EMPLOYMENT RIGHTS BILL

EXPLANATORY NOTES

What these notes do

- These Explanatory Notes relate to the Employment Rights Bill as brought from the House of Commons on 14 March 2025 (HL Bill 81).
- These Explanatory Notes have been prepared by the Department for Business and Trade in order to assist the reader to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

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

2 The Bill is in six parts and contains 12 schedules.

Part	Summary
Part 1: Employment Rights, including Schedules 1-3	This Part provides for the reform of employment rights in the following areas: • Zero hours workers, etc • Flexible working • Statutory sick pay • Tips and gratuities, etc • Entitlements to leave • Protection from harassment • Dismissal
Part 2: Other Matters Relating to Employment	This Part concerns for the delivery of wider employment law reform and makes provision in relation to: • The procedure for handling redundancies; • Public sector outsourcing • The duties of employers relating to equality; • Annual leave records; • Employment businesses
Part 3: Pay and Conditions in Particular Sectors, including Schedules 4 and 5	This Part makes provision in relation to: • Pay and conditions of school support staff in England • The establishment Adult Social Care Negotiating Body in England and Social Care Negotiating Bodies in Scotland and Wales. • Seafarers
Part 4: Trade Unions and Industrial Action, including Schedule 6	This Part makes provision in relation to trade unions and industrial action, in particular: • To provide a right to a statement of trade union rights • To provide a right of trade unions to access workplaces • To make amendments to the conditions for trade union recognition • Trade union finances

	• Facilities provided to trade union representatives and members; • Blacklists • Industrial action, and ballots, the provision of information to employers, picketing and protection for taking industrial action. • The repeal of provision about strikes and minimum service levels • The functions of the Certification officer.
Part 5: Enforcement of Labour Market Legislation, including Schedules 7-11	This Part provides for the Secretary of State to have the function of enforcing labour market legislation, with enforcement officers to be appointed by him for this purpose. The provisions will bring together existing state labour market enforcement functions as well as some new state enforcement functions. The functions include: • National Minimum Wage enforcement • Enforcement of regulations applying to employment businesses and agencies • The unpaid employment tribunal penalty award scheme • The licensing regime for gangmasters and certain modern slavery protections • Holiday pay • Statutory sick pay
Part 6: General, including Schedule 12	This part sets out provision to increase the time limits for making claims to Employment Tribunals as well as the following general provisions: • Power to combine regulations • Power to make consequential provision • Power to make transitional or saving provision • Regulations • Financial provision • Extent • Commencement • Short title.

Policy background

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

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

5 The Employment Rights Bill is the first phase of delivering the Government's Plan to Make Work Pay, and will update the legislative framework in relation to employment rights and trade unions in the following areas:

Ending One-Sided Flexibility

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

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

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

9 The Bill provides for these rights to extend to agency workers as well as directly-engaged workers.

Family Friendly Rights

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

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

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

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

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

15 Parental bereavement leave is the only current statutory entitlement available to employees to grieve. The entitlement is available to those who lose a child who is under 18 years old or have a stillbirth after 24 weeks of pregnancy. The Bill will introduce a new right to bereavement leave, allowing employees to take leave from work to grieve the loss of other loved ones.

Dismissal

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

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

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

19 Collective consultation and notification requirements apply when an employer is proposing to make 20 or more employees redundant at one establishment. The Bill extends these protections by amending current legislation so that the collective consultation and notification requirements also apply where a threshold number of employees are proposed to be made redundant across more than one establishment. The specific threshold number and the method of calculating the threshold number will be set out in secondary legislation.

20 Where an employer has failed to comply with their collective redundancy consultation obligations a complaint may be brought to the Employment Tribunal. If the Employment Tribunal finds the complaint to be well-founded, it may make a protective award in relation to the employees who have been dismissed (or are proposed to be dismissed), ordering the employer to pay renumeration to those employees for the 'protected period'. Currently, the protected period is of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's default but may not exceed 90 days. The Bill will increase the maximum period of the protective award from 90 days' pay to 180 days' pay.

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

Equality at Work

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

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

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

25 The Equality Act 2010 provides legal protections against sexual harassment in the workplace. Despite this, persistent reports and revelations that have emerged in recent years indicate that it remains a problem within the workplace. This Bill therefore strengthens protections against harassment by introducing three amendments to the Equality Act 2010's harassment provisions.

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

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

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

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

30 The Government believes that it is essential to prevent the emergence of a two-tier workforce, where employees have worse terms and conditions than those transferred from the public

sector but working on the same contract. The Bill will ensure Ministers have the appropriate tools to promote the rights of employees engaged on new public contracts which outsource public services and maintain the quality of public service delivery by ensuring consistent employment standards.

Fair Pay and Conditions

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

32 The Employment (Allocation of Tips) Act 2023 ensures that all tips, gratuities and service charges are passed on to workers, and is accompanied by a statutory Code of Practice on fair and transparent distribution of tips. The Bill builds on this legislation by ensuring that workers receive their tips in full and decide how they are allocated by mandating that employers consult with workers when developing or revising their tipping policies.

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

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

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

36 The Bill will also set the weekly rate of SSP at £118.75 or 80% of the employee's normal weekly earnings, whichever is lower. The change from £116.75 to £118.75 is to reflect the uprated sum which will come into effect on 6 April 2025.

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

38 The Bill will provide for a legally binding Seafarers' Charter to set higher standards for seafarers relating to pay and safety, including tours of duty, fatigue management and safety related training. It is intended to prevent a race to the bottom between operators seeking to undercut their competitors by lowering employment standards.

39 The Bill also provides the power for the Secretary of State to make regulations for the purpose of giving effect to other international agreements, and amendments to those agreements, that have been ratified by the UK, so far as the agreement relates to maritime employment.

Voice at Work

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

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

42 The Bill will repeal amendments made by the Trade Union Act 2016 to the Trade Union and Labour Relations (Consolidation) Act 1992. These changes will remove restrictions on trade unions thereby giving them greater freedom to organise, represent and negotiate on behalf of their workers. Some provisions from the Trade Union Act 2016 will be retained such as, the Certification Officer's freedom from ministerial direction.

43 The new provisions in the Bill follow extensive consultation and seek to deliver a balance between allowing for effective industrial action, while also ensuring that employers are able to reasonably prepare. The Bill will abolish the 10-year requirement for unions to ballot members on political fund maintenance, simplify the information requirements for industrial action ballots and notice to employers, extend the expiry of mandate for industrial action from 6 to 12 months, and ensure that trade unions provide a 10-day notice period for industrial action.

44 The Government believes the current statutory trade union recognition process makes it too difficult for unions to gain recognition. The Bill will improve the process and transparency around trade union recognition and access, including streamlining the trade union recognition process and strengthening protections against unfair practices.

45 The Government believe that there are currently no clear and consistent rules regulating access to workplaces for trade union members meeting and representing their members. The Bill will make it easier for unions to gain access to workplaces, including digital access, in line with modern day workplaces, to assist individual union members and to help unions to recruit and organise.

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

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

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

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

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

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

Enforcement

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

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

52 Currently the time limit in which employees can make an employment tribunal claim for most claims is three months. The Bill will increase that to six months, bringing the time limit for claims in line with that for statutory redundancy and equal pay claims.

53 There is evidence of non-compliance in the umbrella company market, where umbrella companies can be responsible for denying employment rights to those who work through them. This means that many workers are unaware of who is responsible for providing their employment rights, or whether they are entitled to any employment rights at all. The Employment Agency Standards Inspectorate is currently unable to take action against non-compliant umbrella companies, as they do not fall within scope of the legislation covering employment agencies and employment businesses. The Bill will allow for the regulation of umbrella companies, and for enforcement by the Employment Agency Standards Inspectorate (and subsequently, the Fair Work Agency).

Legal background

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

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

56 The Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 are amended for the purpose of removing the waiting period and making amendments in relation to the lower earnings limit which apply in relation to statutory sick pay in Great Britain and Northern Ireland.

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

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

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

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

61 The Seafarers' Wages Act 2023 is amended for the purpose of making provision in relation to a Seafarer's Charter and the Merchant Shipping Act 1995 is amended to make provision in relation to international agreements relating to maritime employment.

62 The Employment Agencies Act 1973, Employment Tribunals Act 1996, National Minimum Wage Act 1998, Gangmasters (Licensing) Act 2004 and Modern Slavery Act 2015 are all

amended for the purposes of abolishing the Gangmasters and Labour Abuse Authority and the Director of Labour Market Enforcement and transferring functions to the Secretary of State in relation to the enforcement of labour market legislation. The Employment Agencies Act 1973 is further amended to expand the scope of employment businesses which may be regulated under that Act.

63 A number of other minor consequential amendments are also made in other primary legislation as a result of the establishment of the new functions.

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

Territorial extent and application

65 Clause 155 sets out the territorial extent of the Bill, that is the jurisdictions in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect rather than where it forms part of the law.

66 With the exception of clauses 12, 13 and 30, Parts 1, 2 and 4 of the Employment Rights Bill extend and apply to Great Britain. Employment rights and industrial relations, statutory sick pay and equal opportunities are reserved for Scotland and Wales and transferred in Northern Ireland.

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

68 Parts 5 and 6 (except as provided for by clause 155(5)) of the Bill extends to England and Wales, Scotland and Northern Ireland. Provision made in Part 5 is within the legislative competence of the Northern Ireland Assembly.

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

70 Clauses 12 and 13 (Statutory sick pay in Northern Ireland: removal of waiting period and Statutory sick pay in Northern Ireland: lower earnings limit etc.) extend to Northern Ireland only. Social security is largely a transferred matter in Northern Ireland.

71 Clause 30 (Public sector outsourcing: protection of workers) amends the Procurement Act 2023 which extends to England and Wales, Scotland and Northern Ireland. Procurement is a largely devolved matter in Scotland and Wales and largely transferred in Northern Ireland.

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

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

Commentary on Provisions

Part 1: Employment Rights

Zero hours workers, etc

Clause 1: Right to guaranteed hours

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

New Section 27BA

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

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

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

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

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

b. (3)(a)(i) Be a zero hours contract or be entered into in accordance with a zero hours arrangement, or

c. (3)(a)(ii) Be a contract that requires the employer, or did require the employer when the arrangement was entered into, to make work available to the worker, and is for a number of hours which does not exceed the number of hours to be set in regulations.

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

80 Where (3)(a)(ii) applies, the reference period hours exceed those to be made available under the worker's contract(s).

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

82 The hours worked during the reference period are not worked as an agency worker or any other type of excluded worker. However, provision about guaranteed hours and agency workers are made under Part 1 of Schedule A1.

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

a. The initial reference period or

b. Each subsequent reference period

84 Subsection (5) provides that the initial reference period means the period:

85 Beginning with either:

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

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

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

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

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

89 Subsection (8) clarifies which contracts should be disregarded in the application of the right to guaranteed hours in circumstances where a worker has more than one contract with an employer. In a situation where a worker is engaged on such model of 'parallel contracts' - subsection (8) makes clear that where the worker does not exceed the minimum number of guaranteed hours they have on their contract(s) of the type described at (3)(a)(ii), then such contract(s) (including its terms) should be disregarded and treated by the employer as if it did not exist when making a guaranteed hours offer.

90 Subsection (9) provides that an employer is not restricted from making – if they wish – an offer(s) to the qualifying worker to vary a worker's terms and conditions of employment or enter into a new contract, at the same time as making an offer of guaranteed hours.

91 Subsection (10) provides that the regulations made under subsection (3)(d), (5) or (6) may make provisions around time when an individual is not working, for a reason which is also specified in regulations.

92 Subsection (11) provides that 'excluded worker' will be described in regulations.

New Section 27BB

93 New Section 27BB of the Employment Rights Act 1996 sets out the requirements relating to guaranteed hours offers for the purposes of this Chapter 2.

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

a. Vary the worker's existing terms and conditions of employment (subject to the provisions of subsection (6); OR

b. Enter into a new worker's contract

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

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

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

98 The guaranteed hours offer sets out:

a. The days of the week, and the times on those days, when the offered number of hours are to be provided and worked OR

b. A working pattern of days – and times of day – according to which the offered number of hours are to be provided and worked AND

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

99 Subsection (4) caters for the scenario where there are no regulations in force under subsection (2) that apply to an offer to a qualifying worker. It provides that a guaranteed hours offer must in such cases outline a range of hours over which the worker may be required to work (for example, any time 7am to 9pm Monday to Friday). The offer does not have to set out specific days or particular times the worker is required to work, or a particular working pattern.

100 Subsection (5) provides that regulations may be made to set out how it is to be determined that the offer reflects the number of hours worked during the reference period. It also allows for regulations to be made to outline *when* the guaranteed hours should be worked as set out in the offer, to reflect the hours worked during the reference period (if regulations have been made under subsection 2 and apply to that offer).

101 Subsection (6) provides that the offer of guaranteed hours should only take the form of an offer of varied terms and conditions (rather than a new contract) if the worker:

a. is working under a worker's contract at the beginning of the reference period;

b. is still working under that contract on the day the offer is made; and

c. did not work for the employer under any other worker's contract during the relevant reference period.

102 Subsection (7) makes provisions around the offer of guaranteed hours, where the offer takes the form of varied terms and conditions:

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

b. The only terms and conditions which should be varied should be the number of hours and any terms and conditions required under subsections (1) and (2) or (1) and (4).

103 Subsection (8) makes provisions around the offer of guaranteed offers, where the offer takes the form of a new contract:

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

b. The new contract must (in addition to what is required under subsections (1) and (2) or (1) and (4)) propose terms and conditions (i) which are (other than those relating to working hours and length of employment) – on the whole – no less favourable to the worker than the terms and conditions they had when working for their employer during the reference period, or (ii) where section 27BC applies, that comply with that subsection (2) in relation to circumstances in which the employer may propose less favourable terms and conditions.

104 Subsection (9) provides that it is reasonable for the new contract to be a limited-term contract only if:

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

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

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

105 Subsection (10) provides that an offer of guaranteed hours must be made by no later than a specified day following the end of the reference period. This day will be specified in regulations. The guaranteed hours offer must be offered in the form which will be specified in regulations. It must contain information related to the offer, as specified in regulations.

106 Subsection (11) provides that the Secretary of State may make regulations which make provision about when a guaranteed hours offer is treated as having been made.

107 Subsection (12) defines 'reference period hours'.

New Section 27BC

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

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

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

b. During the relevant reference period:

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

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

110 Subsection (2) provides that – where subsection (1) applies – the offer of guaranteed hours may propose terms and conditions (in addition to the working hours which must be provided under Section 27BB(1) and (2) or 27BB(1) and (4)) – that, taken as a whole, are less favourable than the most favourable terms and conditions the worker has had during the reference period (other than those relating to working hours and length of employment) only if (a) and (b) apply. In other words, the employer does not have to replicate the best terms and conditions of employment the worker ever had during the reference period. However, this only applies if:

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

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

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

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

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

112 Subsection (4) provides that a notice under subsection (3) must be given by the same day and in the same form and manner, as the offer of guaranteed hours.

New Section 27BD

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

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

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

116 Subsection (3) clarifies, in cases where a worker works for an employer under more than one worker's contract or arrangement – during the relevant reference period, offer period or response period – which contract or arrangement needs to be considered when determining whether there has been a relevant termination of a contract or arrangement. Where such a relevant termination takes place, the duty to make a guaranteed hours offer does not apply, or a guaranteed hours offer that has been made is to be treated as withdrawn.

117 Subsection (4) provides that there is a relevant termination if:

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

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

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

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

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

118 Subsection (5) provides that the termination of an arrangement between a qualifying worker and employer is a relevant termination if the worker or employer terminates the arrangement and the termination is equivalent to a relevant termination of a worker's contract (see subsection 4(a) and (b)), or if the arrangement was not intended to be permanent and the termination is equivalent to a termination under subsection 4(c).

119 Subsection (6) provides that regulations may be made to make exceptions to the duty to offer guaranteed hours (s. 27BA(1)) not to apply, in specified circumstances. Where an offer for guaranteed hours has already been made, these exceptions would mean that the offer of guaranteed hours would be treated as withdrawn.

120 Subsections (7)-(8) provide that employers must give a notice to workers where their duty to make a guaranteed hours offer does not apply, or where an offer already made is treated as having been withdrawn, either by virtue of a relevant termination under 27BD(2) or by virtue of regulations made under 27BD(6). If an offer is treated as having been withdrawn, the employer must notify the worker by no later than the end of the response period.

121 Subsection (9) provides that where the employer is excepted from its duty as a result of regulations made under s. 27BD(6), a notice stating that the duty to make a guaranteed hours offer does not apply must be given to a worker by no later than the end of the offer period; and a notice advising of the withdrawal of an offer must be given to a worker no later than the end of the response period.

122 Subsection (10) provides for the Secretary of State to make regulations which set out the form and manner in which notices must be given under s. 27BD(7) or (8), and when a notice is treated as having been given under s. 27BD(7) or (8).

123 Subsection (11)(a) provides that, for the purpose of determining whether there is a relevant termination under subsection(4)(c) of Section 27BD, (and under (5)(b) which refers to (4)(c)), subsection (9) of Section 27BB also applies. Subsection (98) of Section 27BB addresses the circumstances in which it is reasonable for a worker's contract to be entered into as a limited-term contract.

124 For the same purposes, subsection (11)(b) also provides that, unless the contrary is shown, where a worker works for an employer under more than one limited-term worker's contract to undertake the same or similar work during the reference, offer or response periods, it will be presumed that it was not reasonable for those worker's contracts to be entered into for a limited term. In such case the requirements of s. 27BD(4)(c) and (5)(b) as to a relevant termination would not be met, and the employer would not be excepted from its duty to make a guaranteed hours offer.

125 Subsection (12) provides definitions for 'the offer period', 'qualifying reason' and 'the response period'. The offer period begins with the day after the day on which the relevant reference period ends. It ends with the day on which the guaranteed hours offer is made or – if no offer is made – the last day on which the employer may make a guaranteed hours offer as set out in regulations under s. 27BB(109)(a). A qualifying reason is a reason of the type mentioned in Section 98(1)(b) of the ERA 1996 (read, if necessary, as if it applied to workers where they are not employees). The response period begins with the day after the day the offer is made, and ends with a day specified in regulations (i.e. the length of the response period will be specified in regulations).

New Section 27BE

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

127 Subsection (1) provides that where a guaranteed hours offer has been made, a qualifying worker may accept or reject the offer by giving notice to their employer before the end of the response period unless it treated as having been withdrawn in accordance with s. 27BD(2) (due to there being a relevant termination) or regulations made under 27BD(6).

128 Subsection (2) provides that where the offer of guaranteed hours takes the form of an offer to vary terms and conditions, and it is accepted by giving the required notice, the variation should be treated as taking effect on the day after the day on which notice is given by the qualifying worker (subject to subsection (6)).

129 Subsection (3) provides that where the offer takes the form of an offer to vary terms and conditions – but the worker's contract ceases to be in force during the response period – the worker may still accept or refuse the offer of guaranteed hours, unless the offer has been withdrawn under Section 27BD(2) or regulations made under s. 27BD(6). If the worker does so, the worker and employer are treated as entering into a worker's contract on the day after the day on which notice is given and the terms of the contract should be the same as the terms of the contract that was in place when the offer of guaranteed hours was made.

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

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

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

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

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

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

136 Subsection (10) provides that a worker can no longer accept or reject a guaranteed hours offer if the offer is withdrawn in accordance with 27BY(3) (due to the terms of a collective agreement being incorporated into the worker's contract).

New Section 27BF

137 New Section 27BF of the Employment Rights Act 1996 places a duty on employers to ensure workers who have the potential to qualify for a guaranteed hours offer have access to, and continue to have access to, certain information about their rights (to be specified in regulations).

138 Subsection (1) provides that an employer must take reasonable steps during the 'initial information period' to ensure that the worker is aware of information about the right to guaranteed hours. The information in question will be specified in regulations.

139 Subsection (2) provides that an employer subject to the duty outlined in subsection (1) must take reasonable steps to ensure that the worker continues to have access to the specified information after the initial information period and at all times, where the worker is employed by the employer and it is reasonable to consider that the worker might become a qualifying worker entitled to a guaranteed hours offer.

140 Subsections (3) defines the 'initial information period' as two weeks from either the day that the provisions come into force if a worker is already employed on that date, or the first day on which the worker is employed after the day the provisions come into force.

141 Subsection (4) states that where under (3) it was not reasonable to consider that the worker might become a qualifying worker in respect of a reference period, then the initial information period should mean two weeks from the date when it becomes reasonable to consider that the worker might become a qualifying worker.

New Section 27BG

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

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

144 Subsection (2) provides that a worker may also make a complaint to an employment tribunal on the grounds that the duty to make a guaranteed hours offer under s. 27BA(1) applies, but the offer made does not constitute an offer as outlined in section 27BB(1) and (4) where no regulations are made under s. 27BB(2) that apply, or (1) and (3) where regulations that apply are made under (2).

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

a. Includes a prohibited variation to the worker's terms and conditions, as described at section 27BB(6),

b. Does not comply with the requirements outlined at section 27BB(7), or

c. Does not comply with the requirements outlined at section 27BB(8).

146 Subsection (4) provides that a worker may make a complaint to an employment tribunal on the basis that they received a reduced offer because the employer deliberately structured the hours of work, or offered work in the way it did, for the sole or main purpose of rendering the worker eligible to receive only a reduced offer.

147 Similar to subsection (4), subsection (5) allows a worker to make a complaint to a tribunal on the grounds that an employer sought to manipulate the number of hours of work or the way work was made available, for the sole or main purpose of avoiding their obligations to make a guaranteed hours offer by rendering the worker incapable of meeting the requirements to receive a guaranteed hours offer.

148 Subsection (6) provides that a complaint under subsections (2), (3) or (4)to (3A) may be presented by the worker whether or not the offer was accepted by the worker. However, a

complaint may not be made relating to an offer which has been treated as withdrawn in accordance with sections 27BD(2) or 27BY(3) or regulations under section 27BD(6).

149 Subsection (7) provides that a worker can make a complaint to an employment tribunal in relation to the notice that an employer must give a worker under section 27BD(7) or (8) where the employers' duty to make a guaranteed hours offer does not apply, or where an offer already made is treated as having been withdrawn. A complaint can be made on the grounds that the employer has failed to give a notice under section 27BD(7); has given a notice under section 27BD(7) or (8)(b) in circumstances when they should not have done; or the notice given in purported compliance with section 27BD(8) does not refer to any provision of the regulations or refers to the wrong provision.

150 Subsection (8) provides that a worker can make a complaint to an employment tribunal on the grounds that the employer has failed to provide information about their guaranteed hours rights as required by section 27BF(1) or (2).

151 Subsection (9) defines 'the last day of the offer period'.

New Section 27BH

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

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

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

155 Subsection (3) provides that a tribunal must only consider a complaint made under section 27BG(3) or (4) if it is presented before six months have elapsed, beginning with the day after the day when the guaranteed hours offer referred to is made.

156 Subsection (4) provides that an employment tribunal must not consider a complaint under section 27BG(5) if it is presented before six months have elapsed, beginning with the day after what would have been the last day of the offer period.

157 Subsection (5) provides that a tribunal must not consider a complaint made under section 27BG(7)(a) unless it is presented before six months have elapsed, beginning with the day after the day on (or before) which the notice should have been given.

158 Subsection (6) provides that a tribunal must not consider a complaint made under section 27BG(7)(b) or (c) unless it is presented before six months have elapsed, beginning with the day after the day on which the notice is given.

159 Subsection (7) provides that a tribunal must not consider a complaint made under section 27BG(8)(a) unless it is presented before six months have elapsed, beginning with the day after the last day of the initial information period.

160 Subsection (8) provides that a tribunal must not consider a complaint made under section 27BG(8)(b) unless it is presented before six months have elapsed, beginning with the day on which the worker first becomes aware of the failure to which the complaint relates.

161 Subsection (9) provides that if a tribunal is satisfied that it was not reasonably practicable for a worker to bring a complaint under section 27BG within six months, the tribunal may still consider the complaint if it is presented within a reasonable time after the six-month period.

162 Subsection (10) provides that Section 207B of the ERA 1996 (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsections (1) to (8).

New Section 27BI

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

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

165 Subsection (2) provides that the amount of compensation must be of an amount which does not exceed the permitted maximum (see subsection (4)) and is an amount which the tribunal considers right in all the circumstances to compensate the worker for any financial loss they sustained as a result of the issue complained of to the tribunal.

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

167 Subsection (4)(a) provides that the maximum award (permitted maximum) which may be awarded by an employment tribunal will be such number of weeks' pay as specified in regulations where the complaint is under section 27BG(1), (2), (3), 5), (7) or (8); and subsection (4)(b) provides that this permitted maximum will be an amount specified in regulations where the complaint is under section 27BG(4) or (5).

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

Clause 2: Shifts: rights to reasonable notice

169 This clause inserts a new Chapter 3 into Part 2A of the Employment Rights Act 1996, consisting of new sections 27BJ - 27BO, in order to create rights to notice of shifts and changes affecting shifts for individuals on zero hours contracts, zero hours arrangements and other specified contracts. For the purpose of this clause, ''person'' may include a company or any other type of legal person.

New Section 27BJ

170 Section 27BJ creates rights for workers to be given reasonable notice of their shifts.

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

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

173 Subsection (1)(b) establishes the same duty on employers but in respect of workers whose contract is of a description to be specified in regulations by the Secretary of State that requires

the employer to make some work available to them (and is therefore not a zero hours contract) and the contract does not specify when those shifts will take place.

174 Subsection (2) establishes a similar duty but in respect of workers on contracts of a type specified in regulations by the Secretary of State, which provides that a worker is to work at times guaranteed in the contract, i.e. workers who are guaranteed some work at a time set out in their contract. The duty at subsection (2) provides that employers must give reasonable notice of shifts that an employer requests or requires the worker to work where the timings of the shift do not overlap with the timings guaranteed in the contract. This provision is made because the timing of the worker's other shifts are guaranteed in their contract and they already have notice of such shifts.

175 Subsections (1) and (2) also apply to workers who are to be employed by the employer on the types of contract above but are not yet so employed.

176 Under the definition in subsection (7) a "worker" includes individuals who would be workers if they worked the shift in question and "employer" includes the person by whom such individuals would be employed if they worked the shift. This ensures that individuals who do not have a worker's contract at the time the duty applies, for example because they do not have a worker's contract when they are not working, are still entitled to reasonable notice.

177 Subsections (1) and (2) also provide that workers are only entitled to reasonable notice of a shift where the shift is to be worked under the zero hours contract or the contract of a specified description. Where a worker has that type of contract with an employer but also another contract not of that type with the same employer, the worker will not be entitled to reasonable notice of a shift that would be worked under the other contract.

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

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

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

181 For example, notice of a shift given in less than the specified timeframe could be reasonable where the employer needs a worker to provide cover for another worker who has just called in sick. Equally, notice of longer than the specified timeframe may be unreasonable. For example, if the timeframe for presumed unreasonable notice is 7 days but the employer could reasonably have been expected to plan shifts sooner and provide 14 days' notice, notice of 7 days could be unreasonable.

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

183 Subsection (6) deals with a situation where a worker has a contract that meets the conditions in subsections 27BJ(2)(a) and (b) – i.e. a contract of a specified description which provides that the

worker is to work at times guaranteed in the contract – and the employer extends a shift whose timing is guaranteed in the contract. The additional hours that are to be worked because of such an extension must be treated as a separate shift and, in turn, employers are required to give reasonable notice of such hours.

184 Subsection (8) sets out that "notice of a shift" means notice of how many hours are to be worked and when the shift is to start and end.

New Section 27BK

185 Section 27BK creates rights for workers to be given reasonable notice of cancellations of or changes to a shift.

186 Subsection (2) provides that (subject to section 27BM), employers must give workers reasonable notice if they cancel a shift, change when the shift is to start or end, or reduce the number of hours to be worked during the shift because of a break in the shift.

187 Subsection (1) provides that the duty in subsection (2) applies when the employer has given notice of the shift to the worker and the shift is one that the worker was entitled to reasonable notice of under 27BJ. Further, where the shift is one that the employer requested the worker to work, the worker must have agreed to work that shift.

188 Subsection (3) creates a presumption that, unless the contrary is shown:

a. Notice of cancelling the shift is not reasonable if given less than a specified amount of time before the shift would have started;

b. Notice of change to when a shift will start is not reasonable if it is given less than a specified amount of time before the earlier of when the shift would have started and when the shift will now start; and

c. Notice of any other change is not reasonable notice if it is given less than a specified amount of time before the shift is due to start or if it is given on or after the start of the shift.

189 Subsection (4) provides that "notice of a shift" has the same meaning as in section 27BJ.

New section: 27BL

190 Section 27BL makes supplementary provision in relation to clauses 27BJ and 27BK.

191 Subsection (1) provides that none of the duties at sections 27BJ or 27BK apply to a shift worked by agency workers (as Part 2 of Schedule A1 makes separate provision in respect of agency workers).

192 Subsections (2) and (3) provide that employers are not required to give reasonable notice of a shift under section 27BJ where a worker suggests working the shift or where the worker suggests working additional hours to a shift whose timing is guaranteed in their contract (for example, where the worker suggests working overtime). However, where the employer agrees to the worker's suggestion and the employer then changes or cancels that shift, the employer is required to give reasonable notice of changes to or cancellation of the shift under section 27BK.

193 Subsection (4) clarifies that the rights to reasonable notice in section 27BJ and 27BK applies even if the employer made a request of multiple workers to work the same shift (e.g. via a group text message or app) but did not in fact need all of them to work that shift.

194 Subsection (5) then clarifies that, in such scenarios, a cancellation includes a worker not being needed to work a shift because others have agreed to work it. Accordingly, workers in such

scenarios are still entitled to be given reasonable notice of them not being needed to work a shift that they have been requested to work.

195 Subsection (6) provides that the Secretary of State may by regulations make provision about the form and manner in which notice under sections 27BJ and 27BK must be given, and when notice under those sections is to be treated as having been given.

New Section 27BM

196 Section 27BM explains the interaction between Chapter 3 and Chapter 4, which introduces a right to payment for cancelled, moved or curtailed shifts.

197 Subsection (1) provides that, where an employer 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 would have been required to make such a payment but was excepted from doing so under regulations made under section 27BR(1)(b), then the right to reasonable notice at section 27BK(2) is taken to have not applied to that cancellation, movement or curtailment.

198 Therefore, where the employer is required to make a payment under section 27BP for short notice cancellation, movement or curtailment of a shift, a worker cannot also receive compensation for failure to give reasonable notice of the same cancellation, movement or curtailment. Similarly, where an employer is excepted from making such a payment under section 27BP and therefore the worker is not entitled to such payment, the worker is also not entitled to compensation for failure to give reasonable notice of the same cancellation, movement of curtailment.

199 Subsection (2) provides that the terms used have the same meaning as in section 27BP.

New Section 27BN

200 Section 27BN makes provision for workers to enforce section 27BJ and section 27BK.

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

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

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

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

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

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

New Section 27BO

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

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

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

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

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

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

New Section 27BP

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

213 Subsections (2), (3) and (4) set out when a shift is a "qualifying shift".

214 Subsection (2) provides that a shift is "qualifying" when it is being worked, is to be worked or would have been worked under one of three types of contracts or arrangements: (a) a zero hours contract, (b) a worker's contract entered into in accordance with a zero hours arrangement, or (c) a worker's contract of a description to be specified in regulations made by the Secretary of State, where the employer is required to make some work available to the worker but does not specify when that work will take place.

215 Subsections (3) and (4) deal with workers who have the timing of shifts guaranteed in their contract.

216 Subsection (3) provides that shifts whose timings do not overlap with the timings of a guaranteed shift are "qualifying shifts".

217 Subsection (4) then provides that, where a guaranteed shift is extended, any additional hours that result from changes to the start or finish time of a contracted shift are to be treated as a separate shift and are in turn a "qualifying shift". Workers are accordingly entitled to payment where such shifts are cancelled, moved or curtailed at short notice. This provision does not apply to the cancellation, movement or curtailment of a shift whose timing is guaranteed in the contract, as this would amount to a breach of contract and accordingly give rise to a separate remedy.

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

219 Subsection (6) defines what "short notice" means for the purposes of the Chapter in relation to cancellation, movement or curtailment of a shift and therefore the period at which payment becomes due. What amounts to short notice will be specified in regulations. The timeframe that

the short notice period runs until depends on whether the shift is cancelled, moved and/or curtailed, as follows:

a. Under subsection (6)(a), in relation to cancellations, the short notice period ends with when the shift would have started;

b. Under subsection (6)(b),when a shift is moved, or moved and curtailed (e.g. if a 2-5pm shift changes to 4-6pm), the short notice period ends with the earlier of when the shift would have started, or when the shift is now due to start.

c. Under subsection (6)(c), when a shift is curtailed with a change to when the shift is to start (and there is no movement of the shift) (e.g. where a 2-5pm shift changes to 4-5pm), the short notice period ends with the earlier of when the shift would have started or is due to start.

d. Under subsection (6)(d), when a shift is curtailed with no change to the start time of the shift (e.g. where a 2-5pm shift is changed to 2-3pm), the short notice period ends with when the shift is due to start. However, where notice is given of such a curtailment at or after the start of the shift (e.g. if during the shift the worker is informed during what was due to be a 2-5pm shift that they are to finish at 4pm), that notice is short notice.

220 Subsection (7) provides that the Secretary of State may make provision in regulations 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.

221 Subsection (8) provides further detail in relation to who is an "employer" in relation to an individual and a shift, and who is a "worker" in relation to a shift. This ensures that individuals who do not have a worker's contract at the time the duty applies (for example, if an offer for work was conditional and therefore no contract has been formed) are still entitled to payment.

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

223 Subsection (10) clarifies that a request to work a shift includes a request made by the employer to multiple workers (e.g. via a group text message or app) in circumstances where the employer does not need the shift to be worked by all of those to whom the request is made.

224 Subsection (11) then clarifies that, in such scenarios, a cancellation includes a worker not being needed to work a shift because others have agreed to work it. Accordingly, workers in such scenarios are still entitled to payment where they are told that they are not needed to work a shift, although this is subject to section 27BR (in particular, section 27BR(1)(aa) requiring a worker to reasonably believe that they would be needed to work the shift).

New Section 27BQ

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

226 Subsection (1) provides that regulations made to specify the payment amount under section 27BP(1) may not specify an amount that is greater than what the worker would have earned had the shift not been cancelled or changed, i.e. that regulations:

a. Under subsection (1)(a), may not specify a payment amount greater than what the worker would have earned had they worked the hours that were cancelled;

b. Under subsection (1)(b), where a shift is moved or moved and curtailed (at the same time) and no part of the amended shift corresponds to the original time of the shift (e.g. where a shift is moved from 9am-11am to 12pm-2pm), may not specify an amount greater than what the worker would have earned from working the original shift;

c. Under subsection (1)(c), where a shift is moved or moved and curtailed (at the same time) and part of the new shift corresponds to the original time of the shift (e.g. where a shift is moved from 9am-11am to 10am-12pm), may not specify an amount greater than what the worker would have earned had they worked the part of the original shift that was moved, or moved and curtailed;

d. Under subsection (1)(d), where a shift is curtailed but not moved (e.g. where a 9am-11am shift is changed to 9am-10am) or where a shift is moved and curtailed (at the same time) and the shift is now due to start and end within the time of the original shift (e.g. where a 9am-1pm shift changes to 10am to 1pm), may not specify an amount greater than what the worker would have earned had they worked the hours that will not now be worked.

227 Subsection (2) clarifies that regulations under section 27BP(1) may, in particular, specify different payment amounts depending on how short the notice given was.

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

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

New Section 27BR

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

231 Subsection (1)(a) excludes agency workers from the right to payment under section 27BP (as Part 3 of Schedule A1 makes separate provision in respect of agency workers).

232 Subsection (1)(b) provides that workers must reasonably believe they would be needed to work a shift that they were requested to work in order to be entitled to payment under section 27BP. This means that, for example, where a request is made to multiple workers to work a shift and it is made clear that there is not enough work for all of them and that the worker who accepts the shift first will work the shift, a worker who sees that another worker has already accepted the shift would not be entitled to a payment for short notice cancellation if the worker is informed at short notice that they are not needed to work the shift.

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

234 Subsection (2) provides a duty on the employer, where an exception provided for in regulations made under subsection (1)(c) applies, to notify a worker of the relevant exception and explain the reason for the short notice cancellation, movement or curtailment. This enables the worker to understand that they will not receive payment and why.

