addition to the restrictions in section 111, the Welsh Ministers—
- (a) may exercise a power under this Part for the purpose of regulating devolved Scottish authorities only in relation to joint or centralised procurement under a devolved Welsh procurement arrangement; 30
  - (b) may not exercise a power under this Part for the purpose of regulating joint or centralised procurement under a devolved Scottish procurement arrangement.
- (6) This Part does not apply in relation to—
- (a) a private utility; 35
  - (b) a person referred to in regulation 4(1)(b) of the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49);
  - (c) a devolved Welsh authority listed in Schedule 1 of the Social Partnership and Public Procurement (Wales) Act 2023 (asc 1);
  - (d) procurement under a transferred Northern Ireland procurement arrangement, except to the extent that the procurement— 40
    - (i) is carried out by a devolved Scottish authority, and
    - (ii) is not joint or centralised;

- (e) a transferred Northern Ireland authority, except in relation to—
  - (i) procurement under a reserved procurement arrangement,
  - (ii) procurement under a devolved Scottish procurement arrangement, or 5
  - (iii) procurement under a devolved Welsh procurement arrangement.
  
- (7) For the purposes of this section, procurement under a procurement arrangement is “joint or centralised” if as part of that procurement arrangement a contract is to be awarded following a procedure or other selection process carried out— 10
  - (a) jointly by a devolved Scottish authority and another contracting authority which is not a devolved Scottish authority, or
  - (b) by a centralised procurement authority or equivalent body.

**83B Relevant outsourcing contracts** 15

- (1) In this Part, “relevant outsourcing contract” means a contract in relation to which conditions A to C are met.
  
- (2) Condition A is met where the contract—
  - (a) is a public contract under this Act, or
  - (b) is a contract regulated by Scottish procurement legislation. 20
  
- (3) Condition B is met where the contract—
  - (a) is a contract for the supply of services that include the performance of functions that are or have previously been performed by the contracting authority, or
  - (b) is— 25
    - (i) in the case of a public contract, a framework for the future award of a contract referred to in paragraph (a), or
    - (ii) in the case of a contract regulated by Scottish procurement legislation, a framework agreement the purpose of which is to establish the terms governing a contract referred to in paragraph (a). 30
  
- (4) Condition C is met where the functions referred to in subsection (3)(a) are, or are expected to be, performed by individuals (“transferring workers”) who— 35
  - (a) in performing the functions, are employed by the supplier or a sub-contractor under a worker’s contract, and
  - (b) were employed by the contracting authority under a worker’s contract in performing functions of the same kind.
  
- (5) For the purposes of this Part— 40

- (a) “contract regulated by Scottish procurement legislation” means a contract the procurement of which by a devolved Scottish authority is regulated by Scottish procurement legislation;
- (b) in relation to a contract regulated by Scottish procurement legislation—
  - (i) “contracting authority” means a devolved Scottish authority that is a contracting authority within the meaning of the relevant Scottish procurement legislation;
  - (ii) “framework agreement” has the same meaning as in the relevant Scottish procurement legislation;
  - (iii) “supplier” means an economic operator within the meaning of the relevant Scottish procurement legislation;
  - (iv) “the relevant Scottish procurement legislation” means the Scottish procurement legislation regulating the procurement of the contract.

### **83C Power to specify provision for inclusion in relevant outsourcing contracts**

- (1) An appropriate authority may by regulations specify provision to be included in a relevant outsourcing contract for the purpose of ensuring that—
  - (a) transferring workers of a specified description are treated no less favourably as workers of the supplier or a sub-contractor than they were as workers of the contracting authority, and
  - (b) workers of the supplier or a sub-contractor who are not transferring workers and are of a specified description are treated no less favourably than those transferring workers.
- (2) In carrying out the procurement of a relevant outsourcing contract, the contracting authority must—
  - (a) take all reasonable steps to ensure that provision specified under subsection (1) is included in the contract;
  - (b) where provision specified under subsection (1) is included in the contract, take all reasonable steps to secure that such provision is complied with.
- (3) Subsection (2) does not apply—
  - (a) where the contracting authority or the relevant outsourcing contract is of a specified description, or
  - (b) in specified circumstances.
- (4) In this section, “specified” means specified in regulations made by an appropriate authority.



### 83D Code of practice on relevant outsourcing contracts

- (1) An appropriate authority must prepare and publish a code of practice containing guidance to contracting authorities for the purpose of ensuring that, where a contracting authority carries out the procurement of a relevant outsourcing contract – 5
- (a) transferring workers of a description specified in the code are treated no less favourably as workers of the supplier or a sub-contractor than they were as workers of the contracting authority, and
  - (b) workers of the supplier or a sub-contractor who are not transferring workers and are of a description specified in the code are treated no less favourably than those transferring workers. 10
- (2) An appropriate authority – 15
- (a) may amend or replace a code published by it under subsection (1), and
  - (b) must publish any amended or replacement code.
- (3) A code published under subsection (1) or (2) must – 20
- (a) in the case of a code published by a Minister of the Crown, be laid before Parliament;
  - (b) in the case of a code published by the Scottish Ministers, be laid before the Scottish Parliament;
  - (c) in the case of a code published by the Welsh Ministers, be laid before Senedd Cymru.
- (4) In carrying out the procurement of a relevant outsourcing contract, the contracting authority must have regard to the code of practice for the time being published under subsection (1) or (2). 25
- (5) This section does not require an appropriate authority to do anything which the authority does not have power to do (see section 83A and Part 11). 30

### 83E Interpretation of this Part

- (1) In this Part –
- “appropriate authority” has the meaning given in section 83A(2);
  - “contract regulated by Scottish procurement legislation” has the meaning given in section 83B(5)(a); 35
  - “relevant outsourcing contract” has the meaning given in section 83B;
  - “transferring worker”, in relation to a relevant outsourcing contract, has the meaning given in section 83B(4);
  - “worker” and “worker’s contract” have the same meaning as in the Employment Rights Act 1996 (see section 230 of that Act). 40

- (2) For the purposes of this Part, in relation to a contract regulated by Scottish procurement legislation, “contracting authority”, “framework agreement”, “supplier” and “the relevant Scottish procurement legislation” have the meaning given in section 83B(5)(b).

### 83F Power of Scottish Ministers to amend this Part

5

The Scottish Ministers may by regulations modify section 83A, 83B or 83E in consequence of a modification of Scottish procurement legislation.”

- (3) In section 2 (contracting authorities), after subsection (1) insert –
- “(1A) But see also section 83B(5)(b)(i) (which provides for “contracting authority” to have an extended meaning in relation to certain contracts regulated under Part 5A (outsourcing: protection of workers)).” 10
- (4) In section 122 (regulations) –
- (a) in subsection (4) (regulations of Ministers of the Crown subject to affirmative procedure), after paragraph (i) insert – 15
- “(ia) section 83C (provision for inclusion in relevant outsourcing contracts);”;
- (b) in subsection (10) (regulations of Welsh Ministers subject to affirmative procedure), after paragraph (g) insert –
- “(ga) section 83C (provision for inclusion in relevant outsourcing contracts);” 20
- (c) in subsection (14) (regulations of Scottish Ministers subject to affirmative procedure), before paragraph (a) insert –
- “(za) section 83C (provision to be included in relevant outsourcing contracts); 25
- “(zb) section 83F (power to amend section 83A, 83B or 83E);”.
- (5) In section 123 (interpretation), in subsection (1), in the definition of “appropriate authority”, at the end insert –
- “(but see section 83A(2) for a different meaning of “appropriate authority” in Part 5A (outsourcing: protection of workers)).” 30
- (6) In section 124 (index of defined expressions), for the entry for “appropriate authority” substitute –

“appropriate authority (except in Part 5A)	section 123
appropriate authority (in Part 5A)	section 83A”.

- (7) In Schedule 9A (procurement by devolved Scottish authorities), at the appropriate place insert—

“Part 5A (outsourcing: protection of workers)”.

*Duties of employers relating to equality*

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**31 Equality action plans**

- (1) The Equality Act 2010 is amended as follows.  
(2) In Part 5 (work), in Chapter 3 (equality of terms), after section 78 insert—

*“Equality action plans*

**78A Equality action plans**

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- (1) Regulations may require employers to—
- (a) develop and publish a plan (an “equality action plan”) showing the steps that the employers are taking in relation to their employees with regard to prescribed matters related to gender equality, and 15
  - (b) publish prescribed information relating to the plan.
- (2) This section does not apply to—
- (a) an employer with fewer than 250 employees;
  - (b) a public authority, other than— 20
    - (i) a public authority specified in Part 1 of Schedule 19, or
    - (ii) a public authority specified in Part 4 of Schedule 19 with the letter “D” included after the entry.
- (3) For the purposes of subsection (1), a matter is related to gender equality if it is related to advancing equality of opportunity between male and female employees. 25
- (4) Accordingly, matters related to gender equality include—
- (a) addressing the gender pay gap, and
  - (b) supporting employees going through the menopause.
- (5) The regulations may, among other things, make provision about— 30
- (a) the content of a plan;
  - (b) the form and manner in which a plan or information is to be published;
  - (c) when and how frequently a plan or information is to be published or revised;
  - (d) requirements for senior approval before a plan or information is published; 35

- (e) descriptions of employers;
  - (f) descriptions of employee;
  - (g) descriptions of information.
- (6) The regulations may not require an employer, after the first publication of information, to publish information more frequently than at intervals of 12 months. 5
- (7) The regulations may make provision for a failure to comply with the regulations to be enforced, otherwise than as an offence, by such means as are prescribed.
- (8) The reference to a failure to comply with the regulations includes a reference to a failure by a person acting on behalf of an employer. 10
- (9) A Minister of the Crown must consult—
- (a) the Commission, before making regulations under this section that apply to a public authority, and
  - (b) the Welsh Ministers, before making regulations under this section that apply to a public authority specified in Part 4 of Schedule 19 with the letter “D” included after the entry.” 15
- (3) In Part 16 (general and miscellaneous), in section 208(5) (regulations subject to affirmative procedure), after paragraph (b) insert—
- “(ba) regulations under section 78A (equality action plans);” 20

## 32 Provision of information relating to outsourced workers

- (1) The Equality Act 2010 is amended as follows.
- (2) In section 78 (gender pay gap information), after subsection (3) insert—
- “(3A) Regulations under subsection (3)(d) may, among other things, make provision, in a case where an employer is a principal in relation to an individual who is a contract worker, requiring publication of the identity of the person who has contracted with the principal for the supply of the individual. 25
- (3B) In subsection (3A), “principal” and “contract worker” have the meaning that they have in section 41 (see section 41(5) and (7)).” 30
- (3) In section 153 (power to impose specific duties on public authorities), after subsection (1) insert—
- “(1A) Regulations under subsection (1) may, among other things, make provision, in a case where an employer is a principal in relation to an individual who is a contract worker, requiring publication of the identity of the person who has contracted with the principal for the supply of the individual. 35
- (1B) In subsection (1A), “principal” and “contract worker” have the meaning that they have in section 41 (see section 41(5) and (7)).”

- (4) In section 154 (power to impose specific duties: cross-border public authorities), after subsection (3) insert –

“(3A) Regulations under this section made by a Minister of the Crown may, among other things, make provision, in a case where an employer is a principal in relation to an individual who is a contract worker, requiring publication of the identity of the person who has contracted with the principal for the supply of the individual.

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- (3B) In subsection (3A), “principal” and “contract worker” have the meaning that they have in section 41 (see section 41(5) and (7)).”

*Annual leave records*

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**33 Duty to keep records relating to annual leave**

- (1) The Working Time Regulations 1998 (S.I. 1998/1833) are amended as follows.  
(2) In Part 2 (rights and obligations concerning working time), after regulation 16A insert –

**“Records relating to annual leave entitlement**

15

**16B.** –(1) An employer must –

- (a) keep records which are adequate to show whether the employer has complied with the entitlements conferred by regulations 13(1), 13A(1), 15B(2) and 16(1) and the requirements in regulations 14(2) and (6) and 15E(2);

20

- (b) retain such records for six years from the date on which they were made.

(2) The records referred to in paragraph (1)(a) may be created, maintained and kept in such manner and format as the employer reasonably thinks fit.”

- (3) In regulation 29 (offences), in paragraph (1), after “the relevant requirements” insert “or with regulation 16B(1)”.

25

- (4) In regulation 29C (restriction on institution of proceedings in England and Wales) –

- (a) the existing provision becomes paragraph (1);  
(b) after that paragraph insert –

30

“(2) But paragraph (1) does not prevent the Secretary of State from instituting proceedings in England and Wales for an offence under regulation 29(1) in respect of a failure to comply with regulation 16B(1) (duty to keep records).”

*Employment businesses*

**34 Extension of regulation of employment businesses**

In section 13 of the Employment Agencies Act 1973 (interpretation), for subsection (3) substitute –

- “(3) For the purposes of this Act “employment business” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of participating in employment arrangements. 5
- (3A) “Employment arrangements” means arrangements under which persons who are, or are intended to be, in the employment of a person are, or are intended to be, supplied to act for, and under the control of, another person in any capacity. 10
- (3B) “Participating in” employment arrangements means doing any of the following in connection with the arrangements –
- (a) being an employer of the persons who are, or are intended to be, supplied under the arrangements; 15
  - (b) paying for, or receiving or forwarding payment for, the services of those persons, in consideration of directly or indirectly receiving a fee from those persons;
  - (c) supplying those persons (whether or not under the arrangements); 20
  - (d) taking steps with a view to doing anything mentioned in paragraphs (a) to (c).”

**PART 3**

PAY AND CONDITIONS IN PARTICULAR SECTORS 25

**CHAPTER 1**

SCHOOL SUPPORT STAFF

**35 Pay and conditions of school support staff in England**

Schedule 4 contains provision establishing the School Support Staff Negotiating Body. 30

## CHAPTER 2

### SOCIAL CARE WORKERS

#### *Social Care Negotiating Bodies*

#### **36 Power to establish Social Care Negotiating Body**

- (1) For the purposes of this Chapter, the Secretary of State may by regulations provide for there to be a body in England known as the Adult Social Care Negotiating Body for England. 5
- (2) For the purposes of this Chapter, the Welsh Ministers may, with the agreement of the Secretary of State, by regulations provide for there to be a body in Wales known as the Social Care Negotiating Body for Wales. 10
- (3) For the purposes of this Chapter, the Scottish Ministers may, with the agreement of the Secretary of State, by regulations provide for there to be a body in Scotland known as the Social Care Negotiating Body for Scotland.
- (4) Any power of the Welsh Ministers or the Scottish Ministers to make regulations under the remaining provisions of this Chapter may not be exercised without the agreement of the Secretary of State. 15
- (5) In this Chapter –
- “the appropriate authority” –
  - (a) in relation to the Adult Social Care Negotiating Body for England, means the Secretary of State; 20
  - (b) in relation to the Social Care Negotiating Body for Wales, means the Welsh Ministers;
  - (c) in relation to the Social Care Negotiating Body for Scotland, means the Scottish Ministers;
- “Negotiating Body” means a body established by regulations under this section. 25

#### **37 Membership, procedure, etc of Negotiating Body**

- (1) Where the appropriate authority provides for there to be a Negotiating Body under section 36, the authority may by regulations make further provision about the Negotiating Body. 30
- (2) The provision that may be made by regulations under this section includes, among other things –
- (a) provision about membership of the Negotiating Body, including (among other things) –
  - (i) provision about the appointment of members; 35
  - (ii) provision about the number of members, or the number of members of a specified description, which the Negotiating Body is to have (see also subsection (3));

- 
- (iii) provision about the termination of appointments;
  - (b) provision for the appointment of a person to chair the Negotiating Body, including (among other things) provision for that person to be, or not to be, a person of a specified description;
  - (c) provision about how the Negotiating Body makes its decisions; 5
  - (d) provision for the Negotiating Body to keep records of a specified description;
  - (e) provision for the payment of fees or expenses by the appropriate authority to members of the Negotiating Body;
  - (f) provision for staff or facilities to be provided to the Negotiating Body by the appropriate authority; 10
  - (g) provision about reports, including (among other things) provision requiring the Negotiating Body to publish reports at specified times or about specified matters.
- (3) Regulations under this section – 15
    - (a) must provide that the persons appointed as members of the Negotiating Body include –
      - (i) officials of one or more trade unions that represent the interests of social care workers;
      - (ii) persons representing the interests of employers of social care workers; 20
    - (b) may provide for other descriptions of person to be appointed as members of the Negotiating Body.
  - (4) Regulations under this section may provide that the validity of anything done by the Negotiating Body is not affected by a vacancy or a defective appointment. 25
  - (5) Regulations under this section may amend any enactment in consequence of the establishment of the Negotiating Body.
  - (6) In this section “specified” means specified in the regulations.
- 38 Matters within Negotiating Body’s remit 30**
- (1) For the purposes of this Chapter, the matters within a Negotiating Body’s remit are matters that relate to any of the following –
    - (a) the remuneration of relevant social care workers, or of relevant social care workers of a specified description;
    - (b) terms and conditions of employment of relevant social care workers, or of relevant social care workers of a specified description; 35
    - (c) any other specified matters relating to employment as a relevant social care worker, or as a relevant social care worker of a specified description.
  - (2) In subsection (1) – 40



“relevant social care worker”, in relation to a Negotiating Body, means a social care worker employed in, or in connection with, the provision of social care in the area for which the Negotiating Body is established;  
“specified” means specified in regulations made by the appropriate authority.

5

### 39 Meaning of “social care worker”

- (1) In this Chapter “social care worker” means—
  - (a) in relation to England, a person who is employed wholly or mainly in, or in connection with, the provision of social care to individuals aged 18 or over; 10
  - (b) in relation to Wales or Scotland, a person who is employed wholly or mainly in, or in connection with, the provision of social care to any individual.
- (2) For the purposes of subsection (1), “social care” includes any form of personal care or other practical assistance provided for individuals 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. 15

#### *Consideration of matters by Negotiating Body*

### 40 Consideration of matters by Negotiating Body

- (1) The appropriate authority may by regulations make provision about the consideration by a Negotiating Body of matters within its remit. 20
- (2) The provision that may be made by regulations under this section includes, among other things—
  - (a) provision about the circumstances in which the Negotiating Body may, or must, consider a matter within its remit, including (among other things) provision requiring it to consider any matter referred to it by the appropriate authority; 25
  - (b) provision specifying, or enabling the appropriate authority to specify, factors to which the Negotiating Body may, or must, have regard when considering a matter; 30
  - (c) provision specifying, or enabling the appropriate authority to specify, conditions that must be met in relation to any agreement reached by the Negotiating Body about a matter, including (among others) conditions relating to funding;
  - (d) provision requiring members of the Negotiating Body to provide the Negotiating Body with information, or information of a specified description, for the purposes of enabling it to consider, or reach an agreement about, a matter; 35
  - (e) provision requiring the Negotiating Body, if it reaches an agreement about a matter, to submit the agreement to the appropriate authority; 40

- (f) provision requiring the Negotiating Body to take any specified steps before a date notified to it by the appropriate authority.

- (3) In this section “specified” means specified in the regulations.

#### **41 Reconsideration by Negotiating Body**

- (1) The appropriate authority may by regulations provide that, in a case where a Negotiating Body submits an agreement to the appropriate authority, the authority may refer the agreement back to the Negotiating Body for reconsideration, or may do so in specified circumstances. 5
- (2) The appropriate authority may by regulations make provision about what happens where an agreement is referred back to a Negotiating Body as mentioned in subsection (1). 10
- (3) The provision that may be made by regulations under subsection (2) includes, among other things –
  - (a) provision requiring the Negotiating Body to reconsider the agreement;
  - (b) provision specifying, or enabling the appropriate authority to specify, factors to which the Negotiating Body may, or must, have regard when reconsidering the agreement; 15
  - (c) provision specifying, or enabling the appropriate authority to specify, conditions that must be met in relation to any revised agreement reached by the Negotiating Body about a matter, including (among others) conditions relating to funding; 20
  - (d) provision requiring members of the Negotiating Body to provide the Negotiating Body with information, or information of a specified description, for the purposes of enabling it to reconsider the agreement;
  - (e) provision specifying steps which the Negotiating Body may or must take after reconsidering the agreement, including, in particular, submitting the original agreement, or a revised agreement, to the appropriate authority; 25
  - (f) provision requiring the Negotiating Body to take any specified steps before a date notified to it by the appropriate authority. 30
- (4) In this section “specified” means specified in the regulations.

#### **42 Failure to reach an agreement**

- (1) The appropriate authority may by regulations make provision about cases where a Negotiating Body is unable to reach an agreement about a matter.
- (2) The provision that may be made by regulations under this section includes, among other things – 35
  - (a) provision for resolving disagreements about any matter;
  - (b) provision conferring functions on the appropriate authority or a person specified in the regulations;

- (c) provision requiring the Negotiating Body to act in accordance with a decision of the appropriate authority or a person specified in the regulations.

*Giving effect to agreements of Negotiating Body*

**43 Power to ratify agreements** 5

- (1) This section applies if a Negotiating Body submits an agreement to the appropriate authority in accordance with regulations under section 40 or 41.
- (2) The appropriate authority may make regulations ratifying the agreement –
  - (a) in full, or
  - (b) to the extent specified in the regulations. 10

**44 Effect of regulations ratifying agreement**

- (1) This section applies if the appropriate authority makes regulations under section 43 ratifying (to any extent) an agreement submitted by a Negotiating Body.
- (2) If the agreement relates to a social care worker’s remuneration, the social care worker’s remuneration is to be determined and paid in accordance with the agreement. 15
- (3) A provision of the agreement that relates to any other term or condition of a social care worker’s employment has effect as a term of the social care worker’s contract. 20
- (4) A term of that contract has no effect to the extent that it makes provision that is prohibited by, or is otherwise inconsistent with, the agreement.

*Power of appropriate authority to deal with matters*

**45 Power of appropriate authority to deal with matters**

- (1) This section applies where – 25
  - (a) a Negotiating Body notifies the appropriate authority that it has been unable to reach an agreement on a matter referred to it, and
  - (b) any other specified conditions are met.

In paragraph (b) “specified” means specified in regulations made by the appropriate authority. 30
- (2) The appropriate authority may by regulations make provision about the matter.
- (3) Regulations under subsection (2) may provide that the regulations are to have effect for determining the terms and conditions of employment of social care workers to whom the regulations apply. 35

- 
- (4) If the regulations make provision within subsection (3), subsections (5) to (7) apply.
- (5) If the regulations relate to a social care worker’s remuneration, the social care worker’s remuneration is to be determined and paid in accordance with the regulations. 5
- (6) A provision of the regulations that relates to any other term or condition of a social care worker’s employment has effect as a term of the social care worker’s contract.
- (7) A term of that contract has no effect to the extent that it makes provision that is prohibited by, or is otherwise inconsistent with, the regulations. 10

*Guidance etc*

**46 Guidance and codes of practice**

- (1) The appropriate authority may by regulations make provision about the issuing of guidance or codes of practice by the authority in relation to—
- (a) agreements submitted by a Negotiating Body in accordance with regulations under section 40 or 41; 15
- (b) regulations made by the authority under section 45.
- (2) Regulations under this section may, among other things—
- (a) impose duties on specified persons, or persons of a specified description, in relation to any provision of guidance or a code of practice; 20
- (b) make provision about the consequences of a failure to comply with any duty imposed by virtue of paragraph (a).
- (3) The provision that may be made by virtue of subsection (2)(b) includes, among other things, provision for the failure to be taken into account in any proceedings before a court or tribunal, including (among other things) for the purpose of determining the amount of any financial award. 25
- (4) In this section “specified” means specified in the regulations.

*Enforcement*

**47 Duty of employers to keep records**

- 30
- (1) For the purposes of this Chapter, the Secretary of State may by regulations make provision requiring employers—
- (a) to keep, in a specified form and manner, records of a specified description;
- (b) to preserve those records for a specified period. 35
- (2) Regulations under this section may provide for the following provisions of the National Minimum Wage Act 1998 to apply, with or without modifications,

in relation to records which an employer is required to keep and preserve by virtue of the regulations –

- (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). 5
- (3) Regulations under this section that provide for any of those provisions of that Act to apply in relation to such records may provide for section 49 of that Act (restrictions on contracting out) to apply, with or without modifications, in relation to the application of those provisions by the regulations. 10
- (4) In this section “specified” means specified in the regulations.

*Agency workers*

**48 Agency workers who are not otherwise “workers”**

- (1) This section applies in any case where an individual (the “agency worker”) – 15
- (a) is supplied by a person (the “agent”) to do work for another (the “principal”) under a contract or other arrangements made between the agent and the principal,
  - (b) is not, as respects that work, a worker, because of the absence of a worker’s contract between the individual and the agent or the principal, and 20
  - (c) is not a party to a contract under which the agency worker undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of any profession or business undertaking carried on by the individual. 25
- (2) The provisions of this Chapter (other than this section) have effect as if there were a worker’s contract for the doing of the work by the agency worker made between the agency worker and –
- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work, or 30
  - (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work.
- (3) For the purposes of Part 2 of the Employment Rights Act 1996 (protection of wages), as it applies in relation to the entitlements conferred by sections 44(2) and 45(5) – 35
- (a) if at any time the agency worker and the person who, as a result of this section, is the person’s employer for the purposes of this Chapter would not (apart from this subsection) be regarded as the worker and the employer for the purposes of that Part, they are to be so regarded;
  - (b) it is to be assumed that there was a worker’s contract between those persons at that time. 40

- (4) If there would (in the absence of this section) be no worker’s contract between the agency worker and the person who, as a result of this section, is the person’s employer for the purposes of this Chapter, for the purpose of enforcing any entitlement conferred by section 44(2) or (3) or 45(5) or (6) in civil proceedings on a claim in contract it is to be assumed that there is (or was) such a contract between those persons. 5
- (5) Any reference in this section to doing work includes a reference to performing services, and “work” is to be read accordingly.

*Supplementary and general*

**49 Regulations under section 43 or 45: supplementary** 10

- (1) Regulations under section 43 or 45 may make provision that has retrospective effect.  
 This is subject to subsection (2).
- (2) Regulations under section 43 or 45 may not make provision the effect of which is to— 15
- (a) reduce remuneration in respect of a period wholly or partly before the day on which the regulations are made, or
  - (b) alter a condition of a person’s employment to the person’s detriment in respect of such a period.
- (3) Regulations under section 43 or 45 may make provision by reference to— 20
- (a) an agreement submitted by a Negotiating Body to the appropriate authority, or
  - (b) any other document.
- (4) If regulations under section 43 or 45 make provision by virtue of subsection (3), they must include provision about the publication of the agreement or other document. 25

**50 Regulations under this Chapter**

- (1) Regulations under this Chapter may confer a discretion on a person when dealing with any matter.
- (2) Regulations under section 43 are subject to the negative resolution procedure. 30
- (3) Regulations under any other provision of this Chapter are subject to the affirmative resolution procedure.

**51 Status of agreements, etc**

- The Secretary of State may by regulations provide that—
- (a) nothing done by a Negotiating Body, or by members of a Negotiating Body acting in that capacity, is to be regarded as collective bargaining 35

- for the purposes of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992;
- (b) any reference to a collective agreement within the meaning of that Act does not include an agreement reached by a Negotiating Body.

## 52 Interpretation of this Chapter

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### (1) In this Chapter –

- “the appropriate authority” has the meaning given by section 36(5);
- “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing; 10
- “employer”, in relation to a worker, means the person by whom the worker is (or, where the employment has ceased, was) employed;
- “employment” means employment under a worker’s contract; and  
“employed” is to be read accordingly;
- “enactment” means – 15
- (a) an Act of Parliament,
- (b) a Measure or Act of the National Assembly for Wales or an Act of Senedd Cymru, or
- (c) an Act of the Scottish Parliament;
- “Negotiating Body” has the meaning given by section 36(5); 20
- “official”, in relation to a trade union, has the meaning given by section 119 of the Trade Union and Labour Relations (Consolidation) Act 1992;
- “social care worker” has the meaning given by section 39;
- “trade union” has the meaning given by section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992; 25
- “worker” (except in the phrases “agency worker”, “relevant social care worker” and “social care 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 30
- (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 35  
or business undertaking carried on by the individual;
- and any reference to a worker’s contract is to be read accordingly.

- (2) Any reference in this Chapter to an agreement that has been ratified is, in a case where the agreement is ratified in part, a reference to so much of the agreement as has been ratified. 40

### CHAPTER 3

#### SEAFARERS

#### 53 Seafarers’ wages and working conditions

Schedule 5 amends the Seafarers’ Wages Act 2023.

#### 54 International agreements relating to maritime employment

5

- (1) The Merchant Shipping Act 1995 is amended as follows.
- (2) After section 84 insert—

#### “PART 3A

##### INTERNATIONAL AGREEMENTS RELATING TO MARITIME EMPLOYMENT

#### 84A International agreements relating to maritime employment

10

- (1) The Secretary of State may by regulations make such provision as the Secretary of State considers appropriate for the purpose of giving effect to—

- (a) the Maritime Labour Convention, adopted on 23 February 2006 by the International Labour Organisation, as it has effect from time to time;
- (b) the Work in Fishing Convention, adopted on 14 June 2007 by the International Labour Organisation, as it has effect from time to time.

15

- (2) The Secretary of State may by regulations make such provision as the Secretary of State considers appropriate for the purpose of giving effect to an international agreement that has been ratified by the United Kingdom, so far as the agreement relates to maritime employment.

20

- (3) The power in subsection (2) to give effect to an agreement so far as it relates to maritime employment includes power to give effect to any amendments of the agreement that relate to maritime employment.

25

- (4) For the purposes of this section, a provision relates to maritime employment if it relates to the terms and conditions of employment or engagement, or working conditions, of masters or seamen.

- (5) Section 84B makes further provision with respect to the regulations that may be made under this section.

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#### 84B Regulations under section 84A: supplementary

- (1) In subsections (2) to (9) “regulations” means regulations under section 84A.

- (2) Regulations—

35



- (a) may make provision in terms of approvals given by the Secretary of State or another person and in terms of any document which the Secretary of State or that other person considers relevant;
  - (b) may provide for the cancellation of an approval given in pursuance of the regulations and for the alteration of the terms of such an approval; 5
  - (c) must provide for any approval in pursuance of the regulations to be given in writing and to specify the date on which it takes effect and the conditions (if any) on which it is given. 10
- (3) Regulations may make provision for –
  - (a) the granting by the Secretary of State or another person of exemptions from specified provisions of the regulations for classes of case or individual cases, on such terms (if any) as the Secretary of State or that other person may specify, and 15
  - (b) for the alteration or cancellation of such exemptions.
- (4) Regulations may make provision in respect of the checking or monitoring of compliance with any provision of the regulations, including (among other things) provision for –
  - (a) the making and keeping of records and the keeping of documents; 20
  - (b) the issue of certificates;
  - (c) the furnishing of information.
- (5) Regulations may –
  - (a) provide for the detention of a ship in respect of which a contravention of the regulations is suspected to have occurred; 25
  - (b) apply section 284 with or without modifications in relation to such detentions.
- (6) Regulations may provide for the contravention of any provision of the regulations to be a criminal offence, but may not provide – 30
  - (a) for an offence under the regulations to be punishable on summary conviction with imprisonment;
  - (b) in relation to Scotland or Northern Ireland –
    - (i) for an offence under the regulations that is triable only summarily to be punishable by a fine exceeding level 5 on the standard scale; 35
    - (ii) for an offence under the regulations that is triable summarily or on indictment to be punishable on summary conviction by a fine exceeding the statutory maximum; 40
  - (c) for an offence under the regulations to be punishable on conviction on indictment with imprisonment for a term exceeding two years.

- (7) Regulations may provide that, in specified cases, specified persons each commit an offence created by regulations in reliance on subsection (6).
- (8) Regulations may –
- (a) make different provision for different purposes; 5
  - (b) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time;
  - (c) provide for the delegation of functions exercisable by virtue of the regulations. 10
- (9) The power to make regulations includes power to make consequential, supplementary, incidental or transitional provision.
- (10) The powers conferred by section 84A to make provision for the purpose of giving effect to an agreement or an amendment of an agreement include power to provide for the provision to come into force although the agreement or amendment has not come into force. 15
- (11) Nothing in this section is to be construed as restricting the generality of the powers conferred by section 84A.
- (12) A statutory instrument which –
- (a) contains (whether alone or with other provision) regulations under section 84A(2), and 20
  - (b) is the first exercise of the power in respect of a particular agreement,
- may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 25
- (13) A statutory instrument which –
- (a) contains regulations under section 84A(2), and
  - (b) is a subsequent exercise of the power in respect of a particular agreement,
- is subject to annulment in pursuance of a resolution of either House of Parliament.” 30
- (3) In section 306 (regulations etc), in subsection (2A)(a), after “section” insert “84A(2),”.

## PART 4

### TRADE UNIONS AND INDUSTRIAL ACTION, ETC

#### *Right to statement of trade union rights*

#### **55 Right to statement of trade union rights**

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) to (6). 5
- (2) In Part 3 (rights in relation to trade union membership and activities), before section 137 (and the italic heading before it) insert—

*“Statement of trade union rights*

#### **136A Right to statement of trade union rights**

10

- (1) A worker’s employer must give the worker a written statement that the worker has the right to join a trade union.
  - (2) The statement must be given—
    - (a) at the same time as the employer gives the worker a statement under section 1 of the 1996 Act (statement of employment particulars); 15
    - (b) at other prescribed times.
  - (3) The Secretary of State may prescribe—
    - (a) information that must be included in the statement;
    - (b) the form which the statement must take; 20
    - (c) the manner in which the statement must be given.
  - (4) The information prescribed may include that the worker has rights conferred by this Part.
  - (5) For the purposes of this section—
    - (a) “worker” and “employer” have the same meaning as in the 1996 Act (see section 230 of that Act); 25
    - (b) in a case where an employer gives a worker a statement under section 1 of the 1996 Act in instalments (see section 2(4) of that Act), that statement is to be treated as given when the first instalment is given; 30
    - (c) “the 1996 Act” means the Employment Rights Act 1996.
  - (6) Regulations prescribing anything for the purposes of this section (see section 293(1)) may make different provision for different purposes.
  - (7) See section 38 of the Employment Act 2002 for the effect of failing to give a statement in accordance with this section.” 35
- (3) In section 284 (exceptions for share fishermen)—

- (a) after “in the case of” insert “section 136A and”;
- (b) before “sections 137 to 143” insert –  
“section 136A (right to statement of trade union rights),”.
- (4) In section 285 (exceptions for employment outside Great Britain) –  
(a) in subsection (1), before “sections 137 to 143” insert – 5  
“section 136A (right to statement of trade union rights),”;  
(b) in subsection (1A), for “Sections 145A to 151” substitute “Section 136A,  
and sections 145A to 151,”.
- (5) In section 286 (power to provide for other exceptions), before “sections 145A  
to 151” insert “section 136A (right to statement of trade union rights) and”. 10
- (6) In section 296 (meaning of “worker”), in subsection (3), after “68(4),” insert  
“136A(5),”.
- (7) In section 38 of the Employment Act 2002 (failure to give statement of  
employment particulars etc) –  
(a) in subsection (2)(b), after “duty to the worker” insert “under section 15  
136A of the Trade Union and Labour Relations (Consolidation) Act  
1992 (duty to give a written statement of trade union rights),”;  
(b) in subsection (3)(b), after “duty to the worker” insert “under section  
136A of the Trade Union and Labour Relations (Consolidation) Act  
1992,”. 20

*Right of trade unions to access workplaces*

**56 Right of trade unions to access workplaces**

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended  
in accordance with subsections (2) to (6).
- (2) In Part 1 (trade unions), before Chapter 5A insert – 25

**“CHAPTER 5ZA**

RIGHT OF TRADE UNIONS TO ACCESS WORKPLACES

*Access agreements: general*

**70ZA Access agreements**

- (1) This section applies for the purposes of this Chapter. 30
- (2) An “access agreement” is an agreement between a qualifying trade  
union and an employer that –  
(a) provides for one or more officials of the union to physically  
enter a workplace or communicate with workers (or both) for  
any of the access purposes, and 35

- (b) is entered into under section 70ZD or is treated as having been entered into under section 70ZE.
- (3) A “qualifying trade union” is a trade union that has a certificate of independence.
- (4) “Access” means – 5
  - (a) physical entry into a workplace;
  - (b) communication with workers.
- (5) A reference to communication with workers is a reference to communication with workers (including the provision of information to workers) by any means, whether directly or indirectly. 10
- (6) The “access purposes” are –
  - (a) to meet, support, represent, recruit or organise workers (whether or not they are members of a trade union);
  - (b) to facilitate collective bargaining.
- (7) But the access purposes do not include organising industrial action. 15
- (8) Sections 70ZB to 70ZF contain provision about entering into access agreements.
- (9) Section 70ZG contains provision about the variation or revocation of access agreements.
- (10) Sections 70ZH to 70ZK contain provision about the enforcement of access agreements. 20
- (11) Section 70ZL contains general limitations on the provision that may be made under this Chapter, including in access agreements.

*Entering into access agreements*

- 70ZB Access requests and response notices** 25
- (1) A qualifying trade union may give an employer a request for access by one or more officials of the union for any of the access purposes.
  - (2) A request under subsection (1) –
    - (a) may request access on one or more occasions;
    - (b) may include the terms on which access is requested (including as to what (if any) assistance the employer is requested to provide in relation to the access). 30
  - (3) A request under subsection (1) must –
    - (a) be in the prescribed form;
    - (b) include the prescribed information; 35
    - (c) be given in the prescribed manner.

- (4) An employer that has been given a request under subsection (1) may give the union a notice agreeing with the request or disagreeing with the request (in whole or in part).
- (5) A notice under subsection (4) must –
- (a) be in the prescribed form; 5
  - (b) include the prescribed information;
  - (c) be given in the prescribed manner.
- (6) In this Chapter –
- “access request” means a request under subsection (1) given in accordance with subsection (3); 10
  - “response notice” means a notice under subsection (4) given in accordance with subsection (5).

### **70ZC Response period and negotiation period**

In sections 70ZD and 70ZE –

- (a) “the response period” means a prescribed period beginning with the day on which an access request is given; 15
- (b) “the negotiation period” means a prescribed period beginning with the day on which a response notice is given.

### **70ZD Entering into access agreement by negotiation**

- (1) An access agreement is entered into under this section if – 20
- (a) a qualifying trade union gives an access request to an employer,
  - (b) the employer gives the union a response notice before the end of the response period,
  - (c) before the end of the negotiation period, the union and the employer agree in writing terms on which officials of the union are to have access, and 25
  - (d) the union and the employer jointly notify the Central Arbitration Committee of those terms in the prescribed form and manner.
- (2) See section 70ZE for the case where an access agreement is treated as being entered into by virtue of a determination of the Central Arbitration Committee. 30

### **70ZE Determinations by the Central Arbitration Committee**

- (1) This section applies if a qualifying trade union has given an access request to an employer and either – 35
- (a) the employer has not given a response notice to the union before the end of the response period, or
  - (b) the employer has given a response notice before the end of the response period and the negotiation period has ended without

- the union and the employer agreeing in writing terms on which officials of the union are to have access.
- (2) The Central Arbitration Committee may, on an application under this section, make a determination that officials of the union are or are not to have access. 5
- (3) If the Central Arbitration Committee makes a determination that officials of the union are to have access—
- (a) the determination must specify the terms on which officials of the union are to have access (including as to what (if any) assistance the employer must provide in relation to the access), and 10
- (b) an access agreement containing those terms (and no others) is treated as having been entered into between the union and the employer.
- (4) An application for a determination under this section may be made— 15
- (a) by the union, in the case referred to in subsection (1)(a);
- (b) by the union or the employer, in the case referred to in subsection (1)(b).
- (5) An application for a determination under this section—
- (a) must be in writing and in such form as the Central Arbitration Committee may require; 20
- (b) may not be made after the end of a prescribed period beginning with the day on which the access request is given.
- (6) In considering an application for a determination under this section, the Central Arbitration Committee— 25
- (a) may make such enquiries as it sees fit;
- (b) may make reasonable requests to provide information or documents relevant to the application;
- (c) so far as reasonably practicable, must give any person who it considers has a proper interest in the application an opportunity to be heard. 30
- (7) A determination under this section must—
- (a) be in writing, and
- (b) state the reasons for the determination.
- (8) Section 70ZF makes further provision about determinations under this section. 35

**70ZF Determinations by the Central Arbitration Committee: further provision**

- (1) Subject to regulations under this section, a determination by the Central Arbitration Committee under section 70ZE must be consistent with the access principles. 40

- (2) The access principles are—
- (a) officials of a qualifying trade union should be able to physically enter a workplace or communicate with workers (or both) for any of the access purposes in any manner that does not unreasonably interfere with the employer’s business; 5
  - (b) an employer should take reasonable steps to facilitate access by officials of a qualifying trade union;
  - (c) physical entry into a workplace should not be refused solely on the basis that communication with workers by means not involving physical entry into a workplace is permitted; 10
  - (d) communication with workers by means not involving physical entry into a workplace should not be refused solely on the basis that physical entry into a workplace is permitted;
  - (e) access should be refused entirely only where it is reasonable in all the circumstances to do so. 15
- (3) The Secretary of State may prescribe terms of an access agreement that the Central Arbitration Committee must consider to be terms that—
- (a) would not unreasonably interfere with an employer’s business;
  - (b) would constitute reasonable steps that an employer should take to facilitate access; 20
  - (c) it would be reasonable for a union to comply with.
- (4) The Secretary of State may prescribe—
- (a) circumstances in which it is to be regarded as reasonable for the Central Arbitration Committee to make a determination that officials of a union that has given an access request to an employer are not to have access; 25
  - (b) circumstances in which the Central Arbitration Committee must make such a determination.
- (5) The circumstances referred to in subsection (4) may be prescribed by reference to (among other matters)— 30
- (a) the description of business carried on by the employer;
  - (b) the number of workers employed by the employer;
  - (c) the number of workers employed by the employer, or of a particular description, that are members of the union; 35
  - (d) a description of workplace;
  - (e) a description of workers;
  - (f) the ability of the employer to facilitate access;
  - (g) avoiding prejudice to the prevention or detection of offences;
  - (h) national security. 40
- (6) The Secretary of State may prescribe matters to which the Central Arbitration Committee must have regard in considering an application for a determination under section 70ZE.



*Variation and revocation of access agreements*

**70ZG Variation and revocation of access agreements**

- (1) The parties to an access agreement may at any time vary or revoke the agreement.
- (2) A variation or revocation of an access agreement must be in writing. 5
- (3) An access agreement that is varied under this section continues to have effect as an access agreement for the purposes of this Chapter.
- (4) The effect of an access agreement being revoked is that it ceases to be an access agreement for the purposes of this Chapter.
- (5) A variation or revocation of an access agreement takes effect – 10
  - (a) only if the parties jointly notify the Central Arbitration Committee of the variation or revocation in the prescribed form and manner;
  - (b) only in respect of times after the day on which the Central Arbitration Committee is so notified. 15

*Enforcement of access agreements*

**70ZH Enforcement of access agreements: initial complaint**

- (1) A party to an access agreement may make a complaint to the Central Arbitration Committee on the ground that –
  - (a) the other party has breached the agreement; 20
  - (b) a person that is not a party to the agreement has taken or is taking steps to prevent access, or has prevented access, from taking place in accordance with the agreement.
- (2) A complaint under subsection (1) must be made before the end of the period of three months beginning with the day on which the matter complained of is alleged to have occurred. 25
- (3) On a complaint under subsection (1), the Central Arbitration Committee may –
  - (a) vary the agreement;
  - (b) make a declaration that the complaint is or is not well-founded; 30
  - (c) if it makes a declaration that the complaint is well-founded, make an order requiring a person to take any steps specified in the order for the purposes of ensuring that access takes place in accordance with the agreement.
- (4) An access agreement that is varied under subsection (3)(a) continues to have effect as an access agreement for the purposes of this Chapter. 35

- (5) An order under subsection (3)(c) may, where it appears to the Central Arbitration Committee necessary or appropriate to do so, make provision different from that made in the agreement.
- (6) A declaration or order made by the Central Arbitration Committee under this section must— 5
  - (a) be in writing, and
  - (b) state the reasons for the declaration or order.
- (7) For the purposes of this section, a reference to a person taking steps includes a reference to a person not doing something.

**70ZI Enforcement of access agreements: subsequent complaint** 10

- (1) This section applies where the Central Arbitration Committee has made a declaration under section 70ZH(3) that a complaint about a person is well-founded.
- (2) A party to an access agreement may make a complaint to the Central Arbitration Committee on any of the following grounds— 15
  - (a) that the person has, before the end of the relevant period, carried out the conduct complained of under section 70ZH again;
  - (b) where the complaint under section 70ZH was that the person breached the agreement, that the person has, before the end of the relevant period, breached the agreement again (whether or not in the way complained of under section 70ZH); 20
  - (c) that the person has breached an order under section 70ZH(3)(c).
- (3) In subsection (2), “the relevant period” means the period of 12 months beginning with the date of the declaration. 25
- (4) A complaint under subsection (2) must be made before the end of the period of three months beginning with the day on which the alleged conduct occurs.
- (5) On a complaint about a person under subsection (2), the Central Arbitration Committee may— 30
  - (a) make a declaration that the complaint is or is not well-founded;
  - (b) if it makes a declaration that the complaint is well-founded, make an order requiring the person to pay an amount to the Central Arbitration Committee.
- (6) An amount payable under subsection (5)(b) may be any amount that the Central Arbitration Committee considers appropriate, subject to regulations under section 70ZJ. 35
- (7) A declaration or order made by the Central Arbitration Committee under this section must— 40
  - (a) be in writing, and

- (b) state the reasons for the declaration or order.
- (8) A declaration or order made by the Central Arbitration Committee under subsection (5) may be relied on (and enforced by the Central Arbitration Committee or a party to the access agreement) as if it were a declaration or order made by the court. 5
- (9) The Central Arbitration Committee must pay into the Consolidated Fund any amounts received under subsection (5)(b).
- (10) For the purposes of this section, a reference to conduct includes a reference to a person not doing something.

**70ZJ Power to make provision about amounts payable under section 70ZI** 10

- (1) The Secretary of State may prescribe that an amount payable under section 70ZI(5)(b) –
  - (a) must be at least a prescribed amount;
  - (b) may not exceed a prescribed amount.
- (2) An amount may be prescribed under subsection (1)(a) or (b) – 15
  - (a) as a fixed amount;
  - (b) by reference to one or more prescribed factors;
  - (c) as the highest or lowest of two or more prescribed amounts, whether prescribed as fixed amounts or by reference to one or more prescribed factors. 20
- (3) The factors that may be prescribed under subsection (2)(b) or (c) include (among others) –
  - (a) the nature of the complaint under section 70ZI(2) against the person required to pay the amount (the “liable party”);
  - (b) whether the liable party has previously been subject to a complaint under section 70ZH(1) or 70ZI(2), or a prescribed number of such complaints, declared by the Central Arbitration Committee to be well-founded; 25
  - (c) whether the liable party is of a prescribed description;
  - (d) in the case of a liable party that is an undertaking, the turnover of the liable party in a prescribed period, including (in particular) worldwide, European or United Kingdom turnover; 30
  - (e) in the case of a liable party that is an employer –
    - (i) the number of workers employed by the liable party, or 35
    - (ii) the number of workers of a prescribed description employed by the liable party;
  - (f) in the case of a liable party that is a trade union, the number of members that the liable party has.

- (4) The Secretary of State may prescribe matters to which the Central Arbitration Committee must have regard in considering what amount is payable under section 70ZI(5)(b).

#### **70ZK Enforcement of access agreements: supplementary provision**

- (1) An access agreement – 5
- (a) is enforceable only by means of a complaint under section 70ZH or 70ZI, and not by any other means;
  - (b) in particular, is to be conclusively presumed not to have been intended by the parties to be a legally enforceable contract.
- (2) Accordingly, where an access agreement is, or is part of, a collective agreement, section 179(2) and (3)(a) do not apply to the access agreement. 10
- (3) A complaint under section 70ZH or 70ZI must be in writing and in such form as the Central Arbitration Committee may require.
- (4) In its consideration of a complaint under section 70ZH or 70ZI, the Central Arbitration Committee – 15
- (a) may make such enquiries as it sees fit;
  - (b) may make reasonable requests to provide information or documents relevant to the complaint;
  - (c) so far as reasonably practicable, must give any person who it considers has a proper interest in the complaint an opportunity to be heard. 20
- (5) The Central Arbitration Committee 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. 25

#### *General limitations on access agreements etc*

#### **70ZL General limitations on access agreements etc**

- (1) Nothing in this Chapter requires or authorises any of the following (each, a “prohibited activity”) – 30
- (a) physical entry by any person into a dwelling;
  - (b) a disclosure of personal data without the consent of the data subject;
  - (c) a disclosure of information that would contravene the data protection legislation (but, in determining whether a disclosure would do so, the provisions of this Chapter are to be taken into account). 35
- (2) Accordingly –

- (a) a term of an access agreement entered into under section 70ZD that requires or authorises a prohibited activity is of no effect for the purposes of this Chapter;
  - (b) the Central Arbitration Committee may not specify as a term of an access agreement under section 70ZE any term that would require or authorise a prohibited activity; 5
  - (c) the Central Arbitration Committee may not exercise any function under sections 70ZH to 70ZK so as to require or authorise a prohibited activity.
- (3) In this section – 10
- (a) “consent” has the same meaning as in the UK GDPR (see Article 4(11) of the UK GDPR);
  - (b) “personal data”, “data subject”, “the data protection legislation” and “the UK GDPR” have the same meaning as in the Data Protection Act 2018 (see section 3 of that Act). 15

*Appeals to the Employment Appeal Tribunal*

**70ZM Appeals to the Employment Appeal Tribunal**

- (1) An appeal lies to the Employment Appeal Tribunal on any question of law arising from any determination, declaration or order of, or arising in any proceedings before, the Central Arbitration Committee under this Chapter. 20
- (2) Where the Central Arbitration Committee makes an order under section 70ZI(5)(b) for a person to pay an amount to the Central Arbitration Committee, the person may appeal against the order.
- (3) On an appeal under subsection (2), the Employment Appeal Tribunal may – 25
- (a) quash the order;
  - (b) make an order requiring the person to pay a reduced amount to the Central Arbitration Committee;
  - (c) dismiss the appeal. 30
- (4) The Central Arbitration Committee must pay into the Consolidated Fund any amounts received under subsection (3)(b).

*Regulations*

**70ZN Regulations under this Chapter**

- Regulations prescribing anything for the purposes of this Chapter (see section 293(1)) may make different provision for different purposes.” 35
- (3) In section 263 (proceedings of the Central Arbitration Committee) –
- (a) in subsection (4), omit “or, in Scotland, an oversman”;

- (b) after subsection (6) insert—
- “(6A) In relation to the discharge of the Committee’s functions under section 70ZE—
- (a) section 263ZA and subsection (6) apply, and
- (b) subsections (1) to (5) do not apply.”; 5
- (c) in subsection (7), before “Schedule A1” insert “section 70ZH or 70ZI or”;
- (d) after subsection (7) insert—
- “(8) The reference in subsection (7) to the Committee’s functions under Schedule A1 does not include a reference to its functions under paragraph 166 of that Schedule.” 10
- (4) After section 263 insert—
- “263ZA Proceedings of the Committee under section 70ZE**
- (1) For the purpose of discharging its functions under section 70ZE in any particular case, the Central Arbitration Committee is to consist of— 15
- (a) one member of the Committee, or
- (b) a panel of three members of the Committee,
- as the chairman of the Committee may direct.
- (2) In deciding what direction to make under subsection (1), the chairman of the Committee must have regard to the complexity of the case, with a view to directing that the Committee is to consist of one member only in cases which the chairman considers are less complex. 20
- (3) For those purposes, the chairman must in particular—
- (a) consider whether any terms proposed as terms on which officials of a qualifying trade union are to have access are prescribed under section 70ZF(3), and 25
- (b) consider whether, if any of those terms are so prescribed, that fact reduces the complexity of the case, having regard to any other terms so proposed. 30
- (4) In subsection (3), “qualifying trade union” and “access” have the same meaning as in Chapter 5ZA of Part 1 (see section 70ZA).
- (5) The chairman of the Committee may amend a direction under subsection (1) at any time.
- (6) If a direction under subsection (1) is amended— 35
- (a) the amendment does not affect anything done by the Committee before the amendment;
- (b) anything done by the Committee before the amendment is to be treated as having been done by the Committee as it is constituted after the amendment. 40

- (7) If the Committee consists of one member of the Committee –
- (a) the member is to be appointed by the chairman of the Committee;
  - (b) the member is not required to be the chairman or a deputy chairman of the Committee; 5
  - (c) the member may at the member’s discretion sit in private where it appears expedient to do so.
- (8) If the Committee consists of a panel of three members of the Committee –
- (a) the panel is to be appointed by the chairman of the Committee; 10
  - (b) the panel is to consist of the following members –
    - (i) the chairman or a deputy chairman of the Committee;
    - (ii) a member of the Committee whose experience is as a representative of employers;
    - (iii) a member of the Committee whose experience is as a representative of workers; 15
  - (c) the panel is to be chaired by the chairman or the deputy chairman of the Committee;
  - (d) the panel may at the discretion of its chairman sit in private where it appears expedient to do so. 20
- (9) If –
- (a) a panel cannot reach a unanimous decision on a question arising before it, and
  - (b) a majority of the panel have the same opinion, the question is to be decided according to that opinion. 25
- (10) If –
- (a) a panel cannot reach a unanimous decision on a question arising before it, and
  - (b) a majority of the panel do not have the same opinion, the chairman of the panel may decide the question acting with the full powers of an umpire. 30
- (11) Subject to the provisions of this section, the Committee may determine its own procedure.”
- (5) In section 263A (proceedings of the Central Arbitration Committee under Schedule A1) – 35
- (a) for the heading substitute “Proceedings of the Committee: other special cases”;
  - (b) in subsection (1), for “under Schedule A1” substitute “in relation to which this section applies (see section 263(7))”;
  - (c) in subsection (6), omit “or, in Scotland, an oversman”;
  - (d) omit subsection (8). 40
- (6) In section 264 (awards of the Central Arbitration Committee) –

- (a) in the heading, after “Awards” insert “etc”;
  - (b) in subsection (1), after “award,” insert “in any determination, declaration, order or other decision of the Committee under Chapter 5ZA of Part 1,”;
  - (c) after subsection (2) insert – 5  
 “(2A) Subsection (2) does not apply in relation to Chapter 5ZA of Part 1.”
- (7) In Schedule 1 to the Employment Relations Act 2004 (minor and consequential amendments), omit paragraph 15.