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

236 Subsection (4) provides that 'data protection legislation' has the same meaning as in the Data Protection Act 2018.

237 Subsection (5) provides a power to the Secretary of State to specify in regulations how and in what form a notice made under subsection (2) must be given and when it is deemed to be given.

238 Subsection (6) provides that an employer is not required to give a notice under sub-section (2) if the employer has in already paid the worker an amount that they would have had to pay to the worker under section 27BP(1) for the same hours had an exception not applied.

239 Subsection (7) provides that the hours to which a payment relates for the purposes of subsection (5) are to be calculated in accordance with section 27BS(4).

New Section 27BS

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

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

242 Subsection (2) provides that where the employer makes contractual payment to a worker in relation to hours for which a payment for short notice cancellation, movement or curtailment is due, the contractual payment goes towards discharging the employer's liability to pay under section 27BP(1), i.e. is counted towards the payment due.

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

244 Subsection (4) explains how the hours to which a payment relates for the purposes of this section are to be calculated, as follows:

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, and no part of the shift now corresponds to the time of the original shift, the hours that would have been worked during the original shift;

c. where a shift has been moved, or moved and curtailed, and part of the amended shift corresponds to the time of the original shift, the hours that would have been worked during the part of the original shift that does not correspond to the amended shift;

d. where a shift has been curtailed, or moved and curtailed and the amended shift is to start and end within the time of the original shift, the hours that would have been worked if the original shift had not been amended.

New Section 27BT

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

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

247 Subsections (1)(b) and (c) enable workers to bring a claim where they consider that their employer has breached the duty to provide notice (of the relevant exception and reasons for the short notice cancellation, movement or curtailment) under section 27BR(2) where, under subsection (1)(b), they allege that their employer unreasonably failed to provide notice, or, under subsection (1)(c), they allege that the notice given does not refer to any provision of the regulations, does not contain an explanation of why the exception is considered to apply or contains an explanation that is inadequate or untrue.

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

249 Under subsection (2), a complaint that an employer breached the duty to make payment under section 27BP(1) must be brought within six months from the day after the date on which payment under section 27BP(1) was or should have been made.

250 Under subsection (3), a complaint that an employer unreasonably failed to give notice under section 27BR(2) must be brought within six months from the day after the date on which notice under section 27BR(2) should have been given.

251 Under subsection (4), a complaint that the notice given by an employer under section 27BR(2) was inadequate or untrue must be brought within six months from the day after the date on which notice under section 27BR(2) is given.

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

253 Subsection (6) provides that section 207B of the Employment Rights Act 1996 applies so that the time limits at subsections (2) to (4) can be extended to allow for conciliation to take place.

New Section 27BU

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

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

256 Subsection (2) provides that, where a tribunal finds a claim in respect of a notice of an exception (brought under section 27BT(1)(b) or (c)) well-founded, the tribunal must make a declaration to that effect and may, at its discretion, order the employer to pay the worker an amount that it considers right in the circumstances, but not exceeding an amount to be specified in regulations made by the Secretary of State.

257 Subsection (3) provides that an employment tribunal may not order an employer to pay an amount under subsection (2) in relation to notice of an exception where the employer is already under an order from the tribunal to pay the worker the amount due under 27BP(1). Therefore, workers are prevented from obtaining an additional payment where an employer gave a notice of an exception and it is found that an exception did not apply, meaning that the worker is entitled in any event to payment of the amount due under 27BP(1).

258 Subsection (4) provides that a tribunal must have regard to the seriousness of the matter complained of in determining whether to make an order for an amount under subsection (2) and the value of the amount.

Clause 4: Similar rights for agency workers

259 This clause inserts a new Chapter 5 into Part 2A of the Employment Rights Act 1996, consisting of new section 27BV, and introduces Schedule 1. Taken together, these establish similar rights for agency workers as clauses 1-3 do for directly-engaged workers. For the purpose of this clause, ''person'' may include a company or any other type of legal person.

New Section 27BV

260 Section 27BV defines an ''agency worker'' for the purposes of Part 2A of the Employment Rights Act 1996. It also defines ''work-finding agency'' for the purposes of the Part and introduces Schedule A1 into the Employment Rights Act 1996.

261 Subsection (1) provides that an agency worker is an individual who:

a. has a worker's contract or an arrangement with a work-finding agency through which they work for another person,

b. does not work (or is not to work) under a worker's contract with that other person,

c. 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. This excludes genuinely self-employed individuals who are providing services to clients through their own business.

262 Subsection (2) provides that:

a. references to an agency worker in this Part include, when necessary, a former agency worker, and

b. where that is the case, references to a work-finding agency, and references to a person under the supervision and direction of whom the agency worker works, are to be construed accordingly. This means that references to agency and hirer also include references to former agency and former hirer, when the reference is to a former agency worker.

263 Subsection (3) provides that 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 another person by the work-finding agency described in subsection (1)(a) or by a person other than the work-finding agency (for example, another agency in a longer supply chain).

b. whether the individual is (or is to be) paid for work under the supervision and direction of another person by the work-finding agency described in subsection (1)(a) or by a person other than the work-finding agency (for example, a so-called umbrella company).

264 Subsection (4) defines 'work-finding agency' as 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 work for individuals to do for and under the supervision and direction of another person they are not in the employment of.

265 Subsection (5) provides that Part 1 of Schedule A1 of the Employment Rights Act 1996 contains provision on guaranteed hours for agency workers.

266 Subsection (6) provides that Part 2 of Schedule A1 contains provision on the right to reasonable notice of shifts for agency workers.

267 Subsection (7) provides that Part 3 of Schedule A1 contains provision on right to payment for shifts that are cancelled, moved or curtailed at short notice for agency workers.

268 References to a ''person'' may include a company or any other type of legal person (in line with the Interpretation Act 1978).

Schedule 1: Agency workers: Guaranteed hours and rights relating to shift

269 Schedule 1 of the Bill inserts new Schedule A1 into the Employment Rights Act 1996.

New Schedule A1

New Part 1: Right to guaranteed hours

270 New Part 1 of the new Schedule A1 of the Employment Rights Act 1996 makes provision about the new right to guaranteed hours for agency workers.

271 Paragraph 1 outlines the new right to guaranteed hours for agency workers.

272 Subparagraph (1) provides that a hirer must make an offer of guaranteed hours to an agency worker in accordance with paragraph 2 after the end of every period:

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.

273 Subparagraph (2) explains that paragraph 4 makes provision for exceptions to the duty on hirers to offer guaranteed hours, including in certain cases where the agency worker stops working for and under the supervision and direction of the hirer.

274 Subparagraph (3) sets out the qualifying criteria for agency workers for the right to guaranteed hours. An agency worker is a qualifying worker if:

a. during the reference period the agency worker worked for and under the supervision and direction of the hirer for a number of hours. These hours are referred to as the 'reference period hours',

b. the hours worked during the reference period satisfy any conditions around regularity, number of hours worked or otherwise specified in regulations, and

c. the hours worked during the reference period are not worked as an excluded agency worker (as defined in regulations).

275 Subparagraph (4) provides that a 'reference period' is either:

a. the initial reference period, or

b. each subsequent reference period.

276 Subparagraph (5) provides that the initial reference period means the period:

a. beginning with either the day on which subparagraph (1) comes into force (the commencement day) if the agency worker is working for the hirer on the commencement day, or otherwise the first day after the commencement day on which the agency worker is working for the hirer.

b. ending with a day to be set in regulations.

277 Subparagraph (6) provides that a 'subsequent reference period' is a period beginning and ending on days defined in regulations. Subsequent reference periods could be of a different length to the initial reference period.

278 Subparagraph (7) defines, for the purposes of Part 1 of Schedule A1-

a. a 'hirer' as the person the agency worker is supplied to work for.

b. a 'qualifying agency worker' as the agency worker of a hirer in relation to a reference period through subparagraph (3).

c. the 'relevant reference period' as the period which the agency worker is a qualifying agency worker for the hirer.

279 Subparagraph (8) confirms that a hirer is not restricted from making one or more other offers to enter into a worker's contract, at the same time as making an offer of guaranteed hours.

280 Subparagraph (9) provides that the regulations made under subparagraph (3)(b), (5) or (6) may, in particular, include provision to take account of time when an agency worker does not work, for a reason which is also defined in regulations.

281 Subparagraph (10) provides that an 'excluded agency worker' will be described in regulations.

282 Paragraph 2 outlines the requirements for an offer of guaranteed hours.

283 Subparagraph (1) provides that an offer by a hirer to a qualifying agency worker must be an offer to enter into a worker's contract and will require the hirer to provide the agency worker with work and require the agency worker to do work for a number of hours that reflects the hours worked during the reference period.

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

285 Subparagraph (3) provides for the conditions referred to in subparagraph (2). These are that:

a. the offer sets out the days of the week and the times of those days when the offered number of hours are to be provided and worked, or a working pattern of days and times of day which the employer would be required to make available to the worker to work, and

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

286 Subparagraph (4) provides that where no regulations have been made (under subparagraph (2)) to require the offer to set out days of the week or a working pattern of days and times of days, the offer is considered a guaranteed hours offer only if terms and conditions are also proposed relating to when the number of hours are to be provided by the hirer and worked by the agency worker. These terms and conditions do not need to relate to particular days of the week, or particular times on those days, or any regular pattern of days or times of day.

287 Subparagraph (5) provides that regulations may provide how to determine:

a. whether an offer reflects the number of hours worked by a qualifying agency worker during a reference period;

b. where regulations apply so that the offer sets out days of the week or a working pattern of days and times of days (under subparagraph (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.

288 Subparagraph (6) provides that a guaranteed hours offer:

a. must not propose a limited-term contract unless it is reasonable for it to be limited-term, and

b. must, in addition to what is required under subparagraphs (1) and (2) or (1) and (4), propose terms and conditions:

i. that, taken as whole, are no less favourable than the terms and conditions relating to matters other than working hours and length of employment under which the agency worker worked for the hirer during the reference period, or

ii. where paragraph 3 applies (i.e. where terms and conditions have varied during the reference period), that comply with subparagraph (2) of that paragraph.

289 Subparagraph (7) provides that it is only reasonable for the guaranteed hours offer to propose a limited-term contract if it is reasonable for the hirer to consider that:

a. the qualifying agency worker is only needed for a specific task and the worker's contract provides for termination once the task is done,

b. the qualifying agency worker is only needed until an event happens, or fails to happen, and the worker's contract provides for termination upon the occurrence of this event (or the failure of the event to occur), or

c. it is reasonable for the hirer to consider that there is only a temporary need defined in regulations (and not falling within paragraph (a) or (b)) for the agency worker and the contract provides for termination at a time when it is reasonable for the hirer to consider that the temporary need will come to an end.

290 Subparagraph (8) provides that regulations will provide that an offer must be made by no later than a specified day, in which form and manner it must be made, and with which accompanying information.

291 Subparagraph (9) provides that regulations may provide when a guaranteed hour offers is to be treated as having been made.

292 Subparagraph (10) defines 'reference period hours'.

293 Paragraph 3 makes further provision about the terms and conditions of guaranteed hours offers where these terms and conditions have varied during the reference period.

294 Subparagraph (1) provides that 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.

295 Subparagraph (2) provides that, where the terms and conditions have varied during the reference period, 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 under which the qualifying agency worker had worked for the hirer 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 under which the qualifying agency worker worked for the hirer during the relevant reference period, and

b. the proposal of those terms constitutes a proportionate means of achieving a legitimate aim.

296 Subparagraph (3) provides that if a hirer relies on subparagraph (2) when making a guaranteed hours offer to a qualifying agency worker, the hirer must give them a notice that:

a. states that the hirer has done so, and

b. explains how the proposed terms and conditions constitute a means to achieve a legitimate aim.

297 Subparagraph (4) provides that a notice under subparagraph (3) must be given no later than the same day, in the same way, as the guaranteed hours offer (see paragraph 2(8)).

298 Paragraph 4 sets out the exceptions to the duty to make a guaranteed hours offer, and when the guaranteed hours offer is to be treated as having been withdrawn.

299 Subparagraph (1) provides that the duty for a hirer to offer guaranteed hours does not apply if the qualifying agency worker stops working for the hirer during the relevant reference period or offer period in relevant circumstances.

300 Subparagraph (2) provides that a guaranteed hours offer is to be treated as having been withdrawn if the qualifying agency workers stops working for the hirer in relevant circumstances during the response period.

301 Subparagraph (3) defines relevant circumstances as where:

a. the qualifying agency worker declines to continue working for the hirer, other than in circumstances in which they are entitled to do so without notice by reason of the hirer's conduct;

b. the hirer tells the agency supplying the qualifying agency worker to stop supplying them and:

i. the hirer's reason (or principal reason) for doing so is a qualifying reason, and

ii. in the circumstances the hirer has acted reasonably in treating the reason (or principal reason) as sufficient for telling the supplier of the agency worker to stop supplying them.

302 Subparagraph (4) defines 'qualifying reason' in subparagraph (3)(b) as a reason falling within subparagraph (5) or another substantial reason to justify telling the agency to stop supplying an agency worker to do work of the kind that they were supplied to the hirer to do.

303 Subparagraph (5) defines that a reason for the hirer to tell the agency to stop supplying the agency worker should be considered a qualifying reason if:

a. it relates to the capability or qualifications of the qualifying agency worker to do work of the kind that they were supplied to the hirer to do,

b. it relates to the conduct of the qualifying agency worker, or

c. the qualifying agency worker could not continue to do work they were supplied to do without contravention (on the part of the agency worker, the hirer or supplier of the agency worker) of a duty or restriction imposed by or under any legislation.

304 Subparagraph (6) provides that regulations may provide for the duty to offer guaranteed hours not to apply, or for a guaranteed hours offer that has been made to be treated as withdrawn, in other circumstances defined in regulations.

305 Subparagraph (7) provides that where a guaranteed hours offer made by a hirer is treated as having been withdrawn (under subparagraph (2)), the qualifying agency worker must be given notice to state this is the case before the end of the response period.

306 Subparagraph (8) provides that, where an offer is to be treated as having been withdrawn because of circumstances defined in regulations (under subparagraph (6)), the hirer must give notice to the qualifying agency worker that states which provision of the regulations has produced the effect either that:

a. the hirer would otherwise have been subject to the duty to offer guaranteed hours but is not required to make a guaranteed hours offer to the agency worker, or

b. a guaranteed hours offer is treated as having been withdrawn.

307 Subparagraph (9) provides that a notice under subparagraph (8) must be given to a qualifying agency worker:

a. where (8)(a) applies, before the end of the offer period;

b. where (8)(b) applies, before the end of the response period.

308 Subparagraph (10) provides that the way in which a notice under subparagraph (7) or (8) must be given, and when a notice under subparagraph (7) or (8) is to be treated as having been given, may be defined in regulations.

309 Subparagraph (11) defines 'capability' as the qualifying agency workers' ability assessed by reference to skill, aptitude, health or other physical or mental quality. It defines 'the offer period' as 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 by the hirer;

b. the last day as specified by paragraph 2(8)(a) if no guaranteed hours offer is made.

310 Subparagraph (11) also defines 'qualifications' as any academic, technical or professional qualification relevant to the work that the qualifying agency worker is supplied to the hirer to do. It also defines 'the response period' as the period beginning with the day after the day on which the offer is made and ending with a day specified in regulations.

311 Paragraph 5 makes provision around the acceptance or rejection of a guaranteed hours offer.

312 Subparagraph (1) provides that where a guaranteed hours offer is not treated as having been withdrawn under paragraph 4(2) or regulations under paragraph 4(6), the qualifying agency worker may accept or reject the offer by giving notice to the hirer before the end of the response period.

313 Subparagraph (2) provides that where an offer is accepted, the qualifying agency worker and hirer are to be treated as entering into a worker's contract in the terms of the offer on the day after notice of acceptance is given.

314 Subparagraph (3) provides that there is scope for agreement between the qualifying agency worker and hirer that the worker's contract may be treated as being entered into on a later day than mentioned in subparagraph (2).

315 Subparagraph (4) provides that an offer is to be treated as having been rejected if the qualifying agency worker does not give notice under subparagraph (1) before the end of the response period.

316 Subparagraph (5) provides that secondary legislation may provide:

a. the way in which a notice under subparagraph (1) must be given to a hirer;

b. when notice under subparagraph (1) is to be treated as having been given.

317 Subparagraph (6) defines 'the response period' in the same way as in paragraph 4.

318 Subparagraph (7) provides that where-

a. A hirer, through Section 27BY(3), is permitted to withdraw a guaranteed hours offer and,

b. The hirer withdraws the offer by giving notice under that section,

Paragraph 5(1) ceases to apply, regarding the offer when notice is given.

319 Paragraph 6 relates to provision of information to agency workers about the right conferred by Part 1 of Schedule A1.

320 Subparagraph (1) provides that when it is reasonable to consider that an agency worker who is, or is to be, supplied to work for a hirer may become a qualifying agency worker (whether in the initial or a subsequent reference period), the agency must take reasonable steps to ensure that the agency worker is aware of specified information relating to the right conferred by Part 1 of Schedule A1 within the information period.

321 Subparagraph (2) provides that the work-finding agency must take reasonable steps to ensure that the agency worker continues to have access to information referred to in subparagraph (1) after the end of the information period, while the contract or arrangement continues to be in force and it is reasonable to consider that the agency worker may (or may again) become a qualifying agency worker of a hirer within a reference period.

322 Subparagraph (3) defines the 'initial information period' as 2 weeks beginning with:

a. the day on which paragraph 1(1) comes into force (the commencement day), where the worker's contract or arrangement is in force on the commencement day, or

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

323 Subparagraph (4) provides that where, on the day set out in subparagraph (3)(a) or (b), it was not reasonable to consider that the agency worker might become a qualifying agency worker within any reference period, then 'the initial information period' is to mean the 2 weeks beginning with the day on which it becomes reasonable to consider that.

324 Paragraph 7 makes provision for agency workers to present complaints to employment tribunals against hirers.

325 Subparagraph (1) provides that an agency worker may present a complaint to an employment tribunal that the duty imposed by paragraph 1(1) applies to a hirer, but the hirer failed to make an offer before the end of the last day of the offer period.

326 Subparagraph (2) provides that an agency worker may present a complaint to an employment tribunal that the duty imposed by paragraph 1(1) applies to a hirer, but the offer the hirer made to enter a worker's contract is not a guaranteed hours offer as described in:

a. paragraphs 2(1) and 2(3) (read with any regulations in force under paragraph 2(5)(a) or 2(5)(b)), where regulations are in force under paragraph 2(2) that apply in relation to the offer, or

b. otherwise, paragraphs 2(1) and 2(4) (read with any regulations in force under paragraph 2(5)(a)).

327 Subparagraph (3) provides that an agency worker may present a complaint to an employment tribunal that the duty imposed by paragraph 1(1) applies to a hirer, but the guaranteed hours offer the hirer made to the agency worker does not comply with paragraph 2(6).

328 Subparagraph (4) provides that an agency worker may present a complaint to an employment tribunal that the duty to offer guaranteed hours applies to a hirer, and the hirer would have been required to offer more hours than in fact the hirer has offered if the hirer had not, during the reference period:

a. limited the number of hours that the agency worker was requested or required to work for the hirer under the worker's contract or arrangement, or

b. caused the agency worker to be requested or required to work for the hirer in the way that the agency worker was,

for the sole or main purpose of the hirer being able to comply with the duty by making such a reduced offer.

329 Subparagraph (5) provides that an agency worker may present a complaint to an employment tribunal that the duty to offer guaranteed hours would have applied to a hirer if they had not, during the reference period:

a. limited the number of hours the agency worker was requested or required to work under the worker's contract or arrangement, or

b. caused the agency worker to be requested or required to work for the hirer in the way that the agency worker was,

for the sole or main purpose of preventing the agency worker from becoming a qualifying agency worker.

330 Subparagraph (6) provides that a complaint under subparagraph (2), (3) or (4) may be presented whether or not the offer has been accepted by the agency worker, but may not be presented in relation to an offer that is considered withdrawn under paragraph 4(2), regulations under 4(6) or in accordance with Section 27BY(3).

331 Subparagraph (7) provides that an agency worker may present a complaint to an employment tribunal that a hirer:

a. failed to give the agency worker a notice of withdrawal under paragraph 4(7) or 4(8);

b. gave the agency worker a notice under paragraph 4(7) or 4(8)(b) when they should not have; or

c. gave the agency worker a notice supposedly in compliance with paragraph 4(8) that does not refer to any provision or refers to the wrong provision.

332 Subparagraph (8) defines 'the last day of the offer period' as the day defined by paragraph 2(8)(a) as the last day on which a guaranteed hours offer may be made relative to that reference period.

333 Paragraph 8 makes provision for agency workers to present complaints to employment tribunals against work-finding agencies.

334 Subparagraph (1) provides that an agency worker can present a complaint to an employment tribunal against a work-finding agency, that the duty imposed by paragraph 1(1) applies to a hirer in relation to the agency worker and a reference period, but, during that reference period, the work-finding agency:

a. limited the number of hours the agency worker was requested or required to work for the hirer through the worker's contract or arrangement, or

b. caused the agency worker to be requested or required to work for the hirer in the way that the agency worker was,

for the sole or main purpose of enabling the hirer to comply with the duty to offer guaranteed hours whilst making a reduced offer.

335 Subparagraph (2) provides that an agency worker can present a complaint against the work-finding agency that the duty imposed by paragraph 1(1) would have applied to a hirer if the relevant work-finding agency had not, during the reference period:

a. limited the number of hours the agency worker was requested or required to work for the hirer through the worker's contract or arrangement, or

b. caused the agency worker to be requested or required to work for the hirer in the way that the agency worker was,

for the purpose of preventing the agency worker from satisfying one or both conditions in paragraph 1(3)(a) and (b).

336 Subparagraph (3) provides that a complaint under subparagraph (1):

a. may be presented whether or not the hirer has made an offer to the agency worker and whether or not it has been accepted by the agency worker, but

b. where an offer has been made, may not be presented if the offer if regarded as withdrawn through paragraph 4(2) or (6) or in accordance with Section 27BY(3).

337 Subparagraph (4) provides that for the purposes of subparagraphs (1) and (2), references to a 'relevant work-finding agency' are to a work-finding agency with which the agency worker has a worker's contract or arrangement, through which they were supplied to a hirer during the reference period in question.

338 Subparagraph (5) provides that an agency worker can present a complaint to an employment tribunal that a work-finding agency failed to comply with the duty to give information imposed by paragraph 6(1) or (2).

339 Paragraph 9 makes provision around the time limits for complaints to employment tribunals on time limits.

340 Subparagraph (1) provides that an employment tribunal must not consider a complaint under paragraph 7(1) unless it is presented before the end of the 6-month period beginning after the last day of the offer period as defined by paragraph 7(8).

341 Subparagraph (2) provides that an employment tribunal must not consider a complaint under paragraph 7(2) unless it is presented before the end of the 6-month period beginning after the day when the offer referred to in that provision is made.

342 Subparagraph (3) provides that an employment tribunal must not consider a complaint under paragraph 7(3) or (4) unless it is presented before the end of the 6-month period when the guaranteed hours offer referred to in that provision is made.

343 Subparagraph (4) provides that an employment tribunal must not consider a complaint under paragraph 7(5) or 8(2) unless it is presented before the end of the 6-month period beginning the day after what would have been the last day of the offer period (as defined by paragraph 7(8)) if the duty to offer guaranteed hours had applied.

344 Subparagraph (5) provides that 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 6-month period beginning the day after the latest day that the notice should have been given (under paragraph 4(7) or (9)).

345 Subparagraph (6) provides that an employment tribunal must not consider a complaint under paragraph 7(7)(b) or (c) unless it is presented before the end of the 6-month period beginning the day after the notice is given.

346 Subparagraph (7) provides that an employment tribunal must not consider a complaint under paragraph 8(1) unless it is presented before the end of the 6-month period beginning after the last day of the offer period (as defined by paragraph 7(8)).

347 Subparagraph (8) provides that an employment tribunal must not consider a complaint under paragraph 8(1) unless it is presented before the end of the 6-month period beginning the day after the initial information period (as set by paragraph 6(3) or (4)).

348 Subparagraph (9) provides that an employment tribunal must not consider a complaint under paragraph 8(5)(b) unless it is presented before the end of the 6-month period beginning on the day when the agency worker first became aware of the failure to which the complaint relates.

349 Subparagraph (10) provides that if the employment tribunal is satisfied it was not practical for a complaint under paragraph 7 or 8 to be presented before the 6-month period, it may consider the complaint if presented within a further period that the tribunal considers reasonable.

350 Subparagraph (11) provides that section 207B (rules regarding the extension of time limits to facilitate conciliation before proceedings) applies to subparagraphs (1) to (9).

351 Paragraph 10 provides for remedies for well-founded claims to the employment tribunals

352 Subparagraph (1) provides that where an employment tribunal finds a complaint under paragraph 7 or 8 well-founded, the tribunal must make a declaration stating this and may make an award of compensation to be paid by the respondent to the agency worker.

353 Subparagraph (2) provides that the amount of compensation is to be an amount, not greater than the permitted maximum, that the tribunal considers right in all the circumstances to compensate the agency worker for any financial loss suffered relating to the complaint.

354 Subparagraph (3) provides that in determining the financial loss suffered, the tribunal must apply the rules concerning the duty of a person to mitigate their loss as applies to damages recoverable under Common Law (if in England and Wales) or Scots Law (if in Scotland).

355 Subparagraph (4) defines 'the permitted maximum', in subparagraph (2):

a. as the number of weeks' pay specified in secondary legislation for complaints under paragraphs 7(1), 7(2), 7(3), 7(7) or 8(5);

b. as the amount specified in regulations for paragraphs 7(4), 7(5), 8(1) or 8(2).

356 Subparagraph (5) provides that in the calculation of a week's pay to determine the permitted maximum for compensation for a complaint against a hirer under paragraph 7(1), (2), (3) or (7):

a. a week's pay is the average weekly remuneration received by the agency worker for work for the hirer in the reference period;

b. the amount of a week's pay is not to exceed the amount specified in section 227(1);

357 Subparagraph (6) provides that in calculating a week's pay to determine the permitted maximum of compensation, where the complaint is under paragraph 8(5):

a. a week's pay is the average weekly remuneration received by the agency worker in the relevant period for work for the hirer through the worker's contract or arrangement with the work-finding agency.

b. the amount of a week's pay is not to exceed the amount specified in section 227(1);

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, the 12-week period (or, if shorter, the period for which it was in force) ending with the latest day before the last day it was in force on which the agency worker worked for the hirer.

ii. where the worker's contract or arrangement did not cease to be in force, the 12-week period (or, if shorter, the period for which it had been in force) ending with the latest day before the complaint was presented on which the agency worker worked for the hirer.

358 Chapter 2 of Part 14 does not apply, and this paragraph does, where the agency worker to be compensated is an employee of the work-finding agency.

359 Paragraph 11 enables regulations to change the effect of this Part.

360 Subparagraph (1) provides that in relation to certain agency workers, the description of whom is to be set out in regulations:

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 supplying or paying an agency worker, is instead required to make a corresponding or similar offer and is liable to have a complaint against them to an employment tribunal on grounds akin to those in paragraph 7.

361 Subparagraph (2) provides that the provision referred to in subparagraph (1) may be made by amending this Act or otherwise.

362 Subparagraph (3) provides that regulations under subparagraph (1) may make consequential amendments, including provision amending:

a. an Act of Parliament, including the Employment Rights Act 1996;

b. a Measure or Act of the National Assembly for Wales or an Act of Senedd Cymru;

c. an Act of the Scottish Parliament.

New Part 2: Shifts: rights to reasonable notice

363 New Part 2 of Schedule A1 of the Employment Rights Act 1996 makes provision about the new right to reasonable notice of shifts for agency workers.

364 Paragraph 12 sets out the application of this Part to shifts worked by agency workers, including what constitutes an excluded shift for the application of the right to reasonable notice for agency workers. Paragraph 12 also defines the 'work-finding agency' and 'hirer' for this Part.

365 Subparagraph (1) provides that Part 2 applies to a shift that would be, would have been or is being worked by an agency worker.

366 Subparagraph (2) provides that Part 2 does not apply to an excluded shift.

367 Subparagraph (3) provides that what constitutes an 'excluded shift' will be defined in regulations.

368 Subparagraph (4) explains that regulations under subparagraph (3) may specify a description of a 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, either by itself or taken with other shifts of a defined description, being more than a specified number.

c. the shift corresponding to the day and time of a shift provided for by the worker's contract between the agency worker and the work-finding agency or other person in supply and payment of the agency worker. Where regulations specify a description of shift, they may include provision corresponding or similar to new section 27BJ(5A).

369 Subparagraph (5) defines the following terms in relation to the application of Schedule A1:

a. 'the work-finding agency' is the agency with which the agency worker has a worker's contract or an arrangement and by virtue of which they would work, would have worked or are working the shift.

b. 'the hirer' is the person for and under the supervision and direction of whom the agency worker would work, would have worked or is working the shift.

370 Paragraph 13 provides for the right to reasonable notice of a shift.

371 Subparagraph (1) provides that an agency worker is entitled to be given reasonable notice of a shift by the work-finding agency or the hirer. This relates to a shift that the agency worker is requested or required to work by virtue of the worker's contract or arrangement between the agency worker and the work-finding agency.

372 Subparagraph (2) creates a presumption that, unless the contrary is shown, notice of a shift is not reasonable if it is given less than a specified amount of time before the shift is due to start. This amount of time will be set out in regulations.

373 Subparagraph (3) defines 'notice of a shift' for this paragraph, as well as in paragraphs 14 and 15, as notice of how many hours are to be worked and when the shift is to start and end.

374 Paragraph 14 provides for the right to reasonable notice of cancellation of or change to a shift.

375 Subparagraph (1) provides that the entitlement to reasonable notice of cancellation and changes (as set out in subparagraph (2)) applies to agency workers where:

a. the agency worker has been given notice by the work-finding agency or hirer, and

b. the shift is one that the agency worker has been requested (rather than required) to work and has agreed to work.

376 Subparagraph (2) provides that, subject to paragraph 17, the agency worker is entitled to be given reasonable notice by the work-finding agency or hirer of:

a. the cancellation of the shift;

b. any change requested or required, consisting of:

i. a change to when the shift starts and ends, or

ii. a reduction in the number of hours to be worked due to a break in the shift.

377 Subparagraph (3) provides that it is to be presumed unless the contrary is shown that:

a. notice of the cancellation is not reasonable for the purposes of subparagraph (2) if it is given less than a specified amount of time before the shift would have started if not cancelled.

b. notice of a change to the start of the shift is not reasonable for the purposes of subparagraph (2) if it is given less than a specified amount of time before the earlier of:

i. when the shift would have started if not 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 for the purposes of subparagraph (2) if it is given:

i. less than a specified amount of time before the shift is due to start; or

ii. on or after the start of the shift.

378 A "specified amount of time" refers to an amount of time set out in regulations.

379 Paragraph 15 provides for the liability of the work-finding agency and hirer in relation to an agency worker.

380 Subparagraph (1) provides that the work-finding agency is liable for a breach of paragraph 13 or 14, in relation to an agency worker and their shift, to the extent that the agency is responsible for the breach.

381 Subparagraph (2) provides that the hirer is liable for a breach of paragraph 13 or 14, in relation to an agency worker and their shift, to the extent that the hirer is responsible for the breach.

382 Subparagraph (3) provides that for the purposes of Part 2, the hirer is not responsible for a breach of paragraph 13 or 14, and so not liable for the breach, if:

a. the hirer gives notice to the work-finding agency of the shift, or cancellation or change to the shift, and

b. that notice enables the work-finding agency to give reasonable notice to the agency worker under paragraphs 13 or 14.

383 Subparagraph (4) provides that secondary legislation may provide that the work-finding agency is solely responsible, and thus liable, for a breach of paragraph 13 or 14 where the hirer

is a person of a certain description to be defined in regulations. This will allow for exemption from liability of persons which would otherwise be liable as hirers.

384 Paragraph 16 sets out supplementary details to paragraphs 13 to 15.

385 Subparagraph (1) sets out that when an agency worker suggests working a shift and the work-finding agency or hirer agrees:

a. nothing in paragraph 2 applies in relation to the shift suggested but

b. paragraph 14(2) still applies despite conditions of paragraph 14(1) not being met.

386 Subparagraph (2) provides that in paragraphs 13 and 14, references to a request made to an agency worker to work a shift include a request to other agency workers where not all of them are needed to work that shift (also known as a multi-worker request).

387 Subparagraph (3) provides that for the purposes of paragraph 14, where a multi-worker request has been made to an agency worker, references to the cancellation of the shift include the agency worker not being needed because one or more other agency workers have agreed to work it.

388 Subparagraph (4) provides that the Secretary of State may set out in regulations the way the in which notices under paragraphs 13, 14 and 15 must be given, and when notice under paragraphs 13, 14 and 15 is to be treated as having been given may be defined in regulations.

389 Paragraph 17 sets out the interaction between the right to reasonable notice and the right to payment for shifts cancelled, moved, or curtailed at short notice for agency workers as set out in Part 3 of new Schedule A1 to the Employment Rights Act 1996.

390 Subparagraph (1) explains provides that the right to reasonable notice of cancellation of or changes to shifts (in paragraph 14(2)) does not apply to the cancellation, movement or curtailment of a shift for which a work-finding agency:

a. is required to make a payment to an agency worker under the right to payment for a shift that is cancelled, moved or curtailed at short notice, or

b. would have had to make that payment but for the provision made under paragraph 23(1)(c).

391 In this way, where the work-finding agency is required to make a payment for short notice cancellation, movement or curtailment of a shift, the work-finding agency will not also be subject to a potential tribunal claim for failure to give reasonable notice of the same cancellation, movement or curtailment.

392 Subparagraph (2) provides that terms used in paragraph 17 have the same meaning as in paragraph 21.

393 Paragraph 18 makes provision for agency workers to enforce their right to reasonable notice and present complaints to employment tribunals.

394 Subparagraph (1) provides that an agency worker may present a complaint to a tribunal that the work-finding agency or hirer is liable for a breach of paragraph 13 or 14.

395 Subparagraph (2) explains that, when determining whether a complaint under this section is well-founded, the tribunal must have regard to factors to be specified in regulations, as appropriate to the circumstances, in determining whether reasonable notice was given.

396 Subsection (3) provides for time limits to present complaints. It sets out that a tribunal must not consider a complaint unless it is presented before the end of the 6-month period beginning with:

a. the day the shift was due to start, where the complaint is that the work-finding agency or hirer is liable for a breach of paragraph 13;

b. the day the shift would have started had it not been cancelled, where the complaint is that the work-finding agency or hirer is liable for a breach of paragraph 14(2) relating to the cancellation of a shift;

c. the day the changed shift was due to start, or the day the shift started if it was changed on or after its start, where the complaint is that the work-finding agency or hirer is liable for a breach of paragraph 14(2) relating to a change to a shift.

397 Subparagraph (4) provides that the tribunal may extend the time limits and consider the complaint if presented within further period deemed reasonable by the tribunal, if it is satisfied it was not practical for a complaint to be presented within the 6-month period.

398 Subparagraph (5) provides that Section 207B (rules regarding the extension of time limits to facilitate conciliation before proceedings) applies to subparagraph (3).

399 Paragraph 19 provides for remedies for well-founded complaints to employment tribunals.

400 Subparagraph (1) provides that where an employment tribunal finds a complaint under paragraph 18 to be well-founded, the tribunal:

a. must make a declaration stating this and

b. may make an award of compensation to be paid by the respondent to the agency worker.

401 Subparagraph (2) provides that the amount of compensation is to be an amount the tribunal considers right in all the circumstances to compensate the agency worker for any financial loss suffered relating to the complaint.

402 Subparagraph (3) provides that to determine the financial loss suffered, the tribunal must apply the rules concerning duty of a person to mitigate their loss as applies to damages recoverable under Common Law (if in England and Wales) or Scots Law (if in Scotland).

403 Subparagraph (4) provides that where a tribunal makes an award of compensation under subparagraph (1)(b) to an agency worker and both the agency and the hirer are respondents, the amount of compensation payable by each respondent is to be an amount the tribunal considers right having regard to the extent of the respondent's responsibility for the breach related to the complaint.

New Part 3: Shifts: right to payment for cancelled, moved and curtailed shifts

404 New Part 3 of Schedule A1 of the Employment Rights Act 1996 makes provision about the new right to payment for cancelled, moved and curtailed shifts for agency workers.

405 Paragraph 20 provides that Part 3 of Schedule A1 applies in relation to shifts worked by agency workers and defines work-finding agency and 'hirer' for the purposes of this Part of the Schedule.

406 Subparagraph (1) provides that the right to payment for cancelled, moved and curtailed shifts applies to shifts that would be, would have been, or are being worked, by agency workers.

407 Subparagraph (2) defines references to:

a. ‘work-finding agency’ as the work-finding agency with which the agency worker has a worker’s contract or arrangement, through which the agency worker would work, would have worked or is working shifts.

b. ‘hirer’ as the person for and under the supervision and direction of whom the agency worker would work, would have worked or is working for.

408 Paragraph 21 outlines what constitutes a shift for which an agency worker is entitled to payment and provides for what is ‘short notice’ in relation to the right to payment for a cancelled, moved, or curtailed shift.

409 Subparagraph (1) provides that where the exceptions at paragraph 23 do not apply, a work-finding agency must make a payment to an agency worker each time there is cancellation, movement or curtailment of a shift at short notice. It provides that this applies where, by virtue of the worker’s contract or arrangement between the agency worker and agency:

a. the agency worker has been informed they are required to work for the hirer,

b. the agency worker has been requested to work for the hirer and has agreed to work, or

c. the agency worker has suggested working for the hirer and it has been agreed that the agency worker is to work.

410 Subsection (2) provides that a payment under subsection (1) must be made no later than the day specified in regulations.

411 Subparagraph (3) sets out that the meaning of ’short notice’ for the purposes of this Part of the Schedule in relation to cancellation, movement or curtailment of a shift, and therefore the occasions when payment becomes due, will be set out in secondary legislation:

a. in relation to cancellations, short notice is notice given less than a specified amount of time before the shift would have started;

b. when a shift is moved or moved and curtailed (e.g. if a 2-5pm shift changes to 4-6pm), short notice is notice given less than specified amount of time before the earlier of when the shift would have started, or when the shift is now due to start;

c. when a shift is curtailed with a change to when the shift is to start (and there is no movement of the shift) (e.g. where a 2-5pm shift changes to 4-5pm), short notice is notice given less than a specified amount of time before the earlier of when the shift would have started or is due to start;

d. when a shift is curtailed with no change to the start time of the shift (e.g. where a 2-5pm shift is changed to 2-3pm), short notice is notice given less than a specified amount of time before the shift is due to start. However, where notice is given of such a curtailment at or after the start of the shift (e.g. if during the shift the worker is informed during what was due to be a 2-5pm shift that they are to finish at 4pm), that notice is short notice.

412 Subparagraph (4) provides that regulations may make provision about when notice of the cancellation, movement or curtailment of a shift is to be treated as having been given to an agency worker.

413 Subparagraph (5) provides that a shift counts as being “moved” if its start time is changed by more than an amount of time defined in regulations. The effect is that regulations can prescribe a maximum amount of time by which employers can move shifts at short notice without having to make a payment under this section.

414 Subparagraph (6) provides that for the right to payment for cancelled, moved, and curtailed shifts, references to a request made to an agency worker to work a shift include a 'multi-worker request' made to the agency worker and at least one other, where not all are required to work the shift on offer.

415 Subparagraph (7) provides that for the right to payment for cancelled, moved, and curtailed shifts, where a multi-worker request has been made, references to its cancellation include the agency worker not being needed to work the shift as at least one other has agreed to work it.

416 Paragraph 22 provides further details on how the powers in new paragraph 21 can be exercised.

417 Subparagraph (1) provides that regulations made to specify the payment amount under 21(1) may not specify an amount that is greater than what the agency worker would have earned had the shift not been cancelled or changed. In other words:

a. regulations may not specify a payment amount greater than what the agency worker would have earned had they worked the hours that were cancelled;

b. where a shift is moved or moved and curtailed (at the same time) and no part of the amended shift corresponds to the original time of the shift (for example where a shift is moved from 9am-11am to 12pm-2pm), regulations may not specify an amount greater than what the agency worker would have earned from working the original shift;

c. where a shift is moved or moved and curtailed (at the same time) and part of the new shift corresponds to the original time of the shift (for example where a shift is moved from 9am-11am to 10am-12pm), regulations may not specify an amount greater than what the agency worker would have earned had they worked the part of the original shift that was moved, or moved and curtailed;

d. where a shift is curtailed but not moved (for example where a 9am-11am shift is changed to 9am-10am) or where a shift is moved and curtailed (at the same time) and the shift is now due to start and end within the time of the original shift (for example where a 9am-1pm shift changes to 10am to 1pm), regulations may not specify an amount greater than what the worker would have earned had they worked the hours that will not now be worked.

418 Subparagraph (2) clarifies that regulations under paragraph 21(1) may specify different payment amounts depending on how short the notice was.

419 Subparagraph (3) provides that the period for short notice, to be set in regulations under paragraph 21(3), may not be greater than 7 days.

420 Paragraph 23 provides for exceptions to the duty to make payment for a cancelled, moved or curtailed shift.

421 Subparagraph (1) makes exceptions to the requirement to make a payment for a cancelled, moved, or curtailed shift. It provides that it does not apply:

a. if the shift is an excluded shift as defined in regulations;

b. to cancellation, movement or curtailment of a shift that the agency worker has been requested to work, unless the agency worker reasonably believed that they would be needed to work the shift. This is especially relevant where it is clear that end hirers or work-finding agencies have offered a shift to multiple workers, but only one worker is expected to work the shift; nor

c. in other circumstances as defined in regulations.

422 Subparagraph (2) sets out that 'excluded shift' in subparagraph (1)(a) means a shift of a specified description to be defined in regulations.

423 Subparagraph (3) provides that regulations under subparagraph (2) may 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, either alone or a number of shifts of a specified description, being more than a specified number;

c. the shift corresponding to the time of a shift that is provided for by a worker's contract that the agency worker has with the work-finding agency or other person involved in supplying or paying the agency worker. Where regulations specify a description of shift in this way, they may include provision akin to new section 27BP(4).

424 Subparagraph (4) provides that where a work-finding agency is not required to make a payment to an agency worker because of the circumstances defined in regulations (see subparagraph (1)(c)), the work-finding agency must notify the agency worker of the relevant exception and include an explanation of why the work-finding agency was entitled to rely on that exception. This enables the agency worker to understand that they will not receive payment and why.

425 Subparagraph (5) provides that work-finding agencies do not have to disclose information in the notice of relying on an exception (under subparagraph (4)) that would lead them to breach data protection legislation, reveal commercially sensitive information, or breach a duty of confidentiality to another person.

426 Subparagraph (6) provides that "the data protection legislation" in subparagraph (4)(a) has the same meaning as given by section 3(9) of the Data Protection Act 2018.

427 Subparagraph (7) provides that regulations may prescribe the form in which a notice under subparagraph (3) must be given and when it is treated as having been given.

428 Subparagraph (8) provides that the work-finding agency is not obliged to give a notice of exception under subparagraph (4) if, by the point that the notice must otherwise be given, the work-finding agency or another person has in fact made a payment to the agency worker, at least as much as the payment that would have been required under paragraph 21(1) if an exemption had not applied.

429 Subparagraph (9) provides that paragraph 24(4) applies for the purposes of paragraph 23(7) as it applies for paragraph 24(2) and (3), in determining the number of hours for which such a payment should be made.

430 Paragraph 24 provides for how the right to payment for short notice cancellation, movement or curtailment of shifts interacts with contractual remuneration.

431 Subparagraph (1) provides that the right of an agency worker to receive such a payment under paragraph 21(1) does not affect the agency worker's contractual rights to remuneration under a worker's contract (whether with the work-finding agency or another person).

432 Subparagraph (2) provides that 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.

433 Conversely, subparagraph (3) provides that 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.

434 Subparagraph (4) provides that the hours to which a payment relates for the purposes of subparagraphs (2) and (3) 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 original shift before it was moved, or moved and curtailed, the hours that would have been worked during the original shift;

c. where a shift has been moved, or moved and curtailed, and part of the shift now corresponds to the time of the original shift, the hours that would have been worked during the part of the original shift that does not correspond to the amended shift;

d. where a shift has been curtailed but not moved, or moved and curtailed and the amended shift is to start and end within the time of the original shift, the hours that would have been worked if the shift had not been amended.

435 Paragraph 25 provides that an agency worker may bring a claim to an employment tribunal in relation to a breach of rights in this Part of the Schedule.

436 Subparagraph (1) enables an agency worker to bring a complaint to an employment tribunal where 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);

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:

d. does not refer to any provision of the regulations or refers to the wrong provision;

e. does not contain an explanation or contains an explanation that is inadequate or untrue.

437 Subparagraph (2) provides that an employment tribunal must not consider a complaint under subparagraph (1)(a) unless it is presented before the end of the 6-month period beginning with the day after the day on or before which the payment should have been made (see paragraph 21(2)).

438 Subparagraph (3) provides that an employment tribunal must not consider a complaint under subparagraph (1)(b) unless it is presented before the end of the 6-month period beginning with the day after the day on or before which the notice should have been given (see paragraph 23(6)(b)).

439 Subparagraph (4) provides that an employment tribunal must not consider a complaint under subparagraph (1)(c) unless it is presented before the end of the 6-month period beginning with the day after the notice is given.

440 Subparagraph (5) provides that if the employment tribunal is satisfied that it was not practical for a complaint under this paragraph to be presented before the end of the relevant 6-month period, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

441 Subparagraph (6) provides that section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subparagraphs (2) to (4).

442 Subparagraph (7) provides that the work-finding agency may request the employment tribunal to join the hirer as a party to the proceedings where-

a. An agency worker presents a complaint to an employment tribunal under subparagraph (1)(c) that the work-finding agency has given a notice supposedly in compliance with paragraph 23(4) that refers to the wrong provision or contains an explanation that is inadequate or untrue, and

b. The work-finding agency claims it was provided information for the notice by the hirer referred to wrong provisions, or its explanations were inadequate or untrue.

443 Subparagraph (8) provides that a request under subparagraph (7) must be granted if it is made before the hearing of the complaint begins but may be refused if it made after. No request may be made once the tribunal has reached its decision as to if the complaint is well-founded.

444 Subparagraph (9) provides that regulations can be made so that subparagraph (7) does not apply in relation to a hirer of a description defined in regulations.

445 Paragraph 26 makes provision on the remedies that a tribunal may award where it finds a complaint under paragraph 25 well-founded.

446 Subparagraph (1) provides that, where a tribunal finds that the work-finding agency has breached the duty to make payment, following a complaint under paragraph 25(1)(a), the tribunal must make a declaration to that effect and order the work-finding agency to pay the amount due. This may either be the full amount of payment due where no payment has been made or any further amount due where it has paid too little.

447 Subparagraph (2) provides that, where a tribunal finds that the work-finding agency has breached the duty to provide notice, following a complaint under paragraph 25(1)(b) or (c), the tribunal must make a declaration to that effect and may, at its discretion, order the work-finding agency to pay the agency worker an amount that it considers right in the circumstances, but not exceeding an amount to be defined in regulations.

448 Subparagraph (3) provides that an employment tribunal may not order a work-finding agency to pay an amount under subparagraph (2)(b) in relation to notice of an exception where the work-finding agency is already under an order from the tribunal to make the payment to the agency worker under subparagraph (1)(b). Therefore, workers are prevented from obtaining an additional payment where a work-finding agency gave an inadequate or untrue notice of an exception and it is found that an exception did not apply, meaning that the worker is entitled in any event to payment of the amount due

449 Subparagraph (4) provides that a tribunal must have regard to the seriousness of the matter complained of in determining whether to make an order for an amount under subparagraph (2) and the value of the amount.

450 Subparagraph (5) provides that if an employment tribunal adds a hirer as a party to the proceedings following a request made under subparagraph (2)5(7) and the tribunal:

a. finds the complaint under subparagraph25(1)(c) to be well-founded (regarding the notice referring to wrong provisions, or its explanations being inadequate or untrue)

b. makes an award of compensation under subparagraph(2)(b), and

c. finds the hirer did provide the work-finding agency with information for the notice which referred to wrong provisions or had inadequate or untrue explanations,

It may order the compensation to be paid by the hirer instead of the work-finding agency, or split between them both, with the amount payable by each to be an amount the tribunal considers to be right considering the circumstances.

451 Paragraph 27 makes provision on the recovery of payments made by the work-finding agency from the hirer.

452 Subparagraph (1) provides that a work-finding agency is entitled to recover from a hirer a payment made to an agency worker under paragraph 21(1) of such a proportion that reflects the hirer's responsibility for the short notice cancellation, movement or curtailment to which the payment relates. This includes recovering the full amount of the payment, where the hirer is fully responsible for the short notice cancellation, movement or curtailment, or a smaller proportion of that amount where the work-finding agency is also responsible for the short notice cancellation, movement or curtailment to some extent.

453 This right only applies where the payment was made under a "pre-existing arrangement" involving the work-finding agency and the hirer.

454 "Pre-existing arrangement" is defined in subparagraph (3) as an arrangement (which would include a contract) that was entered into on or before the last day of the 2-month period beginning with the day on which the Employment Rights Bill was passed and that has not been modified by the work-finding agency and the hirer after then.

455 Subparagraph (2) provides that regulations can be made to provide that subparagraph (1) does not apply in relation to a hirer of a specified description.

456 Sub-paragraph (4) ensures that a work-finding agency can also recover payments for short notice cancellation, movement or curtailment from a hirer that the work-finding agency is ordered to make by a tribunal under paragraph 26(1)(b).

457 Sub-paragraph (5) clarifies that a work-finding agency can recover payments they had to make for short notice cancellation, movement or curtailment from a hirer even where the agency worker was to be, or was, supplied to work for and under the supervision and direction of the hirer by a person other than the work-finding agency.

458 No specific provision is made for the enforcement of this right as it should be possible to enforce the right in the civil courts as a sum recoverable by virtue of an enactment.

Clause 5: Collective agreements: Contracting out

459 This clause makes provision to allow for contracting out of the rights and duties in Chapters 2 to 5 (including Schedule A1) of the Employment Rights Act 1996 where there is a collective agreement and certain conditions are met.

460 Subsection (2) inserts a new Chapter 6 into Part 2A of the Employment Rights Act 1996, consisting of new sections 27BW - 27BZ1, which specifies when the rights and duties in Chapters 2 to 5 (including Schedule A1) do not apply as a result of a collective agreement and makes further provision relating to this.

461 Subsection (3) amends section 203 of the Employment Rights Act 1996 to allow for the rights in Chapters 2, to 5 (including Schedule A1) to be contracted out of.

New Section 27BW

462 Section 27BW allows employers and unions to collectively agree to exclude workers from the rights and duties in Chapters 2, 3, and 4, where conditions are met.

463 A duty or right in Chapters 2, 3, and 4 does not apply in relation to a worker where the following conditions are met:

a. Under subsection (3), a collective agreement must be in writing and made by or on behalf of a worker's employer and one or more trade unions which have a certificate of independence (issued under section 6 of the Trade Union and Labour Relations (Consolidation) Act 1992);

b. Under subsection (2)(b), the collective agreement must expressly exclude the duty or right and it must include terms that expressly replace the excluded duty or right. These replacement terms could include rights or duties that are modified versions of those they are replacing, for example, a right to payment for short notice cancellations but with a different short notice period to that to be specified in regulations under section 27BP(1). Such replacement terms would become contractual terms. Collective agreements can also exclude some rights but not others (e.g. could exclude the right to guaranteed hours under Chapter 2 but not the rights to reasonable notice and payments for short notice under Chapters 3 and 4) but this should be clear in the collective agreement;

c. Under subsection (2)(c), the replacement terms must be incorporated into the worker's contract. This ensures that the terms are enforceable by workers by way of a breach of contract claim; and

d. Under subsection (2)(d), the employer must notify the worker in writing of the incorporation and effect of those terms.

New Section 27BX

464 Section 27BX mirrors section 27BW but in respect of agency workers. The key difference is that section 27BX allows unions and "other parties" to collectively agree to exclude agency workers from the rights in Schedule A1, introduced by Chapter 5.

465 The "other party" should be the party that holds a worker's contract with the agency worker. Typically this will be the work-finding agency. However, it could alternatively be an umbrella company or other agency where there are other such agencies involved.

466 The duties that can be opted out of are both those applying to the hirer and those applying to the work-finding agency. However, it would be for the work-finding agency/other party to negotiate this with the union. The agency worker would then be opted out of duties imposed on end hirers, regardless of the end hirer they were working for.

467 A duty or right in Schedule A1 does not apply in relation to a worker where the following conditions are met:

a. Under subsection (3), a collective agreement must be in writing and made by or on behalf of the work-finding agency / other party and one or more trade unions which have a certificate of independence (issued under section 6 of the Trade Union and Labour Relations (Consolidation) Act 1992);

b. Under subsection (2)(b), the collective agreement must expressly exclude the duty or right and it must include terms that expressly replace the excluded duty or right. These replacement terms could include rights or duties that are modified versions of those they are replacing, for example, a right to payment for short notice cancellations but with a different short notice period to that to be specified in regulations under paragraph 21(1). Such replacement terms would become contractual terms. Collective agreements can also exclude some rights but not others (e.g. could exclude workers

from the right to guaranteed hours under Part 1 but not the rights to reasonable notice and payments for short notice under Parts 2 and 3) but this should be clear in the collective agreement;

c. Under subsection (2)(c), the replacement terms must be incorporated into the agency worker's contract. This ensures that the terms are enforceable by agency workers by way of a breach of contract claim; and

d. Under subsection (2)(d), the work-finding agency / other party must notify the agency worker in writing of the incorporation and effect of those terms.

New Section 27BY

468 Section 27BY makes supplementary provision for the purposes of sections 27BW and 27BX, in particular in respect of the rights to a guaranteed hours contract in Chapter 2 and Part 1 of Schedule A1.

469 Subsection (1) clarifies that:

a. The terms that replace the duties and rights in Chapters 2 to 5 (including Schedule A1) do not have to relate to the same matter. For example, they could be about what hourly rate is granted for the work.

b. It does not matter if the collective agreement used to opt out of the rights and duties in Chapters 2 to 5 (including Schedule A1) ceases to be in force, provided that the terms from the collective agreement that replace the rights/duties (as per 27BW(c) and 27BX(c)) continue to be incorporated into the worker's contract. For example, a collective agreement could agree that workers will not receive guaranteed hours but will receive a higher rate of pay. Provided that the term providing for a higher rate of pay remains incorporated into workers' contracts, it does not matter if the collective agreement itself ceases to be in force.

470 Subsection (2) provides that, where the replacement terms from a collective agreement become incorporated into a worker's contract (as per 27BW(c) and 27BX(c)) during the offer period, a guaranteed hours offer, under Chapter 2 or Part 1 of Schedule A1, does not need to be made.

471 Subsections (3) to (6) make provision for a guaranteed hours offer to be withdrawn during the response period.

472 Subsection (3) provides that, where the replacement terms from a collective agreement become incorporated into a worker's contract (as per 27BW(c) and 27BX(c)) during the response period, a guaranteed hours offer made to a worker and not yet accepted by the worker can be withdrawn by giving a notice to the worker.

473 Subsection (4) provides that the notice of the withdrawal of the guaranteed hours offer must explain that the offer is being withdrawn due to the replacement terms from a collective agreement being incorporated into a worker's contract.

474 Subsection (5) provides that a worker can complain to an employment tribunal that they have been wrongly given a notice under subsection (3), e.g., where a worker considers that their employer was not entitled to withdraw their guaranteed hours offer because the replacement terms from a collective agreement are not incorporated into their worker's contract.

475 Subsection (6) then provides that such a complaint should be dealt with in the same way as complaints under section 27BG(7)(b) and paragraph 7(7)(b) of Schedule A1 (which concern complaints about notices that a guaranteed hours offer is treated as having been withdrawn when the notice was given in circumstances where the employer or hirer should not have done

so), i.e., the same time limit for bringing a complaint (six months from the beginning with the day after the day on which the notice is given) and the same remedies apply.

476 Where the conditions in 27BW(2) and 27BX(2) cease to be met, the rights and duties in Chapters 2 to 5 (including Schedule A1) are no longer excluded and accordingly apply again. In particular, where terms from a collective agreement cease to incorporated into a worker's contract, including where a worker's contract is terminated, the rights and duties should no longer be excluded.

477 Subsections (7) and (8) concern the effect of terms from a collective agreement that replaced the rights under Chapter 2 and Part 1 of Schedule A1 on (guaranteed hours) ceasing to be incorporated into a worker's contract on the reference periods and initial information period.

478 The effect is that the reference period for obtaining the right to guaranteed hours (re)commences when the terms cease to be incorporated.

479 This is of particular relevance to workers who do not have an overarching worker's contract and therefore only have a worker's contract when they work (or agree to work). If such workers have replacement terms from a collective agreement incorporated into their worker's contracts each time they work (or agree to work), each time such a contract terminates, the reference period should recommence and therefore such workers should not become entitled to a guaranteed hours offer unless and until they later move onto a worker's contract (or a series of them) that does not have the replacement terms incorporated and complete the reference period.

480 Similarly, the initial information period in section 27BF(3) and paragraph (6)(3) of Schedule A1 (re)commences when the replacement terms from a collective agreement cease to be incorporated into a worker's contract. This means that workers become entitled to be made aware of the information to be specified under section 27BF and paragraph 6 of Schedule A1 within two weeks of the replacement terms from a collective agreement ceasing to be incorporated (or within two weeks of when it becomes reasonable to consider that they might become a qualifying worker).

New Section 27BZ

481 Section 27BX provides a power for the Secretary of State to make further provision for the purposes of section 27BW or 27BX through regulations.

482 Subsection (2) clarifies that the power can, in particular, make provision regarding:

a. The effect on the rights and duties in Chapters 2 to 5 (including Schedule A1) where terms from a collective agreement are incorporated or cease to be incorporated into a worker's contract as per 27BW(2)(c) or 27BX(2)(c).

b. The form and manner which a notice of withdrawal of a guaranteed hours offer, made in accordance with 27BY(3) must take and when such a notice is treated as having been given.

New Section 27BZ1

483 Section 27BZ1 makes provision regarding the interpretation of Chapter 6.

484 Subsection (1) provides that where terms are also used in Chapters 2 to 5 (including Schedule A1), they carry the same meaning.

485 Subsection (2) provides that "certificate of independence" means a certificate issued under section 6 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Clause 6: Amendments relating to sections 1 to 5

486 This clause inserts new Chapter 7 (General) into Part 2A of the Employment Rights Act 1996, consisting of new sections 27BZ2 and 27BZ3, to make provision on interpretation and powers. For the purpose of this clause, ''person'' may include a company or any other type of legal person.

487 Subsection (2) inserts Schedule 2 which makes amendments consequential to clauses 1 to 5.

New Section 27Z2

488 Section 27BZ2 makes provision for the interpretation of Part 2A of the Employment Rights Act 1996.

489 Subsection (1) provides definitions of agency workers, arrangement, specified, zero hours arrangement and zero hours contract. In particular, the definition of "zero hours contract" that was previously in section 27A of the Employment Rights Act 1996 is moved to this subsection as the definition will now apply for the whole of Part 2A. The definition of "zero hours arrangement" moves the previous definition of "non-contractual zero hours arrangement" from section 27B of the Employment Rights Act 1996 and clarifies that this such arrangements can include contracts other than worker's contracts. "Arrangement" is also clarified when used by itself and not as part of "zero hours arrangement", and means an arrangement whether contractual or not which is not a worker's contract.

490 Subsection (2) explains what is meant by work, doing work and making work available.

New Section 27BZ3

491 Subsection (1) of new section 27BZ3 provides that regulations under Part 2A of the Employment Rights Act (as amended by clauses 1 to 5, including Schedule A1) may make different provision for different purposes and make provision subject to exceptions.

492 Section 27BZ3 also provides that the powers in Part 2A of the Employment Rights Act 1996, as amended above, can make ambulatory reference to other legislation.

Schedule 2 – Consequential amendments relating to sections 1 to 5

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

494 Paragraphs 2 - 18 amend the Employment Rights Act 1996.

495 Paragraph 3 amends section 27 to provide for a payment under section 27BP(1) to be treated as "wages" for the purposes of the provisions on unlawful deductions of wages in Part 2 of that Act. Where a worker has not received a payment under section 27BP(1) or paragraph 21(1) of Schedule A1 for the short notice cancellation, movement or curtailment of their shift, they therefore have the option to bring an unlawful deduction of wages claim.

496 Paragraph 4 amends Section 27A (exclusivity terms unenforceable in zero hours contracts), to omit subsections 1 and 2.

497 Paragraph 5 amends Section 27B (power to make further provision in relation to zero hours workers) to omit sub sections (4), (7) and (8)

498 Paragraph 6 inserts Section 47H into the Employment Rights Act 1996 to create new rights for workers not to be subjected to a detriment on the grounds outlined below.

499 Paragraph 7 inserts Section 47I into the Employment Rights Act 1996 to create new rights for agency workers not to be subjected to detriment on the grounds outlined below.

500 Paragraph 8 amends section 48 of the ERA 1996 (enforcement) by adding new subsection (1BA), to make provision for a worker to take a complaint to an employment tribunal on the grounds that they have been subjected to a detriment, as outlined in section 47H. After the new subsection (1BA), a new subsection (1BB) is inserted making provision for an agency worker (within the meaning of Part 2A) to present a complaint on the grounds that they have been subjected to detriment in contravention of section 47I. A new subsection (2B) provides that 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.

501 Paragraph 9 amends section 49 of the ERA 1996 (remedies). It limits compensation paid when a worker who is not an employee makes a claim under section 48(1BA) because their contract or working arrangement has been terminated, to the amount that would have been payable if they were an employee dismissed for a reason outlined in section 104BA. Corresponding amendments are made to section 49 ERA in relation to agency workers by paragraph 9(3), (5) and (7).

502 Paragraph 10 inserts Section 104BA (guaranteed hours) into the ERA 1996.

503 Paragraph 11 inserts corresponding Section 104BB (guaranteed hours: agency workers).

504 Paragraph 12 amends section 105 (redundancy), by adding the reasons outlined at section 104BA as reasons by which an employee would be unfairly selected for redundancy. Reasons outlined at section 104BB in relation to agency workers are similarly included in new subsection (7BZB).

505 Paragraph 13 amends section 108 (qualifying period of employment) to add reference to section 104BA. Corresponding amendments are made in respect of agency workers (and section 104BB) in new paragraph (ghb).

506 Paragraph 14 amends section 205 (remedy for infringement of certain rights) to make reference to Part 2A and section 47H of the ERA 1996. Corresponding amendments are made in relation to agency workers by introducing new subsection (3).

507 Paragraph 15 amends section 225 (calculation date for purposes of working out a week's pay) to account for the calculation of a week's pay by adding a new subsection (A1) to s. 225 where complaints are made to an employment tribunal under section 27BG(1), (2) (3), (7) or (8), and by adding a new subsection (A2) to s. 225 where a complaint is made to an employment tribunal under section 27BY(5).

508 Paragraph 16 amends section 227 (maximum amount of week's pay) to make reference to compensation awarded under section 27BI.

509 Paragraph 17 amends section 235 (definitions for purposes of the Act) to amend existing definitions of 'limited-term contract' and 'limiting event', as well as the definition of "week", which has a specific definition at paragraph 10 of Schedule A1 for those purposes instead.

510 Paragraph 18 amends section 236 (orders and regulations) to insert at s. 236(3) references to new powers (introduced by clauses 1 to 4) to make regulations, where they are subject to the affirmative procedure including for agency workers under new Schedule A1.

New Section 47H

511 Subsection (1) of section 47H of the Employment Rights Act 1996 makes provision for a worker not to be subject to detriment on the grounds that the worker:

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

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

c. Declined to work a shift based on a reasonable belief that the employer failed to comply with a duty under section 27BJ or section 27BK to provide reasonable notice in relation to that shift. For example, an employer must not stop offering the worker hours or reduce the worker's hours on the basis that the worker has refused to work such a shift, as this would amount to "detriment". Detriment for the purposes of this section could also include an employer suing a worker for breach of a term of their contract that requires them to work a shift that is notified to the worker with, what the worker reasonably believes to be, unreasonable notice in breach of section 27BJ or 27BK

d. Brought proceedings against the employer under section 27BG, section 27BN, section 27BT or section 27BY(5)

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

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

513 Subsection (3) provides that it is immaterial for the purposes of subsection (1)(d) or (e) whether or not the employer has failed to comply with the duties imposed under section 27BA(1) or 27BD(7) or (8) or 27BF(1) or (2), or 27BJ or 27BK, or 27BP(1) or 27BR(2), or behaved as described in section 27BG(4) or (5). For subsection (1)(d) or (e) to apply, however, the claim must be made in good faith.

514 Subsection (4) provides that subsection (1)(e) may apply if the worker made the nature of the employer's alleged non-compliance, or the alleged behaviour as the case may be, reasonably clear to the employer.

515 Subsection (5) provides that a worker has the right not to be subjected to any detriment by the employer on the ground that the worker is, or that the employer believes the worker is, entitled to a guaranteed hours offer under proposed new section 27BA(1).

516 Subsection (6) provides that section 47H does not apply where the worker is an employee, and the detriment amounts to dismissal within the meaning of Part 10 of the ERA 1996 (unfair dismissal).

517 Subsection (7) provides that references to 'worker' and 'employer' in this section, section 48(1BA) and 49 are to be read where relevant, in accordance with the modifications set out in s. 27BJ(7) and 27BP(8). This ensures that an individual who would be a worker if they worked the relevant shift also benefits from the detriment provisions.

518 Subsection (8) provides that 'reference period' in this section has the same meaning as in Chapter 2 of Part 2A (see section 27BA(4)).

New Section 47I

519 Subsection (1) provides that an agency worker has the right not to be subjected to detriment by any act or deliberate failure by to act, by a relevant person on the grounds that the agency worker-

a. Accepted or proposed to accept an offer to enter into a worker's contract made in compliance with the right to guaranteed hours.

b. Rejected or proposed to reject an offer into a worker's contract made in compliance with the right to guaranteed hours.

c. Declined to work a shift or part of a shift based on reasonable belief there had been a failure to comply with the right to reasonable of a shift and change of a shift.

d. Brought proceedings to an employment tribunal under paragraphs 7 or 8, 18, or 25 of Schedule A1 or Section 27BY(5)

e. Alleged the existence of any circumstance which would make bringing proceedings under paragraph (1)(d) legitimate.

520 Subsection (2) provides that the reference in subparagraph (1)(b) to an agency worker includes a reference to an agency worker who is to be treated as rejecting an offer, as set out in paragraph 5(4) of Schedule A1.

521 Subsection (3) provides that for subparagraph (1)(d) or (e) to apply, the claim must be made in good faith, but it is irrelevant whether or not there has been-

a. A failure to comply with the duties imposed by paragraphs 1(1), 4(7) or (8), 6(1) or (2), 13, 14, 21(1) or 23(4) of Schedule A1, or

b. Behaviour described in paragraphs 7(4) or (5) or 8(1) or (2) of Schedule A1.

522 Subsection (4) provides that it is sufficient for subparagraph (1)(e) to apply that the agency worker made the nature of the alleged non-compliance or behaviour reasonably clear to either the relevant person or (if different) the person against whom the proceedings could be brought.

523 Subsection (5) provides that an agency worker has the right not to be subjected to detriment by any act or deliberate failure by to act, by a relevant person on the grounds that-

a. The right to guaranteed hours applies in relation to the agency worker and a particular reference period, or

b. The relevant person believes that the duty so applies.

524 Subsection (6) provides that this section does not apply where-

a. The worker is an employee of the relevant person,

b. The detriment in question amounts to dismissal within Part 10.

525 Subsection (7) provides that for the purposes of this section, a 'relevant person' is a person who is or has been-

a. A work-finding agency which the agency worker has a worker's contract or arrangement through which they work for another person.

b. A person for which the agency worker is supplied to work for (the hirer).

c. A person involved in the supply of the agency worker to a hirer who is involved in the payment of the agency worker for the hirer.

526 Subsection (8) defines the following terms-

a. 'agency worker' has the same meaning as in Part 2A;

b. 'reference period' has the same meaning as in Part 1 of Schedule A1;

c. 'work-finding agency' has the same meaning as in Part 2A of the Employment Rights Act 1996.

New Section 104BA

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

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

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

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

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

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.

530 Subsection (4) provides that it is immaterial whether the employer has behaved as described in section 27BG(4) or (5) but the unfair dismissal claim must be made in good faith.

531 Subsection (5) provides that, for the purposes of subsection (3)(b), it is sufficient that the employee made the nature of the employer's alleged behaviour reasonably clear to the employer.

532 Subsection (6) provides that an employee who is dismissed is to be regarded as unfairly dismissed if:

a. The duty to offer guaranteed hours applies to their employer or the employer believes that that duty so applies, and

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

533 Subsection (7) defines 'reference period' with reference to s. 27BA(4).

New Section 104BB Guaranteed hours: agency workers

534 Paragraph 9A inserts new section 104BB making provision relating to unfair dismissal of agency workers.

535 Subsection (1) provides that for the purposes of this Part an employee dismissed by their employer is regarded as unfairly dismissed if the reason (or main reason if more than one) for the dismissal is that the employee-

a. Accepted or proposed to accept an offer to enter into a worker's contract in compliance with the right to guaranteed hours, or

b. Rejected or proposed to rejected an offer to enter into a worker's contract in compliance with the right to guaranteed hours.

536 Subsection (2) provides that the reference in subsection (1)(b) to an employee who rejected an offer includes reference to an employee treated as having rejected an offer as set out in paragraph 5(4) of Schedule A1.

537 Subsection (3) provides that for the purposes of this Part an employee dismissed by their employer is regarded as unfairly dismissed if the reason (or main reason if more than one) for the dismissal is that the employee-

a. Brought proceedings against the employer under paragraphs 8(1) or (2), or

b. Alleged the existence of any circumstance which would constitute a ground for bringing such proceedings.

538 Subsection (4) provides that it is irrelevant for subsection (3) whether or not the employer behaved as described in paragraphs 8(1) or (2) but for subsection (3) to apply, the claim must be made in good faith.

539 Subsection (5) provides that it is sufficient for subsection (3)(b) to apply that the nature of the employer's alleged behaviour was made reasonably clear to them by the employee.

540 Subsection (6) provides that an employee dismissed by their employer is to be treated for the purposes of this Part as unfairly dismissed if-

a. The right to guaranteed hours applies in relation to the employee and a particular reference period, or the employer believes the duty so applies, and

b. The reason (or main reason if more than one) for the dismissal is that the employer sought to avoid the necessity of complying with that duty.

541 Subsection (7) defines the following terms-

a. 'reference period' has the same meaning as in paragraph 1(4) of Part 1 of Schedule A1.

b. 'relevant person' means a person falling within subparagraph (7)(a) or (c) of section 47I.

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

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

Clause 8: Exclusivity terms in zero hours arrangements

543 This clause amends section 27B of the Employment Rights Act 1996 on exclusivity terms in zero hours arrangements in consequence of the new definition of "zero hours arrangement" provided in clause 6, which will replace the previous definition of "non-contractual zero hours arrangement" in section 27B of the Employment Rights Act 1996 once it is brought into force. The definition clarifies that such arrangements can be contracts other than worker's contracts.

Flexible working

Clause 9: Right to request flexible working

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

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

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

547 Subsection (4) adds a new requirement that where a flexible working application is refused, the notification required under section 80G(1)(aa) must state the ground or grounds for refusing the application and explain why the employer considers that decision is reasonable.

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

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

550 Subsection (7) amends Section 202 of the Employment Rights Act 1996 to insert Part 8A into the scope of this section. Section 202 states that where, in the opinion of a Minister, the disclosure of information would be contrary to national security then nothing in any of the provisions to which this section applies requires any person to disclose the information, and no person shall disclose the information in any proceedings in any court or tribunal relating to any of those provisions. This means that the security services (MI5, GCHQ, SiS) would be exempt from disclosing any information related to flexible working requests if, in the opinion of a Minister, it would be contrary to national security.

Statutory Sick Pay

Clause 10: Statutory sick pay: removal of waiting period

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

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

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

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

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

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

Clause 11: Statutory sick pay: lower earnings limit etc

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

558 Subsection (2) sets the weekly rate of SSP at £118.75 or 80% of the employee's normal weekly earnings, whichever is lower. The change from £116.75 to £118.75 is to reflect the uprated sum which will come into effect on 6 April 2025.

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

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

560 This clause amends Part 11 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (statutory sick pay) to make SSP payable to employees for the first three qualifying days in a period of entitlement. Clause 12 mirrors Clause 10 of this Bill so that the changes are also made to the equivalent Northern Ireland legislation, in line with the principle of parity as set out in section 87 of the Northern Ireland Act 1998.