*Trade union recognition* 10

**57 Trade union recognition**

Schedule 6 amends Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (collective bargaining: recognition).

*Trade union finances*

**58 Political funds: requirement to pass political resolution** 15

In section 73 of the Trade Union and Labour Relations (Consolidation) Act 1992 (passing and effect of political resolution) –

- (a) omit subsection (3);
  - (b) in subsection (4), for “before the end of that period” substitute “a political resolution (“the old resolution”) is in force and”.
- 20

**59 Requirement to contribute to political fund**

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) to (6).
  - (2) In section 82 (rules as to political fund), in subsection (1)(ca)(i), for “opt to be” substitute “opt out of being”. 25
  - (3) For sections 84 (contributions to political fund from members of a union) and 84A (information to members about contributing to political fund) substitute –
- “84 Contributors to political fund**
- (1) For the purposes of this Act, a member of a trade union is a “contributor” to the political fund of the union unless an opt-out notice given by the member to the union has effect (see subsection (3)). 30
  - (2) An “opt-out notice” is a notice that the member opts out of being a contributor.
  - (3) An opt-out notice has effect on and after the relevant day unless the member withdraws the notice. 35



- (4) In subsection (3), “the relevant day” means –
- (a) in a case where –
    - (i) a political resolution is passed on a ballot held at a time when no such resolution is in force, and
    - (ii) the opt-out notice is given before the end of the period of four weeks beginning with the day on which an opt-out information notice is given to the member under section 84A,  
the day on which the opt-out notice is given;
  - (b) in any other case, 1 January in the year following the year in which the opt-out notice is given.
- (5) A member of a trade union withdraws an opt-out notice by giving the union notice of the withdrawal (a “withdrawal notice”).
- (6) A member of a trade union may give an opt-out notice or a withdrawal notice –
- (a) by delivering it (either personally or by an authorised agent or by post) at the head office or a branch office of the union;
  - (b) by sending it by email to an address that the union has told its members can be used for sending such notices;
  - (c) by completing an electronic form provided by the union which sets out the notice, and sending it to the union by electronic means in accordance with instructions given by the union;
  - (d) by such other electronic means as may be prescribed.

#### **84A Opt-out information notices**

- (1) A trade union must give an opt-out information notice to each member of the union –
- (a) within the period of eight weeks beginning with the day after the day on which a political resolution is passed by the members of the union under section 73, and
  - (b) within the period of eight weeks beginning with the end of –
    - (i) the period of ten years beginning with the day on which a political resolution is passed, and
    - (ii) each successive period of ten years,  
unless during that period of ten years the political resolution is rescinded or otherwise ceases to have effect.
- (2) An “opt-out information notice” is a notice stating that –
- (a) each member of the union has the right not to be a contributor to the political fund of the union, and
  - (b) a member may exercise that right by giving an opt-out notice under section 84.
- (3) An opt-out information notice must be given in accordance with rules of the union approved for the purpose by the Certification Officer.

- 
- (4) In deciding whether to approve those rules, the Certification Officer must have regard in each case to the existing practice and character of the union.
- (5) As soon as is reasonably practicable after the end of any period of eight weeks within which an opt-out information notice must be given, a trade union must send to the Certification Officer a copy of – 5
- (a) the opt-out information notice, or
  - (b) if there is more than one form of opt-out information notice, each form of notice.
- (6) A member of a trade union who claims that the union has failed to comply with this section may complain to the Certification Officer. 10
- (7) Where the Certification Officer is satisfied on a complaint under subsection (6) that a trade union has failed to comply with this section, the Officer may make such order for remedying the failure as the Officer thinks just under the circumstances. 15
- (8) Before deciding the matter the Certification Officer –
- (a) may make such enquiries as the Officer thinks fit;
  - (b) must give the union and the member making the complaint an opportunity to make written representations;
  - (c) may give the union and the member making the complaint an opportunity to make oral representations. 20
- (9) An order made by the Certification Officer under this section may be enforced by the Certification Officer in the same way as an order of the court.”
- (4) In section 86 (employer not to deduct contributions where member gives certificate), in subsection (1), for “, he is not a contributor to the fund,” substitute “– 25
- (a) the member is not a contributor to the fund, or
  - (b) the member has given the union an opt-out notice but it does not yet have effect.”. 30
- (5) In section 94 (overseas members of trade union) –
- (a) in subsection (1), at the end of paragraph (a) insert “, and
  - (b) rules made by the union for the purpose of complying with section 84A (opt-out information notices) may provide for opt-out information notices not to be given by the union to its overseas members.”; 35
  - (b) in subsection (2), after “rules” insert “; and where provision is made in accordance with subsection (1)(b), section 84A(1) is not to be taken to require opt-out information notices to be given to overseas members.” 40

- (6) In section 299 (index of defined expressions), in the entry for “contributor”, for “84(5)” substitute “84(1)”. 5
- (7) In consequence of the amendments made by subsections (2) to (6), in the Trade Union Act 2016 –
  - (a) in section 11, omit subsections (1), (2) and (5) to (8);
  - (b) in Schedule 4 –
    - (i) in paragraph 7, omit sub-paragraph (3);
    - (ii) omit paragraph 9.

**60 Deduction of trade union subscriptions from wages in public sector**

- (1) In the Trade Union and Labour Relations (Consolidation) Act 1992 – 10
  - (a) omit section 116B (restriction on deduction of union subscriptions from wages in public sector) and the italic heading before it;
  - (b) in section 296 (meaning of “worker” and related expressions), in subsection (3), omit “116B(10),”.
- (2) In consequence of the amendments made by subsection (1), omit section 15 of the Trade Union Act 2016. 15

*Facilities provided to trade union representatives and members*

**61 Facilities provided to trade union officials and learning representatives**

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) to (6). 20
- (2) In section 168 (time off for carrying out trade union duties) –
  - (a) after subsection (3) insert –
    - “(3A) 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 such 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 provisions of a Code of Practice issued by ACAS.”; 25
  - (b) for subsection (4) substitute – 30
    - “(4) An employee may present a complaint to an employment tribunal that the employer has failed –
      - (a) to permit the employee to take time off, or
      - (b) to provide the employee with facilities, as required by this section. 35
- (5) On a complaint under subsection (4)(a), it is for the employer to show that the amount of time off which the employee proposed to take was not a reasonable amount of time off.”

- (3) In section 168A (time off for union learning representatives) –
- (a) after subsection (8) insert –
- “(8A) 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 such accommodation and other facilities for the purposes for which the employee takes time off as is reasonable in all the circumstances, having regard to any relevant provisions of a Code of Practice issued by ACAS.”; 5
- (b) for subsection (9) substitute – 10
- “(9) An employee may present a complaint to an employment tribunal that the employer has failed –
- (a) to permit the employee to take time off, or
- (b) to provide the employee with facilities, as required by this section. 15
- (10) On a complaint under subsection (9)(a), it is for the employer to show that the amount of time off which the employee proposed to take was not a reasonable amount of time off.”
- (4) In section 172 (remedies), in subsection (2), omit “in failing to permit time off to be taken by the employee”. 20
- (5) In section 199 (issue of Codes of Practice by ACAS), in subsection (2)(a), after “time off” insert “and facilities”.
- (6) In section 200 (procedure for issue of Code by ACAS), in subsection (3)(a), after “time off” insert “and facilities”.
- (7) In section 10 of the Employment Relations Act 1999 (right to be accompanied), in subsection (7), for “and (4)” substitute “, (4) and (5)”. 25

## 62 Facilities for equality representatives

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) to (10).
- (2) After section 168A insert – 30
- “168B Time off for union equality representatives**
- (1) An employer must permit an employee who is –
- (a) a member of an independent trade union recognised by the employer, and
- (b) an equality representative of the trade union, 35
- to take time off during the employee’s working hours for any of the following purposes.
- (2) The 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; 5
  - (d) consulting with the employer on matters relating to equality in the workplace;
  - (e) obtaining and analysing information relating to equality in the workplace; 10
  - (f) preparing for any of the things mentioned in paragraphs (a) to (e).
- (3) Subsection (1) applies only if –
  - (a) the trade union has given the employer notice in writing that the employee is an equality representative of the union, and 15
  - (b) the training condition is met in relation to the employee.
- (4) The training condition is met if –
  - (a) the employee has undergone sufficient training to enable the employee to carry on activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact, 20
  - (b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or 25
  - (c) 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.
- (5) Only one notice under subsection (4)(b) may be given in respect of any one employee. 30
- (6) References in subsection (4) to sufficient training to carry out activities mentioned in subsection (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State. 35
- (7) If an employer is required to permit an employee to take time off under subsection (1), the employer must also permit the employee to take time off during the employee’s working hours for the following purposes –
  - (a) undergoing training which is relevant to the employee’s functions as an equality representative, and 40
  - (b) where the trade union has in the last six months given the employer notice under subsection (4)(b) in relation to the

- employee, undergoing such training as is mentioned in subsection (4)(a).
- (8) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances, having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State. 5
- (9) 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 such accommodation and other facilities in relation to the purposes for which the employee takes time off as is reasonable in all the circumstances, having regard to any relevant provisions of a Code of Practice issued by ACAS. 10
- (10) An employee may present a complaint to an employment tribunal that the employer has failed – 15
- (a) to permit the employee to take time off, or
  - (b) to provide the employee with facilities,
- as required by this section.
- (11) On a complaint under subsection (10)(a), it is for the employer to show that the amount of time off which the employee proposed to take was not a reasonable amount of time off. 20
- (12) For the purposes of this section –
- (a) a person is an equality representative of a trade union if the person is appointed or elected as such in accordance with its rules; 25
  - (b) “equality”, in relation to a workplace, means –
    - (i) the elimination of discrimination, harassment and victimisation, each of which is to be read in accordance with the Equality Act 2010, and of any other conduct that is prohibited by or under that Act; 30
    - (ii) the advancement of equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
    - (iii) the fostering of good relations between persons who share a relevant protected characteristic and persons who do not share it; 35
  - (c) “relevant protected characteristic” means age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation, each of which is to be read in accordance with the Equality Act 2010; 40
  - (d) a reference to qualifying members of the trade union is a reference to members of the trade union –

- (i) who are employees of the employer of a description in respect of which the union is recognised by the employer, and
    - (ii) in relation to whom it is the function of the equality representative to act as such.” 5
- (3) In section 169 (payment for time off) –
  - (a) in the heading, for “section 168” substitute “sections 168 to 168B”;
  - (b) in subsection (1), for “or 168A” substitute “, 168A or 168B”.
- (4) In section 170 (time off for trade union activities) –
  - (a) in subsection (2A), after “learning representative” insert “or an equality representative”; 10
  - (b) in subsection (2B), after “learning representative” insert “or an equality representative”;
  - (c) in subsection (2C) –
    - (i) after “applies” insert “– 15
    - (a) in relation to a learning representative,”;
      - (ii) at the end insert –
        - “(b) in relation to an equality representative, if the equality representative would be entitled to time off under subsection (1) of section 168B for the purpose of carrying on in relation to the employee activities of the kind mentioned in subsection (2) of that section.”; 20
  - (d) in subsection (5) –
    - (i) in paragraph (a), after “learning representative” insert “or an equality representative”; 25
    - (ii) omit the “and” at the end of paragraph (a);
    - (iii) after paragraph (b) insert “, and
      - (c) a person who is an equality representative of a trade union acts as such if the person carries on the activities mentioned in section 168B(2) in that capacity.” 30
- (5) In section 171 (time off: time limit for proceedings), in subsection (1), after “168A,” insert “168B,”.
- (6) In section 172 (time off: remedies), in subsection (1), after “168A” insert “, 168B”. 35
- (7) In section 173 (interpretation and other supplementary provisions) –
  - (a) in subsection (1), after “168A” insert “, 168B”;
  - (b) in subsection (2), after “168A,” insert “168B,”;
  - (c) in subsection (3), after “168A” insert “or 168B”. 40

- (8) In section 199 (issue of Codes of Practice by ACAS), in subsection (1), after “learning representatives” insert “or equality representatives”.
- (9) In section 200 (procedure for issue of Code by ACAS), in subsection (3)—
- (a) omit the “or” at the end of paragraph (b);
  - (b) after paragraph (b) insert— 5
    - “(ba) on the time off and facilities to be permitted to a trade union equality representative in accordance with section 168B (time off for training and carrying out functions as an equality representative),
    - (bb) on the training that is sufficient to enable a trade union equality representative to carry on the activities mentioned in section 168B(2) (activities for which time off is to be permitted), or”. 10
- (10) In section 203 (issue of Codes of Practice by Secretary of State), in subsection (1)(b), after “learning representatives” insert “or equality representatives”. 15
- (11) In section 18 of the Employment Tribunals Act 1996 (conciliation: relevant proceedings), in subsection (1)(a), after “168A,” insert “168B,”.
- (12) In section 104 of the Employment Rights Act 1996 (unfair dismissal for assertion of statutory rights), in subsection (4)(c), after “168A,” insert “168B,”.
- 63 Facility time: publication requirements and reserve powers** 20
- (1) In the Trade Union and Labour Relations (Consolidation) Act 1992—
    - (a) omit section 172A (publication requirements in relation to facility time);
    - (b) omit section 172B (reserve powers in relation to facility time).
  - (2) In consequence of the amendments made by subsection (1), omit sections 13 and 14 of the Trade Union Act 2016. 25

### *Blacklists*

- 64 Blacklists: additional powers**
- (1) Section 3 of the Employment Relations Act 1999 (blacklists) is amended as follows.
  - (2) In subsection (1)(b), omit “by employers or employment agencies”. 30
  - (3) After subsection (2) insert—
 

“(2A) The Secretary of State may make regulations prohibiting—

    - (a) the use of lists which contain details of members of trade unions, or persons who have taken part in the activities of trade unions, for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers; 35



- (b) the sale or supply of such lists with a view to being used for those purposes.”
- (4) In subsection (3)–
  - (a) before paragraph (a) insert –
    - “(za) make provision for a person who causes another person to do something to be treated as doing that thing;”;
  - (b) in paragraph (e), after “subsection (1)” insert “or (2A)”.

5

*Industrial action: ballots*

**65 Industrial action ballots: turnout threshold**

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) to (5). 10
- (2) In section 226 (requirement of ballot before action by trade union), in subsection (2)(a)–
  - (a) insert “and” at the end of sub-paragraph (ii);
  - (b) omit sub-paragraph (iia) (and the “and” after it). 15
- (3) In section 231 (information for members as to result of ballot)–
  - (a) omit paragraph (a);
  - (b) insert “and” at the end of paragraph (d);
  - (c) for paragraph (e) (and the “and” after it) substitute –
    - “(e) the number of spoiled voting papers.”;
  - (d) omit paragraph (f). 20
- (4) Omit section 297A (meaning of “voting”).
- (5) In section 299 (index of defined expressions), omit the entry for “voting”.
- (6) In consequence of the amendments made by subsections (2) to (5)–
  - (a) in the Trade Union Act 2016–
    - (i) omit section 2;
    - (ii) in Schedule 4, omit paragraphs 12 and 17;
  - (b) in section 66 of this Act, omit subsection (3)(a). 25

**66 Industrial action ballots: support thresholds**

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) and (3). 30
- (2) In section 226 (requirement of ballot before action by trade union)–
  - (a) in subsection (2)(a)(iii), for “the required number of persons (see subsections (2A) to (2C))” substitute “the majority voting in the ballot”;
  - (b) omit subsections (2A) to (2F). 35

- (3) In section 231 (information for members as to result of ballot)—
- (a) insert “and” at the end of paragraph (e);
  - (b) omit paragraph (g) (and the “and” before it).
- (4) In consequence of the amendments made by subsection (2), omit section 3 of the Trade Union Act 2016. 5

#### 67 Notice of industrial action ballot and sample voting paper for employers

In section 226A of the Trade Union and Labour Relations (Consolidation) Act 1992 (notice of ballot and sample voting paper for employers)—

- (a) in subsection (2)(c)—
  - (i) in sub-paragraph (i), for the words from “figures” to “arrived at” substitute “number mentioned in subsection (2B)”; 10
  - (ii) in sub-paragraph (ii), for “figures and that explanation” substitute “that number”;
- (b) for subsection (2B) substitute—
  - “(2B) The number is the total number of employees concerned.”; 15
- (c) in subsection (2C)—
  - (i) in paragraph (b), omit the words from “and the number” to “categories”; 20
  - (ii) in paragraph (c), omit the words from “and the number” to “workplaces”;
- (d) in subsection (2D), for “figures” substitute “the number”.

#### 68 Industrial action ballots: information to be included on voting paper

- (1) In section 229 of the Trade Union and Labour Relations (Consolidation) Act 1992 (information to be included on voting paper), omit subsections (2B) to (2D). 25
- (2) In consequence of the amendment made by subsection (1), omit section 5 of the Trade Union Act 2016.

#### 69 Period after which industrial action ballot ceases to be effective

In section 234 of the Trade Union and Labour Relations (Consolidation) Act 1992 (period after which industrial action ballot ceases to be effective), in subsection (1), for the words from “period” to the end substitute “period of 12 months beginning with the date of the ballot”. 30

#### 70 Electronic balloting

- (1) In the Trade Union Act 2016, omit section 4 (provision for electronic balloting for industrial action: review and piloting scheme). 35
- (2) Subsection (1) does not affect the power of the Secretary of State to make an order under section 54 of the Employment Relations Act 2004 (permissible

means of balloting) in relation to ballots for the purposes of section 226 of the Trade Union and Labour Relations (Consolidation) Act 1992 (ballots on industrial action).

*Notice to employers of industrial action*

- 71 Notice to employers of industrial action** 5
- (1) In section 234A of the Trade Union and Labour Relations (Consolidation) Act 1992 (notice to employers of industrial action) –
- (a) in subsection (3B), omit paragraph (b) (but not the “and” after it);
  - (b) in subsection (3C)(b), omit the words from “and the number” to “categories”; 10
  - (c) in subsection (4), for paragraph (b) and the words after paragraph (b) substitute –  
“*(b) ending with the tenth day before the day, or before the first of the days, specified in the relevant notice.*”
- (2) In consequence of the amendment made by subsection (1)(c), omit section 8 of the Trade Union Act 2016. 15

*Industrial action: picketing*

- 72 Union supervision of picketing**
- (1) In the Trade Union and Labour Relations (Consolidation) Act 1992 –
- (a) in section 219 (protection from certain tort liabilities), in subsection (3), for the words from “unless” to the end substitute “unless it is done in the course of attendance declared lawful by section 220 (peaceful picketing)”; 20
  - (b) omit section 220A (union supervision of picketing).
- (2) In consequence of the amendments made by subsection (1), omit section 10 of the Trade Union Act 2016. 25

*Protection for taking industrial action*

- 73 Protection against detriment for taking industrial action**
- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) and (3). 30

- (2) In Part 5 (industrial action), after section 236 insert—

*“Protection against detriment*

**236A Detriment on grounds of industrial action**

- (1) A worker has the right not to be subjected as an individual to detriment of a prescribed description by any 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. 5
- (2) For that purpose, a worker takes protected industrial action if the worker commits an act which, or a series of acts each of which, the worker is induced to commit by an act which by virtue of section 219 is not actionable in tort. 10
- (3) But no account may be taken of the repudiation of any act by a trade union as mentioned in section 21 in relation to anything which occurs before the end of the next working day after the day on which the repudiation takes place. 15
- (4) Regulations under subsection (1) may prescribe detriment of any description (instead of detriment of a specific description).
- (5) Subsection (1) does not apply where the worker is an employee and the detriment in question amounts to dismissal (but see sections 237 to 239). 20
- (6) A worker or former worker may present a complaint to an employment tribunal on the ground that the worker or former worker has been subjected to a detriment by an employer in contravention of this section. 25
- (7) A worker or former worker has no other remedy for infringement of the right conferred by this section.
- (8) In this section and sections 236B to 236D— 30
- “employer” means—
- (a) in relation to a worker, the person for whom the worker works;
- (b) in relation to a former worker, the person for whom the former worker worked;
- “worker” means an individual who works, or normally works, as mentioned in paragraphs (a) to (c) of section 296(1); 35
- “working day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971.

### **236B Time limit for proceedings**

- (1) An employment tribunal may not consider a complaint under section 236A unless it is presented –
  - (a) before the end of the period of six months 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 (or both), the last of them, or 5
  - (b) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period, within such further period as it considers reasonable. 10
- (2) For the purposes of subsection (1) –
  - (a) 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;
  - (b) a failure to act is to be treated as done when it was decided on. 15
- (3) For the purposes of subsection (2), in the absence of evidence establishing the contrary, an employer is to be taken to decide on a failure to act –
  - (a) when the employer does an act inconsistent with doing the failed act, or 20
  - (b) if the employer has done no such inconsistent act, when the period expires within which the employer might reasonably have been expected to do the failed act if it was to be done.
- (4) Section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a). 25

### **236C Consideration of complaint**

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. 30

### **236D Remedies**

- (1) Where the employment tribunal finds that a complaint under section 236A is well-founded, the tribunal –
  - (a) must make a declaration to that effect, and
  - (b) may make an award of compensation to be paid by the employer to the complainant in respect of the act or failure complained of. 35
- (2) The amount of the compensation awarded is to be an amount which the tribunal considers just and equitable in all the circumstances having

regard to the infringement complained of and to any loss sustained by the complainant which is attributable to the act or failure.

- (3) The loss is to be taken to include—
  - (a) any expenses reasonably incurred by the complainant in consequence of the act or failure, and 5
  - (b) loss of any benefit which the complainant might reasonably be expected to have had but for the act or failure.
- (4) In ascertaining the loss, the tribunal must apply the same rule concerning the duty of a person to mitigate loss as applies to damages recoverable under the common law of England and Wales or Scotland. 10
- (5) Where the tribunal finds that the act or failure complained of was to any extent caused or contributed to by action of the complainant, it must reduce the amount of the compensation by such proportion as it considers just and equitable having regard to that finding.”
- (3) In section 296 (meaning of “worker”), in subsection (3), for “and 151(1B)” substitute “, 151(1B) and 236A(8)”. 15
- (4) In section 18 of the Employment Tribunals Act 1996 (conciliation: relevant proceedings), in subsection (1)(a), for “or 192” substitute “, 192 or 236A”.
- (5) In section 104 of the Employment Rights Act 1996 (unfair dismissal for assertion of statutory rights), in subsection (4)(c), for “and 170” substitute “, 170 and 236A”. 20

#### **74 Protection against dismissal for taking industrial action**

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) to (4).
- (2) In section 229 (industrial action ballots: voting paper), in subsection (4), omit the words from “if it takes place fewer than” to the end. 25
- (3) In section 238A (protection for employees taking part in official industrial action)—
  - (a) in subsection (2), omit paragraph (b) (and the “and” before it);
  - (b) omit subsections (3) to (7D); 30
  - (c) omit subsection (9).
- (4) Omit section 238B (conciliation and mediation: supplementary provisions).
- (5) In consequence of the amendments made by subsections (2) to (4), in the Employment Relations Act 2004—
  - (a) omit section 26 (dismissal where employees locked out); 35
  - (b) omit section 27 (date of dismissal);
  - (c) omit section 28 (dismissal after end of protected period);
  - (d) in Schedule 1 (minor and consequential amendments), omit paragraph 13.

*Strikes: minimum service levels*

**75 Repeal of provision about minimum service levels**

- (1) In the Trade Union and Labour Relations (Consolidation) Act 1992, omit sections 234B to 234G (minimum service levels for certain services).
- (2) Accordingly, in that Act—
  - (a) in section 219 (protection from tort liabilities), in subsection (4), for the words from “to”, in the first place it occurs, to “steps);” substitute “to—
    - (a) sections 222 to 225 (action excluded from protection),
    - (b) section 226 (requirement of ballot before action by trade union), and
    - (c) section 234A (requirement of notice to employer of industrial action);”;
  - (b) in section 234A (notice to employers of industrial action), in subsection (3)—
    - (i) at the end of paragraph (a), insert “and”;
    - (ii) omit paragraph (ba) and the “and” before it;
  - (c) omit the italic heading before section 234B;
  - (d) for the italic heading before section 235 substitute “*Sections 226 to 234A: meaning of “contract of employment”*”;
  - (e) in section 235 (construction of references to contract of employment)—
    - (i) in the heading, at the end insert “in sections 226 to 234A”;
    - (ii) for “to 234G” substitute “to 234A”;
  - (f) in section 238A (unfair dismissal: participation in official industrial action)—
    - (i) in subsection (2), insert “and” at the end of paragraph (a) and omit paragraph (aa) (and the “and” after it);
    - (ii) for subsection (9) substitute—
      - “(9) In this section “date of dismissal” has the meaning given by section 238(5).”;
  - (g) in section 246 (minor definitions), for “where section 229(2A) applies (see that section and 234G(2))” substitute “for the purposes of section 229(2) (see section 229(2A))”;
  - (h) in section 299 (index of defined expressions)—
    - (i) in the entry for “contract of employment”, for “234G” substitute “234A”;
    - (ii) in the entry for “not protected”, for “, 234A and 234E” substitute “and 234A”;
    - (iii) omit the entries for “minimum service regulations (in Part 5)”, “relevant service (in Part 5)” and “work notice” (in Part 5)”.
      - (3) The Strikes (Minimum Service Levels) Act 2023 is repealed.

*Certification Officer***76 Annual returns: removal of provision about industrial action**

- (1) In the Trade Union and Labour Relations (Consolidation) Act 1992, omit section 32ZA (details of industrial action etc to be included in annual return).
- (2) In consequence of the amendment made by subsection (1), omit section 7 of the Trade Union Act 2016. 5

**77 Annual returns: removal of provision about political expenditure**

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) to (6).
- (2) Omit section 32ZB (details of political expenditure to be included in annual return). 10
- (3) In section 32ZC (enforcement) –
  - (a) in the heading, for “sections 32ZA and 32ZB” substitute “section 32ZA”;
  - (b) in subsection (1), omit “or 32ZB”.
- (4) In section 45 (rights of union members: offences), in subsection (1), for “sections 32ZA and 32ZB” substitute “section 32ZA”. 15
- (5) In section 131 (administrative provisions applying to employers’ associations), in subsection (1), omit “, section 32ZB”.
- (6) In section 135 (federated employers’ associations), in subsection (3), omit “, section 32ZB”. 20
- (7) In consequence of the amendments made by subsections (2) to (6), omit section 12 of the Trade Union Act 2016.

**78 Removal of powers to enforce requirements relating to annual returns**

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) to (5). 25
- (2) Omit section 32ZC (enforcement of sections 32ZA and 32ZB).
- (3) In section 45 (rights of union members: offences), in subsection (1), for the words from “section 32” to “sections 32A” substitute “sections 32”.
- (4) In section 45D (appeals from Certification Officer on question arising in proceedings etc under Chapters 1, 2 and 3 of Part 1), omit “, 32ZC”. 30
- (5) In section 256 (procedure before the Certification Officer), in subsection (1)(c), omit “, 32ZC”.
- (6) In consequence of the amendments made by subsections (2) to (5) –
  - (a) omit section 18 of the Trade Union Act 2016;
  - (b) in section 77 of this Act, omit subsections (3) and (4). 35



## 79 Removal of investigatory powers

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) to (6).
- (2) In section 25 (duties with respect to register of members' names and addresses: remedies), omit subsection (6A). 5
- (3) In section 45D (appeals from Certification Officer on question arising in proceedings etc under Chapters 1, 2 and 3 of Part 1), omit "or paragraph 5 of Schedule A3".
- (4) In section 256 (procedure before the Certification Officer), in subsection (1)(c), omit "or under paragraph 5 of Schedule A3". 10
- (5) Omit section 256C (investigatory powers).
- (6) Omit Schedule A3 (Certification Officer: investigatory powers).
- (7) In consequence of the amendments made by subsections (2) to (6) –
  - (a) in section 43 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, omit subsection (4); 15
  - (b) in the Trade Union Act 2016 –
    - (i) in section 17, omit subsections (1) and (2);
    - (ii) omit Schedule 1;
    - (iii) in Schedule 4, omit paragraphs 2 and 3(b).

## 80 Powers to be exercised only on application 20

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) to (9).
- (2) In section 45C (duty to secure union positions not held by certain offenders: remedies and enforcement) –
  - (a) in subsection (1), omit the words from "; but the Certification Officer" to the end; 25
  - (b) in subsection (2A) –
    - (i) in paragraph (b), omit "(if any)";
    - (ii) in paragraph (c), omit "(if any)".
- (3) In section 54 (elections for union positions: remedies), in subsection (1), omit the words after paragraph (b). 30
- (4) In section 55 (elections for union positions: powers of Certification Officer) –
  - (a) in the heading, for "Powers of" substitute "Application to";
  - (b) in subsection (1) –
    - (i) omit ", either"; 35
    - (ii) omit paragraph (b) and the "or" before it;
  - (c) in subsection (2) –
    - (i) in paragraph (b), omit "(if any)";

- (ii) in paragraph (c), omit “(if any)”.
- (5) In section 72A (application of funds in breach of section 71: remedies) –
- (a) in subsection (1), omit the words from “; but the Certification Officer” to the end;
- (b) in subsection (2A) – 5
- (i) in paragraph (b), omit “(if any)”;
- (ii) in paragraph (c), omit “(if any)”.
- (6) In section 79 (remedy for failure to comply with political ballot rules), in subsection (1), omit the words from “; but the Certification Officer” to the end. 10
- (7) In section 80 (remedy for failure to comply with political ballot rules: powers of Certification Officer) –
- (a) in the heading, for “Powers of” substitute “Application to”;
- (b) in subsection (1) –
- (i) omit “either”;
- (ii) omit “or without any such application having been made”;
- (c) in subsection (2) –
- (i) in paragraph (b), omit “(if any)”;
- (ii) in paragraph (c), omit “(if any)”.
- (8) In section 82 (rules as to political fund) – 20
- (a) in subsection (2), omit the words from “; but the Officer” to the end;
- (b) in subsection (3) –
- (i) in paragraph (b), omit “(if any)”;
- (ii) in paragraph (c), omit “(if any)”.
- (9) In section 103 (passing of amalgamation or transfer resolution: powers of Certification Officer) – 25
- (a) in the heading, for “Powers of” substitute “Complaint to”;
- (b) in subsection (1), omit the words from “; but the Officer” to the end;
- (c) in subsection (3A) –
- (i) in paragraph (b), omit “(if any)”;
- (ii) in paragraph (c), omit “(if any)”.
- (10) In consequence of the amendments made by subsections (2) to (9), in the Trade Union Act 2016 –
- (a) in section 17(3), for the words from “to enable the Certification Officer” to “the Officer” substitute “in relation to the powers of the Certification Officer”;
- (b) in Schedule 2 –
- (i) in the heading of the Schedule, omit “without application”;
- (ii) in paragraph 3, omit sub-paragraph (2);
- (iii) in paragraph 6, omit sub-paragraph (2). 40

**81 Removal of power to impose financial penalties**

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) and (3).
- (2) Omit section 256D (power to impose financial penalties).
- (3) Omit Schedule A4 (Certification Officer: power to impose financial penalties). 5
- (4) In consequence of the amendments made by subsections (2) and (3), in the Trade Union Act 2016 –
  - (a) in section 19, omit subsections (1) to (3);
  - (b) omit Schedule 3.

**82 Removal of power to impose levy** 10

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) and (3).
- (2) Omit section 257A (levy payable to Certification Officer).
- (3) In section 258 (Certification Officer: annual reports and account), omit subsection (1A). 15
- (4) In consequence of the amendments made by subsections (2) and (3), omit section 20 of the Trade Union Act 2016.

**83 Appeals to the Employment Appeal Tribunal**

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows. 20
- (2) In section 45D (appeals from Certification Officer on question arising in proceedings etc under Chapters 1, 2 and 3 of Part 1), after “question” insert “of law”.
- (3) In section 56A (appeal from Certification Officer on question arising in proceedings etc under section 55), after “question” insert “of law”. 25
- (4) In section 95 (appeal from Certification Officer on question arising in proceedings etc under Chapter 6 of Part 1), after “question” insert “of law”.
- (5) In section 104 (appeal from Certification Officer on question arising in proceedings etc under section 103), after “question” insert “of law”.
- (6) In section 108C (appeal from Certification Officer on question arising in proceedings etc under Chapter 7A of Part 1), after “question” insert “of law”. 30

*General***84 Employment outside Great Britain**

In section 285 of the Trade Union and Labour Relations (Consolidation) Act 1992 (employment outside Great Britain)–

- (a) in subsection (1), before “works” insert “ordinarily”; 5
- (b) in subsection (1A), before “works” insert “ordinarily”.

**85 Regulations subject to affirmative resolution procedure**

In section 293 of the Trade Union and Labour Relations (Consolidation) Act 1992 (regulations), for subsection (3) substitute–

- “(3) Regulations under this section are to be made by statutory instrument. 10
- (4) A statutory instrument containing regulations to which subsection (5) applies (whether alone or with other provision) may not be made unless a draft of the instrument is laid before and approved by a resolution of each House of Parliament.
- (5) This subsection applies to regulations prescribing anything for the purposes of– 15
  - (a) section 70ZC (access agreements: response period and negotiation period);
  - (b) section 70ZE (access agreements: period to make application to Central Arbitration Committee); 20
  - (c) section 70ZF (access agreements: determinations by Central Arbitration Committee);
  - (d) section 70ZJ (enforcement of access agreements: amounts payable for breach);
  - (e) section 236A (detriment for taking industrial action). 25
- (6) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

**86 Devolved Welsh authorities**

In consequence of provision made by this Part– 30

- (a) in the Trade Union and Labour Relations (Consolidation) Act 1992–
  - (i) omit section 297B (devolved Welsh authorities);
  - (ii) in section 299 (index of defined expressions), omit the entry for “devolved Welsh authority”;
- (b) in the Trade Union (Wales) Act 2017 (anaw 4), omit section 1 35  
(amendments to the Trade Union and Labour Relations (Consolidation) Act 1992).

## PART 5

### ENFORCEMENT OF LABOUR MARKET LEGISLATION

#### *General*

#### **87 Enforcement of labour market legislation by Secretary of State**

- (1) The Secretary of State has the function of enforcing the labour market legislation listed in Part 1 of Schedule 7 (but see also section 89). 5
- (2) For the purposes of enabling the Secretary of State to perform that function, this Part confers powers on—
  - (a) the Secretary of State, and
  - (b) enforcement officers. 10
- (3) In this Part “enforcement officer” means a person appointed by the Secretary of State under this section.
- (4) The powers of an enforcement officer include power to exercise any of the Secretary of State’s enforcement functions, other than the function under subsection (1). 15
- (5) Accordingly, in the case of the exercise by an enforcement officer of an enforcement function of the Secretary of State, any reference in an enactment to the Secretary of State in connection with that function is to be read as, or as including, a reference to that officer or any other enforcement officer.
- (6) A person appointed under this section may exercise any powers of an enforcement officer to the extent specified in the appointment. 20
- (7) Subsection (1) does not limit the Secretary of State’s powers under—
  - (a) section 113 (power to bring proceedings in employment tribunal), or
  - (b) section 114 (power to provide legal assistance).
- (8) Nothing in this section authorises the Secretary of State to bring proceedings in Scotland for an offence. 25

#### **88 Enforcement functions of Secretary of State**

- (1) Any reference in this Part to an enforcement function of the Secretary of State is a reference to—
  - (a) any function of the Secretary of State under this Part, 30
  - (b) any function of the Secretary of State under any provision of relevant labour market legislation, or
  - (c) any other function of the Secretary of State that is exercisable for the purposes of enforcing any relevant labour market legislation.
- (2) But the following functions are not enforcement functions of the Secretary of State for the purposes of this Part— 35

- (a) the power to appoint enforcement officers under section 87;
- (b) any function under section 89 (delegation of functions);
- (c) any function under section 90 (Advisory Board);
- (d) any function under section 91 or 92 (strategies and reports);
- (e) any function under or by virtue of section 113 or 114 (powers in relation to civil proceedings); 5
- (f) any function under Part 1 of Schedule 11 (transfer schemes);
- (g) any power to give directions or make subordinate legislation.

## 89 Delegation of functions

- (1) The Secretary of State may make arrangements with a public authority – 10
  - (a) for the authority to exercise any delegable function of the Secretary of State to the extent specified in the arrangements;
  - (b) for officers or other staff of the authority to be appointed as enforcement officers.
- (2) The following functions are “delegable functions” – 15
  - (a) any enforcement function of the Secretary of State;
  - (b) any function of the Secretary of State by virtue of section 113 (power to bring proceedings in employment tribunal);
  - (c) any function of the Secretary of State under section 7 or 11 of the Gangmasters (Licensing) Act 2004 (powers relating to licensing of gangmasters). 20
- (3) Accordingly, in the case of the exercise of a function by a public authority in accordance with arrangements under this section, any reference in an enactment to the Secretary of State in connection with that function is to be read as a reference to that authority. 25
- (4) Arrangements under this section may provide for payments to be made by the Secretary of State in respect of the performance of any function to which the arrangements relate.
- (5) Arrangements under this section do not prevent the Secretary of State from performing a function to which the arrangements relate. 30
- (6) In this section “public authority” means a person certain of whose functions are functions of a public nature.

### *Advisory Board*

## 90 Advisory Board

- (1) The Secretary of State must establish an Advisory Board (“the Board”) for the purposes of providing advice to the Secretary of State about such matters as the Secretary of State may specify relating to the Secretary of State’s function under section 87(1). 35

- (2) The Board is to consist of not fewer than nine members appointed by the Secretary of State.
- (3) Each member of the Board is to hold and vacate office in accordance with the terms and conditions of the member’s appointment.
- (4) The members of the Board must include an equal number of each of the following—
  - (a) persons appearing to the Secretary of State to represent the interests of trade unions;
  - (b) persons appearing to the Secretary of State to represent the interests of employers;
  - (c) persons appearing to the Secretary of State to be independent experts.
- (5) For the purposes of subsection (4)(c) an “independent expert” is a person who—
  - (a) is not a person falling within paragraph (a) or (b) of subsection (4), and
  - (b) has expertise that is relevant to the Secretary of State’s function under section 87(1).
- (6) The Secretary of State may pay such remuneration or allowances to members of the Board as the Secretary of State may determine.
- (7) In addition to the matters referred to in subsection (1), the Board may also provide advice to the Secretary of State about such matters as the Secretary of State may specify relating to the Secretary of State’s functions under or by virtue of sections 113 and 114 (powers in relation to civil proceedings).

*Strategies and reports*

- 91 Labour market enforcement strategy**
- (1) The Secretary of State must, before the beginning of each relevant three-year period (see subsection (6)), prepare and publish a labour market enforcement strategy for that period.
  - (2) A labour market enforcement strategy is a document that—
    - (a) sets out the Secretary of State’s assessment of—
      - (i) the scale and nature of non-compliance with relevant labour market legislation during the period of three years ending immediately before the strategy period, and
      - (ii) the likely scale and nature of such non-compliance during the strategy period,
    - (b) contains a proposal for the strategy period setting out how enforcement functions of the Secretary of State are to be exercised, and
    - (c) deals with any other matters which the Secretary of State considers appropriate.
  - (3) The Secretary of State—

- (a) may, at any time during the strategy period, revise the labour market enforcement strategy, and
- (b) must publish any revised labour market enforcement strategy.
- (4) In preparing or revising a labour market enforcement strategy, the Secretary of State must consult the Advisory Board. 5
- (5) The Secretary of State must lay before Parliament and the Northern Ireland Assembly a copy of any strategy published under this section.
- (6) In this section –
- “relevant three-year period” means –
- (a) the period of three years beginning with the next 1 April after the day on which this section comes into force; 10
- (b) each successive period of three years;
- “strategy period”, in relation to a labour market enforcement strategy, means the period to which the strategy relates.
- 92 Annual reports** 15
- (1) As soon as reasonably practicable after the end of each financial year, the Secretary of State must prepare and publish an annual report for that year.
- (2) The annual report must include the following –
- (a) an assessment of the extent to which enforcement functions of the Secretary of State were exercised in accordance with the applicable strategy during the year; 20
- (b) an assessment of the extent to which the applicable strategy had an effect on the scale and nature of non-compliance with relevant labour market legislation during the year.
- (3) Before publishing an annual report under this section, the Secretary of State must consult the Advisory Board. 25
- (4) The Secretary of State must lay before Parliament and the Northern Ireland Assembly a copy of every annual report published under this section.
- (5) In this section –
- “the applicable strategy”, in relation to a financial year, means any labour market enforcement strategy published under section 91 that has effect for that year; 30
- “financial year” means –
- (a) the period beginning with the day on which this section comes into force and ending with the following 31 March, and 35
- (b) each successive period of 12 months.



*Powers to obtain documents or information*

**93 Power to obtain documents or information**

- (1) The Secretary of State may by notice require a person—
- (a) to attend at a specified time and place and to provide information by answering questions; 5
  - (b) to provide specified information, or information of a specified description, by a specified date;
  - (c) to provide specified documents, or documents of a specified description, by a specified date.
- In this subsection “specified” means specified in the notice. 10
- (2) The Secretary of State may give a notice under this section to a person only if the Secretary of State has reasonable grounds to believe that—
- (a) in the case of a requirement under subsection (1)(a), the person is able to provide information which is necessary for any enforcement purpose;
  - (b) in the case of a requirement under subsection (1)(b) or (c)— 15
    - (i) it is necessary to obtain the information or document (as the case may be) for any enforcement purpose, and
    - (ii) the person is able to provide it.
- (3) In this section “enforcement purpose” means—
- (a) the purpose of enabling the Secretary of State to determine whether to exercise any enforcement function; 20
  - (b) the purpose of determining whether there has been any non-compliance with relevant labour market legislation;
  - (c) in the case of a requirement under subsection (1)(c), the purpose of ascertaining whether the documents may be required as evidence in proceedings for any non-compliance with relevant labour market legislation. 25

**94 Power to enter premises in order to obtain documents, etc**

- (1) An enforcement officer may, for any enforcement purpose—
- (a) enter any premises, and 30
  - (b) exercise any powers within subsection (2).
- This is subject to section 95 (which provides that a warrant is necessary to enter a dwelling).
- (2) The powers referred to in subsection (1)(b) are—
- (a) to inspect or examine any documents on the premises; 35
  - (b) to 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;

- (c) to have access to, and check the operation of, any computer or other equipment used in connection with the processing or storage of any information or documents.
- (3) The officer may only exercise a power conferred by this section at a reasonable time, unless it appears to the officer that there are grounds for suspecting that the purpose of entering the premises may be frustrated if the officer seeks to enter at a reasonable time. 5
- (4) An enforcement officer may seize any document produced, inspected or examined under this section.
- (5) In this section – 10  
“enforcement purpose” means –  
(a) the purpose of enabling the Secretary of State to determine whether to exercise any enforcement function;  
(b) the purpose of determining whether there has been any non-compliance with relevant labour market legislation; 15  
(c) the purpose of ascertaining whether there are documents on the premises which may be required as evidence in proceedings for any non-compliance with relevant labour market legislation;  
“equipment” includes software.
- 95 Power to enter dwelling subject to warrant 20**
- (1) An enforcement officer may not by virtue of section 94 enter any dwelling unless a justice has issued a warrant authorising the officer to enter the dwelling.
- (2) A justice may issue a warrant under this section only if, on an application by the officer, the justice is satisfied – 25  
(a) that the officer has reasonable grounds to believe that –  
(i) there are documents in the dwelling which for any enforcement purpose the officer wishes to inspect, examine or seize, or  
(ii) there is computer or other equipment in the dwelling to which the officer wishes to have access for any enforcement purpose, 30  
and  
(b) that any of the conditions in subsection (3) is satisfied.
- (3) The conditions are –  
(a) that it is not practicable to communicate with any person entitled to grant entry to the dwelling; 35  
(b) that it is not practicable to communicate with any person entitled to grant access to the documents or equipment;  
(c) that entry to the dwelling is unlikely to be granted unless a warrant is produced;  
(d) that the purpose of entry may be frustrated or seriously prejudiced unless an enforcement officer arriving at the dwelling can secure immediate entry to it. 40

- (4) In this section—  
“enforcement purpose” has the same meaning as in section 94;  
“justice” means—  
    (a) in relation to England and Wales, a justice of the peace;  
    (b) in relation to Scotland, a sheriff or summary sheriff; 5  
    (c) in relation to Northern Ireland, a lay magistrate.
- (5) For further provision about warrants under this section, see section 128 and Schedule 8.

## 96 Supplementary powers in relation to documents

- (1) A power conferred by section 93 or 94 to require the production or provision 10  
of any document includes, in the case of a document stored in an electronic  
form, power to require the document to be produced or provided in a form—  
    (a) in which it can be taken away, and  
    (b) in which it is visible and legible or from which it can readily be  
        produced in a visible and legible form. 15
- (2) The Secretary of State may inspect or examine any document provided under  
section 93.
- (3) The Secretary of State or an enforcement officer may take copies of any  
document—  
    (a) provided in response to a requirement under section 93, or 20  
    (b) inspected, examined or produced under section 94.

## 97 Retention of documents

- (1) This section applies to any document which—  
    (a) is provided in response to a requirement under section 93, or  
    (b) is seized under section 94. 25
- (2) The document may be retained so long as is necessary in all the circumstances  
and in particular—  
    (a) for use as evidence at a trial for a labour market offence, or  
    (b) for forensic examination or for investigation in connection with a  
        labour market offence. 30
- (3) No document may be retained for either of the purposes mentioned in  
subsection (2) if a photograph or a copy would be sufficient for that purpose.

*Other powers to investigate non-compliance***98 Powers of enforcement officers under Police and Criminal Evidence Act 1984**

For provision enabling enforcement officers in England and Wales to exercise powers under the Police and Criminal Evidence Act 1984 in relation to the investigation of labour market offences, see section 114B of that Act.

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**99 Offences relating to gangmasters: power to enter premises with warrant**

(1) In this section—

- (a) “relevant contravention” means a contravention of section 6 of the Gangmasters (Licensing) Act 2004 (prohibition of unlicensed activities), so far as it applies in relation to England and Wales and Scotland;
- (b) references to an enforcement officer do not include an enforcement officer who is authorised by virtue of section 114B of the Police and Criminal Evidence Act 1984 to exercise any power under Part 2 of that Act in relation to a relevant contravention.

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(2) If a justice is satisfied that there are reasonable grounds for an enforcement officer to enter relevant premises for the purpose of determining whether there has been a relevant contravention, and is also satisfied—

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- (a) that admission to the premises has been refused, or that a refusal is expected, and (in either case) that notice of the intention to apply for a warrant has been given to the occupier,
- (b) that an application for admission, or the giving of 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,

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the justice may issue a warrant authorising the enforcement officer to enter the premises, if necessary using reasonable force.

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(3) The reference in subsection (2) to being satisfied that there are reasonable grounds as mentioned in that subsection is, in relation to England and Wales, a reference to being satisfied by written information on oath.

(4) An enforcement officer entering any premises by virtue of a warrant under this section may—

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- (a) when entering the premises, bring any equipment which the officer considers necessary,
- (b) exercise any power conferred by section 94(2) or (4),
- (c) carry out on the premises any other inspections and examinations which the officer considers necessary for the purpose of determining whether there has been a relevant contravention, and
- (d) seize any item which is on the premises.

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(5) Where by virtue of subsection (4)(d) an enforcement officer seizes any item, the officer must leave on the premises from which the item was removed a

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statement giving details of what was seized and stating that the officer has seized it.

- (6) Any item seized by an enforcement officer by virtue of subsection (4)(d) may be retained for as long as the officer considers necessary for the purpose of determining whether there has been a relevant contravention. 5
- (7) In this section—  
“justice” means—  
(a) in relation to England and Wales, a justice of the peace;  
(b) in relation to Scotland, the sheriff, a summary sheriff or a justice of the peace; 10  
“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 15  
(b) premises which such a person uses in connection with the person’s business;  
“worker” has the same meaning as in the Gangmasters (Licensing) Act 2004 (see section 26 of that Act).
- (8) Section 4 of the Gangmasters (Licensing) Act 2004 (acting as a gangmaster) applies for the purposes of this section as it applies for the purposes of that Act. 20
- (9) For further provision about warrants under this section, see section 128 and Schedule 8.

*Notices of underpayment* 25

**100 Power to give notice of underpayment**

- (1) Where it appears to the Secretary of State that—  
(a) on any day (“the relevant day”), a sum in respect of—  
(i) one or more periods ending before the relevant day, or  
(ii) one or more events occurring before the relevant day, 30  
was due from a person (the “liable party”) to an individual (the “underpaid individual”) under or by virtue of a statutory pay provision (see subsection (7)), and  
(b) any period for payment of that sum to be made has ended without the sum having been paid to the underpaid individual, 35  
the Secretary of State may give a notice of underpayment to the liable party.
- (2) A notice of underpayment is a notice under this section requiring the liable party to pay the required sum to the underpaid individual before the end of the period of 28 days beginning with the day on which the notice is given. For the meaning of the “required sum”, see section 101. 40

- (3) Subsection (1) is subject to—
- (a) subsection (6), and
  - (b) section 102 (period to which notice of underpayment may relate).
- (4) The Secretary of State may give a notice of underpayment to a person in respect of a sum that was due from the person on the relevant day whether or not the sum remains due at the time of the giving of the notice (see, in particular, section 104 (penalties for underpayment)). 5
- (5) But where all or part of that sum has been paid before the giving of the notice, the requirement imposed by the notice is, to that extent, to be treated as met.
- (6) The Secretary of State may not give a notice of underpayment in respect of any matter if— 10
- (a) proceedings have been brought about the matter by virtue of section 113 (power to bring proceedings in employment tribunal), and
  - (b) the proceedings have not been finally determined or discontinued.
- (7) In this Part “statutory pay provision” means a provision of relevant labour market legislation that— 15
- (a) confers a right or entitlement to the payment of any sum to an individual, or
  - (b) prohibits or restricts the withholding of payment of any sum to an individual. 20

### 101 Calculation of the required sum

- (1) For the purposes of section 100(2), the “required sum” is whichever is the greater of the following sums—
- (a) the sum that was due to the underpaid individual on the relevant day; 25
  - (b) in a case where regulations under subsection (2) apply, the sum determined in accordance with the regulations.
- This is subject to subsection (4).
- (2) Regulations made by the Secretary of State may make provision for determining the sum required to be paid to an individual by a notice of underpayment in a case where the sum due to the individual on any day under or by virtue of a statutory pay provision would have been greater had that sum been determined by reference to the statutory pay provision as it has effect at the time of giving the notice of underpayment. 30
- (3) But regulations under subsection (2) may not make provision in relation to any provision of the National Minimum Wage Act 1998 (see instead section 17 of that Act). 35
- (4) If the required sum in respect of an underpaid individual would (in the absence of this subsection) be greater than the specified maximum for the statutory pay provision concerned, the required sum in respect of the underpaid individual is the specified maximum. 40

- (5) For the purposes of subsection (4) “the specified maximum”, in relation to a statutory pay provision, means an amount specified by, or determined in accordance with, regulations made by the Secretary of State.
- (6) Regulations under this section are subject to the affirmative resolution procedure. 5

## 102 Period to which notice of underpayment may relate

- (1) A notice of underpayment may not relate to any sum that became due under or by virtue of a statutory pay provision before the beginning of the claim period.
- (2) The “claim period”, in relation to a notice of underpayment, is the period of six years ending with the day on which the notice is given. 10
- (3) The Secretary of State may by regulations amend this section so as to alter the length of the claim period.
- (4) Regulations under subsection (3) –
  - (a) may specify different claim periods in relation to different statutory pay provisions; 15
  - (b) may not provide for the claim period in relation to a notice of underpayment to be greater than the period of six years ending with the day on which the notice is given.
- (5) Regulations under subsection (3) are subject to the affirmative resolution procedure. 20
- (6) A notice of underpayment may relate to sums that became due before the coming into force of this section.
- (7) But a notice of underpayment may not relate to any sum that became due before the day on which this Act is passed. 25
- (8) Subsection (7) does not apply to a notice of underpayment so far as it relates to any sum due under section 17 of the National Minimum Wage Act 1998 (entitlement to additional remuneration for failure to pay at least the minimum wage).
- (9) See also section 109(3) (claim period for replacement notices of underpayment). 30

## 103 Notices of underpayment: further provision

- (1) Where a notice of underpayment relates to more than one underpaid individual, the notice may identify the individuals by name or by description.
- (2) A notice of underpayment must specify, for each underpaid individual to whom it relates – 35
  - (a) the relevant day in relation to the individual;
  - (b) the sum due to the individual on that day and how that sum was calculated;

- (c) the period or periods, or event or events, in respect of which it was due;
- (d) the statutory pay provision under or by virtue of which it was due;
- (e) the fact that any period for payment of that sum to be made ended without the sum having been paid; 5
- (f) the required sum in respect of the individual and (if different from the sum mentioned in paragraph (b)) how that sum was calculated.