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

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

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

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

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

Clause 13: Statutory sick pay in Northern Ireland: lower earnings limit etc

566 This clause amends Part 11 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (statutory sick pay) to remove the prohibition on a period of entitlement for SSP purposes arising where a person earns below the Lower Earnings Limit. This means that all eligible employees, regardless of earnings, will be entitled to SSP. Clause 13 mirrors Clause 10 of this Bill so that the changes are also made to the equivalent Northern Ireland legislation, in line with the principle of parity as set out in section 87 of the Northern Ireland Act 1998.

567 Subsection (2) sets the weekly rate of SSP at £118.75 or 80% of the employee's weekly earnings, whichever is lower.

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

Tips and gratuities, etc

Clause 14: Policy about allocating tips etc: review and consultation

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

570 Subsection (2) inserts new subsection (2A) into section 27I of the Employment Rights Act 1996, introducing the requirement for employers to consult with the representatives of recognised trade unions or worker representatives, or, where there are no such representatives in place,

workers likely to be affected by the policy. Such consultation is to be carried out before the employers produce their written tipping policy.

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

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

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

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

Entitlements to leave

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

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

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

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

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

578 Subsection (2) amends section 80B of the Employment Rights Act 1996 (entitlement to paternity leave: adoption) by omitting paragraph (a) in subsection (1) and paragraph (a) in subsection (6C). This removes the power for the Secretary of State to make regulations relating to the duration an employee must be employed before being entitled to be absent from work on paternity leave (adoption). It also removes a modification made in relation to bereaved partners paternity leave which is no longer required.

Clause 17: Ability to take paternity leave following shared parental leave

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

580 Subsection (1) amends section 80A of the Employment Rights Act 1996 (entitlement to paternity leave: birth)) by omitting subsection (4A) and paragraph (c) in subsection (6A). This removes

the restriction on taking paternity leave (birth) following shared parental leave and, as a consequence, removes a modification in relation to parental bereavement leave that would no longer have any effect.

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

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

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

Clause 18: Bereavement leave

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

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

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

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

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

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

Protection from Harassment

Clause 19: Employers to take all reasonable steps to prevent sexual harassment

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

Clause 20: Harassment by third parties

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

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

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

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

Clause 21: Sexual harassment: power to make provision about "reasonable steps"

595 This clause amends the Equality Act 2010.

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

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

New Section 40B

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

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

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

601 Subsection (4) explains that:

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

b. "specified" means specified in the regulations.

Clause 22: Protection of disclosures relating to sexual harassment

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

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

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

Dismissal

Clause 23: Right not to be unfairly dismissed: removal of qualifying period, etc

605 This clause introduces Schedule 2 to the Bill.

Schedule 3: Right not to be unfairly dismissed: removal of qualifying period, etc.

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

607 Paragraph 2 inserts new section 108A (Employees who have not yet started work) into the Employment Rights Act 1996. See below for further detail on section 108A.

608 Paragraph 3 inserts, at subparagraph (2), new section 98ZZA into Part 10 of the Employment Rights Act 1996. See below for further detail on section 98ZZA.

609 Paragraph 4 amends the power in Section 15 of the Enterprise and Regulatory Reform Act 2013 to allow the Secretary of State to set a different maximum level for the compensation award which can be ordered by an employment tribunal from the one that normally applies to successful claims of unfair dismissal. This will apply where a dismissal meets the conditions in new section 98ZZA(2) and (3) ERA, as inserted by paragraph 3.

610 Paragraphs 5-19 make further amendments to the ERA and to other legislation.

611 Amendments are made to existing legislative provisions which deem certain reasons for dismissal to be unfair, and disapply the current two year qualifying period for claiming unfair dismissal in relation to dismissals for those reasons. The following amendments to those provisions have the effect of exempting those claims from the requirement in new section 108A(1) that the employee must have started work before being able to make an unfair dismissal claim:

- Paragraph 5 amends provisions in the Trade Union and Labour Relations (Consolidation) Act 1992 dealing with dismissals relating to trade union membership and activities (subparagraphs (1) and (2)); the taking of protected industrial action (subparagraph (3)); and trade union recognition processes

(subparagraph (4)).

- Sub-paragraph (2) of paragraph 9 amends section 12 of the Employment Relations Act 1999, dealing with dismissals relating to the right to be accompanied at disciplinary and grievance hearings.

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

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

613 Paragraph 6 makes consequential amendments to the Employment Rights Act 1996.

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

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

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

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

618 Paragraphs 7-8, 10 -13 and 16-19 make consequential amendments to legislation in order to reflect amendments made by this Bill.

619 Sub-paragraph (3) of paragraph 9 amends section 34 of the Employment Relations Act 1999, which contains a duty on the Secretary of State to make an annual order adjusting the limit on a compensation award for unfair dismissal to reflect changes in the retail prices index. The amendments ensure that the duty also applies to any limit on compensation imposed by exercising the power in new subsections (5A) and (5B) of section 15 of the Enterprise and Regulatory Reform Act 2013 (see paragraph above).

New Section 108A

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

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

- the performance of jury service;
- pregnancy, childbirth or maternity, or the exercise of statutory family related leave entitlements;
- certain health and safety related matters;
- decisions by shop workers and betting workers to opt out of Sunday working or refuse to work additional hours on Sundays;
- rights relating to working time, the national minimum wage, participation in education or training, or the making of protected disclosures;
- acting as a trustee of an occupational pension scheme or as an employee representative;
- the assertion of a statutory right;
- the receipt of tax credits or statutory pensions enrolment;
- rights relating to zero hours workers, agency workers, part time workers or fixed term workers;
- requests for flexible working or for study or training;
- trade union blacklists;
- decisions to decline offers of employee shareholder status;
- variation of contract of employment;
- selection for redundancy on certain specified grounds; or
- information and consultation rights relating to European Works Councils, information and consultation bodies, occupational pension schemes or European Public Limited Liability companies.

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

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

624 There are further exemptions which are given effect by consequential amendments to other legislation (see paragraph of these notes above).

New Section 98ZZA

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

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

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

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

- relate either to the employee's conduct, or their capability or qualifications for performing the work for which they have been employed,
- be that their continued employment would contravene a statutory duty or restriction, or
- be for some other substantial reason, relating to the employee.

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

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

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

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

Clause 24: Dismissal during pregnancy

631 This clause amends Part 5B the Employment Rights Act 1996 which gives the Secretary of State the power to make provision in regulations about redundancy during or after a protected period of pregnancy.

632 Subsection (3) inserts "or dismissal" into the heading of section 49D after "Redundancy".

633 Subsection (4) inserts new subsection (1A) into section 49D, giving the Secretary of State a new power to make similar regulations to make provision about dismissal, for reasons other than redundancy, during or after a "protected period of pregnancy".

634 Subsection (5) amends subsection (3) of section 49D to insert "or (1A)" after "subsection (1)".

635 Subsection (6) inserts new section 49E into Part 5B.

636 Subsection (7) inserts "or dismissal" into the heading of Part 5B of the Employment Rights Act 1996 after "Redundancy".

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

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

New Section 49E

639 New Section 49E permits regulations under section 49D to include various specified matters.

640 Those regulations may set out what notices and evidence will be required and what procedures to be followed in order to access the enhanced dismissal protections, (section 49E(a)). The regulations may also set out the consequences of not complying with any of these requirements or procedures (section 49E(b) and (c)).

641 The Regulations may make provision for situations where an employee has a non-statutory right which exists in parallel to any rights under section 49D (for example, a right arising under their contract of employment) (section 49E(d)).

642 The Regulations may modify the way in which a week's pay is calculated in Chapter 2 of Part 14 of the Employment Rights Act 1996 to take account of periods of absence during a protected period of pregnancy. The concept of 'a week's pay' is widely used in that Act, for example in section 119 which sets out how the basic Employment Tribunal award for unfair dismissal should be calculated (section 49E(e)).

643 The Regulations may also modify, apply or exclude any enactment in relation to someone during a protected period of pregnancy, in specified circumstances and subject to specified conditions (section 49E(f)).

644 The Regulations can deal differently with different cases or circumstances (section 49E(g)).

Clause 25: Dismissal following period of statutory family leave

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

646 Subsection (2) amends section 74(2) (maternity leave: redundancy and dismissal) which will enable regulations under sections 71 (ordinary maternity leave) and 73 (additional maternity leave) to make provision about dismissal during "or after" that leave.

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

648 Subsection (4) makes the equivalent amendment for shared parental leave, amending section 75J(1)(b) (shared parental leave: redundancy and dismissal) which will enable regulations

under sections 75E (shared parental leave: birth) and 75G (shared parental leave: adoption) to make provision about dismissal during "or after" that leave.

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

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

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

Clause 26: Dismissal for failing to agree to variation of contract, etc

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

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

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

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

New Section 104I

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

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

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

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

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

have demonstrate the reason for the variation was to eliminate, prevent, significantly reduce or significantly mitigate the effects of financial difficulties which, at the time of the dismissal, were affecting the employers ability to carry on activities constituting the business; and:

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

660 If an employer can demonstrate that subsection (4) of new section 104I is met, the dismissal will not be automatically unfair, but the employment tribunal will still have to assess whether the dismissal was fair in all the circumstances.

661 Subsection (5) provides that the employment tribunal must consider a number of (non-exhaustive) matters when determining whether the dismissal was fair or unfair, this includes whether any consultation was carried out by the employer with the employee, an independent trade union or another employee representative organisation about the variation of the employee's contract of employment, and whether the employer offered the employee anything in return for agreeing to a variation. Subsection (5) of new section 104I also provides the Secretary of State with a power to specify other factors which must be considered, in secondary legislation.

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

Part 2: Other Matters Relating to Employment

Procedure for handling redundancies

Clause 27: Collective redundancy: extended application of requirements

663 This clause changes the existing requirements for employers to collectively consult appropriate representatives of affected employees, and to notify the Secretary of State, where an employer is proposing redundancies.

664 Subsection (2)(a-c) amends s188 TULRCA so that the collective consultation obligations within that section not only apply when 20 or more redundancies are proposed at one establishment but also where the threshold number of redundancies are proposed at more than one establishment.

665 Subsection (2)(d) creates a new subsection (2A) of s188 TULRCA which clarifies that employers are not required to consult all appropriate representatives of the affected employees in a single consultation exercise, and that employers do not need to ensure that the outcomes of consultation with different employee representatives are the same. This is not intended to change the current law but to provide clarity on the application of section 188.

666 Subsection (2)(e) amends subsection (4) of s188 TULRCA to set out the information that must be provided to relevant employee representatives where the redundancies are proposed across multiple establishments.

667 Subsection (3)(a) and (b) amend s193 TULRCA so that the obligations within that section (duty of employer to notify Secretary of State of certain redundancies) apply when either 20 or more redundancies are proposed to take place at one establishment or where the threshold number of employees (as specified in regulations) are proposed to be made redundant across more than one establishment.

668 Subsection (3)(c-e) makes consequential amendments to s193A TULRCA to reflect the re-numbering of subsections within s193 TULRCA.

669 Subsection (5) creates a new section 195A of TULRCA which gives the Secretary of State a power to set the threshold number of employees (which will trigger collective redundancy consultation and notification requirements) through secondary legislation.

670 Subsection (6) amends s197 TULRCA. Currently, s197 TULRCA provides that the Secretary of State may amend s188(2) by secondary legislation. However, this is an incorrect cross-reference, made by subsequent amending legislation, and subsection (5) therefore corrects this so that s197 now refers to s188(1A) (minimum consultation periods). This will not change the law, which can already be interpreted to refer to the correct cross-reference, but it will improve the clarity and accessibility of the law and put the position beyond doubt.

671 Subsection (6) also amends s197 TULRCA so that the Secretary of State will have the power to amend s193(2A)(b) TULRCA. The effect of this is to extend the existing power in s197, to allow the Secretary of State to make regulations to amend the notification period set out under s193 for 20-99 redundancies, as well as the existing power to amend the notification periods set out under s193 for 100 or more redundancies.

672 Subsection (7) amends s198A, in consequence of the changes to the collective consultation requirements made by this clause. The effect of this change is that, where a transfer is taking place under the Transfer of Undertakings (Protection of Employment) Regulations 2006, transferees may collectively consult representatives of affected transferring individuals where the transferee is proposing to dismiss as redundant 20 or more employees at one establishment or where the number of employees proposed to be dismissed as redundant meets the new threshold trigger, and transferring individuals may be affected by these proposals. This provision will therefore reflect the revised requirements in section 188 TULRCA, as amended by this clause.

New Section 195A TULRCA

673 Subsection (1) provides that, in Chapter II of Part IV of TULRCA, references to the threshold number of employees refer to the number of employees specified in regulations made under section 195A.

674 Subsection (2) allows the Secretary of State to make provision to set the threshold number of employees as a percentage of employees, a specified number, or a combination of these, or to determine the threshold number in some other way specified in the regulations.

675 Subsection (3) ensures that any threshold set by regulations cannot be lower than 20 employees.

676 Subsection (4) allows the Secretary of State to make provision for how the number of an employer's employees should be determined when the regulations set a threshold based on a specified percentage of the employer's employees.

677 Subsection (5) allows the Secretary of State to make different provisions in respect of different descriptions of employer, or different provision in respect of different provisions of Chapter II of Part IV of TULRCA.

678 Subsection (6) allows regulations made under this section to make any necessary incidental, supplementary or transitional provisions.

679 Subsection (7) provides that any regulations under this section are to be made by statutory instrument, and subsection (8) sets out that regulations made under this section are subject to the affirmative procedure.

Clause 28: Collective redundancy consultation: protected period

680 This clause will allow an employment tribunal to impose a higher protective award on employers who fail to comply with their collective redundancy obligations.

681 Subsection (2) amends section 189(4) TULRCA to increase the maximum protected period of the protective award in that subsection to 180 days', up from 90 days, where an employer fails to comply with their collective redundancy obligations.

682 Subsection (3) amends subsection 197 of TULRCA to reflect that there is only one period specified in section 189(4) TULRCA. This is not intended to change the current law.

Clause 29: Collective redundancy notifications: ships' crew

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

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

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

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

687 Subsection (3) amends s193A(1) so that it provides that s193 of TULRCA (as amended by this Bill), applies subject to the modifications set out in s193A in specified circumstances. These are that (a) the duty of an employer to notify the Secretary of State if they are making over the specified number of redundancies (see section 193(1A)) applies, and (b) some of or all the employees concerned are members of the crew of a seagoing ship which is registered at a port outside Great Britain.

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

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

690 Subsection (6) amends section 285 (employment outside Great Britain) of TULRCA. It expressly includes those employees working on GB-linked ships as ordinarily working in Great Britain for the purposes of sections 193-194. A GB-linked ship is defined as ships providing a specified

type of service which either (a) operated between a place in Great Britain and a place elsewhere in the UK or (b) entered a harbour in Great Britain on at least 120 occasions in the 12 months before the redundancy proposal is settled by the employer or, if the service has been provided for less than a year, entered a harbour in Great Britain on at least 10 occasions in each month for which the service has been provided. The specified types of service are services for the carriage of persons or goods, with or without vehicles but excluding, in the case of the second part of the definition, services for the purpose of leisure or recreation and fishing vessels. Subsection (6) also provides a definition of 'harbour' with reference to the Harbours Act 1964, and provides that ship has the same meaning in s285 as in s193A.

Public sector outsourcing: protection of workers

Clause 30: Public sector outsourcing: protection of workers

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

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

b. other 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.

692 Subsection (2) inserts new Part 5A (Outsourcing: Protection of workers) into the Procurement Act 2023.

693 Subsection (3) amends section 2 of the Procurement Act 2023 to provide that the definition of "contracting authority" within that Act has an extended meaning in relation to certain contracts regulated under the new Part 5A.

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

695 Subsection (5) amends section 123 of the Procurement Act 2023 to provide that the definition of "appropriate authority" has a different meaning within the new Part 5A than it does in the rest of that Act.

696 Subsection (6) amends section 124 of the Procurement Act 2023 by inserting an additional definition for "appropriate authority" that is specific to section 83A of the new Part 5A.

697 Subsection (7) amends Schedule 9A of the Procurement Act 2023 to provide that the new Part 5A will apply to devolved Scottish authorities that wish to participate in a joint procurement or similar arrangement which is governed by that Act , or to make use of a framework or dynamic market established under the Act.

New Part 5A

698 Section 83A(1) establishes that Part 5A 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.

699 Section 83A(2) specifies that "appropriate authority" within Part 5A means a Minister of the Crown, the Scottish Ministers or the Welsh Ministers.

700 Section 83A(3) provides that a Minister of the Crown may not exercise a power under Part 5A to regulate devolved Scottish authorities (unless it is in relation to joint or centralised procurement under a reserved procurement arrangement) or to regulate joint or centralised procurement under a devolved Scottish procurement arrangement.

701 Section 83A(4) provides that the Scottish Ministers may only exercise a power under Part 5A to regulate devolved Scottish authorities or procurement under a devolved Scottish procurement arrangement but not to regulate joint or centralised procurement under either a reserved procurement arrangement or a devolved Welsh arrangement.

702 Section 83A(5) provides that the Welsh Ministers may only exercise a power under Part 5A to regulate devolved Scottish authorities in relation to joint or centralised procurement under a devolved Welsh procurement arrangement but not to regulate the same type of procurement under a devolved Scottish procurement arrangement.

703 Sections 83A(3) to (5) reflect the extent of the powers of a Minister of the Crown, the Scottish Ministers and the Welsh Ministers under the Procurement Act 2023.

704 Section 83A(6) provides that Part 5A including the duties to "take all reasonable steps" in regards to any regulations made under 83C and to "have regard" to a code of practice published under 83D, does not apply to private utilities (whether regulated under the Procurement Act 2023 or the Utilities Contracts (Scotland) Regulations 2016), in relation to a transferred Northern Ireland procurement arrangement (except where the procurement is carried out by a devolved Scottish authority and is not joint or centralised) or to a transferred Northern Ireland authority (unless they are carrying out procurement under a reserved procurement arrangement, a devolved Scottish procurement arrangement or a devolved Welsh procurement arrangement). Procurement arrangements are defined in section 114 of the Procurement Act 2023.

705 Section 83A(6) also provides that Part 5A does not apply to a devolved Welsh authority listed in Schedule 1 of the Social Partnership and Public Procurement (Wales) Act 2023. This is because that Act makes similar provision to Part 5A in relation to those authorities.

706 Section 83A (7) defines a procurement arrangement as being "joint and centralised" if, as part of that procurement arrangement, a contract is to be awarded following a procedure or other selection process carried out jointly between a devolved Scottish authority and another contracting authority, which is not a devolved Scottish authority or by a centralised procurement authority or body.

707 Sections 83B (1) to (4) specify the contracts to which any requirements set out in the regulations, and the code of practice, apply, known as "relevant outsourcing contracts". These are public contracts, as defined in section 3 of the Procurement Act 2023 or a contract regulated by Scottish procurement legislation, which:

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

b. provide that those functions will be carried out by workers, who are employed by the supplier or a sub-contractor to carry out the functions under the contract and, were previously employed by the contracting authority to carry out these functions, as part of that contract. In practice, this means that a "relevant outsourcing contract" must be

one in relation to which there are workers transferring from the public sector body undertaking the outsourcing to the supplier.

708 Section 83B (5) specifies that a "contract regulated by Scottish procurement legislation" means a contract procured by a devolved Scottish authority under Scottish procurement legislation. It also sets out how terminology in Part 5A should be interpreted in relation to a contract regulated by Scottish procurement legislation.

709 Section 83C (1) empowers an appropriate authority to make regulations to specify provision to be included in relevant outsourcing contracts for the purpose of ensuring that:

a. transferring workers of a specified description are treated no less favourably as workers of the supplier 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.

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

711 Section 83C (2) provides that, where an appropriate authority has made regulations under subsection (1), a contracting authority procuring a relevant outsourcing contract must take all reasonable steps to ensure that provision specified in those regulations is included in the contract and ensure that those clauses are complied with.

712 Section 83C (3) and (4) provide that the duty to "take all reasonable steps" will not apply where the contracting authority or the relevant outsourcing contract is of a description specified in regulations, or in circumstances specified in regulations. This is to allow Ministers to make tailored provision across the wide array of outsourcing contracts.

713 Section 83D (1) places a duty on an appropriate authority to publish a code of practice containing guidance to contracting authorities in relation to relevant outsourcing contracts. The code of practice must be for the same purposes as the regulations.

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

715 Section 83D(2) provides that an appropriate authority may amend or replace the code of practice and must republish it if it does so.

716 Section 83D(3) provides that a published code must be laid before Parliament, the Scottish Parliament or the Senedd Cymru depending on which appropriate authority has prepared it.

717 Section 83D(4) provides that contracting authorities must have regard to any code of practice published under subsection (1).

718 Section 83E provides definitions for various terms used in this clause.

719 Section 83F provides that Scottish Ministers may by regulations modify sections 83A, 83B or 83E of Part 5A where this is necessary as a result of amendments to devolved Scottish procurement legislation.

Duties of employers relating to equality

Clause 31: Equality action plans

720 This clause amends the Equality Act 2010 to enable obligations to be imposed on employers in relation to equality action plans.

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

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

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

New Section 78A

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

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

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

a. addressing the gender pay gap;

b. supporting employees going through the menopause.

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

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

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

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

Clause 32: Provision of information relating to outsourced workers

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

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

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

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

Annual leave records

Clause 33: Duty to keep records relating to annual leave

735 This clause introduces a duty for employers to keep records relating to annual leave entitlement and to retain these records for 6 years from the date on which they were made.

736 Subsection (1) provides that the Working Time Regulations 1998 will be amended.

737 Subsection (2) inserts new regulation 16B - Records relating to annual leave entitlement into the Working Time Regulations 1998 under Part 2 (rights and obligations concerning working time).

738 Subsection (3) inserts "or with regulation 16B (1)" (records relating to annual leave entitlement) after "relevant requirements" in Regulation 29 (offences) of the Working Time Regulations 1998. This makes it an offence, punishable by with a fine, to fail to comply with the duty in new regulation 16B(1), as inserted by paragraph (2).

739 Subsection (4) amends regulation 29C (restriction on institution of proceedings in England and Wales) by making the existing provision subparagraph (1) and adding subparagraph (2) as follows. "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)". This ensures the requirement in regulation 29C to seek consent from the Director of Public Prosecutions before commencing proceedings for the offence will not apply to the duty in regulation 16B(1).

New Regulation 16B

740 Subsection (1)(a) states that an employer must keep records that are adequate to show compliance with the entitlements and requirements conferred by the regulations detailed (regulations 13 (1), 13A (1), 15B (2), 16 (1), 14 (2) and (6) and 15E (2)).

741 Subsection (1)(b) of new regulation 16(B) states the records need to be retained for 6 years from the date they were made.

742 Subsection (2) states the records referred to in new regulation 16B(1)(a) may be created, maintained and kept in a format the employer reasonably thinks fit.

Employment businesses

Clause 34: Extension of regulation of employment businesses

743 This clause amends section 13 of the Employment Agencies Act 1973 to expand the scope of "employment business" as defined by that Act. It replaces the current subsection (3).

744 The expanded definition covers other types of businesses (not currently included) that participate in arrangements under which persons are supplied by their employer to work for other persons (such as so-called "umbrella companies", payment intermediaries that typically act as the employer of the workers that they pay, whether or not an additional business may supply those workers).

745 The amended subsection (3) provides that, under the provisions of the Employment Agencies Act 1973, "employment business" means the business of participating in employment arrangements.

746 Subsection (3A) provides a definition of "employment arrangements". "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.

747 Subsection (3B) provides a definition of "participating in" in relation to employment arrangements. 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;

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);

d. taking steps with a view to doing anything mentioned in (a) to (c).

748 Subsection (3B)(b) refers to a "fee" which is defined in section 13(1) of the Employment Agencies Act 1973 as including any charge however described.

749 The requirement in subsection (3B)(b) for the processing of payment for the services of persons to be in consideration of receiving a fee is intended to prevent payroll companies from being considered to participate in employment arrangements.

750 Whether or not the processing of payment for the services of persons under subsection (3B)(b) is in consideration of receiving a fee will depend on the substance of the arrangements as a whole. It would, for example, not matter that the fee is also paid in consideration of additional services.

751 A fee under subsection (3B)(b) may be paid by way of a deduction from an amount otherwise due to them for their services, by a person who is supplied (or intended to be supplied).

Part 3: Pay and Conditions in Particular Sectors
Chapter 1: School Support Staff

Clause 35: Pay and conditions of school support staff in England

752 This clause introduces Schedule 4 which makes further provision establishing the School Support Staff Negotiating Body.

Schedule 4 – Pay and conditions of school support staff in England

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

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

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

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

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

New section 148A The School Support Staff Negotiating Body

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

New section 148B Matters within the SSSNB's remit

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

New section 148C Meaning of "school support staff"

760 This section defines the meaning of "school support staff" for the purposes of Part 8A of the Education Act 2002 as persons who meet the conditions in subsections (3) and (4).

761 Sub section (3)(a) concerns support staff in maintained schools. When read with subsections (4) and (5) it provides that persons employed by local authorities or governing bodies of maintained schools in England under a contract of employment that requires them to work wholly at one or more maintained schools in England, who are not school teachers for the purposes of s.122 Education Act 2002 or persons of a description prescribed in regulations made under sub section (4)(b) will be "school support staff".

762 Sub section (3)(b) concerns support staff in academies. When read with subsections (4) and (5) it provides that persons employed by the proprietor of an "Academy" under a contract of employment that provides:

a. for the person to work wholly at one or more "Academies", OR

b. for the person to carry out work of a description prescribed in regulations for the purposes of one or more "Academies", who are not qualified teachers employed to work as a teacher or a person of a description prescribed in regulations under sub section (4)(b) will be "school support staff".

763 The Government envisages that the power to make regulations under subsection (4)(b) will be exercised so as to exclude from the definition of "school support staff", staff such as unqualified teachers, trainee teachers or executives working within academies and/or persons whose terms and conditions of employment are determined in accordance with agreements of other bodies.

764 The power to make regulations under subsection (3)(b)(ii) may be exercised to include academy staff that do not work ''wholly at'' one or more academies but are employed by an academy to

do particular work, such as staff teams working in offsite offices or who deliver some services in maintained schools or other non-academy locations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

New section 148I Reconsideration of agreement by SSSNB

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

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

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

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

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

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

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

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

agreement. Where the Secretary of State ratifies only part of an agreement, the remainder of the agreement falls away.

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

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

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

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

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

792 Subsections (3) and (4) provide that where, following reconsideration of an agreement, the School Support Staff Negotiating Body fails to submit a revised agreement or resubmit the existing agreement to the Secretary of State by a specified date, the Secretary of State may extend any such deadline or, if she considers there is an urgent need to do so, by regulations make provision in relation to a matter to which the agreement relates.

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

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

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

New section 148M Effect of regulations ratifying agreement

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

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

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

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

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

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

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

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

New section 148O Regulations: supplementary

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

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

New section 148P Guidance

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

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

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

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

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

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

New section 148R Interpretation of this Part

809 This section defines terms used in the Part.

Schedule 12A The School Support Staff Negotiating Body

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

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

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

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

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

815 Paragraph 6, new schedule 12A requires the constitution of the School Support Staff Negotiating Body to provide for the School Support Staff Negotiating Body to issue an annual report about the performance of its functions.

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

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

Chapter 2: Social Care Workers

818 This policy concerns the introduction of sectoral agreements in the adult social care sector in England and in the social care sectors in Scotland and Wales. The clauses create a framework for establishing "Negotiating Bodies" in England, Scotland and Wales. Each of these bodies will be made up of relevant employer and worker representatives, including officials of trade unions representing the interests of social care workers, as well as other appointed members. This framework will allow for agreements to set out matters relating to pay and other terms for relevant social care workers, which the Secretary of State, Scottish Ministers, or Welsh Ministers (referred to below as the "appropriate authorities") will have the power to ratify through regulations. If ratified, pay and terms for eligible workers will be set in accordance with the agreement.

The Social Care Negotiating Bodies

Clause 36: Power to establish Social Care Negotiating Body

819 Subsection (1) gives the Secretary of State the power to create an Adult Social Care Negotiating Body for England.

820 Subsection (2) gives the Welsh Ministers the power to establish a Social Care Negotiating Body for Wales, with the agreement of the Secretary of State.

821 Subsection (3) gives the Scottish Ministers the power to establish a Social Care Negotiating Body for Scotland, with the agreement of the Secretary of State.

822 Subsection (4) sets out that the exercise of the powers within this Chapter by the Welsh or Scottish Ministers requires the agreement of the Secretary of State.

823 Subsection (5) provides that the Secretary of State, Welsh Ministers and Scottish Ministers are referred to as the 'appropriate authority' in relation to their respective Negotiating Body and that Negotiating Body means a body established by the regulations under this section.

Clause 37: Membership, procedure, etc of Negotiating Body

824 This clause gives the appropriate authority the power to make regulations setting out further provision about the Negotiating Body they have established under clause 36.

825 Subsection (1) sets out that this power to make regulations applies where the appropriate authority has established a Negotiating Body.

826 Subsection (2) sets out that the appropriate authority may make provision in regulations under this clause about the following (amongst other things) in relation to that Negotiating Body:

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

b. the appointment of a chair of the Negotiating Body;

c. how the Negotiating Body makes decisions;

d. keeping records of a specified description;

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

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

g. reporting requirements for the Negotiating Body.

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

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

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

828 Regulations may also provide for anyone else of a specified description to be appointed as members of the Negotiating Body.

829 Subsection (4) provides that regulations may clarify that the validity of anything done by the Negotiating Body is not affected by a vacancy or defective appointment.

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

Clause 38: Matters within Negotiating Body's remit

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

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

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

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

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

833 Subsection (2) defines:

a. "relevant social care worker" in relation to a particular Negotiating Body, as a social care worker employed in or in connection with the provision of social care in the area for which that Negotiating Body is established;

b. "specified" as being specified in regulations made by the appropriate authority.

Clause 39: Meaning of "social care worker"

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

835 Subsection (1) defines social care workers in England as "a person who is employed wholly or mainly in, or in connection with, the provision of social care to individuals aged 18 or over", and in Wales or Scotland as "a person who is employed wholly or mainly in, or in connection with, the provision of social care to any individual".

836 Subsection (2) defines "social care" as including 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.

Consideration of matters by Negotiating Body

Clause 40: Consideration of matters by Negotiating Body

837 This clause sets out that an appropriate authority may make provision about the matters that a Negotiating Body may or must consider when coming to an agreement.

838 Subsection (1) establishes that an appropriate authority may make provision about the consideration by the Body of matters within its remit.

839 Subsection (2) outlines, but does not represent an exhaustive list of, the provisions that may be made in regulations under subsection (1). These include provisions that:

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

b. Specify, or enable the appropriate authority to specify, factors to which the negotiating Body may or must have regard to;

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

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

e. Require the Negotiating Body to submit agreements about a matter to the appropriate authority; and,

f. Require the Negotiating Body to take any steps specified in regulations before a date notified to it by the appropriate authority.

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

Clause 41: Reconsideration by Negotiating Body

841 This clause outlines the powers of the appropriate authority to make regulations specifying the circumstances in which the appropriate authority may refer a submitted agreement back to a Negotiating Body for reconsideration.

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

843 Subsection (2) allows the appropriate authority to set out in regulations what happens where an agreement is referred back to a Negotiating Body.

844 Subsection (3) outlines, but does not represent an exhaustive list of, the provision that may be made under subsection (2). These include provisions that:

a. Require the Negotiating Body to reconsider the agreement;

b. Specify, or enable the appropriate authority to specify, factors that the Negotiating Body may or must have regard to;

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

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

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

f. Require the Negotiating Body to take any steps specified in regulations before a date notified to it by the appropriate authority.

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

Clause 42: Failure to reach an agreement

846 This clause gives the appropriate authority the power to make provision in circumstances where a Negotiating Body is unable to reach an agreement.

847 Subsection (1) confers power on the appropriate authority to make provisions about cases where a Negotiating Body is unable to reach an agreement on a matter.

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

a. To resolve disagreements about any matter;

b. To confer functions on the appropriate authority or a person specified in the regulations; and,

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

Giving effect to agreements of Negotiating Body

Clause 43: Power to ratify agreements

849 This clause gives the appropriate authority the power to ratify agreements submitted to them by a Negotiating Body (this includes agreements submitted to them following reconsideration).

850 Subsection (1) provides the appropriate authority with the power to ratify an agreement if that agreement has been submitted in accordance with regulations under clauses 40 or 41.

851 Subsection (2) allows the appropriate authority to ratify the agreement through regulations either:

a. In full; OR

b. To the extent specified in the regulations.

852 Note that the regulations made under clause 43 may make provision that has retrospective effect (see clause 49).

Clause 44: Effect of regulations ratifying agreement

853 This clause sets out the effect of regulations made by the appropriate authority to ratify agreements under clause 43, ensuring that any changes to a social care workers' remuneration or other terms or conditions set out in an agreement take effect within their contract.

854 Subsection (1) refers to the appropriate authority's power to ratify agreements through regulations under the circumstances outlined in clause 43.

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

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

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

Power of appropriate authority to deal with matters

Clause 45: Power of appropriate authority to deal with matters

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

859 Subsection (1) states this section applies where:

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

b. Any other conditions specified in regulations are met.

860 Subsection (2) sets out that the appropriate authority may by regulations make provision about the matter.

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

862 Subsection (4) outlines that if provision is made within subsection (3), then subsections (5) to (7) will apply.

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

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

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

866 Note that the regulations made under clause 45 may make provision that has retrospective effect (see clause 49).

Guidance etc

Clause 46: Guidance and codes of practice

867 This clause gives the appropriate authority power to make regulations about the issuing of guidance and codes of practice.

868 Subsection (1) gives the appropriate authority the power to make provision about issuing guidance or codes of practice in relation to:

a. Agreements submitted by a Negotiating Body in accordance with regulations under clause 40 or clause 41; and,

b. Regulations made by the authority under clause 45.

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

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

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

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

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

Enforcement

Clause 47: Duty of employers to keep records

872 This clause outlines the power of the Secretary of State to create provisions regarding the keeping of records.

873 Subsection (1) empowers the Secretary of State to make regulations requiring employers to:

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

b. To preserve those records for a specified period.

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

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

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

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

875 These sections would allow regulations to confer a right on a social care worker to present a complaint to the employment tribunal on the ground that the employer failed to produce relevant records or failed to allow access to them.

876 Subsection (3) provides that regulations may provide for section 49 (restrictions on contracting out) of the National Minimum Wage Act 1998 to apply in relation to the application of the provisions listed under subsection (2) by regulations .

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

Agency Workers

Clause 48: Agency workers who are not otherwise "workers"

878 This clause applies to agency workers who may not otherwise meet the definition of "worker" and may not otherwise be treated as having a "worker's contract".

879 Subsection (1) sets out that this clause applies to the agency workers that meet the conditions in (a) to (c).

880 Subsection (2) sets out that the provisions of this Chapter have effect as if there was a worker's contract between the agency worker and either the agent or the principal, depending on which is responsible for paying the agency worker for their work or, if neither the agent nor the principal is responsible, which of them does in fact pay the agency worker in respect of the work.

881 Subsection (3) operates so that where a worker's contract is deemed to exist under this section, the agency worker is regarded as a worker for the purposes of Part 2 of the Employment Rights Act 1996 and a worker's contract is deemed to exist for the purposes of that worker bringing a claim in an employment tribunal under that Part in relation to the entitlements conferred by sections 44(2) and 45(5).

882 Subsection (4) operates so that where a worker's contract is deemed to exist under this clause between an agency worker and their agent or principal, it is also deemed to exist for the purpose of the worker bringing a claim for breach of contract in the civil courts in order to enforce the entitlement conferred on them by clauses 44(2) and (3), and 45(5) and (6).

Supplementary and general

Clause 49: Regulations under section 43 or 45: supplementary

883 This section provides that regulations made under clauses 43 or 45 may apply retrospectively subject to certain limitations.

884 Subsection (1) sets out that regulations made under clauses 43 or 45 may have a retrospective effect, subject to subsection 2 of this clause.

885 Subsection (2) sets out the limitations on the retrospective effect of regulations made under clause 43 or 45, preventing any:

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

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

886 Subsection (3) means that regulations made under clause 43 or 45 may make provision by reference to:

a. An agreement submitted to the appropriate authority by a Negotiating Body; and,

b. Any other document.

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

Clause 50: Regulations under this Chapter

888 This clause makes further provision about the regulations that may be made under this Chapter.

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

890 Subsection (2) sets out that regulations ratifying an agreement under clause 43 are subject to the negative resolution procedure.

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

Clause 51: Status of agreements, etc

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

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

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

Clause 52: Interpretations of this Chapter

893 This clause outlines the definitions used in this chapter.

894 Subsection (2) makes clear that any references to a ratified agreements within this Chapter also includes any parts of an agreement that have been ratified.

Chapter 3: Seafarers

Clause 53: Seafarers' wages and working conditions

895 This clause introduces Schedule 5 which amends the Seafarers' Wages Act 2023.

Schedule 5 – Seafarers' wages and working conditions

896 Paragraph 1 provides that the Schedule amends the Seafarers' Wages Act in accordance with paragraphs 2-23.

897 Paragraphs 2-3 amend Section 1 of the Seafarers' Wages Act to introduce the concept of "Relevant services", which replaces the previous references to "Services to which this Act applies". This is to allow the different types of declarations to apply to different services if defined in the Regulations.

898 Paragraph 4 – 8 make consequential changes to the existing provisions of the Seafarers' Wages Act to reflect the fact that the scope of the Act is being expanded by Schedule 5.

899 Paragraph 9 inserts Chapter 3 to the Act, "Remuneration Regulations and Declarations".

900 Paragraph 10 inserts Part 3: Seafarers' Working Conditions" containing new Sections 4E-4G

901 Paragraphs 11-19 amends the Act to put the existing enforcement provisions in a new Part 4. These paragraphs also amend the existing enforcement provisions of the Act as necessary, so that they also relate to remuneration declarations and safe working declarations. The amendments include an amendment to the offences in the Act of operating a service inconsistently with a declaration or providing a false and misleading declaration so that it applies to operating inconsistently with the new remuneration and safe working regulations, as well as equivalence declarations. They also amend the requirement in the Act on harbour authorities to impose surcharges on operators who fail to provide equivalence declarations, so that they also apply to failure to provide remuneration and safe working declarations.

902 Paragraph 20 inserts the heading "Part 5: General and Final Provisions".

903 Paragraph 21 inserts new section 16A.

904 Paragraph 22 amends section 17 (regulations) to insert the word "general" at the end of the heading, and to substitute subparagraph (i) for "(i) relevant service".

905 Paragraph 23 inserts a definition of "declaration" which refers to all three categories of declaration .

906 Paragraph 24 amends the title of the Act to the Seafarers (Wages and Working Conditions) Act 2023.

New Section 4A

907 Subsection (1) provides that regulations may set out requirements relating to the remuneration of seafarers who do not qualify for the national minimum wage in respect of their work related to the provision of a relevant service, whether or not that work takes place in UK waters.

908 Subsection (2) sets out that these regulations are to be known as "remuneration regulations".

909 Subsection (3) provides that these regulations can relate to remuneration for all or only some of the work on a relevant service and can be framed by reference to the waters in which the work is carried out.

910 Subsection (4) provides that they can apply to all relevant services or one or more relevant services of a specified description.

911 Subsection (5) provides that a service can be described in relation to the route operated by the service, or other things.

912 Subsection (6) provides that the Regulations can also provide that Chapter 2, which relates to equivalence declarations, does not apply to a service to which the remuneration regulations apply.

New Section 4B

913 Section 4B sets out the requirements on harbour authorities to request a remuneration declaration.

914 Subsection (1) provides that subsection (2) applies where a harbour authority has reasonable grounds to believe that a service will enter or has entered its harbour on at least 120 occasions, or a higher number of occasions if specified by the remuneration regulations during a relevant year, which is defined in s19 of the Seafarers' Wages Act (paragraph 23 of the Schedule).

915 Subsection (2) provides that in the circumstances set out in subsection (1), the harbour authority must request that the operator of the service provides them with a remuneration declaration for the relevant year, within the period to be set in regulations.

916 Subsection (3) provides that the duty on the harbour authority is subject to any direction given by the Secretary of State (section 16 of that Act).

917 Subsection (4) provides that a harbour authority which fails to comply with the requirements is guilty of an offence and liable to a fine in England and Wales, and a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.

New Section 4C

918 Section 4C sets out requirements regarding the nature of remuneration declarations.

919 Subsection (1) provides that a remuneration declaration in respect of a service for a relevant year is a declaration within any of subsections (2) to (5).

920 Subsection (2) provides that a declaration can be provided before the relevant year and can state that there are no non-qualifying seafarers working on the service during the relevant year, or that any non-qualifying seafarers will be paid in accordance with the remuneration regulations.

921 Subsection (3) provides that declaration can be provided during the relevant year and can state that in what remains of the relevant year there are no non-qualifying seafarers working on the service during the relevant year, or that any non-qualifying seafarers will be paid in accordance with the remuneration regulations.

922 Subsection (4) provides that a declaration provided during the relevant year and can state that in so much of the relevant year that has already occurred, there have been no non-qualifying seafarers working on the service during the relevant year, or that any non-qualifying seafarers were paid in accordance with the remuneration regulations.

923 Subsection (5) provides that a declaration provided after the relevant year can state that there were no non-qualifying seafarers working on the service during the relevant year, or that any non-qualifying seafarers were paid in accordance with the remuneration regulations.

New Section 4D

924 Subsection (1) provides that national minimum wage equivalent is an hourly rate specified in regulations.

925 This section was previously section 4(6)-(9) of the Seafarers' Wages Act, and has been moved in the Schedule so that it also applies to remuneration regulations.

926 Subsection (2) provides that regulations may make provision for purposes of specifying the hourly rate at which a non-qualifying seafarer is remunerated in any period in respect of any work, and specifying whether their work is UK work.

927 Subsection (3) provides that the regulations may make reference to any provision in s2(2) to (6) of the National Minimum Wage Act 1998 and to currency conversion.

928 Subsection (4) provides that subsection (5) applies for the purposes of section 4, and remuneration regulations that are framed by reference to the national minimum wage equivalent.

929 Subsection (5) provides that in making regulations, the Secretary of State much seek to ensure that a non-qualifying seafarers is remunerated at a rate equal to the national minimum wage equivalent only if their remuneration is broadly equivalent to the remuneration they would receive if they qualified for the national minimum wage.

New Section 4E

930 Section 4E is called "Safe working regulations"

931 Subsection (1) provides that a seafarer means a person who is on a ship providing a relevant service.

932 Subsection (2) provides that safe working regulations can specify conditions relating to the working pattern and rest requirements of seafarers carrying out work in relation to a relevant service, including minimum and maximum periods of work.

933 Subsection (3) provides that they may also make provision for the management and mitigation of risks arising from fatigue suffered by seafarers.

934 Subsection (4) sets out what regulations under subsection (3) can require. They can require the operator to provide a fatigue management plan and can make provision about the contents of such plans.

935 Subsection (5) provides that the regulations may also make provision for training of seafarers for the purpose of ensuring the safety of the ship, things on the ship and the health and safety of people on the ship.

936 Subsection (6) provides that regulations under subsections (2), (3) or (5) are referred to as "safe working regulations".

937 Subsection (7) allows safe working regulations to impose requirements on the operator of a relevant service.

938 Subsection (8) provides that safe working regulations can apply to all relevant services or one or more services of a specified description.

939 Subsection (9) provides that the service may be described by reference to the route operated by the service, among other things.

New Section 4F

940 Subsection (1) provides that subsection (2) applies where a harbour authority has reasonable grounds to believe that a service will enter or has entered its harbour on at least 120 occasions, or a higher number of occasions if specified by the regulations during a relevant year.

941 Subsection (2) provides that the harbour authority must request that the operator of the service provides it with a safe working declaration in respect of the relevant year, within the period to be set in regulations.

942 Subsection (3) provides that the duty on the harbour authority is subject to any direction given by the Secretary of State under section 16(1)(a) of the Seafarers' Wages Act).

943 Subsection (4) provides that a harbour authority which fails to comply with the requirements is guilty of an offence and liable to a fine in England and Wales, and a fine not exceeding level 5 on the standard scale in Scotland and Northern Ireland.

New Section 4G

944 Subsection (1) provides that a safe working declaration in respect of a service for a relevant year is a declaration within any of subsections (2) to (5).

945 Subsection (2) provides for declarations provided before the relevant year and states that the safe working conditions will be met in relation to the service in the relevant year.

946 Subsection (3) provides for declarations provided during the relevant year stating that the safe working conditions will be met in relation to the service in what remains of the relevant year.

947 Subsection 4 provides for declarations provided during the relevant year and states that the safe working conditions have been met in relation to the service in so much of the relevant year has already occurred, and that they will be met in what remains of the relevant year.

948 Subsection 5 provides for declarations provided after the end of the relevant year stating that the safe working conditions were met in relation to the service in the relevant year.,

949 Subsection (6) provides that the safe working conditions will have been met if the service is operated in compliance with regulations relating to working patterns, rest requirements and fatigue management plans.

950 Subsection (7) provides that the references to operations in subsection (6) include its operations outside UK territorial waters.

New Section 16A

951 Subsection (1) states that regulations about declarations may make provision for the period within which declarations are to be provided, the wording of the declarations and the form and manner in which they are to be provided (this provision is modified from the previous section 3(5) of the Act) .

952 Subsection (2) provides that regulations under subsection (1)(b) may specify a single form combining different kinds of declarations. It makes clear that a requirement to provide a declaration in such a form does not require an operator to provide a declaration which the harbour authority has not requested from them.

Clause 54: International agreements relating to maritime employment

953 Clause 54 amends the Merchant Shipping Act 1995 by adding Part 3A, International Agreements Relating to Maritime Employment and new Sections 84A and 84B.

New Section 84A

954 Subsection (1) provides that the Secretary of State may make regulations for the purposes of giving effect to the Maritime Labour Convention, 2006 and the Work in Fishing Convention, 2007.

955 Subsections (2) and (3) also provides the power for the Secretary of State to make regulations for the purpose of giving effect to other international agreements, and amendments to those agreements, that have been ratified by the UK, so far as the agreement relates to maritime employment.

956 Subsection (4) defines that 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.

957 Subsection (5) sets out that new section 84B makes further provision for the regulations under Section 84A

New Section 84B

958 Subsection (1) provides that in subsections (2) to (9), "regulations" means regulations under section 84A.

959 Subsection (2) allows that regulations may make provision for approvals considered relevant, including cancellation of approvals, and requires that any approval be made in writing and specify the date it takes effect and any conditions.

960 Subsection (3) allows that regulations may make provision for exemptions from the regulations for classes of case or individual cases, and for the alteration or cancellation of these exemptions.

961 Subsection (4) provides that the regulations may also make provision for the checking or monitoring of compliance, including record keeping, issue of certificates and the furnishing of information.

962 Subsection (5) provides that regulations may also provide for the detention of ships in respect of suspected contravention of the regulations, and that section 284 of the Merchant Shipping Act 1995, with or without modifications, may apply.

963 Subsection (6) provides that regulations may provide for contraventions of any provision to be a criminal offence, but that these offences may not be punishable on summary conviction with imprisonment, or on indictment with imprisonment for a term exceeding two years. In Scotland or Northern Ireland, an offence triable summarily only may not be punishable by a fine exceeding level 5 on the standard scale and an offence triable summarily or on indictment may not be punishable by a fine exceeding the statutory maximum.

964 Subsection (7) allows that in specified cases, regulations may provide specified persons each commit an offence created by the regulations under subsection 6.

965 Subsection (8) allows for regulations to make different provision for different purposes, to provide for references to specified documents to operate as references to that document as revised or re-issued from time to time and to provide for the delegation of functions exercisable by virtue of the regulations.

966 Subsection (9) provides that the power to make regulations includes power to make consequential, supplementary, incidental or transitional provisions.

967 Subsection (10) provides that the power to give effect to an agreement or amendment to an agreement includes power to provide for the provision to come into force even if the agreement or amendment has not come into force.

968 Subsection (11) provides that nothing in section 84B is to be construed as restricting the generality of section 84A.

969 Subsection (12) provides that a statutory instrument containing regulations under section 84A(2) and which 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 (affirmative resolution procedure).

970 Subsection (13) provides that a statutory instrument containing regulations under section 84A(2) and which 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 (negative resolution procedure).

Part 4: Trade Unions and Industrial Action, etc

Right to statement of trade union rights

Clause 55: Right to statement of trade union rights

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

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

973 Subsection (3) amends section 284 (exceptions for share fishermen) TULRCA, to insert reference to section 136A. Subsection (4) of clause 55 amends section 285 (exceptions for employment outside Great Britain) to insert reference to section 136A. Subsection (5) amends section 286 (power to provide for other exceptions) to insert reference to section 136A. Subsection (6) amends section 296 (meaning of worker and related expressions), to insert reference to the new section 136A(5) which specifies the definition of worker and employer.

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

New Section 136A

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

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

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

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

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

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

981 Subsection (5) sets out that in this section (section 42 of the Employment Rights Bill), the meaning of the terms "worker" and "employer" have the same meaning as is specified in Section 230 of the Employment Rights Act 1996. This is as follows: Worker: means "an individual who has entered into or works under (or, where the employment has ceased, worked under)— (a) a contract of employment, or (b) any other contract, whether express or

implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual." Employer: means "in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed."

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

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

Right of trade unions to access workplaces

Clause 56: Right of trade unions to access workplaces

984 This clause provides for access agreements, between "qualifying trade unions" and employers, which make provision for officials from those trade unions, to access the workplace or communicate with workers by other means, or both, for specified "access purposes".

985 Subsection (2) inserts Chapter 5ZA, Rights of Trade Unions to access workplaces, into TULRCA, sections 70ZA to 70ZN.

986 Subsection (3) amends section 263 (proceedings of the Central Arbitration Committee) of the 1992 Act and makes consequential amendments to section 263, including removing the unnecessary reference to 'oversman', which has the same meaning as 'umpire' in this context, and removing this reference is not intended to change the law.

987 Subsection (4) inserts new section 263ZA (Proceedings of the Committee under section 70ZE) which details how the Central Arbitration Committee will operate when discharging the specific functions under the Section 70ZE – where the union and employer cannot agree on terms on which officials of a qualifying trade union are to have access.

988 Subsection (5) makes consequential amendments to section 263A.

989 Subsection (6) makes consequential amendments to section 264.

990 Subsection (7) makes a consequential amendment to the Employment Relations Act 2004.

New Section 70ZA

991 Section 70ZA (Access agreements), subsection (1) provides that section 70ZA applies for the purposes of the Chapter.

992 Subsections (2) to (6) contain definitions of the following terms for the purposes of the Chapter: "access agreement", "qualifying trade union", "access", and "access purposes".

993 Subsection (5A) defines communication with workers.

994 The access purposes are provided in subsection (6) and in practice include meeting trade union members, recruiting new trade union members, supporting a trade union member with an employment related matter, or to facilitate collective bargaining.

995 Subsection (8) introduces sections 70ZB to 70ZF as making provision about entering into access agreements.

996 Subsections (9) and (10) introduce the remaining sections.

997 Subsection (11) introduces Section 70ZJA as containing general limitations on provisions made under this Chapter.

New Section 70ZB

998 Section 70ZB (Access requests and response notices), subsection (1) provides that a trade union may give an access request to an employer for any of the access purposes.

999 Subsections (2) and (4) set out the process for the trade union to make an access request, and for the employer to provide a response notice to that request.

1000 Subsections (3) and (5) provide a power for the Secretary of State to set out in secondary legislation the form the information must be in, the information to be provided, and the manner in which the information must be given, for the access request and response notice respectively.

1001 Subsection (6) defines an access request as a request given under subsection (1), and in accordance with subsection (3), and defines a response notice as a notice given under subsection (4), and in accordance with subsection (5).

New Section 70ZC

1002 Section 70ZC (Response period and negotiation period) provides that the Secretary of State can prescribe in regulations the length of the "response period" and the "negotiation period" that apply for the purposes of sections 70ZD and 70ZE. The response period starts on the day the access request is given, and the negotiation period starts on the day that the employer gives a response notice.

New Section 70ZD

1003 Section 70ZD (Entering into access agreement by negotiation), subsection (1) sets out the conditions that apply for an access agreement to be entered into under the section.

a. Firstly, that a qualifying trade union gives an access request.

b. Secondly, that the employer provides a response notice before the end of the response period.

c. Thirdly, that the union and employer have agreed in writing the terms on which trade union officials are to have access, before the end of the negotiation period.

d. Finally, the union and employer need to notify the Central Arbitration Committee (CAC) jointly of those terms.

1004 The Secretary of State can make provision as to the form and manner of that notification to the CAC in secondary legislation under section 70ZD(1)(d). Subsection (2) signposts section 70ZE as providing for cases where access agreements are treated as being entered into following a CAC determination.

New Section 70ZE

1005 Section 70ZE (Determinations by the Central Arbitration Committee) makes provision for CAC determinations. Subsection (1) provides that the section applies where a qualifying trade union has given an access request and either the employer has not responded in time, or the employer has responded but negotiations have not been completed in time.

1006 Subsection (2) provides that where an application is made, the CAC can make a determination that officials are, or are not, to have access to the workplace.

1007 Subsection (3)(a) provides that where the determination is that union officials are to have access, it must specify the terms of access, including any assistance the employer must provide in relation to the access. An agreement is then treated as being entered into between the employer and trade union, containing only those terms from the CAC determination.

1008 Subsection (4) provides that an application for a determination can be made by the union, in cases where the employer has not responded to the access notice, or by the union or employer where negotiations have been unsuccessful.

1009 Subsection (5) provides that applications under this section must be in writing and in the form the CAC may require. An application cannot be made after the end of a period beginning with the date on which the access request is given, and that period is to be provided for in regulations made by the Secretary of State.

1010 Subsection (6)(a) to (c) provide that when considering applications under this section the CAC may make: such enquiries as it sees fit; reasonable requests to provide information or documents relevant to the application; and so far as reasonably practicable, must give any person who it considers has a proper interest in the application an opportunity to be heard.

1011 Subsection (7) provides that a determination must be in writing and state the reasons for that determination.

New Section 70ZF

1012 Section 70ZF (Determinations by the Central Arbitration Committee: Further provision), subsection (1) provides that subject to regulations made under this section, the CAC must make determinations under section 70ZE consistent with the access principles.

1013 Those access principles are set out at subsection (2) and seek to ensure a balance between the interests of the trade union and employer respectively .The access principles are:

a. that 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 (which are defined under section 70ZA(5)) in any manner that does not unreasonably interfere with the employer's business;

b. an employer should take reasonable steps to facilitate access by officials of a qualifying trade union ;

c. physical entry into a workplace should not be refused solely on the basis that communications with workers by means not involving physical entry into a workplace is not permitted;

d. communication with workers by means not involving physical entry into a workplace should not be refused on the basis that physical entry into a workplace is not permitted;

e. access should be refused entirely only where it is reasonable in all the circumstances to do so.

1014 Principles (c) and (d) ensure that the CAC's determinations about access do not prioritise communication with workers other than by means involving physical entry over physical entry and vice versa.

1015 Subsection (3) provides a power for the Secretary of State to provide in regulations the terms of the access agreement that the CAC must consider as:

a. not unreasonably interfering with an employer's business;

b. that must be considered as reasonable steps that an employer should take to facilitate access by officials of a qualifying trade union;

c. must consider as being terms that are reasonable for a union to comply with.

1016 Subsection (4) provides a power for the Secretary of State to provide in regulations the circumstances where it is to be regarded as reasonable for the CAC to make a determination that officials of a union that has given an access request to an employer are not to have access , and the circumstances in which the CAC must make such a determination

1017 Subsection (5) provides a non-exhaustive list of matters that the circumstances provided for in regulations made under the power in subsection (4) may reference. These matters are

a. the 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;

d. description of a workplace;

e. a description of workers;

f. the ability of the employer to facilitate access to the workplace;

g. avoiding prejudice to the prevention or detection of offences; and

h. national security.

1018 Subsection (6) provides a power for the Secretary of State to prescribe matters to which the CAC must have regard in considering an application for a determination about access, under Section 70ZE.

New Section 70ZG

1019 Section 70ZG (variation and revocation of agreements), subsection (1) provides that the parties may vary or revoke the agreement.

1020 Under subsection (2) this must be done in writing.

1021 Subsection (3) provides that where the access agreement is varied it has effect as an access agreement under the Chapter, and similarly subsection (4) provides that where it is revoked it ceases to be an access agreement for the purposes of the Chapter.

1022 Subsection (5)(a) provides that both parties need to notify the CAC of the variation or revocation in writing, and the Secretary of State has the power to make provision in regulations as to the form and manner of that notification.

1023 Subsection (5)(b) provides that the variation or revocation only has effect after the CAC has been notified.

New Section 70ZH

1024 Section 70ZH (Enforcement of access agreements initial complaint), subsection (1) provides that a party can make a complaint to the CAC on the grounds that the other party has breached the access agreement; a third party has prevented access.

1025 Subsection (2) provides that the complaint must be made within three months of the act complained of.

1026 Subsection (3) provides that the CAC may vary the agreement, make a declaration that the complaint is well-founded or not, and if making a declaration that the complaint is well founded the CAC may also make an order requiring a person to take any steps specified in the order the purposes of ensuring access takes place in accordance with the agreement.

1027 As with access agreements varied by the parties, an access agreement varied by the CAC continues to have effect for the purposes of the Chapter, this is provided for under subsection (4). Subsection (5) provides that the CAC when making an order may make provision that is different from the agreement, where it appears to the CAC it is necessary or appropriate to do so.

1028 Subsection (6) provides that determinations and orders under this section must be in writing and include reasons for the declaration or order. Subsection (7) provides that taking steps to do something (for the purposes of this section) includes a reference to not doing something.

New Section 70ZI

1029 Section 70ZI (Enforcement of access agreements: subsequent complaint) makes provision where there is a subsequent complaint to the CAC following a declaration that a complaint is well founded under section 70ZH(3).

1030 Subsection (2) provides that a party to the agreement may make a complaint to the CAC that the person has, within the relevant period, carried out the conduct complained of again. This complaint can be on any of the grounds set out at subsection 2(a) to (c). Subsection 2(a) provides that a complaint under this section can be made where the person has carried out the conduct complained of under section 70ZH again.

1031 Subsection (2)(b) provides that where the complaint under section 70ZH was a breach of the agreement, a complaint can be brought under this section that the agreement has been breached again whether or not the agreement has been breached in the same way as it was originally.

1032 Subsection (2)(c) provides that a complaint can be made under this section that an order made by the CAC under section 70ZH(3)(c) has been breached again.

1033 Subsection (3) provides that that the relevant period referred to in subsection (2)(a) is 12 months from the date of the original CAC declaration.

1034 Subsection (4) provides that a complaint is to be made within three months of the act complained of.

1035 Subsection (5) provides that the CAC may make a declaration that the complaint is well founded or not, and if it is well founded order that a penalty is paid to the CAC; which must then be paid into the Consolidated Fund (under subsection (9)).

1036 Subsection (6) provides that the amount of the penalty is what the CAC considers appropriate, subject to provision made in regulations under section 70ZJ.

1037 Subsection (7) provides that a declaration or order made under this section must be in writing and state the reasons for the declaration or order.

1038 Subsection (8) provides that a declaration or order made under section 70ZI(5) may be relied upon and enforced by the CAC or a party to the agreement as if it were made by the court.

1039 Subsection (9) provides that the CAC must pay into the Consolidated Fund any penalty amounts received under subsection (5)(b)

1040 Subsection (10) provides that for the purposes of this section a reference to conduct also includes a person not doing something.

New Section 70ZJ

1041 Section 70ZJ (Power to make provision about amounts payable under section 70ZI) makes provision about amounts payable under Section 70ZI. It allows the Secretary of State to make more detailed provision in regulations about the amounts required to be paid for breaches of access requirements.

1042 Subsection (1) provides that the Secretary of State may prescribe (1)(a) the minimum and (1)(b) the maximum amount payable under section 70ZI(5)(b).

1043 Subsection (2) sets out that the amount set out in subsection (1) may be: (a) a fixed amount; (b) refer 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.

1044 Subsection (3) provides a non-exhaustive list of the factors that may be prescribed under subsection (2)(b) or (c): (a) the nature of the complaint against the liable party; (b) whether the liable party has previously been subject to a complaint under section 70ZH(1) or 70ZH(2), or a prescribed number of such complaints, declared by the CAC to be well-founded; (c) whether the liable party is of a prescribed description; (d) if the liable party is an undertaking, the turnover of that party in a prescribed period, including by reference to UK, European and worldwide turnover; (e) where the liable party is an employer, (i) the number of workers it employs and (ii) the number of workers of a prescribed description it employs; (f) where the liable party is a trade union, the number of members it has.

1045 Subsection (4) provides a power for the Secretary of State to prescribe matters to which the CAC must have regard in considering the amount payable under Section 70ZI(5)(b).

New Section 70ZK

1046 Section 70ZK (Enforcement of access agreements: supplementary provision) makes further provision for the enforcement of access agreements.

1047 Subsection (1) provides that access agreements (as defined in section 70ZA(2)) are only enforceable under section 70ZH or 70ZI and not by any other means, and that it is to be conclusively presumed that there was no intention for the access agreement to be a legally enforceable contract.

1048 As set out in subsection (2) this means that even when access agreements are or form part of collective agreements, and that collective agreement is intended to be a legally enforceable contract, that intention does not apply to the access agreement (as defined in section 70ZA(2)), so section 179(2) and (3)(a) are disapplied.

1049 Subsection (3) provides that complaints under section 70ZH and 70ZI must be in writing and in such form as the CAC may require.

1050 Subsection (4) provides that when considering a complaint under section 70ZH or 70ZI, the CAC may make such enquiries as it sees fit, may make reasonable requests to provide information or documents relevant to the complaint, and so far as reasonably practicable must

give any person who it considers has a proper interest in the complaint an opportunity to be heard.

1051 Subsection (5) provides that the CAC may draw an adverse inference from a person's failure to comply with any reasonable request to provide information or documents relevant to a complaint under section 70ZH or 70ZI.

New Section 70ZL

1052 Subsection (1) of Section 70ZL (General limitations on access agreements etc) provides a list of prohibited activities. Provisions requiring trade unions to have access to workers and workplaces cannot require (1)(a) physical entry into dwellings; (1)(b) disclosure of personal data without consent of the subject; and (1)(c) disclosure of information in breach of data protection legislation (however, provisions in this Chapter must be taken into account when determining whether a disclosure would constitute a breach).

1053 Subsection (2)(a) provides that a term of access entered into under section 70ZD that requires or authorises a prohibited activity is of no effect in this Chapter.

1054 Subsection (2)(b) also prevents these terms from being specified by the CAC as a term of an access agreement under section 70ZE.

1055 Subsection (2)(c) disallows the CAC from exercising any functions under section 70ZH and 70ZK so as to require or authorise a prohibited activity.

1056 Subsection (3) provides definitions for terms used in this Chapter: "consent"; "personal data"; "data subject"; "data protection legislation" and "UK GDPR".

New Section 70ZM

1057 Section 70ZM (Appeals to the Employment Appeal Tribunal), subsection (1) provides that an appeal on points of law can be made to the Employment Appeal Tribunal (EAT); and under subsection (2) the order made under section 70ZI(5)(b) to pay a penalty can also be appealed to the EAT.

1058 Under subsection (3) where the appeal to the EAT is in relation to the penalty, the EAT can quash the order of the CAC, reduce the amount of the penalty, or dismiss the appeal. Under subsection (4) if the EAT make an order to pay a reduced amount, any funds that the CAC receive in relation to that order are payable into the consolidated fund.

New Section 70ZN

1059 Section 70ZN (Regulations under this Chapter) provides that where Regulations prescribe anything for the purpose of this Chapter, they may make different provision for different purposes.

New Section 236ZA

1060 Under subsection (1), the chairman decides whether the determination made by the CAC under section 70ZE is made by a tripartite panel with representatives from unions and employers, or in less complex cases by a single member.

1061 Subsection (2) stipulates that, in the decision they make under subsection (1), the chairman must have regard to the complexity of the case, with the view of directing that the Committee is to consist of only one member only in cases which the chairman considers are less complex.

1062 Subsection (3) sets out that when considering whether to allocate to a single member or not, the chairman must consider whether (a) any of the proposed terms are those prescribed under

Section 70ZF(3), and (b) if so, that reduces the complexity of the case, having also regard to any other terms proposed.

1063 Subsection (4) sets out that, in subsection (3), "qualifying trade union" and "access" are to have the same meaning as in Chapter 5ZA of Part 1.

1064 Subsection (5) allows the chairman to amend the direction under subsection (1) at any time. In cases where it is amended, subsection (6) outlines that (a) this does not affect anything done by the Committee before the amendment; and (b) anything done by the Committee before the amendment will be treated as having been done by the Committee as it is constituted after the amendment.

1065 Subsection (7) makes procedural provision in relation to a Committee consisting of a single member.

1066 Subsection (8) makes procedural provision in relation to a Committee consisting of a panel of three members.

1067 Under subsection (9), if the panel cannot reach a unanimous decision on a question arising before it, and the majority of the panel have the same opinion, the question is decided according to that opinion.

1068 If the majority of the panel do not have the same opinion, subsection (10) allows for the chairman of the panel to decide acting with the full powers of an umpire.

1069 Subsection (11) sets out that the Committee may determine its own procedure, subject to the provisions of this section.

Trade union recognition

Clause 57: Trade union recognition

1070 This clause introduces Schedule 6 to the Bill.

Schedule 6 – Trade union recognition

1071 This schedule amends Schedule A1 of the Trade Union and Labour Relations (Consolidations) Act 1992.

1072 Schedule A1 of the 1992 Act established a statutory procedure for the recognition and derecognition of trade unions for the purposes of collective bargaining on behalf of a particular group of workers.

1073 The Government's approach in 1999 was to create a mechanism which enabled recognition of the union(s) by the employer where the majority of the relevant workforce wanted this. One aim of the mechanism is to encourage the voluntary settlement of recognition claims wherever possible, the statutory recognition procedure therefore acting as a fall-back system.

1074 The following paragraphs briefly describe Schedule A1 as it stands prior to amendment by the Bill.

a. Part I of Schedule A1 provides that in certain circumstances a trade union (or trade unions) may make an application to the Central Arbitration Committee (CAC) for a declaration that it should be recognised for the purpose of conducting collective bargaining on behalf of a group or groups of workers employed by an employer in a particular bargaining unit.

b. Part II of Schedule A1 provides that where a voluntary agreement for recognition is made between the parties, after a request for statutory recognition has been made

under Schedule A1, the employer has to maintain that agreement for three years unless the union ends it before that time. This is known as semi-voluntary recognition. If, following the conclusion of an agreement for recognition, the parties are unable to agree a bargaining procedure, an application may be made to the CAC for it to determine one. Part II is designed to afford protection to unions which withdraw from the statutory process to agree a voluntary deal, and therefore to encourage the voluntary settlement of claims.

c. Part III of Schedule A1 sets out a procedure to be followed by the parties and the CAC where a union has been recognised through the statutory procedures and, as a result of a change in the employer's business, either the union or the employer believes the bargaining unit has changed or has ceased to exist.

d. Parts IV and V of Schedule A1 provide that where recognition results from an earlier declaration by the CAC, it may in certain circumstances, on application from the employer or one or more workers in the bargaining unit, declare a union to be derecognised.

e. Part VI of Schedule A1 provides for workers to be able to invoke the statutory derecognition procedure where an employer has voluntarily recognised a union which does not have a certificate of independence.

1075 A significant number of the changes made by this Clause and the New Schedule of this Bill relate to Schedule A1 (unless otherwise stated). There are a number of stages in the recognition process (contained in Part I of the Schedule A1), usually with a specific timetable for each. These are set out for information below.

1076 *Stage 1 - Trade union writes to the employer seeking recognition*. The process is triggered by the union(s) writing to the employer, requesting recognition, and identifying the proposed bargaining unit of the workers concerned. For a request to be valid, the employer (together with associated employers) must employ 21 or more workers.

1077 The employer has a period in which to respond. If the employer agrees voluntarily to recognise the union (or unions), the statutory recognition procedure is regarded as closed. However, the parties can have such an agreement declared an agreement for recognition by the CAC under Part II of Schedule A1. This applies to a voluntary agreement at whichever stage in the recognition process it is agreed.

1078 Alternatively, if the employer agrees to negotiate, the parties have a time period to conclude discussions. The parties may call on the Advisory, Conciliation and Arbitration Service (ACAS) to assist. If the employer refuses to negotiate or does not respond to the union's letter, or if negotiations fail to reach an agreement, the union(s) may make an application for recognition to the CAC.

1079 *Stage 2 – Application by trade union to the CAC*. The CAC has a fixed period to decide, against a number of criteria, whether to accept the application. These criteria include a requirement for at least 10% of the workers in the proposed bargaining unit to be members of the union(s), and for the CAC to be satisfied that a majority of the workers in the bargaining unit would be likely to favour recognition.

1080 *Stage 3 – Agreement or determination of a bargaining unit*. If the union's application is accepted the parties have a period to agree a bargaining unit if they have not already done so. If the parties fail to agree a unit, then the CAC will determine it. In doing so, the CAC must take a number of matters into account, including in particular the need for the unit to be compatible with effective management. If a bargaining unit agreed between the union and employer or

determined by the CAC is different from the unit originally proposed by the union when making its application, then the CAC must reapply the acceptance criteria in respect of the new bargaining unit.

1081 *Stage 4 – Determining whether to award recognition.* Once the bargaining unit is established, the CAC must decide whether to declare the union(s) to be automatically recognised or to hold a ballot. If the CAC is satisfied that a majority of the workers in the bargaining unit are union members it must make a declaration of recognition, unless it decides that a ballot should be held for any of the reasons listed in paragraph 22(4) of Schedule A1.

1082 *Stage 5 – Recognition ballot*. A ballot is held if the union(s) does not have majority membership in the bargaining unit, or if the CAC decides that despite majority membership, a ballot should still be held. Unless during the period immediately following the CAC's notification of the holding of a ballot the union, or the parties jointly, inform the CAC that they do not wish the ballot to be held, the CAC will appoint a Qualified Independent Person (QIP) to conduct the ballot. The CAC must also determine the form of the ballot: workplace, postal, or a combination of these methods. During the ballot the employer has a general duty to co-operate with the ballot.

1083 In addition, the employer must allow the union(s) to communicate with the workers in the bargaining unit during the balloting period. A statutory Code of Practice applies. The employer must also supply to the CAC the names and addresses of the workers in the bargaining unit. The costs of the ballot are borne equally by the parties. If the result of the ballot is that the union's application is supported by a majority of all those voting, and at least 40% of those entitled to vote, the CAC must issue a declaration that the union is (or unions are) recognised for the purposes of collective bargaining on behalf of the bargaining unit. Otherwise, the union is not recognised.

1084 *Stage 6 – Method of collective bargaining*. Following a CAC declaration of recognition, the parties have a period to reach an agreement on the method for conducting their collective bargaining. If the parties do not agree a method, they can apply to the CAC for assistance. If there is still no agreement, the CAC specifies a bargaining method.

1085 A CAC specified method is enforceable as though it were a contract between the parties. If either party believes the other is subsequently not following such a method, it may seek an order of specific performance from the courts.

Part 1 - Introduction

1086 Paragraph 1 of Schedule 6 explains that the schedule amends Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 in accordance with Parts 2 to 5 of this Schedule.

1087 Paragraph 2 explains that Part 6 of this Schedule contains consequential amendments to the Employment Relations Act 2004.

1088 This new Schedule would amend Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 to extend the prohibition on unfair practices to the entirety of a recognition or derecognition process, ensure that the Central Arbitration Committee can make orders in relation to such practices whether or not they have an impact on the process, increase the time limit for making claims in relation to such practices, provide for binding arrangements for access by the union to workers throughout a recognition or derecognition process, prevent workers who joined the bargaining unit after a recognition application from being counted for the purposes of the recognition process, prevent a new recognition agreement with a non-independent union stopping the statutory recognition process, and make the amendments originally in clause 47 when the Bill was first published (see below).

1089 The provisions in respect of preventing workers who joined the bargaining unit after a recognition application from being counted for the purposes of the recognition process have been drafted so as to sit in Schedule A1 at the points of the recognition process where they are most relevant as opposed to being grouped together. Below is a brief summary of the relevant points of the Schedule at which you will find these provisions and the paragraphs of Schedule A1 that they relate to:

a. Paragraph 4(2) (Paragraph 14(1A) of Schedule A1, acceptance of applications: multiple applications);

b. Paragraph 4(5) (Paragraph 14(5A) of Schedule A1, acceptance of applications: multiple applications);

c. Paragraph 10(3) (Paragraph 22(1A) of Schedule A1, powers of the CAC to declare a union recognised where a majority of the workers are members of the union);

d. Paragraph 11(3) (Paragraph 23(1A) of Schedule A1, CAC to order a ballot where the majority of workers are not members of the union);

e. Paragraph 19(2) (Paragraph 35(1A) of Schedule A1, admissibility of applications: existing collective agreement);

f. Paragraph 20, (Paragraph 36(1A) of Schedule A1, admissibility of applications: minimum support);

g. Paragraph 21(3) (Paragraph 38(2A) of Sch. A1, admissibility of applications: overlapping bargaining unit);

h. Paragraph 25(2) (Paragraph 44(1A) of Sch. A1, validity of applications: existing collective agreement);

i. Paragraph 26 (Paragraph 45(2) of Schedule A1, validity of applications: minimum support);

j. Paragraph 27(3) (Paragraph 46(3) of Schedule A1, validity of applications: overlapping bargaining unit).