#### 104 Penalties for underpayment

- (1) A notice of underpayment must require the liable party to pay a penalty to the Secretary of State. 10  
This is subject to section 105(1) (power to specify exceptions).
- (2) The penalty must be paid before the end of the period of 28 days beginning with the day on which the notice is given.
- (3) The amount of the penalty is the total of the amounts for each underpaid individual to whom the notice relates calculated in accordance with subsections (4) and (5) (but see subsection (6)). 15
- (4) The amount for each underpaid individual to whom the notice relates is 200% of the sum specified in the notice of underpayment as the sum due to the individual on the relevant day (see section 103(2)(b)).
- (5) But if the amount determined under subsection (4) for any underpaid individual would be more than £20,000, the amount for the individual taken into account in calculating the penalty is to be £20,000. 20
- (6) If a penalty calculated in accordance with subsection (3) would be less than £100, the amount of the penalty is to be £100.
- (7) The Secretary of State may by regulations amend this section— 25
  - (a) so as to substitute a different percentage for a percentage for the time being specified in this section;
  - (b) so as to substitute a different amount for an amount for the time being specified in this section;
  - (c) so as to specify different percentages or amounts for different purposes. 30
- (8) Regulations under subsection (7) are subject to the affirmative resolution procedure.

#### 105 Further provision about penalties

- (1) The Secretary of State may by directions specify circumstances in which a notice of underpayment is not to impose a requirement to pay a penalty. 35
- (2) A direction under subsection (1) may be amended or revoked by a further direction.
- (3) A notice of underpayment that imposes a requirement to pay a penalty must—



- (a) specify the amount of the penalty,
  - (b) state how that amount was calculated, and
  - (c) specify the date by which the penalty must be paid.
- (4) In a case where a notice of underpayment imposes a requirement on a person to pay a penalty, if the person, before the end of the period of 14 days beginning with the day on which the notice is given—
- (a) pays (or has paid) the required sum specified in the notice of underpayment, and
  - (b) pays at least half the penalty,
- the person is to be regarded as having paid the penalty.
- (5) Any penalty received by the Secretary of State in accordance with section 104 is to be paid into the Consolidated Fund.

#### **106 Suspension of penalty where criminal proceedings have been brought, etc**

- (1) Subsection (3) applies where—
- (a) the Secretary of State is proposing to give a notice of underpayment that imposes a requirement on a person to pay a penalty, and
  - (b) it appears to the Secretary of State that—
    - (i) relevant criminal proceedings have been brought, or
    - (ii) relevant criminal proceedings may be brought.
- (2) In this section “relevant criminal proceedings” means proceedings against the person for a labour market offence in respect of any act or omission to which the notice relates (“the relevant conduct”).
- (3) The notice of underpayment may contain provision suspending the requirement to pay the penalty until a notice terminating the suspension is given to the person under subsection (4).
- (4) The Secretary of State may give the person a notice terminating the suspension (a “penalty activation notice”) if it appears to the Secretary of State—
- (a) in a case referred to in subsection (1)(b)(i), that the proceedings have concluded without the person having been convicted of a labour market offence in respect of the relevant conduct, or
  - (b) in a case referred to in subsection (1)(b)(ii)—
    - (i) that relevant criminal proceedings will not be brought, or
    - (ii) that relevant criminal proceedings have concluded without the person having been convicted of a labour market offence in respect of the relevant conduct.
- (5) Where a penalty activation notice is given, the requirement to pay the penalty has effect as if the notice of underpayment had been given on the day on which the penalty activation notice was given.
- (6) The Secretary of State must give the person a notice withdrawing the requirement to pay the penalty if it appears to the Secretary of State that the

person has been convicted of a labour market offence in respect of the relevant conduct.

## 107 Appeals against notices of underpayment

- (1) A person to whom a notice of underpayment is given may appeal to a tribunal against any one or more of the following – 5
  - (a) the decision to give the notice;
  - (b) any requirement imposed by the notice to pay a sum to an individual;
  - (c) any requirement imposed by the notice to pay a penalty.
- (2) An appeal under this section must be made before the end of the period of 28 days beginning with the day on which the notice is given. 10
- (3) An appeal under subsection (1)(a) may be made only on one or more of the following grounds –
  - (a) that no sum was due to any individual to whom the notice relates on the specified day under or by virtue of the specified provision;
  - (b) that, in the case of every sum specified in the notice as due to an individual to whom the notice relates, the sum had been paid before the end of the period mentioned in section 100(1)(b); 15
  - (c) that, in the case of every sum specified in the notice as due to an individual to whom the notice relates, the sum was one to which a notice may not relate by virtue of subsection (1) or (7) of section 102 (period to which notice may relate). 20
- (4) An appeal under subsection (1)(b) in relation to an individual may be made only on one or more of the following grounds –
  - (a) that, on the specified day, no sum was due to the individual under or by virtue of the specified provision; 25
  - (b) that, in the case of any sum specified in the notice as due to the individual, the sum had been paid before the end of the period mentioned in section 100(1)(b);
  - (c) that, in the case of any sum specified in the notice as due to the individual, the sum was one to which a notice may not relate by virtue of subsection (1) or (7) of section 102; 30
  - (d) that the amount specified in the notice as the sum required to be paid to the individual is incorrect;
  - (e) that, in the case of a replacement notice given under section 109, the notice contravenes subsection (2) of that section. 35
- (5) An appeal under subsection (1)(c) may be made only on one or more of the following grounds –
  - (a) that the notice was given in circumstances specified in a direction under section 105(1);
  - (b) that the amount of the penalty specified in the notice of underpayment has been incorrectly calculated (whether because the notice is incorrect 40

- in some of the particulars which affect that calculation or for some other reason).
- (6) Where the tribunal allows an appeal under subsection (1)(a), it must cancel the notice.
- (7) Where, in a case where subsection (6) does not apply, the tribunal allows an appeal under subsection (1)(b) or (c) – 5
- (a) the tribunal must rectify the notice, and
  - (b) the notice of underpayment, as rectified, has effect as if it had been given on the day on which the tribunal makes its determination.
- (8) In this section – 10
- “the specified day”, in relation to an individual, means the day specified in accordance with section 103(2)(a) in relation to the individual;
  - “the specified provision”, in relation to an individual, means the statutory pay provision specified in accordance with section 103(2)(d) in relation to the individual; 15
  - “tribunal” means –
    - (a) an employment tribunal, in relation to England and Wales or Scotland;
    - (b) an industrial tribunal, in relation to Northern Ireland.
- 108 Withdrawal of notice of underpayment** 20
- (1) Where –
- (a) a notice of underpayment has been given to a person (and not already withdrawn or cancelled), and
  - (b) it appears to the Secretary of State that the notice incorrectly includes or omits any requirement or is incorrect in any particular, 25
- the Secretary of State may withdraw it by giving a notice of withdrawal to the person.
- (2) Where a notice of underpayment given to a person is withdrawn and no replacement notice of underpayment is given in accordance with section 109 – 30
- (a) any sum paid by or recovered from the person by way of penalty payable under the notice must be repaid to the person with interest at the appropriate rate running from the date when the sum was paid or recovered;
  - (b) any appeal against the notice must be dismissed.
- (3) In subsection (2)(a) “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838. 35
- (4) Where subsection (2) applies, the notice of withdrawal must indicate the effect of that subsection (but a failure to do so does not make the withdrawal ineffective). 40

**109 Replacement notice of underpayment**

- (1) If the Secretary of State –
- (a) gives a notice of withdrawal to a person under section 108, and
  - (b) is of the opinion referred to in section 100(1) in relation to any individual specified in the notice which is being withdrawn (“the original notice”),
- the Secretary of State may at the same time give a fresh notice of underpayment to the person (a “replacement notice”).
- (2) The replacement notice may not relate to any individual to whom the original notice did not relate.
- (3) The claim period for a replacement notice (see section 102(1)) is the period –
- (a) beginning with the claim period for the original notice, and
  - (b) ending with the day on which the replacement notice is given.
- Accordingly, the replacement notice may relate to sums that became due after the day on which the original notice was given.
- (4) The replacement notice must –
- (a) set out the differences between it and the original notice that it is reasonable for the Secretary of State to consider are material, and
  - (b) explain the effect of section 110.
- (5) Failure to comply with subsection (4) does not make the replacement notice ineffective.
- (6) Where a replacement notice is withdrawn under section 108, no further replacement notice may be given under subsection (1) as a result of the withdrawal.
- (7) Nothing in this section affects any power that exists apart from this section to give a notice of underpayment in relation to any underpaid individual.

**110 Effect of replacement notice of underpayment**

- (1) This section applies where a notice of underpayment is withdrawn under section 108 and a replacement notice is given in accordance with section 109.
- (2) If an appeal has been made under section 107 in respect of the original notice and the appeal has not been withdrawn or finally determined before the time when that notice is withdrawn –
- (a) that appeal (“the earlier appeal”) has effect after that time as if it had been made in respect of the replacement notice, and
  - (b) the person given the notice may exercise the right of appeal under that section in respect of the replacement notice only if the earlier appeal is withdrawn.
- (3) If a sum was paid by or recovered from the person by way of penalty under the original notice –

- (a) an amount equal to that sum (or, if more than one, the total of those sums) is to be treated as having been paid in respect of the penalty imposed by the replacement notice, and
  - (b) any amount by which that sum (or total) exceeds the amount of the penalty imposed by the replacement notice must be repaid to the person with interest at the appropriate rate running from the date when the sum (or, if more than one, the first of them) was paid or recovered. 5
- (4) In subsection (3)(b) “the appropriate rate” means the rate that, on the date mentioned in that provision, was specified in section 17 of the Judgments Act 1838. 10

### 111 Enforcement of requirement to pay sums due to individuals

- (1) In a case where it appears to the Secretary of State that the liable party has failed to comply with a requirement in a notice of underpayment to pay a sum to an underpaid individual, the Secretary of State may apply to the court for an order under this section. 15
- (2) An application under this section may be made only if –
- (a) the relevant 28-day period has ended, and
  - (b) the liable party’s appeal rights are exhausted (see subsection (5)).
- (3) If, on an application under this section, the court is satisfied that – 20
- (a) the notice was given to the liable party and has not been withdrawn, and
  - (b) the liable party has failed to comply with a requirement imposed by the notice to pay a sum to an underpaid individual,
- the court must order the liable party to pay the sum to the underpaid individual within the period specified in the order. 25
- (4) This section does not affect any right of an underpaid individual to recover any sums owed by the liable party to the individual.
- (5) For the purposes of this section, the liable party’s appeal rights are exhausted if – 30
- (a) the relevant 28-day period ended without an appeal being made under section 107 in respect of the notice,
  - (b) any appeal made under that section by the liable party in respect of the notice has been withdrawn, or
  - (c) any such appeal has been finally determined and the notice has not been cancelled under subsection (6) of that section. 35
- (6) In this section –
- “the court” means –
    - (a) the county court, in relation to England and Wales;
    - (b) the sheriff, in relation to Scotland; 40
    - (c) a county court, in relation to Northern Ireland;

“the relevant 28-day period” means the period of 28 days beginning with the day on which the notice (or, where section 107(7)(b) applies, the rectified notice) is given.

## 112 Enforcement of requirement to pay penalty

- (1) In England and Wales, a penalty is recoverable as if it were payable under an order of the county court. 5
- (2) In Scotland, a penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (3) In Northern Ireland, a penalty is recoverable as if it were payable under an order of a county court. 10
- (4) Where action is taken under this section for the recovery of a penalty, the penalty –
  - (a) in relation to England and Wales, is to be treated for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc) as if it were a judgment entered in the county court; 15
  - (b) in relation to Northern Ireland, is to be treated for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (S.I. 1981/226 (N.I. 6)) (register of judgments) as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order. 20
- (5) In this section “penalty” means a penalty payable under a notice of underpayment.

### *Powers relating to civil proceedings*

## 113 Power to bring proceedings in employment tribunal 25

- (1) In a case where –
  - (a) a worker has the right under any enactment to bring proceedings about a matter in an employment tribunal in England and Wales or Scotland, and
  - (b) it appears to the Secretary of State that the worker is not going to bring proceedings about that matter, 30
 the Secretary of State may, in place of the worker, bring proceedings about the matter in an employment tribunal under the enactment.
- (2) Subsection (1) does not apply to –
  - (a) any right to bring proceedings about a matter in respect of which a notice of underpayment under section 100 has been given; 35
  - (b) any right arising under or by virtue of the Agricultural Sector (Wales) Act 2014 (anaw 6) or the Agricultural Wages (Scotland) Act 1949.

- (3) Where by virtue of this section the Secretary of State brings proceedings in place of a worker –
- (a) the proceedings are to be proceeded with as if they had been brought by the worker, and
  - (b) for the purposes of dealing with the proceedings, and any proceedings arising out of those proceedings, references to the worker in any enactment are to be read as including a reference to the Secretary of State. 5
- (4) But, despite subsection (3), any power which an employment tribunal dealing with the proceedings would have to make a declaration, decision, award or other order in favour of the worker if the worker had brought the proceedings continues to be exercisable in relation to the worker (not the Secretary of State). 10
- (5) Any appeal arising out of proceedings brought by the Secretary of State in place of a worker by virtue of this section may be brought by the worker as well as by the Secretary of State. 15
- (6) The Secretary of State is not liable to any worker for anything done (or omitted to be done) in, or in connection with, the discharge or purported discharge of the Secretary of State’s functions by virtue of this section.
- (7) For the purposes of this section – 20
- (a) any reference to a worker includes –
    - (i) an individual who is not a worker as defined by section 230(3) of the Employment Rights Act 1996 but who is a worker for the purposes of Part 4A of that Act (see section 43K(1) of that Act), and 25
    - (ii) an individual seeking to be employed by a person as a worker;
  - (b) any reference to a right to bring proceedings under an enactment is to such a right however expressed, and includes any right to present a complaint or make any other description of claim or application;
  - (c) any reference to the Secretary of State includes an enforcement officer. 30

#### 114 Power to provide legal assistance

- (1) The Secretary of State may assist a person who is or may become party to civil proceedings in England and Wales or Scotland relating to employment or trade union law or the law of labour relations.
- (2) In giving assistance under this section the Secretary of State may provide or arrange for the provision of – 35
- (a) legal advice;
  - (b) legal representation;
  - (c) any other form of assistance.
- (3) But the Secretary of State may not provide, or arrange for the provision of, facilities for the settlement of a dispute. 40

- (4) Where proceedings relate or may relate partly to employment or trade union law or the law of labour relations (“employment-related matters”) and partly to other matters –
- (a) assistance may be given under this section in respect of any aspect of the proceedings, and 5
  - (b) if the proceedings cease to relate to employment-related matters –
    - (i) assistance may nevertheless continue to be given under this section in respect of the proceedings, but
    - (ii) the fact that assistance has been given under this section in respect of the proceedings does not require such assistance to continue to be given. 10
- (5) This section does not affect any restriction imposed in respect of representation –
- (a) by virtue of an enactment, or
  - (b) in accordance with the practice of a court or tribunal. 15
- (6) A legislative provision which requires insurance or an indemnity in respect of advice given in connection with a settlement agreement does not apply to advice provided by the Secretary of State under this section.

### 115 Recovery of costs of legal assistance

- (1) Subsection (2) applies where – 20
- (a) the Secretary of State has assisted a person under section 114 in relation to proceedings, and
  - (b) the person becomes entitled to some or all of the person’s costs or, in Scotland, expenses in the proceedings (whether as a result of an award or as a result of an agreement). 25
- (2) The Secretary of State’s expenditure in giving the assistance –
- (a) is to be charged on sums paid to the person by way of costs or expenses, and
  - (b) may be enforced as a debt due to the Secretary of State.
- (3) A requirement to pay money to the Secretary of State under subsection (2) ranks, in England and Wales, after a requirement imposed by virtue of section 25 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (statutory charge in connection with civil legal aid). 30
- (4) Subsection (2), in its application to Scotland, does not affect the operation of section 17(2A) of the Legal Aid (Scotland) Act 1986 (requirement in certain cases to pay to the Scottish Legal Aid Board sums recovered under awards of, or agreements as to, expenses). 35
- (5) For the purposes of subsection (2), the Secretary of State’s expenditure is to be calculated in accordance with such provision (if any) as the Secretary of State makes for the purpose by regulations. 40



- (6) Regulations under subsection (5) may, in particular, provide for the apportionment of expenditure incurred by the Secretary of State—
  - (a) partly for one purpose and partly for another, or
  - (b) for general purposes.
- (7) Regulations under subsection (5) are subject to the negative resolution procedure. 5

*Labour market enforcement undertakings*

**116 Power to request LME undertaking**

- (1) This section applies where the Secretary of State believes that a person has committed, or is committing, a labour market offence (see section 148). 10
- (2) The Secretary of State may give a notice to the person—
  - (a) identifying the labour market offence which the Secretary of State believes has been or is being committed;
  - (b) giving the Secretary of State’s reasons for the belief;
  - (c) inviting the person to give the Secretary of State a labour market enforcement undertaking in the form attached to the notice. 15
- (3) A labour market enforcement undertaking (an “LME undertaking”) is an undertaking by the person giving it (the “subject”) to comply with any prohibitions, restrictions and requirements set out in the undertaking (as to which, see section 117). 20

**117 Measures in LME undertakings**

- (1) An LME undertaking may include a prohibition, restriction or requirement (each a “measure”) if, and only if—
  - (a) the measure falls within subsection (2) or (3) (or both), and
  - (b) the Secretary of State considers that the measure is just and reasonable. 25
- (2) A measure falls within this subsection if it is for the purpose of—
  - (a) preventing or reducing the risk of the subject not complying with any requirement imposed by or under the relevant enactment, or
  - (b) bringing to the attention of persons likely to be interested in the matter— 30
    - (i) the existence of the LME undertaking,
    - (ii) the circumstances in which it was given, and
    - (iii) any action taken (or not taken) by the subject in order to comply with the undertaking.
- (3) A measure falls within this subsection if it is specified, or is of a description specified, in regulations made by the Secretary of State. 35
- (4) Regulations under subsection (3) are subject to the affirmative resolution procedure.

- (5) 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 believes that at least one measure in the undertaking is necessary for the purpose mentioned in subsection (6). 5
- (6) That purpose is preventing or reducing the risk of the subject—
- (a) committing a further labour market offence under the relevant enactment, or
  - (b) continuing to commit the labour market offence.
- (7) An LME undertaking must set out how each measure included for the purpose mentioned in subsection (2)(a) is expected to achieve that purpose. 10
- (8) In this section “the relevant enactment” means the enactment under which the Secretary of State believes the labour market offence concerned has been or is being committed.
- 118 Duration of LME undertakings** 15
- (1) An LME undertaking has effect from—
- (a) the time when it is accepted by the Secretary of State, or
  - (b) any later time specified in the LME undertaking for this purpose.
- (2) An LME undertaking has effect for the period specified in the LME undertaking. 20
- (3) The maximum period for which an LME undertaking may have effect is two years.
- (4) The Secretary of State may release the subject from an LME undertaking.
- (5) The Secretary of State must release the subject from an LME undertaking if at any time during the period for which it has effect the Secretary of State believes that no measure in it is necessary for the purpose mentioned in section 117(6). 25
- (6) If the Secretary of State releases the subject from an LME undertaking, the Secretary of State must take whatever steps the Secretary of State considers appropriate to bring that fact to the attention of— 30
- (a) the subject;
  - (b) any other persons likely to be interested in the matter.
- 119 Means of giving notice under section 116**
- (1) A notice may be given under section 116 to a person by— 35
- (a) delivering it to the person,
  - (b) leaving it at the person’s proper address,
  - (c) sending it by post to the person at that address, or
  - (d) subject to subsection (6), sending it to the person by electronic means.

- (2) A notice to a body corporate may be given to any officer of that body.
- (3) A notice to a partnership may be given to any partner.
- (4) A notice to an unincorporated association (other than a partnership) may be given to any member of the governing body of the association.
- (5) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of a person is the person's last known address (whether of the person's residence or of a place where the person carries on business or is employed) and also –
- (a) in the case of a body corporate or an officer of the body, the address of the body's registered or principal office in the United Kingdom;
  - (b) in the case of a partnership or a partner, the address of the principal office of the partnership in the United Kingdom;
  - (c) in the case of an unincorporated association (other than a partnership) or a member of its governing body, the principal office of the association in the United Kingdom.
- (6) A notice may be sent to a person by electronic means only if –
- (a) the person has indicated that notices under section 116 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.
- (7) A notice sent to a person by electronic means is, unless the contrary is proved, to be treated as having been given on the working day immediately following the day on which it was sent.
- (8) In this section –
- “electronic address” means any number or address used for the purposes of sending or receiving documents or information by electronic means;
  - “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body;
  - “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

*Labour market enforcement orders*

**120 Power to make LME order on application**

- (1) The appropriate court may, on an application by the Secretary of State under section 121, make a labour market enforcement order in relation to a person if the court –
- (a) is satisfied, on the balance of probabilities, that the person has committed, or is committing, a labour market offence, and
  - (b) considers that it is just and reasonable to make the order.

- (2) A labour market enforcement order (an “LME order”) is an order which—
- (a) prohibits or restricts the person in relation to whom it is made (the “respondent”) from doing anything set out in the order;
  - (b) requires the respondent to do anything set out in the order.
- (See also section 123.) 5
- (3) An application for an LME order under this section is—
- (a) in England and Wales, to be made by complaint;
  - (b) in Northern Ireland, to be made by complaint under Part 8 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)). 10
- (4) In this section “the appropriate court”—
- (a) in a case where the conduct constituting the labour market offence took place, or is taking place, primarily in England and Wales, means a magistrates’ court;
  - (b) in a case where that conduct took place, or is taking place, primarily in Scotland, means the sheriff or a summary sheriff; 15
  - (c) in a case where that conduct took place, or is taking place, primarily in Northern Ireland, means a court of summary jurisdiction.

## 121 Applications for LME orders

- (1) The Secretary of State may apply for an LME order to be made under section 120 in relation to a person (the “proposed respondent”) if— 20
- (a) the Secretary of State has given the proposed respondent a notice under section 116, and
  - (b) the proposed respondent— 25
    - (i) refuses to give an LME undertaking, or
    - (ii) otherwise fails, before the end of the negotiation period, to give an LME undertaking in the form attached to the notice or in such other form as may be agreed with the Secretary of State.
- (2) The Secretary of State may also apply for an LME order if the proposed respondent— 30
- (a) has given an LME undertaking to the Secretary of State, and
  - (b) has failed to comply with the undertaking.
- (3) In subsection (1) “the negotiation period” means— 35
- (a) the period of 14 days beginning with the day after the day on which the notice mentioned in paragraph (a) of that subsection was given, or
  - (b) a longer period agreed between the Secretary of State and the proposed respondent.

## 122 Power to make LME order on conviction

- (1) This section applies where a court deals with a person in respect of a conviction for a labour market offence.
- (2) The court may make an LME order in relation to the person if the court considers it is just and reasonable to do so. 5
- (3) An LME order must not be made under this section except—
  - (a) in addition to a sentence imposed in respect of the offence concerned, or
  - (b) in addition to an order discharging the person conditionally or, in Scotland, discharging the person absolutely. 10

## 123 Measures in LME orders

- (1) An LME order may include a prohibition, restriction or requirement (each a “measure”) if, and only if, the measure falls within subsection (2) or (3) (or both).
- (2) A measure falls within this subsection if it is for the purpose of— 15
  - (a) preventing or reducing the risk of the respondent not complying with any requirement imposed by or under the relevant enactment, or
  - (b) bringing to the attention of persons likely to be interested in the matter—
    - (i) the existence of the LME order, 20
    - (ii) the circumstances in which it was made, and
    - (iii) any action taken (or not taken) by the respondent in order to comply with the order.
- (3) A measure falls within this subsection if it is specified, or is of a description specified, in regulations made by the Secretary of State. 25
- (4) Regulations under subsection (3) are subject to the affirmative resolution procedure.
- (5) Where an LME order includes a measure for the purpose mentioned in subsection (2)(a), the order must set out how the measure is expected to achieve that purpose. 30
- (6) In this section “the relevant enactment” means the enactment under which the labour market offence concerned has been or is being committed.

## 124 Further provision about LME orders

- (1) An LME order has effect for the period specified in the LME order.
- (2) The maximum period for which an LME order may have effect is two years. 35
- (3) An LME order may not be made against an individual who is under the age of 18.

- (4) If a court makes an LME order, the court may also –
- (a) release the respondent from any LME undertaking given in relation to the labour market offence concerned;
  - (b) discharge any other LME order which is in force against the respondent and which was made by –
    - (i) that court, or
    - (ii) any other court in the same part of the United Kingdom as that court.

## 125 Variation and discharge of LME orders

- (1) On an application under this section, the appropriate court may by order vary or discharge an LME order. 10
- (2) An application for the variation or discharge of an LME order may be made by –
- (a) the respondent, or
  - (b) the Secretary of State. 15
- (3) An application for an order under this section is –
- (a) in England and Wales, to be made by complaint;
  - (b) in Northern Ireland, to be made by complaint under Part 8 of the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)). 20
- (4) In this section “the appropriate court” –
- (a) in the case of an LME order made in England and Wales (whether made under section 120 or 122), means a magistrates’ court;
  - (b) in the case of an LME order made in Scotland, means the sheriff or a summary sheriff; 25
  - (c) in the case of an LME order made in Northern Ireland, means a court of summary jurisdiction.

## 126 LME orders: appeals

- (1) A respondent may appeal against –
- (a) the making of an LME order under section 120; 30
  - (b) the making of, or refusal to make, an order under section 125.
- (2) An appeal under subsection (1) is to be made –
- (a) where the order was made or refused by a magistrates’ court in England and Wales, to the Crown Court;
  - (b) where the order was made or refused by the sheriff or a summary sheriff, to the Sheriff Appeal Court; 35
  - (c) where the order was made or refused by a court of summary jurisdiction in Northern Ireland, to a county court.
- (3) On an appeal under subsection (1), the court hearing the appeal –

- (a) may make such orders as may be necessary to give effect to its determination of the appeal, and
  - (b) may also make any incidental or consequential orders that appear to it to be just and reasonable.
- (4) An LME order that has been varied by virtue of subsection (3) remains an order of the court that first made it for the purposes of section 125. 5
- (5) A respondent may appeal against the making of an LME order under section 122 as if the order were a sentence passed on the respondent for the labour market offence.

*Safeguards etc* 10

**127 Evidence of authority**

- (1) This section applies where a person is proposing to exercise –
  - (a) any enforcement function of the Secretary of State;
  - (b) any power of an enforcement officer, other than a power by virtue of section 113 (power to bring proceedings in employment tribunal). 15
- (2) The person must, if required to do so, produce identification showing that the person is authorised to exercise that function.

**128 Warrants**

- (1) A warrant under section 95 or 99 may be executed by any enforcement officer.
- (2) A warrant under section 95 or 99 may authorise persons to accompany any enforcement officer who is executing it. 20
- (3) A person authorised under subsection (2) to accompany an enforcement officer may exercise any power conferred by this Part which the officer may exercise as a result of the warrant.
- (4) But the person may exercise such a power only in the company of, and under the supervision of, an enforcement officer. 25
- (5) Schedule 8 contains further provision about –
  - (a) applications for warrants under section 95 or 99, and
  - (b) warrants issued under section 95 or 99.
- (6) The entry of premises under a warrant issued under section 95 or 99 is unlawful unless it complies with the provisions of Part 3 of that Schedule (execution of warrants). 30

**129 Items subject to legal privilege**

- (1) Nothing in this Part requires a person to produce any document, or provide any information, which the person would be entitled to refuse to produce or provide – 35

- (a) in proceedings in the High Court on the grounds of legal professional privilege, or
  - (b) in proceedings in the Court of Session on the grounds of confidentiality of communications.
- (2) In subsection (1) “communications” means – 5
- (a) communications between a professional legal adviser and the adviser’s client, or
  - (b) communications made in connection with or in contemplation of legal proceedings or for the purposes of those proceedings.
- 130 Privilege against self-incrimination** 10
- (1) This section applies where a person provides information in response to a requirement under section 93.
- (2) In any criminal proceedings against the person –
- (a) no evidence relating to the information may be adduced by or on behalf of the prosecution, and 15
  - (b) no question relating to the information may be asked by or on behalf of the prosecution.
- (3) Subsection (2) does not apply if, in the proceedings –
- (a) evidence relating to the information is adduced by or on behalf of the person providing it, or 20
  - (b) a question relating to the information is asked by or on behalf of that person.
- (4) Subsection (2) does not apply if the proceedings are for –
- (a) an offence under section 137 (providing false information or documents); 25
  - (b) an offence under section 5 of the Perjury Act 1911 (false statutory declarations and other false statements without oath);
  - (c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations);
  - (d) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statutory declarations and other false unsworn statements). 30
- 131 Information relating to the intelligence services, etc**
- (1) A power conferred by section 93 or 94 may not be exercised in relation to a person serving in an intelligence service unless the Secretary of State certifies that the condition in subsection (3) is met in relation to the power. 35
- (2) A power of entry conferred by this Part may not be exercised in relation to any premises (or any part of premises) used for the purposes of an intelligence service unless the Secretary of State certifies that the condition in subsection (3) is met in relation to the power. 40



- (3) The condition in this subsection is met in relation to a power if the Secretary of State is satisfied that the exercise of the power will not be contrary to the public interest or prejudicial to –
- (a) national security,
  - (b) the prevention or detection of serious crime, or
  - (c) the economic well-being of the United Kingdom.
- (4) A certificate issued under this section in relation to a power may impose conditions on the exercise of the power.
- (5) Except as provided for by subsection (1), nothing in this Part requires any person to –
- (a) produce any document containing intelligence service information, or
  - (b) provide any information that is intelligence service information.
- (6) For the purposes of this section –
- (a) “crime” means conduct which –
    - (i) constitutes a criminal offence, or
    - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute a criminal offence;
  - (b) crime is “serious” if –
    - (i) the offence which is or would be constituted by the conduct is an offence for which the maximum sentence (in any part of the United Kingdom) is imprisonment for three years or more, or
    - (ii) the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose;
  - (c) “intelligence service information” means information obtained directly or indirectly from, or that relates to, an intelligence service or a person acting on behalf of an intelligence service.

*Disclosure of information* 30

**132 Disclosure of information**

- (1) In this section –
- “civil proceedings function” means a function under or by virtue of section 113 or 114 (powers in relation to civil proceedings);
  - “enforcement function” means –
    - (a) an enforcement function of the Secretary of State, or
    - (b) a power of an enforcement officer (other than a power by virtue of section 113);
  - “enforcing authority” means the Secretary of State or an enforcement officer.

- (2) A person may disclose information to an enforcing authority if the disclosure is made for the purposes of the exercise of an enforcement function or a civil proceedings function.
- (3) Information obtained by an enforcing authority in connection with the exercise of an enforcement function or a civil proceedings function – 5
- (a) may be used by an enforcing authority in connection with the exercise of any other enforcement function or civil proceedings function;
  - (b) may be used by the Secretary of State in connection with a function of the Secretary of State under this Part.
- (4) The Secretary of State may disclose to a person any information obtained by an enforcing authority in connection with the exercise of an enforcement function or a civil proceedings function if the disclosure is made for a purpose connected with an enforcement function or civil proceedings function or a function of the Secretary of State under this Part. 10
- (5) The Secretary of State may disclose to a person specified in Schedule 9 information obtained in connection with the exercise of an enforcement function or a civil proceedings function if the disclosure is made for the purposes of the exercise of a function of the person. 15
- (6) The Secretary of State may by regulations amend Schedule 9.
- (7) Regulations under subsection (6) are subject to the affirmative resolution procedure. 20
- (8) Sections 133 to 135 contain further provision about disclosure of information under this section.

### 133 Disclosure of information: supplementary provision

- (1) A disclosure of information which is authorised by section 132 does not breach – 25
- (a) an obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed). 30
- (2) But nothing in section 132 authorises either of the following –
- (a) the making of a disclosure which would contravene the data protection legislation (but in determining whether a disclosure would do so, the power conferred by that section is to be taken into account);
  - (b) the making of a disclosure which is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016. 35
- (3) In subsection (2) “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).
- (4) Section 132 does not limit the circumstances in which information may be disclosed apart from that section. 40

### 134 Restriction on disclosure of HMRC information

- (1) HMRC information may not be disclosed by an enforcing authority without authorisation from the Commissioners for His Majesty’s Revenue and Customs (“the Commissioners”).
- (2) If an enforcing authority has disclosed HMRC information to a person, that person may not further disclose that information without authorisation from the Commissioners. 5
- (3) Subsections (1) and (2) do not apply to national minimum wage information.
- (4) If a person contravenes subsection (1) or (2) by disclosing revenue and customs information relating to a person whose identity – 10
  - (a) is specified in the disclosure, or
  - (b) can be deduced from it,section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act. 15
- (5) In this section –
  - “enforcing authority” has the same meaning as in section 132;
  - “HMRC information” means information disclosed to an enforcing authority under section 132 by the Commissioners or a person acting on behalf of the Commissioners; 20
  - “national minimum wage information” means information obtained by an enforcing authority for the purposes of enforcing any provision of the National Minimum Wage Act 1998;
  - “revenue and customs information relating to a person” has the meaning given by section 19(2) of the Commissioners for Revenue and Customs Act 2005. 25

### 135 Restriction on disclosure of intelligence service information

- (1) Section 132(2) does not authorise a person to disclose information to an enforcing authority where – 30
  - (a) the person is serving in an intelligence service, or
  - (b) the information is intelligence service information.But this does not affect the disclosures which a person serving in an intelligence service may make in accordance with intelligence service disclosure arrangements (see subsection (4)).
- (2) Intelligence service information may not be disclosed by an enforcing authority without authorisation from the appropriate service chief. 35
- (3) If an enforcing authority has disclosed intelligence service information to a person, that person may not further disclose that information without authorisation from the appropriate service chief.
- (4) In this section – 40

“appropriate service chief” means—

- (a) the Director-General of the Security Service, in the case of information obtained from, or relating to, that Service or a person acting on its behalf;
- (b) the Chief of the Secret Intelligence Service, in the case of information obtained from, or relating to, that Service or a person acting on its behalf;
- (c) the Director of GCHQ, in the case of information obtained from, or relating to, GCHQ or a person acting on its behalf;

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“enforcing authority” has the same meaning as in section 132;

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“intelligence service disclosure arrangements” means—

- (a) arrangements made by the Director-General of the Security Service under section 2(2)(a) of the Security Service Act 1989 about the disclosure of information by that Service;
- (b) arrangements made by the Chief of the Intelligence Service under section 2(2)(a) of the Intelligence Services Act 1994 about the disclosure of information by that Service;
- (c) arrangements made by the Director of GCHQ under section 4(2)(a) of that Act about the disclosure of information by GCHQ;

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“intelligence service information” means information obtained directly or indirectly from, or that relates to, an intelligence service or a person acting on behalf of an intelligence service.

### *Offences*

#### **136 Offence of failing to comply with LME order**

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- (1) A person in relation to whom an LME order is made commits an offence if the person, without reasonable excuse, fails to comply with the order.
- (2) A person guilty of an offence under this section is liable—
  - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine, or both;
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum, or both;
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

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#### **137 Offence of providing false information or documents**

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- (1) A person commits an offence if—

- (a) the person produces, or knowingly causes or allows to be produced, any information or document in response to a requirement reasonably made by a person in the exercise of a power conferred by this Part,
  - (b) the information or document is false in a material respect, and
  - (c) the person knows that it is or is reckless as to whether it is. 5
- (2) A person guilty of an offence under this section is liable –
  - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the maximum term for summary offences or a fine, or both;
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both; 10
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale, or both. 15
- (3) In subsection (2)(a) “the maximum term for summary offences” means –
  - (a) in the case of an offence committed before the time when section 281(5) of the Criminal Justice Act 2003 comes into force, 6 months;
  - (b) in the case of an offence committed after that time, 51 weeks.
- 138 Providing false information or documents: national security etc defence 20**
- (1) A person in relation to whom a certificate is issued by the Secretary of State for the purposes of this section is not liable for the commission of an offence under section 137 (offence of providing false information or documents).
- (2) The Secretary of State may issue a certificate in relation to a person for the purposes of this section only if satisfied that it is necessary for the person to engage in conduct amounting to such an offence –
  - (a) in the interests of national security,
  - (b) for the purposes of preventing or detecting serious crime, or
  - (c) in the interests of the economic well-being of the United Kingdom. 25
- (3) A certificate under this section may be revoked by the Secretary of State at any time. 30
- (4) For the purposes of subsection (2)(b) –
  - (a) “crime” means conduct which –
    - (i) constitutes a criminal offence, or
    - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute a criminal offence, and 35
  - (b) crime is “serious” if –
    - (i) the offence which is or would be constituted by the conduct is an offence for which the maximum sentence (in any part of 40

- the United Kingdom) is imprisonment for three years or more,  
or
- (ii) the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

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### 139 Offence of obstruction

- (1) A person commits an offence if the person—
- (a) intentionally obstructs a person who is acting in the exercise of an enforcement function, or
- (b) without reasonable excuse, fails to comply with any requirement imposed by a person who is acting in the exercise of an enforcement function. 10
- (2) In subsection (1) “enforcement function” means—
- (a) an enforcement function of the Secretary of State, or
- (b) a power of an enforcement officer, other than a power by virtue of section 113 (power to bring proceedings in employment tribunal). 15
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the maximum term for summary offences or a fine, or both; 20
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both;
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale, or both. 25
- (4) In subsection (3)(a) “the maximum term for summary offences” means—
- (a) in the case of an offence committed before the time when section 281(5) of the Criminal Justice Act 2003 comes into force, 6 months;
- (b) in the case of an offence committed after that time, 51 weeks. 30
- (5) Nothing in this section requires a person to answer any question or give any information if to do so might incriminate that person.

#### *Recovery of enforcement costs*

### 140 Power to recover costs of enforcement

- (1) The Secretary of State may by regulations make provision requiring a relevant person, or a relevant person of a specified description, to pay a charge as a means of recovering any enforcement costs incurred in relation to the person. 35
- (2) For the purposes of this section—

- “enforcement costs”, in relation to a relevant person, means any costs incurred in connection with the exercise of an enforcement function of the Secretary of State in relation to the person;
- “relevant person” means a person who has failed to comply with any relevant labour market legislation; 5
- “specified” means specified in the regulations.
- (3) Regulations under this section may –
- (a) provide that the amount of a charge is –
- (i) a fixed amount, or
- (ii) an amount calculated by reference to an hourly rate; 10
- (b) provide for the amount of the charge to be determined by the Secretary of State in accordance with the regulations.
- (4) The regulations may in particular –
- (a) provide that the amount of a charge is to be determined by the Secretary of State in accordance with a scheme made and published by the Secretary of State, and 15
- (b) make provision about such schemes, including the principles governing such schemes.
- (5) The provision that may be made by regulations under this section includes, among other things – 20
- (a) provision for charges to be payable only in specified circumstances;
- (b) provision about reductions, exemptions and waivers;
- (c) provision about how and when charges are to be paid;
- (d) provision about the collection or recovery of payments;
- (e) provision for the charging of interest on unpaid charges; 25
- (f) provision about the resolution of disputes relating to the payment of charges, including provision for the making of appeals to a court or tribunal.
- (6) Regulations under this section are subject to the negative resolution procedure.
- (7) Sums paid to the Secretary of State under this section are not required to be paid into the Consolidated Fund. 30

*Supplementary*

**141 Offences by bodies corporate**

- (1) If an offence under this Part committed by a body corporate is proved –
- (a) to have been committed with the consent or connivance of an officer of the body, or 35
- (b) to be attributable to any neglect on the part of such an officer, the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

- (2) In subsection (1) “officer”, in relation to a body corporate, means –
- (a) a director, manager, secretary or other similar officer of the body;
  - (b) a person purporting to act in any such capacity.
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate. 5

## 142 Application of this Part to partnerships

- (1) If an offence under this Part committed by a partner (“P”) of a partnership which is not regarded as a legal person is shown – 10
- (a) to have been committed with the consent or connivance of another partner, or
  - (b) to be attributable to any neglect on the part of another partner, that other partner, as well as P, is guilty of the offence and liable to be proceeded against and punished accordingly. 15
- (2) Proceedings for an offence under this Part alleged to have been committed by a partnership which is regarded as a legal person may be brought against the partnership in the firm name.
- (3) For the purposes of such proceedings –
- (a) rules of court relating to the service of documents have effect as if the partnership were a body corporate, and 20
  - (b) the following provisions apply as they apply in relation to a body corporate –
    - (i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980; 25
    - (ii) sections 34(2), 66(6AA) and 72D(2) of the Criminal Procedure (Scotland) Act 1995;
    - (iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)). 30
- (4) A fine imposed on a partnership on its conviction of an offence under this Part is to be paid out of the funds of the partnership.
- (5) If an offence under this Part committed by a partnership is proved –
- (a) to have been committed with the consent or connivance of a partner, or 35
  - (b) to be attributable to any neglect on the part of a partner, the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) In subsections (1) and (5) “partner” includes a person purporting to act as a partner. 40



- (7) For the purposes of this section a partnership is, or is not, “regarded as a legal person” if it is, or is not, so regarded under the law of the country or territory under which it was formed.

### **143 Application of this Part to unincorporated associations**

- (1) In a case falling within subsection (2), an unincorporated association is to be treated as a legal person for the purposes of this Part. 5
- (2) A case falls within this subsection if it relates to a labour market offence for which it is possible to bring proceedings against an unincorporated association in the name of the association.
- (3) Proceedings for an offence under this Part alleged to have been committed by an unincorporated association may be brought against the association in the name of the association. 10
- (4) For the purposes of such proceedings –
- (a) rules of court relating to the service of documents have effect as if the association were a body corporate, and 15
  - (b) the following provisions apply as they apply in relation to a body corporate –
    - (i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates’ Courts Act 1980;
    - (ii) sections 34(2), 66(6AA) and 72D(2) of the Criminal Procedure (Scotland) Act 1995; 20
    - (iii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).
- (5) A fine imposed on the association on its conviction of an offence under this Part is to be paid out of the funds of the association. 25
- (6) If an offence under this Part committed by an unincorporated association is proved –
- (a) to have been committed with the consent or connivance of an officer of the association, or 30
  - (b) to be attributable to any neglect on the part of such an officer, the officer, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) In subsection (6) “officer”, in relation to any association, means –
- (a) an officer of the association or a member of its governing body; 35
  - (b) a person purporting to act in such a capacity.

**144 Application of this Part to the Crown and Parliament**

- (1) Subject to the provisions of section 131 and this section, this Part is binding on the Crown and applies in relation to any Crown premises as it applies in relation to any other premises.
- (2) In this section “Crown premises” means premises held, or used, by or on behalf of the Crown. 5
- (3) No contravention by the Crown of any provision made by this Part is to make the Crown criminally liable; but the High Court or, in Scotland, the Court of Session may declare unlawful any act or omission of the Crown which constitutes such a contravention. 10
- (4) Despite subsection (3), the provisions of this Part apply to persons in the public service of the Crown as they apply to other persons.
- (5) If the Secretary of State certifies that it appears appropriate in the interests of national security that powers of entry conferred by this Part should not be exercisable in relation to Crown premises specified in the certificate, those powers are not exercisable in relation to those premises. 15
- (6) No power of entry conferred by this Part may be exercised in relation to—
  - (a) land belonging to His Majesty in right of His private estates, or
  - (b) premises occupied for the purposes of either House of Parliament.
- (7) In subsection (6)(a), the reference to His Majesty’s private estates is to be read in accordance with section 1 of the Crown Private Estates Act 1862. 20

**145 Abolition of existing enforcement authorities**

- (1) The following are abolished—
  - (a) the Gangmasters and Labour Abuse Authority;
  - (b) the Director of Labour Market Enforcement. 25
- (2) Accordingly—
  - (a) in the Gangmasters (Licensing) Act 2004, omit section 1 (the Gangmasters and Labour Abuse Authority);
  - (b) in Part 1 of the Immigration Act 2016 (labour market and illegal working), omit section 1 (Director of Labour Market Enforcement). 30

**146 Consequential and transitional provision**

- (1) Schedule 10 contains consequential amendments relating to this Part.
- (2) Part 1 of Schedule 11 contains provision for the making of schemes for the transfer of staff, property, rights and liabilities from the Gangmasters and Labour Abuse Authority and the Director of Labour Market Enforcement to the Secretary of State. 35
- (3) Part 2 of that Schedule contains other transitional and saving provision for the purposes of this Part.

*Interpretation of this Part*

**147 Meaning of “non-compliance with relevant labour market legislation”**

- (1) For the purposes of this Part, each of the following constitutes “non-compliance with relevant labour market legislation” –
- (a) failure to comply with any requirement, restriction or prohibition imposed by or under a provision of relevant labour market legislation; 5
  - (b) breach of a condition of a licence granted under section 7 of the Gangmasters (Licensing) Act 2004;
  - (c) the commission of a labour market offence.
- (2) For the purposes of this Part, any requirement to pay a relevant sum within the meaning of Part 2A of the Employment Tribunals Act 1996 is to be treated as a requirement imposed by or under that Part; and a reference to enforcing that Part is to be read accordingly. 10

**148 Interpretation: general**

- (1) In this Part – 15
- “the Advisory Board” means the Advisory Board established under section 90;
- “ancillary offence”, in relation to an offence under any provision of relevant labour market legislation, means –
- (a) an offence of attempting or conspiring to commit such an offence; 20
  - (b) an offence under Part 2 of the Serious Crime Act 2007 in relation to such an offence;
  - (c) an offence of inciting a person to commit such an offence;
  - (d) an offence of aiding, abetting, counselling or procuring the commission of such an offence; 25
- “business” includes –
- (a) a trade or profession, and
  - (b) any activity carried on by a body of persons (whether corporate or unincorporated); 30
- “employee” and “employer” have the same meaning as in the Employment Rights Act 1996 (see section 230 of that Act);
- “employers’ association” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992 (see section 122 of that Act); 35
- “enactment” means an enactment whenever passed or made, and includes –
- (a) an enactment contained in subordinate legislation,
  - (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales or an Act of Senedd Cymru, 40

- (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
- “enforcement function”, in relation to the Secretary of State, has the meaning given by section 88; 5
- “enforcement officer” has the meaning given by section 87(3);
- “GCHQ” has the same meaning as in the Intelligence Services Act 1994;
- “intelligence service” means –
- (a) the Security Service; 10
  - (b) the Secret Intelligence Service;
  - (c) GCHQ;
- “labour market offence” means –
- (a) an offence under any provision of relevant labour market legislation, or 15
  - (b) an ancillary offence relating to such an offence;
- “the liable party”, in relation to a notice of underpayment, has the meaning given by section 100(1);
- “LME order” has the meaning given by section 120(2);
- “LME undertaking” has the meaning given by section 116(3); 20
- “non-compliance with relevant labour market legislation” has the meaning given by section 147; and any reference to a failure to comply with relevant labour market legislation is to be read accordingly;
- “notice of underpayment” has the meaning given by section 100(2);
- “premises” has the meaning given by subsection (2); 25
- “the relevant day”, in relation to a notice of underpayment, has the meaning given by section 100(1);
- “relevant labour market legislation” means the labour market legislation listed in Part 1 of Schedule 7;
- “respondent”, in relation to an LME order, has the meaning given by section 120(2); 30
- “statutory pay provision” has the meaning given by section 100(7);
- “subject”, in relation to an LME undertaking, has the meaning given by section 116(3);
- “subordinate legislation” has the meaning given by section 21(1) of the Interpretation Act 1978; 35
- “trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992 (see section 1 of that Act);
- “underpaid individual”, in relation to a notice of underpayment, has the meaning given by section 100(1); 40
- “worker” (except in section 99) has the same meaning as in the Employment Rights Act 1996 (see section 230 of that Act), and a reference to a person seeking work is to be read accordingly.

- (2) In this Part “premises” includes any place and, in particular, includes –

- (a) any vehicle, vessel, aircraft or hovercraft;
  - (b) any tent or movable structure;
  - (c) any offshore installation;
  - (d) any renewable energy installation.
- (3) In subsection (2)– 5
- “offshore installation” has the same meaning as in the Mineral Workings (Offshore Installations) Act 1971;
- “renewable energy installation” has the meaning given by section 104 of the Energy Act 2004.

## PART 6 10

### MISCELLANEOUS AND GENERAL

#### *Tribunals*

#### **149 Increase in time limits for making claims**

Schedule 12 makes amendments for the purpose of increasing time limits for making claims in employment tribunals in Great Britain (and, in certain cases, industrial tribunals in Northern Ireland) from three months to six months. 15

#### *Regulations etc under Employment Rights Act 1996*

#### **150 Orders and regulations under Employment Rights Act 1996: procedure**

In section 236 of the Employment Rights Act 1996 (orders and regulations), after subsection (4) insert– 20

“(4A) A statutory instrument containing an order or regulations under this Act to which subsection (3) applies may include an order or regulations under this Act to which subsection (3) would not otherwise apply.

(4B) In such a case, the statutory instrument is to be proceeded with as if all of the orders and regulations contained in it were orders or regulations to which subsection (3) applies.” 25

#### *Final provisions*

#### **151 Power to make consequential amendments**

- (1) The Secretary of State may by regulations make provision that is consequential on any provision made by this Act. 30
- (2) The power to make regulations under this section may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under primary legislation passed before, or in the same session of Parliament as, this Act.

- (3) In this section “primary legislation” means—
- (a) an Act of Parliament;
  - (b) a Measure or Act of the National Assembly for Wales or an Act of Senedd Cymru;
  - (c) an Act of the Scottish Parliament; 5
  - (d) Northern Ireland legislation.
- (4) Regulations under this section that amend or repeal any primary legislation are subject to the affirmative resolution procedure.
- (5) Any other regulations under this section are subject to the negative resolution procedure. 10

### 152 Power to make transitional or saving provision

- (1) The Secretary of State may by regulations make such transitional or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act.
- (2) Regulations under this section may (among other things)— 15
- (a) make provision in addition to, or different from, that made by this Act;
  - (b) make any adaptations of any provisions of this Act brought into force that appear to be appropriate in consequence of other provisions of this Act not yet having come into force. 20

### 153 Regulations

- (1) Any power of the Secretary of State or the Welsh Ministers to make regulations under this Act is exercisable by statutory instrument.
- (2) For provision about the making of regulations under this Act by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (which provides for such regulations to be made by Scottish statutory instrument). 25
- (3) Regulations under this Act may—
- (a) make different provision for different purposes or different areas;
  - (b) contain supplementary, incidental, consequential, transitional or saving provision. 30
- (4) Subsection (3) does not apply to regulations under section 156 (see instead subsection (4) of that section).
- (5) Where regulations under this Act are subject to the “negative resolution procedure”— 35
- (a) in the case of regulations of the Secretary of State, the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament;

- (b) in the case of regulations of the Welsh Ministers, the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of Senedd Cymru;
  - (c) in the case of regulations of the Scottish Ministers, the regulations are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)). 5
- (6) Where regulations under this Act are subject to the “affirmative resolution procedure” –
  - (a) in the case of regulations of the Secretary of State, the regulations may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament; 10
  - (b) in the case of regulations of the Welsh Ministers, the regulations may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, Senedd Cymru; 15
  - (c) in the case of regulations of the Scottish Ministers, the regulations are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (7) Any provision that may be included by a person in an instrument under this Act subject to the negative resolution procedure may be made by the person by regulations subject to the affirmative resolution procedure. 20

#### 154 Financial provision

There is to be paid out of money provided by Parliament –

- (a) any expenditure incurred under or by virtue of this Act by a person holding office under His Majesty or by a government department, and 25
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

#### 155 Extent

- (1) Except as set out below –
  - (a) Parts 1, 2 and 4 of this Act extend to England and Wales and Scotland; 30
  - (b) in Part 3 –
    - (i) Chapter 1 extends to England and Wales;
    - (ii) Chapter 2 extends to England and Wales and Scotland;
    - (iii) Chapter 3 extends to England and Wales, Scotland and Northern Ireland; 35
  - (c) Part 5 and this Part extend to England and Wales, Scotland and Northern Ireland.
- (2) Sections 12 and 13 (statutory sick pay in Northern Ireland) extend to Northern Ireland only.