1090 The original amendments, now included in this new Schedule to the Bill, amend the requirement that a union demonstrates that it has 10% membership of the proposed bargaining unit on application to the Central Arbitration Committee and replace this with references to the 'required percentage test'. The new Schedule removes all references in Schedule A1 that also required a union to demonstrate on application to the CAC that it was likely to obtain a majority in a recognition ballot. The Schedule gives the Secretary of State the power to amend by Regulations the "required percentage" to be no greater than 10% and no less than 2%. Finally, the Schedule gives effect to the policy of only requiring unions to obtain a simple majority in a trade union recognition ballot.

1091 Similar to paragraph 119 above, the provisions in respect of the required percentage test and achieving simple majority sit in Schedule A1 at the points of the recognition process where they are most relevant as opposed to being grouped together. Please see below a brief summary of the relevant points of the Schedule at which you will find these provisions and the paragraphs of Schedule A1 that they relate to:

a. Required percentage test

i. Para. 4(3), (4), (6) and (7) (Para. 14 of Sch. A1, acceptance of applications: multiple applications);

ii. Para. 20 (Para. 36(1) of Sch. A1, admissibility of applications: minimum support);

iii. Para. 26 (Para. 45(1) of Sch. A1, validity of applications: minimum support);

iv. Para. 31 (Para. 51(2)(c) of Sch. A1, competing applications);

v. Para. 35(2) and (3) (Para. 86(2) and (3) of Sch. A1, new bargaining unit: assessment of support);

vi. Para. 37 (Para. 88(1) of Sch. A1, powers of CAC where majority of workers are not members of union);

vii. Para. 58 (Para. 171B of Sch. A1, meaning of "the required percentage");

b. Simple majority

a. Para. 18(3) (Para 29(3) of Sch. A1, result of ballot);

b. Para. 36 (Para. 87 of Sch. A1, powers of CAC where majority of workers are members of union);

c. Para. 37 (Para. 88 of Sch. A1, powers of CAC where majority of workers are not members of union).

1092 The subsequent paragraphs in the new Schedule give effect to the policy intent set out in the paragraphs above.

Part 2 - Recognition

Meaning of the "application day"

1093 Paragraph 3 of the new Schedule inserts new wording in paragraph 2 of Schedule A1 that clarifies that in relation to recognition applications, the reference to the application day is the day on which the CAC receives the application for recognition.

Acceptance of applications

1094 Paragraph 4 of the Schedule amends paragraph 14 (acceptance of applications including multiple applications) of Schedule A1.

1095 Subparagraphs (2) and (5) amend paragraph 14 of Schedule A1 by ensuring that any worker who joined the bargaining unit after the application day is to be disregarded for the purposes of the statutory recognition scheme.

1096 Subparagraphs (3), (4),(6) and (7) amend paragraph 14 of Schedule A1 by deleting references to the "10% test" and substituting this with the "required percentage test."

Withdrawal of application

1097 Paragraph 5 amends paragraph 16 of Schedule A1 so that a union cannot withdraw its application after the CAC has declared that the union or the employer have not complied with an access agreement or has determined that one of the parties has committed an unfair practice and has decided to either dismiss the union application or grant recognition as a consequence.

Notice to cease consideration of an application

1098 Paragraph 6 amends paragraph 17 of Schedule A1 in relation to a notice to cease consideration of the application by inserting references to when the CAC has declared that the union or the employer have not complied with an access agreement or has determined that one of the parties

has committed an unfair practice and has decided to either dismiss the union application or grant recognition as a consequence.

Communication with workers through independent person after application

1099 Paragraph 7, subparagraph (1) amends paragraph 19C (appointment of independent person to handle communications between the union and workers) of Schedule A1 as follows. This independent person is normally called the Suitable Independent Person (SIP).

1100 Subparagraph (2) sets out that the union must (if at all) apply for a SIP to be appointed before the end of the period of 5 working days after the CAC has given the union(s) notice that their application for statutory union recognition has been accepted. This is called the access request period.

Access agreements

1101 Paragraph 8 inserts after paragraph 19F of Schedule A1 a new paragraph 19G. Subparagraph (1) of 19G states that new paragraph 19G applies when the CAC accepts a statutory union recognition application where the employer has failed to agree to voluntary recognition or to the composition of the bargaining unit or where the union applies to the CAC to decide whether the union has the support of the majority of the workers in the bargaining unit.

1102 Subparagraph (2) of 19G provides that the union can give notice to the CAC and the employer within the access request period that it wants access to the relevant workers in the bargaining unit.

1103 Subparagraphs (3) and (4) of 19G define who the relevant workers are.

1104 Subparagraph (5) of 19G defines the access request period of 5 working days.

1105 Subparagraph (6) of 19G defines that a recognition application under Schedule A1 paragraphs 11 or 12 is in progress unless one of a number of events (a-d) has occurred.

1106 Paragraph 8 inserts after paragraph 19F of Schedule A1 a new paragraph 19H. Subparagraph (1) of 19H states that new paragraph 19H applies when the CAC accepts a statutory union recognition application and the application is in progress and the union requests access.

1107 Subparagraph (2) of 19H sets out that the CAC must try to help the parties reach an agreement during the negotiation period.

1108 Subparagraph (3) of 19H sets out that the negotiation period is 15 working days starting the following day after the union has submitted its request to the employer and the CAC for access.

1109 Subparagraph (4) of 19H provides that the CAC can give notice the parties that the negotiation period has come to an end where the CAC concludes that there is no reasonable prospect of the parties agreeing access terms.

1110 Subparagraph (5) of 19H sets out that the CAC's notice must contain reasons for the CAC reaching that conclusion.

1111 Subparagraph (6) of 19H provides flexibility enabling the CAC to bring forward or put back the date where the negotiation period ends where both parties request this.

1112 Paragraph 8 inserts after paragraph 19F of Schedule A1 a new paragraph 19I. Subparagraph (1) of 19I states that new paragraph 19I applies when the CAC accepts a statutory union recognition application, a union has requested access, the parties have not reached within the 15 working days negotiation period a voluntary access agreement and the application is in progress.

1113 Subparagraph (2) of 19I set out that the CAC must decide whether the CAC can have access to the workers and on what terms.

1114 Subparagraph (3) of 19I sets out that the adjudication period for this decision is 10 working days after the expiry of the negotiation period. This can be extended by the CAC giving notice and reasons to the parties.

1115 Subparagraph (4) of paragraph 19I clarifies that any access terms that the CAC imposes must grant the union reasonable access to inform the workers of their statutory application for recognition and seek their support and views on the issues involved.

1116 Paragraph 8 inserts after paragraph 19F of Schedule A1 a new paragraph 19J. Subparagraph (1) of 19J states that new paragraph 19J applies when the CAC accepts a statutory union recognition application, an access agreement is agreed and the application is in progress.

1117 Subparagraph (2) of paragraph 19J defines an access agreement.

1118 Subparagraph (3) of paragraph 19J requires the parties to comply with the access agreement.

1119 Subparagraph (4) of paragraph 19J requires that the employer must not make an offer to the workers that could induce them not to attend a meeting with the union and which is not reasonable.

1120 Subparagraph (5) of paragraph 19J states that the employer must not discipline a worker who attended or indicated that they wished to attend a meeting with the union.

1121 Subparagraph (6) of paragraph 19J defines who is a relevant worker in the bargaining unit in the case of an application under paragraph 11(2) or 12(2).

1122 Subparagraph (7) of paragraph 19J states that in relation to an application to the CAC to determine whether the union has majority support in the bargaining unit, the relevant workers are those within the bargaining unit agreed by the parties.

1123 Subparagraph (8) of paragraph 19J defines a relevant meeting, that is a meeting between the workers and the union, as organised in compliance with the access agreement or a CAC order and where the employer is required to permit the workers to attend.

1124 Subparagraph (9) of paragraph 19J clarifies that the duties imposed by the employer under subparagraphs (4) and (5) of paragraph 19J do not confer rights on a worker, but also that they do not affect any other rights that the worker may have.

1125 Subparagraph (10) of paragraph 19J sets out that any provision in an access agreement that requires personal data to be disclosed to someone other than the Suitable Independent Person (SIP) who manages communications or the Qualified Independent Person (QIP) who oversees the recognition ballot, has no effect.

1126 Subparagraph (11) of paragraph 19J defines that the "appointed person" is either the SIP or QIP referred to above. Personal data has the same meaning as in the Data Protection Act 2018.

1127 Subparagraph (12) of paragraph 19J stipulates that an access agreement is not a legally enforceable contract and that is also the case where the access agreement forms part of a collective agreement. The remedies for breach are therefore those provided in the legislation.

1128 Paragraph 8 inserts after paragraph 19F of Schedule A1 a new paragraph 19K. Subparagraph (1) of 19K states that the CAC may issue an order where the CAC is satisfied that a party has failed to fulfil duties imposed on it by new paragraph 19J and the application is still in progress.

1129 Subparagraph (2) of paragraph 19K provides that the CAC may order a party to take remedial steps to remedy any failure within a reasonable period of time.

1130 Subparagraph (3) of paragraph 19K sets out the circumstances where subparagraphs (4) and (5) of new paragraph 19K apply which includes that the bargaining unit has to be agreed by the parties or decided by the CAC. In instances where it becomes apparent a declaration under subparagraphs (4) or (5) may be needed but the bargaining unit has not yet been agreed or determined, it is expected that the bargaining unit would be agreed or determined and then the CAC would consider making a declaration under either subparagraph.

1131 Subparagraph (4) of paragraph 19K sets out that if the party in breach is the employer, the CAC may declare that the union(s) has been recognised.

1132 Subparagraph (5) of paragraph 19K sets out that if the party in breach is the union, the CAC may declare that the union is not recognised.

1133 Paragraph 8 inserts after paragraph 19F of Schedule A1 a new paragraph 19L. This sets out the powers for the Secretary of State or ACAS to issue Codes of Practice relating to access, including what is reasonable access and clarifying the duty of the employer in relation to inducements.

Unfair practices

1134 Paragraph 9 of the Schedule inserts after new paragraph 19L a new paragraph 19M in relation to unfair practices.

1135 Subparagraph (1) of paragraph 19M sets out that the parties must refrain from using any unfair practice.

1136 Subparagraph (2) of paragraph 19M defines what constitutes an unfair practice. This follows the current definition of an unfair practice. It should be noted that Ministers have the power under paragraph 166B of Schedule A1 to widen in future the definition of what constitutes an unfair practice.

1137 Subparagraph (3) of paragraph 19M defines what is the relevant ballot and the relevant workers.

1138 Subparagraph (4) of paragraph 19M defines what is an outcome-specific offer, which is an offer to pay money or equivalent where the aim is to affect the outcome of the recognition application.

1139 Subparagraph (5) of paragraph 19M states that duties imposed by new paragraph 19M do not confer any rights on the worker, but do not affect any other rights that the worker may have.

1140 Subparagraph (6) of paragraph 19M provides for Ministers or ACAS to issue Codes of Practice in relation to new paragraph 19M.

1141 Paragraph 9 of the Schedule inserts after paragraph 19L new paragraph 19N. Subparagraph (1) of paragraph 19N sets out that a party may complain to the CAC where the other party has not complied with the duties in new paragraph 19M (unfair practices).

1142 Subparagraph (2) of paragraph 19N sets out the stages of the recognition process after which a complaint cannot be made.

1143 Subparagraphs (3), (4) and (5) of paragraph 19N require the CAC to decide within a period of 10 working days whether a complaint of an unfair practice is well-founded. Well-founded is defined as the CAC making a finding that an unfair practice has occurred. The CAC may extend the 10 working day period by notice giving reasons to the parties.

1144 Paragraph 9 of the Schedule inserts new paragraph 19O after new paragraph 19L. Subparagraph (1) of paragraph 19O stipulates that this paragraph applies where the CAC has found a complaint under new paragraph 19N (unfair practices) to be well founded.

1145 Subparagraph (2) of paragraph 19O states that the CAC must make a declaration that the complaint is well founded.

1146 Subparagraph (3) of paragraph 19O enables the CAC to order the offending party to take specified steps within a specified period.

1147 Subparagraph (4) of paragraph 19O sets out the circumstances where subparagraph (5) below applies.

1148 Subparagraph (5) of paragraph 19O sets out that the CAC may give notice to the union and the employer that it intends to hold a secret ballot of the workforce in the bargaining unit (excluding those who joined after the application day) to determine whether they want union recognition.

1149 Subparagraph (6) of paragraph 19O sets out that the CAC can make orders, issue notices or declarations at any time prior to certain events occurring under (a – d).

1150 Subparagraph (7) of paragraph 19O explains that any action that the CAC takes must be reasonable in order to mitigate the failure of a party where it has not complied with the requirements under paragraph 19M (unfair practices).

1151 Paragraph 9 of the new Schedule inserts new paragraph 19P after new paragraph 19L.

1152 New paragraph 19P sets out the circumstances, in cases where the CAC has found that an unfair practice complaint has been well founded, and that there has been use of violence, dismissal of a union official, or where the CAC has made an order in relation to rectifying an unfair practice and this has not been complied with, or makes another declaration under paragraph 19O(2) in relation to the same party, then the CAC may consider awarding the union recognition if the employer is the party in breach, or may consider dismissing the application where the party in breach is the union. New paragraph 19P subparagraph (6) clarifies that the CAC powers under paragraph 19P are in addition to those under paragraph 19O.

Powers of CAC on proceeding with application

1153 Paragraph 10 of the Schedule amends paragraph 22 of Schedule A1 (powers of the CAC to declare a union recognised where a majority of the workers are members of the union, subject to three qualifying conditions where the CAC must hold a recognition ballot instead). Paragraph 10 of the Schedule does this by inserting amendments so that workers who join the bargaining unit after the application day are not counted in the CAC's decision-making process. This includes disregarding any evidence that these workers may provide.

1154 Paragraph 11 of the Schedule amends paragraph 23 of Schedule A1 (CAC to order a ballot where the majority of workers are not members of the union) by inserting amendments so that workers who join the bargaining unit after the application day are not counted in the CAC's decision-making process.

Ballots

1155 Paragraph 12 of the Schedule amends paragraph 24 of Schedule A1 by inserting the ballot notification requirements (to notify the CAC that the party does not want the CAC to arrange a ballot) in the circumstance where the CAC has found that there has been an unfair practice and decides under new paragraph 19O subparagraph (5) to order a ballot. The notification period in such a case is 5 working days.

1156 Where notice of the ballot is given under paragraph 22 of Schedule A1 (where the union has a majority of workers in the bargaining unit) or under paragraph 23 of Schedule A1 (where the union does not have a majority of workers in the bargaining unit), the notification period remains at 10 working days. This may be extended at the discretion of the CAC.

1157 Paragraph 13 of the Schedule amends paragraph 25 (rules relating to ballot) of Schedule A1 by inserting that workers who joined the bargaining unit after the application day will not be eligible to vote in the ballot.

1158 Paragraph 14 of the Schedule amends paragraph 26 (duties of employer in relation to ballot) of Schedule A1. Currently the five duties under paragraph 26 refer to duties of the employer under a recognition ballot. As a result of this Bill, unions will be able to obtain access much earlier in the recognition process; they will be able to request it once the CAC notifies them that their application has been accepted. Protections for both parties in relation to unfair practices are also extended much earlier in the recognition process, again where the CAC notifies the parties that an application has been accepted.

1159 As a result, some of the duties on the employer will, following the passage of this Bill, relate to the recognition process as a whole, not just the ballot. That is why paragraph 14 of the Schedule removes references to the second, fourth and fifth duty from paragraph 26 of Schedule A1 as these duties, in relation to the recognition process as a whole, are now provided for elsewhere.

1160 Paragraph 14 of the Schedule also amends the duty on the employer to cooperate generally with the union and with the person appointed for the conduct of the ballot by specifying that no other duties in this Part of Schedule A1 can prejudice the generality of this duty.

1161 Paragraph 14 of the Schedule also inserts duties on the employer, where a ballot has been ordered by the CAC under new paragraph 19O(5) in circumstances where the CAC has found that there has been an unfair practice and where a ballot had been previously ordered: the employer is required to provide updated information in relation to the workers in the bargaining unit, including information regarding names and addresses not previously provided to the CAC, and information on those workers who have left.

1162 Paragraph 14 of the Schedule also deletes references to powers for Ministers and ACAS to issue Codes of Practice. This is because these powers now relate to access and unfair practices for the whole recognition process from the point an application is accepted by the CAC. These powers no longer solely relate to the ballot, hence why references are deleted in paragraph 26 of Schedule A1 (but see new paragraphs 19L(1) and 19M(6) of Schedule A1).

1163 Paragraph 15 of the Schedule amends paragraph 27 of Schedule A1 which applies where the employer has failed to comply with its duties under paragraph 26 of Schedule A1 and the ballot has not yet been held. Paragraph 27 of Schedule A1 gives the CAC the power to order the employer to take remedial steps and, if this is not complied with, the power to award recognition to the union.

1164 Paragraph 15 of the Schedule supplements paragraph 27 of Schedule A1 by inserting additional circumstances relating to breaches of obligations under Schedule A1.

1165 New subparagraph (2)7ZA is inserted requiring the CAC to take steps to cancel a ballot or if the ballot is held, to provide that it is to have no effect, in circumstances where the CAC has issued a declaration ordering a party to take remedial steps as a result of a breach of duty under an access agreement.

1166 New subparagraph (2)7ZB is inserted to address circumstances where a party has submitted a complaint that there has been an unfair practice and the ballot has not yet taken place. The CAC

may notify the parties and the QIP to postpone the date of the ballot until after the CAC's decision period under new paragraph 19N(5) of Schedule A1.

1167 New subparagraph (2)7ZC is inserted to address circumstances where the CAC has found that a complaint in relation to an unfair practice is well founded. If the ballot has not been held, the CAC must take steps to cancel it. If the ballot has been held, it is to have no effect.

1168 New subparagraph (2)7ZD is inserted to address circumstances where the CAC has given a declaration or order that an unfair practice complaint is well founded and where the CAC has previously made an order in relation to a cancelled or ineffective ballot: then that order has effect to the extent that the CAC specifies in its notice to the parties.

1169 Paragraph 16 of the Schedule deletes paragraphs 27A to 27F of Schedule A1.

1170 Paragraph 17 of the Schedule amends paragraph 28 (costs of the ballot) of Schedule A1. In particular, if the ballot is ordered under paragraph 19O(5) following a well-founded complaint about an unfair practice, the costs are to be borne in proportions determined by the CAC.

1171 Paragraph 18 of the Schedule amends paragraph 29 of Schedule A1 (result of ballot) to reflect that the CAC needs to announce the result of the ballot as soon as practicable following 5 working days after the close of the ballot or once an unfair practice complaint has been determined. Paragraph 29 of Schedule A1 is also amended to reflect that the CAC must declare statutory recognition where the union obtains a simple majority in the recognition ballot (the requirement for at least 40 per cent of workers in the bargaining unit to support recognition being removed).

General provisions about admissibility of applications

1172 Paragraph 19 of the Schedule amends paragraph 35 (admissibility of applications: existing collective agreement) of Schedule A1 by specifying that any worker that joins the bargaining unit after the application day is not counted for the purposes of the recognition process.

1173 Paragraph 19 of the Schedule also amends paragraph 35 of Schedule A1 to ensure that a recognition agreement agreed between an employer and a non-independent union following the receipt by the employer of a letter from an independent union formally requesting voluntary recognition, cannot block the independent union's subsequent application for statutory recognition. This is as long as the statutory recognition application is submitted by the independent union within 20 working days from the end of the period where the employer has to respond to the request for voluntary recognition under paragraph 11 or 12 of Schedule A1.

1174 Paragraph 20 of the Schedule amends paragraph 36 (admissibility of applications: minimum support) of Schedule A1 by inserting the 'required percentage test' of the number of workers in the bargaining unit who are members of the union and specifies that any worker who joined the bargaining unit after the application day is not to be counted for the purposes of the recognition process.

1175 Paragraph 21 of the Schedule amends paragraph 38 (admissibility of applications: overlapping bargaining unit) of Schedule A1 by inserting references to circumstances where the CAC has issued a declaration or order against either the union or employer in relation to non-compliance with an access agreement or an unfair practice. Paragraph 38 is also amended to specify that any worker who joined the bargaining unit after the application day is not to be counted for the purposes of the recognition process.

1176 Paragraph 22 of the Schedule amends paragraph 40 (timing of admissibility of applications: union not entitled to be recognised) of Schedule A1 by inserting, in addition to the circumstance where the union loses the recognition ballot, additional circumstances where the CAC declares

that the union has not been recognised if the CAC has found against the union in relation to non-compliance with an access agreement or is satisfied that the union has carried out an unfair practice.

1177 Paragraph 23 of the Schedule inserts a new paragraph 40A after paragraph 40 of Schedule A1. New paragraph 40A sets out that where the CAC has declared that the union is not entitled to be recognised, then any future application within a period of 3 years by that same union(s) for statutory recognition where the bargaining unit is the same or substantially the same will not be admissible. It should be noted that this does not change the current policy.

1178 Paragraph 24 of the Schedule amends paragraph 41 (timing of admissibility of applications: union required to cease bargaining arrangements) of Schedule A1 by updating references to circumstances where the CAC has found against a union in relation to non-compliance with an access agreement or that the union has committed an unfair practice as part of a derecognition process.

General provisions about validity of applications

1179 Paragraph 25 of the Schedule amends paragraph 44 (validity of applications: existing collective agreement) of Schedule A1 by specifying that any worker who joins the bargaining unit after the application day will not be counted for the purposes of the trade union recognition process.

1180 Paragraph 25 also inserts after subparagraph (5) of paragraph 44 of Schedule A1 a new subparagraph (6) to ensure that a recognition agreement agreed between an employer and a non-independent union following receipt by the employer of a letter from an independent union formally requesting voluntary recognition cannot block the independent union's subsequent application for statutory recognition. This is as long as the statutory recognition application is submitted by the independent union within 20 working days from the end of the period where the employer has to respond to the request for voluntary recognition under paragraph 11 or 12 of Schedule A1.

1181 Paragraph 26 of the Schedule amends paragraph 45 (validity of applications: minimum support) of Schedule A1 by inserting references to the 'required percentage" of the workers in the bargaining unit and specifying that any worker who joined the bargaining unit after the application day is not counted for the purposes of the recognition process.

1182 Paragraph 27 of the Schedule amends paragraph 46 of Schedule A1 (validity of applications: overlapping bargaining unit) by clarifying that any worker who joins the bargaining unit after the application day will not be counted for the purposes of the trade union recognition process.

1183 Paragraph 28 of the Schedule makes consequential amendments to paragraph 48 of Schedule A1 (validity of applications: union not entitled to be recognised years).

1184 Paragraph 29 of the Schedule inserts after paragraph 48 of Schedule A1 new paragraph 48A. New paragraph 48A relates to applications where the CAC is asked to determine the bargaining unit, either because one of the parties does not believe the original bargaining unit is appropriate, or because there has been significant change to it or where the original bargaining unit may not longer exist. Where the CAC in such applications has found that a union has breached an access agreement or has committed an unfair practice, the CAC can then declare that the union is not entitled to be recognised and cannot re-apply for recognition in relation to that same or similar bargaining unit for 3 years.

1185 Paragraph 30 of the Schedule makes consequential amendments to paragraph 49 of Schedule A1 (validity of applications: union required to cease bargaining arrangements years).

Competing applications

1186 Paragraph 31 of the Schedule amends paragraph 51 (competing applications) of Schedule A1 by deleting the reference to the 10% test and substituting this with the 'required percentage test'.

Voluntary recognition

1187 Paragraph 32 of the Schedule amends paragraph 52 (voluntary recognition) of Schedule A1 by inserting references to circumstances where the CAC has found that either an employer or union has breached an access agreement or committed an unfair practice.

Part 3 – Changes affecting bargaining unit after recognition

Access agreements

1188 Paragraph 33 of the Schedule inserts after paragraph 81 new paragraphs 81A to 81F in relation to access agreements. This mirrors paragraph 8 of the Schedule in relation to statutory recognition applications under paragraph 11 or 12 of Schedule A1. However, paragraph 33 of the Schedule, and new paragraphs 81A to 81F that it inserts, relate to applications to the CAC under paragraph 66 or 75 to determine the bargaining unit where one of the parties believes the original bargaining unit is no longer appropriate or where there have been significant changes to it, including where the original bargaining unit may not exist. Subparagraph (1) of new paragraph 81A makes this clear.

1189 Subparagraph (2) of 81A provides that the union can give notice to the CAC and the employer within the access request period that it wants access to the relevant workers in the bargaining unit.

1190 Subparagraphs (3) and (4) of 81A define who the relevant workers are, by reference either to the original bargaining unit or any new bargaining unit that the CAC decides is appropriate.

1191 Subparagraph (5) of 81A defines the access request period of 5 working days.

1192 Subparagraph (6) of 81A defines that a recognition application under Schedule A1 paragraph 66 or 75 is in progress unless one of a number of events (a-d) has occurred.

1193 Paragraph 33 of the Schedule inserts after paragraph 81 of Schedule A1 a new paragraph 81B. Subparagraph (1) of 81B states that new paragraph 81B applies when the CAC accepts an application to determine the bargaining unit under Schedule A1 paragraph 66 or 75, the application is in progress and the union requests access.

1194 Subparagraph (2) of 81B sets out that the CAC must try to help the parties reach an agreement on access terms during the negotiation period.

1195 Subparagraph (3) of 81B sets out that the negotiation period is 15 working days starting the following day after the union has submitted its request to the employer and the CAC for access.

1196 Subparagraph (4) of 81B provides that the CAC can give notice to the parties that the negotiation period has come to an end where the CAC concludes that there is no reasonable prospect of the parties agreeing access terms.

1197 Subparagraph (5) of 81B sets out that the CAC's notice must contain reasons for the CAC reaching that conclusion.

1198 Subparagraph (6) of 81B provides flexibility enabling the CAC to bring forward or put back the date where the negotiation period ends where both parties request this.

1199 Paragraph 33 of the Schedule inserts after paragraph 81 of Schedule A1 a new paragraph 81C. Subparagraph (1) of 81C states that new paragraph 81C applies when the CAC accepts an application to determine the bargaining unit under Schedule A1 paragraph 66 or 75, the union has requested access, the parties have not reached agreement within the 15 working days negotiation period on a voluntary access agreement and the application is in progress.

1200 Subparagraph (2) of 81C set out that the CAC must decide whether the CAC can have access to the workers and on what terms.

1201 Subparagraph (3) of 81C sets out that the adjudication period for this decision is 10 working days after the expiry of the negotiation period. This can be extended by the CAC giving notice and reasons to the parties.

1202 Subparagraph (4) of paragraph 81C clarifies that any access terms that the CAC imposes must grant the union reasonable access to inform the workers of the application under paragraph 66 or 75 of Schedule A1, or any resulting ballot, and seek their support and views on the issues involved.

1203 Paragraph 33 of the Schedule inserts after paragraph 81 of Schedule A1 a new paragraph 81D. Subparagraph (1) of 81D states that new paragraph 81D applies when an access agreement is entered and the application under paragraph 66 or 75 of Schedule A1 is in progress.

1204 Subparagraph (2) of paragraph 81D defines an access agreement, the terms of which may be agreed by the parties or decided by the CAC

1205 Subparagraph (3) of paragraph 81D requires the parties to comply with the access agreement.

1206 Subparagraph (4) of paragraph 81D requires that the employer must not make an offer to the workers that could induce them not to attend a relevant meeting (as to which see subparagraph (8)) with the union and which is not reasonable.

1207 Subparagraph (5) of paragraph 81D states that the employer must not (for that reason) discipline a worker who attended or indicated that they wished to attend a meeting with the union.

1208 Subparagraph (6) of paragraph 81D defines who is a relevant worker in the bargaining unit in the case of an application under paragraph 66 or 75 of Schedule A1, by reference either to the original bargaining unit or any new bargaining unit that the CAC decides is appropriate.

1209 Subparagraph (7) of paragraph 81D states that where there is more than one new bargaining unit decided upon by the CAC, references to relevant workers relate to workers constituting each bargaining unit separately.

1210 Subparagraph (8) of paragraph 81D defines a relevant meeting, that is a meeting between the workers and the union, as organised in compliance with the access agreement or a CAC order and where the employer is required to permit the workers to attend.

1211 Subparagraph (9) of paragraph 81D clarifies that the duties imposed on the employer under subparagraphs (4) and (5) of paragraph 81D do not confer rights on a worker, but also that they do not affect any other rights that the worker may have.

1212 Subparagraph (10) of paragraph 81D sets out that any provision in an access agreement that requires personal data to be disclosed to someone other than the Suitable Independent Person (SIP) who manages communications or the Qualified Independent Person (QIP) who oversees a ballot, has no effect.

1213 Subparagraph (11) of paragraph 81D sets out that personal data has the same meaning as in the Data Protection Act 2018.

1214 Subparagraph (12) of paragraph 81D stipulates that an access agreement is not a legally enforceable contract and that is also the case where the access agreement forms part of a collective agreement. The remedies for breach are therefore those provided in the legislation.

1215 Paragraph 33 inserts after paragraph 81 of Schedule A1 a new paragraph 81E. Subparagraph (1) of 81E states that the CAC may issue an order where the CAC is satisfied that a party has failed to fulfil duties imposed on it by new paragraph 81D and the application under paragraph 66 or 75 of Schedule A1 is still in progress.

1216 Subparagraph (2) of paragraph 81E provides that the CAC may order a party to take reasonable remedial steps to remedy any failure within a reasonable period of time.

1217 Subparagraph (3) of paragraph 81E sets out the circumstances where subparagraphs 4 and 5 of new paragraph 81E apply, being that an order made under subparagraph (2) has not been complied with, an application under paragraph 66 or 75 is in progress and the CAC has given notice of a decision as to an appropriate new bargaining unit.

1218 Subparagraph (4) of paragraph 81E sets out that if the party in breach is the employer, the CAC may declare that the union(s) has been recognised in relation to the new bargaining unit(s).

1219 Subparagraph (5) of paragraph 81E sets out that if the party in breach is the union, the CAC may declare that the union is not recognised in relation to the new bargaining unit(s).

1220 Paragraph 33 inserts after paragraph 81 of Schedule A1 a new paragraph 81F. This sets out the powers for the Secretary of State or ACAS to issue Codes of Practice relating to access, including what is reasonable access and clarifying the duty of the employer in relation to inducements.

Unfair practices

1221 Paragraph 34 of the Schedule inserts after new paragraph 81F new paragraphs 81G to 81J in relation to unfair practices. This mirrors paragraph 9 of the Schedule in relation to statutory recognition applications under paragraph 11 or 12 of Schedule A1. However, paragraph 34 of the Schedule, and new paragraphs 81G to 81J that it inserts, relate to applications to the CAC under paragraphs 66 or 75 to determine the bargaining unit where one of the parties believes the original bargaining unit is no longer appropriate or where there have been significant changes to it, including where the original bargaining unit may not exist.

1222 Subparagraph (1) of paragraph 81G sets out that the parties must refrain from using any unfair practice.

1223 Subparagraph (2) of paragraph 81G defines what constitutes an unfair practice. This follows the current definition of an unfair practice. It should be noted that Ministers have the power under paragraph 166B of Schedule A1 to widen in future the definition of what constitutes an unfair practice.

1224 Subparagraph (3) of paragraph 81G defines what is the relevant ballot and the relevant workers.

1225 Subparagraph (4) of paragraph 81G defines what is an outcome-specific offer, which is an offer to pay money or equivalent where the aim is to affect the outcome of the recognition application.

1226 Subparagraph (5) of paragraph 81G states that duties imposed by new paragraph 81G do not confer any rights on the worker, but do not affect any other rights that the worker may have.

1227 Subparagraph (6) of paragraph 81G provides for Ministers or ACAS to issue Codes of Practice in relation to new paragraph 81G (unfair practices).

1228 Paragraph 34 of the Schedule inserts after new paragraph 81G new paragraph 81H. Subparagraph (1) of paragraph 81H sets out that a party may complain to the CAC where the other party has not complied with the duties in new paragraph 81G (unfair practices).

1229 Subparagraph (2) of paragraph 81H sets out that a complaint may not be made after certain stages of the recognition process. These stages, termed 'conclusion events', are set out in subparagraph (3).

1230 Subparagraph (4) of paragraph 81H sets out that the complaint period is extended from 1 working day to 5 working days after the closing of the ballot.

1231 Subparagraph (5), (6) and (7) of paragraph 81H require the CAC to decide within a period of 10 working days whether a complaint of an unfair practice is well-founded. Well-founded is defined as the CAC making a finding that an unfair practice has occurred. The CAC may extend the 10 working day period by notice giving reasons to the parties.

1232 Paragraph 34 of the Schedule inserts new paragraph 81I after new paragraph 81H. Subparagraph (1) of paragraph 81I stipulates that this paragraph applies where the CAC has found a complaint under new paragraph 81H (unfair practices) in relation to an application to the CAC to determine the bargaining unit under paragraph 66 or 75 of Schedule A1 to be well founded.

1233 Subparagraph (2) of paragraph 81I states that the CAC must make a declaration that the complaint is well founded.

1234 Subparagraph (3) of paragraph 81I enables the CAC to order the offending party to take specified steps within a specified period.

1235 Subparagraph (4) of paragraph 81I sets out the circumstances where subparagraph (5) below applies: where the CAC determines that the original bargaining unit is not appropriate, has given a decision about a new unit and informed the union of a ballot.

1236 Subparagraph (5) of paragraph 81I sets out that the CAC may give notice to the union and the employer that it intends to hold a secret ballot of the workforce in the new bargaining unit(s) to determine whether they want union recognition.

1237 Subparagraph (6) of paragraph 81I sets out that the CAC can make orders, issue notices or declarations at any time prior to certain events occurring under (a – d).

1238 Subparagraph (7) of paragraph 81I explains that any action that the CAC takes must be reasonable in order to mitigate the failure of a party where it has not complied with the requirements under paragraph 81G (unfair practices). Subparagraph (8) allows the CAC to make more than one order under this paragraph.

1239 Paragraph 34 of the new Schedule inserts new paragraph 81J after new paragraph 81I.

1240 New paragraph 81J sets out the circumstances, in cases where the CAC has found that an unfair practice complaint has been well founded, and that there has been use of violence, dismissal of a union official, or where the CAC has made an order in relation to rectifying an unfair practice and this has not been complied with, or makes another declaration under paragraph 81I(2) in relation to the same party, then the CAC may consider awarding the union recognition if the employer is the party in breach, or may consider dismissing the application where the party in breach is the union. New paragraph 81J subparagraph (6) clarifies that the CAC powers under paragraph 81J are in addition to those under paragraph 81I.

Powers of CAC where CAC decides new unit appropriate

1241 Paragraph 35 of the Schedule amends paragraph 86 (new bargaining unit: assessment of support) of Schedule A1 by replacing the 10% test with the required percentage test and deleting the second test where the union has to show that there is likely to be majority support in the bargaining unit for union recognition.

1242 Paragraph 36 of the Schedule amends paragraph 87 (powers of CAC where majority of workers are members of the union) of Schedule A1 by deleting the references to the two tests that a union must meet on application to the CAC (the 10% membership test and the second test to demonstrate that there is a likely majority in support of trade union recognition). This is replaced by a new subparagraph (1) to apply paragraph 87 where the CAC is satisfied that a majority of the workers in the new unit are members of the union.

1243 Paragraph 37 of the Schedule amends paragraph 88 (powers of CAC where majority of workers are not members of the union) of Schedule A1 by deleting the reference to the requirement for the second test on application, while modifying the reference to the first requirement from 10% of the bargaining unit to the 'required percentage test'.

1244 Paragraph 38 of the Schedule amends paragraph 89 (ballots) of Schedule A1 by modifying references to when ballots are held in relation to applications under paragraphs 66 and 75, to reflect changes that are also made in relation to applications under paragraphs 11 and 12, in particular in relation to the provision of information about workers in the new bargaining unit.

1245 Paragraph 39 of the Schedule amends paragraph 93 (withdrawal of application) of Schedule A1 by modifying references to circumstances when a party cannot withdraw its application under paragraphs 66 or 75 of Schedule A1 (i.e. after the CAC has made declarations under certain circumstances).

Part 4 - Derecognition

Access agreements

1246 Paragraph 40 of the Schedule inserts after paragraph 116 new paragraphs 116A to 116F in relation to access agreements.

1247 Subparagraph (1) of 116A states that new paragraph 116A applies when the CAC accepts a derecognition application under paragraph 106, 107 or 112, and the application is in progress.

1248 Subparagraph (2) of 116A provides that the union can give notice to the CAC and the employer within the access request period that it wants access to the relevant workers in the bargaining unit.

1249 Subparagraph (3) of 116A defines the access request period of 5 working days.

1250 Subparagraph (4) of 116A defines a derecognition application to be in progress for the purposes of paragraphs 116A to 116E unless one of a number of events (a-e) has occurred.

1251 Subparagraph (1) of 116B states that this paragraph applies if the CAC accepts a derecognition application, and the application is in progress, and the union requests access to the workers.

1252 Subparagraph (2) of 116B sets out that the CAC must try to help the parties reach an agreement during the negotiation period as to the terms on which there will be access to the workers.

1253 Subparagraph (3) of 116B sets out that the negotiation period is 15 working days starting the day after the union has submitted its request to the employer for access.

1254 Subparagraph (4) of 116B provides that the CAC can give notice to the parties that the negotiation period has come to an end where the CAC concludes that there is no reasonable prospect of the parties agreeing access terms.

1255 Subparagraph (5) of 116B sets out that the CAC's notice must contain reasons for the CAC reaching that conclusion.

1256 Subparagraph (6) of 116B provides flexibility enabling the CAC to bring forward or put back the date when the negotiation period ends where both parties request this.

1257 Subparagraph (1) of 116C states that this paragraph applies if the CAC accepts a derecognition application, the application is in progress, the union requests access, and there has not, during the negotiating period, been agreement on the terms of access to the workers.

1258 Subparagraph (2) of 116C states that the CAC must decide whether the union can have access and on what terms, during the adjudication period.

1259 Subparagraph (3) of 116C defines the adjudication period for this decision as 10 working days after the expiry of the negotiation period. This can be extended by the CAC giving notice and reasons to the parties.

1260 Subparagraph (4) of 116C clarifies that any access terms that the CAC imposes must grant the union reasonable access to inform the workers of the object of the application for derecognition or any related ballot and seek their support and views on the issues involved.

1261 Subparagraph (1) of 116D states that this paragraph applies if a derecognition application is in process and an access agreement is agreed.

1262 Subparagraph (2) of 116D defines an access agreement.

1263 Subparagraph (3) of 116D requires the parties to comply with the access agreement.

1264 Subparagraph (4) of 116D requires that the employer must not make an offer to the workers that could induce them not to attend a meeting with the union and which is not reasonable.

1265 Subparagraph (5) of 116D states that the employer must not discipline a worker who attended or indicated that they wished to attend a relevant meeting with the union.

1266 Subparagraph (6) of 116D defines a relevant meeting for the purposes of subparagraphs (4) and (5).

1267 Subparagraph (7) of 116D clarifies that the duties imposed by the employer under subparagraphs (4) and (5) of paragraph 116D do not confer rights on a worker, but also that they do not affect any other rights that the worker may have.

1268 Subparagraph (8) of 116D clarifies that any provision in an access agreement that requires personal data to be disclosed to someone other than a person appointed under paragraph 117 of Schedule A1 to conduct a ballot, has no effect.

1269 Subparagraph (9) of 116D clarifies that "personal data" has the same meaning as in section 3 of the Data Protection Act 2018.

1270 Subparagraph 10 of 116D stipulates that an access agreement is not a legally enforceable contract and that is also the case where the access agreement forms part of a collective agreement. The remedies for breach are therefore as set out in the legislation.

1271 Subparagraph (1) of 116E states that this paragraph applies where the CAC is satisfied that a party has failed to fulfil duties imposed on it by new paragraph 116D and the derecognition application is still in progress.

1272 Subparagraph (2) of 116E provides that the CAC may order a party to take reasonable remedial steps to remedy any failure within a reasonable period of time.

1273 Subparagraph (3) of 116E sets out the circumstances where subparagraphs 4 and 5 of new paragraph 116E apply, which is where the CAC is satisfied that a party has failed to comply with an order under subparagraph (2) while the application remains in process.

1274 Subparagraph (4) of 116E sets out that where the employer has failed to comply, the CAC may refuse the application for derecognition under paragraph 106 or 107.

1275 Subparagraph (5) of 116E sets out that where the union has failed to comply, the CAC may declare that the bargaining arrangements are to cease to have effect.

1276 Subparagraphs 1 and 2 of 116F sets out the powers for the Secretary of State and ACAS to issue Codes of Practice relating to access, including what is reasonable access and clarifying the duty of the employer in relation to inducements.

Unfair practices

1277 Paragraph 41 of the Schedule inserts after new paragraph 116F new paragraphs 116G – 116K in relation to unfair practices.

1278 Subparagraph (1) of 116G sets out that the parties must refrain from using any unfair practice in relation to a derecognition application under paragraph 106, 107 or 112.

1279 Subparagraph (2) of 116G defines what constitutes an unfair practice. This follows the current definition of an unfair practice. It should be noted that Ministers have the power under paragraph 166B of Schedule A1 to widen in future the definition of what constitutes an unfair practice.

1280 Subparagraph (3) of 116G defines what is the relevant ballot and the relevant workers, for the purposes of the definition of an unfair practice in subparagraph (2).

1281 Subparagraph (4) of 116G defines what is an outcome-specific offer, which is an offer to pay money or equivalent where the aim is to affect the outcome of the derecognition application.

1282 Subparagraph (5) of 116G confirms that references to a party include the worker or workers making the derecognition application, where this is made under paragraph 112 of Schedule A1.

1283 Subparagraph (6) of 116G states that duties imposed by new paragraph 116G do not confer any rights on a worker, and do not affect any other rights that the worker may have.

1284 Subparagraph (7) of 116G provides for Ministers or ACAS to issue Codes of Practice in relation to new paragraph 116G.

1285 Paragraph 116H sets out the process for complaints to the CAC regarding non-compliance with the requirements of paragraph 116G.

1286 Subparagraph (1) of 116H sets out that a party may complain to the CAC where the other party has not complied with the duties in new paragraph 116G.

1287 Subparagraph (2) of 116H sets out the stages of the derecognition process after which a complaint cannot be made.

1288 Subparagraphs 3, 4 and 5 of 116H require the CAC to decide within a period of 10 working days whether a complaint of an unfair practice is well-founded. Well-founded is defined as the

CAC making a finding that an unfair practice has occurred (irrespective of the effect of the practice). The CAC may extend the 10 working day period by notice giving reasons to the parties.

1289 Paragraph 116I sets out the process if the CAC finds that a complaint under paragraph 116H is well-founded.

1290 Subparagraph (2) of 116I states that the CAC must make a declaration that the complaint is well founded.

1291 Subparagraph (3) of 116I enables the CAC to order the offending party to take specified steps within a specified period.

1292 Subparagraph (4) of 116I sets out the circumstances where subparagraph (5) below applies: where the CAC has informed the union of a ballot.

1293 Subparagraph (5) of 116I sets out that the CAC may make arrangements for the holding of a secret ballot of the workforce in the bargaining unit to determine whether they want the bargaining arrangements to be ended.

1294 Subparagraph (6) of 116I sets out that the CAC can make orders, issue notices or declarations at any time prior to certain events occurring under (a-d).

1295 Subparagraph (7) of 116I explains that any action that the CAC requires must be reasonable in order to mitigate the failure of a party where it has not complied with the requirements under paragraph 116G (unfair practices).

1296 Subparagraph (8) of 116G clarifies that the CAC can make multiple orders under subparagraph (3).

1297 Paragraph 116J sets out the circumstances, in cases where the CAC has found that an unfair practice complaint has been well founded, and that there has been use of violence, dismissal of a union official, or where the CAC has made an order in relation to rectifying an unfair practice and this has not been complied with, or makes another declaration under paragraph 116I(2) in relation to the same party, then the CAC may consider refusing the application under paragraph 106 or 107 or order the employer to refrain from campaigning in relation to an application under paragraph 112, if the employer is the party in breach. If the party in breach is the union, subparagraph (5) clarifies that the CAC may issue a declaration that the bargaining arrangements are to cease to have effect on a date specified by the CAC. If the application is made by workers under paragraph 112 and the party in breach is any such worker, the CAC may under subparagraph (6) consider refusing the application. Subparagraph (7) clarifies that the CAC powers under paragraph 116J are in addition to those under paragraph 116I.

1298 Paragraph 116K relates to where the CAC has made an order against the employer in relation to a derecognition application by workers under paragraph 112.

1299 Subparagraph (2) of 116K states that the worker making the application and the union are entitled to enforce obedience to the order. Subparagraph (3) states how that order can be enforced.

Ballots

1300 Paragraph 42 of the Schedule makes minor amendments to paragraph 117 of Schedule A1 (ballots: general) to refer to a ballot arranged under paragraph 116(3) as well as under paragraph 117.

1301 Paragraph 43 of the Schedule amends paragraph 118 of Schedule A1 (duties of employer in relation to ballot). Currently the five duties under paragraph 118 refer to duties of the employer

under a derecognition ballot. As a result of this Bill, unions will be able to obtain access earlier in the derecognition process; they will be able to request it once the CAC notifies them that an application has been accepted. Protections for both parties in relation to unfair practices are also extended earlier in the derecognition process, again where the CAC notifies the parties that an application has been accepted.

1302 As a result, some of the duties on the employer will, following the passage of this Bill, relate to the derecognition process as a whole, not just the ballot. That is why paragraph 43 of the Schedule removes references to the second, fourth and fifth duties from paragraph 118 of Schedule A1 as these duties, in relation to the derecognition process as a whole, are now provided for elsewhere.

1303 Paragraph 43 of the Schedule also amends the duty on the employer to cooperate generally with the union and with the person appointed for the conduct of the ballot by specifying that no other duties in this Part of Schedule A1 can prejudice the generality of this duty.

1304 Paragraph 43 of the Schedule inserts duties on the employer, where a ballot has been ordered by the CAC under new paragraph 116I in circumstances where the CAC has found that there has been an unfair practice and where a ballot had been previously ordered: the employer is required to provide updated information in relation to the workers in the bargaining unit, including information regarding names and addresses not previously provided to the CAC, and information on those workers who have left.

1305 Paragraph 43 of the Schedule also deletes references to powers for Ministers and ACAS to issue Codes of Practice. This is because these powers now relate to access and unfair practices for the whole of the recognition and derecognition processes from the point an application is accepted by the CAC. These powers no longer solely relate to the ballot, hence why references are deleted in paragraph 118 of Schedule A1.

1306 Paragraph 44 of the Schedule amends paragraph 119 of Schedule A1 which applies where the employer has failed to comply with its duties under paragraph 118 of Schedule A1 and the ballot has not yet been held. Paragraph 119 of Schedule A1 gives the CAC the power to order the employer to take remedial steps and, if this is not complied with, the power to refuse the application for derecognition. Where the application is made under paragraph 112, and an order is made against the employer, the workers making the application can enforce it as provided in subparagraph (6).

1307 Paragraph 45 of the Schedule supplements paragraph 119 of Schedule A1 by providing in paragraph 119ZA of Schedule A1 that where a union has been informed that a ballot is to be held under para. 117(11), that ballot is to be cancelled or to have no effect if already held in circumstances where the derecognition application has been refused or a declaration has been made under 116E.

1308 New subparagraph 119ZB is inserted by paragraph 45 to address circumstances where a party has submitted a complaint that there has been an unfair practice and the ballot has not yet taken place. The CAC may notify the parties and the qualified independent person to postpone the date of the ballot until after the CAC's decision period under new paragraph 116H of Schedule A1.

1309 New subparagraph 119ZC is inserted by paragraph 45 to address circumstances where the CAC has found that a complaint in relation to an unfair practice is well founded. If the ballot has not been held, the CAC must take steps to cancel it. If the ballot has been held, it is to have no effect.

1310 New subparagraph 119ZD is inserted by paragraph 45 to address circumstances where the CAC has given a declaration or order that an unfair practice complaint is well founded and where the CAC has previously made an order in relation to a cancelled or ineffective ballot: then that order has effect, to the extent that the CAC specifies in its notice to the parties, as if made in relation to the ballot arranged under paragraph 116I(5).

1311 Paragraph 46 of the Schedule deletes paragraphs 119A to 119I of Schedule A1. Unfair practices are now addressed earlier in Schedule A1.

1312 Paragraph 47 of the Schedule amends paragraph 120 (costs of the ballot) of Schedule A1. In particular, if the ballot is ordered under paragraph 116I(5) following a well-founded complaint about an unfair practice, the costs are to be borne in proportions determined by the CAC.

1313 Paragraph 48 of the Schedule amends paragraph 121 of Schedule A1 (result of ballot) to reflect that the CAC needs to announce the result of the ballot as soon as practicable following 5 working days after the close of the ballot or once an unfair practice complaint has been determined.

Derecognition where recognition is automatic

1314 Paragraph 49 of the Schedule amends paragraph 122 (derecognition where recognition automatic on agreed terms) of Schedule A1 by inserting the correct references where the CAC issues an order in relation to a breach by a party regarding an access agreement or where they have committed an unfair practice.

1315 Paragraph 50 of the Schedule amends paragraph 123 (derecognition where recognition automatic on specified terms) of Schedule A1 by inserting the correct references where the CAC issues an order in relation to a breach by a party regarding an access agreement or where they have committed an unfair practice.

1316 Paragraph 51 of the Schedule amends paragraph 124 (derecognition where recognition automatic following changes to the bargaining unit) of Schedule A1 by inserting the correct references where the CAC has declared a union recognised where the employer has failed to comply with an order in relation to access or in relation to an unfair practice.

1317 Paragraph 52 of the Schedule inserts new paragraph 132A (on access agreements) after paragraph 132 of Schedule A1, which sets out the steps the CAC must take when considering an application for union derecognition by an employer under paragraph 128 of Schedule A1. New paragraph 132A sets out those relevant paragraphs in relation to access agreements (paragraphs 116A to 116E) that apply to such derecognition applications from the employer.

1318 Paragraph 53 of the Schedule inserts new paragraph 132B (on unfair practices) after new paragraph 132A. New paragraph 132B sets out those relevant paragraphs in relation to unfair practices (paragraphs 116G to 116K) that apply to such derecognition applications from the employer.

1319 Paragraph 54 of the Schedule amends paragraph 133 (ballot on derecognition) of Schedule A1by ensuring under subparagraph (1) of paragraph 133 of Schedule A1 that the derecognition ballot arrangements, set out in paragraph 117 of Schedule A1, apply in relation to derecognition applications received from the employer, as well as those received by workers.

1320 Subparagraph (3) of paragraph 54 of the Schedule also amends references into subparagraph (2) of paragraph 133 of Schedule A1.

Derecognition where union not independent

1321 Paragraph 55 of the Schedule inserts new paragraph 146A on access agreements after paragraph 146 of Schedule A1. This sets out the steps the CAC must take when considering an application by workers for derecognition of a non-independent union under paragraph 137 of Schedule A1. New paragraph 146A sets out those relevant paragraphs in relation to access agreements (paragraphs 116A to 116E) that apply to such derecognition applications by workers of non-independent unions.

1322 Paragraph 56 of the Schedule inserts new paragraph 146B (on unfair practices) after new paragraph 146A. New paragraph 146B sets out those relevant paragraphs in relation to unfair practices (paragraphs 116G to 116K) that apply to such derecognition applications from the employer.

1323 Paragraph 57 of the Schedule amends paragraph 157 (ballot on derecognition) of Schedule A1 by inserting correct references.

Part 5 – Meaning of "the required percentage"

1324 Paragraph 58 of the Schedule inserts after paragraph 171A of Schedule A1 a new paragraph 171B that sets out provisions in relation to the "required percentage".

1325 Subparagraph (1) of new paragraph 171B clarifies that "the required percentage" means 10% of the membership of the bargaining unit.

1326 Subparagraph (2) provides that the Secretary of State may bring forward regulations to vary this required percentage to a percentage between 2% and 10%.

1327 Subparagraph (3) provides that these regulations must be made by statutory instrument and may make provision for supplementary, incidental, saving or transitional matters and may make different provision for different cases.

1328 Subparagraph (4) requires that any regulations must be made under the affirmative procedure needing approval by both Houses of Parliament.

Part 6 – Consequential amendments

1329 Paragraph 59 of the Schedule makes a number of consequential amendments to the Employment Relations Act 2004 (section 9, deleting sections 10 and 13) while making changes to paragraph 23 of Schedule 1 of the 2004 Act.

Trade union finances

Clause 58: Political funds: requirement to pass political resolution

1330 This clause amends Section 73 of the Trade Union and Labour Relations (Consolidation) Act 1992 (passing and effect of political resolution) to remove the requirement for a political resolution to be renewed every 10 years in order for a trade union to maintain a political fund.

1331 Subsection (a) removes section 73(3) of the Trade Union and Labour Relations (Consolidation) Act 1992, which states that a political resolution shall cease to have effect at the end of the 10-year period, beginning on the date when the ballot was passed.

1332 Subsection (b) amends section 73(4) of the Trade Union and Labour Relations (Consolidation) Act 1992 to reflect that a political resolution continues to have effect beyond the end of the 10-year period, except in the instance outlined in section 73(4) where a ballot on a new political resolution is held.

Clause 59: Requirement to contribute to political fund

1333 This clause repeals the requirement for trade unions to opt out their members from contributions to political funds, unless they have expressly requested to opt in. This will return (in substance) to the position before the passage of the Trade Union Act 2016, with trade union members being automatically opted in to contribute to a political fund, unless they expressly opt out. In particular, it amends section 82 and 84 of the Trade Union and Labour Relations (Consolidation) Act 1992.

1334 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) to (7), set out below.

1335 Subsection (2) amends section 82 (1)(ca)(i) of the Trade Union and Labour Relations (Consolidation) Act 1992 to change it to reflect the opt in regime.

1336 Subsection (3) sets out replacement text for section 84 of the Trade Union and Labour Relations (Consolidation) Act 1992, to update the requirements for an opt-out process in relation to political funds, and inserts a new section 84A, which requires trade unions to give notice to its members of their right to opt-out of contributing to the union's political fund every ten years.

1337 Subsection (4) retains an amended requirement for the employer to not deduct a contribution from the member where they are not a contributor to the fund or where their opt out notice has been given but is not yet in force.

1338 Subsections (5) and (6) make consequential amendments to section 94, allowing unions to make rules for the purposes of complying with section 84A (opt-out information notices) that may provide for the notice to be given to overseas members, and section 299 of the Trade Union and Labour Relations (Consolidation) Act 1992.

1339 Subsection (7) repeals subsections (1), (2) and (5) to (8) of section 11 of the Trade Union Act 2016. It also repeals paragraph (7)(3) and paragraph (9) of Schedule 4 to that Act.

New Section 84

1340 Subsection (1) sets out a definition of a "contributor" to political funds as a trade union member unless they have given an opt-out notice that has effect.

1341 Subsection (2) defines an "opt-out notice".

1342 Subsection (3) provides that an opt-out notice has effect on and after the "relevant day" unless the member withdraws that notice.

1343 Subsection (4) defines a "relevant day". If a political resolution is passed on a ballot held where no political resolution is already in effect, and the opt-out notice is given before the end of the period of four weeks beginning with the day the union provides an opt-out information notice to the member under section 84A, then the relevant day is the day on which the opt-out notice is given. Otherwise, the relevant day is the 1 January in the year following the year in which the opt-out notice is given.

1344 Subsection (5) states that a member of a trade union is able to withdraw an opt-out notice by providing the union with notice of the withdrawal (a "withdrawal notice").

1345 Subsection (6) describes how a member of a trade union can serve an opt-out notice or a withdrawal notice on the trade union.

New Section 84A

1346 Section 84A requires that trade unions give notice to its members of their right to opt-out of contributing to the union's political fund within eight weeks from the day a political resolution is passed, and then every ten years.

1347 Subsection (1) specifies when the opt-out reminder must be given to each member: (a) within eight weeks beginning with the day after which a political resolution was passed by members under section 73; and (b) within the eight weeks that succeed the ten year anniversary of the day after which a political resolution was passed, and each successive period of ten years after this date, unless the political resolution is rescinded or ceases to have an effect.

1348 Subsection (2) defines what an "opt-out information notice" is and specifies what must be stated in it. Members must be informed: (a) of their right to not contribute their union's political fund; and (b) that they can provide an opt-out notice to exercise this right.

1349 Subsection (3) specifies that opt-out information notices must be provided to members in accordance with the rules of the union approved for that purpose by the Certification Officer.

1350 Subsection (4) requires that the Certification Officer has regard to the existing practice and character of a union when approving the rules required under Subsection (3).

1351 Subsection (5) specifies the information that a union is required to provide to the Certification Officer at the end of the eight-week period in which an opt-out information notice is to be sent to members: (a) a copy of the opt-out information notice; or (b) if a union is issuing multiple forms of an opt-out information notice, each form of the notice.

1352 Subsection (6) allows a trade union member to make a complaint to the Certification Officer if they believe that a union has not complied with its obligations under Section 84A.

1353 Subsection (7) enables the Certification Officer, where they are satisfied on a complaint under Subsection (6) that the trade union has failed to comply with section 84A, to make an order remedying the failure as the Certification Officer thinks just under the circumstances.

1354 Subsection (8) outlines the Certification Officer's investigatory capacities when considering a complaint made under Subsection (6): (a) allows the Certification Officer to make any enquiries as its sees fit; (b) requires the Certification Officer to provide both the union and the member involved in the complaint an opportunity to make a written representation; (c) also allows the Certification Officer to provide both the union and the member involved in the complaint an opportunity to make an oral representation.

1355 Subsection (9) states that an order made by the Certification Officer against a union under Section 84A can be enforced in the same way as an order of the court.

Clause 60: Deduction of trade union subscriptions from wages in public sector

1356 This clause repeals section 116B of the Trade Union and Labour Relations (Consolidation) Act 1992 as inserted by section 15 of the Trade Union Act 2016. Section 15 placed requirements on public sector employers in relation to providing a check off service. Check off involves the employer deducting trade union subscriptions from a union member's pay on behalf of that union and transferring the money deducted to the union. The Trade Union Act 2016 only permitted public sector employers from providing a check off service if their workers have the option to pay their union subscriptions by other means and arrangements have been made for the union to make reasonable payments to the employer in respect of making the deductions.

1357 Subsection (1)(b) makes a consequential amendment to section 296, to remove the reference to section 116B(10).

1358 Subsection (2) removes section 15 of the Trade Union Act 2016.

Facilities provided to trade union representatives and members

Clause 61: Facilities provided to trade union officials and learning representatives

1359 This clause amends the Trade Union and Labour Relations (Consolidation) Act 1992 in accordance with subsections (2)-(6).

1360 Subsection (2) amends section 168 (time off for carrying out trade union duties) inserting subsection 3A to provide that an employer that permits an employee to take time off as required by this section must, where requested by the employee, provide the employee with accommodation and other facilities for carrying out the duties or undergoing the training for which the employee takes time off as is reasonable in all the circumstances, having regard to any relevant Code of Practice issued by ACAS. Subsection (2) also substitutes section 168(4) to state that an employee may present a complaint to an employment tribunal that the employer has failed to permit the employee to take time off or to provide the employee with facilities, and inserts 168(5) which provides that on complaint to the employment tribunal, it is for the employer to show that the amount of time off which the employee proposed was not a reasonable amount.

1361 Subsection (3) makes the equivalent amendments to section 168A (time off for learning representatives), inserting subsection 8A, substitutes section 168A(9) and inserts section 168A(9A).

1362 Subsections (4-6) make consequential amendments to sections 172 (remedies), 199 (issue of Codes of Practice by ACAS), and 200 (procedure for issue of Code by ACAS).

1363 Subsection (7) makes consequential amendments to section 10 (right to be accompanied) of the Employment Relations Act 1999.

Clause 62: Facilities for equality representatives

1364 This clause inserts new Section 168B into the Trade Union and Labour Relations (Consolidation) Act 1992 .

1365 Subsections (3)-(10) make consequential amendments to sections 169 (payment for time off), 170 (time off for trade union activities), 171 (time off: time limit for proceedings), 173 (interpretation and other supplementary provisions), 199 (issue of Codes of Practice by ACAS), 200 (procedure for issue of Code by ACAS) and 203 (issue of Codes of Practice by Secretary of State) of the Trade Union and Labour Relations (Consolidation) Act 1992 as a result of new section 168B.

1366 Subsection (11) makes consequential amendments to section 18 (conciliation: relevant proceedings) of the Employment Tribunals Act 1996 as a result of new section 168B.

1367 Subsection (12) makes consequential amendments to section 104 (unfair dismissal for assertion of statutory rights) of the Employment Rights Act 1996 as a result of new section 168B,

New section 168B

1368 Subsection(1) of new section 168B requires that an employer must permit an employee who is a member of an independent trade union recognised by the employer and an equality representative of the trade union to take time off during the employee's working hours for the following purposes.

1369 Subsection (2) specifies those purposes are:

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

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

1370 Providing information, advice or support to qualifying members of the trade union in relation to matters relating to equality in the workplace;

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

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

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

1371 Subsection (3) states that subsection (1) applies only if the trade union has given the employer notice in writing that the employee is an equality representative of the union, and the training condition is met in relation to the employee.

1372 Subsection(4) states that the training condition is met if the employee has undergone sufficient training to enable the employee to carry out the activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact; the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training; or within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so and the trade union has given the employer notice of that fact.

1373 Subsection(5) states that only one notice under subsection (4)(b) may be given in respect of any one employee.

1374 Subsection (6) clarifies that sufficient training is training that is sufficient for the purposes of subsection (2), having regard to a relevant Code of Practice issued by ACAS or the Secretary of State.

1375 Subsection (7) states that the employer must also permit the employee to take time off during working hours to undergo training relevant to their role as an equality representative

1376 Subsection(8) states that the amount of time off, purposes, the occasions and conditions to which time off may be taken are those that are reasonable in all the circumstances having regard to a Code of Practice issued by ACAS or the Secretary of State.

1377 Subsection (9) states that an employer must, where requested by the employee, provide the employee with accommodation and other facilities in relation to the purposes of fulfilling their role as an equality representative, having regard to any relevant provisions in a Code of Practice issued by ACAS.

1378 Subsections (10) and (11) provide that an employee may present a complaint to an employment tribunal if the employer has failed to permit the employee to take time off or provide the employee with facilities as required. On complaint, it is for the employer to show that the amount of time off the employee proposed was not reasonable.

1379 Subsection (12) defines an equality representative and equality in the workplace.

Clause 63: Facility time: publication requirements and reserve powers

1380 This clause repeals sections 172A and 172B of the Trade Union and Labour Relations (Consolidation) Act 1992 as inserted by sections 13 and 14 of the 2016 Act. This repeals the power in section 172A to enable a Minister of the Crown to make regulations requiring some or all public sector employees with one or more trade union representatives to publish information relating to time off taken by those representatives for trade union duties and activities (referred to as facility time).

1381 Repealing section 172B removes the power for a Minister of the Crown to make regulations exercising reserve powers after 3 years from when the regulations under section 172A come into force, where the Minister considers it appropriate to do so having regard to information published in accordance with publication requirements, the cost to public funds of facility time in relation to each employer, the nature or any particular features of the various undertakings carried on by those employers and any other matters the Minister thinks relevant.

1382 Subsection (1) removes sections 172A and 172B from the Trade Union and Labour Relations (Consolidation) Act 1992.

1383 Subsection (2) removes sections 13 and 14 of the Trade Union Act 2016.

Blacklists

Clause 64: Blacklists: additional powers

1384 This clause amends section 3 of the Employment Relations Act 1999 to extend prohibitions to lists that are not prepared for the purposes of discrimination, but that subsequently are used for that. This will enable secondary legislation to be brought in to ensure that where AI compiles a list (and a person with a view to discriminate is not involved in compiling that list); where that list is subsequently used or sold or supplied by a person with a view to discriminate – that list becomes a prohibited list at that point.

1385 Subsection (1) specifies that the clause amends section 3 of the Employment Relations Act 1999 (blacklists).

1386 Subsection (2) removes reference in section 3(1)(b) of the Employment Relations Act 1999 to employers or employment agencies, thereby widening the scope of the existing power so that regulations can strengthen protections in relation to third parties compiling blacklists.

1387 Subsection (3) inserts a new section (2A). This enables the Secretary of State to make regulations that prohibit the use, sale or supply of lists containing the details of trade union members or those who have taken part in trade union activities for the purposes of discrimination in relation to recruitment or the treatment of workers. This broadens the existing power to make regulations providing protections against blacklisting.

1388 Subsection (4)(a) amends section 3(3) of the Employment Relations Act 1999 by adding that the Secretary of State may make regulations in relation to third party use of blacklists.

1389 Subsection (4)(b) enables regulations to be made in relation to the new section 2A to include provision in relation to dismissal of an employee.

Industrial action: ballots

Clause 65: Industrial action ballots: turnout thresholds

1390 This clause repeals section 2 of the Trade Union Act 2016 and makes consequential amendments to Schedule 4 to that Act. Section 2 required at least 50% of the trade union members entitled to vote to do so in order for the industrial action ballot to be valid. The law will revert to requiring a simple majority of those voting for a ballot conducted by a trade union for industrial action to be successful.

1391 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) to (4), set out below.

1392 Subsection (2) amends section 226 (2)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 to remove (iia), the requirement for a trade union to meet the 50%

turnout threshold of those entitled to vote, in order for the industrial action to have the support of a ballot.

1393 Subsection (2A) makes consequential amendments to section 231 of the Trade Union and Labour Relations (Consolidation) Act 1992 to reduce the information to be shared with those entitled to vote in the ballot to the number of votes cast in the ballot, numbers answering yes and no to the question and the number of spoiled or invalid voting papers.

1394 Subsection (3) consequentially removes section 297A of the Trade Union and Labour Relations (Consolidation) Act 1992 which defines the meaning of "voting" to include those who return spoiled or invalid ballot papers.

1395 Subsection (4) makes a consequential amendment to remove the entry for "voting" from section 299 of the Trade Union and Labour Relations (Consolidation) Act 1992 which provides for where the expression is defined.

1396 Following the above changes, subsection (5) removes section 2 of the Trade Union Act 2016, changes Schedule 4 to remove paragraphs 12 and 17, and makes a consequential amendment to section 231 of the Trade Union and Labour Relations (Consolidation) Act 1992 to remove information requirements to members following a ballot that will no longer be relevant once the turnout threshold is repealed.

Clause 66 – Industrial action ballots: support thresholds

1397 This clause repeals section 3 of the Trade Union Act 2016. Section 3 required, in important public services as defined, for trade unions to obtain the support of at least 40% of all union members entitled to vote in the ballot. The law will revert to requiring a simple majority of those voting for a ballot conducted by a trade union for industrial action to be successful, with no requirement for any level of turnout.

1398 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) and (3), set out below.

1399 Subsection (2) amends section 226 (2)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 to update (iii) to make clear that a simple majority of persons voting in the ballot is needed for an industrial action ballot to be successful. (2)(b) removes subsections (2A) to (2F), which therefore removes the additional requirement for ballots in important public services to have the support of at least 40% of those entitled to vote.

1400 Subsection (3) makes consequential amendments to section 231 of the Trade Union and Labour Relations (Consolidation) Act 1992 to remove from the information to be shared with those eligible to vote in the ballot the requirement to specify whether the 40% support threshold was met.

1401 Following the above changes, subsection (4) removes section 3 of the Trade Union Act 2016.

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

1402 This clause amends section 226A of the Trade Union and Labour Relations (Consolidation) Act 1992 to remove the requirements for a trade union to provide information to an employer ahead of an industrial action ballot as to the number of employees concerned in each category or workplace and to provide an explanation of how the total number of employees concerned was determined by the union.

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

1403 This clause amends the Trade Union and Labour Relations (Consolidation) Act 1992 to reverse the effect of section 5 of the Trade Union Act 2016.

1404 Section 5 set out the information a union must include on the ballot paper. This included requiring the trade union to:

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

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

1405 Repealing this means the law will revert to requiring a trade union to ask its members on the ballot paper which type of industrial action they want to take part in, expressed in terms of whether this is strike action or action short of a strike. The type of action that a majority of members vote for will then (assuming other legal requirements are met) be protected and immune from legal action by the employers or others.

1406 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended to remove subsections (2B) to (2D) which set out information requirements for the voting paper, removing the need for the voting paper to include:

a. A summary of the trade dispute;

b. The type of industrial action, if other than a strike;

c. The period of time when the industrial action is expected to take place.

1407 Subsection (2) sets out that as a consequence of the amendments made by subsection (1), section 5 of the Trade Union Act 2016 is to be removed.

Clause 69: Period after which industrial action ballot ceases to be effective

1408 This clause amends section 234 of the Trade Union and Labour Relations (Consolidation) Act 1992 to increase the time period for which an industrial action ballot has effect from 6 months (or up to 9 months by agreement between the employer and trade union) to 12 months.

Clause 70: Electronic balloting

1409 This clause repeals section 4 of the Trade Union Act 2016. Section 4 required the Secretary of State to commission an independent review of electronic balloting for all industrial action ballots within 6 months of Royal Assent of the Trade Union Act 2016, to consider the report, and publish a response and laying it before each House.

1410 Subsection (1) removes section 4 of the Trade Union Act 2016.

1411 Subsection (2) makes clear that removal of section 4 from the Trade Union Act 2016 does not affect the power of the Secretary of State under section 54 of the Employment Relations Act 2004 to widen the means of voting that are to be available in industrial action ballots conducted under the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992.

Notice to employers of industrial action

Clause 71: Notice to employers of industrial action

1412 This clause amends section 234A of the Trade Union and Labour Relations (Consolidation) Act 1992, as inserted by section 8 of the Trade Union Act 2016. The clause means that the notice a trade union must give the employer of industrial action after it has secured a ballot mandate and before any such action is taken will reduce from 14 to 10 days, and a trade union does not

have to provide information to an employer ahead of industrial action as to the number of employees in each category that are expected to take part in the action.

1413 Subsection (1)(a) and (b) remove the requirement for a trade union to provide information to an employer ahead of industrial action as to the number of employees in each category that are expected to take part in the action. Subsection (1)(c) amends section 234A of the Trade Union and Labour Relations (Consolidation) Act 1992 to replace the 14 day notice period with a 10 day notice period.

Industrial action: picketing

Clause 72: Union supervision of picketing

1414 This clause repeals section 220A of the Trade Union and Labour Relations (Consolidation) Act 1992 as inserted by section 10 of the Trade Union Act 2016. Section 10 placed additional requirements on trade unions to ensure they are protected from certain tort liabilities. The relevant torts are inducing another person to break or interfere with a contract, or threatening that a contract will be broken or interfered with. Section 10 required trade unions to appoint a picket supervisor, who is familiar with the Code of Practice on Picketing. The union is required to give the police the supervisor's name, the location where the picketing is taking place and how the police should contact the supervisor. The picket supervisor should have a letter confirming that the picket is approved by the union and where the employer, or the employer's agent, asks to see the letter, it should be shown, as soon as reasonably practicable. The supervisor should be present at the picket or be readily contactable by the union or the police and be able to attend the picket at short notice. When the supervisor is attending the picket, they should wear something so that they are readily identifiable.

1415 Subsection (1)(a) amends the Trade Union and Labour Relations (Consolidation) Act 1992 to remove the requirement to meet the requirements for union supervision of picketing in order to have protection from certain tort liabilities as set out in section 10 of the Trade Union Act 2016.

1416 Subsection (1)(b) removes section 220A of the Trade Union and Labour Relations (Consolidation) Act 1992 thereby removing the requirements for union supervision of picketing.

1417 Subsection (2) consequentially removes section 10 of the Trade Union Act 2016.

Protection for taking industrial action

Clause 73: Protection against detriment for taking industrial action

1418 This clause amends Part V (Industrial Action) of the Trade Union and Labour Relations (Consolidation) Act 1992 to widen protections for workers from detriment as a result of taking official and protected industrial action.