- (3) Section 30 (public sector outsourcing: protection of workers) extends to England and Wales, Scotland and Northern Ireland.
- (4) Except as set out in subsection (5), an amendment, repeal or revocation made by this Act has the same extent within the United Kingdom as the provision amended, repealed or revoked. 5
- (5) In Schedule 12 (increase in time limits for making claims) –
  - (a) the amendments made by paragraph 9(3) and (4) extend to Northern Ireland only;
  - (b) the amendments made by paragraphs 10, 12 and 13 extend to England and Wales and Scotland only. 10

## 156 Commencement

- (1) The following provisions of this Act come into force on the day on which this Act is passed –
  - (a) section 75 (repeal of provision about minimum service levels);
  - (b) sections 151 to 155, this section and section 157. 15
- (2) The following provisions of this Act come into force at the end of the period of two months beginning with the day on which this Act is passed –
  - (a) section 58 (political funds: requirement to pass political resolution);
  - (b) section 59 (requirement to contribute to political fund);
  - (c) section 60 (deduction of trade union subscriptions from wages in public sector); 20
  - (d) section 63 (facility time: publication requirements and reserve powers);
  - (e) section 64 (blacklists: additional powers);
  - (f) section 66 (industrial action ballots: support thresholds);
  - (g) section 67 (notice of industrial action ballot and sample voting paper for employers); 25
  - (h) section 68 (industrial action ballots: information to be included on voting paper);
  - (i) section 69 (period after which industrial action ballot ceases to be effective); 30
  - (j) section 70 (electronic balloting);
  - (k) section 71 (notice to employers of industrial action);
  - (l) section 72 (union supervision of picketing);
  - (m) section 77 (union annual returns: removal of provision about political expenditure); 35
  - (n) section 79 (Certification Officer: removal of investigatory powers);
  - (o) section 80 (Certification Officer: powers to be exercised only on application);
  - (p) section 81 (Certification Officer: removal of power to impose financial penalties); 40
  - (q) section 83 (Certification Officer: appeals to the Employment Appeal Tribunal);



- (r) section 84 (employment outside Great Britain);
  - (s) section 86 (devolved Welsh authorities).
- (3) The other provisions of this Act come into force in accordance with regulations made by the Secretary of State.
- (4) Regulations under subsection (3) may make different provision for different purposes or different areas. 5

**157 Short title**

This Act may be cited as the Employment Rights Act 2025.

## SCHEDULES

### SCHEDULE 1

Section 4

#### AGENCY WORKERS: GUARANTEED HOURS AND RIGHTS RELATING TO SHIFTS

Before Schedule 1 to the Employment Rights Act 1996 insert –

#### “SCHEDULE A1

Section 27BV

5

#### AGENCY WORKERS: GUARANTEED HOURS AND RIGHTS RELATING TO SHIFTS

### PART 1

#### RIGHT TO GUARANTEED HOURS

*Right for qualifying agency workers to be offered guaranteed hours*

- 1 (1) A hirer must make a guaranteed hours offer to an agency worker in accordance with paragraph 2 after the end of every period – 10
  - (a) that is a reference period in relation to that agency worker and that hirer, and
  - (b) in relation to which the agency worker is a qualifying agency worker of the hirer. 15
- (2) Paragraph 4 makes provision for exceptions to this duty, including in certain cases where the agency worker stops working for and under the supervision and direction of the hirer.
- (3) An agency worker is a qualifying agency worker of a hirer in relation to a reference period if – 20
  - (a) during the reference period the agency worker worked for and under the supervision and direction of the hirer for a number of hours (the “reference period hours”),
  - (b) the reference period hours satisfy such conditions as to number, regularity or otherwise as are specified, and 25
  - (c) when the agency worker worked the reference period hours, it was not as an excluded agency worker.
- (4) In relation to an agency worker and a hirer for and under the supervision and direction of whom the agency worker works, each of the following is a “reference period” – 30
  - (a) the initial reference period, and
  - (b) each subsequent reference period.
- (5) “The initial reference period”, in relation to an agency worker and a hirer for and under the supervision and direction of whom the agency worker works, means the period – 35
  - (a) beginning with –

- (i) where the agency worker is working for and under the supervision and direction of the hirer on the day on which sub-paragraph (1) comes into force (“the commencement day”), the commencement day, or
    - (ii) where the agency worker is not so working, the first day after the commencement day on which the agency worker is working for and under the supervision and direction of the hirer, and
  - (b) ending with the specified day.
- (6) A “subsequent reference period”, in relation to an agency worker and a hirer for and under the supervision and direction of whom the agency worker works, means a period beginning and ending with the specified days. 10
- (7) For the purposes of this Part of this Schedule –
  - (a) references to a “hirer” are to a person for and under the supervision and direction of whom agency workers are supplied to work, 15
  - (b) references to a “qualifying agency worker” are to an agency worker who is a qualifying agency worker of a hirer in relation to a reference period by virtue of sub-paragraph (3), and
  - (c) the reference period in relation to which the agency worker is a qualifying agency worker of the hirer is referred to as “the relevant reference period”. 20
- (8) Nothing in this Part of this Schedule prevents a hirer from making one or more other offers to a qualifying agency worker to enter into a worker’s contract, at the same time as making a guaranteed hours offer. 25
- (9) Regulations made under sub-paragraph (3)(b), (5) or (6) may, in particular, include provision to take account of time when an agency worker does not work for a specified reason.
- (10) In this paragraph, “excluded agency worker” means an agency worker who is of a specified description. 30

*Requirements relating to a guaranteed hours offer*

- 2 (1) An offer by a hirer to a qualifying agency worker is a guaranteed hours offer for the purposes of this Part of this Schedule if it is an offer to enter into a worker’s contract and the worker’s contract will require the hirer to provide the qualifying agency worker with work, and the qualifying agency worker to do work, for a number of hours that reflects the reference period hours in the relevant reference period. 35
- (2) The Secretary of State may by regulations provide that an offer by a hirer to a qualifying agency worker is a guaranteed hours offer for the purposes of this Part of this Schedule only if it also satisfies the condition in sub-paragraph (3). 40
- (3) The condition referred to in sub-paragraph (2) is that –
  - (a) the offer sets out –

- 
- (i) the days of the week, and the times on those days, when the offered number of hours are to be provided and worked, or
    - (ii) a working pattern of days, and times of day, by reference to which the offered number of hours are to be provided and worked, and 5
  - (b) those days and times reflect, or that pattern reflects, when the qualifying agency worker worked the reference period hours in the relevant reference period.
- (4) Where no regulations are in force under sub-paragraph (2) that apply in relation to an offer by a hirer to a qualifying agency worker, the offer is a guaranteed hours offer for the purposes of this Part of this Schedule only if it also proposes terms and conditions relating to when the offered number of hours are to be provided and worked (which need not be on particular days of the week, or at particular times on those days, or by reference to a particular working pattern of days or times of day). 10
- (5) The Secretary of State may by regulations make provision about how it is to be determined – 15
- (a) whether an offer reflects the number of hours worked by a qualifying agency worker during a reference period; 20
  - (b) where regulations are in force under sub-paragraph (2) that apply in relation to an offer, whether the offer reflects when hours were worked by a qualifying agency worker during a reference period.
- (6) A guaranteed hours offer – 25
- (a) must not propose a worker’s contract that is a limited-term contract unless it is reasonable for it to be entered into as such a contract, and
  - (b) must (in addition to what is required by or under sub-paragraphs (1) and (2) or sub-paragraphs (1) and (4)) propose terms and conditions of employment – 30
    - (i) that, taken as a whole, are no less favourable than the terms and conditions relating to matters other than working hours and length of employment under which the qualifying agency worker worked for and under the supervision and direction of the hirer during the relevant reference period, or 35
    - (ii) where paragraph 3 applies, that comply with sub-paragraph (2) of that paragraph.
- (7) For the purposes of sub-paragraph (6)(a) it is reasonable for a worker’s contract to be entered into, between a hirer and a qualifying agency worker, as a limited-term contract only if – 40
- (a) it is reasonable for the hirer to consider that the qualifying agency worker is only needed to perform a specific task and the worker’s contract provides for termination when the task has been performed,

- (b) it is reasonable for the hirer to consider that the qualifying agency worker is only needed until the occurrence of an event (or the failure of an event to occur) and the worker’s contract provides for termination on the occurrence of the event (or the failure of the event to occur), or 5
  - (c) it is reasonable for the hirer to consider that there is only a temporary need of a specified description (not falling within paragraph (a) or (b)) for the qualifying agency worker to do work under the worker’s contract and the worker’s contract is to expire at a time when it is reasonable for the hirer to consider that the temporary need will come to an end. 10
- (8) A guaranteed hours offer –
- (a) must be made by no later than the specified day,
  - (b) must be made in the specified form and manner, and
  - (c) must be accompanied by specified information relating to the offer. 15
- (9) The Secretary of State may by regulations make provision about when a guaranteed hours offer is to be treated as having been made.
- (10) In this paragraph, “reference period hours”, in relation to a qualifying agency worker and a relevant reference period, has the same meaning as in paragraph 1(3). 20

*Requirements relating to a guaranteed hours offer: supplementary*

- 3 (1) This paragraph applies where, during the relevant reference period, the terms and conditions relating to matters other than working hours and length of employment under which the qualifying agency worker worked for and under the supervision and direction of the hirer were not the same throughout the relevant reference period. 25
- (2) Where this paragraph applies, the guaranteed hours offer may propose terms and conditions of employment (in addition to what is required by or under paragraph 2(1) and (2) or paragraph 2(1) and (4)) that, taken as a whole, are less favourable than the most favourable terms and conditions relating to matters other than working hours and length of employment that the qualifying agency worker had when working for and under the supervision and direction of the hirer during the relevant reference period, but only if – 30
- (a) those proposed terms and conditions, taken as a whole, are no less favourable than the least favourable terms and conditions relating to matters other than working hours and length of employment that the qualifying agency worker had when working for and under the supervision and direction of the hirer during the relevant reference period, and 35
  - (b) the proposal of those terms by the hirer constitutes a proportionate means of achieving a legitimate aim. 40

- (3) If a hirer relies on sub-paragraph (2) when making a guaranteed hours offer to a qualifying agency worker, the hirer must give to the qualifying agency worker a notice that—
- (a) states that the hirer has done so, and
  - (b) explains how the proposed terms and conditions constitute a proportionate means of achieving a legitimate aim. 5
- (4) A notice under sub-paragraph (3) must be given by no later than the same day, and in the same form and manner, as the guaranteed hours offer (see paragraph 2(8)).

*Guaranteed hours offer: exceptions to duty to make offer and withdrawal of offer* 10

- 4 (1) The duty imposed by paragraph 1(1) on a hirer in relation to a qualifying agency worker does not apply if, during the relevant reference period or the offer period, the qualifying agency worker stops working for and under the supervision and direction of the hirer in relevant circumstances.
- (2) A guaranteed hours offer made by a hirer to a qualifying agency worker is to be treated as having been withdrawn if, during the response period, the qualifying agency worker stops working for and under the supervision and direction of the hirer in relevant circumstances. 15
- (3) Relevant circumstances occur where—
- (a) the qualifying agency worker declines to continue working under the supervision and direction of the hirer other than in circumstances in which the qualifying agency worker is entitled to do so without notice by reason of the hirer’s conduct; 20
  - (b) the hirer tells the work-finding agency, or other person, that has been supplying the qualifying agency worker to the hirer to stop supplying the qualifying agency worker and— 25
    - (i) the hirer’s reason for doing so (or, if more than one, the hirer’s principal reason for doing so) is a qualifying reason, and
    - (ii) in the circumstances (including the size and administrative resources of the hirer’s undertaking) the hirer has acted reasonably in treating the reason (or the principal reason) as a sufficient reason for telling the work-finding agency, or other person, to stop supplying the qualifying agency worker. 30
- (4) In sub-paragraph (3)(b), “qualifying reason”, in relation to a qualifying agency worker, means a reason falling within sub-paragraph (5) or some other substantial reason of a kind such as to justify telling a work-finding agency, or other person, to stop supplying an agency worker doing work of the kind which the qualifying agency worker was supplied to the hirer to do. 35
- (5) A reason falls within this sub-paragraph if it— 40

- (a) relates to the capability or qualifications of the qualifying agency worker to do work of the kind which the qualifying agency worker was supplied to the hirer to do,
  - (b) relates to the conduct of the qualifying agency worker, or
  - (c) is that the qualifying agency worker could not continue to do work of the kind which the qualifying agency worker was supplied to the hirer to do without contravention (whether on the part of the qualifying agency worker, on the part of the hirer or on the part of the work-finding agency or other person that supplied the qualifying agency worker) of a duty or restriction imposed by or under any legislation. 5
- (6) The Secretary of State may by regulations make provision for the duty imposed by paragraph 1(1) not to apply, or for a guaranteed hours offer that has been made to be treated as having been withdrawn, in other specified circumstances. 10
- (7) Where, by virtue of sub-paragraph (2), a guaranteed hours offer made by a hirer to a qualifying agency worker is treated as having been withdrawn, the hirer must, by no later than the end of the response period, give a notice to the qualifying agency worker stating this to be the case. 15
- (8) Where, by virtue of regulations under sub-paragraph (6) – 20
  - (a) a hirer who would otherwise have been subject to the duty imposed by paragraph 1(1) in relation to a qualifying agency worker and a particular reference period is not required to make a guaranteed hours offer to the qualifying agency worker, or
  - (b) a guaranteed hours offer made by a hirer to a qualifying agency worker is treated as having been withdrawn, 25the hirer must give a notice to the qualifying agency worker that states which provision of the regulations has produced the effect referred to in paragraph (a) or (b) (as the case may be).
- (9) A notice under sub-paragraph (8) must be given by a hirer to a qualifying agency worker – 30
  - (a) where it is required to be given by virtue of paragraph (a) of that sub-paragraph, by no later than the end of the offer period;
  - (b) where it is required to be given by virtue of paragraph (b) of that sub-paragraph, by no later than the end of the response period. 35
- (10) The Secretary of State may by regulations make provision about –
  - (a) the form and manner in which a notice under sub-paragraph (7) or (8) must be given;
  - (b) when a notice under sub-paragraph (7) or (8) is to be treated as having been given. 40
- (11) In this paragraph –
  - “capability”, in relation to a qualifying agency worker, means the qualifying agency worker’s capability assessed by reference to skill, aptitude, health or any other physical or mental quality;

“the offer period”, in relation to a qualifying agency worker and the hirer for and under the supervision and direction of whom the agency worker worked, means the period beginning with the day after the day on which the relevant reference period ends and ending with—

- (a) the day on which a guaranteed hours offer is made to the qualifying agency worker by the hirer, or
- (b) if no guaranteed hours offer is made before the day specified under paragraph 2(8)(a) as the last day on which the hirer may make such an offer to the qualifying agency worker, that last day;

“qualifications”, in relation to a qualifying agency worker, means any degree, diploma or other academic, technical or professional qualification relevant to the work which the qualifying agency worker is supplied to the hirer to do;

“the response period”, in relation to a guaranteed hours offer made to a qualifying agency worker, means the period—

- (a) beginning with the day after the day on which the offer is made, and
- (b) ending with the specified day.

#### *Acceptance or rejection of a guaranteed hours offer*

- 5 (1) Where a hirer makes a guaranteed hours offer to a qualifying agency worker and the offer is not treated as having been withdrawn by virtue of paragraph 4(2) or regulations under paragraph 4(6), the qualifying agency worker may, by giving notice to the hirer before the end of the response period, accept or reject the offer.
- (2) Where a qualifying agency worker gives notice under sub-paragraph (1) accepting an offer, the qualifying agency worker and the hirer that made the offer are to be treated as entering into a worker’s contract in the terms of the offer on the day after the day on which notice is given.
- (3) But a qualifying agency worker and a hirer may agree, for the purposes of sub-paragraph (2), that the worker’s contract is to be treated as being entered into on a later day than the day mentioned in that sub-paragraph.
- (4) If a qualifying agency worker to whom a guaranteed hours offer has been made does not give notice under sub-paragraph (1) before the end of the response period, the qualifying agency worker is to be treated as having rejected the offer.
- (5) The Secretary of State may by regulations make provision about—
  - (a) the form and manner in which notice under sub-paragraph (1) must be given by a qualifying agency worker to a hirer;
  - (b) when notice given by a qualifying agency worker to a hirer under sub-paragraph (1) is to be treated as having been given.



(6) In this paragraph, “the response period” has the same meaning as in paragraph 4.

(7) Where –

(a) a hirer is permitted by section 27BY(3) to withdraw a guaranteed hours offer (withdrawal of offer following incorporation of terms of collective agreement), and 5

(b) the hirer withdraws the offer by giving notice under that section, sub-paragraph (1) of this paragraph ceases to apply in relation to the offer when the notice is given.

*Information about rights conferred by Part 1 of Schedule A1* 10

6 (1) Where –

(a) a work-finding agency has a worker’s contract or an arrangement with an agency worker by virtue of which the agency worker is (or is to be) supplied to work for and under the supervision and direction of a hirer, and 15

(b) it is reasonable to consider that the agency worker might become a qualifying agency worker of a hirer in relation to a reference period (whether the initial reference period, or a subsequent reference period, as defined in paragraph 1),

the work-finding agency must take reasonable steps, within the initial information period, to ensure that the agency worker is aware of specified information relating to the rights conferred on agency workers by this Part of this Schedule. 20

(2) A work-finding agency that is subject to the duty in sub-paragraph (1) in relation to an agency worker must take reasonable steps to ensure that, after the end of the initial information period, the agency worker continues to have access to the specified information referred to in that sub-paragraph at all times when – 25

(a) the worker’s contract or (as the case may be) the arrangement so referred to continues to be in force, and 30

(b) it is reasonable to consider that the agency worker might become (or might again become) a qualifying agency worker of a hirer in relation to a reference period.

(3) “The initial information period”, in relation to an agency worker and the work-finding agency with which the agency worker has a worker’s contract or an arrangement by virtue of which the agency worker is (or is to be) supplied to work for and under the supervision and direction of a hirer, means the period of two weeks beginning with – 35

(a) where the worker’s contract or arrangement is in force on the day on which paragraph 1(1) comes into force (“the commencement day”), the commencement day, or 40

(b) where it is not in force on that day, the first day after the commencement day on which it is in force.

- (4) But where, on the day referred to in sub-paragraph (3)(a) or (b), it was not reasonable to consider that the agency worker might become a qualifying agency worker of a hirer in relation to any reference period, sub-paragraph (3) is to be read as if it provided for “the initial information period” to mean the period of two weeks beginning with the day on which it becomes reasonable so to consider. 5

*Complaints to employment tribunals against a hirer: grounds*

- 7 (1) An agency worker may present a complaint to an employment tribunal that –
- (a) the duty imposed by paragraph 1(1) applies to a hirer in relation to the agency worker and a particular reference period, but 10
  - (b) by the end of the last day of the offer period, the hirer has not made an offer to enter into a worker’s contract in compliance (or purported compliance) with that duty (whether because the hirer does not consider that the agency worker is a qualifying agency worker in relation to the reference period or for any other reason). 15
- (2) An agency worker may present a complaint to an employment tribunal that –
- (a) the duty imposed by paragraph 1(1) applies to a hirer in relation to the agency worker and a particular reference period, but 20
  - (b) the offer that the hirer has made to the agency worker in relation to that reference period to enter into a worker’s contract is not a guaranteed hours offer as described in –
    - (i) where regulations are in force under sub-paragraph (2) of paragraph 2 that apply in relation to the offer, sub-paragraphs (1) and (3) of that paragraph (read with any regulations in force under sub-paragraph (5)(a) or (b) of that paragraph), or 25
    - (ii) where no regulations are in force under sub-paragraph (2) of paragraph 2 that apply in relation to the offer, sub-paragraphs (1) and (4) of that paragraph (read with any regulations in force under sub-paragraph (5)(a) of that paragraph). 30
- (3) An agency worker may present a complaint to an employment tribunal that – 35
- (a) the duty imposed by paragraph 1(1) applies to a hirer in relation to the agency worker and a particular reference period, but
  - (b) the guaranteed hours offer that the hirer has made to the agency worker in relation to that reference period does not comply with paragraph 2(6). 40
- (4) An agency worker may present a complaint to an employment tribunal that –
- (a) the duty imposed by paragraph 1(1) applies to a hirer in relation to the agency worker and a particular reference period, but

- (b) the guaranteed hours offer that the hirer has made to the agency worker in relation to that reference period is on terms requiring the hirer to provide, and the agency worker to do, less work than would have been the case if the hirer had not, during that reference period – 5
- (i) limited (by whatever means) the number of hours of work that the agency worker was requested or required, by virtue of a worker’s contract or arrangement between the agency worker and a work-finding agency, to work for and under the supervision and direction of the hirer, or 10
  - (ii) caused the agency worker to be requested or required, by virtue of a worker’s contract or arrangement between the agency worker and a work-finding agency, to work for and under the supervision and direction of the hirer in the way that the agency worker was, 15
- for the sole or main purpose of the hirer being able to comply with the duty by making such a reduced offer.
- (5) An agency worker may present a complaint to an employment tribunal that the duty imposed by paragraph 1(1) would have applied to a hirer in relation to the agency worker and a particular reference period if the hirer had not, during that reference period – 20
- (a) limited (by whatever means) the number of hours of work that the agency worker was requested or required, by virtue of a worker’s contract or arrangement between the agency worker and a work-finding agency, to work for and under the supervision and direction of the hirer, or 25
  - (b) caused the agency worker to be requested or required, by virtue of a worker’s contract or arrangement between the agency worker and a work-finding agency, to work for and under the supervision and direction of the hirer in the way that the agency worker was, 30
- for the sole or main purpose of preventing the agency worker from satisfying, in relation to that reference period, the condition in paragraph 1(3)(a) or (b).
- (6) A complaint under sub-paragraph (2), (3) or (4) – 35
- (a) may be presented whether or not the offer in question has been accepted by the agency worker, but
  - (b) may not be presented in relation to an offer that is –
    - (i) treated as having been withdrawn by virtue of paragraph 4(2) or regulations under paragraph 4(6), or
    - (ii) withdrawn in accordance with section 27BY(3) (withdrawal of offer following incorporation of terms of collective agreement). 40
- (7) An agency worker may present a complaint to an employment tribunal that a hirer –

- (a) has failed to give to the agency worker a notice under paragraph 4(7) or (8);
  - (b) has given to the agency worker a notice under paragraph 4(7) or (8)(b) in circumstances in which the hirer should not have done so;
  - (c) has given to the agency worker a notice in purported compliance with paragraph 4(8) that does not refer to any provision of the regulations or refers to the wrong provision. 5
- (8) In this paragraph, “the last day of the offer period”, in relation to a reference period, means the day specified under paragraph 2(8)(a) as the last day on which a guaranteed hours offer may be made in relation to that reference period. 10

*Complaints to employment tribunals against a work-finding agency: grounds*

- 8 (1) An agency worker may present a complaint to an employment tribunal, against a relevant work-finding agency, that—
- (a) the duty imposed by paragraph 1(1) applies to a hirer in relation to the agency worker and a particular reference period, but 15
  - (b) during that reference period the relevant work-finding agency—
    - (i) limited (by whatever means, including termination of a worker’s contract or an arrangement) the number of hours of work that the agency worker was requested or required, by virtue of a worker’s contract or arrangement between the agency worker and the relevant work-finding agency, to work for and under the supervision and direction of the hirer, or 20
    - (ii) caused the agency worker to be requested or required, by virtue of a worker’s contract or arrangement between the agency worker and the relevant work-finding agency, to work for and under the supervision and direction of the hirer in the way that the agency worker was, 25
- for the sole or main purpose of enabling the hirer to comply with the duty by making an offer to the agency worker on terms requiring the hirer to provide, and the agency worker to do, less work than would otherwise have been the case. 30
- (2) An agency worker may present a complaint to an employment tribunal, against a relevant work-finding agency, that the duty imposed by paragraph 1(1) would have applied to a hirer in relation to the agency worker and a particular reference period if the relevant work-finding agency had not, during that reference period— 35
- (a) limited (by whatever means, including termination of a worker’s contract or an arrangement) the number of hours of work that the agency worker was requested or required, by virtue of a worker’s contract or arrangement between the agency worker and the relevant work-finding agency, to work for and under the supervision and direction of the hirer, or 40

- (b) caused the agency worker to be requested or required, by virtue of a worker’s contract or arrangement between the agency worker and the relevant work-finding agency, to work for and under the supervision and direction of the hirer in the way that the agency worker was, 5
- for the sole or main purpose of preventing the agency worker from satisfying, in relation to that reference period, the condition in paragraph 1(3)(a) or (b).
- (3) A complaint under sub-paragraph (1) – 10
- (a) may be presented whether or not an offer has been made by the hirer to the agency worker and, if it has, whether or not the offer has been accepted by the agency worker, but
- (b) where an offer has been made, may not be presented where the offer is – 15
- (i) treated as having been withdrawn by virtue of paragraph 4(2) or regulations under paragraph 4(6), or
- (ii) withdrawn in accordance with section 27BY(3) (withdrawal of offer following incorporation of terms of collective agreement).
- (4) For the purposes of sub-paragraphs (1) and (2), references to a “relevant work-finding agency”, in relation to an agency worker, a hirer and a reference period, are to a work-finding agency with which the agency worker had a worker’s contract or arrangement by virtue of which the agency worker was (or could have been) supplied to work for and under the supervision and direction of the hirer during the reference period in question. 25
- (5) An agency worker may present a complaint to an employment tribunal that a work-finding agency has failed to comply with – 30
- (a) the duty imposed by paragraph 6(1);
- (b) the duty imposed by paragraph 6(2).

*Complaints to employment tribunals: time limits*

- 9 (1) An employment tribunal must not consider a complaint under paragraph 7(1) unless it is presented before the end of the period of six months beginning with the day after the last day of the offer period (as defined in paragraph 7(8)). 35
- (2) An employment tribunal must not consider a complaint under paragraph 7(2) unless it is presented before the end of the period of six months beginning with the day after the day when the offer referred to in that provision is made.
- (3) An employment tribunal must not consider a complaint under paragraph 7(3) or (4) unless it is presented before the end of the period of six months beginning with the day after the day when the guaranteed hours offer referred to in that provision is made. 40

- (4) An employment tribunal must not consider a complaint under paragraph 7(5) or 8(2) unless it is presented before the end of the period of six months beginning with the day after what would have been the last day of the offer period (as defined in paragraph 7(8)) if the duty in paragraph 1(1) had applied. 5
- (5) An employment tribunal must not consider a complaint under paragraph 7(7)(a) relating to a notice unless it is presented before the end of the period of six months beginning with the day after the day on or before which the notice should have been given (see paragraph 4(7) and (9)).
- (6) An employment tribunal must not consider a complaint under paragraph 7(7)(b) or (c) relating to a notice unless it is presented before the end of the period of six months beginning with the day after the day on which the notice is given. 10
- (7) An employment tribunal must not consider a complaint under paragraph 8(1) unless it is presented before the end of the period of six months beginning with the day after the last day of the offer period (as defined in paragraph 7(8)). 15
- (8) An employment tribunal must not consider a complaint under paragraph 8(5)(a) unless it is presented before the end of the period of six months beginning with the day after the last day of the initial information period (see paragraph 6(3) and (4)). 20
- (9) An employment tribunal must not consider a complaint under paragraph 8(5)(b) unless it is presented before the end of the period of six months beginning with the day on which the agency worker first becomes aware of the failure to which the complaint relates. 25
- (10) But, if the employment tribunal is satisfied that it was not reasonably practicable for a complaint under paragraph 7 or 8 to be presented before the end of the relevant period of six months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable. 30
- (11) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of sub-paragraphs (1) to (9).

### Remedies

- 10 (1) Where an employment tribunal finds a complaint under paragraph 7 or 8 well-founded, the tribunal – 35
- (a) must make a declaration to that effect, and
  - (b) may make an award of compensation to be paid by the respondent to the agency worker.
- (2) The amount of compensation under sub-paragraph (1)(b) is to be such amount, not exceeding the permitted maximum, as the tribunal considers just and equitable in all the circumstances to compensate the agency worker 40

for any financial loss sustained by the agency worker which is attributable to the matter complained of.

- (3) In ascertaining the financial loss sustained, the tribunal must apply the same rule concerning the duty of a person to mitigate their loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland. 5
- (4) For the purposes of sub-paragraph (2), “the permitted maximum” is –
- (a) where the complaint is under paragraph 7(1), (2), (3) or (7) or 8(5), such number of weeks’ pay as the Secretary of State may specify in regulations; 10
  - (b) where the complaint is under paragraph 7(4) or (5) or 8(1) or (2), such amount as the Secretary of State may specify in regulations.
- (5) For the purposes of determining the permitted maximum for an award of compensation to be paid by a hirer (where the complaint is under paragraph 7(1), (2), (3) or (7)) – 15
- (a) the amount of a week’s pay is (subject to paragraph (b)) the amount of average weekly remuneration received by the agency worker for working for and under the supervision and direction of the hirer in the reference period in question;
  - (b) the amount of a week’s pay is not to exceed the amount specified in section 227(1) (as amended from time to time). 20
- (6) For the purposes of determining the permitted maximum for an award of compensation to be paid by a work-finding agency (where the complaint is under paragraph 8(5)) –
- (a) the amount of a week’s pay is (subject to paragraph (b)) the amount of average weekly remuneration received by the agency worker, in the relevant period, for working for and under the supervision and direction of a hirer (or, if more than one, all of the hirers taken together) by virtue of the worker’s contract or arrangement between the work-finding agency and the agency worker; 25
  - (b) the amount of a week’s pay is not to exceed the amount specified in section 227(1) (as amended from time to time); 30
  - (c) “the relevant period” means –
- (i) where the worker’s contract or arrangement between the agency worker and the work-finding agency ceased to be in force on or before the date the complaint was presented to the employment tribunal, the period of 12 weeks (or, if it was not in force for 12 weeks, the shorter period for which it was in force) ending with the latest day before the last day on which it was in force on which the agency worker worked for and under the supervision and direction of the hirer, or (if more than one) one of the hirers, referred to in paragraph (a); 35
  - (ii) where the worker’s contract or arrangement between the agency worker and the work-finding agency did not so cease 40
- 45

to be in force, the period of 12 weeks (or, if it had not then been in force for 12 weeks, the shorter period for which it had been in force) ending with the latest day before the date on which the complaint was presented to the employment tribunal on which the agency worker worked for and under the supervision and direction of the hirer, or (if more than one) one of the hirers, referred to in paragraph (a);

- (d) Chapter 2 of Part 14 does not apply (and this paragraph applies instead), where the agency worker to whom compensation is to be paid is an employee of the work-finding agency.

*Power to change the effect of Part 1 of Schedule A1*

- 11 (1) The Secretary of State may by regulations make provision that, in relation to specified descriptions of agency workers, has the effect that—
- (a) a hirer is not required by this Part of this Schedule to make a guaranteed hours offer, and
  - (b) a work-finding agency, or another person involved in the supply or payment of an agency worker, is instead required to make a corresponding or similar offer (and is liable to have a complaint against them presented to an employment tribunal on grounds corresponding or similar to those in paragraph 7).
- (2) The provision referred to in sub-paragraph (1) may be made by amending this Act (or otherwise).
- (3) Regulations under sub-paragraph (1) may make consequential provision, including provision amending—
- (a) an Act of Parliament (including this Act);
  - (b) a Measure or Act of the National Assembly for Wales or an Act of Senedd Cymru;
  - (c) an Act of the Scottish Parliament.

**PART 2**

SHIFTS: RIGHTS TO REASONABLE NOTICE

*Application of Part 2 of Schedule A1*

- 12 (1) This Part of this Schedule applies in relation to a shift that would be (or would have been) worked, or is being worked, by an individual as an agency worker.
- (2) But nothing in this Part of this Schedule applies in relation to a shift that would be (or would have been) worked, or is being worked, by an individual as an agency worker if, in relation to the agency worker, the shift is an excluded shift.
- (3) For the purposes of this Part of this Schedule, “excluded shift”, in relation to an agency worker, means a shift of a specified description.



- (4) Regulations under sub-paragraph (3) may, in particular, specify a description of shift by reference to—
- (a) the amount payable for working the shift being more than a specified amount;
  - (b) the number of hours to be worked during the shift, whether alone or taken together with other shifts of a specified description, being more than a specified number; 5
  - (c) the shift corresponding to the time of a shift provided for by a worker’s contract between the agency worker and a work-finding agency or another person involved in the supply or payment of the agency worker (and where the regulations so specify a description of shift, the regulations may include provision similar or corresponding to section 27BJ(6)). 10
- (5) In the application of this Part of this Schedule in relation to an agency worker and a shift, references to— 15
- (a) “the work-finding agency” are to the work-finding agency with which the agency worker has a worker’s contract or an arrangement and by virtue of which the agency worker would work (or would have worked) or is working the shift;
  - (b) “the hirer” are to the person for and under the supervision and direction of whom the agency worker would work (or would have worked) or is working the shift. 20

*Right to reasonable notice of a shift*

- 13 (1) An agency worker is entitled to be given, by the work-finding agency or the hirer, reasonable notice of a shift that the agency worker is requested or required to work by virtue of the worker’s contract or arrangement that the agency worker has with the work-finding agency. 25
- (2) It is to be presumed, unless the contrary is shown, that notice of a shift is not reasonable notice if it is given less than a specified amount of time before the shift is due to start. 30
- (3) In this paragraph and paragraphs 14 and 15, “notice of a shift” means notice of how many hours are to be worked during the shift and when the shift is to start and end.

*Right to reasonable notice of cancellation of or change to a shift*

- 14 (1) Sub-paragraph (2) applies in relation to an agency worker where— 35
- (a) the agency worker has been given notice of a shift by the work-finding agency or the hirer, and
  - (b) where the shift is one that the agency worker has been requested (rather than required) to work, the agency worker has agreed to work it. 40
- (2) The agency worker is entitled to be given, by the work-finding agency or the hirer, reasonable notice of—

- 
- (a) the cancellation of the shift;
  - (b) any change requested or required by virtue of the worker’s contract or arrangement that the agency worker has with the work-finding agency consisting of—
    - (i) a change to when the shift is to start or end; 5
    - (ii) a reduction in the number of hours to be worked during the shift because of a break in the shift;
 (but this is subject to paragraph 17).
- (3) It is to be presumed, unless the contrary is shown, that—
- (a) notice of the cancellation of a shift is not reasonable notice for the purposes of sub-paragraph (2) if it is given less than a specified amount of time before the shift would have started (if the shift had not been cancelled); 10
  - (b) notice of a change to when a shift is to start is not reasonable notice for the purposes of sub-paragraph (2) if it is given less than a specified amount of time before the earlier of— 15
    - (i) when the shift would have started (if the shift had not been changed), and
    - (ii) when the shift is due to start (having been changed);
  - (c) notice of any other change to a shift is not reasonable notice for the purposes of sub-paragraph (2) if it is given— 20
    - (i) less than a specified amount of time before the shift is due to start;
    - (ii) on or after the start of the shift.
- Paragraphs 13 and 14: liability of work-finding agency and hirer* 25
- 15 (1) The work-finding agency is liable for a breach of paragraph 13 or 14, in relation to an agency worker and a shift, to the extent that it is responsible for the breach.
- (2) The hirer is liable for a breach of paragraph 13 or 14, in relation to an agency worker and a shift, to the extent that it is responsible for the breach. 30
- (3) For the purposes of this Part of this Schedule, the hirer is not responsible for a breach of paragraph 13 or 14 in relation to an agency worker and a shift (and accordingly is not liable for the breach) if—
- (a) the hirer gives notice to the work-finding agency of the shift or (as the case may be) of the cancellation of, or change to, the shift, and 35
  - (b) that notice is such as to enable the work-finding agency to give reasonable notice to the agency worker under paragraph 13 or 14.
- (4) The Secretary of State may by regulations provide, in relation to an agency worker and a shift, that the work-finding agency is solely responsible for a breach of paragraph 13 or 14 (and accordingly is solely liable for the breach) where the hirer is a person of a specified description. 40

*Paragraphs 13 to 15: supplementary*

- 16 (1) Where an agency worker suggests working a shift and the work-finding agency or the hirer agrees to the suggestion—
- (a) nothing in paragraph 13 applies in relation to the shift as suggested by the agency worker, but 5
  - (b) paragraph 14(2) applies (even though the conditions in paragraph 14(1) have not been met).
- (2) In paragraphs 13 and 14, references to a request made to an agency worker to work a shift include a request (a “multi-worker request”) made to the agency worker and one or more others in circumstances where not all of those to whom the request is made are needed to work the shift. 10
- (3) For the purposes of paragraph 14, where a multi-worker request has been made to an agency worker in relation to a shift, references to the cancellation of the shift include the agency worker not being needed to work the shift because one or more others have agreed to work it. 15
- (4) The Secretary of State may by regulations make provision about—
- (a) the form and manner in which notices under paragraphs 13 to 15 must be given;
  - (b) when notice under those paragraphs is to be treated as having been given. 20

*Interaction with Part 3 of Schedule A1*

- 17 (1) Where a work-finding agency—
- (a) is required to make a payment to an agency worker under paragraph 21(1) in relation to a shift that is cancelled, moved or curtailed at short notice, or 25
  - (b) would have been required to make such a payment in relation to the shift but for provision made under paragraph 23(1)(c),  
nothing in paragraph 14(2) is to be taken to have applied in relation to the cancellation, movement or curtailment of the shift that gave rise to, or would have given rise to, the requirement to make the payment. 30
- (2) Terms used in this paragraph have the same meaning as in paragraph 21.

*Complaints to employment tribunals*

- 18 (1) An agency worker may present a complaint to an employment tribunal that the work-finding agency or the hirer is liable for a breach of paragraph 13 or 14 in relation to the agency worker and a shift. 35
- (2) Where, in determining whether a complaint under this paragraph is well-founded, the tribunal must determine whether reasonable notice has been given, the tribunal must have regard, in particular, to such of the specified matters as are appropriate in the circumstances.

- (3) An employment tribunal must not consider a complaint under this paragraph unless it is presented before the end of the period of six months beginning with—
- (a) where the complaint is that the work-finding agency or the hirer is liable for a breach of paragraph 13 in relation to the agency worker and a shift, the day on which the shift was due to start; 5
  - (b) where the complaint is that the work-finding agency or the hirer is liable for a breach of paragraph 14(2) in relation to the agency worker and the cancellation of a shift, the day on which the shift would have started (if the shift had not been cancelled); 10
  - (c) where the complaint is that the work-finding agency or the hirer is liable for a breach of paragraph 14(2) in relation to the agency worker and a change to a shift, the day on which the shift as changed was due to start or, where the shift was changed on or after its start, the day on which the shift started. 15
- (4) But, if the employment tribunal is satisfied that it was not reasonably practicable for a complaint to be presented before the end of the relevant period of six months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.
- (5) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of sub-paragraph (3). 20

### Remedies

- 19 (1) Where an employment tribunal finds a complaint under paragraph 18 well-founded, the tribunal—
- (a) must make a declaration to that effect, and 25
  - (b) may make an award of compensation to be paid by the respondent to the agency worker.
- (2) The amount of compensation under sub-paragraph (1)(b) in relation to a complaint is to be such amount, not exceeding the specified amount, as the tribunal considers just and equitable in all the circumstances to compensate the agency worker for any financial loss sustained by the agency worker which is attributable to the matter complained of. 30
- (3) In ascertaining the financial loss sustained, the tribunal must apply the same rule concerning the duty of a person to mitigate their loss as applies to damages recoverable under the common law of England and Wales or (as the case may be) Scotland. 35
- (4) Where an employment tribunal makes an award of compensation under sub-paragraph (1)(b) to an agency worker in relation to a shift and both the work-finding agency and the hirer are respondents, the amount of compensation payable by each respondent is to be such amount (if any) as the tribunal considers just and equitable having regard to the extent of each respondent's responsibility for the breach to which the complaint relates. 40

### PART 3

#### RIGHT TO PAYMENT FOR CANCELLED, MOVED AND CURTAILED SHIFTS

##### *Application of Part 3 of Schedule A1*

- 20 (1) This Part of this Schedule applies in relation to a shift that would be (or would have been) worked, or is being worked, by an individual as an agency worker. 5
- (2) In the application of this Part of this Schedule in relation to an agency worker and a shift, references to –
- (a) “the work-finding agency” are to the work-finding agency with which the agency worker has a worker’s contract or an arrangement and by virtue of which the agency worker would work (or would have worked) or is working the shift; 10
  - (b) “the hirer” are to the person for and under the supervision and direction of whom the agency worker would work (or would have worked) or is working the shift. 15

##### *Right to payment for a cancelled, moved or curtailed shift*

- 21 (1) A work-finding agency must make a payment of a specified amount to an agency worker each time that, by virtue of the worker’s contract or arrangement that the agency worker has with the work-finding agency, there is a cancellation, movement or curtailment at short notice of a shift – 20
- (a) that the agency worker has been informed they are required to work for the hirer (by virtue of that worker’s contract or arrangement),
  - (b) that the agency worker has been requested to work for the hirer (by virtue of that worker’s contract or arrangement) and the agency worker has agreed to work, or 25
  - (c) that the agency worker has suggested working for the hirer and it has been agreed (by virtue of that worker’s contract or arrangement) that the agency worker is to work,
- (but see paragraph 23 for exceptions to this duty).
- (2) A payment that a work-finding agency is required to make under sub-paragraph (1) must be made by no later than the specified day. 30
- (3) For the purposes of this Part of this Schedule, “short notice” means –
- (a) in relation to the cancellation of a shift, notice given less than a specified amount of time before the shift would have started (if the shift had not been cancelled); 35
  - (b) in relation to the movement of a shift, or the movement and curtailment (at the same time) of a shift, notice given less than a specified amount of time before the earlier of –
    - (i) when the shift would have started (if the shift had not been moved, or moved and curtailed), and 40

- (ii) when the shift is due to start (having been moved, or moved and curtailed);
  - (c) in relation to the curtailment of a shift where there is a change to when the shift is to start (but there is no movement of the shift), notice given less than a specified amount of time before the earlier of –
    - (i) when the shift would have started (if there had not been the change), and
    - (ii) when the shift is due to start (the change having been made);
  - (d) in relation to the curtailment of a shift where there is no change to when the shift is to start, notice given –
    - (i) less than a specified amount of time before the shift is due to start;
    - (ii) on or after the start of the shift.
- (4) The Secretary of State may by regulations make provision about when notice of the cancellation, movement or curtailment of a shift is to be treated as having been given to an agency worker for the purposes of this Part of this Schedule. 15
- (5) In this Part of this Schedule, references to the “movement” of a shift (however expressed) are to any change to the day on which or the time at which the shift is to start that is a change of more than a specified amount of time. 20
- (6) In this Part of this Schedule, references to a request made to an agency worker to work a shift include a request (a “multi-worker request”) made to the agency worker and one or more others in circumstances where not all of those to whom the request is made are needed to work the shift. 25
- (7) For the purposes of this Part of this Schedule, where a multi-worker request has been made to an agency worker in relation to a shift, references to the cancellation of the shift include the agency worker not being needed to work the shift because one or more others have agreed to work it. 30

*Regulations under paragraph 21: supplementary*

- 22 (1) Regulations under paragraph 21(1) may not specify an amount to be paid to an agency worker in relation to the cancellation, movement or curtailment of a shift that exceeds –
  - (a) where the shift is cancelled, the amount of remuneration to which the agency worker would have been entitled had they worked the hours that will not be worked because of the cancellation; 35
  - (b) where the shift is moved, or moved and curtailed (at the same time), and no part of the shift as moved, or as moved and curtailed, corresponds to the time of the shift (“the original shift”) before it was moved, or moved and curtailed, the amount of remuneration to which the agency worker would have been entitled had they worked the original shift; 40

- (c) where the shift is moved, or moved and curtailed (at the same time), and part of the shift as moved, or as moved and curtailed, corresponds to the time of the original shift (but part does not), the amount of remuneration to which the agency worker would have been entitled had they worked the part of the original shift that does not correspond to the shift as moved, or as moved and curtailed; 5
- (d) where the shift is –
  - (i) curtailed but not moved, or
  - (ii) moved and curtailed (at the same time) and the shift as moved and curtailed is to start and end within the time of the original shift, 10  
the amount of remuneration to which the agency worker would have been entitled had they worked the hours that will not be worked because of the curtailment, or the movement and curtailment. 15
- (2) Regulations under paragraph 21(1) may, in particular, include provision specifying different amounts depending on the amount of notice that was given of the cancellation, movement or curtailment.
- (3) Regulations under paragraph 21(3) may not specify an amount of time that exceeds 7 days. 20

*Exceptions to duty to make payment for a cancelled, moved or curtailed shift*

- 23 (1) The requirement to make a payment under paragraph 21(1) does not apply –
- (a) in relation to the cancellation, movement or curtailment of a shift if, in relation to the agency worker, the shift is an excluded shift; 25
  - (b) in relation to the cancellation, movement or curtailment of a shift that an agency worker has been requested to work, unless the agency worker reasonably believed, whether on agreeing to work the shift or at some later time before the cancellation, movement or curtailment, that they would be needed to work the shift; 30
  - (c) in other specified circumstances (whether circumstances relating to the work-finding agency, the hirer or otherwise).
- (2) In sub-paragraph (1)(a), “excluded shift”, in relation to an agency worker, means a shift of a specified description. 35
  - (3) Regulations under sub-paragraph (2) may, in particular, specify a description of shift by reference to –
    - (a) the amount payable for working the shift being more than a specified amount;
    - (b) the number of hours to be worked during the shift, whether alone or taken together with other shifts of a specified description, being more than a specified number; 40

- (c) the shift corresponding to the time of a shift provided for by a worker’s contract between the agency worker and a work-finding agency or another person involved in the supply or payment of the agency worker (and where the regulations so specify a description of shift, the regulations may include provision similar or corresponding to section 27BP(4)). 5
- (4) Where, by virtue of regulations made under sub-paragraph (1)(c), a work-finding agency is not required to make a payment to an agency worker in relation to a shift under paragraph 21(1), the work-finding agency must give a notice to the agency worker that— 10
- (a) states which provision of the regulations has produced the effect that the work-finding agency is not required to make the payment, and
- (b) explains why the work-finding agency was entitled to rely on that provision so as not to make the payment to the agency worker under paragraph 21(1). 15
- (5) But sub-paragraph (4) does not require a work-finding agency to disclose—
- (a) any information the disclosure of which by the work-finding agency would contravene the data protection legislation (but in determining whether a disclosure would do so, the duty imposed by that sub-paragraph is to be taken into account); 20
- (b) any information that is commercially sensitive;
- (c) any information the disclosure of which by the work-finding agency would constitute a breach of a duty of confidentiality owed by the work-finding agency to any other person. 25
- (6) In sub-paragraph (5)(a) “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).
- (7) The Secretary of State may by regulations make provision about—
- (a) the form and manner in which a notice under this paragraph must be given; 30
- (b) the day on or before which it must be given;
- (c) when a notice under this paragraph is to be treated as having been given.
- (8) The duty in sub-paragraph (4) does not apply if, before the day on or before which the notice must be given, the work-finding agency or another person has paid to the agency worker an amount in relation to a number of hours that is at least equal to the amount of the payment that the work-finding agency would have been required to make to the agency worker under paragraph 21(1) in relation to the same number of hours but for regulations made under sub-paragraph (1)(c). 35 40
- (9) Sub-paragraph (4) of paragraph 24 applies for the purposes of sub-paragraph (8) of this paragraph as it applies for the purposes of sub-paragraphs (2) and (3) of that paragraph.



*Contractual remuneration*

- 24 (1) The right of an agency worker to receive a payment from a work-finding agency under paragraph 21(1) does not affect any right of the agency worker in relation to remuneration under a worker’s contract (whether with the work-finding agency or another person) (“contractual remuneration”). 5
- (2) Any contractual remuneration paid to an agency worker in relation to a number of hours goes towards discharging any liability of the work-finding agency to make a payment to the agency worker under paragraph 21(1) in relation to the same hours.
- (3) Any payment made by a work-finding agency to an agency worker under paragraph 21(1) in relation to a number of hours goes towards discharging any liability to pay contractual remuneration to the agency worker in relation to the same hours. 10
- (4) For the purposes of sub-paragraphs (2) and (3), the hours to which a payment under paragraph 21(1) relates are – 15
- (a) where a shift has been cancelled, the hours that would have been worked (by virtue of the worker’s contract or arrangement between the work-finding agency and the agency worker) if the shift had not been cancelled;
- (b) where a shift has been moved, or moved and curtailed (at the same time), and no part of the shift as moved, or as moved and curtailed, corresponds to the time of the shift (“the original shift”) before it was moved, or moved and curtailed, the hours that would have been worked (by virtue of the worker’s contract or arrangement between the work-finding agency and the agency worker) during the original shift; 20
- (c) where a shift has been moved, or moved and curtailed (at the same time), and part of the shift as moved, or as moved and curtailed, corresponds to the time of the original shift (but part does not), the hours that would have been worked (by virtue of the worker’s contract or arrangement between the work-finding agency and the agency worker) during the part of the original shift that does not correspond to the shift as moved, or as moved and curtailed; 30
- (d) where a shift has been – 35
- (i) curtailed but not moved, or
- (ii) moved and curtailed (at the same time) and the shift as moved and curtailed is to start and end within the time of the original shift,
- the hours that would have been worked (by virtue of the worker’s contract or arrangement between the work-finding agency and the agency worker) if the shift had not been curtailed, or moved and curtailed. 40

*Complaints to employment tribunal*

- 25 (1) An agency worker may present a complaint to an employment tribunal that, in relation to a shift, the work-finding agency –
- (a) has failed to make the whole or any part of a payment that the work-finding agency is liable to make to the agency worker under paragraph 21(1); 5
  - (b) has unreasonably failed to give to the agency worker a notice under paragraph 23(4);
  - (c) has given to the agency worker a notice in purported compliance with paragraph 23(4) that – 10
    - (i) does not refer to any provision of the regulations or refers to the wrong provision;
    - (ii) does not contain an explanation or contains an explanation that is inadequate or untrue.
- (2) An employment tribunal must not consider a complaint under sub-paragraph (1)(a) relating to a payment unless it is presented before the end of the period of six months beginning with the day after the day on or before which the payment should have been made (see paragraph 21(2)). 15
- (3) An employment tribunal must not consider a complaint under sub-paragraph (1)(b) relating to a notice unless it is presented before the end of the period of six months beginning with the day after the day on or before which the notice should have been given (see paragraph 23(7)(b)). 20
- (4) An employment tribunal must not consider a complaint under sub-paragraph (1)(c) relating to a notice unless it is presented before the end of the period of six months beginning with the day after the day on which the notice is given. 25
- (5) But, if the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this paragraph to be presented before the end of the relevant period of six months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable. 30
- (6) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of sub-paragraphs (2) to (4).
- (7) Where – 35
- (a) an agency worker presents a complaint to an employment tribunal under sub-paragraph (1)(c) that, in relation to a shift, the work-finding agency has given to the agency worker a notice in purported compliance with paragraph 23(4) that refers to the wrong provision of the regulations or contains an explanation that is inadequate or untrue, and 40
  - (b) the work-finding agency claims that it was provided by the hirer with information for the purposes of the notice that was wrong, inadequate or untrue,

the work-finding agency may request the employment tribunal to direct that the hirer be added as a party to the proceedings.

- (8) A request under sub-paragraph (7) must be granted if it is made before the hearing of the complaint begins, but may be refused if it is made after that time; and no such request may be made after the tribunal has made its decision as to whether the complaint is well-founded. 5
- (9) The Secretary of State may by regulations provide that sub-paragraph (7) does not apply in relation to a hirer of a specified description.

### Remedies

- 26 (1) Where an employment tribunal finds a complaint under paragraph 25(1)(a) well-founded, the tribunal must – 10
- (a) make a declaration to that effect, and
  - (b) order the work-finding agency to pay to the agency worker the amount of the payment under paragraph 21(1) which it finds is due to the agency worker. 15
- (2) Where an employment tribunal finds a complaint under paragraph 25(1)(b) or (c) well-founded, the tribunal –
- (a) must make a declaration to that effect, and
  - (b) may order the work-finding agency to make a payment to the agency worker of such amount, not exceeding the specified amount, as the tribunal considers just and equitable in all the circumstances. 20
- (3) But an employment tribunal may not make an order under sub-paragraph (2)(b) relating to a notice given in purported compliance with paragraph 23(4) if the tribunal makes an order under sub-paragraph (1)(b) relating to the same payment to which the notice related. 25
- (4) In determining –
- (a) whether to make an order under sub-paragraph (2)(b), and
  - (b) if so, how much to order the work-finding agency to pay,
- an employment tribunal must have regard, in particular, to the seriousness of the matter complained of. 30
- (5) If, following the making of a request under paragraph 25(7), an employment tribunal has added the hirer as a party to the proceedings and the tribunal –
- (a) finds the complaint under paragraph 25(1)(c) well-founded (so far as relating to the notice referring to the wrong provision of the regulations or containing an explanation that is inadequate or untrue), 35
  - (b) makes an award of compensation under sub-paragraph (2)(b), and
  - (c) also finds that the hirer did provide the work-finding agency with information for the purposes of the notice that was wrong, inadequate or untrue, 40
- it may order that the compensation is to be paid by the hirer instead of by the work-finding agency, or partly by the hirer and partly by the

work-finding agency (with the amount of the compensation payable by each being such amount as the tribunal considers just and equitable in the circumstances).

*Recovery of payment by work-finding agency from hirer: pre-existing arrangements*

- 27 (1) Where, in compliance with paragraph 21(1), a work-finding agency makes a payment to an agency worker in relation to a shift that the agency worker was to be, or was, supplied to work by virtue of a pre-existing arrangement involving the work-finding agency and the hirer, the work-finding agency is entitled to recover from the hirer the proportion of the payment (up to the full amount of it) that reflects the hirer’s responsibility for the shift having been cancelled, moved or curtailed at short notice. 5  
10
- (2) The Secretary of State may by regulations provide that sub-paragraph (1) does not apply in relation to a hirer of a specified description.
- (3) A “pre-existing arrangement” means an arrangement –
- (a) that was entered into on or before the last day of the period of two months beginning with the day on which the Employment Rights Act 2025 was passed, and 15
- (b) that has not been modified by the work-finding agency and the hirer after the last day of that period.
- (4) The reference in sub-paragraph (1) to a payment made in compliance with paragraph 21(1) includes a payment made by virtue of an order under paragraph 26(1)(b). 20
- (5) Sub-paragraph (1) applies whether the agency worker was to be, or was, supplied to work for and under the supervision and direction of the hirer by the work-finding agency or by another person.” 25

SCHEDULE 2

Section 6

CONSEQUENTIAL AMENDMENTS RELATING TO SECTIONS 1 TO 5

*Employment Tribunals Act 1996*

- 1 In the Employment Tribunals Act 1996, in section 18 (conciliation: relevant proceedings), in subsection (1)(b) – 30
- (a) after “23,” insert “27BG, 27BN, 27BT, 27BY(5),”;
- (b) after “177 of” insert “, or paragraph 7, 8, 18 or 25 of Schedule A1 to,”.

*Employment Rights Act 1996*

- 2 The Employment Rights Act 1996 is amended as follows. 35
- 3 In section 27 (meaning of “wages” for purposes of Part 2 of the Act), in subsection (1) –

- (a) after the paragraph (ce) inserted by the Neonatal Care (Leave and Pay) Act 2023 insert—
    - “(cf) a payment under section 27BP(1) of this Act (payment for a cancelled, moved or curtailed shift),”;
  - (b) after paragraph (cf) (inserted by paragraph (a)) insert— 5
    - “(cg) a payment under paragraph 21(1) of Schedule A1 to this Act (agency workers: payment for a cancelled, moved or curtailed shift),”;
  - (c) renumber the paragraph (ce) inserted by the Employment (Allocation of Tips) Act 2023 as paragraph (ch). 10
- 4 In section 27A (exclusivity terms unenforceable in zero hours contracts), omit subsections (1) and (2).
- 5 In section 27B (power to make further provision in relation to zero hours workers)—
- (a) omit subsection (4); 15
  - (b) in subsection (6)(a) and (b) (inserted by section 8), for “prescribed” substitute “specified”;
  - (c) omit subsections (7) and (8).
- 6 After section 47G insert—
- “47H Zero hours workers and similar 20**
- (1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the worker’s employer done on the ground that the worker—
    - (a) accepted, or proposed to accept, an offer from the employer to vary the worker’s terms and conditions of employment or to enter into a new worker’s contract made in compliance (or purported compliance) with the duty imposed by section 27BA(1), 25
    - (b) rejected, or proposed to reject, an offer from the employer to vary the worker’s terms and conditions of employment or to enter into a new worker’s contract made in compliance (or purported compliance) with the duty imposed by section 27BA(1), 30
    - (c) declined to work a shift (or part of a shift) on the basis of a reasonable belief that the employer failed to comply with a duty imposed by section 27BJ or 27BK in relation to the shift, 35
    - (d) brought proceedings against the employer under—
      - (i) section 27BG,
      - (ii) section 27BN,
      - (iii) section 27BT, or 40
      - (iv) section 27BY(5), or

- (e) alleged the existence of any circumstance which would constitute a ground for bringing any proceedings within paragraph (d).
- (2) The reference in subsection (1)(b) to a worker who rejected an offer includes a reference to a worker who is to be treated as having rejected an offer (see section 27BE(7)). 5
- (3) It is immaterial for the purposes of subsection (1)(d) or (e) whether or not the employer has (as the case may be) –
- (a) failed to comply with the duty imposed by section 27BA(1), 27BD(7) or (8) or 27BF(1) or (2), a duty imposed by section 27BJ or 27BK or the duty imposed by section 27BP(1) or 27BR(2), or 10
- (b) behaved as described in section 27BG(4) or (5), but, for subsection (1)(d) or (e) to apply, the claim must be made in good faith. 15
- (4) It is sufficient for subsection (1)(e) to apply that the worker made the nature of the employer’s alleged non-compliance, or (as the case may be) alleged behaviour, reasonably clear to the employer.
- (5) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the worker’s employer done on the ground that – 20
- (a) the duty imposed by section 27BA(1) applies to the employer in relation to the worker and a particular reference period, or
- (b) the employer believes that that duty so applies. 25
- (6) This section does not apply where –
- (a) the worker is an employee, and
- (b) the detriment in question amounts to dismissal within the meaning of Part 10.
- (7) References to “worker” and “employer” in this section, section 48(1BA) and section 49 so far as relating to a complaint under section 48(1BA) are to be read with the modifications set out in – 30
- (a) section 27BJ(7), in connection with a complaint of detriment in contravention of this section relating to a duty imposed by section 27BJ or 27BK; 35
- (b) section 27BP(8), in connection with a complaint of detriment in contravention of this section relating to a duty imposed by section 27BP(1) or 27BR(2).
- (8) In this section “reference period” has the same meaning as in Chapter 2 of Part 2A (see section 27BA(4)).” 40

7 After section 47H (inserted by paragraph 6) insert—

**“47I Agency workers and Schedule A1 rights**

- (1) An agency worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by a relevant person done on the ground that the agency worker— 5
- (a) accepted, or proposed to accept, an offer to enter into a worker’s contract made in compliance (or purported compliance) with the duty imposed by paragraph 1(1) of Schedule A1,
  - (b) rejected, or proposed to reject, an offer to enter into a worker’s contract made in compliance (or purported compliance) with the duty imposed by paragraph 1(1) of Schedule A1, 10
  - (c) declined to work a shift (or part of a shift) on the basis of a reasonable belief that there had been a failure to comply with a duty imposed by paragraph 13 or 14 of Schedule A1 in relation to the shift, 15
  - (d) brought proceedings under—
    - (i) paragraph 7 or 8 of Schedule A1,
    - (ii) paragraph 18 of Schedule A1, 20
    - (iii) paragraph 25 of Schedule A1, or
    - (iv) section 27BY(5), or
  - (e) alleged the existence of any circumstance which would constitute a ground for bringing any proceedings within paragraph (d). 25
- (2) The reference in subsection (1)(b) to an agency worker who rejected an offer includes a reference to an agency worker who is to be treated as having rejected an offer (see paragraph 5(4) of Schedule A1).
- (3) It is immaterial for the purposes of subsection (1)(d) or (e) whether or not there has been (as the case may be)— 30
- (a) a failure to comply with the duty imposed by paragraph 1(1), 4(7) or (8) or 6(1) or (2) of Schedule A1, a duty imposed by paragraph 13 or 14 of Schedule A1 or the duty imposed by paragraph 21(1) or 23(4) of Schedule A1, or 35
  - (b) behaviour of the type described in paragraph 7(4) or (5) or 8(1) or (2) of Schedule A1,
- but, for subsection (1)(d) or (e) to apply, the claim must be made in good faith.
- (4) It is sufficient for subsection (1)(e) to apply that the agency worker made the nature of the alleged non-compliance, or (as the case may be) the alleged behaviour, reasonably clear to either the relevant person or (if different) the person against whom proceedings could be brought. 40

- 
- (5) An agency worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by a relevant person done on the ground that—
- (a) the duty imposed by paragraph 1(1) of Schedule A1 applies in relation to the agency worker and a particular reference period, or 5
  - (b) the relevant person believes that that duty so applies.
- (6) This section does not apply where—
- (a) the worker is an employee of the relevant person, and
  - (b) the detriment in question amounts to dismissal within the meaning of Part 10. 10
- (7) For the purposes of this section, a person is a “relevant person”, in relation to an agency worker, if the person is (or has been)—
- (a) a work-finding agency with which the agency worker has a worker’s contract or an arrangement by virtue of which the agency worker is (or is to be) supplied to work for and under the supervision and direction of another person; 15
  - (b) a person for and under the supervision and direction of whom the agency worker is (or is to be) supplied to work;
  - (c) a person who is (or is to be) involved in the supply of the agency worker to a person falling within paragraph (b) or the payment of the agency worker for work done for such a person. 20
- (8) In this section—
- “agency worker” has the same meaning as in Part 2A (see section 27BV); 25
  - “reference period” has the same meaning as in Part 1 of Schedule A1 (see paragraph 1(4));
  - “work-finding agency” has the same meaning as in Part 2A (see section 27BV).” 30
- 8 (1) Section 48 (enforcement) is amended as follows.
- (2) After subsection (1B) insert—
- “(1BA) A worker may present a complaint to an employment tribunal that the worker has been subjected to a detriment in contravention of section 47H.” 35
- (3) After subsection (1BA) (inserted by sub-paragraph (2)) insert—
- “(1BB) An agency worker (within the meaning of Part 2A) may present a complaint to an employment tribunal that the agency worker has been subjected to a detriment in contravention of section 47I.”
- (4) In subsection (2), for “or (1B)” substitute “, (1B) or (1BA)”. 40



- (5) After subsection (2A) insert –
- “(2B) On a complaint under subsection (1BB) it is for the relevant person (within the meaning of section 47I) to show the ground on which any act, or deliberate failure to act, was done.”
- (6) In subsection (4), in the words after paragraph (b), after “hirer” insert “, or a relevant person (within the meaning of section 47I),”.
- (7) In subsection (6), after “49” insert “, except so far as relating to an alleged detriment in contravention of section 47I,”.
- 9 (1) Section 49 (remedies) is amended as follows.
- (2) In subsection (1), for “or (1B)” substitute “, (1B) or (1BA)”.
- (3) After subsection (1A) insert –
- “(1B) Where an employment tribunal finds a complaint under section 48(1BB) well-founded, the tribunal –
- (a) must make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the relevant person (within the meaning of section 47I) to the complainant in respect of the act or failure to act to which the complaint relates.”
- (4) In subsection (2), for “and (6)” substitute “, (6), (7) and (7A)”.
- (5) In that subsection, after “(7A)” insert “and (7B)”.
- (6) After subsection (7) insert –
- “(7A) Where –
- (a) the complaint is made under section 48(1BA),
- (b) the detriment to which the worker is subjected is the termination of the worker’s contract, and
- (c) that contract is not a contract of employment,
- any compensation must not exceed the compensation that would be payable under Chapter 2 of Part 10 if the worker had been an employee and had been dismissed for a reason specified in section 104BA.”
- (7) After subsection (7A) (inserted by sub-paragraph (6)) insert –
- “(7B) Where –
- (a) the complaint is made under section 48(1BB),
- (b) the detriment to which the agency worker is subjected is the termination of a worker’s contract between the agency worker and the relevant person, and
- (c) that contract is not a contract of employment,
- any compensation must not exceed the compensation that would be payable under Chapter 2 of Part 10 if the agency worker had been an employee and had been dismissed for a reason specified

in section 104BB (and “agency worker” and “relevant person” have the same meaning in this subsection as in section 47I).”

10 After section 104B insert –

**“104BA Guaranteed hours**

- (1) An employee who is dismissed is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee –
  - (a) accepted, or proposed to accept, an offer from the employer to vary the employee’s terms and conditions of employment or to enter into a new contract of employment made in compliance (or purported compliance) with the duty imposed by section 27BA(1), or
  - (b) rejected, or proposed to reject, an offer from the employer to vary the employee’s terms and conditions of employment or to enter into a new contract of employment made in compliance (or purported compliance) with the duty imposed by section 27BA(1).
- (2) The reference in subsection (1)(b) to an employee who rejected an offer includes a reference to an employee who is to be treated as having rejected an offer (see section 27BE(7)).
- (3) An employee who is dismissed is also to be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee –
  - (a) brought proceedings against the employer under section 27BG(4) or (5), or
  - (b) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.
 (In relation to other proceedings under section 27BG, see section 104.)
- (4) It is immaterial for the purposes of subsection (3) whether or not the employer has behaved as described in section 27BG(4) or (5) but, for subsection (3) to apply, the claim must be made in good faith.
- (5) It is sufficient for subsection (3)(b) to apply that the employee made the nature of the employer’s alleged behaviour reasonably clear to the employer.
- (6) An employee who is dismissed is also to be regarded for the purposes of this Part as unfairly dismissed if –
  - (a) the duty imposed by section 27BA(1) applies to the employee’s employer in relation to the employee and a particular reference period, or the employer believes that that duty so applies, and

- (b) the reason (or, if more than one, the principal reason) for the dismissal is that the employer sought to avoid the necessity of complying with that duty in relation to the employee and that reference period.
- (7) In this section, “reference period” has the same meaning as in Chapter 2 of Part 2A (see section 27BA(4)).” 5
- 11 After section 104BA (inserted by paragraph 10) insert –
- “104BB Guaranteed hours: agency workers**
- (1) An employee who is dismissed by a relevant person (who is their employer) is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee – 10
- (a) accepted, or proposed to accept, an offer to enter into a worker’s contract made in compliance (or purported compliance) with the duty imposed by paragraph 1(1) of Schedule A1, or 15
- (b) rejected, or proposed to reject, an offer to enter into a worker’s contract made in compliance (or purported compliance) with the duty imposed by paragraph 1(1) of Schedule A1. 20
- (2) The reference in subsection (1)(b) to an employee who rejected an offer includes a reference to an employee who is to be treated as having rejected an offer (see paragraph 5(4) of Schedule A1).
- (3) An employee who is dismissed by a relevant person (who is their employer) is also to be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee – 25
- (a) brought proceedings against the employer under paragraph 8(1) or (2), or
- (b) alleged the existence of any circumstance which would constitute a ground for bringing such proceedings. 30
- (In relation to other proceedings under paragraph 8, see section 104.)
- (4) It is immaterial for the purposes of subsection (3) whether or not the employer has behaved as described in paragraph 8(1) or (2) but, for subsection (3) to apply, the claim must be made in good faith. 35
- (5) It is sufficient for subsection (3)(b) to apply that the employee made the nature of the employer’s alleged behaviour reasonably clear to the employer.
- (6) An employee who is dismissed by a relevant person (who is their employer) is also to be regarded for the purposes of this Part as unfairly dismissed if – 40

- (a) the duty imposed by paragraph 1(1) of Schedule A1 applies in relation to the employee and a particular reference period, or the employer believes that that duty so applies, and
- (b) the reason (or, if more than one, the principal reason) for the dismissal is that the employer sought to avoid the necessity of that duty having to be complied with in relation to the employee and the reference period. 5
- (7) In this section –
- “reference period” has the same meaning as in Part 1 of Schedule A1 (see paragraph 1(4)); 10
- “relevant person” means a person falling within subsection (7)(a) or (c) of section 47L.”
- 12 In section 105 (redundancy) –
- (a) after subsection (7B) insert –
- “(7BZA) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was – 15
- (a) the reason specified in subsection (1)(a) or (6) of section 104BA,
- (b) the reason specified in subsection (1)(b) of that section (read with subsection (2) of that section), or 20
- (c) the reason specified in subsection (3) of that section (read with subsections (4) and (5) of that section).”;
- (b) after subsection (7BZA) (inserted by paragraph (a)) insert –
- “(7BZB) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was – 25
- (a) the reason specified in subsection (1)(a) or (6) of section 104BB,
- (b) the reason specified in subsection (1)(b) of that section (read with subsection (2) of that section), or 30
- (c) the reason specified in subsection (3) of that section (read with subsections (4) and (5) of that section).”
- 13 In section 108 (qualifying period of employment), in subsection (3) –
- (a) after paragraph (gh) insert – 35
- “(gha) any of the following provisions of section 104BA applies –
- (i) subsection (1)(a) or (6),
- (ii) subsection (1)(b) (read with subsection (2) of that section), or 40
- (iii) subsection (3) (read with subsections (4) and (5) of that section).”;

- (b) after paragraph (gha) (inserted by paragraph (a)) insert—
- “(ghb) any of the following provisions of section 104BB applies—
- (i) subsection (1)(a) or (6),
  - (ii) subsection (1)(b) (read with subsection (2) of that section), or
  - (iii) subsection (3) (read with subsections (4) and (5) of that section).”
- 14 (1) Section 205 (remedy for infringement of certain rights) is amended as follows. 10
- (2) In subsection (1), after “section 8,” insert “Chapters 2 to 4 of Part 2A,”.
- (3) After subsection (1A) insert—
- “(1B) In relation to the rights conferred by—
- (a) Chapters 2 to 4 of Part 2A, and
  - (b) section 47H,
- the reference in subsection (1) to an employee has effect as a reference to a worker, read (where relevant) in accordance with section 27BJ(7) or 27BP(8) (as the case may be).” 15
- (4) After subsection (2) insert—
- “(3) The remedy of an agency worker (within the meaning of Part 2A) for infringement of any of the rights conferred by Parts 1 to 3 of Schedule A1 and section 47I is, where provision is made for a complaint to an employment tribunal, by way of such a complaint and not otherwise.” 20
- 15 In section 225 (calculation date for purposes of working out a week’s pay), before subsection (1) insert— 25
- “(A1) Where the calculation is for the purposes of section 27BI, the calculation date is—
- (a) where the complaint is under section 27BG(1), (2), (3) or (7), the latest day of the reference period to which the complaint relates on which the worker was employed by the employer under a worker’s contract; 30
  - (b) where the complaint is under section 27BG(8)—
    - (i) the date on which the complaint was presented to the employment tribunal, or 35
    - (ii) if the worker was not employed by the employer under a worker’s contract on that date, the latest day before that date on which the worker was so employed.
- (A2) Where the calculation is for the purposes of section 27BI as applied by section 27BY(6)(a) in relation to a complaint under section 27BY(5), the calculation date is the latest day of the reference period 40

- to which the complaint relates on which the worker was employed by the employer under a worker’s contract.”
- 16 In section 227 (maximum amount of week’s pay), in subsection (1), before paragraph (zza) insert –
- “(zzza) an award of compensation under section 27BI(1)(b),”.
- 17 In section 235 (definitions for purposes of the Act) –
- (a) in subsection (1), in paragraph (b) of the definition of “week”, after “86” insert “and paragraph 10 of Schedule A1”;
- (b) in subsection (2A) (definition of “limited-term contract”), after “contract of employment” insert “or other worker’s contract”;
- (c) in subsection (2B) (definition of “limiting event”), in the words before paragraph (a), after “contract of employment” insert “or other worker’s contract”.
- 18 In section 236 (orders and regulations), in subsection (3) (regulations subject to affirmative procedure) –
- (a) after “27B,” insert “27BA(3)(a)(ii) or (d), (6) or (11), 27BB(2), (5) or (9)(c), 27BD(6), 27BJ(1)(b), (2)(a) or (4), 27BK(3), 27BP(1), (2)(c), (3)(a), (6) or (9), 27BR(1)(c), 27BU(2), 27BZ,”;
- (b) after “209,” insert “or under paragraph 1(3)(b), (6) or (10), 2(2), (5) or (7)(c), 4(6), 11(1), 12(3), 13(2), 14(3), 15(4), 21(1), (3) or (5), 23(1)(c) or (2), 25(9), 26(2) or 27(2) of Schedule A1,”.

## SCHEDULE 3

## Section 23

## RIGHT NOT TO BE UNFAIRLY DISMISSED: REMOVAL OF QUALIFYING PERIOD, ETC

*Right not to be unfairly dismissed: removal of qualifying period of employment*

- 1 In Part 10 of the Employment Rights Act 1996 (unfair dismissal), omit section 108 (qualifying period of employment).

*Exclusion of right not to be unfairly dismissed where employee has not yet started work*

- 2 In Part 10 of the Employment Rights Act 1996, after section 108 insert –
- “108A Employees who have not yet started work**
- (1) Section 94 does not apply to the dismissal of an employee if on the effective date of termination the employee has not yet started work.
- (2) Subsection (1) does not apply if any of the following provisions applies –
- (a) subsection (1) of section 98B (read with subsection (2) of that section);
- (b) subsection (1) of section 99 (read with any regulations made under that section);

- 
- (c) subsection (1) of section 100 (read with subsections (2) and (3) of that section);
  - (d) subsection (1) of section 101 (read with subsection (2) of that section) or subsection (3) of that section;
  - (e) subsection (2) of section 101ZA (read with subsection (3) of that section) or subsection (4) of that section; 5
  - (f) any of sections 101A to 103A;
  - (g) subsection (1) of section 104 (read with subsections (2) and (3) of that section);
  - (h) subsection (1) of section 104A (read with subsection (2) of that section); 10
  - (i) subsection (1) of section 104B (read with subsection (2) of that section);
  - (j) subsection (1)(a) or (3) of section 104BA, subsection (1)(b) of that section (read with subsection (2) of that section) or subsection (3) of that section (read with subsections (4) and (5) of that section); 15
  - (k) subsection (1)(a) or (6) of section 104BB, subsection (1)(b) of that section (read with subsection (2) of that section) or subsection (3) of that section (read with subsections (4) and (5) of that section); 20
  - (l) section 104C;
  - (m) subsection (1) of section 104D (read with subsection (2) of that section);
  - (n) section 104E; 25
  - (o) subsection (1) of section 104F (read with subsection (2) of that section);
  - (p) section 104G;
  - (q) section 105;
  - (r) section 4(3)(b) of the Rehabilitation of Offenders Act 1974 (read with any order made under section 4(4) of that Act); 30
  - (s) paragraph (3) or (6) of regulation 28 of the Transnational Information and Consultation of Employees Regulations 1999 (S.I. 1999/3323) (read with paragraphs (4) and (7) of that regulation); 35
  - (t) paragraph (1) of regulation 7 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (S.I. 2000/1551);
  - (u) paragraph (1) of regulation 6 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (S.I. 2002/2034); 40
  - (v) paragraph (3) or (6) of regulation 30 of the Information and Consultation of Employees Regulations 2004 (S.I. 2004/3426) (read with paragraphs (4) and (7) of that regulation);

- (w) paragraph 5(3) or (5) of the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349) (read with paragraph 5(6) of that Schedule);
  - (x) paragraph (1)(a) or (b) of regulation 29 of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401); 5
  - (y) paragraph (1) of regulation 17 of the Agency Workers Regulations 2010 (S.I. 2010/93).
- (3) Subsection (1) does not apply if the reason (or, if more than one, the principal reason) for the dismissal is, or relates to, the employee's political opinions or affiliation. 10
  - (4) Subsection (1) does not apply if the reason (or, if more than one, the principal reason) for the dismissal is, or is connected with, the employee's membership of a reserve force (as defined in section 374 of the Armed Forces Act 2006).” 15

*Power to make provision about dismissal during initial period of employment*

- 3 (1) The Employment Rights Act 1996 is amended as follows.
  - (2) In Part 10, after section 98 insert—
- “98ZZA Dismissal during initial period of employment** 20
- (1) The Secretary of State may make regulations modifying the application of section 98(4) in relation to the dismissal of an employee that meets the conditions in subsections (2) and (3).
  - (2) The condition in this subsection is that—
    - (a) the effective date of termination falls on or before the last day of the initial period of employment (see subsection (4)), or 25
    - (b) the employer gives notice to the employee to terminate the contract of employment before the end of the initial period of employment and the effective date of termination falls on or before the last day of the period of three months beginning with the day after the last day of the initial period of employment. 30
  - (3) The condition in this subsection is that the reason (or, if more than one, the principal reason) shown for the dismissal by the employer is— 35
    - (a) a reason falling within paragraph (a), (b) or (d) of section 98(2), or
    - (b) some other substantial reason relating to the employee.



- (4) In this section “the initial period of employment”, in relation to an employee, means a period specified in, or determined in accordance with, regulations made by the Secretary of State.
- (5) The provision that may be made by regulations under this section includes, among other things – 5
- (a) provision specifying circumstances in which two or more periods of continuous employment are to be treated as a single period of continuous employment;
  - (b) provision for determining whether a reason does, or does not, relate to an employee; 10
  - (c) provision for the dismissal of an employee to be treated as fair if, or only if, the employer has taken any steps specified in the regulations.”
- (3) In section 236 (orders and regulations), in subsection (3) (regulations subject to affirmative resolution procedure), before “99” insert “98ZZA,”. 15
- 4 In section 15 of the Enterprise and Regulatory Reform Act 2013 (power by order to increase or decrease limit of compensatory award), after subsection (5) insert –
- “(5A) The power conferred by subsection (1) includes power to provide that, in the case of the dismissal of an employee that meets the conditions in section 98ZZA(2) and (3) of the Employment Rights Act 1996 (dismissal during initial period of employment), the limit imposed for the time being by subsection (1) of section 124 of that Act is a different amount from that otherwise imposed by that subsection. 20
- (5B) Subsections (3), (4)(a) and (5) do not apply for the purposes of specifying the amount of the limit in such a case.” 25

*Consequential amendments*

- 5 (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows. 30
- (2) After section 153 insert –
- “153A Unfair dismissal: disapplication of requirement to have started work**
- Section 108A(1) of the Employment Rights Act 1996 (employees who have not yet started work) does not apply to a dismissal which by virtue of section 152 or 153 is regarded as unfair for the purposes of Part 10 of that Act.” 35
- (3) Omit section 154 (disapplication of qualifying period for unfair dismissal relating to union membership or activities).
- (4) In section 239 (supplementary provisions relating to unfair dismissal in connection with industrial action), in subsection (1), for the words from 40

- “sections 108” to “limit)” substitute “section 108A(1) of that Act (employees who have not yet started work)”.
- (5) In Schedule A1 (collective bargaining: recognition) –
- (a) in paragraph 160 (right not to be subjected to detriment: compensation), in sub-paragraph (2)(b) – 5
- (i) for “124(1)” substitute “124”;
- (ii) at the end insert “(ignoring any different sum specified as the limit for a dismissal that meets the conditions in section 98ZZA(2) and (3) of that Act).”;
- (b) after paragraph 163 insert – 10
- “Disapplication of requirement to have started work
- 163A Section 108A(1) of the Employment Rights Act 1996 (employees who have not yet started work) does not apply to a dismissal which by virtue of paragraph 161 or 162 is regarded as unfair for the purposes of Part 10 of that Act.”; 15
- (c) omit paragraph 164.
- 6 (1) The Employment Rights Act 1996 is amended as follows.
- (2) In section 92 (right to written statement of reasons for dismissal) –
- (a) in subsection (3), for the words from “unless” to the end substitute “if the dismissal occurs during the initial period of employment (see subsection (3A)).”; 20
- (b) after that subsection insert –
- “(3A) A reference in this section to a dismissal that occurs during the initial period of employment is a reference to a dismissal that meets the condition in section 98ZZA(2).”; 25
- (c) in subsection (4), for “she has been continuously employed for any period” substitute “the dismissal occurred during the initial period of employment”;
- (d) in subsection (4A), for “he has been continuously employed for any period” substitute “the dismissal occurred during the initial period of employment”. 30
- (3) In section 94 (right not to be unfairly dismissed), in subsection (2), for “108” substitute “108A”.
- (4) In section 97 (effective date of termination) –
- (a) in subsection (2), omit “108(1),”; 35
- (b) in subsection (4), omit “108(1),”.
- (5) In section 98 (fairness: general), in subsection (6)(a), for “98A” substitute “98ZZA”.
- (6) In section 192 (armed forces), in subsection (2)(e) –
- (a) omit “, 108(5)”; 40
- (b) before “and 134” insert “, 108A(4)”.

- (7) In section 205A (employee shareholders), in subsection (10), for the words from “where” to the end substitute “where—
- (a) the dismissal is by reason of any requirement or recommendation that is referred to in section 64(2), or
  - (b) the reason (or, if more than one, the principal reason) for the dismissal is, or relates to, the employee’s political opinions or affiliations.” 5
- (8) In section 209 (powers to amend Act), in subsection (5), omit “108(1),”.
- (9) In section 213 (intervals in employment), in subsection (1), omit “108(1) or”. 10
- (10) In Schedule 1 (consequential amendments), omit paragraph 56(8).
- 7 In section 7 of the Public Interest Disclosure Act 1998, omit subsection (1).
- 8 (1) The National Minimum Wage Act 1998 is amended as follows.
- (2) In section 24 (enforcement of right not to be subjected to detriment), in subsection (4)(b)— 15
- (a) for “124(1)” substitute “124”;
  - (b) after “section 123 of that Act” insert “(ignoring any different sum specified as the limit for a dismissal that meets the conditions in section 98ZZA(2) and (3) of that Act)”.
- (3) In section 25, omit subsection (3). 20
- 9 (1) The Employment Relations Act 1999 is amended as follows.
- (2) In section 12 (detriment and dismissal), in subsection (4), for the words from “Sections” to “limit” substitute “Section 108A(1) of that Act (employees who have not yet started work)”.
- (3) In section 34 (indexation of amounts, etc)— 25
- (a) in subsection (1)(c), for “124(1)” substitute “124”;
  - (b) omit subsection (4);
  - (c) in subsection (4A), for “124(1)” substitute “124”;
  - (d) in subsection (4B)— 30
    - (i) for “124(1)” substitute “124”;
    - (ii) after “1996” insert “in relation to cases of any description”;
    - (iii) for the words from “such a sum” to “that date” substitute “, with effect from a day within 12 months before that date, a sum specified in that section in relation to cases of that description”. 35
- 10 In the Employment Relations Act 2004, omit the following provisions—
- (a) section 35;
  - (b) section 40(6);
  - (c) section 41(5);
  - (d) in Schedule 1, paragraph 32. 40

- 11 In section 39 of the Education and Skills Act 2008, omit subsection (4).
- 12 (1) In Part 1 of the Pensions Act 2008 (pension scheme membership for jobholders), Chapter 3 (safeguards: employment and pre-employment) is amended as follows.
- (2) In section 56 (enforcement of right not to be subjected to detriment), in subsection (4)(b) – 5
- (a) for “124(1)” substitute “124”;
- (b) at the end insert “(ignoring any different sum specified as the limit for a dismissal that meets the conditions in section 98ZZA(2) and (3) of that Act).” 10
- (3) In section 57, omit subsection (5).
- 13 In Schedule 1 to the Apprenticeships, Skills, Children and Learning Act 2009, omit paragraph 4.
- 14 In the Enterprise and Regulatory Reform Act 2013, omit section 13.
- 15 In section 31 of the Growth and Infrastructure Act 2013, omit subsection (5). 15
- 16 In the Defence Reform Act 2014, omit section 48.
- 17 In Schedule 5 to the Enterprise Act 2016, omit paragraph 10.
- 18 In Schedule 7 to the Coronavirus Act 2020, omit paragraph 16.
- 19 In Part 1 of this Act – 20
- (a) in Schedule 2, omit paragraph 13;
- (b) in section 26, omit subsection (4).

#### SCHEDULE 4

Section 35

#### PAY AND CONDITIONS OF SCHOOL SUPPORT STAFF IN ENGLAND

#### *The School Support Staff Negotiating Body* 25

- 1 In the Education Act 2002, after Part 8 insert –

#### **“PART 8A**

#### SCHOOL SUPPORT STAFF IN ENGLAND

#### *The School Support Staff Negotiating Body*

#### **148A The School Support Staff Negotiating Body** 30

- (1) There is to be an unincorporated body of persons known as the School Support Staff Negotiating Body (“the SSSNB”).
- (2) The SSSNB has the functions conferred on it by this Part.

- (3) Schedule 12A makes further provision about the SSSNB.

**148B Matters within the SSSNB’s remit**

- (1) For the purposes of this Part, the matters within the SSSNB’s remit are matters relating to the following—
- (a) the remuneration of school support staff; 5
  - (b) terms and conditions of employment of school support staff;
  - (c) the training of school support staff;
  - (d) career progression for school support staff.
- (2) The Secretary of State may by regulations provide that, for the purposes of subsection (1)— 10
- (a) a payment or entitlement of a prescribed kind is, or is not, to be treated as remuneration;
  - (b) a prescribed matter is, or is not, to be treated as relating to terms and conditions of employment of school support staff;
  - (c) a prescribed matter is, or is not, to be treated as relating to the training of school support staff; 15
  - (d) a prescribed matter is, or is not, to be treated as relating to career progression for school support staff.

**148C Meaning of “school support staff”**

- (1) This section has effect for the purposes of this Part. 20
- (2) “School support staff” means persons who meet the conditions in subsections (3) and (4).
- (3) The condition in this subsection is that the person—
- (a) is employed by a local authority in England, or the governing body of a school maintained by a local authority in England, under a contract of employment providing for the person to work wholly at one or more schools maintained by a local authority in England, or 25
  - (b) is employed by the proprietor of an Academy under a contract of employment which— 30
    - (i) provides for the person to work wholly at one or more Academies, or
    - (ii) provides for the person to carry out work of a prescribed description for the purposes of one or more Academies. 35
- (4) The condition in this subsection is that the person is not—
- (a) a school teacher, or
  - (b) a person of a prescribed description.
- (5) In this section “school teacher” means—

- (a) a person who is a school teacher for the purposes of section 122, or
- (b) a qualified teacher who is employed by the proprietor of an Academy to work as a teacher.

*Consideration of matters by the SSSNB*

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

- (1) The Secretary of State may refer a matter within the SSSNB’s remit to the SSSNB for consideration by it.
- (2) For provision about referrals of matters relating to—
  - (a) the remuneration of school support staff, or
  - (b) terms and conditions of employment of school support staff, see section 148E (and sections 148H to 148J).
- (3) For provision about referrals of matters relating to the training or career progression of school support staff, see section 148F.

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**148E Referral of matters relating to remuneration or conditions of employment**

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- (1) This section applies if the Secretary of State refers a matter to the SSSNB under section 148D that relates to—
  - (a) the remuneration of school support staff, or
  - (b) terms and conditions of employment of school support staff.
- (2) The Secretary of State may specify—
  - (a) factors to which the SSSNB must have regard in considering the matter;
  - (b) a date by which the SSSNB must comply with subsection (4).
- (3) The SSSNB must consider the matter, having regard to any factors specified under subsection (2)(a).
- (4) When it has considered the matter, the SSSNB must—
  - (a) if it has reached an agreement about the matter, submit the agreement to the Secretary of State;
  - (b) if it has been unable to reach an agreement about the matter, notify the Secretary of State of that fact.
- (5) If the Secretary of State specifies a date under subsection (2)(b), the SSSNB must comply with subsection (4) no later than that date.
- (6) The Secretary of State may, at any time before the SSSNB has complied with subsection (4) in relation to a matter—
  - (a) withdraw or vary the reference of the matter;

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- (b) if factors have been specified under paragraph (a) of subsection (2), withdraw or vary those factors, or specify further factors under that paragraph;
- (c) if a date has been specified under paragraph (b) of subsection (2), specify a later date under that paragraph.

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#### **148F Referral of matters relating to training or career progression**

- (1) This section applies if the Secretary of State refers a matter to the SSSNB under section 148D that relates to the training or career progression of school support staff.
- (2) The Secretary of State may specify –
  - (a) factors to which the SSSNB must have regard in considering the matter;
  - (b) a date by which the SSSNB must comply with subsection (4).
- (3) The SSSNB must consider the matter, having regard to any factors specified under subsection (2)(a).
- (4) When it has considered the matter, the SSSNB must submit a report about the matter (including any recommendations it makes about the matter) to the Secretary of State.
- (5) If the Secretary of State specifies a date under subsection (2)(b), the SSSNB must comply with subsection (4) no later than that date.
- (6) The Secretary of State may, at any time before the SSSNB has complied with subsection (4) in relation to a matter –
  - (a) withdraw or vary the reference of the matter;
  - (b) if factors have been specified under paragraph (a) of subsection (2), withdraw or vary those factors, or specify further factors under that paragraph;
  - (c) if a date has been specified under paragraph (b) of subsection (2), specify a later date under that paragraph.

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#### **148G Consideration of matters by the SSSNB without a referral**

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- (1) The SSSNB may, with the agreement of the Secretary of State, consider a matter within its remit, even if the matter has not been referred to it by the Secretary of State under section 148D.
- (2) If –
  - (a) the matter relates to the remuneration of school support staff, or terms and conditions of employment of school support staff, and
  - (b) the SSSNB reaches an agreement about the matter,it may submit the agreement to the Secretary of State.

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- (3) If the matter relates to training or career progression of school support staff, the SSSNB may submit a report about the matter (including any recommendations it makes about the matter) to the Secretary of State.

*Powers of Secretary of State on submission of SSSNB agreement* 5

**148H Agreement submitted by the SSSNB under section 148E or 148G**

- (1) This section applies if the SSSNB submits an agreement to the Secretary of State under section 148E(4)(a) or 148G(2).
- (2) The Secretary of State may –
- (a) make regulations ratifying the agreement (see section 148M), or
  - (b) if the Secretary of State thinks that it would be inappropriate to make regulations ratifying the agreement, refer the agreement back to the SSSNB for reconsideration (see section 148I). 15
- (3) Regulations under subsection (2)(a) may ratify the agreement –
- (a) in full, or
  - (b) to the extent prescribed in the regulations.

*Reconsideration by the SSSNB*

**148I Reconsideration of agreement by the SSSNB** 20

- (1) This section applies if, under section 148H(2)(b) or section 148J(2)(b), the Secretary of State refers an agreement back to the SSSNB for reconsideration.
- (2) The Secretary of State may specify –
- (a) factors to which the SSSNB must have regard in the reconsideration; 25
  - (b) a date by which the SSSNB must comply with subsection (4).
- (3) The SSSNB must reconsider the agreement, having regard to any factors specified under subsection (2)(a). 30
- (4) After completing its reconsideration, the SSSNB must –
- (a) if it has agreed revisions to the agreement, submit to the Secretary of State a new version of the agreement incorporating the revisions;
  - (b) if it has not agreed revisions to the agreement, submit the existing version of the agreement to the Secretary of State. 35



- (5) If the Secretary of State specifies a date under subsection (2)(b), the SSSNB must comply with subsection (4) no later than that date.
- (6) The Secretary of State may, at any time before the SSSNB has complied with subsection (4) in relation to an agreement referred back to it for reconsideration –
  - (a) withdraw the reference of the agreement; 5
  - (b) if factors have been specified under paragraph (a) of subsection (2), withdraw or vary those factors, or specify further factors under that paragraph;
  - (c) if a date has been specified under paragraph (b) of subsection (2), specify a later date under that paragraph. 10

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

- (1) This section applies if the SSSNB submits an agreement about a matter to the Secretary of State under section 148I. 15
- (2) The Secretary of State may –
  - (a) make regulations ratifying the agreement –
    - (i) in full, or
    - (ii) to the extent prescribed in the regulations;
  - (b) refer the agreement back to the SSSNB for reconsideration (see section 148I); 20
  - (c) make regulations requiring prescribed persons to have regard to the agreement in exercising prescribed functions;
  - (d) by regulations make provision, in relation to a matter to which the agreement relates, otherwise than in the terms of the agreement (see section 148N). 25

This is subject to subsections (3) and (4).
- (3) The Secretary of State may refer an agreement about a matter back to the SSSNB for reconsideration only if it appears to the Secretary of State that the condition in subsection (5) is met. 30
- (4) The Secretary of State may make regulations under subsection (2)(d) in relation to a matter only if it appears to the Secretary of State that –
  - (a) the condition in subsection (5) is met, and
  - (b) there is an urgent need to make provision in relation to the matter. 35
- (5) The condition is that one or more of the following applies –
  - (a) the agreement does not properly address the matter;
  - (b) it is not practicable to implement the agreement;
  - (c) the SSSNB failed in reconsidering the agreement to have regard to factors specified under section 148I(2)(a). 40

*Additional powers of Secretary of State***148K Powers of Secretary of State in absence of SSSNB agreement**

- (1) Subsection (2) applies if—
  - (a) the SSSNB notifies the Secretary of State under section 148E(4)(b) that it has been unable to reach an agreement on a matter referred to it, or 5
  - (b) the SSSNB fails to comply with section 148E(4) in relation to a matter by any date specified under section 148E(2)(b).
- (2) The Secretary of State may—
  - (a) if a date has been specified under paragraph (b) of section 148E(2) in relation to the matter, specify a later date under that paragraph, or 10
  - (b) if it appears to the Secretary of State that there is an urgent need to do so, by regulations make provision in relation to the matter (see section 148N). 15
- (3) Subsection (4) applies if the SSSNB fails to comply with section 148I(4) in relation to an agreement by any date specified under section 148I(2)(b).
- (4) The Secretary of State may—
  - (a) if a date has been specified under paragraph (b) of section 148I(2) in relation to the SSSNB’s reconsideration of the agreement, specify a later date under that paragraph, or 20
  - (b) if it appears to the Secretary of State that there is an urgent need to do so, by regulations make provision in relation to a matter to which the agreement relates (see section 148N). 25
- (5) Before making any regulations under subsection (2)(b) or (4)(b), the Secretary of State must consult the SSSNB.

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

- (1) This section applies if the SSSNB fails to comply with section 148F(4) in relation to a matter by any date specified under section 148F(2)(b). 30
- (2) The Secretary of State may—
  - (a) specify a later date under section 148F(2)(b), or
  - (b) if it appears to the Secretary of State appropriate to do so, issue guidance under section 148P in relation to the matter without waiting for the SSSNB to submit a report about it. 35

*Regulations*

**148M Effect of regulations ratifying agreement**

- (1) This section applies if the Secretary of State makes regulations ratifying (to any extent) an agreement submitted by the SSSNB.
- (2) If the agreement relates to a person's remuneration, the person's remuneration is to be determined and paid in accordance with the agreement. 5
- (3) A provision of the agreement that relates to any other term or condition of a person's employment has effect as a term of the person's contract of employment. 10
- (4) A term of the person's contract of employment has no effect to the extent that it makes provision that is prohibited by, or is otherwise inconsistent with, the agreement.
- (5) Where the person is employed by the proprietor of an Academy, any provision of the Academy arrangements relating to the Academy has no effect to the extent that it makes provision that is prohibited by, or is otherwise inconsistent with, the agreement. 15

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

- (1) This section applies if the Secretary of State makes regulations under section 148J(2)(d) or 148K(2)(b) or (4)(b). 20
- (2) The regulations must either –
  - (a) require prescribed persons, in exercising prescribed functions, to have regard to the regulations, or
  - (b) provide that the regulations are to have effect for determining the terms and conditions of employment of persons to whom the regulations apply. 25
- (3) If the regulations make provision within subsection (2)(b), subsections (4) to (7) apply.
- (4) If the regulations relate to a person's remuneration, the person's remuneration is to be determined and paid in accordance with the regulations. 30
- (5) A provision of the regulations that relates to any other term or condition of a person's employment has effect as a term of the person's contract of employment. 35
- (6) A term of the person's contract of employment has no effect to the extent that it makes provision that is prohibited by, or is otherwise inconsistent with, the regulations.

- (7) Where the person is employed by the proprietor of an Academy, any provision of the Academy arrangements relating to the Academy has no effect to the extent that it makes provision that is prohibited by, or is otherwise inconsistent with, the regulations.

**148O Regulations: supplementary** 5

- (1) Regulations under this Part may make provision that has retrospective effect.  
This is subject to subsection (2).
- (2) Regulations under this Part may not make provision the effect of which is to— 10
- (a) reduce remuneration in respect of a period wholly or partly before the day on which the regulations are made, or
  - (b) alter the terms and conditions of a person’s employment to the person’s detriment in respect of such a period.
- (3) Regulations under this Part may make provision by reference to— 15
- (a) an agreement submitted to the Secretary of State by the SSSNB, or
  - (b) any other document.
- (4) If regulations under this Part make provision by virtue of subsection (3), they must include provision about the publication of the agreement or other document. 20
- (5) A reference in section 148N(4) to (7) to regulations under section 148J(2)(d) or 148K(2)(b) or (4)(b), or to a provision of such regulations, includes a reference to a provision of a document referred to by such regulations. 25

*Guidance*

**148P Guidance**

- (1) The SSSNB may, with the approval of the Secretary of State, issue guidance relating to— 30
- (a) an agreement that has been ratified by regulations under this Part;
  - (b) an agreement to which regulations under section 148J(2)(c) require persons to have regard.
- (2) The Secretary of State may issue guidance relating to— 35
- (a) an agreement that has been ratified by regulations under this Part;
  - (b) an agreement to which regulations under section 148J(2)(c) require persons to have regard;

- (c) regulations made under section 148J(2)(d) or 148K(2)(b) or (4)(b);
  - (d) any matter relating to training or career progression of school support staff (but see subsection (3)).
- (3) The Secretary of State may issue guidance under subsection (2)(d) about a matter only if—
- (a) the SSSNB has submitted a report about the matter to the Secretary of State under section 148F(4) or 148G(3), and
  - (b) the Secretary of State has had regard to the report and any recommendations it makes.
- This is subject to section 148L (power to issue guidance where the SSSNB fails to submit a report by the specified date).
- (4) In exercising functions in respect of school support staff, each of the following is to have regard to guidance issued under this section—
- (a) a local authority in England;
  - (b) the governing body of a school maintained by a local authority in England;
  - (c) the proprietor of an Academy.

*Supplementary and general*

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

- (1) Nothing done by the SSSNB, or by members of the SSSNB acting in that capacity, is to be regarded as collective bargaining for the purposes of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (2) Accordingly, any reference to a collective agreement within the meaning of that Act does not include an agreement which the SSSNB reaches under this Part.

**148R Interpretation of this Part**

- (1) In this Part—
- “Academy” and “Academy arrangements” have the same meaning as in the Academies Act 2010 (but see subsection (2));
  - “contract of employment” has the meaning given by section 230(2) of the Employment Rights Act 1996;
  - “school maintained by a local authority” means any of the following—
    - (a) a community, foundation or voluntary school;
    - (b) a community or foundation special school;
    - (c) a maintained nursery school;

- (d) a pupil referral unit;  
“school support staff” has the meaning given by section 148C;  
“the SSSNB” means the School Support Staff Negotiating Body.
- (2) In this Part—
- (a) a reference to an Academy includes a reference to a city technology college and a city college for the technology of the arts, and 5
- (b) a reference to Academy arrangements includes a reference to an agreement under section 482 of the Education Act 1996.
- (3) Any reference in this Part to an agreement that has been ratified is, in a case where the agreement is ratified in part, a reference to so much of the agreement as has been ratified.” 10
- 2 In the Education Act 2002, after Schedule 12 insert—
- “SCHEDULE 12A Section 148A(3)
- THE SCHOOL SUPPORT STAFF NEGOTIATING BODY 15
- Constitution*
- 1 (1) The SSSNB is to be constituted in accordance with arrangements made by the Secretary of State.
- (2) Before making or revising arrangements under sub-paragraph (1), the Secretary of State must consult— 20
- (a) the prescribed school support staff organisations, and
- (b) the prescribed school support staff employer organisations.
- (3) References in this Schedule to the SSSNB’s constitutional arrangements are to arrangements made under sub-paragraph (1). 25
- (4) References in this Schedule to the prescribed organisations are to the organisations prescribed under sub-paragraph (2).
- (5) Before making any regulations prescribing an organisation under sub-paragraph (2)(a), the Secretary of State must consult the Trades Union Congress. 30
- Membership*
- 2 (1) The SSSNB’s constitutional arrangements must provide for the members of the SSSNB to include persons representing the interests of—
- (a) the prescribed organisations; 35
- (b) the Secretary of State.
- (2) The arrangements may also provide for the members of the SSSNB to include other persons who do not represent the interests of—

- (a) school support staff organisations, or
  - (b) school support staff employer organisations.
- 3 (1) The SSSNB’s constitutional arrangements must provide for the members of the SSSNB to include a person appointed to chair the SSSNB. 5
- (2) The arrangements must provide for that person to be a person who, in the opinion of the Secretary of State, does not represent the interests of –
- (a) a school support staff organisation,
  - (b) a school support staff employer organisation, 10
  - (c) the Secretary of State, or
  - (d) any other person or organisation represented on the SSSNB.

*Proceedings*

- 4 (1) The SSSNB’s constitutional arrangements may not provide for a member of the SSSNB to be entitled to vote in respect of its proceedings unless the member is a person representing the interests of any of the prescribed organisations. 15
- (2) Subject to sub-paragraph (1), the arrangements may make provision about the proceedings of the SSSNB (including provision allowing the SSSNB to determine its own proceedings). 20

*Administrative support*

- 5 The SSSNB’s constitutional arrangements may make provision about the provision of administrative support by the Secretary of State to the SSSNB. 25

*Annual reports*

- 6 (1) The SSSNB’s constitutional arrangements must provide for the SSSNB to prepare a report, in respect of each successive period of 12 months beginning with the day on which it is established, about the performance of its functions in that period. 30
- (2) The arrangements may –
- (a) require the SSSNB to send copies of the report to specified persons;
  - (b) require the SSSNB otherwise to publish the report in a specified manner. 35

In this sub-paragraph “specified” means specified in the arrangements.

*Fees and expenses*

- 7 The SSSNB’s constitutional arrangements may make provision about—
- (a) the payment of fees by the Secretary of State to the person appointed to chair the SSSNB; 5
  - (b) the payment by the Secretary of State of expenses incurred by the SSSNB.

*Interpretation*

- 8 In this Schedule—
- “school support staff organisation” means an organisation that, in the opinion of the Secretary of State, represents the interests of school support staff; 10
  - “school support staff employer organisation” means an organisation that, in the opinion of the Secretary of State, represents the interests of employers of school support staff.” 15

*Consequential amendments*

- 3 In the House of Commons Disqualification Act 1975, in Part 3 of Schedule 1 (other disqualifying offices), at the appropriate place insert—
- “Person appointed to chair the School Support Staff Negotiating Body.” 20
- 4 In Schedule 2 to the Education Act 2002 (effect on staffing of suspension of delegated budget)—
- (a) after paragraph 10 insert—
    - “10A Paragraph 8 has effect subject to— 25
    - (a) any provision made by regulations under section 148H(2)(a) or 148J(2)(a);
    - (b) any provision made by regulations under section 148J(2)(d) or 148K(2)(b) or (4)(b), where the regulations provide that they are to have effect for determining the terms and conditions of employment of persons to whom they apply.”; 30
  - (b) omit paragraph 11.

*Pre-commencement consultation*

- 5 If, before the coming into force of paragraph 2 (which inserts Schedule 12A to the Education Act 2002), any consultation takes place which would have satisfied the requirement for consultation under paragraph 1(5) of that Schedule to any extent if it had been in force, that requirement is to be taken as having been satisfied to that extent. 35



SCHEDULE 5

Section 53

SEAFARERS’ WAGES AND WORKING CONDITIONS

*Amendment of Seafarers’ Wages Act 2023*

- 1 The Seafarers’ Wages Act 2023 (“the Act”) is amended in accordance with paragraphs 2 to 23. 5

*Part 1 of the Act: relevant services*

- 2 For the italic heading before section 1 substitute –

**“PART 1**

RELEVANT SERVICES”.

- 3 In section 1 (services to which this Act applies) – 10

- (a) for the heading substitute “Relevant services”;
- (b) in subsection (1), for “This Act applies to” substitute “In this Act, “relevant service” means”;
- (c) in subsection (2), for “this Act does not apply to” substitute ““relevant service” does not include”;
- (d) for subsection (4) substitute –

“(4) In this Act, “ship” –

- (a) includes –
  - (i) any kind of vessel used in navigation, and
  - (ii) hovercraft;
- (b) includes a ship which is registered in a State other than the United Kingdom.” 20

*Chapter 1 of Part 2 of the Act: non-qualifying seafarers*

- 4 After section 1 insert –

**“PART 2 25**

REMUNERATION OF SEAFARERS

**CHAPTER 1**

NON-QUALIFYING SEAFARERS”.

- 5 In section 2 (non-qualifying seafarers), in paragraph (a), for “service to which this Act applies” substitute “relevant service”. 30

*Chapter 2 of Part 2 of the Act: national minimum wage equivalence declarations*

6 For the italic heading before section 3 substitute—

**“CHAPTER 2****NATIONAL MINIMUM WAGE EQUIVALENCE DECLARATIONS”.**

- 7 In section 3 (request for declaration)— 5
- (a) in the heading, after “for” insert “equivalence”;
- (b) in subsection (1)—
- (i) for “Act applies” substitute “Chapter applies (see subsection (4A))”;
- (ii) at the end insert “(see section 19 for the meaning of “relevant year”);” 10
- (c) after subsection (4) insert—
- “(4A) This Chapter applies to a relevant service, subject to provision made by remuneration regulations in reliance on section 4A(6).”;
- (d) omit subsections (5) and (6). 15
- 8 In section 4 (nature of declaration)—
- (a) in the heading, after “of” insert “equivalence”;
- (b) after subsection (5) insert—
- “(5A) For the meaning of “UK work”, see section 19. 20
- (5B) For the meaning of “national minimum wage equivalent”, see section 4D(1).”;
- (c) omit subsections (6) to (10).

*Chapters 3 and 4 of Part 2 of the Act: remuneration regulations and declarations*

9 After section 4 insert— 25

**“CHAPTER 3****REMUNERATION REGULATIONS AND DECLARATIONS***Remuneration regulations***4A Remuneration regulations**

- (1) Regulations may specify requirements relating to the remuneration of non-qualifying seafarers in respect of their work carried out in relation to the provision of a relevant service (whether or not in the territorial waters of the United Kingdom). 30
- (2) In this Act, regulations under subsection (1) are referred to as “remuneration regulations”. 35

- (3) Remuneration regulations may relate to remuneration in respect of only some of the work carried out in relation to the provision of a relevant service, and may frame such provision by reference to the waters in which the work is carried out or in any other way.
- (4) Remuneration regulations may apply to— 5
  - (a) all relevant services, or
  - (b) one or more relevant services of a specified description.
- (5) For the purposes of subsection (4)(b), a service may be described by reference to (among other things) the route operated by the service. 10
- (6) Remuneration regulations may provide that Chapter 2 does not apply to any extent to a relevant service to which the regulations apply.

*Remuneration declarations*

**4B Request for remuneration declaration** 15

- (1) Subsection (2) applies where a harbour authority has reasonable grounds to believe that ships providing a service to which remuneration regulations apply will enter, or have entered, its harbour on at least— 20
  - (a) 120 occasions, or
  - (b) if remuneration regulations specify a higher number in relation to services of a specified description and the service is of that description, that higher number of occasions, during a relevant year (see section 19 for the meaning of “relevant year”). 25
- (2) The harbour authority must, within such period as is determined by regulations under this subsection, request that the operator of the service provide the authority with a remuneration declaration in respect of the service for the relevant year.
- (3) The duty under subsection (2) is subject to any direction given by the Secretary of State under section 16(1)(a). 30
- (4) A harbour authority which fails to comply with subsection (2) is guilty of an offence and liable on summary conviction— 35
  - (a) in England and Wales, to a fine, or
  - (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.

**4C Nature of remuneration declaration**

- (1) A remuneration declaration in respect of a service for a relevant year is a declaration within any of subsections (2) to (5).

- (2) A declaration is within this subsection if it is provided before the beginning of the relevant year and it is to the effect that—
- (a) in the relevant year there will be no non-qualifying seafarers working on ships providing the service, or
  - (b) in the relevant year non-qualifying seafarers working on ships providing the service will be remunerated in respect of their work in relation to the service in accordance with the remuneration regulations that apply in relation to them. 5
- (3) A declaration is within this subsection if it is provided during the relevant year and it is to the effect that— 10
- (a) in what remains of the relevant year there will be no non-qualifying seafarers working on ships providing the service, or
  - (b) in what remains of the relevant year non-qualifying seafarers working on ships providing the service will be remunerated in respect of their work in relation to the service in accordance with the remuneration regulations that apply in relation to them. 15
- (4) A declaration is within this subsection if it is provided during the relevant year and it is to the effect that— 20
- (a) in so much of the relevant year as has already occurred—
    - (i) there have been no non-qualifying seafarers working on ships providing the service, or
    - (ii) non-qualifying seafarers working on ships providing the service have been remunerated in respect of their work in relation to the service in accordance with the remuneration regulations that apply in relation to them, and 25
  - (b) in what remains of the relevant year—
    - (i) there will be no non-qualifying seafarers working on ships providing the service, or 30
    - (ii) non-qualifying seafarers working on ships providing the service will be remunerated in respect of their work in relation to the service in accordance with the remuneration regulations that apply in relation to them. 35
- (5) A declaration is within this subsection if it is provided after the end of the relevant year and it is to the effect that—
- (a) in the relevant year there were no non-qualifying seafarers working on ships providing the service, or 40
  - (b) in the relevant year non-qualifying seafarers working on ships providing the service were remunerated in respect of their work in relation to the service in accordance with the remuneration regulations that apply in relation to them.

## CHAPTER 4

### CHAPTERS 2 AND 3: SUPPLEMENTARY REGULATIONS

#### 4D Regulations about national minimum wage equivalent etc

- (1) For the purposes of this Part, the national minimum wage equivalent is an hourly rate specified in regulations. 5
- (2) Regulations may make provision for determining for the purposes of this Part—
  - (a) the hourly rate at which a non-qualifying seafarer is remunerated in any period in respect of any work, and
  - (b) whether, or the extent to which, a non-qualifying seafarer’s work in relation to a relevant service is UK work. 10
- (3) Regulations under subsection (2)(a) may in particular make—
  - (a) any provision referred to in section 2(2) to (6) of the National Minimum Wage Act 1998;
  - (b) provision relating to currency conversion. 15
- (4) Subsection (5) applies for the purposes of—
  - (a) section 4, and
  - (b) remuneration regulations that are framed by reference to the national minimum wage equivalent.
- (5) The Secretary of State must in making regulations under this section seek to secure that a non-qualifying seafarer is remunerated at a rate equal to the national minimum wage equivalent only if their remuneration is in all the circumstances broadly equivalent to the remuneration they would receive if they qualified for the national minimum wage.” 20 25

#### *Part 3 of the Act: seafarers’ working conditions*

- 10 After section 4D (inserted by paragraph 9 of this Schedule) insert—

### “PART 3

#### SEAFARERS’ WORKING CONDITIONS

#### *Safe working regulations* 30

#### 4E Safe working regulations

- (1) In this Part, “seafarer” means a person who works on a ship providing a relevant service.
- (2) Regulations may specify conditions relating to the working pattern and rest requirements of seafarers who carry out work relating to the provision of a relevant service, including conditions about— 35

- (a) their maximum periods of work in a specified period;
  - (b) their minimum periods of rest in a specified period.
- (3) Regulations may make provision for the purpose of managing and mitigating risks arising from fatigue suffered by seafarers when carrying out their work relating to the provision of a relevant service. 5
- (4) Regulations under subsection (3) may, among other things—
- (a) require the operator of a relevant service to produce a plan to manage and mitigate risks arising from fatigue suffered by seafarers when carrying out their work relating to the provision of the service (a “fatigue management plan”); 10
  - (b) make provision about the contents of such a plan by reference to a specified document as amended from time to time.
- (5) Regulations may make provision for and in connection with the training of seafarers who carry out work relating to the provision of a relevant service, for the purpose of ensuring— 15
- (a) the safety of the ship on which they work,
  - (b) the safety of things on the ship, or
  - (c) the health or safety of persons on the ship.
- (6) In this Act, regulations under subsection (2), (3) or (5) are referred to as “safe working regulations”. 20
- (7) Safe working regulations may impose requirements on the operator of a relevant service.
- (8) Safe working regulations may apply to—
- (a) all relevant services, or 25
  - (b) one or more relevant services of a specified description.
- (9) For the purposes of subsection (8)(b), a service may be described by reference to (among other things) the route operated by the service.

*Safe working declarations* 30

#### **4F Request for safe working declaration**

- (1) Subsection (2) applies where a harbour authority has reasonable grounds to believe that ships providing a service to which safe working regulations apply will enter, or have entered, its harbour on at least— 35
- (a) 120 occasions, or
  - (b) if safe working regulations specify a higher number in relation to services of a specified description and the service is of that description, that higher number of occasions,

during a relevant year (see section 19 for the meaning of “relevant year”).

- (2) The harbour authority must, within such period as is determined by regulations under this subsection, request that the operator of the service provide the authority with a safe working declaration in respect of the service for the relevant year. 5
- (3) The duty under subsection (2) is subject to any direction given by the Secretary of State under section 16(1)(a).
- (4) A harbour authority which fails to comply with subsection (2) is guilty of an offence and liable on summary conviction – 10
  - (a) in England and Wales, to a fine, or
  - (b) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale.

#### **4G Nature of safe working declaration**

- (1) A safe working declaration in respect of a service for a relevant year is a declaration within any of subsections (2) to (5). 15
- (2) A declaration is within this subsection if it is provided before the beginning of the relevant year and it is to the effect that the safe working conditions will be met in relation to the service in the relevant year. 20
- (3) A declaration is within this subsection if it is provided during the relevant year and it is to the effect that the safe working conditions will be met in relation to the service in what remains of the relevant year.
- (4) A declaration is within this subsection if it is provided during the relevant year and it is to the effect that – 25
  - (a) the safe working conditions have been met in relation to the service in so much of the relevant year as has already occurred, and
  - (b) the safe working conditions will be met in relation to the service in what remains of the relevant year. 30
- (5) A declaration is within this subsection if it is provided after the end of the relevant year and it is to the effect that the safe working conditions were met in relation to the service in the relevant year.
- (6) For the purposes of this section the safe working conditions are met in relation to a service at a particular time if at that time – 35
  - (a) the service is operated in compliance with regulations under section 4E(2) or (3) that apply to the service,
  - (b) the service is operated in compliance with a fatigue management plan that is required for the service by regulations under section 4E(3) (see section 4E(4)), and 40

(c) the service is operated in compliance with regulations under section 4E(5) that apply to the service.

(7) References in subsection (6) to the operation of a service include references to its operation outside the territorial waters of the United Kingdom.”

5

*Part 4 of the Act: enforcement of Parts 2 and 3*

11 After section 4G (inserted by paragraph 10 of this Schedule) insert –

**“PART 4**

ENFORCEMENT OF PARTS 2 AND 3

*Offence of operating service inconsistently with declaration”.*

10

12 In section 5 (offence of operating service inconsistently with declaration) –

(a) in subsection (1) –

(i) for “service to which this Act applies” substitute “relevant service”;

(ii) in paragraph (a), for “an equivalence declaration” substitute “a declaration”;

15

(b) in subsections (2), (3) and (4), omit “equivalence”.

13 (1) Section 6 (imposition of surcharges: failure to provide declaration in time) is amended as follows.

(2) In subsection (1)(a) –

20

(a) for “service to which this Act applies” substitute “relevant service”;

(b) for “an equivalence declaration” substitute “a declaration”.

(3) In subsection (1)(b), for “an equivalence declaration” substitute “the requested declaration”.

(4) In subsection (2)(b)(ii), for “an equivalence declaration” substitute “the requested declaration”.

25

(5) In subsection (3)(b)(ii), for “an equivalence declaration” substitute “the requested declaration”.

(6) In subsection (5)(a), for “an equivalence declaration” substitute “the requested declaration”.

30

(7) In subsection (5)(b), for “section 4(4) or (5).” substitute “–

(i) section 4(4) or (5),

(ii) section 4C(4) or (5), or

(iii) section 4G(4) or (5),

(whichever applies).”

35

(8) In subsection (6) –

(a) for “an equivalence declaration” substitute “a declaration”;



- (b) in the definition of “prescribed period”, for “3(5)(a)” substitute “16A(1)(a)”;
  - (c) in the definition of “prescribed form and manner”, for “3(5)(b) and (c)” substitute “16A(1)(b) and (c)”.
- 14 In section 7 (imposition of surcharges: in-year declaration that is prospective only), in subsection (1)–
- (a) in paragraph (a)–
    - (i) for “service to which this Act applies” substitute “relevant service”;
    - (ii) for “an equivalence declaration” substitute “a declaration”;
  - (b) in paragraph (b), for “3(5)” substitute “16A(1)”;
  - (c) in paragraph (c), for the words from “within subsection (3)” to the end substitute “–
    - (i) within subsection (3) of section 4 (and not also within subsection (4) of that section),
    - (ii) within subsection (3) of section 4C (and not also within subsection (4) of that section), or
    - (iii) within subsection (3) of section 4G (and not also within subsection (4) of that section),(whichever applies).”
- 15 (1) Section 8 (imposition of surcharges: operating inconsistently with declaration) is amended as follows.
- (2) In subsection (1)(a)–
    - (a) for “service to which this Act applies” substitute “relevant service”;
    - (b) for “an equivalence declaration” substitute “a declaration”.
  - (3) In subsection (3), after “equivalence declaration” insert “, remuneration declaration or safe working declaration (as the case may be)”.
  - (4) In subsection (4)(a)–
    - (a) for “service to which this Act applies” substitute “relevant service”;
    - (b) for “an equivalence declaration” substitute “a declaration”.
  - (5) In subsection (6), after “equivalence declaration” insert “, remuneration declaration or safe working declaration (as the case may be)”.
- 16 In section 11 (refusal of harbour access for failure to pay surcharge), in subsection (1), for “service to which this Act applies” substitute “relevant service”.
- 17 (1) Section 12 (provision of information by operators) is amended as follows.
- (2) In subsection (1)–
    - (a) for “service to which this Act applies” substitute “relevant service”;
    - (b) in paragraphs (a) and (b), for “an equivalence declaration” substitute “a declaration”.
  - (3) In subsection (2)–

- (a) in paragraph (b), at the beginning insert “for the purposes of Part 2,”;
- (b) after paragraph (b) insert—
- “(c) for the purposes of Part 3—
- (i) information relating to the working pattern, working conditions or training of persons working on ships providing the service; 5
- (ii) a fatigue management plan produced by the operator of the service (see section 4E(4)(a)).”
- (4) In subsection (5), for “service to which this Act applies” substitute “relevant service”. 10
- 18 In section 13 (provision of information by harbour authorities), in subsection (2)(b), omit “equivalence”.
- 19 In section 14 (inspections), in subsection (2) —
- (a) in paragraph (a), for “service to which this Act applies” substitute “relevant service”; 15
- (b) in paragraphs (a) and (b), for “an equivalence declaration” substitute “a declaration”.

*Part 5 of the Act: general and final provisions*

- 20 After section 15 insert— 20

**“PART 5**

GENERAL AND FINAL PROVISIONS”.

- 21 After section 16 insert—
- “16A Regulations about declarations**
- (1) Regulations may make provision— 25
- (a) as to the period within which declarations are to be provided;
- (b) as to the wording of declarations and the form in which they are to be provided;
- (c) as to the manner in which declarations are to be provided.
- (2) Regulations under subsection (1)(b) may specify a single form combining different kinds of declarations (but a requirement to provide a declaration in such a form does not require an operator of a service to provide a declaration which a harbour authority has not requested the operator to provide).” 30
- 22 In section 17 (regulations) — 35
- (a) in the heading, at the end insert “: general”;

- (b) in subsection (2)(a), for sub-paragraph (i) (but not the “or” after it) substitute –
- “(i) relevant service;”.
- 23 (1) Section 19 (general interpretation) is amended as follows.
- (2) After the definition of “the data protection legislation” insert – 5
- ““declaration” (without more) means –
- (a) an equivalence declaration,
- (b) a remuneration declaration, or
- (c) a safe working declaration;”.
- (3) Omit the definition of “national minimum wage equivalent”. 10
- (4) In the definition of “operator”, for “service to which this Act applies” substitute “relevant service”.
- (5) After the definition of “operator” insert –
- ““relevant service” has the meaning given by section 1;”.
- (6) In the definition of “relevant year”, for “has the meaning given by section 3(6);” substitute “means – 15
- (a) the period of 12 months beginning with a date specified in regulations, and
- (b) each successive period of 12 months;”.
- (7) After the definition of “relevant year” insert – 20
- ““remuneration declaration” has the meaning given by section 4C(1);
- “remuneration regulations” has the meaning given by section 4A(2);
- “safe working declaration” has the meaning given by section 4G(1);
- “safe working regulations” has the meaning given by section 4E(6);”.
- (8) In the definition of “UK work”, for “has the meaning given by section 4(10)” substitute “means work which is carried out in the United Kingdom or its territorial waters”. 25

*Amendment of title of the Act*

- 24 (1) The Seafarers’ Wages Act 2023 may be cited as the Seafarers (Wages and Working Conditions) Act 2023. 30
- (2) For the words “Seafarers’ Wages Act 2023” wherever they occur in any enactment substitute “Seafarers (Wages and Working Conditions) Act 2023”.

SCHEDULE 6

Section 57

TRADE UNION RECOGNITION

**PART 1**

INTRODUCTION

- |   |   |   |
|---|---|---|
| 1 | Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with Parts 2 to 5 of this Schedule. | 5 |
| 2 | Part 6 of this Schedule contains consequential amendments to the Employment Relations Act 2004.   |   |

**PART 2**

RECOGNITION

10

*Meaning of “the application day”*

- |   |   |    |
|---|---|----|
| 3 | In paragraph 2 (interpretation of Part 1 of Schedule A1), after sub-paragraph (5) insert—   |    |
|   | “(6) In relation to an application under paragraph 11 or 12, a reference to the application day is to the day on which the CAC receives the application.” | 15 |

*Acceptance of applications*

- |   |   |    |
|---|---|----|
| 4 | (1) Paragraph 14 (acceptance of applications: multiple applications) is amended as follows.   |    |
|   | (2) After sub-paragraph (1) insert—   | 20 |
|   | “(1A) For the purposes of sub-paragraph (1)(b), any worker who joined any of the relevant bargaining units after the application day is to be disregarded.” |    |
|   | (3) In sub-paragraph (4), for “10 per cent test” substitute “required percentage test”.   | 25 |
|   | (4) In sub-paragraph (5)—   |    |
|   | (a) for “10 per cent test” substitute “required percentage test”;   |    |
|   | (b) for “at least 10 per cent” substitute “at least the required percentage (see paragraph 171B)”.  |    |
|   | (5) After sub-paragraph (5) insert—   | 30 |
|   | “(5A) For the purposes of sub-paragraph (5), any worker who joined the relevant bargaining unit after the application day is to be disregarded.”            |    |
|   | (6) In sub-paragraph (7)—   |    |

- (a) in paragraph (a), for “10 per cent test” substitute “required percentage test”;
  - (b) in paragraph (b), for “10 per cent test” substitute “required percentage test”.
- (7) In sub-paragraph (8), for “10 per cent test” substitute “required percentage test”. 5

*Withdrawal of application*

- 5 In paragraph 16 (withdrawal of application), in sub-paragraph (1)(a), after “19F(5)” insert “, 19K(4) or (5), 19P(4) or (5)”.

*Notice to cease consideration of application* 10

- 6 In paragraph 17 (notice to cease consideration of application), in sub-paragraph (3)(a), after “19F(5)” insert “, 19K(4) or (5), 19P(4) or (5)”.

*Communication with workers through independent person after application*

- 7 (1) Paragraph 19C (appointment of independent person to handle communications between union and workers) is amended as follows. 15
- (2) After sub-paragraph (2) insert –
- “(2A) An application under sub-paragraph (2) is valid only if it is made before the end of the period of 5 working days starting with the day after the day on which the CAC gives the union (or unions) notice under paragraph 15(5) that the application mentioned in sub-paragraph (1) is accepted.” 20
- (3) In sub-paragraph (5)(c), after “19F(5)” insert “, 19K(4) or (5), 19P(4) or (5)”.
- (4) In sub-paragraph (7), for “an application” substitute “a valid application”.

*Access agreements*

- 8 After paragraph 19F insert – 25
- “Access agreements
- 19G(1) This paragraph applies if –
- (a) the CAC accepts an application under paragraph 11(2) or 12(2) or (4), and
  - (b) the application is in progress. 30
- (2) The union (or unions) may, by giving notice to the CAC and the employer within the access request period, request access to the relevant workers in connection with the application.
- (3) In the case of an application under paragraph 11(2) or 12(2), the relevant workers are – 35

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- (a) in relation to any time before an appropriate bargaining unit is agreed by the parties or decided by the CAC, those falling within the proposed bargaining unit, and
    - (b) in relation to any time after an appropriate bargaining unit is so agreed or decided, those falling within the bargaining unit agreed or decided upon. 5
  - (4) In the case of an application under paragraph 12(4), the relevant workers are those falling within the bargaining unit agreed by the parties.
  - (5) The access request period is the period of 5 working days starting with the day after the day on which the CAC gives the union (or unions) notice under paragraph 15(5) that the application is accepted. 10
  - (6) For the purposes of this paragraph and paragraphs 19H to 19K, an application under paragraph 11 or 12 is in progress if none of the following has occurred – 15
    - (a) the withdrawal of the application;
    - (b) the CAC giving notice to the union (or unions) of a decision under paragraph 20 that the application is invalid;
    - (c) the CAC giving notice to the union (or unions) of a declaration issued under paragraph 19F(5), 19K(4) or (5), 19P(4) or (5), 22(2) or 27(2) in relation to the application; 20
    - (d) the holding of any ballot arising from the application.
  - 19H(1) This paragraph applies if –
    - (a) the CAC accepts an application under paragraph 11(2) or 12(2) or (4), 25
    - (b) the union requests (or unions request) access to the relevant workers under paragraph 19G(2) in connection with the application, and
    - (c) the application is in progress. 30
  - (2) The CAC must try to help the parties to reach agreement within the negotiation period as to terms on which the union is (or unions are) to have access to the relevant workers.
  - (3) The negotiation period is, subject to any notice under sub-paragraph (4) or (6), the period of 15 working days starting with the day after the day on which the union gives (or unions give) notice to the employer under paragraph 19G(2). 35
  - (4) If, during the negotiation period, the CAC concludes that there is no reasonable prospect of the parties' agreeing terms on which the union is (or unions are) to have access to the relevant workers before the time when (apart from this sub-paragraph) the negotiation period would end, the CAC may, by a notice given to the parties, declare that the negotiation period ends with the date of the notice. 40

- (5) A notice under sub-paragraph (4) must contain reasons for reaching the conclusion mentioned in that sub-paragraph.
- (6) If, during the negotiation period, the parties apply to the CAC for a declaration that the negotiation period is to end with a date (specified in the application) which is earlier or later than the date with which it would otherwise end, the CAC may, by a notice given to the parties, declare that the negotiation period ends with the specified date. 5
- 19I (1) This paragraph applies if –
- (a) the CAC accepts an application under paragraph 11(2) or 12(2) or (4), 10
  - (b) the union requests (or unions request) access to the relevant workers under paragraph 19G(2) in connection with the application,
  - (c) the parties have not within the negotiation period agreed terms on which the union is (or unions are) to have access to the relevant workers, and 15
  - (d) the application is in progress.
- (2) Within the adjudication period, the CAC must –
- (a) decide the terms on which the union is (or unions are) to have access to the relevant workers, or 20
  - (b) decide that the union is (or unions are) not to have access to the relevant workers.
- (3) The adjudication period is –
- (a) the period of 10 working days starting with the day after the day with which the negotiation period ends, or 25
  - (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.
- (4) Any terms decided by the CAC must be terms that the CAC regards as allowing such access to the relevant workers as is reasonable to enable the union (or unions) to –
- (a) inform the workers of the object of the application or any ballot arising from it, and 30
  - (b) seek their support and their opinions on the issues involved. 35
- 19J (1) This paragraph applies if –
- (a) an access agreement is entered into, and
  - (b) the application under paragraph 11 or 12 is in progress.
- (2) “Access agreement” means – 40
- (a) terms on which the union is (or unions are) to have access to the relevant workers and which are agreed between

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- the parties under paragraph 19H during the negotiation period, or
- (b) terms on which the union is (or unions are) to have access to the relevant workers and which are decided by the CAC under paragraph 19I, 5
- and such an agreement is “entered into” when the terms are so agreed or decided.
- (3) The parties must comply with the access agreement.
- (4) The employer must refrain from making any offer to any or all of the relevant workers which – 10
- (a) has or is likely to have the effect of inducing any or all of them not to attend any relevant meeting between the union (or unions) and the relevant workers, and
- (b) is not reasonable in the circumstances.
- (5) The employer must refrain from taking, or threatening to take, any action against a worker solely or mainly on the grounds that the worker – 15
- (a) attended or took part in any relevant meeting between the union (or unions) and the relevant workers, or
- (b) indicated an intention to attend or take part in such a meeting. 20
- (6) In the case of an application under paragraph 11(2) or 12(2), the relevant workers are –
- (a) in relation to any time before an appropriate bargaining unit is agreed by the parties or decided by the CAC, those falling within the proposed bargaining unit, and 25
- (b) in relation to any time after an appropriate bargaining unit is so agreed or decided, those falling within the bargaining unit agreed or decided upon.
- (7) In the case of an application under paragraph 12(4), the relevant workers are those falling within the bargaining unit agreed by the parties. 30
- (8) A meeting is a relevant meeting in relation to a worker for the purposes of sub-paragraphs (4) and (5) if –
- (a) it is organised in accordance with an access agreement or as a result of a step ordered to be taken under paragraph 19K to remedy a failure to comply with the duty in sub-paragraph (3), and 35
- (b) it is one which the employer is, by such an agreement or order as is mentioned in paragraph (a), required to permit the worker to attend. 40
- (9) The duties imposed by sub-paragraphs (4) and (5) do not confer any rights on a worker; but that does not affect any other right which a worker may have.



- (10) Any provision of an access agreement that would require personal data relating to any of the relevant workers to be disclosed to any person who is not an appointed person is of no effect for the purposes of this Part of this Schedule.
- (11) In sub-paragraph (10) – 5
- (a) “appointed person” means –
    - (i) a person appointed to handle communications under paragraph 19C, or
    - (ii) a person appointed to conduct a ballot under paragraph 25; 10
  - (b) “personal data” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).
- (12) An access agreement is to be conclusively presumed not to have been intended by the parties to be a legally enforceable contract; and, accordingly, where an access agreement is, or is part of, a collective agreement, section 179(2) and (3)(a) do not apply to the access agreement. 15
- 19K (1) Sub-paragraph (2) applies if –
- (a) the CAC is satisfied that a party has failed to fulfil any of the duties imposed on that party by paragraph 19J, and 20
  - (b) the application under paragraph 11 or 12 is in progress.
- (2) The CAC may order the party –
- (a) to take such steps to remedy the failure as the CAC considers reasonable and specifies in the order, and
  - (b) to do so within such period as the CAC considers reasonable and specifies in the order. 25
- (3) Sub-paragraphs (4) and (5) apply if –
- (a) the CAC is satisfied that a party has failed to comply with an order under sub-paragraph (2),
  - (b) the application under paragraph 11 or 12 is in progress, 30
  - (c) the parties have agreed an appropriate bargaining unit or the CAC has decided an appropriate bargaining unit, and
  - (d) in the case of an application under paragraph 11(2) or 12(2), the CAC, if required to do so, has decided under paragraph 20 that the application is not invalid. 35
- (4) If the party that has failed to comply is the employer, the CAC may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.
- (5) If the party that has failed to comply is a union, the CAC may issue a declaration that the union is (or unions are) not entitled to be so recognised. 40

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- 19L(1) Each of the powers specified in sub-paragraph (2) is to be taken to include power to issue Codes of Practice about any matter relating to requests for access under paragraph 19G(2), including (among other things) –
- (a) what access is reasonable for the purposes of paragraph 19I(4); 5
  - (b) the duty in paragraph 19J(4).
- (2) The powers are –
- (a) the power of ACAS under section 199(1);
  - (b) the power of the Secretary of State under section 203(1)(a).” 10

*Unfair practices*

- 9 After paragraph 19L (inserted by paragraph 8 of this Schedule) insert –  
 “*Unfair practices*

- 19M(1) Each of the parties informed by the CAC under paragraph 15(5) that an application under paragraph 11 or 12 is accepted must refrain from using any unfair practice in relation to the application. 15
- (2) A party uses an unfair practice if, with a view to influencing the outcome of the application, the party does any of the following –
- (a) dismisses, or threatens to dismiss, a worker; 20
  - (b) takes, or threatens to take, disciplinary action against a worker;
  - (c) subjects, or threatens to subject, a worker to any other detriment;
  - (d) offers to pay money, or give money’s worth, to a relevant worker in return for the worker’s agreement to vote in a particular way, or to abstain from voting, in a relevant ballot; 25
  - (e) makes an outcome-specific offer to a relevant worker;
  - (f) coerces, or attempts to coerce, a relevant worker to disclose – 30
    - (i) whether the worker intends to vote, or to abstain from voting, in any relevant ballot, or
    - (ii) how the worker intends to vote, or has voted, in any relevant ballot; 35
  - (g) uses, or attempts to use, undue influence on a relevant worker.
- (3) In sub-paragraph (2) –
- (a) “relevant ballot” means any ballot that is or may be held in which workers are asked whether they want the union (or unions) to conduct collective bargaining on their behalf, and 40

- (b) “relevant worker” means any worker who is or would be entitled to vote in a relevant ballot.
- (4) For the purposes of sub-paragraph (2)(e) an “outcome-specific offer” is an offer to pay money, or give money’s worth, which—
  - (a) is conditional on the issuing by the CAC of a declaration that—
    - (i) the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, or
    - (ii) the union is (or unions are) not entitled to be so recognised, and
  - (b) is not conditional on anything which is done or occurs as a result of the declaration in question.
- (5) The duty imposed by this paragraph does not confer any rights on a worker; but that does not affect any other right which a worker may have.
- (6) Each of the following powers is to be taken to include power to issue Codes of Practice about unfair practices for the purposes of this paragraph—
  - (a) the power of ACAS under section 199(1);
  - (b) the power of the Secretary of State under section 203(1)(a).
- 19N (1) A party may complain to the CAC that another party has failed to comply with paragraph 19M.
- (2) A complaint under sub-paragraph (1) may not be made after—
  - (a) the application under paragraph 11 or 12 is withdrawn;
  - (b) the CAC gives notice to the union (or unions) of a decision under paragraph 20 that the application is invalid;
  - (c) the CAC notifies the union (or unions) of a declaration issued under paragraph 19F(5), 19K(4) or (5), 19P(4) or (5), 22(2) or 27(2) in relation to the application;
  - (d) if the CAC informs the union (or unions) under paragraph 25(9) of a ballot in relation to the application, the fifth working day after—
    - (i) the date of the ballot, or
    - (ii) if votes may be cast in the ballot on more than one day, the last of those days.
- (3) Within the decision period the CAC must decide whether the complaint is well-founded.
- (4) A complaint is well-founded if the CAC finds that the party complained against used an unfair practice.
- (5) The decision period is—

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- (a) the period of 10 working days starting with the day after the day on which the complaint under sub-paragraph (1) was received by the CAC, or
  - (b) such longer period (so starting) as the CAC may specify to the parties by a notice containing reasons for the extension. 5
- 19O(1) This paragraph applies if the CAC decides that a complaint under paragraph 19N is well-founded.
- (2) The CAC must, as soon as is reasonably practicable, issue a declaration to that effect. 10
  - (3) The CAC may order the party concerned to take any action specified in the order within such period as may be so specified.
  - (4) Sub-paragraph (5) applies if –
    - (a) the parties have agreed an appropriate bargaining unit or the CAC has decided an appropriate bargaining unit, and 15
    - (b) the CAC has at any time informed the union (or unions) under paragraph 25(9) of a ballot in relation to the application (including a ballot that was cancelled or is ineffective).
  - (5) The CAC may give notice to the employer and to the union (or unions) that it intends to arrange for the holding of a secret ballot in which the workers constituting the bargaining unit, other than those who joined the bargaining unit after the application day, are asked whether they want the union (or unions) to conduct collective bargaining on their behalf. 20
  - are asked whether they want the union (or unions) to conduct collective bargaining on their behalf. 25
  - (6) The CAC may make an order under sub-paragraph (3), or give a notice under sub-paragraph (5), either at the same time as it issues the declaration under sub-paragraph (2) or at any other time before any of the following occurs –
    - (a) the withdrawal of the application under paragraph 11 or 12; 30
    - (b) the CAC giving notice to the union (or unions) of a decision under paragraph 20 that the application is invalid;
    - (c) the CAC notifying the union (or unions) of a declaration issued under paragraph 19F(5), 19K(4) or (5), 19P(4) or (5), 22(2) or 27(2) in relation to the application; 35
    - (d) if the CAC informs the union (or unions) under paragraph 25(9) of a ballot in relation to the application, the CAC acting under paragraph 29 in relation to the ballot.
  - (7) The action specified in an order under sub-paragraph (3) must be such as the CAC considers reasonable in order to mitigate the effect of the failure of the party concerned to comply with the duty imposed by paragraph 19M. 40

- (8) The CAC may make more than one order under sub-paragraph (3).
- 19P(1) Sub-paragraphs (4) to (6) apply if –
- (a) the CAC issues a declaration under paragraph 19O(2) that a complaint that a party has failed to comply with paragraph 19M is well-founded, 5
  - (b) the application under paragraph 11 or 12 has not been withdrawn,
  - (c) the parties have agreed an appropriate bargaining unit or the CAC has decided an appropriate bargaining unit, 10
  - (d) in the case of an application under paragraph 11(2) or 12(2), the CAC, if required to do so, has decided under paragraph 20 that the application is not invalid,
  - (e) the CAC has not notified the union (or unions) of a declaration issued under paragraph 19F(5), 19K(4) or (5), 19P(4) or (5), 22(2) or 27(2) in relation to the application, and 15
  - (f) sub-paragraph (2) or (3) applies.
- (2) This sub-paragraph applies if the declaration states that the unfair practice used consisted of or included – 20
- (a) the use of violence, or
  - (b) the dismissal of a union official.
- (3) This sub-paragraph applies if the CAC has made an order under paragraph 19O(3) and – 25
- (a) it is satisfied that the party subject to the order has failed to comply with it, or
  - (b) it makes another declaration under paragraph 19O(2) in relation to a complaint against that party.
- (4) If the party that has failed to comply is the employer, the CAC may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit. 30
- (5) If the party that has failed to comply is a union, the CAC may issue a declaration that the union is (or unions are) not entitled to be so recognised. 35
- (6) The powers conferred by this paragraph are in addition to those conferred by paragraph 19O.”

*Powers of CAC on proceeding with application*

- 10 (1) Paragraph 22 (powers of CAC where majority of workers are members of union) is amended as follows. 40
- (2) In sub-paragraph (1)(a), after “19F(5)” insert “, 19K(4) or (5) or 19P(4) or (5)”.

- (3) After sub-paragraph (1) insert –
- “(1A) For the purposes of sub-paragraph (1)(b), any worker who joined the bargaining unit after the application day is to be disregarded.”
- (4) In sub-paragraph (3), after “bargaining unit” insert “, other than those who joined the bargaining unit after the application day,”. 5
- (5) After sub-paragraph (4) insert –
- “(4A) For the purposes of sub-paragraph (4)(b) and (c), evidence from or relating to a worker who joined the bargaining unit after the application day is to be disregarded.”
- 11 (1) Paragraph 23 (CAC to order ballot where majority of workers are not members of union) is amended as follows. 10
- (2) In sub-paragraph (1)(a), after “19F(5)” insert “, 19K(4) or (5) or 19P(4) or (5)”.
- (3) After sub-paragraph (1) insert –
- “(1A) For the purposes of sub-paragraph (1)(b), any worker who joined the bargaining unit after the application day is to be disregarded.” 15
- (4) In sub-paragraph (2), after “bargaining unit” insert “, other than those who joined the bargaining unit after the application day,”.

### *Ballots*

- 12 (1) Paragraph 24 (notice of holding of ballot) is amended as follows. 20
- (2) In sub-paragraph (1), after “paragraph” insert “19O(5),”.
- (3) In sub-paragraph (5) –
- (a) before paragraph (a) insert –
- “(za) in the case of notice given under paragraph 19O(5), the period of 5 working days starting with the day on which the union (or the last of the unions) receives that notice,”; 25
- (b) in paragraph (a) –
- (i) at the beginning insert “in the case of notice given under paragraph 22(3) or 23(2),”; 30
- (ii) for the words from “the CAC’s notice” to the end substitute “that notice”;
- (c) in paragraph (b), for “so starting” substitute “starting with the day mentioned in paragraph (za) or (a) (as the case may be)”.
- (4) In sub-paragraph (6) – 35
- (a) before paragraph (a) insert –
- “(za) in the case of notice given under paragraph 19O(5), the period of 5 working days starting with the day

- on which the union (or the last of the unions) receives that notice,”;
- (b) in paragraph (a) –
    - (i) at the beginning insert “in the case of notice given under paragraph 22(3) or 23(2),”;
    - (ii) for the words from “the CAC’s notice” to the end substitute “that notice”;
  - (c) in paragraph (b), for “so starting” substitute “starting with the day mentioned in paragraph (za) or (a) (as the case may be)”.
- 13 In paragraph 25 (rules relating to ballot), after sub-paragraph (1) insert –  
“(1A) A worker who joined the bargaining unit after the application day is not eligible to vote in the ballot.” 10
- 14 (1) Paragraph 26 (duties of employer in relation to ballot) is amended as follows.
- (2) In sub-paragraph (1), omit “five”. 15
  - (3) In sub-paragraph (2) –
    - (a) for “The first duty is to” substitute “The employer must”;
    - (b) for “the second and third duties are not” substitute “no other duty of the employer under this Part of this Schedule is”.
  - (4) Omit sub-paragraph (3). 20
  - (5) In sub-paragraph (4) –
    - (a) in the words before paragraph (a), for “The third duty is to” substitute “The employer must”;
    - (b) in paragraph (a) –
      - (i) for “to give” substitute “give”;
      - (ii) for “constituting the bargaining unit” substitute “eligible to vote in the ballot”;
    - (c) omit paragraph (b);
    - (d) in paragraph (c) –
      - (i) for “to inform” substitute “inform”;
      - (ii) omit “or (b)”.
  - (6) After sub-paragraph (4) insert –  
“(4ZA) If the ballot is being held by virtue of paragraph 19O(5), the duty under sub-paragraph (4)(a) is limited to –
    - (a) giving the CAC the names and home addresses of any workers eligible to vote in the ballot which have not previously been given to it in accordance with that duty;
    - (b) informing the CAC of any change to the name or home address of a worker whose name and home address have previously been given to the CAC in accordance with that duty;” 35 40

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- (c) informing the CAC of any worker whose name had previously been given to it in accordance with that duty who has ceased to be within the bargaining unit.”
- (7) Omit sub-paragraphs (4A) to (4E), (4G), (8) and (9).
- 15 After paragraph 27 insert – 5
- “27ZA (1) This paragraph applies if –
- (a) the union has (or unions have) been informed of a ballot under paragraph 25(9), and
- (b) the CAC issues a declaration under paragraph 19K.
- (2) If the ballot has not been held, the CAC must take steps to cancel it. 10
- (3) If the ballot is held, it is to have no effect.
- 27ZB (1) This paragraph applies if –
- (a) the union has (or unions have) been informed of a ballot under paragraph 25(9), 15
- (b) a complaint is made under paragraph 19N, and
- (c) the ballot did not begin before the beginning of the decision period referred to in paragraph 19N(5).
- (2) The CAC may by notice to the parties and the qualified independent person postpone the date on which the ballot is to begin until a date which falls after the end of the decision period. 20
- 27ZC (1) This paragraph applies if –
- (a) the union has (or unions have) been informed of a ballot under paragraph 25(9),
- (b) the CAC issues a declaration that a complaint under paragraph 19N is well-founded, and 25
- (c) the CAC –
- (i) gives a notice under paragraph 19O(5), or
- (ii) issues a declaration under paragraph 19P(4) or (5).
- (2) If the ballot has not been held, the CAC must take steps to cancel it. 30
- (3) If the ballot is held, it is to have no effect.
- 27ZD (1) This paragraph applies if –
- (a) the CAC gives a notice under paragraph 19O(5), and
- (b) the CAC has previously made an order under paragraph 27(1) in relation to a cancelled or ineffective ballot in connection with the application to which the notice relates. 35
- (2) The order has effect, to the extent that the CAC specifies in a notice to the parties, as if it were made for the purposes of the ballot to which the notice under paragraph 19O(5) relates.” 40
- 16 Omit paragraphs 27A to 27F (unfair practices during ballot).



- 17 (1) Paragraph 28 (costs of ballot) is amended as follows.
- (2) After sub-paragraph (1) insert –
- “(1A) If the ballot is one to which a notice under paragraph 19O(5) relates, the gross costs of the ballot are to be borne by such of the parties and in such proportions as the CAC may determine.” 5
- (3) In sub-paragraph (2), for “The gross costs” substitute “If the ballot is one to which a notice under paragraph 22(3) or 23(2) relates, the gross costs”.
- (4) In sub-paragraph (4), for “the employer and the union (or each of the unions)” substitute “the party or parties required to bear the costs”.
- 18 (1) Paragraph 29 (result of ballot) is amended as follows. 10
- (2) For sub-paragraphs (1) and (1A) substitute –
- “(1) The CAC must act under this paragraph as soon as reasonably practicable after –
- (a) the CAC is informed of the result of a ballot by the person conducting it, and 15
- (b) the complaint period ends.
- (1ZA) The complaint period is the period of 5 working days starting with the day after –
- (a) the date of the ballot, or
- (b) if votes may be cast in the ballot on more than one day, 20
- the last of those days.
- (1A) The duty in sub-paragraph (1) does not apply –
- (a) if a complaint is made under paragraph 19N, on or before the day on which the CAC decides whether the complaint is well-founded; 25
- (b) if the CAC gives a notice under paragraph 19O(5).”
- (3) For sub-paragraph (3) substitute –
- “(3) If the result is that the union is (or unions are) supported by a majority of the workers voting, the CAC must issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the bargaining unit.” 30
- (4) Omit sub-paragraphs (5) to (7).

*General provisions about admissibility of applications*

- 19 (1) Paragraph 35 (admissibility of applications: existing collective agreement) is amended as follows. 35
- (2) After sub-paragraph (1) insert –
- “(1A) For the purposes of sub-paragraph (1), any worker who joined the relevant bargaining unit after the application day is to be disregarded.”

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- (3) After sub-paragraph (5) insert –
- “(5A) In applying sub-paragraph (1) an agreement for recognition (the agreement in question) must be ignored if –
- (a) the union recognised under the agreement in question does not have (or none of the unions recognised under the agreement in question has) a certificate of independence, 5
  - (b) the union (or unions) making the application under paragraph 11 or 12 made the application before the end of the period of reflection, and 10
  - (c) the agreement in question was entered into during the restricted period.
- (5B) The period of reflection is the period of 20 working days starting with the first day after the end of –
- (a) the first period referred to in paragraph 10(6), in the case of an application under paragraph 11, or 15
  - (b) the second period referred to in paragraph 10(7), in the case of an application under paragraph 12.
- (5C) The restricted period is the period –
- (a) starting with the day on which the employer receives a valid request for recognition under paragraph 4, and 20
  - (b) ending with the day on which the CAC makes a decision under paragraph 15.”
- 20 In paragraph 36 (admissibility of applications: minimum support), for sub-paragraph (1) substitute – 25
- “(1) An application under paragraph 11 or 12 is not admissible unless the CAC decides that members of the union (or unions) constitute at least the required percentage (see paragraph 171B) of the workers constituting the relevant bargaining unit.
- (1A) For the purposes of sub-paragraph (1), any worker who joined the relevant bargaining unit after the application day is to be disregarded.” 30
- 21 (1) Paragraph 38 (admissibility of applications: overlapping bargaining unit) is amended as follows.
- (2) In sub-paragraph (1)(d) – 35
- (a) after “19F(5),” insert “19K(4) or (5), 19P(4) or (5),”;
  - (b) omit “27D(3), 27D(4),”.
- (3) After sub-paragraph (2) insert –
- “(2A) For the purposes of sub-paragraph (2)(a), any worker who joined the relevant bargaining unit or the bargaining unit referred to in sub-paragraph (1) after the application day is to be disregarded.” 40

- 22 In paragraph 40 (admissibility of applications: union not entitled to be recognised), in sub-paragraph (1) –
- (a) for “27D(4)” substitute “19K(5), 19P(5)”; and
  - (b) omit the words from “; and this is so” to the end.
- 23 After paragraph 40 insert – 5
- “40A (1) This paragraph applies if the CAC issues a declaration under paragraph 81E(5), 81J(5) or 29(4) (where it applies by virtue of paragraph 89(5)) that a union is (or unions are) not entitled to be recognised as entitled to conduct collective bargaining on behalf of a bargaining unit. 10
- (2) An application under paragraph 11 or 12 is not admissible if –
- (a) the application is made within the period of 3 years starting with the day after the day on which the declaration was issued,
  - (b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and 15
  - (c) the application is made by the union (or unions) which made the application leading to the declaration.
- (3) The relevant bargaining unit is – 20
- (a) the proposed bargaining unit, where the application is under paragraph 11(2) or 12(2);
  - (b) the agreed bargaining unit, where the application is under paragraph 12(4).”
- 24 In paragraph 41 (admissibility of applications: union required to cease bargaining arrangements), in sub-paragraph (1) – 25
- (a) for “119D(4), 119H(5)” substitute “116E(5), 116J(5)”; and
  - (b) for “the ballot concerned is arranged” substitute “the declaration is issued”.

*General provisions about validity of applications* 30

- 25 (1) Paragraph 44 (validity of applications: existing collective agreement) is amended as follows.
- (2) After sub-paragraph (1) insert –
- “(1A) For the purposes of sub-paragraph (1), any worker who joined the relevant bargaining unit after the application day is to be disregarded.” 35
- (3) After sub-paragraph (5) insert –
- “(6) In applying sub-paragraph (1) an agreement for recognition (the agreement in question) must be ignored if –
- (a) the union recognised under the agreement in question does not have (or none of the unions recognised under 40

- 
- the agreement in question has) a certificate of independence,
- (b) the union (or unions) making the application under paragraph 11 or 12 made the application before the end of the period of reflection, and 5
- (c) the agreement in question was entered into during the restricted period.
- (7) The period of reflection is the period of 20 working days starting with the first day after the end of –
- (a) the first period referred to in paragraph 10(6), in the case of an application under paragraph 11, or 10
- (b) the second period referred to in paragraph 10(7), in the case of an application under paragraph 12.
- (8) The restricted period is the period –
- (a) starting with the day on which the employer receives a valid request for recognition under paragraph 4, and 15
- (b) ending with the day on which the CAC makes a decision under paragraph 20.”
- 26 For paragraph 45 (validity of applications: minimum support) substitute –
- “45 (1) The application in question is invalid unless the CAC decides that members of the union (or unions) constitute at least the required percentage (see paragraph 171B) of the workers constituting the relevant bargaining unit. 20
- (2) For the purposes of sub-paragraph (1), any worker who joined the relevant bargaining unit after the application day is to be disregarded.” 25
- 27 (1) Paragraph 46 (validity of applications: overlapping bargaining unit) is amended as follows.
- (2) In sub-paragraph (1)(d) –
- (a) after “19F(5),” insert “19K(4) or (5), 19P(4) or (5),”; 30
- (b) omit “27D(3), 27D(4),”.
- (3) After sub-paragraph (2) insert –
- “(3) For the purposes of sub-paragraph (2)(a), any worker who joined the relevant bargaining unit or the bargaining unit referred to in sub-paragraph (1) after the application day is to be disregarded.” 35
- 28 In paragraph 48 (validity of applications: union not entitled to be recognised), in sub-paragraph (1) –
- (a) for “27D(4)” substitute “19K(5), 19P(5)”;
- (b) omit the words from “; and this is so” to the end.

- 29 After paragraph 48 insert –
- “48A (1) This paragraph applies if the CAC issues a declaration under paragraph 81E(5), 81J(5) or 29(4) (where it applies by virtue of paragraph 89(5)) that a union is (or unions are) not entitled to be recognised as entitled to conduct collective bargaining on behalf of a bargaining unit. 5
- (2) The application in question is invalid if –
- (a) the application is made within the period of 3 years starting with the date of the declaration,
- (b) the relevant bargaining unit is the same or substantially the same as the bargaining unit mentioned in sub-paragraph (1), and 10
- (c) the application is made by the union (or unions) which made the application leading to the declaration.”
- 30 In paragraph 49 (validity of applications: union required to cease bargaining arrangements), in sub-paragraph (1) – 15
- (a) for “119D(4), 119H(5)” substitute “116E(5), 116J(5)”;  
(b) for “the ballot concerned is arranged” substitute “the declaration is issued”.

*Competing applications* 20

- 31 In paragraph 51 (competing applications), in sub-paragraph (2)(c), for “10 per cent test” substitute “required percentage test”.

*Voluntary recognition*

- 32 In paragraph 52 (voluntary recognition), in sub-paragraph (3)(f), after “19F(5)” insert “, 19K(4) or (5), 19P(4) or (5)”. 25

**PART 3**

CHANGES AFFECTING BARGAINING UNIT AFTER RECOGNITION

*Access agreements*

- 33 After paragraph 81 insert – 30
- “Access agreements
- 81A(1) This paragraph applies if –
- (a) the CAC accepts an application under paragraph 66 or 75, and
- (b) the application is in progress.
- (2) The union (or unions) may, by giving notice to the CAC and the employer within the access request period, request access to the relevant workers in connection with the application. 35

- (3) The relevant workers are –
- (a) in relation to any time before the CAC decides that a bargaining unit other than the original unit is an appropriate bargaining unit, the workers constituting the original unit, and 5
  - (b) in relation to any time after the CAC decides that a bargaining unit other than the original unit is an appropriate bargaining unit, the workers constituting the new unit (see paragraph 82(4)).
- (4) But, where there is more than one new unit, references to the relevant workers are references to the workers constituting each new unit separately. 10
- (5) The access request period is the period of 5 working days starting with the day after the day on which the CAC gives the union (or unions) notice under paragraph 68(5) or 76(5) that the application is accepted. 15
- (6) For the purposes of this paragraph and paragraphs 81B to 81E, an application under paragraph 66 or 75 is in progress if none of the following has occurred –
- (a) the withdrawal of the application; 20
  - (b) the CAC issuing a declaration under paragraph 69(3), 78(3), 81E(4) or (5) or 81J(4) or (5) in relation to the application;
  - (c) the CAC notifying the union (or unions) of its decision under paragraph 77(2) or 77(3); 25
  - (d) in relation to the new unit (or, if there is more than one, all of the new units) –
    - (i) the CAC issuing a declaration under paragraph 83(2), 85(2), 86(3) or 87(2), or under paragraph 27(2) (where it applies by virtue of paragraph 89(5)), 30
    - (ii) the union (or unions) notifying the CAC under paragraph 89(1), or
    - (iii) the holding of any ballot arising from the application.
- 81B(1) This paragraph applies if – 35
- (a) the CAC accepts an application under paragraph 66 or 75,
  - (b) the union requests (or unions request) access to the relevant workers under paragraph 81A(2) in connection with the application, and 40
  - (c) the application is in progress.
- (2) The CAC must try to help the parties to reach agreement within the negotiation period as to terms on which the union is (or unions are) to have access to the relevant workers.

- (3) The negotiation period is, subject to any notice under sub-paragraph (4) or (6), the period of 15 working days starting with the day after the day on which the union gives (or unions give) notice to the employer under paragraph 81A(2).
- (4) If, during the negotiation period, the CAC concludes that there is no reasonable prospect of the parties' agreeing terms on which the union is (or unions are) to have access to the relevant workers before the time when (apart from this sub-paragraph) the negotiation period would end, the CAC may, by a notice given to the parties, declare that the negotiation period ends with the date of the notice.
- (5) A notice under sub-paragraph (4) must contain reasons for reaching the conclusion mentioned in that sub-paragraph.
- (6) If, during the negotiation period, the parties apply to the CAC for a declaration that the negotiation period is to end with a date (specified in the application) which is earlier or later than the date with which it would otherwise end, the CAC may, by a notice given to the parties, declare that the negotiation period ends with the specified date.
- 81C(1) This paragraph applies if –
- (a) the CAC accepts an application under paragraph 66 or 75,
  - (b) the union requests (or unions request) access to the relevant workers under paragraph 81A(2) in connection with the application,
  - (c) the parties have not within the negotiation period agreed terms on which the union is (or unions are) to have access to the relevant workers, and
  - (d) the application is in progress.
- (2) Within the adjudication period, the CAC must –
- (a) decide the terms on which the union is (or unions are) to have access to the relevant workers, or
  - (b) decide that the union is (or unions are) not to have access to the relevant workers.
- (3) The adjudication period is –
- (a) the period of 10 working days starting with the day after the day with which the negotiation period ends, or
  - (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.
- (4) Any terms decided by the CAC must be terms that the CAC regards as allowing such access to the relevant workers as is reasonable to enable the union (or unions) to –

- (a) inform the workers of the object of the application or any ballot arising from it, and
  - (b) seek their support and their opinions on the issues involved.
- 81D(1) This paragraph applies if – 5
- (a) an access agreement is entered into, and
  - (b) the application under paragraph 66 or 75 is in progress.
- (2) “Access agreement” means –
- (a) terms on which the union is (or unions are) to have access to the relevant workers and which are agreed between the parties under paragraph 81B during the negotiation period, or 10
  - (b) terms on which the union is (or unions are) to have access to the relevant workers and which are decided by the CAC under paragraph 81C, 15
- and such an agreement is “entered into” when the terms are so agreed or decided.
- (3) The parties must comply with the access agreement.
- (4) The employer must refrain from making any offer to any or all of the relevant workers which – 20
- (a) has or is likely to have the effect of inducing any or all of them not to attend any relevant meeting between the union (or unions) and the relevant workers, and
  - (b) is not reasonable in the circumstances.
- (5) The employer must refrain from taking, or threatening to take, any action against a worker solely or mainly on the grounds that the worker – 25
- (a) attended or took part in any relevant meeting between the union (or unions) and the relevant workers, or
  - (b) indicated an intention to attend or take part in such a meeting. 30
- (6) The relevant workers are –
- (a) in relation to any time before the CAC decides that a bargaining unit other than the original unit is an appropriate bargaining unit, the workers constituting the original unit, and 35
  - (b) in relation to any time after the CAC decides that a bargaining unit other than the original unit is an appropriate bargaining unit, the workers constituting the new unit (see paragraph 82(4)). 40
- (7) But, where there is more than one new unit, references to the relevant workers are references to the workers constituting each new unit separately.



- (8) A meeting is a relevant meeting in relation to a worker for the purposes of sub-paragraphs (4) and (5) if—
- (a) it is organised in accordance with an access agreement or as a result of a step ordered to be taken under paragraph 81E to remedy a failure to comply with the duty in sub-paragraph (3), and
  - (b) it is one which the employer is, by such an agreement or order as is mentioned in paragraph (a), required to permit the worker to attend.
- (9) The duties imposed by sub-paragraphs (4) and (5) do not confer any rights on a worker; but that does not affect any other right which a worker may have.
- (10) Any provision of an access agreement that would require personal data relating to any of the relevant workers to be disclosed to any person other than a person appointed to conduct a ballot under paragraph 25 (where it applies by virtue of paragraph 89(4)) is of no effect for the purposes of this Part of this Schedule.
- (11) “Personal data” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).
- (12) An access agreement is to be conclusively presumed not to have been intended by the parties to be a legally enforceable contract; and, accordingly, where an access agreement is, or is part of, a collective agreement, section 179(2) and (3)(a) do not apply to the access agreement.
- 81E(1) Sub-paragraph (2) applies if—
- (a) the CAC is satisfied that a party has failed to fulfil any of the duties imposed on that party by paragraph 81D, and
  - (b) the application under paragraph 66 or 75 is in progress.
- (2) The CAC may order the party—
- (a) to take such steps to remedy the failure as the CAC considers reasonable and specifies in the order, and
  - (b) to do so within such period as the CAC considers reasonable and specifies in the order.
- (3) Sub-paragraphs (4) and (5) apply if—
- (a) the CAC is satisfied that a party has failed to comply with an order under sub-paragraph (2),
  - (b) the application under paragraph 66 or 75 is in progress, and
  - (c) the CAC has given notice under paragraph 70 or 79 of a decision as to the bargaining unit which is (or units which are) appropriate (each, a “new unit”).

- (4) If the party that has failed to comply is the employer, the CAC may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the new unit or units.
- (5) If the party that has failed to comply is a union, the CAC may issue a declaration that the union is (or unions are) not entitled to be so recognised. 5
- 81F (1) Each of the powers specified in sub-paragraph (2) is to be taken to include power to issue Codes of Practice about any matter relating to requests for access under paragraph 81A(2), including (among other things)– 10
- (a) what access is reasonable for the purposes of paragraph 81C(4);
- (b) the duty in paragraph 81D(4).
- (2) The powers are– 15
- (a) the power of ACAS under section 199(1);
- (b) the power of the Secretary of State under section 203(1)(a).”

*Unfair practices*

- 34 After paragraph 81F (inserted by paragraph 33 of this Schedule) insert– 20
- “*Unfair practices*
- 81G (1) Each of the parties informed by the CAC under paragraph 68(5) or 76(5) that an application under paragraph 66 or 75 is accepted must refrain from using any unfair practice in relation to the application.
- (2) A party uses an unfair practice if, with a view to influencing the outcome of the application, the party does any of the following– 25
- (a) dismisses, or threatens to dismiss, a worker;
- (b) takes, or threatens to take, disciplinary action against a worker;
- (c) subjects, or threatens to subject, a worker to any other detriment; 30
- (d) offers to pay money, or give money’s worth, to a relevant worker in return for the worker’s agreement to vote in a particular way, or to abstain from voting, in a relevant ballot; 35
- (e) makes an outcome-specific offer to a relevant worker;
- (f) coerces, or attempts to coerce, a relevant worker to disclose–
- (i) whether the worker intends to vote, or to abstain from voting, in any relevant ballot, or 40
- (ii) how the worker intends to vote, or has voted, in any relevant ballot;

- (g) uses, or attempts to use, undue influence on a relevant worker.
- (3) In sub-paragraph (2) –
  - (a) “relevant ballot” means any ballot that is or may be held in which workers are asked whether they want the union (or unions) to conduct collective bargaining on their behalf, and 5
  - (b) “relevant worker” means any worker who is or would be entitled to vote in a relevant ballot.
- (4) For the purposes of sub-paragraph (2)(e) an “outcome-specific offer” is an offer to pay money, or give money’s worth, which – 10
  - (a) is conditional on the issuing by the CAC of a declaration that –
    - (i) the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of a bargaining unit, or 15
    - (ii) the union is (or unions are) not entitled to be so recognised, and
  - (b) is not conditional on anything which is done or occurs as a result of the declaration in question. 20
- (5) The duty imposed by this paragraph does not confer any rights on a worker; but that does not affect any other right which a worker may have.
- (6) Each of the following powers is to be taken to include power to issue Codes of Practice about unfair practices for the purposes of this paragraph – 25
  - (a) the power of ACAS under section 199(1);
  - (b) the power of the Secretary of State under section 203(1)(a).
- 81H(1) A party may complain to the CAC that another party has failed to comply with paragraph 81G. 30
- (2) A complaint under sub-paragraph (1) may not be made after a conclusion event occurs.
- (3) The following are conclusion events –
  - (a) the withdrawal of the application under paragraph 66 or 75; 35
  - (b) the CAC issuing a declaration under paragraph 69(3), 78(3), 81E(4) or (5) or 81J(4) or (5) in relation to the application;
  - (c) the CAC notifying the union (or unions) of its decision under paragraph 77(2) or 77(3); 40
  - (d) if the CAC has given notice under paragraph 70 or 79 of a decision as to the bargaining unit which is (or units which are) appropriate (each, a “new unit”), any of the

- following occurring in relation to the new unit (or, if there is more than one, all of the new units) –
- (i) the CAC issuing a declaration under paragraph 83(2), 85(2), 86(3) or 87(2), or under paragraph 27(2) (where it applies by virtue of paragraph 89(5)); 5
  - (ii) the union (or unions) notifying the CAC under paragraph 89(1);
  - (iii) the post-ballot complaint period having ended.
- (4) The post-ballot complaint period is, in relation to any ballot held arising from the application, the period of 5 working days after – 10
- (a) the date of the ballot, or
  - (b) if votes may be cast in the ballot on more than one day, the last of those days.
- (5) Within the decision period the CAC must decide whether the complaint is well-founded. 15
- (6) A complaint is well-founded if the CAC finds that the party complained against used an unfair practice.
- (7) The decision period is –
- (a) the period of 10 working days starting with the day after the day on which the complaint under sub-paragraph (1) was received by the CAC, or 20
  - (b) such longer period (so starting) as the CAC may specify to the parties by a notice containing reasons for the extension.
- 81I (1) This paragraph applies if the CAC decides that a complaint under paragraph 81H is well-founded. 25
- (2) The CAC must, as soon as is reasonably practicable, issue a declaration to that effect.
- (3) The CAC may order the party concerned to take any action specified in the order within such period as may be so specified. 30
- (4) Sub-paragraph (5) applies if –
- (a) the CAC has given notice under paragraph 70 or 79 of a decision as to the bargaining unit which is (or units which are) appropriate (each, a “new unit”), and
  - (b) the CAC has at any time informed the union (or unions) under paragraph 25(9) (where it applies by virtue of paragraph 89(4)) of a ballot in relation to the application (including a ballot that was cancelled or is ineffective). 35
- (5) The CAC may give notice to the employer and to the union (or unions) that it intends to arrange for the holding of a secret ballot (or secret ballots) in which the workers constituting the new unit (or each of the new units) are asked whether they want the union (or unions) to conduct collective bargaining on their behalf. 40

- (6) The CAC may make an order under sub-paragraph (3), or give a notice under sub-paragraph (5), either at the same time as it issues the declaration under sub-paragraph (2) or at any other time before any of the following occurs –
- (a) the withdrawal of the application under paragraph 66 or 75; 5
  - (b) the CAC issuing a declaration under paragraph 69(3), 78(3), 81E(4) or (5) or 81J(4) or (5) in relation to the application;
  - (c) the CAC notifying the union (or unions) of its decision under paragraph 77(2) or 77(3); 10
  - (d) in relation to the new unit (or, if there is more than one, all of the new units) –
    - (i) the CAC issuing a declaration under paragraph 83(2), 85(2), 86(3) or 87(2), or under paragraph 27(2) (where it applies by virtue of paragraph 89(5)), 15
    - (ii) the union (or unions) notifying the CAC under paragraph 89(1), or
    - (iii) the holding of any ballot arising from the application. 20
- (7) The action specified in an order under sub-paragraph (3) must be such as the CAC considers reasonable in order to mitigate the effect of the failure of the party concerned to comply with the duty imposed by paragraph 81G.
- (8) The CAC may make more than one order under sub-paragraph (3). 25
- 81J (1) Sub-paragraphs (4) to (6) apply if –
- (a) the CAC issues a declaration under paragraph 81I(2) that a complaint that a party has failed to comply with paragraph 81G is well-founded, 30
  - (b) the application under paragraph 66 or 75 has not been withdrawn,
  - (c) the CAC has given notice under paragraph 70 or 79 of a decision as to the bargaining unit which is (or units which are) appropriate (each, a “new unit”), 35
  - (d) the CAC has not issued a declaration under paragraph 69(3), 78(3), 81E(4) or (5) or 81J(4) or (5) in relation to the application,
  - (e) the CAC has not notified the union (or unions) of its decision under paragraph 77(2) or 77(3), 40
  - (f) in relation to the new unit (or, if there is more than one, all of the new units), none of the following has occurred –
    - (i) the CAC issuing a declaration under paragraph 83(2), 85(2), 86(3) or 87(2), or under paragraph 27(2) (where it applies by virtue of paragraph 89(5)), 45

- (ii) the union (or unions) notifying the CAC under paragraph 89(1), or
  - (iii) the holding of any ballot arising from the application, and
  - (g) sub-paragraph (2) or (3) applies. 5
  - (2) This sub-paragraph applies if the declaration states that the unfair practice used consisted of or included –
    - (a) the use of violence, or
    - (b) the dismissal of a union official.
  - (3) This sub-paragraph applies if the CAC has made an order under paragraph 81I(3) and – 10
    - (a) it is satisfied that the party subject to the order has failed to comply with it, or
    - (b) it makes another declaration under paragraph 81I(2) in relation to a complaint against that party. 15
  - (4) If the party that has failed to comply is the employer, the CAC may issue a declaration that the union is (or unions are) recognised as entitled to conduct collective bargaining on behalf of the new unit or units.
  - (5) If the party that has failed to comply is a union, the CAC may issue a declaration that the union is (or unions are) not entitled to be so recognised. 20
  - (6) The powers conferred by this paragraph are in addition to those conferred by paragraph 81I.”
- Powers of CAC where CAC decides new unit appropriate* 25
- 35 (1) Paragraph 86 (new bargaining unit: assessment of support) is amended as follows.
    - (2) For sub-paragraph (2) substitute –
      - “(2) The CAC must decide whether members of the union (or unions) constitute at least the required percentage (see paragraph 171B) of the workers constituting the new unit.” 30
    - (3) In sub-paragraph (3), for “one or both of the questions in the negative” substitute “that members of the union (or unions) do not constitute at least the required percentage of the workers constituting the new unit”.
  - 36 In paragraph 87 (powers of CAC where majority of workers are members of union), for sub-paragraph (1) substitute – 35
    - “(1) This paragraph applies if, following a decision under paragraph 86(2), the CAC is satisfied that a majority of workers constituting the new unit are members of the union (or unions).”

- 37 In paragraph 88 (powers of CAC where majority of workers are not members of union), for sub-paragraph (1) substitute –
- “(1) This paragraph applies if –
- (a) the CAC decides under paragraph 86(2) that members of the union (or unions) constitute at least the required percentage of the workers constituting the new unit, but
  - (b) the CAC is not satisfied that a majority of workers constituting the new unit are members of the union (or unions).”
- 38 (1) Paragraph 89 (ballots) is amended as follows.
- (2) In sub-paragraph (4), at the end insert “, but as if paragraph 25(1A) were omitted.”
- (3) In sub-paragraph (5) –
- (a) omit the “and” at the end of paragraph (a);
  - (b) after paragraph (a) insert –
- “(aa) references to provisions of paragraphs 19G to 19P were references to the corresponding provisions of paragraphs 81A to 81J,
- (ab) the duty in paragraph 26(4) included –
- (i) a duty to give to the CAC, as soon as is reasonably practicable, the name and home address of any worker who joins the bargaining unit after the employer has complied with paragraph 26(4)(a), and
  - (ii) a duty to inform the CAC, as soon as is reasonably practicable, of any worker whose name has been given to the CAC under that duty and who ceases to be within the bargaining unit, and”;
- (c) in paragraph (b), for “26(4F) to (4H)” substitute “26(4F) and (4H)”.
- (4) In sub-paragraph (8), for “or 27D(3)” substitute “, 81E(4) or 81J(4)”.
- (5) In sub-paragraph (9), for “27D(4)” substitute “81E(5) or 81J(5)”.

*Withdrawal of application*

- 39 In paragraph 93 (withdrawal of application), in sub-paragraph (1)(a), for “or 78(3)” substitute “, 78(3), 81E(4) or (5) or 81J(4) or (5)”.

**PART 4**

## DERECOGNITION

*Access agreements*

- 40      After paragraph 116 insert –
- “Access agreements 5
- 116A(1) This paragraph applies if –
- (a) the CAC accepts an application under paragraph 106, 107 or 112, and
- (b) the application is in progress.
- (2) The union (or unions) may, by giving notice to the CAC and the employer within the access request period, request access to the workers constituting the bargaining unit in connection with the application. 10
- (3) The access request period is the period of 5 working days starting with the day after the day on which the CAC gives the union (or unions) notice under paragraph 111(5) or 115(5) that the application is accepted. 15
- (4) For the purposes of this paragraph and paragraphs 116B to 116E, an application under paragraph 106, 107 or 112 is in progress if none of the following has occurred – 20
- (a) in the case of an application under paragraph 106 or 107, the withdrawal of the application;
- (b) in the case of an application under paragraph 112, an agreement or withdrawal as described in paragraph 116(1);
- (c) the CAC refusing the application under paragraph 116E(4), 116J(4)(a) or (6) or 119(2); 25
- (d) the CAC notifying the union (or unions) of a declaration issued under paragraph 116E(5) or 116J(5) in relation to the application;
- (e) the holding of any ballot arising from the application. 30
- 116B(1) This paragraph applies if –
- (a) the CAC accepts an application under paragraph 106, 107 or 112,
- (b) the union requests (or unions request) access to the workers constituting the bargaining unit under paragraph 116A(2) in connection with the application, and 35
- (c) the application is in progress.
- (2) The CAC must try to help the parties to reach agreement within the negotiation period as to terms on which the union is (or unions are) to have access to the workers. 40



- (3) The negotiation period is, subject to any notice under sub-paragraph (4) or (6), the period of 15 working days starting with the day after the day on which the union gives (or unions give) notice to the employer under paragraph 116A(2).
  - (4) If, during the negotiation period, the CAC concludes that there is no reasonable prospect of the parties' agreeing terms on which the union is (or unions are) to have access to the workers before the time when (apart from this sub-paragraph) the negotiation period would end, the CAC may, by a notice given to the parties, declare that the negotiation period ends with the date of the notice.
  - (5) A notice under sub-paragraph (4) must contain reasons for reaching the conclusion mentioned in that sub-paragraph.
  - (6) If, during the negotiation period, the parties apply to the CAC for a declaration that the negotiation period is to end with a date (specified in the application) which is earlier or later than the date with which it would otherwise end, the CAC may, by a notice given to the parties, declare that the negotiation period ends with the specified date.
- 116C(1) This paragraph applies if –
- (a) the CAC accepts an application under paragraph 106, 107 or 112,
  - (b) the union requests (or unions request) access to the workers constituting the bargaining unit under paragraph 116A(2) in connection with the application,
  - (c) the parties have not within the negotiation period agreed terms on which the union is (or unions are) to have access to the workers, and
  - (d) the application is in progress.
- (2) Within the adjudication period, the CAC must –
- (a) decide the terms on which the union is (or unions are) to have access to the workers, or
  - (b) decide that the union is (or unions are) not to have access to the workers.
- (3) The adjudication period is –
- (a) the period of 10 working days starting with the day after the day with which the negotiation period ends, or
  - (b) such longer period (so starting) as the CAC may specify to the parties by notice containing reasons for the extension.
- (4) Any terms decided by the CAC must be terms that the CAC regards as allowing such access to the workers constituting the bargaining unit as is reasonable to enable the union (or unions) to –

- 
- (a) inform the workers of the object of the application or any ballot arising from it, and
  - (b) seek their support and their opinions on the issues involved.
- 116D(1) This paragraph applies if – 5
- (a) an access agreement is entered into, and
  - (b) the application under paragraph 106, 107 or 112 is in progress.
- (2) “Access agreement” means – 10
- (a) terms on which the union is (or unions are) to have access to the workers constituting the bargaining unit and which are agreed between the parties under paragraph 116B during the negotiation period, or
  - (b) terms on which the union is (or unions are) to have access to the workers constituting the bargaining unit and which are decided by the CAC under paragraph 116C, 15
- and such an agreement is to be treated as “entered into” when the terms are so agreed or decided.
- (3) The parties must comply with the access agreement.
- (4) The employer must refrain from making any offer to any or all of the workers constituting the bargaining unit which – 20
- (a) has or is likely to have the effect of inducing any or all of them not to attend any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, and 25
  - (b) is not reasonable in the circumstances.
- (5) The employer must refrain from taking, or threatening to take, any action against a worker solely or mainly on the grounds that the worker – 30
- (a) attended or took part in any relevant meeting between the union (or unions) and the workers constituting the bargaining unit, or
  - (b) indicated an intention to attend or take part in such a meeting.
- (6) A meeting is a relevant meeting in relation to a worker for the purposes of sub-paragraphs (4) and (5) if – 35
- (a) it is organised in accordance with an access agreement or as a result of a step ordered to be taken under paragraph 116E to remedy a failure to comply with the duty in sub-paragraph (3), and 40
  - (b) it is one which the employer is, by such an agreement or order as is mentioned in paragraph (a), required to permit the worker to attend.

- (7) The duties imposed by sub-paragraphs (4) and (5) do not confer any rights on a worker; but that does not affect any other right which a worker may have.
- (8) Any provision of an access agreement that would require personal data relating to any of the relevant workers to be disclosed to a person other than a person appointed under paragraph 117 to conduct a ballot is of no effect for the purposes of this Part of this Schedule. 5
- (9) “Personal data” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act). 10
- (10) An access agreement is to be conclusively presumed not to have been intended by the parties to be a legally enforceable contract; and, accordingly, where an access agreement is, or is part of, a collective agreement, section 179(2) and (3)(a) do not apply to the access agreement. 15
- 116E (1) Sub-paragraph (2) applies if—
- (a) the CAC is satisfied that a party has failed to fulfil any of the duties imposed on that party by paragraph 116D, and
- (b) the application under paragraph 106, 107 or 112 is in progress. 20
- (2) The CAC may order the party—
- (a) to take such steps to remedy the failure as the CAC considers reasonable and specifies in the order, and
- (b) to do so within such period as the CAC considers reasonable and specifies in the order. 25
- (3) Sub-paragraphs (4) and (5) apply if—
- (a) the CAC is satisfied that a party has failed to comply with an order under sub-paragraph (2), and
- (b) the application under paragraph 106, 107 or 112 is in progress. 30
- (4) If the party that has failed to comply is the employer, and the application is under paragraph 106 or 107, the CAC may refuse the application.
- (5) If the party that has failed to comply is a union, the CAC may issue a declaration that the bargaining arrangements are to cease to have effect; and the bargaining arrangements cease to have effect accordingly. 35
- 116F (1) Each of the powers specified in sub-paragraph (2) is to be taken to include power to issue Codes of Practice about any matter relating to requests for access under paragraph 116A(2), including (among other things)— 40

- (a) what access is reasonable for the purposes of paragraph 116C(4);
  - (b) the duty in paragraph 116D(4).
- (2) The powers are –
- (a) the power of ACAS under section 199(1);
  - (b) the power of the Secretary of State under section 203(1)(a).”

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*Unfair practices*

41 After paragraph 116F (inserted by paragraph 40 of this Schedule) insert –  
 “Unfair practices

116G (1) Each of the parties informed by the CAC under paragraph 111(5) or 115(5) that an application under paragraph 106, 107 or 112 is accepted must refrain from using any unfair practice in relation to the application.

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(2) A party uses an unfair practice if, with a view to influencing the outcome of the application, the party does any of the following –

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- (a) dismisses, or threatens to dismiss, a worker;
- (b) takes, or threatens to take, disciplinary action against a worker;
- (c) subjects, or threatens to subject, a worker to any other detriment;
- (d) offers to pay money, or give money’s worth, to a relevant worker in return for the worker’s agreement to vote in a particular way, or to abstain from voting, in a relevant ballot;
- (e) makes an outcome-specific offer to a relevant worker;
- (f) coerces, or attempts to coerce, a relevant worker to disclose –
  - (i) whether the worker intends to vote, or to abstain from voting, in any relevant ballot, or
  - (ii) how the worker intends to vote, or has voted, in any relevant ballot;
- (g) uses, or attempts to use, undue influence on a relevant worker.

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(3) In sub-paragraph (2) –

- (a) “relevant ballot” means any ballot that is or may be held in which workers are asked whether the bargaining arrangements should be ended, and
- (b) “relevant worker” means any worker who is or would be entitled to vote in a relevant ballot.

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(4) For the purposes of sub-paragraph (2)(e) an “outcome-specific offer” is an offer to pay money, or give money’s worth, which –

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- (a) is conditional on—
    - (i) the issuing by the CAC of a declaration that the bargaining arrangements are to cease to have effect, or
    - (ii) the refusal by the CAC of an application under paragraph 106, 107 or 112, and
  - (b) is not conditional on anything which is done or occurs as a result of that declaration, or, as the case may be, of that refusal.
- (5) For the purposes of this paragraph and paragraphs 116H to 116J as they apply in relation to an application under paragraph 112, references to a party are to be read as including references to the worker or workers making the application.
- (6) The duty imposed by this paragraph does not confer any rights on a worker; but that does not affect any other right which a worker may have.
- (7) Each of the following powers is to be taken to include power to issue Codes of Practice about unfair practices for the purposes of this paragraph—
- (a) the power of ACAS under section 199(1);
  - (b) the power of the Secretary of State under section 203(1)(a).
- 116H(1) A party may complain to the CAC that another party has failed to comply with paragraph 116G.
- (2) A complaint under sub-paragraph (1) may not be made after—
- (a) in the case of an application under paragraph 106 or 107, the application is withdrawn;
  - (b) in the case of an application under paragraph 112, an agreement or withdrawal as described in paragraph 116(1);
  - (c) the CAC refuses the application under paragraph 116E(4), 116J(4)(a) or (6) or 119(2);
  - (d) the CAC notifies the union (or unions) of a declaration issued under paragraph 116E(5) or 116J(5) in relation to the application;
  - (e) if the CAC informs the union (or unions) under paragraph 117(11) of a ballot, the fifth working day after—
    - (i) the date of the ballot, or
    - (ii) if votes may be cast in the ballot on more than one day, the last of those days.
- (3) Within the decision period the CAC must decide whether the complaint is well-founded.
- (4) A complaint is well-founded if the CAC finds that the party complained against used an unfair practice.
- (5) The decision period is—

- 
- (a) the period of 10 working days starting with the day after the day on which the complaint under sub-paragraph (1) was received by the CAC, or
- (b) such longer period (so starting) as the CAC may specify to the parties by a notice containing reasons for the extension. 5
- 116I(1) This paragraph applies if the CAC decides that a complaint under paragraph 116H is well-founded.
- (2) The CAC must, as soon as is reasonably practicable, issue a declaration to that effect. 10
- (3) The CAC may order the party concerned to take any action specified in the order within such period as may be so specified.
- (4) Sub-paragraph (5) applies if the CAC has at any time informed the union (or unions) under paragraph 117(11) of a ballot in relation to the application (including a ballot that was cancelled or is ineffective). 15
- (5) The CAC may make arrangements for the holding of a secret ballot in which the workers constituting the bargaining unit are asked whether the bargaining arrangements should be ended.
- (6) The CAC may make an order under sub-paragraph (3), or make arrangements under sub-paragraph (5), either at the same time as it issues the declaration under sub-paragraph (2) or at any other time before any of the following occurs— 20
- (a) in the case of an application under paragraph 106 or 107, the withdrawal of the application; 25
- (b) in the case of an application under paragraph 112, an agreement or withdrawal as described in paragraph 116(1);
- (c) the CAC refusing the application under paragraph 116E(4), 116J(4)(a) or (6) or 119(2);
- (d) the CAC notifying the union (or unions) of a declaration issued under paragraph 116E(5) or 116J(5) in relation to the application; 30
- (e) if the CAC informs the union (or unions) under paragraph 117(11) of a ballot, the CAC acting under paragraph 121 in relation to the ballot. 35
- (7) The action specified in an order under sub-paragraph (3) must be such as the CAC considers reasonable in order to mitigate the effect of the failure of the party concerned to comply with the duty imposed by paragraph 116G.
- (8) The CAC may make more than one order under sub-paragraph (3). 40
- 116J (1) Sub-paragraphs (4) to (7) apply if—

- (a) the CAC issues a declaration under paragraph 116I(2) that a complaint that a party has failed to comply with paragraph 116G is well-founded,
    - (b) the application under paragraph 106, 107 or 112 has not been withdrawn or, in the case of an application under paragraph 112, there has been no agreement as described in paragraph 116(1),
    - (c) the CAC has not refused the application under paragraph 116E(4), 116J(4)(a) or (6) or 119(2),
    - (d) the CAC has not notified the union (or unions) of a declaration issued under paragraph 116E(5) or 116J(5) in relation to the application, and
    - (e) sub-paragraph (2) or (3) applies.
  - (2) This sub-paragraph applies if the declaration states that the unfair practice used consisted of or included –
    - (a) the use of violence, or
    - (b) the dismissal of a union official.
  - (3) This sub-paragraph applies if the CAC has made an order under paragraph 116I(3) and –
    - (a) it is satisfied that the party subject to the order has failed to comply with it, or
    - (b) it makes another declaration under paragraph 116I(2) in relation to a complaint against that party.
  - (4) If the party that has failed to comply is the employer, the CAC may –
    - (a) refuse the employer’s application under paragraph 106 or 107;
    - (b) order the employer to refrain from any campaigning in relation to an application under paragraph 112.
  - (5) If the party that has failed to comply is a union, the CAC may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC in the declaration; and the bargaining arrangements cease to have effect accordingly.
  - (6) If the party that has failed to comply is the worker making an application under paragraph 112 (or any of the workers making an application under paragraph 112), the CAC may refuse the application.
  - (7) The powers conferred by this paragraph are in addition to those conferred by paragraph 116I.
- 116K(1) This paragraph applies if the CAC has made an order against the employer under paragraph 116I(3) or 116J(4)(b) in relation to an application under paragraph 112.

- (2) The worker making the application (or each of the workers making the application) and the union (or each of the unions) are entitled to enforce obedience to the order.
- (3) The order may be enforced –
- (a) in England and Wales, in the same way as an order of the county court; 5
  - (b) in Scotland, in the same way as an order of the sheriff.”

### *Ballots*

- 42 (1) Paragraph 117 (ballots: general) is amended as follows.
- (2) In sub-paragraph (1), for “This paragraph” substitute “Sub-paragraph (3)”. 10
  - (3) In sub-paragraph (2), for “This paragraph” substitute “Sub-paragraph (3)”. 10
  - (4) In sub-paragraph (4), for “The ballot” substitute “A ballot arranged under sub-paragraph (3), or under paragraph 116I(5),”.
- 43 (1) Paragraph 118 (duties of employer in relation to ballot) is amended as follows. 15
- (2) In sub-paragraph (1), omit “five”.
  - (3) In sub-paragraph (2) –
    - (a) for “The first duty is to” substitute “The employer must”;
    - (b) for “the second and third duties are not” substitute “no other duty of the employer under this Part of this Schedule is”. 20
  - (4) Omit sub-paragraph (3).
  - (5) In sub-paragraph (4) –
    - (a) in the words before paragraph (a), for “The third duty is to” substitute “The employer must”;
    - (b) in paragraph (a), for “to give” substitute “give”; 25
    - (c) in paragraph (b), for “to give” substitute “give”;
    - (d) in paragraph (c), for “to inform” substitute “inform”.
  - (6) After sub-paragraph (4) insert –
    - “(4ZA) If the ballot is arranged under paragraph 116I(5), the duty under sub-paragraph (4)(a) is limited to – 30
      - (a) giving the CAC the names and home addresses of any workers in the bargaining unit which have not previously been given to it in accordance with that duty;
      - (b) giving the CAC the names and home addresses of those workers who have joined the bargaining unit since the employer last gave the CAC information in accordance with that duty; 35
      - (c) informing the CAC of any change to the name or home address of a worker whose name and home address have



- previously been given to the CAC in accordance with that duty;
- (d) informing the CAC of any worker whose name had previously been given to it in accordance with that duty who has ceased to be within the bargaining unit.” 5
- (7) Omit sub-paragraphs (4A) to (4E), (8) and (9).
- 44 In paragraph 119 (breach of paragraph 118), after sub-paragraph (4) insert—
- “**(5)** If—
- (a) the ballot has been arranged in consequence of an application under paragraph 112, 10
- (b) the CAC has made an order against the employer under sub-paragraph (1), and
- (c) the ballot has not been held,  
the worker making the application (or each of the workers making the application) and the union (or each of the unions) are entitled to enforce obedience to the order. 15
- (6) The order may be enforced—
- (a) in England and Wales, in the same way as an order of the county court;
- (b) in Scotland, in the same way as an order of the sheriff.” 20
- 45 After paragraph 119 insert—
- “**119ZA** (1) This paragraph applies if—
- (a) the union has (or unions have) been informed of a ballot under paragraph 117(11), and
- (b) the CAC refuses an application or issues a declaration under paragraph 116E. 25
- (2) If the ballot has not been held, the CAC must take steps to cancel it.
- (3) If the ballot is held, it is to have no effect.
- 119ZB** (1) This paragraph applies if— 30
- (a) the union has (or unions have) been informed of a ballot under paragraph 117(11),
- (b) a complaint is made under paragraph 116H, and
- (c) the ballot did not begin before the beginning of the decision period referred to in paragraph 116H(5). 35
- (2) The CAC may by notice to the parties and the qualified independent person postpone the date on which the ballot is to begin until a date which falls after the end of the decision period.
- (3) In relation to an application under paragraph 112, “the parties” includes the worker or workers making the application. 40
- 119ZC** (1) This paragraph applies if—

- 
- (a) the union has (or unions have) been informed of a ballot under paragraph 117(11),
- (b) the CAC issues a declaration that a complaint under paragraph 116H is well-founded, and
- (c) the CAC – 5
- (i) makes arrangements under paragraph 116I(5),
- (ii) refuses under paragraph 116J(4)(a) or (6) an application under paragraph 106, 107 or 112, or
- (iii) issues a declaration under paragraph 116J(5).
- (2) If the ballot has not been held, the CAC must take steps to cancel it. 10
- (3) If the ballot is held, it is to have no effect.
- 119ZD(1) This paragraph applies if –
- (a) the CAC makes arrangements under paragraph 116I(5), and 15
- (b) the CAC has previously given an order under paragraph 119(1) in relation to a cancelled or ineffective ballot in connection with the application to which the notice relates.
- (2) The order has effect, to the extent that the CAC specifies in a notice to the parties, as if it were made for the purposes of the ballot for which arrangements are made under paragraph 116I(5). 20
- (3) In relation to an application under paragraph 112, “the parties” includes the worker or workers making the application.”
- 46 Omit paragraphs 119A to 119I (unfair practices during ballot).
- 47 (1) Paragraph 120 (costs of ballot) is amended as follows. 25
- (2) In sub-paragraph (1), after “paragraph” insert “116I(5) or”.
- (3) After sub-paragraph (1) insert –
- “(1A) If the holding of the ballot is arranged under paragraph 116I(5), the gross costs of the ballot are to be borne by such of the parties and in such proportions as the CAC may determine. 30
- (1B) In relation to an application under paragraph 112, “the parties” includes the worker or workers making the application.”
- (4) In sub-paragraph (2), for “The gross costs” substitute “If the holding of the ballot is arranged under paragraph 117(3), the gross costs”.
- (5) In sub-paragraph (4), for “the employer and the union (or each of the unions)” substitute “the party or parties required to bear the costs”. 35
- 48 In paragraph 121 (result of ballot), for sub-paragraphs (1) and (1A) substitute –
- “(1) The CAC must act under this paragraph as soon as reasonably practicable after – 40

- (a) the CAC is informed of the result of a ballot by the person conducting it, and
  - (b) the complaint period ends.
- (1ZA) The complaint period is the period of 5 working days starting with the day after – 5
- (a) the date of the ballot, or
  - (b) if votes may be cast in the ballot on more than one day, the last of those days.
- (1A) The duty in sub-paragraph (1) does not apply – 10
- (a) if a complaint is made under paragraph 116H, on or before the day on which the CAC decides whether the complaint is well-founded;
  - (b) if the CAC makes arrangements under paragraph 116I(5).”

*Derecognition where recognition automatic*

- 49 In paragraph 122 (derecognition where recognition automatic on agreed terms), in sub-paragraph (1)(a) – 15
- (a) after “19F(5),” insert “19K(4), 19P(4),”;
  - (b) for “, 27(2) or 27D(3)” substitute “or 27(2)”.
- 50 In paragraph 123 (derecognition where recognition automatic on specified terms), in sub-paragraph (1)(a) – 20
- (a) after “19F(5),” insert “19K(4), 19P(4),”;
  - (b) for “, 27(2) or 27D(3)” substitute “or 27(2)”.
- 51 In paragraph 124 (derecognition where recognition automatic following changes to bargaining unit), in sub-paragraph (1), after “paragraph” insert “81E(4), 81J(4) or”. 25
- 52 After paragraph 132 insert –
- “Access agreements*
- 132A Paragraphs 116A to 116E apply if the CAC accepts an application under paragraph 128 (as well as in the cases mentioned in paragraph 116A(1)), as if – 30
- (a) the references in paragraphs 116A(1) and (4), 116B(1)(a), 116C(1)(a), 116D(1)(b) and 116E(1)(b) and (3)(b) to paragraph 106, 107 or 112 were to paragraph 106, 107, 112 or 128;
  - (b) the reference in paragraph 116A(3) to paragraph 111(5) or 115(5) were to paragraph 111(5), 115(5) or 132(5); 35
  - (c) the references in paragraphs 116A(4)(a) and 116E(4) to paragraph 106 or 107 were to paragraph 106, 107 or 128.”

53 After paragraph 132A (inserted by paragraph 52 of this Schedule) insert—  
“*Unfair practices*”

132B Paragraphs 116G to 116K apply if the CAC accepts an application under paragraph 128 (as well as in the cases mentioned in paragraph 116G), as if—

- (a) the references in paragraphs 116G(1) and (4)(a)(ii) and 116J(1)(b) to paragraph 106, 107 or 112 were to paragraph 106, 107, 112 or 128;
- (b) the reference in paragraph 116G(1) to paragraph 111(5) or 115(5) were to paragraph 111(5), 115(5) or 132(5);
- (c) the references in paragraphs 116H(2)(a), 116I(6)(a) and 116J(4)(a) to paragraph 106 or 107 were to paragraph 106, 107 or 128.”

54 (1) Paragraph 133 (ballot on derecognition) is amended as follows.

(2) In sub-paragraph (1), for “and (2)” substitute “, (2) and (4)”.

(3) In sub-paragraph (2)—

- (a) in paragraph (a), for “references in paragraphs 119(2)(a) and 119D(3)” substitute “reference in paragraph 119(2)(a)”;
- (b) in paragraph (b), for “119A(3)(a)(ii), 119E(1)(b)” substitute “119ZC(1)(c)(ii)”.

*Derecognition where union not independent*

55 After paragraph 146 insert—

“*Access agreements*”

146A Paragraphs 116A to 116E apply if the CAC accepts an application under paragraph 137 (as well as in the cases mentioned in paragraph 116A(1)), as if—

- (a) the references in paragraphs 116A(1) and (4), 116B(1)(a), 116C(1)(a), 116D(1)(b) and 116E(1)(b) and (3)(b) to paragraph 106, 107 or 112 were to paragraph 106, 107, 112 or 137;
- (b) the reference in paragraph 116A(4)(b) to paragraph 112 were to paragraph 112 or 137;
- (c) the reference in paragraph 116A(3) to paragraph 111(5) or 115(5) were to paragraph 111(5), 115(5) or 141(5);
- (d) the reference in paragraph 116A(4)(b) to paragraph 116(1) were to paragraph 116(1), 142(1) or 145(3).”

56 After paragraph 146A (inserted by paragraph 55 of this Schedule) insert –  
“Unfair practices

146B Paragraphs 116G to 116K apply if the CAC accepts an application under paragraph 137 (as well as in the cases mentioned in paragraph 116G), as if –

- (a) the references in paragraphs 116G(1) and (4)(a)(ii) and 116J(1)(b) to paragraph 106, 107 or 112 were to paragraph 106, 107, 112 or 137;
- (b) the reference in paragraph 116G(1) to paragraph 111(5) or 115(5) were to paragraph 111(5), 115(5) or 141(5);
- (c) the references in paragraphs 116G(5), 116H(2)(b), 116I(6)(b), 116J(1)(b), (4)(b) and (6) and 116K(1) to paragraph 112 were to paragraph 112 or 137;
- (d) the references in paragraphs 116H(2)(b) and 116I(6)(b) to paragraph 116(1) were to paragraph 116(1), 142(1) or 145(3).”

57 (1) Paragraph 147 (ballot on derecognition) is amended as follows.

(2) In sub-paragraph (1), for “and (2)” substitute “, (2) and (4)”.

(3) In sub-paragraph (2) –

- (a) in paragraph (a), for “references in paragraphs 119H(1) and 119I(1)(a)” substitute “reference in paragraph 119(5)(a)”;
- (b) in paragraph (b), for “119A(3)(a)(ii), 119E(1)(b)” substitute “119ZC(1)(c)(ii)”;
- (c) after paragraph (c) insert –

“(d) the reference in paragraph 119ZA(1)(b) to the CAC refusing an application included a reference to it being required to give notice under paragraph 146(5).”

## PART 5

### MEANING OF “THE REQUIRED PERCENTAGE”

58 After paragraph 171A insert –

““The required percentage”

171B (1) In this Schedule, “the required percentage” means 10%.

(2) The Secretary of State may by regulations amend this paragraph so that the required percentage is a percentage –

- (a) not greater than 10%, and
- (b) not less than 2%.

(3) Regulations under sub-paragraph (2) –

- (a) are to be made by statutory instrument;

- (b) may include supplementary, incidental, saving or transitional provision, including provision amending this Schedule;
  - (c) may make different provision for different cases.
- (4) A statutory instrument containing regulations under sub-paragraph (2) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.” 5

## PART 6

### CONSEQUENTIAL AMENDMENTS 10

- 59 (1) The Employment Relations Act 2004 is amended as follows.
- (2) In section 9–
    - (a) omit subsections (1) to (4);
    - (b) in subsection (5), for “that Schedule” substitute “Schedule A1 to the 1992 Act”; 15
    - (c) omit subsections (6) to (9).
  - (3) Omit section 10.
  - (4) Omit section 13.
  - (5) In paragraph 23 of Schedule 1–
    - (a) in sub-paragraph (10), omit paragraph (b) (and the “and” before it); 20
    - (b) in sub-paragraph (11), omit paragraph (b) (and the “and” before it);
    - (c) in sub-paragraph (13), omit paragraph (b) (and the “and” before it);
    - (d) in sub-paragraph (14), omit paragraph (b) (and the “and” before it);
    - (e) omit sub-paragraph (19);
    - (f) in sub-paragraph (26), omit paragraph (a) (and the “and” after it); 25
    - (g) in sub-paragraph (27), omit paragraph (a) (and the “and” after it).

## SCHEDULE 7

Section 87(1)

### LEGISLATION SUBJECT TO ENFORCEMENT UNDER PART 5

## PART 1

### RELEVANT LABOUR MARKET LEGISLATION 30

#### *Employment Agencies Act 1973*

- 1 The Employment Agencies Act 1973 (employment agencies and employment businesses).

- 2 Regulations under section 5 of that Act (conduct of employment agencies and businesses).

*Social Security Contributions and Benefits Act 1992*

- 3 Section 151(1) of the Social Security Contributions and Benefits Act 1992 (employer's liability to pay statutory sick pay). 5
- 4 Regulations under section 153(5)(b) of that Act (requirement to provide statement about entitlement).

*Social Security Administration Act 1992*

- 5 Regulations under section 5 of the Social Security Administration Act 1992 (regulations about claims for and payments of benefit), so far as relating to statutory sick pay. 10
- 6 Section 14(3) of that Act (duty of employers to provide certain information to employees in relation to statutory sick pay).
- 7 Regulations under section 130 of that Act (duties of employers), so far as relating to statutory sick pay. 15

*Social Security Contributions and Benefits (Northern Ireland) Act 1992*

- 8 Section 147(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (employer's liability to pay statutory sick pay).
- 9 Regulations under section 149(5)(b) of that Act (requirement to provide statement about entitlement). 20

*Social Security Administration (Northern Ireland) Act 1992*

- 10 Regulations under section 5 of the Social Security Administration (Northern Ireland) Act 1992 (regulations about claims for and payments of benefit), so far as relating to statutory sick pay.
- 11 Section 12(3) of that Act (duty of employers to provide certain information to employees in relation to statutory sick pay). 25
- 12 Regulations under section 122 of that Act (duties of employers), so far as relating to statutory sick pay.

*Employment Tribunals Act 1996*

- 13 Part 2A of the Employment Tribunals Act 1996 (financial penalties for failure to pay sums ordered to be paid or settlement sums). 30

*National Minimum Wage Act 1998*

- 14 Section 1 of the National Minimum Wage Act 1998 (entitlement to the national minimum wage).
- 15 Regulations under section 9 of that Act (duty of employers to keep records). 35

- |    |   |   |
|----|---|---|
| 16 | Section 10 of that Act (worker’s right of access to records).   |   |
| 17 | Regulations under section 12 of that Act (employer to provide worker with national minimum wage statement). |   |
| 18 | Section 17 of that Act (non-compliance: worker entitled to additional remuneration).                        | 5 |
| 19 | Section 23 of that Act (right not to suffer detriment).   |   |
| 20 | Section 31 of that Act (offences).  |   |

*Working Time Regulations 1998*

- |    |   |    |
|----|---|----|
| 21 | The following provisions of the Working Time Regulations 1998 (S.I. 1998/1833) –              | 10 |
|    | (a) regulations 13 to 15E (entitlement to annual leave, etc);                                 |    |
|    | (b) regulation 16 (right to payment in respect of periods of leave);                          |    |
|    | (c) regulation 16A (rolled-up holiday pay for irregular hours workers and part-year workers); |    |
|    | (d) regulation 16B(1) (duty to keep records relating to annual leave entitlement);            | 15 |
|    | (e) regulation 29(1) (offences), so far as relating to regulation 16B(1).                     |    |

*Gangmasters (Licensing) Act 2004*

- |    |   |    |
|----|---|----|
| 22 | Section 6 of the Gangmasters (Licensing) Act 2004 (prohibition of unlicensed activities).   | 20 |
| 23 | Rules under section 8 of that Act (power to make rules in connection with licensing of persons acting as gangmasters).  |    |
| 24 | Section 9 of that Act (modification, revocation or transfer of licence).  |    |
| 25 | Sections 12 and 13 of that Act (offences).  |    |
| 26 | The references in paragraphs 22 and 25 to the Gangmasters (Licensing) Act 2004 are to that Act only so far as it applies in relation to England and Wales and Scotland. | 25 |

*Fraud Act 2006*

- |    |  |    |
|----|--|----|
| 27 | Section 1 of the Fraud Act 2006, so far as relating to an offence which –  |    |
|    | (a) is committed under the law of England and Wales by virtue of section 4 of that Act (fraud by abuse of position), and | 30 |
|    | (b) is committed in relation to a worker or a person seeking work.   |    |

*Modern Slavery Act 2015*

- |    |   |    |
|----|---|----|
| 28 | Section 1 of the Modern Slavery Act 2015 (offence of slavery, servitude and forced or compulsory labour). | 35 |
|----|---|----|



- 29 Sections 2 and 4 of that Act (human trafficking), so far as relating to an offence –
- (a) which is committed in relation to a worker or a person seeking work, or
  - (b) which is otherwise committed in circumstances where subsection (2) of section 3 of that Act applies. 5
- 30 (1) Part 2 of that Act (prevention orders), so far as relating to –
- (a) the making of orders under that Part on the application of the Secretary of State,
  - (b) offences committed in relation to orders made under that Part on such an application, or 10
  - (c) offences committed in relation to orders within sub-paragraph (2).
- (2) An order is within this sub-paragraph if –
- (a) the order was made under section 14 of that Act following –
    - (i) the conviction of the defendant of a relevant offence, or 15
    - (ii) a finding of a kind mentioned in section 14(1)(b) or (c) of that Act in connection with a relevant offence, and
  - (b) the prosecution resulted from an investigation conducted by or on behalf of the Secretary of State.
- (3) In sub-paragraph (2) “relevant offence” means – 20
- (a) an offence under section 1 of the Modern Slavery Act 2015;
  - (b) an offence under section 2 or 4 of that Act falling within paragraph 29;
  - (c) an ancillary offence relating to an offence within paragraph (a) or (b). 25

*Employment Rights Act 2025*

- 31 Section 44(2) of this Act (entitlement of social care workers to be paid in accordance with ratified agreements of Negotiating Body).
- 32 Section 45(5) (entitlement of social care workers to be paid in accordance with regulations made by Secretary of State, etc). 30
- 33 Sections 116 to 126 and 136 (LME undertakings and orders).
- 34 Sections 137 and 139 (offences relating to Part 5).

**PART 2**

POWER TO AMEND PART 1

- 35 (1) The Secretary of State may by regulations amend Part 1 of this Schedule in order to – 35
- (a) add an enactment to the list of legislation in that Part, or
  - (b) vary a reference to an enactment in that list.

- (2) Regulations under this paragraph may add an enactment only if it relates to –
- (a) rights or entitlements conferred on employees or workers;
  - (b) the treatment of employees or workers;
  - (c) requirements, restrictions or prohibitions imposed on employers; 5
  - (d) trade unions, employers’ associations, industrial action or labour relations.
- (3) Regulations under this paragraph may not add an enactment that deals with a transferred matter, or vary a reference to such an enactment, without the consent of the appropriate Northern Ireland department. 10
- (4) For the purposes of sub-paragraph (3) –
- “the appropriate Northern Ireland department”, in relation to an enactment that deals with a transferred matter, means the Northern Ireland department which has responsibility for that matter;
  - “deals with” is to be read in accordance with section 98(2) and (3) of the Northern Ireland Act 1998; 15
  - “transferred matter” has the meaning given by section 4(1) of that Act.
- (5) Regulations under this paragraph may amend any of the following provisions in consequence of an amendment of Part 1 of this Schedule –
- (a) section 88 (enforcement functions of Secretary of State); 20
  - (b) section 89 (delegation of functions);
  - (c) section 100 (power to give notice of underpayment);
  - (d) section 147 (meaning of “non-compliance with relevant labour market legislation”).
- (6) Regulations under this paragraph that add an enactment which – 25
- (a) confers a right or entitlement to the payment of any sum to an individual, or
  - (b) prohibits or restricts the withholding of payment of any sum to an individual,
- may provide that a notice of underpayment relating to sums due under or by virtue of the enactment may relate to sums becoming due before the coming into force of the regulations. 30
- (7) Regulations under this paragraph are subject to the affirmative resolution procedure.

SCHEDULE 8

Section 128(5)

WARRANTS UNDER PART 5: FURTHER PROVISION

**PART 1**

APPLICATION OF THIS SCHEDULE

- 1 This Schedule applies in relation to— 5
- (a) applications for warrants under section 95 or 99, and
  - (b) warrants issued under section 95 or 99.

**PART 2**

WARRANTS: APPLICATIONS AND SAFEGUARDS

*Applications for warrants* 10

- 2 (1) Where an enforcement officer applies for a warrant, the officer must—
- (a) state the ground on which the application is made,
  - (b) state the provision of this Act under which the warrant would be issued,
  - (c) specify the premises which it is desired to enter, and 15
  - (d) identify, so far as is practicable, the purpose for which entry is desired.
- (2) An application for a warrant must be made without notice and must be supported by an information in writing or, in Scotland, evidence on oath.
- (3) The officer must answer on oath any question that the justice hearing the application asks the officer. 20

*Safeguards in connection with power of entry conferred by warrant*

- 3 A warrant authorises an entry on one occasion only.
- 4 (1) A warrant must specify— 25
- (a) the name of the person who applies for it,
  - (b) the date on which it is issued,
  - (c) the provision of this Act under which it is issued, and
  - (d) the premises to be entered.
- (2) A warrant must identify, so far as is practicable, the purpose for which entry is desired. 30
- 5 (1) Two copies are to be made of a warrant.
- (2) In the case of a warrant issued in electronic form, the copies must be clearly marked as copies.
- (3) In the case of a warrant issued otherwise than in electronic form, the copies must be clearly certified as copies. 35

### PART 3

#### EXECUTION OF WARRANTS

##### *Warrant to be executed within three months*

- 6 Execution of a warrant must be within three months from the date of its issue. 5

##### *Time of entry*

- 7 Execution of a warrant must be at a reasonable time, unless it appears to the officer executing it that there are grounds for suspecting that the purpose of entering the premises may be frustrated if the officer seeks to enter at a reasonable time. 10

##### *Evidence of authority etc*

- 8 (1) Where the occupier of premises to be entered under a warrant is present at the time when an enforcement officer seeks to execute the warrant, the following requirements must be satisfied— 15
- (a) the officer must produce to the occupier documentary evidence of the fact that the officer is an enforcement officer;
  - (b) if the officer is asked for it, the occupier must be told the officer's name;
  - (c) the officer must produce the warrant to the occupier;
  - (d) the officer must supply the occupier with a copy of the warrant that is marked or certified as a copy in accordance with paragraph 5. 20
- (2) Where— 25
- (a) the occupier of premises to be entered under a warrant is not present when an enforcement officer seeks to execute it, but
  - (b) some other person who appears to the officer to be in charge of the premises is present,
- sub-paragraph (1) has effect as if any reference to the occupier were a reference to that other person.
- (3) If there is no person present who appears to the enforcement officer to be in charge of the premises, the officer must leave a copy of the warrant, marked or certified as a copy in accordance with paragraph 5, in a prominent place on the premises. 30

##### *Securing premises after entry*

- 9 An enforcement officer who enters premises under a warrant must take reasonable steps to ensure that when the officer leaves the premises they are as secure as they were before the officer entered. 35

*Return and retention of warrants*

- 10 (1) A warrant which –
- (a) has been executed, or
  - (b) has not been executed within the time authorised for its execution, must be returned to the appropriate person. 5
- (2) For the purposes of sub-paragraph (1) the appropriate person is –
- (a) in the case of a warrant issued in England and Wales, the designated officer for the local justice area in which the justice was acting when the warrant was issued;
  - (b) in the case of a warrant issued in Scotland by a justice of the peace, the clerk of the justice of the peace court in the sheriffdom for which the justice of the peace was appointed; 10
  - (c) in the case of a warrant issued in Scotland by a sheriff or a summary sheriff, the sheriff clerk;
  - (d) in the case of a warrant issued in Northern Ireland, the clerk of petty sessions. 15
- (3) A warrant that is returned under this paragraph must be retained by the person to whom it is returned for a period of 12 months.
- (4) If during that period the occupier of the premises to which the warrant relates asks to inspect it, the occupier must be allowed to do so. 20

SCHEDULE 9

Section 132(5)

PERSONS TO WHOM INFORMATION MAY BE DISCLOSED UNDER SECTION 132

*Authorities with functions in connection with the labour market or the workplace etc*

- The Commissioners for His Majesty’s Revenue and Customs.
- The Health and Safety Executive. 25
- An enforcing authority within the meaning of Part 1 of the Health and Safety at Work etc. Act 1974 (see section 18(7) of that Act).
- An inspector appointed by such an enforcing authority (see section 19 of that Act).
- An officer acting for the purposes of Part 2 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (S.I. 1981/839 (N.I. 20)). 30
- An enforcement authority within the meaning of regulation 28 of the Working Time Regulations 1998 (S.I. 1998/1833).
- An inspector appointed by such an enforcement authority (see Schedule 3 to those Regulations). 35
- The Advisory, Conciliation and Arbitration Service.

The Low Pay Commission.	
The Pensions Regulator.	
The Pensions Ombudsman.	
<i>Law enforcement and border security</i>	
A chief officer of police of a police force maintained for a police area in England and Wales.	5
A local policing body.	
The Chief Constable of the British Transport Police Force.	
The chief constable of the Police Service of Scotland.	
The Chief Constable of the Police Service of Northern Ireland.	10
The National Crime Agency.	
A person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.	
<i>Local government</i>	
A county council or district council in England.	15
A London borough council.	
The Greater London Authority.	
The Common Council of the City of London in its capacity as a local authority.	
The Council of the Isles of Scilly.	
A county council or county borough council in Wales.	20
A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.	
A district council in Northern Ireland.	
<i>Health and social care bodies</i>	
The Care Quality Commission.	25
A National Health Service trust established under section 25 of the National Health Service Act 2006 or section 18 of the National Health Service (Wales) Act 2006.	
An NHS foundation trust within the meaning given by section 30 of the National Health Service Act 2006.	30
A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.	
A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.	

A Special Health Board constituted under that section.	
Healthcare Improvement Scotland.	
Social Care Wales.	
Social Care and Social Work Improvement Scotland.	
The Scottish Social Services Council.	5
The Health and Social Care Regulation and Quality Improvement Authority in Northern Ireland.	

*Other persons*

The Equality and Human Rights Commission.	
The Independent Anti-slavery Commissioner.	10
The Welsh Ministers.	
A Northern Ireland department.	

SCHEDULE 10

Section 146(1)

CONSEQUENTIAL AMENDMENTS RELATING TO PART 5

**PART 1** 15

EXISTING POWERS UNDER RELEVANT LABOUR MARKET LEGISLATION

*Employment Agencies Act 1973*

1	The Employment Agencies Act 1973 is amended as follows.	
2	Omit section 8A (appointment of officers).	
3	Omit section 9 (inspection).	20
4	(1) Section 11A (offences: extension of time limit) is amended as follows.	
	(2) In subsection (1), omit “9(4)(b) or”.	
	(3) In subsection (3), omit “9(4)(b) or”.	

*Part 2A of Employment Tribunals Act 1996*

5	Part 2A of the Employment Tribunals Act 1996 (financial penalties for failure to pay sums ordered to be paid or settlement sums) is amended as follows.	25
6	In section 37D (unpaid amount of relevant sum: further provision), in subsection (6), for “an enforcement officer” substitute “the Secretary of State”.	30
7	(1) Section 37E (warning notice) is amended as follows.	

- (2) In subsection (1), for “an enforcement officer” substitute “the Secretary of State”.
- (3) In subsection (2) –
- (a) for “officer” substitute “Secretary of State”;
  - (b) for “officer’s” substitute “Secretary of State’s”. 5
- (4) In subsection (3), for “officer” substitute “Secretary of State”.
- 8 (1) Section 37F (penalty notice) is amended as follows.
- (2) In subsection (1), for “an enforcement officer” substitute “the Secretary of State”.
- (3) In subsection (2), for “officer” substitute “Secretary of State”. 10
- 9 In section 37G (appeal against penalty notice), in subsection (3)(b), for “enforcement officer” substitute “Secretary of State”.
- 10 In section 37I (withdrawal of warning notice), in subsection (1) –
- (a) in paragraph (b), for “an enforcement officer” substitute “the Secretary of State”; 15
  - (b) in the closing words, for “officer” substitute “Secretary of State”.
- 11 In section 37J (withdrawal of penalty notice), in subsection (1) –
- (a) in paragraph (b), for “an enforcement officer” substitute “the Secretary of State”;
  - (b) in the closing words, for “officer” substitute “Secretary of State”. 20
- 12 In section 37K (replacement penalty notice), in subsection (1) –
- (a) for “an enforcement officer” substitute “the Secretary of State”;
  - (b) for “the officer” substitute “the Secretary of State”.
- 13 Omit section 37M (enforcement officers).
- 14 In section 37O (modification in particular cases), in subsection (4)(a), for “enforcement officer” substitute “Secretary of State”. 25
- 15 In section 37P (giving of notices), in subsection (1)(a), for “an enforcement officer” substitute “the Secretary of State”.
- 16 In section 37Q(1) (interpretation), omit the definition of “enforcement officer”. 30

*National Minimum Wage Act 1998*

- 17 The National Minimum Wage Act 1998 is amended as follows.
- 18 Omit section 13 (appointment of officers) and the italic heading before that section.
- 19 Omit section 14 (powers of officers). 35
- 20 Omit section 15 (information obtained by officers).
- 21 Omit section 16 (information obtained by agricultural wages officers).



- 22 In section 16A (disclosure of information by officers), in subsection (5)–  
(a) in the definition of “enforcement officer”, omit paragraph (a) (and the “or” after it);  
(b) in the definition of “the relevant legislation”, omit paragraph (a) (and the “and” after it). 5
- 23 Omit sections 19 to 19H (notices of underpayment).
- 24 In section 31 (offences), omit subsection (5).

*Gangmasters (Licensing) Act 2004*

- 25 The Gangmasters (Licensing) Act 2004 is amended as follows.
- 26 Omit the italic heading before section 1. 10
- 27 Omit section 2 (directions etc to the Gangmasters and Labour Abuse Authority).
- 28 In section 3 (work to which Act applies), for subsection (6) substitute–  
“(6) Before making regulations under subsection (5), the Secretary of State must consult the Advisory Board established under section 90 of the Employment Rights Act 2025.” 15
- 29 (1) Section 7 (grant of licence) is amended as follows.  
(2) In subsection (1)–  
(a) for “Authority” substitute “Secretary of State”;  
(b) for “it” substitute “the Secretary of State”. 20  
(3) In subsection (2), for “Authority” substitute “Secretary of State”.  
(4) In subsection (5), for “Authority” substitute “Secretary of State”.
- 30 (1) Section 8 (general power to make rules) is amended as follows.  
(2) In the heading, omit “of Authority”.  
(3) In subsection (1)– 25  
(a) for the words from the beginning to “State” substitute “The Secretary of State may”;  
(b) for “it” substitute “the Secretary of State”.
- 31 (1) Section 9 (modification, revocation or transfer of licence) is amended as follows. 30  
(2) In subsection (1)–  
(a) for “Authority” substitute “Secretary of State”;  
(b) in paragraph (b), for “him” substitute “the Secretary of State”.  
(3) In subsection (2), for “Authority” substitute “Secretary of State”.  
(4) In subsection (3), for “Authority”, in both places it occurs, substitute 35  
“Secretary of State”.

- 
- 32 In section 10 (appeals), in subsection (1), for “Authority” substitute “Secretary of State”.
- 33 (1) Section 11 (register of licences) is amended as follows.
- (2) In subsection (1), for “The Authority shall establish and” substitute “The Secretary of State must”.
- (3) In subsection (2), for “Authority” substitute “Secretary of State”.
- (4) In subsection (3), for “Authority” substitute “Secretary of State”.
- 34 In section 12 (offences: acting as a gangmaster, etc), in subsection (6)(b), for “Authority” substitute “Gangmasters and Labour Abuse Authority or the Secretary of State”.
- 35 (1) Section 14 (offences: supplementary provisions) is amended as follows.
- (2) In subsection (1), for “section 24A of the Police and Criminal Evidence Act 1984 (c. 60)” substitute “Article 26A of the Police and Criminal Evidence Act (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))”.
- (3) Omit subsection (2A).
- (4) In subsection (3), after “do not apply” insert “in England and Wales or”.
- 36 (1) Section 15 (enforcement and compliance officers) is amended as follows.
- (2) For the heading substitute “Enforcement officers: Northern Ireland”.
- (3) In subsection (1)–
- (a) for “Secretary of State” substitute “Department of Agriculture, Environment and Rural Affairs in Northern Ireland (“the Department”);
- (b) after “this Act” insert “, so far as it applies in relation to Northern Ireland”.
- (4) In subsection (2), for “Secretary of State” substitute “Department”.
- (5) In subsection (3)–
- (a) omit paragraph (a);
- (b) after paragraph (b) insert–
- “(ba) any Minister within the meaning of the Northern Ireland Act 1998 or any Northern Ireland department;”
- (c) omit paragraphs (c) and (d).
- (6) After subsection (3) insert–
- “(3A) Arrangements made under subsection (2) with a relevant authority within paragraph (b) or (e) of that subsection may provide for payments to be made by the Department in respect of the performance of any function to which the arrangements relate.

- (3B) Any sums received by virtue of subsection (3A) by a Minister of the Crown or government department are to be paid into the Consolidated Fund.”
- (7) Omit subsection (4).
- (8) In subsection (5), omit “or a compliance officer”. 5
- (9) In subsection (6), omit “or a compliance officer”.
- (10) After subsection (6) insert –
- “(6ZA) For powers to enforce this Act so far as it applies in relation to England and Wales and Scotland, see Part 5 of the Employment Rights Act 2025.” 10
- (11) Omit subsection (6A).
- 37 (1) Section 16 (powers of officers) is amended as follows.
- (2) Omit subsection (A1).
- (3) In subsection (1), omit “or a compliance officer”.
- 38 (1) Section 17 (entry by warrant) is amended as follows. 15
- (2) Omit subsection (A1).
- (3) In subsection (1), for “written information” substitute “a written complaint”.
- (4) After subsection (4) insert –
- “(4A) In this section a reference to section 6 is a reference to that section only so far as it applies in relation to Northern Ireland.” 20
- (5) Omit subsection (5).
- 39 (1) Section 18 (obstruction of officers) is amended as follows.
- (2) In subsection (1)(a) –
- (a) omit “or compliance officer”;
- (b) omit the words from “or functions” to “officers)”. 25
- (3) In subsection (2), omit “or compliance officer”.
- (4) In subsection (3) –
- (a) omit paragraph (a);
- (b) in paragraph (b), omit “Scotland or”;
- (c) omit the words after paragraph (b). 30
- 40 (1) Section 19 (information relating to gangmasters) is amended as follows.
- (2) In subsection (1) –
- (a) omit paragraph (aa) (but not the “and” after it);
- (b) in paragraph (b), before sub-paragraph (i) insert –
- “(zi) the enforcement of this Act so far as it applies in relation to England and Wales and Scotland,”. 35

- (3) In subsection (1A), omit paragraph (b) (and the “and” before it).
- (4) Omit subsection (1B).
- (5) In subsection (2) –
- (a) for “subsection (1)(aa) or (b)” substitute “subsection (1)(b)”;
  - (b) after “supplied to” insert “, or used by,”. 5
- 41 Omit section 22A (relationship with other agencies: requests for assistance).
- 42 Omit section 24 (financial provision).
- 43 (1) Section 25 (regulations, rules and orders) is amended as follows.
- (2) In subsection (3), after “regulations” insert “, rules”.
  - (3) Omit subsection (4). 10
  - (4) In subsection (5) –
    - (a) omit paragraph (a);
    - (b) omit paragraph (c) (and the “or” before it).  - (5) In subsection (6)(b), omit “made by the Authority” and “of Authority”.
- 44 Omit Schedule 1 (consequential amendments of enactments). 15
- 45 (1) Schedule 2 (application of Act to Northern Ireland) is amended as follows.
- (2) Omit paragraphs 3 to 6.
  - (3) In paragraph 9 (grant of licences), for “Authority” substitute “Secretary of State”.
  - (4) In the italic heading before paragraph 10, omit “of Authority”. 20
  - (5) In paragraph 10 (general power to make rules) –
    - (a) in sub-paragraph (1), omit “of Authority”;
    - (b) omit sub-paragraph (2);
    - (c) in sub-paragraph (3), for “Authority” substitute “Secretary of State”.  - (6) For paragraph 11 substitute – 25
- “11 Regulations under section 10 that make provision for appeals against decisions made in connection with Northern Ireland licences may, if the relevant Northern Ireland department so agrees, confer functions on the relevant Northern Ireland department.” 30
- (7) In paragraph 12 (register of licences), for “The Authority shall establish and” substitute “The Secretary of State must”.
  - (8) Omit paragraph 14 (offences: supplementary provision).
  - (9) Omit paragraph 15 (enforcement and compliance officers).
  - (10) Omit paragraph 16 (entry by warrant). 35
  - (11) In paragraph 16A (information relating to gangmasters), in sub-paragraph (1), omit paragraphs (a) and (b) (and the “and” before paragraph (c)).

- (12) Omit paragraph 16B (relationship with other agencies: requests for assistance).
- (13) Omit paragraph 18 (financial provision).

*Modern Slavery Act 2015*

- 46 The Modern Slavery Act 2015 is amended as follows. 5
- 47 Omit section 11A (enforcement of Part 1 by Gangmasters and Labour Abuse Authority).
- 48 (1) Section 15 (slavery and trafficking prevention orders on application) is amended as follows.
  - (2) In subsection (1), for paragraph (d) substitute – 10
    - “(ca) if it appears that an offence under this Part which is a labour market offence has been, is being or may be committed, the Secretary of State.”
  - (3) In subsection (7) –
    - (a) for “Gangmasters and Labour Abuse Authority” substitute “Secretary of State”; 15
    - (b) for “the Authority” substitute “the Secretary of State”.
  - (4) In subsection (8)(b) –
    - (a) for “Gangmasters and Labour Abuse Authority” substitute “Secretary of State”; 20
    - (b) for “the Authority” substitute “the Secretary of State”.
- 49 In section 19 (requirement to provide name and address), in subsection (7) –
  - (a) for “Gangmasters and Labour Abuse Authority” substitute “Secretary of State”; 25
  - (b) for “the Authority” substitute “the Secretary of State”.
- 50 (1) Section 20 (variation, renewal and discharge) is amended as follows.
  - (2) In subsection (2)(g), for “the Gangmasters and Labour Abuse Authority, the Authority” substitute “the Secretary of State, the Secretary of State”.
  - (3) In subsection (9) – 30
    - (a) for “Gangmasters and Labour Abuse Authority” substitute “Secretary of State”;
    - (b) for “the Authority”, in both places it occurs, substitute “the Secretary of State”.
- 51 (1) Section 23 (slavery and trafficking risk orders) is amended as follows. 35
  - (2) In subsection (1), for paragraph (d) substitute –
    - “(ca) if it appears that an offence under this Part which is a labour market offence has been, is being or may be committed, the Secretary of State.”

- 
- (3) In subsection (6)–
- (a) for “Gangmasters and Labour Abuse Authority” substitute “Secretary of State”;
- (b) for “the Authority” substitute “the Secretary of State”.
- (4) In subsection (7)(b)– 5
- (a) for “Gangmasters and Labour Abuse Authority” substitute “Secretary of State”;
- (b) for “the Authority” substitute “the Secretary of State”.
- 52 In section 26 (requirement to provide name and address), in subsection (7)– 10
- (a) for “Gangmasters and Labour Abuse Authority” substitute “Secretary of State”;
- (b) for “the Authority” substitute “the Secretary of State”.
- 53 (1) Section 27 (variation, renewal and discharge) is amended as follows.
- (2) In subsection (2)(g), for “the Gangmasters and Labour Abuse Authority, the Authority” substitute “the Secretary of State, the Secretary of State”. 15
- (3) In subsection (7)–
- (a) for “Gangmasters and Labour Abuse Authority” substitute “Secretary of State”;
- (b) for “the Authority”, in both places it occurs, substitute “the Secretary of State”. 20
- 54 Omit section 30A (enforcement of Part 2 by Gangmasters and Labour Abuse Authority).
- 55 In section 33 (guidance), in subsection (1), for “, the Director General of the National Crime Agency and the Gangmasters and Labour Abuse Authority” substitute “and the Director General of the National Crime Agency”. 25
- 56 In section 34 (interpretation of Part 2), in subsection (1), after the definition of “interim slavery and trafficking risk order” insert –
- ““labour market offence” has the same meaning as in Part 5 of the Employment Rights Act 2025;”.
- 30

## PART 2

### OTHER CONSEQUENTIAL AMENDMENTS

#### *Public Records Act 1958*

- 57 In Schedule 1 to the Public Records Act 1958 (definition of public records), in Part 2 of the Table at the end of paragraph 3, omit the entry relating to the Gangmasters and Labour Abuse Authority. 35

*Parliamentary Commissioner Act 1967*

- 58 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation), omit the entries relating to—
- (a) the Director of Labour Market Enforcement, and
  - (b) the Gangmasters and Labour Abuse Authority.
- 5

*Superannuation Act 1972*

- 59 In Schedule 1 to the Superannuation Act 1972 (kinds of employment to which that Act applies), omit the entries relating to—
- (a) the Director of Labour Market Enforcement, and
  - (b) the Gangmasters and Labour Abuse Authority.
- 10

*House of Commons Disqualification Act 1975*

- 60 In Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership)—
- (a) in Part 2, omit the entry relating to the Gangmasters and Labour Abuse Authority;
  - (b) in Part 3, omit the entry relating to the Director of Labour Market Enforcement.
- 15

*Northern Ireland Assembly Disqualification Act 1975*

- 61 In Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (offices disqualifying for membership)—
- (a) in Part 2, omit the entry relating to the Gangmasters and Labour Abuse Authority;
  - (b) in Part 3, omit the entry relating to the Director of Labour Market Enforcement.
- 20

*Employment Protection Act 1975* 25

- 62 In Schedule 13 to the Employment Protection Act 1975, omit paragraph 6.

*Police and Criminal Evidence Act 1984*

- 63 (1) Section 114B of the Police and Criminal Evidence Act 1984 (application of Act to labour abuse prevention officers) is amended as follows.
- (2) In the heading, for “labour abuse prevention officers” substitute “enforcement officers”. 30
  - (3) In subsection (1), for “labour abuse prevention officers” substitute “enforcement officers”.
  - (4) Omit subsections (3), (4), (8) and (9).
  - (5) In subsection (10), for “Any other” substitute “A”. 35

(6) For subsection (11) substitute –

“(11) In this section –

“enforcement officer” has the meaning given by section 87(3) of the Employment Rights Act 2025;

“labour market offence” has the same meaning as in Part 5 of that Act (see section 148(1) of that Act).” 5

*Companies Act 1985*

64 In Schedule 15C to the Companies Act 1985, omit paragraph 7D.

*Trade Union and Labour Relations (Consolidation) Act 1992*

65 In section 251B of the Trade Union and Labour Relations (Consolidation) Act 1992 (prohibition on disclosure of information), in subsection (2), omit paragraph (ca). 10

*Criminal Justice and Public Order Act 1994*

66 (1) The Criminal Justice and Public Order Act 1994 is amended as follows.

(2) In section 36 (effect of accused’s failure or refusal to account for objects, substances or marks), after subsection (5) insert – 15

“(5A) This section applies in relation to enforcement officers who –

(a) are appointed by the Secretary of State under section 87 of the Employment Rights Act 2025, and

(b) are acting in the exercise of functions conferred on them by virtue of section 114B of the Police and Criminal Evidence Act 1984, 20

as it applies in relation to constables.”

(3) In section 37 (effect of accused’s failure or refusal to account for presence at a particular place), after subsection (4) insert – 25

“(4A) This section applies in relation to enforcement officers who –

(a) are appointed by the Secretary of State under section 87 of the Employment Rights Act 2025, and

(b) are acting in the exercise of functions conferred on them by virtue of section 114B of the Police and Criminal Evidence Act 1984, 30

as it applies in relation to constables.”

*Deregulation and Contracting Out Act 1994*

67 In Schedule 10 to the Deregulation and Contracting Out Act 1994, omit paragraph 1(4). 35



*Employment Tribunals Act 1996*

- 68 (1) The Employment Tribunals Act 1996 is amended as follows.
- (2) In section 18 (conciliation: relevant proceedings etc), in subsection (1)(c), omit “, 19D(1)(a)”.
- (3) In section 19A (conciliation: recovery of sums payable under settlements), omit subsection (10A). 5
- (4) In section 21 (jurisdiction of Employment Appeal Tribunal), in subsection (1), after paragraph (ge) insert—
- “(gf) Part 5 of the Employment Rights Act 2025.”

*Employment Relations Act 1999* 10

- 69 In Schedule 7 to the Employment Relations Act 1999, omit paragraph 4.

*Immigration and Asylum Act 1999*

- 70 In Schedule A1 to the Immigration and Asylum Act 1999, omit paragraph 17.

*Finance Act 2000* 15

- 71 In the Finance Act 2000, omit section 148 (use of minimum wage information).

*Regulation of Investigatory Powers Act 2000*

- 72 In Part 1 of Schedule 1 to the Regulation of Investigatory Powers Act 2000 (relevant public authorities for purposes of sections 28 and 29 of that Act), omit paragraph 20E. 20

*Freedom of Information Act 2000*

- 73 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (bodies etc that are public authorities for the purposes of the Act), omit the entries relating to— 25
- (a) the Director of Labour Market Enforcement, and
- (b) the Gangmasters and Labour Abuse Authority.

*Police Reform Act 2002*

- 74 (1) The Police Reform Act 2002 is amended as follows.
- (2) In section 10 (general functions of the Independent Police Complaints Commission)— 30
- (a) in subsection (1), for paragraph (ga) substitute—
- “(ga) to carry out such corresponding functions in relation to enforcement officers (within the meaning of Part

- 
- 5 of the Employment Rights Act 2025) acting in the exercise of functions conferred on them by virtue of section 114B of the Police and Criminal Evidence Act 1984;”;
- (b) in subsection (3) – 5
- (i) after paragraph (bc) insert –
- “(bca) any regulations under section 26CA of this Act (enforcement officers appointed under Employment Rights Act 2025);”;
- (ii) omit paragraph (bd). 10
- (3) After section 26C insert –
- “26CA Enforcement officers appointed under Employment Rights Act 2025**
- (1) The Secretary of State may make regulations conferring functions on the Director General in relation to enforcement officers acting in the exercise of functions conferred on them by virtue of section 114B of the Police and Criminal Evidence Act 1984. 15
- (2) In this section “enforcement officer” means a person appointed by the Secretary of State under section 87 of the Employment Rights Act 2025. 20
- (3) Regulations under this section may, in particular –
- (a) apply (with or without modifications), or make provision similar to, any provision of or made under this Part;
- (b) make provision for payment by the Secretary of State to, or in respect of, the Office or in respect of the Director General. 25
- (4) The Director General and the Parliamentary Commissioner for Administration may jointly investigate a matter in relation to which –
- (a) the Director General has functions by virtue of this section, and 30
- (b) the Parliamentary Commissioner for Administration has functions by virtue of the Parliamentary Commissioner Act 1967.
- (5) The Secretary of State or an enforcement officer may disclose information to the Director General, or to a person acting on the Director General’s behalf, for the purposes of the exercise by the Director General, or by any person acting on the Director General’s behalf, of a relevant complaints function. 35
- (6) The Director General and the Parliamentary Commissioner for Administration may disclose information to each other for the purposes of the exercise of a function – 40
- (a) by virtue of this section, or

- (b) under the Parliamentary Commissioner Act 1967.
  - (7) Regulations under this section may, in particular, make—
    - (a) further provision about the disclosure of information under subsection (5) or (6);
    - (b) provision about the further disclosure of information that has been so disclosed. 5
  - (8) A disclosure of information authorised by this section does not breach—
    - (a) any obligation of confidence owed by the person making the disclosure, or 10
    - (b) any other restriction on the disclosure of information (however imposed).
  - (9) But this section does not authorise a disclosure of information that—
    - (a) would contravene the data protection legislation (but in determining whether a disclosure would do so, the power conferred by this section is to be taken into account), or 15
    - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
  - (10) In this section—
    - “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act); 20
    - “relevant complaints function” means a function in relation to the exercise of functions by enforcement officers.”
  - (4) Omit section 26D (labour abuse prevention officers).
- Employment Relations Act 2004* 25
- 75 In Schedule 1 to the Employment Relations Act 2004, omit paragraphs 40 and 41.
- Civil Partnership Act 2004*
- 76 In Schedule 27 to the Civil Partnership Act 2004, omit paragraph 155.
- Pensions Act 2004* 30
- 77 In Schedule 3 to the Pensions Act 2004 (certain permitted disclosures of restricted information held by the Pensions Regulator), omit the entry relating to the Director of Labour Market Enforcement.
- Serious Organised Crime and Police Act 2005*
- 78 In Schedule 7 to the Serious Organised Crime and Police Act 2005, omit paragraph 62. 35

*Natural Environment and Rural Communities Act 2006*

- 79 In Schedule 7 to the Natural Environment and Rural Communities Act 2006 (designated bodies), omit paragraph 13.

*Regulatory Enforcement and Sanctions Act 2008*

- 80 In Schedule 5 to the Regulatory Enforcement and Sanctions Act 2008 (designated regulators), omit the entry relating to the Gangmasters and Labour Abuse Authority. 5

*Employment Act 2008*

- 81 In the Employment Act 2008, omit the following— 10
- (a) section 9(1) and (2);
  - (b) section 16;
  - (c) section 18.

*Equality Act 2010*

- 82 In Schedule 19 to the Equality Act 2010 (public authorities subject to public sector equality duty), omit the entry relating to the Gangmasters and Labour Abuse Authority. 15

*Financial Services Act 2012*

- 83 In Schedule 18 to the Financial Services Act 2012, omit paragraph 36.

*Modern Slavery Act 2015*

- 84 (1) The Modern Slavery Act 2015 is amended as follows. 20
- (2) In section 52 (duty to notify Secretary of State about suspected victims of slavery or human trafficking), in subsection (5), omit paragraph (k).
  - (3) Omit section 54A (Gangmasters and Labour Abuse Authority: information gateways).
  - (4) In section 58(4) (regulations), omit paragraph (ja). 25
  - (5) In section 60 (extent)—
    - (a) in subsection (1), omit “and section 54A, and Schedule 4A, in Part 7”;
    - (b) in subsection (3), omit “(except for section 54A and Schedule 4A)”.
  - (6) In Schedule 3, omit the following— 30
    - (a) the entry relating to the Gangmasters and Labour Abuse Authority;
    - (b) the entry relating to the Director of Labour Market Enforcement;
    - (c) the heading “Regulators”.
  - (7) Omit Schedule 4A.

*Small Business, Enterprise and Employment Act 2015*

- 85 In the Small Business, Enterprise and Employment Act 2015, omit the following—
- (a) in section 150, subsections (4) and (7);
  - (b) section 152.

5

*Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*

- 86 In Schedule 3 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2 (N.I.)) (slavery and trafficking prevention orders), in Part 3, in paragraph 18(7)(e), omit “or the Gangmasters and Labour Abuse Authority”.

10

*Immigration Act 2016*

- 87 In the Immigration Act 2016, omit the following—
- (a) sections 2 to 9;
  - (b) section 10;
  - (c) section 11(2);
  - (d) section 12(2);
  - (e) section 13;
  - (f) sections 14 to 30;
  - (g) sections 32 and 33;
  - (h) in Schedule 2, paragraphs 1 to 7, 9, 16 and 17;
  - (i) in Schedule 3, paragraphs 1 to 9, 11, 12, 14 to 16, 17(b), 18 to 22, 23(4)(b), 24(2) and (3) and 25 to 36.

15

20

*Investigatory Powers Act 2016*

- 88 (1) The Investigatory Powers Act 2016 is amended as follows.
- (2) In Part 1 of Schedule 4, in the Table, omit the entry relating to the Gangmasters and Labour Abuse Authority.
- (3) In Schedule 10, omit paragraph 35.

25

*Policing and Crime Act 2017*

- 89 In Schedule 9 to the Policing and Crime Act 2017, omit paragraph 36.

30

*Data Protection Act 2018*

- 90 In Schedule 19 to the Data Protection Act 2018, omit paragraphs 191 and 197.

*Sentencing Act 2020*

- 91 In section 379(1) of the Sentencing Act 2020 (other behaviour orders etc), after the entry for the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 insert –
- “Employment Rights Act 2025** 5
- |             |                                 |  |    |
|-------------|---------------------------------|--|----|
| section 122 | labour market enforcement order | labour market offence within the meaning of Part 5 of that Act.” | 10 |
|-------------|---------------------------------|--|----|

*Police, Crime, Sentencing and Courts Act 2022*

- 92 In Part 2 of Schedule 3 to the Police, Crime, Sentencing and Courts Act 2022 (extraction of information from electronic devices: authorised persons in relation to all purposes within section 37), after the entry relating to section 15 of the Gangmasters (Licensing) Act 2004 insert – 15
- “A person who is an enforcement officer for the purposes of Part 5 of the Employment Rights Act 2025.”

*Procurement Act 2023*

- 93 (1) The Procurement Act 2023 is amended as follows.
- (2) In Part 1 of Schedule 6 (mandatory exclusion grounds: offences), in paragraph 26, for “section 27 of the Immigration Act 2016” substitute “section 136 of the Employment Rights Act 2025”. 20
- (3) In Schedule 7 (discretionary exclusion grounds), in paragraph 1(d), for “section 18 of the Immigration Act 2016” substitute “section 120 of the Employment Rights Act 2025”. 25

SCHEDULE 11

Section 146(2) and (3)

TRANSITIONAL AND SAVING PROVISION RELATING TO PART 5

**PART 1**

ABOLITION OF EXISTING ENFORCEMENT AUTHORITIES: TRANSFER SCHEMES

*Staff transfer schemes*

30

- 1 (1) The Secretary of State may make a scheme (a “staff transfer scheme”) providing –

- (a) for a designated employee of the GLAA to become a member of staff of the Secretary of State (and accordingly to become employed in the civil service of the state);
  - (b) so far as may be consistent with employment in the civil service of the state, for the terms and conditions of the employee’s employment with the GLAA to have effect as if they were the conditions of service as a member of the Secretary of State’s staff; 5
  - (c) for the transfer to the Secretary of State of the rights, powers, duties and liabilities of the GLAA under or in connection with the employee’s contract of employment; 10
  - (d) for anything done (or having effect as if done) before that transfer by or in relation to the GLAA in respect of such a contract or the employee to be treated as having been done by or in relation to the Secretary of State.
- (2) A staff transfer scheme may provide for a period before the employee became a member of the Secretary of State’s staff to count as a period during which the employee was a member of the Secretary of State’s staff (and for the operation of the scheme not to be treated as having interrupted the continuity of that period). 15
- (3) A staff transfer scheme may provide for the employee not to become a member of the Secretary of State’s staff if the employee gives notice objecting to the operation of the scheme in relation to the employee. 20
- (4) A staff transfer scheme may provide for a person who would be treated (by an enactment or otherwise) as being dismissed by the operation of the scheme not to be so treated. 25
- (5) A staff transfer scheme may provide for an employee of the GLAA to become a member of the Secretary of State’s staff despite any provision, of whatever nature, which would otherwise prevent the person from being employed in the civil service of the state.

*Property transfer schemes* 30

- 2 (1) The Secretary of State may make a scheme (a “property transfer scheme”) providing for the transfer from the GLAA or the Director to the Secretary of State of designated property, rights or liabilities.
- (2) A property transfer scheme may –
- (a) create rights, or impose liabilities, in relation to property or rights transferred by virtue of the scheme; 35
  - (b) provide for anything done by or in relation to the GLAA or the Director in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the Secretary of State; 40
  - (c) apportion property, rights and liabilities;
  - (d) make provision about the continuation of legal proceedings.
- (3) The things that may be transferred by a property transfer scheme include –

- (a) property, rights and liabilities that could not otherwise be transferred;
- (b) property acquired, and rights and liabilities arising, after the making of the scheme.

*Continuity* 5

- 3 A transfer by virtue of a staff transfer scheme or a property transfer scheme does not affect the validity of anything done by or in relation to the GLAA or the Director before the transfer takes effect.

*Supplementary provision, etc*

- 4 A staff transfer scheme or a property transfer scheme may include supplementary, incidental, transitional or consequential provision. 10

*Interpretation*

- 5 In this Part of this Schedule –  
 “designated”, in relation to a staff transfer scheme or a property transfer scheme, means specified in, or determined in accordance with, the scheme; 15  
 “the Director” means the Director of Labour Market Enforcement;  
 “the GLAA” means the Gangmasters and Labour Abuse Authority.

**PART 2**

OTHER TRANSITIONAL AND SAVING PROVISION 20

*General*

- 6 (1) Anything which –  
 (a) was done by or in relation to a relevant person for the purpose of, or in connection with, any function of the person under a provision amended or repealed by Part 1 of Schedule 10, and 25  
 (b) is in effect immediately before the day on which the amendment or repeal comes into force,  
 has effect, on and after that day, as if done by or in relation to the Secretary of State.
- (2) Anything (including legal proceedings) which – 30  
 (a) relates to a function of a relevant person under a provision amended or repealed by Part 1 of Schedule 10, and  
 (b) immediately before the day on which the amendment or repeal comes into force, is in the process of being done by or in relation to that person, 35  
 may be continued, on and after that day, by or in relation to the Secretary of State.



- (3) Where anything mentioned in sub-paragraph (1) or (2) was done, or is in the process of being done, under a provision repealed by Schedule 10, that thing has effect as if done under, or may be continued under, the corresponding provision of this Act.
- (4) In this paragraph “relevant person” means – 5
- (a) an officer acting for the purposes of the Employment Agencies Act 1973;
  - (b) an officer acting for the purposes of Part 2A of the Employment Tribunals Act 1996;
  - (c) an officer acting for the purposes of the National Minimum Wage Act 1998; 10
  - (d) the Gangmasters and Labour Abuse Authority;
  - (e) an enforcement officer acting for the purposes of the Gangmasters (Licensing) Act 2004, other than an enforcement officer appointed by virtue of paragraph 15 of Schedule 2 to that Act (enforcement officers in Northern Ireland); 15
  - (f) a compliance officer acting for the purposes of that Act;
  - (g) an officer of the Gangmasters and Labour Abuse Authority acting for the purposes of any other enactment.
- (5) Sub-paragraphs (1) to (3) are subject to the remaining provisions of this Schedule (and see also section 152, which confers power to make transitional or saving provision). 20

*Powers to obtain documents etc*

- 7 (1) Any requirement to provide documents or information which – 25
- (a) was made under a repealed provision before the commencement day, and
  - (b) immediately before the commencement day, has not been complied with,
- is to be treated, on and after that day, as having been made under the corresponding provision of this Act. 30
- (2) Any document which, immediately before the commencement day, was retained in the exercise of a power conferred by a repealed provision is to be treated, on and after that day, as retained under section 97.
- (3) In this paragraph – 35
- “the commencement day”, in relation to a repealed provision, means the day on which the repeal of that provision comes into force;
  - “repealed provision” means a provision repealed by Part 1 of Schedule 10.

*Labour abuse prevention officers*

- 8 (1) Anything which – 40

- (a) was done by or in relation to a labour abuse prevention officer in, or in connection with, the exercise of a function conferred on the officer by virtue of section 114B of the Police and Criminal Evidence Act 1984 (“PACE”), and
- (b) is in effect immediately before the day on which paragraph 63 of Schedule 10 comes into force (“the relevant day”),
- has effect, on and after that day, as if done by or in relation to a relevant enforcement officer. 5
- (2) Anything which—
- (a) relates to a function conferred on a labour abuse prevention officer by virtue of section 114B of PACE, and 10
- (b) immediately before the relevant day, is in the process of being done by or in relation to such an officer,
- may be continued, on and after that day, by or in relation to a relevant enforcement officer. 15
- (3) In this paragraph—
- “labour abuse prevention officer” has the meaning given by section 114B of PACE (as that section had effect immediately before the relevant day);
- “relevant enforcement officer”, in relation to a function conferred by virtue of section 114B of PACE, means an enforcement officer on whom that function is conferred by virtue of that section (as it has effect on and after the relevant day). 20

### *Warrants*

- 9 (1) This paragraph applies to an application for a warrant under section 17 of the Gangmasters (Licensing) Act 2004 (“the 2004 Act”) which— 25
- (a) is made in England and Wales or Scotland before the day on which paragraph 38 of Schedule 10 comes into force, and
- (b) is not determined or withdrawn before that day.
- (2) The application is to be treated, on and after that day, as an application made by an enforcement officer for a warrant under section 99 of this Act. 30
- 10 (1) This paragraph applies to a warrant under section 17 of the 2004 Act which—
- (a) is issued under that section before the day on which paragraph 38 of Schedule 10 comes into force, and 35
- (b) is not executed before that day.
- (2) The warrant is to be treated for the purposes of section 99 of this Act as if it had been issued under that section.
- (3) That section applies in relation to the warrant as if—
- (a) in subsection (4)(a), after “bring” there were inserted “any persons or”, and 40

(b) after subsection (4) there were inserted –

“(4A) On leaving any premises which an enforcement officer is authorised to enter by a warrant under this section, the officer must, if the premises are unoccupied or the occupier is temporarily absent, leave the premises as effectively secured against trespassers as the officer found them.”

5

(4) Section 128 and Schedule 8 do not apply in relation to the warrant.

*LME undertakings and orders*

11 (1) Anything which –

(a) was done by an enforcing authority for the purpose of, or in connection with, any of sections 14 to 30 of the Immigration Act 2016 (“the 2016 Act”), and

10

(b) is in effect immediately before the commencement day, has effect, on and after that day, as if done by the Secretary of State under the corresponding provision of this Act.

15

(2) Anything (including legal proceedings) which –

(a) relates to a function of an enforcing authority under any of sections 14 to 30 of the 2016 Act, and

(b) immediately before the commencement day, is in the process of being done by or in relation to the enforcing authority,

20

may be continued, on and after that day, by or in relation to the Secretary of State under the corresponding provision of this Act.

(3) Accordingly –

(a) any undertaking given under section 14(3) of the 2016 Act and having effect immediately before the commencement day is to be treated, on and after that day, as an LME undertaking;

25

(b) any order made under section 18 or 20 of the 2016 Act and having effect immediately before the commencement day is to be treated, on and after that day, as an LME order.

(4) In this paragraph –

30

“the commencement day” means the day on which the repeal of sections 14 to 30 of the 2016 Act comes into force;

“enforcing authority” has the meaning given by section 14(5) of the 2016 Act (as it had effect immediately before the commencement day).

35

*Information*

12 (1) This paragraph applies to information which –

(a) was obtained in the course of –

(i) exercising the powers conferred by section 9 of the Employment Agencies Act 1973 (“the 1973 Act”), or

40

- (ii) exercising powers by virtue of section 26(1) of the Immigration Act 2016, and
  - (b) immediately before the coming into force of paragraph 2 of Schedule 10, is held by an officer acting for the purposes of the 1973 Act.
- (2) On the coming into force of that paragraph, information to which this paragraph applies vests in the Secretary of State. 5
- 13 Any reference in section 132 to information obtained by the Secretary of State in connection with the exercise of any enforcement function includes a reference to—
- (a) any information which the Secretary of State obtains by virtue of paragraph 12; 10
  - (b) any information which, immediately before the coming into force of paragraph 20 of Schedule 10, the Secretary of State holds by virtue of section 15(2) of the National Minimum Wage Act 1998;
  - (c) any information which, immediately before the coming into force of paragraph 21 of that Schedule, the Secretary of State holds by virtue of section 16(2) of that Act; 15
  - (d) any information which the Secretary of State obtains by virtue of a property transfer scheme under paragraph 2 of this Schedule.
- 14 The repeal of section 9 of the Employment Agencies Act 1973 (inspection) by paragraph 3 of Schedule 10 does not prevent the use in evidence against a person, in criminal proceedings taking place on or after the day on which that repeal comes into force, of a statement made before that day by the person in compliance with a requirement under that section (subject to subsection (2B) of that section). 20  
25

*Orders under Modern Slavery Act 2015*

- 15 The reference in paragraph 30(2)(b) of Schedule 7 to an investigation conducted by or on behalf of the Secretary of State includes, in relation to any order made under section 14 of the Modern Slavery Act 2015 before the coming into force of that paragraph, a reference to an investigation conducted by a labour abuse prevention officer (within the meaning of section 114B of the Police and Criminal Evidence Act 1984 as that section had effect before the coming into force of paragraph 63 of Schedule 10). 30
- 16 (1) Where—
- (a) a slavery and trafficking prevention order requires a person to notify the Gangmasters and Labour Abuse Authority in accordance with section 19 of the Modern Slavery Act 2015 (“the 2015 Act”), and 35
  - (b) immediately before the day on which paragraph 49 of Schedule 10 comes into force, that requirement has not been complied with, that requirement has effect, on and after that day, as a requirement to notify the Secretary of State. 40
- (2) On and after the coming into force of paragraph 50 of Schedule 10, the reference in section 20(2)(g) of the 2015 Act (as amended by that paragraph)

to a slavery and trafficking prevention order made on an application under section 15 of that Act by the Secretary of State includes a reference to such an order made on an application under that section by the Gangmasters and Labour Abuse Authority.

- (3) In this paragraph “slavery and trafficking prevention order” has the same meaning as in the 2015 Act. 5

17 (1) Where—

(a) a slavery and trafficking risk order requires a person to notify the Gangmasters and Labour Abuse Authority in accordance with section 26 of the Modern Slavery Act 2015 (“the 2015 Act”), and 10

(b) immediately before the day on which paragraph 52 of Schedule 10 comes into force, that requirement has not been complied with, that requirement has effect, on and after that day, as a requirement to notify the Secretary of State.

- (2) On and after the coming into force of paragraph 53 of Schedule 10, the reference in section 27(2)(g) of the 2015 Act (as amended by that paragraph) to a slavery and trafficking risk order made on an application under section 23 of that Act by the Secretary of State includes a reference to such an order made on an application under that section by the Gangmasters and Labour Abuse Authority. 15 20

- (3) In this paragraph “slavery and trafficking risk order” has the same meaning as in the 2015 Act.

*Notices of underpayment under the National Minimum Wage Act 1998*

18 Except so far as provided for by paragraph 6(1) or (2) of this Schedule, the repeal of sections 19 to 19H of the National Minimum Wage Act 1998 by paragraph 23 of Schedule 10 does not apply in relation to any notice served under any of those sections before the coming into force of that repeal (and accordingly paragraph 6(3) of this Schedule does not apply in relation to things done, or in the process of being done, under any of those sections). 25

*Enforcement of agricultural wages legislation* 30

19 The amendments made by paragraphs 17 to 23, 68(2), 81(a) and 85(b) of Schedule 10 do not affect any provision of the National Minimum Wage Act 1998 so far as it has effect for the purposes of any of the following—

- (a) the Agricultural Wages Act 1948;  
(b) the Agricultural Sector (Wales) Act 2014 (anaw 6); 35  
(c) the Agricultural Wages (Scotland) Act 1949;  
(d) the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (S.I. 1977/2151 (N.I. 22)).

*Appeals under the Gangmasters (Licensing) Act 2004: Northern Ireland licences*

- 20 The amendment made by paragraph 45(6) of Schedule 10 does not affect any regulations under section 10 of the Gangmasters (Licensing) Act 2004 (appeals) made by a Northern Ireland department in reliance on paragraph 11 of Schedule 2 to that Act as that paragraph had effect immediately before the coming into force of that amendment. 5

## SCHEDULE 12

Section 149

## INCREASE IN TIME LIMITS FOR MAKING CLAIMS

*Safety Representatives and Safety Committees Regulations 1977*

- 1 (1) In regulation 11 of the Safety Representatives and Safety Committees Regulations 1977 (S.I. 1977/500) (time off for safety representatives), in paragraph (2), for “three”, in both places it occurs, substitute “six”. 10
- (2) In regulation 12 of those Regulations—
- (a) in paragraph (2), for “three” substitute “six”;
  - (b) in paragraph (3), for “three” substitute “six”; 15
  - (c) in paragraph (4), for “three” substitute “six”.

*Trade Union and Labour Relations (Consolidation) Act 1992*

- 2 (1) The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows.
- (2) In section 66 (unjustifiable discipline by union), in subsection (2)(a), for “three” substitute “six”. 20
- (3) In section 68A (unauthorised deduction of union subscriptions), in subsection (1)(a), for “three” substitute “six”.
- (4) In section 70C (collective bargaining: obligations relating to training), in subsection (2)— 25
- (a) in paragraph (a), for “three” substitute “six”;
  - (b) in paragraph (b), for “three” substitute “six”.
- (5) In section 87 (unlawful deduction of contributions to political fund), in subsection (2)(a), for “three” substitute “six”.
- (6) In section 139 (refusal of employment on grounds related to union membership), in subsection (1)(a), for “three” substitute “six”. 30
- (7) In section 145C (inducements), in subsection (1)(a), for “three” substitute “six”.
- (8) In section 147 (detriment for trade union activities), in subsection (1)(a), for “three” substitute “six”. 35

- (9) In section 171 (time off for trade union activities), in subsection (1)(a), for “three” substitute “six”.
- (10) In section 189 (consultation in collective redundancy), in subsection (5) –  
(a) in paragraph (b), for “three” substitute “six”;  
(b) in paragraph (c), for “three” substitute “six”. 5
- (11) In section 192 (remuneration under protective award), in subsection (2) –  
(a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”.
- (12) In paragraph 157 of Schedule A1 (detriment in relation to trade union recognition), in sub-paragraph (1)(a), for “3” substitute “6”. 10

*Pension Schemes Act 1993*

- 3 In section 126 of the Pension Schemes Act 1993 (unpaid pension contributions), in subsection (2), for “three” substitute “six”.

*Employment Rights Act 1996*

- 4 (1) The Employment Rights Act 1996 is amended as follows. 15
- (2) In section 11 (written statements), in subsection (4) –  
(a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”.
- (3) In section 23 (protection of wages) –  
(a) in subsection (2), for “three” substitute “six”;  
(b) in subsection (4), for “three” substitute “six”. 20
- (4) In section 27N (information relating to tips etc) –  
(a) in subsection (2), for “three” substitute “six”;  
(b) in subsection (3), for “three” substitute “six”.
- (5) In section 34 (guarantee payments), in subsection (2) – 25  
(a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”.
- (6) In section 48 (detriment in employment), in subsection (3) –  
(a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”. 30
- (7) In section 51 (time off for public duties), in subsection (2) –  
(a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”.
- (8) In section 54 (time off following redundancy), in subsection (2) –  
(a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”. 35
- (9) In section 57 (time off for ante-natal care), in subsection (2) –

- (a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”.
- (10) In section 57ZC (time off for ante-natal care: agency workers), in subsection (3) –
- (a) in paragraph (a), for “three” substitute “six”; 5  
(b) in paragraph (b), for “three” substitute “six”.
- (11) In section 57ZF (time off to accompany to ante-natal appointment), in subsection (2) –
- (a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”. 10
- (12) In section 57ZH (time off to accompany to ante-natal appointment: agency workers), in subsection (3) –
- (a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”.
- (13) In section 57ZM (time off to attend adoption appointments), in subsection (2) – 15
- (a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”.
- (14) In section 57ZQ (time off to attend adoption appointments: agency workers), in subsection (3) – 20
- (a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”.
- (15) In section 57B (time off for dependants), in subsection (2) –
- (a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”. 25
- (16) In section 60 (time off for pension scheme trustees), in subsection (2) –
- (a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”.
- (17) In section 63 (time off for employee representatives), in subsection (2) –
- (a) in paragraph (a), for “three” substitute “six”; 30  
(b) in paragraph (b), for “three” substitute “six”.
- (18) In section 63C (time off for study or training), in subsection (2) –
- (a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”.
- (19) In section 63I (requests in relation to study or training), in subsection (5) – 35
- (a) in paragraph (a), for “three” substitute “six”;  
(b) in paragraph (b), for “three” substitute “six”.
- (20) In section 70 (rights following suspension from work) –
- (a) in subsection (2) –
- (i) in paragraph (a), for “three” substitute “six”; 40



- (ii) in paragraph (b), for “three” substitute “six”;
  - (b) in subsection (5) –
    - (i) in paragraph (a), for “three” substitute “six”;
    - (ii) in paragraph (b), for “three” substitute “six”.
- (21) In section 70A (rights of agency worker where supply is ended on maternity grounds) – 5
  - (a) in subsection (2) –
    - (i) in paragraph (a), for “three” substitute “six”;
    - (ii) in paragraph (b), for “three” substitute “six”;
  - (b) in subsection (5) – 10
    - (i) in paragraph (a), for “three” substitute “six”;
    - (ii) in paragraph (b), for “three” substitute “six”.
- (22) In section 80 (parental leave), in subsection (2) –
  - (a) in paragraph (a), for “three” substitute “six”;
  - (b) in paragraph (b), for “three” substitute “six”. 15
- (23) In section 80H (right to request flexible working), in subsection (5) –
  - (a) in paragraph (a), for “three” substitute “six”;
  - (b) in paragraph (b), for “three” substitute “six”.
- (24) In section 80N (carer’s leave), in subsection (2) –
  - (a) in paragraph (a), for “three” substitute “six”; 20
  - (b) in paragraph (b), for “three” substitute “six”.
- (25) In section 111 (unfair dismissal), in subsection (2) –
  - (a) in paragraph (a), for “three” substitute “six”;
  - (b) in paragraph (b), for “three” substitute “six”.
- (26) In section 188 (rights on insolvency of employer), in subsection (2) – 25
  - (a) in paragraph (a), for “three” substitute “six”;
  - (b) in paragraph (b), for “three” substitute “six”.

*Health and Safety (Consultation with Employees) Regulations 1996*

- 5 (1) In paragraph 3 of Schedule 2 to the Health and Safety (Consultation with Employees) Regulations 1996 (S.I. 1996/1513) (time off for representatives of employee safety etc), for “three”, in both places it occurs, substitute “six”. 30
- (2) In paragraph 3A of that Schedule –
  - (a) in sub-paragraph (2), for “three” substitute “six”;
  - (b) in sub-paragraph (3), for “three” substitute “six”;
  - (c) in sub-paragraph (4), for “three” substitute “six”. 35

*Working Time Regulations 1998*

- 6 In regulation 30 of the Working Time Regulations 1998 (S.I. 1998/1833) (rights as to working time), in paragraph (2) –

- (a) in sub-paragraph (a), for the words from “three months” to “six months)” substitute “six months”;
- (b) in sub-paragraph (b), omit “three or, as the case may be,”.

*National Minimum Wage Act 1998*

- 7 In section 11 of the National Minimum Wage Act 1998 (access to records)— 5
- (a) in subsection (3), for “three” substitute “six”;
  - (b) in subsection (4), for “three” substitute “six”.

*Employment Relations Act 1999*

- 8 In section 11 of the Employment Relations Act 1999 (right to be 10  
accompanied), in subsection (2)—
- (a) in paragraph (a), for “three” substitute “six”;
  - (b) in paragraph (b), for “three” substitute “six”.

*Transnational Information and Consultation of Employees Regulations 1999*

- 9 (1) In regulation 27 of the Transnational Information and Consultation of 15  
Employees Regulations 1999 (S.I. 1999/3323) (time off for members of a  
European Works Council etc)—
- (a) in the heading, for “tribunals” substitute “employment tribunals in  
Great Britain”;
  - (b) in paragraph (1), for the words from “complaint,” to “, that” 20  
substitute “complaint to an employment tribunal in Great Britain  
that”;
  - (c) in paragraph (2)—
    - (i) in sub-paragraph (a), for “three” substitute “six”;
    - (ii) in sub-paragraph (b), for “three” substitute “six”;
  - (d) omit paragraph (2B). 25
- (2) In the heading of regulation 27A of those Regulations (extension of time  
limit to facilitate conciliation before institution of proceedings), at the end  
insert “in Great Britain”.
- (3) After regulation 27A of those Regulations insert—

**“Right to time off: complaints to industrial tribunals in Northern Ireland 30**

**27AA.**—(1) An employee may present a complaint to an industrial  
tribunal in Northern Ireland that the employee’s employer—

- (a) has unreasonably refused to permit the employee to take time off  
as required by regulation 25; or
- (b) has failed to pay the whole or any part of any amount to which 35  
the employee is entitled under regulation 26.

(2) A tribunal shall not consider a complaint under this regulation unless  
it is presented—

- (a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted; or
  - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months. 5
- (3) Regulation 27B (extension of time limit to facilitate conciliation before institution of proceedings in Northern Ireland) applies for the purposes of paragraph (2). 10
- (4) Where a tribunal finds a complaint under this regulation well-founded, the tribunal shall make a declaration to that effect.
- (5) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which the employee would have been entitled under regulation 26 if the employer had not refused. 15
- (6) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which the employee is entitled under regulation 26, the tribunal shall also order the employer to pay to the employee the amount which it finds due to the employee.” 20
- (4) In regulation 27B of those Regulations (extension of time limit to facilitate conciliation before institution of proceedings in Northern Ireland) –
- (a) in paragraph (2), for “27(2)(a)” substitute “27AA(2)(a)”;
  - (b) in paragraph (3), for “27(2)(a)” substitute “27AA(2)(a)”;
  - (c) in paragraph (4), for “27(2)(b)” substitute “27AA(2)(b)”.
- 25

*Merchant Shipping (Working Time: Inland Waterways) Regulations 2003*

- 10 In regulation 18 of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049) (merchant shipping: rights as to working time), in paragraph (2) – 30
- (a) in sub-paragraph (a), for “three” substitute “six”;
  - (b) in sub-paragraph (b), for “three” substitute “six”.

*Civil Aviation (Working Time) Regulations 2004*

- 11 In regulation 18 of the Civil Aviation (Working Time) Regulations 2004 (S.I. 2004/756) (civil aviation: rights as to working time), in paragraph (2) – 35
- (a) in sub-paragraph (a), for “three” substitute “six”;
  - (b) in sub-paragraph (b), for “three” substitute “six”.

*Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004*

- 12 In regulation 19 of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713) (fishing vessels: rights to rest and leave), in paragraph (2) –
- (a) in sub-paragraph (a), for “three” substitute “six”; 5
  - (b) in sub-paragraph (b), for “three” substitute “six”.

*Transfer of Undertakings (Protection of Employment) Regulations 2006*

- 13 (1) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) are amended as follows.
- (2) In regulation 12 (notification of employee liability information), in paragraph (2) – 10
    - (a) in sub-paragraph (a), for “three” substitute “six”;
    - (b) in sub-paragraph (b), for “three” substitute “six”.
  - (3) In regulation 15 (information and consultation requirements), in paragraph (12) – 15
    - (a) in the words before sub-paragraph (a), for “three” substitute “six”;
    - (b) in the words after sub-paragraph (b), for “three” substitute “six”.

*Cross-border Railway Services (Working Time) Regulations 2008*

- 14 In regulation 17 of the Cross-border Railway Services (Working Time) Regulations 2008 (S.I. 2008/1660) (cross-border railway services: rights to working time), in paragraph (2) – 20
- (a) in sub-paragraph (a), for “three” substitute “six”;
  - (b) in sub-paragraph (b), for “three” substitute “six”.

*European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009* 25

- 15 In regulation 28 of the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009 (S.I. 2009/2401) (time off for members of special negotiating body etc), in paragraph (2) –
- (a) in sub-paragraph (a), for “three” substitute “six”;
  - (b) in sub-paragraph (b), for “three” substitute “six”. 30

*Agency Workers Regulations 2010*

- 16 In regulation 18 of the Agency Workers Regulations 2010 (S.I. 2010/93) (rights of agency workers), in paragraph (4), for “three” substitute “six”.

*Equality Act 2010*

- 17 In section 123 of the Equality Act 2010 (discrimination etc at work), in subsection (1)(a), for “3” substitute “6”. 35

*Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018*

- 18 In regulation 26 of the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 (S.I. 2018/58) (rights of seafarers to leave), in paragraph (6), for “three” substitute “six”.

# Employment Rights Bill

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[AS BROUGHT FROM THE COMMONS]

A

## B I L L

TO

Make provision to amend the law relating to employment rights; to make provision about procedure for handling redundancies; to make provision about the treatment of workers involved in the supply of services under certain public contracts; to provide for duties to be imposed on employers in relation to equality; to amend the definition of “employment business” in the Employment Agencies Act 1973; to provide for the establishment of the School Support Staff Negotiating Body and Social Care Negotiating Bodies; to amend the Seafarers’ Wages Act 2023; to make provision for the implementation of international agreements relating to maritime employment; to make provision about trade unions, industrial action, employers’ associations and the functions of the Certification Officer; to make provision about the enforcement of legislation relating to the labour market; and for connected purposes.

*Brought from the Commons on 14th March 2025*

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Ordered to be Printed, 14th March 2025.

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