1419 Subsection (2) inserts new sections 236A (detriment on ground of industrial action), 236B (time limit for proceedings), 236C (consideration of complaint) and 236D (remedies) into the Trade Union and Labour Relations (Consolidation) Act 1992.

1420 Subsection (3) makes consequential amendments to section 296 (meaning of "worker") of the Trade Union and Labour Relations (Consolidation) Act 1992.

1421 Subsection (4) makes consequential amendments to section 18 (conciliation: relevant proceedings) of the Employment Tribunals Act 1996.

1422 Subsection (5) makes consequential amendments to section 104 (unfair dismissal for assertion of statutory rights) of the Employment Rights Act 1996.

New section 236A

1423 Section 236A, subsection (1) provides that a worker has the right not to be subject as an individual to detriment of a prescribed description by an act, or any deliberate failure to act, by the worker's employer, if the act or failure takes place for the sole or main purpose of preventing or deterring the worker from taking protected industrial action, or penalising the worker for doing so.

1424 Subsection (2) defines protected industrial action.

1425 Subsection (3) provides that regulations may prescribe detriment of any description.

1426 Subsection (4) provides that subsection (1) does not apply where the worker is an employee and the detriment in question amounts to dismissal, and signposts that in those circumstances the relevant sections are sections 237 to 239.

1427 Subsection (5) provides that a worker or former worker may present a complaint to an employment tribunal on the ground that the worker or former worker has been subject to a detriment by an employer in contravention of this section. Subsection (6) provides that a worker or former work has no other remedy for infringement of the right conferred by this section.

1428 Subsection (7) defines "worker" and "employer".

New section 236B

1429 Section 236B, subsection (1) provides that an employment tribunal may not consider a complaint under section 236A unless it is presented within 3 months of the detriment occurring, beginning with the date of the act or failure to which the complaint relates or where that act or failure is part of a series of similar acts or failures. Alternatively, the tribunal may consider a complaint under section 236A if the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented within that time period in which case the complaint must be presented within a period the tribunal considers reasonable.

1430 Subsection (2) provides that where an act extends over a period, the reference to the date of the act is a reference to the last day of that period and a failure to act is to be treated as done when it was decided on. Subsection (3) provides that, in the absence of evidence establishing the contrary, an employer is to be taken to decide on a failure to act when the employer does an act inconsistent with doing the failed act or when the period expires within which the employer might reasonably have been expected to do the failed act if it was done.

1431 Subsection (4) provides that section 292A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (1)(a).

New section 236C

1432 Section 236C states that on a complaint under section 236A, it is for the employer to show what was the sole or main purpose for which the employer acted or failed to act.

New section 236D

1433 Section 236D, subsection (1) provides that where the employment tribunal finds that a complaint under section 236A is well-founded, the tribunal must make a declaration to that effect and may make an award of compensation to be paid by the employer.

1434 Subsection (2) provides that the amount of compensation should be what the tribunal considers just and equitable in all the circumstances including having regard to the infringement complained of and to any loss sustained by the complainant. Subsection (3) provides that the loss includes any expenses reasonably incurred as a consequence of the act or

failure and loss of any benefit which the complainant might reasonably be expected to have had if the act or failure had not occurred. Subsection (4) provides that in ascertaining the loss, the tribunal must apply the same rule concerning the duty of a person to mitigate loss for England, Wales and Scotland. Subsection (5) provides that where the tribunal finds that the act or failure complained of was caused or contributed to by action of the complainant, it must reduce the amount of compensation by the proportion it considers just and equitable.

Clause 74: Protection against dismissal for taking industrial action

1435 This clause amends the Trade Union and Labour Relations (Consolidation) Act 1992 so that protection under section 238A against dismissal will apply for the length of the strike action. This removes the current protected period, which includes the basic period of 12 weeks provided for under section 238A(7A) to (7D).

1436 Subsections (2)-(4) makes consequential amendments to section 229 (industrial action ballots: voting paper), 238A (protection for employees taking part in official industrial action) and section 238 (conciliation and mediation: supplementary provisions) of the Trade Union and Labour Relations (Consolidation) Act 1992.

1437 Subsection (5) makes consequential amendments to section 26 (dismissal where employees locked out); section 27 (date of dismissal); section 28 (dismissal after end of protected period) and Schedule 1 (minor and consequential amendments) to the Employment Relations Act 2004.

Strikes: minimum service levels

Clause 75: Repeal of provisions about minimum service levels

1438 This clause repeals the Strikes (Minimum Service Levels) Act 2023 and makes consequential amendments. That Act provides for the Secretary of State to set minimum service levels to be provided during strikes affecting certain essential services and for an employer to be able to give a "work notice" requiring the trade union calling the strike to take reasonable steps to ensure its members comply with the work notice.

1439 Subsection (1) repeals provisions of the Trade Union and Labour Relations (Consolidation) Act 1992, as inserted by Section 1 of the Strikes (Minimum Service Levels) Act 2023. The following sections of the Trade Union and Labour Relations (Consolidation) Act 1992 will fall away completely as a result: 234B, 234C, 234D, 234E, 234F and 234G. As a result, all associated powers, regulations and defined terms related to minimum service levels, will also fall away completely.

1440 Subsection (2) paragraphs (a)-(h) make consequential amendments to other sections of the Trade Union and Labour Relations (Consolidation) Act 1992. In particular, certain amendments made by the Trade Union Act 2016 to section 238A of that Act, which provides certain protections for employees taking protected industrial action, are reversed.

1441 Subsection (3) states that the Strikes (Minimum Service Levels) Act 2023 is repealed.

Certification Officer

Clause 76: Annual returns: removal of provision about industrial action

1442 This clause repeals section 32ZA as inserted by section 7 of the Trade Union Act 2016. Section 32ZA required a trade union to include details of any industrial action taken in the reporting period in its annual return to the Certification Officer. This includes the nature of the trade dispute relating to the industrial action, the type of industrial action, when the industrial action was taken, as well as confirmation that the relevant thresholds introduced to section 226 of the Trade Union and Labour Relations (Consolidation) Act 1992 have been met. It also required

that where a trade union held a ballot in respect of industrial action, the union's return under section 32 for that period, shall contain the information mentioned in section 231 (number of votes cast, the number of those who voted yes, the number who voted no, etc.).

1443 Subsection (1) removes section 32ZA from the Trade Union and Labour Relations (Consolidation) Act 1992 which sets out the information on industrial action the trade union needs to report for the Certification Officer through the annual return.

1444 Subsection (2) consequentially removes section 7 of the Trade Union Act 2016.

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

1445 This clause repeals section 12 of the Trade Union Act 2016 which required trade unions to provide details of their political expenditure in their annual return to the Certification Officer. This information must be provided where a union spends more than £2000 per annum from its political fund.

1446 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended according to subsections (2) to (6) below.

1447 Subsection (2) removes section 32ZB of the Trade Union and Labour Relations (Consolidation) Act 1992 which sets out the information to be included in the trade union's annual return on political expenditure.

1448 Subsection (3) removes references to section 32ZB from section 32ZC which provided the enforcement mechanism for the Certification Officer if a trade union failed to comply with the requirement to provide information about their political expenditure.

1449 Subsection (4) removes the reference to section 23ZB from section 45 of the Trade Union and Labour Relations (Consolidation) Act 1992, so that failure to comply with the requirement to provide information about political expenditure is no longer an offence.

1450 Subsection (5) removes reference to section 32ZB in section 131 so the requirement to provide information about political expenditure no longer applies to employers' associations.

1451 Subsection (6) removes reference to section 32ZB so the requirement to provide information about political expenditure no longer applies to federated employers' associations.

1452 Subsection (7) consequentially removes section 12 from the Trade Union Act 2016.

Clause 78: Removal of powers to enforce requirements relating to annual returns

1453 This clause repeals section 18 of the Trade Union Act 2016. This allowed the Certification Officer to enforce annual return requirements and gave the Certification Officer the power to make a declaration that a trade union has failed to comply with the Trade Union Act 2016 annual return requirements in relation to details of industrial action and political expenditure.

1454 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended with subsections (2) to (5) below.

1455 Subsection (2) removes section 32ZC of the Trade Union and Labour Relations (Consolidation) Act 1992, removing the Certification Officer's powers to enforce the requirement for details of political expenditure (32ZB of the Trade Union and Labour Relations (Consolidation) Act 1992) and industrial action (32ZA the Trade Union and Labour Relations (Consolidation) Act 1992) to be included in the annual return.

1456 Subsections (3)-(5) remove references to 32ZA, 32ZB and 32ZC.

1457 Subsection (6) consequentially removes section 18 of the Trade Union Act 2016 and subsections (3) and (4) of clause 63 of this Bill (which provide for surviving references to section 32ZA of the Trade Union and Labour Relations (Consolidation) Act 1992 in relation to details of industrial action).

Clause 79: Removal of investigatory powers

1458 This clause repeals subsections 1 and 2 of section 17 of the Trade Union Act 2016 which gave the Certification Officer specific investigatory powers.

1459 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 will be amended by sections (2) to (6) below.

1460 Subsection (2) removes subsection (6A) of section 25 of the Trade Union and Labour Relations (Consolidation) Act 1992, which was inserted by the 2016 Act to enable more time in determining an application where the delay is caused by the exercise of powers to require the production of documents etc and to appoint inspectors.

1461 Subsections (3) and (4) remove references to paragraph 5 of Schedule A3, which relates to the enforcement of paragraphs 2 and 3 of Schedule A3 by the Certification Officer.

1462 Subsection (5) removes section 256C of the Trade Union and Labour Relations (Consolidation) Act 1992 so that Schedule A3 no longer has affect.

1463 Subsection (6) removes Schedule A3 from the Trade Union and Labour Relations (Consolidation) Act 1992 which sets out the details of the Certification Officer's investigatory powers including requiring the production of documents, investigation by inspectors and enforcement by the Certification Officer.

1464 Subsection (7) removes section 43, subsection (4) from the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. This removes the requirement for the Certification Officer to specify in its declaration:

a. the steps taken by a trade union to remedy the failure on the duties etc. relating to the register of members, or to prevent the failure happening again;

b. or that the union has agreed to take such steps.

1465 Subsection (7) also consequentially removes from the Trade Union Act 2016:

a. Subsections (1) and (2) from section 17, which inserted Schedule A3 into the Trade Union and Labour Relations (Consolidation) Act 1992.

b. Schedule 1 from the Trade Union Act 2016 which sets out the investigatory powers for the Certification Officer.

c. Paragraphs 2 and 3(b) of Schedule 4.

Clause 80: Powers to be exercised only on application

1466 This clause removes the powers of the Certification Officer to be able to investigate without having first received a complaint from a member of a trade union.

1467 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) to (9) below.

1468 Subsections (2) and (3) remove references to the Certification Officer being able to exercise the powers in relation to union positions not being held by certain offenders and elections for union positions, where they have received no complaint from a member.

1469 Subsection (4) reverts back to the Certification Officer only being able to consider a complaint from a member in relation to elections for union positions, and not to commence an investigation proactively.

1470 Subsection (5) and (6) remove references to the Certification Officer being able to investigate where no member has complained from section 72A and 79 of the Trade Union and Labour Relations (Consolidation) Act 1992, in relation to political funds.

1471 Subsection (7) and (8) removes the ability of the Certification Officer to proactively investigate in relation to political ballot rules and political funds, reverting back to only considering an issue following a complaint from a member.

1472 Subsection (9) removes the ability for the Certification Officer to proactively investigate in relation to the passing of an amalgamation or transfer resolution by the trade union, reverting back to considering only if a complaint is made by a trade union member.

1473 Subsection (10) consequentially amends section 17(3) and Schedule 2 of the Trade Union Act 2016 to remove reference to the Certification Officer being able to proactively investigate.

Clause 81: Removal of power to impose financial penalties

1474 This clause omits section 19 (1) to (3) of the Trade Union Act 2016 and removes Schedule 3 to remove the power for the Certification Officer to impose financial penalties.

1475 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) and (3) below.

1476 Subsection (2) removes section 256D of the Trade Union and Labour Relations (Consolidation) Act 1992 which inserted Schedule A4 to give effect to the power to impose financial penalties.

1477 Subsection (3) removes Schedule A4 which sets out the detail of the power to impose financial penalties.

1478 Subsection (4) consequentially amends the 2016 Act to remove subsections (1)-(3) of section 19 and removes Schedule 3 which inserted into the Trade Union and Labour Relations (Consolidation) Act 1992 the power for the Certification Officer to impose financial penalties.

Clause 82: Removal of power to impose levy

1479 This clause removes the power of the Certification Officer to impose a levy by repealing the effect of section 20 of the Trade Union Act 2016.

1480 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) and (3) below.

1481 Subsection (2) removes section 257A of the Trade Union and Labour Relations (Consolidation) Act 1992 which set out the requirements for a levy to be paid to the Certification Officer by trade unions and employers' associations.

1482 Subsection (3) removes the requirement for the Certification Officer to report on the levy in their annual report to the Secretary of State.

1483 Subsection (4) consequentially removes section 20 of the Trade Union Act 2016 which brought in the power for the Certification Officer to impose a levy.

Clause 83: Appeals to Employment Appeal Tribunal

1484 This clause returns the right of appeals against decisions of the Certification Officer to the Employment Appeal Tribunal to be on questions of law rather than law and fact. This reverses the position created by the Trade Union Act 2016.

1485 Subsections (2)-(6) amend the Trade Union and Labour Relations (Consolidation) Act 1992 to refer to appeals arising on questions of law.

General

Clause 84: Employment Outside Great Britain

1486 This clause amends s285(1) and (1A) of the Trade Union and Labour Relations (Consolidation) Act 1992. S285(1) disapplies the collective redundancy notification requirements and certain other requirements for employees are who "working" outside Great Britain. S285(1A) disapplies the requirements of s145A to s151 where under his contract personally to do work or perform services a worker who is not an employee works outside Great Britain. This clause inserts the word "ordinarily" ahead of the word "works" in subsections (1) and (1A). This has been done to remove the argument that employees/workers who spend any of their working time outside the UK are excluded from the provisions referred to above.

Clause 85: Regulations subject to the affirmative resolution procedure

1487 This clause amends section 293 of the Trade Union and Labour Relations (Consolidation) Act 1992 to require that regulations made under sections 70ZC, 70ZE, 70ZF, 70ZIA and 236A should be subject to the affirmative procedure.

Clause 86: Devolved Welsh authorities

1488 This clause makes consequential amendments to the Trade Union (Wales) Act 2017 to repeal section 1. Section 1 of the Trade Union (Wales) Act 2017 Act disapplied certain Trade Union Act 2016 amendments to the Trade Union and Labour Relations (Consolidation) Act 1992 in relation to "devolved Welsh authorities". Section 1 disapplied section 116B (the restriction on deduction of union subscriptions from wages in the public sector), section 172A (publication requirements in relation to facility time) and section 226 (the 40% ballot threshold for important public services). As these provisions inserted by the Trade Union Act 2016 will no longer exist in the Trade Union and Labour Relations (Consolidation) Act 1992, section 1 can be repealed. In addition, this clause removes the definition of "devolved Welsh authority".

1489 Subsection (a) removes the definition of a devolved Welsh Authority from the Trade Union and Labour Relations (Consolidation) Act 1992 at section 297B and from the list of definitions at section 299, which was inserted by the Trade Union (Wales) Act 2017.

1490 Subsection (b) removes section 1 from the Trade Union (Wales) Act 2017.

Part 5: Enforcement of Labour Market Legislation

General

Clause 87: Enforcement of labour market legislation by Secretary of State

1491 This clause grants the Secretary of State the overarching responsibility to enforce specific labour market legislation, as listed in Part 1 of Schedule 7. The enforcement role is primarily vested in the Secretary of State, but it also allows for the delegation of this role to enforcement officers.

1492 Subsection (1) sets out that the Secretary of State has the function of enforcing labour market legislation listed in Part 1 of Schedule 7 to this Bill.

1493 Subsection (2) clarifies that for the purposes of enabling the Secretary of State to perform the enforcement function, Part 5 of this Bill confers powers both on the Secretary of State and on enforcement officers.

1494 Subsection (3) defines "enforcement officer" as a person appointed by the Secretary of State under this clause.

1495 Subsections (4) and (6) read together provide for enforcement officers appointed by the Secretary of State to be able to exercise any of the Secretary of State's functions, except for the function under subsection (1), as well as any powers conferred on enforcement officers, in line with what is set out in their terms of appointment.

1496 Subsection (7) provides that the definition of the Secretary of State's enforcement function in subsection (1) does not limit their power to bring proceedings in an employment tribunal under clause 113 or to provide legal assistance under clause 114.

1497 Subsection (5) provides that when an enforcement officer exercises an enforcement function on behalf of the Secretary of State, any statutory reference to the "Secretary of State" in relation to that function is also to be read as a reference to an enforcement officer.

1498 Subsection (8) limits the scope of the Secretary of State's enforcement authority such that the Secretary of State will not be permitted to bring proceedings in Scotland for an offence.

Schedule 7 – Legislation subject to enforcement under Part 5

1499 Part 1 of Schedule 7 sets out the relevant labour market legislation that the Secretary of State has overarching responsibility to enforce. Specifically:

- The Employment Agencies Act 1973, and regulations made under section 5 of that Act.
- Section 151(1) of the Social Security Contributions and Benefits Act 1992 and regulations made under section 153(5)(b) of that Act.
- Certain provisions of, and regulations made using certain powers contained in, the Social Security Administration Act 1992.
- Part 2A of the Employment Tribunals Act 1996.
- Section 1 of the Fraud Act 2006 - so far as relating to offences committed under the law of England and Wales under section 4 of this Act (Fraud by abuse of position).

- Certain provisions of the National Minimum Wage Act 1998: entitlement, duty of employers to keep records, worker's right to access to records, underpayments, right to not suffer detriment, and offences.
- Provisions in the Working Time Regulations 1998 that relate to entitlement to annual leave, the rights to payment in respect of leave, payment in lieu of leave, rolled-up holiday pay for irregular hours workers and part-year workers, and obligations on employers to keep records to demonstrate their compliance.
- Provisions in the Gangmasters (Licensing) Act 2004 that relate to prohibition of unlicensed activities, rules relating to licensing, licensing and offences.
- Provisions of the Modern Slavery Act 2015 that relate to the offence of slavery, servitude and forced or compulsory labour (part 1) and slavery trafficking prevention and risk orders (part 2) and relevant offences.
- Provisions of the Employment Rights Act 2025 related to LME undertakings and orders, and offences relating to part 5.
- Section 147(1) and Regulations under section 149(5)(b) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- Regulations made under sections 5 and 122 of the Social Security Administration (Northern Ireland) Act 1992, so far as they relate to Statutory Sick Pay, and section 12(3) of that Act.
- Clause 44(2) (entitlement of social care workers to be paid in accordance with ratified agreements of Negotiating Body) and 45(5) (entitlement of social care workers to be paid in accordance with regulations made by Secretary of State, etc) of this Bill.

1500 In Part 2 of Schedule 7, Paragraph 35 gives the Secretary of State powers to amend the list of relevant labour market legislation in Part 1 of that Schedule.

1501 Subparagraph (1) provides for Secretary of State to make regulations to add to the list of labour market legislation in Part 1 of the Schedule or vary references to enactments that are already included in the list. Adding legislation to Part 1 of Schedule 7 would bring enforcement of that legislation in scope of the Secretary of State's enforcement functions.

1502 Subparagraph (2) places limits on the regulation making power in subparagraph (1). The Secretary of State can only exercise this power to amend Part 1 of this Schedule if the legislation relates to the following: rights or entitlements of employees or workers; the treatment of employees or workers; requirements, restrictions or prohibitions on employers; or trade unions, employers' associations, industrial action or labour relations.

1503 Subparagraph (3) requires the Secretary of State to obtain consent from the appropriate Northern Ireland department before exercising the power in subparagraph (1) to add legislation that deals with a transferred matter to Part 1 of Schedule 7, or to vary existing references in Part 1 to such legislation.

1504 Subparagraph (4) defines key terms, including "the appropriate Northern Ireland department" and "transferred matter".

1505 Subparagraph (5) provides that regulations made to amend Part 1 of Schedule 7 may also make necessary consequential changes to clauses 88 (enforcement functions of Secretary of State), 89 (delegation of functions, clause 100 (power to give notice of underpayment, and 147 (meaning of non-compliance with relevant labour market legislation).

1506 Subparagraph (6) provides that regulations that amend Part 1 of Schedule 7 to add an enactment may provide that a notice of underpayment relating to sums due under or by virtue of the enactment may relate to sums that became due before the regulations come into force.

1507 Subparagraph (7) provides that regulations to add to, or vary references in, the list in Part 1 of Schedule 7 are subject to the affirmative resolution procedure

Clause 88: Enforcement functions of the Secretary of State

1508 This clause specifies the functions that fall within the meaning of any reference to an enforcement function in Part 5, and those which do not.

1509 Subsection (1) outlines that the enforcement functions of the Secretary of State include: functions granted under Part 5 of this Bill, functions provided under other relevant labour market legislation and any additional function carried out to enforce relevant labour market legislation.

1510 Subsection (2) explicitly states the following functions are not enforcement functions of the Secretary of State: the power to appoint enforcement officers under clause 87, functions related to delegation under clause 89, functions relating to the Advisory Board under clause 90, the creation and submission of strategies and reports under clauses 91 and 92, any function under or by virtue of clause 113 or 114 to bring proceedings in an employment tribunal or provide legal assistance, any function related to transfer schemes under Part 1 of Schedule 11, and any powers related to making subordinate legislation.

Clause 89: Delegation of functions

1511 This clause provides for the Secretary of State to make arrangements with a public authority to carry out delegable functions on their behalf. The clause also provides for the Secretary of State to make arrangements for officers or other staff of a public authority to be appointed as enforcement officers.

1512 Subsection (1)(a) provides for the Secretary of State to make arrangements for public authorities to exercise enforcement functions on their behalf to the extent set out in the arrangement between the bodies. Subsection (1)(b) also allows the Secretary of State to make arrangements with a public authority for officers or other staff of that authority to be appointed as enforcement officers.

1513 Subsection (2) defines a "delegable function" as being any of the Secretary of State's enforcement functions defined under this Bill, any function of the Secretary of State to bring proceedings in an employment tribunal or the Secretary of State's functions related to the licensing scheme for gangmasters which are set out in the Gangmasters (Licensing) Act 2004.

1514 Subsection (3) states that where a public authority exercises an enforcement function in accordance with an arrangement with the Secretary of State, any reference to the Secretary of State in the legislation related to that function should be read as a reference to the public authority performing it.

1515 Subsection (4) provides for the Secretary of State to make payments to public authorities in respect of performing any function on their behalf.

1516 Subsection (5) provides that the Secretary of State retains the right to perform enforcement functions even if they have been delegated to a public authority, ensuring that the delegation does not strip the Secretary of State of responsibility or control.

1517 Subsection (6) defines a "public authority" as a person whose functions are of a public nature. and do not relate to private business or commercial interests.

Advisory Board

Clause 90: Advisory board

1518 This clause requires the Secretary of State to establish an Advisory Board to provide advice regarding their function of enforcing labour market legislation and establishes requirements for the Board's composition.

1519 Subsection (1) requires the Secretary of State to create the Advisory Board, which will provide advice on matters related to the enforcement of labour market legislation. Subsection (1) also provides for the Secretary of State to specify the matters on which the Advisory Board advises.

1520 Subsection (2) specifies that the Board must consist of at least nine members appointed by the Secretary of State.

1521 Subsection (3) provides that board members hold and vacate their position in accordance with the terms and conditions of their appointment.

1522 Subsection (4) provides for the composition of the Board. It must include an equal number of representatives of the interests of trade unions and employers as well as individuals appearing to the Secretary of State to be independent experts who meet the criteria set out in subsection (5).

1523 Subsection (5) defines the term "independent expert" for the purposes of the Secretary of State making appointments to the Advisory Board under subsection (4)(c).

1524 Subsection (6) gives the Secretary of State the power to determine and provide remuneration or allowances for Board members.

1525 Subsection (7) provides that, should the Secretary of State so specify, the Board may provide advice about the Secretary of State's functions relating to bringing proceedings in an employment tribunal and providing legal assistance under clauses 113 and 114.

Strategies and reports

Clause 91: Labour market enforcement strategy

1526 This clause requires the Secretary of State to prepare and publish a labour market enforcement strategy within specified timescales. This should give an assessment of levels of non-compliance with labour market legislation as well as what activity will be undertaken to address it.

1527 Subsection (1) mandates the Secretary of State to produce and publish a strategy before every relevant three-year period.

1528 Subsection (2) outlines certain topics that an enforcement strategy should cover, which includes an assessment of the scale and nature of non-compliance with labour market laws in the previous three years, a forecast of future non-compliance and a proposal for how the Secretary of State will exercise their enforcement functions to address this. Subsection (2)(c)

allows the Secretary of State to specify other matters they consider appropriate for the strategy to cover.

1529 Subsection (3) allows the Secretary of State to revise the enforcement strategy at any time and requires any revision to be published.

1530 Subsection (4) mandates the Secretary of State to consult the Advisory Board when preparing or revising the enforcement strategy.

1531 Subsection (5) requires the Secretary of State to be lay before Parliament and the Northern Ireland Assembly a copy of the enforcement strategy.

1532 Subsection (6) defines "relevant three-year period" and "strategy period" to provide clarity on when each enforcement strategy should be issued.

Clause 92: Annual reports

1533 This clause sets out the requirement for the Secretary of State to prepare and publish an annual report about the enforcement of labour market legislation. It also provides details on what each annual report should include and when each report should be issued.

1534 Subsection (1) provides that the Secretary of State must prepare and publish an annual report as soon as reasonably practicable after the end of each financial year.

1535 Subsection (2) sets out the contents of the Annual Report, including: an assessment of how labour market enforcement functions were exercised, how effectively they were aligned with the applicable strategy for the year and an assessment of the impact the strategy had on the scale and nature of non-compliance in the labour market.

1536 Subsection (3) requires the Secretary of State to consult the Advisory Board while preparing the annual report and before it is published.

1537 Subsection (4) requires the Secretary of State to lay before Parliament and the Northern Ireland Assembly a copy of every annual report.

1538 Subsection (5) defines the terms "applicable strategy" and "financial year" to provide clarity on when each annual report should be published and the years it relates to.

Powers to obtain documents or information

Clause 93: Power to obtain documents or information

1539 This clause gives the Secretary of State power to obtain documents or information for any enforcement purpose. Investigatory powers are necessary to ensure that the Secretary of State and enforcement officers can fulfil their functions and have the information required to allow them to reach decisions regarding breaches of the labour market legislation listed in Part 1 of Schedule 7.

1540 Subsection (1) gives the Secretary of State the power to issue a notice to a person requiring them to provide information by answering questions at a meeting, to take place at a specified time and place. The Secretary of State may also require a person to provide specified information or specified documents, in each case by a specified date. "Specified" means as specified in the notice.

1541 Subsection (2) sets out the circumstances in which the Secretary of State may give a notice to a person. The Secretary of State must have reasonable grounds to believe that a person required to attend a meeting to answer questions is able to provide information which is necessary for any enforcement purpose. Where a person is required to provide specified information or documents, the Secretary of State must have reasonable grounds to believe that it is necessary

to obtain the document or information for any enforcement purpose and that the person can provide it.

1542 Subsection (3) defines 'enforcement purpose' for the purposes of this clause.

Clause 94: Power to enter premises in order to obtain documents, etc

1543 This clause gives an enforcement officer the power to enter any premises to obtain documents. Under subsection (1), the power may be exercised for any enforcement purpose. In the case of dwellings, the power is subject to clause 95.

1544 Subsection (2) sets out the powers that an enforcement officer may exercise on premises. These are to (a) inspect or examine any documents on the premises, (b) require any person on the premises to produce any documents which the officer has reasonable grounds to believe are on the premises and within the person's possession or control and, (c) access and check the operation of any computer or equipment used for processing or storing information or documents.

1545 Subsection (3) provides that this power may only be exercised at a reasonable time, unless the officer thinks there is reason to suspect that the purpose of entry may be frustrated if the officer seeks to enter at a reasonable time.

1546 Subsection (4) gives an enforcement officer the power to seize any documents produced, inspected or examined.

1547 Subsection (5) defines 'enforcement purpose' and 'equipment'.

Clause 95: Power to enter dwelling subject to warrant

1548 This clause makes it a requirement for an enforcement officer to obtain a warrant from a justice before being able to enter a dwelling under clause 94. In this clause "enforcement purpose" has the same meaning as in clause 94 and "justice" means:

a. in relation to England and Wales, a justice of the peace;

b. in relation to Scotland, a sheriff or summary sheriff;

c. in relation to Northern Ireland, a lay magistrate.

1549 Subsection (1) sets out that an enforcement officer may not by virtue of clause 94 enter any dwelling unless a justice has issued a warrant authorising the officer to do so.

1550 Subsection (2) sets out that a justice may issue a warrant under this clause only if, on an application by the officer, the justice is satisfied that:

a. the officer has reasonable grounds to believe that there are documents in the dwelling which for any enforcement purpose the officer wishes to inspect, examine or seize, or there is computer or other equipment in the dwelling to which the officer wishes to have access for any enforcement purpose, and

b. that any of the conditions in subsection (3) are satisfied.

1551 Subsection (3) sets out the conditions, at least one of which must be met:

a. that it is not practicable to communicate with any person entitled to grant entry to the dwelling;

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.

1552 For further provision about warrants under this clause, see clause 128 and Schedule 8.

Clause 96: Supplementary powers in relation to documents

1553 This clause provides for additional powers in relation to documents.

1554 Subsection (1) relates to powers under clauses 93 or 94 that are exercised in relation to documents stored in electronic form. It provides a further power to require electronic documents to be produced or provided in a form in which they can be taken away, and in which they are visible and legible (or can readily be made visible or legible).

1555 Subsection (2) gives the Secretary of State the power to inspect or examine any documents provided under clause 93.

1556 Subsection (3) gives the Secretary of State or an enforcement officer the power to take copies of any documents which are provided under clause 93 or inspected, examined or produced under clause 94.

Clause 97: Retention of documents

1557 This clause sets out the circumstances in which documents may be retained.

1558 Subsection (1) applies this clause to any document provided in response to a requirement under clause 93 or seized under clause 94.

1559 Subsection (2) provides that a document may be retained so long as is necessary in all the circumstances. In particular, a document may be retained for use as evidence in a trial for a labour market offence, or for forensic examination or investigation in connection with a labour market offence.

1560 Subsection (3) makes clear that no documents may be retained for either of the purposes in subsection (2) if a photograph or copy would be sufficient for that purpose.

Other powers to investigate non-compliance

Clause 98: Powers of enforcement officers under the Police and Criminal Evidence Act 1984

1561 This clause concerns the ability of enforcement officers in England and Wales to exercise specific police powers in relation to the investigation of labour market offences. These powers include search, arrest and suspect interviews in relation to labour market offences. The clause indicates that provision is made under section 114B of the Police and Criminal Evidence Act 1984.

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

1562 This clause provides for a warrant to be obtained in specified circumstances for an enforcement officer to enter relevant premises for the purposes of determining whether there has been a contravention of section 6 of the Gangmasters (Licensing) Act 2004, which prohibits persons from acting as a gangmaster without a licence in England, Wales or Scotland. It does not apply to enforcement officers who are authorised under section 114B of the Police and Criminal Evidence Act 1984 to use their powers under Part 2 of that Act to investigate such a contravention.

1563 A justice of the peace and, in Scotland, a sheriff or a summary sheriff may issue a warrant if they are satisfied, firstly, that there are reasonable grounds for an enforcement officer to enter

the relevant premises for the purpose of determining whether there has been a relevant contravention.

1564 Subsection (2) specifies they must also be satisfied: (a) that entry to the premises has already been refused or is expected to be refused, and the occupier has been notified of the intention to seek a warrant; (b) that application for admission, or giving such a notice, would defeat the object of the entry; (c) that the case is one of extreme urgency; or (d) that the premises are unoccupied or the occupier is temporarily absent. The warrant would allow the enforcement officer to enter the property without the occupier's consent, if necessary, using reasonable force. The mention in subsection (2) of being satisfied that there are reasonable grounds means, in the context of England and Wales, being satisfied based on written information on oath (subsection (3)).

1565 Subsection (4) provides that the warrant grants the enforcement officer authority to bring any necessary equipment to assist with inspection. It also enables them to exercise any power conferred by clause 94(2) or (4), conduct inspections and examinations that the officer considers necessary to determine if any unlicensed activities are taking place and to take and seize any items on the premises as evidence.

1566 Subsection (5) requires that when an enforcement officer seizes an item from a property under subsection (4)(c), they must leave a statement at the property giving details of what was seized and stating that the officer has seized it.

1567 Subsection (6) provides that any item seized by an enforcement officer by virtue of subsection (4)(c) can be retained as long as the officer considers necessary to determine whether there has been a relevant contravention. Subsection (7) explains the meanings of certain terms used in this clause. In particular:

a. "relevant premises" means any premises which an enforcement officer has reasonable grounds to believe are: (a) premises where a person acting as a gangmaster, or a person supplied with workers or services by a person acting as a gangmaster, carries on business, or (b) premises which such a person uses in connection with the person's business; and

b. "worker" has the same meaning as in the Gangmasters (Licensing) Act 2004 (see section 26 of that Act).

1568 Subsection (8) states that definition in section 4 of the Gangmasters (Licensing) Act 2004 of acting as a gangmaster also applies to this clause, just as it does in that Act.

1569 Subsection (9) explains that warrants issued under this clause are also subject to clause 128 and Schedule 8 of the Bill, which provide additional procedural and operational details.

Notice of Underpayment

Clause 100 – Power to give notice of underpayment

1570 This clause, and the clauses that follow, allow the Secretary of State to issue notices of underpayments to employers where they have underpaid workers in breach of certain statutory pay provisions. The Notice of Underpayments will require the employers to pay any outstanding arrears to their workers and also pay a penalty into the Consolidated Fund.

1571 Subsection (1) sets out when the Secretary of State may give a notice of underpayment. They may issue such a notice where it appears to them that on any day (the 'relevant day') a sum payable under or by virtue of a statutory pay provision was due from the liable party to an individual and any period for payment of that sum has ended without the sum having been paid to the underpaid individual.

1572 Subsection (2) defines a notice of underpayment as a notice given under this clause that requires the liable party to pay the required sum (which is defined in the next clause) to an underpaid individual within 28 days of the notice being issued.

1573 Subsection (3) makes additional provision about the Secretary of State's power to give a notice of underpayment under subsection (1). The issue of Notice of Underpayments by the Secretary of State is subject to subsection (6) and clause 102.

1574 Subsection (4) sets out that the Secretary of State may give a notice of underpayment to a person in respect of a sum that was due on the relevant day, regardless of whether the sum remains due at the time the notice is given.

1575 Subsection (5) states that where all or part of the sum is paid before the giving of the notice, that part of the requirement imposed by the notice is, to that extent, treated as met.

1576 Subsection (6) states that a notice of underpayment cannot be given by the Secretary of State if proceedings have already been brought via clause 113, and these proceedings have not been finally determined or discontinued.

1577 Subsection (7) defines 'statutory pay provision' as a provision of relevant labour market legislation that confers a right or entitlement to the payment of any sum, or prohibits or restricts the withholding of payment of any sum, to an individual.

Clause 101 – Calculation of the required sum

1578 This clause sets out how the required sum included in the notice of underpayment must be calculated.

1579 Subsection (1) sets out that 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 and

b. the sum determined in accordance with regulations under subsection (2) (if applicable).

1580 Subsection (2) provides that regulations made by the Secretary of State may provide for a greater sum to be payable to an individual if the amount payable under a statutory pay provision would have been higher if calculated at the time the notice was issued, rather than at the time the underpayment occurred.

1581 Subsection (3) states that the regulations made under the above subsection (2) cannot make provision in relation to the National Minimum Wage Act 1998.

1582 Subsection (4) states that the required sum payable to an individual may not exceed the specified maximum for the statutory pay provision. Subsection (5) defines 'the specified maximum' in relation to a statutory pay provision as an amount set out in regulations made by the Secretary of State under subsection (5). Subsection (6) states regulations made under this section are subject to the affirmative resolution procedure.

Clause 102 – Period to which notice of underpayment may relate

1583 This clause defines the period to which a notice of underpayment may relate.

1584 Subsection (1) states the notice of underpayment may not include any sum due under or by virtue of a statutory pay provision that became due before the beginning of the claim period.

1585 Subsection (2) defines a 'claim period' as the period of six years ending with the day on which the notice is given.

1586 Subsection (3) provides that the Secretary of State may, by regulations, amend the length of the claim period.

1587 Subsection (4) provides that regulations made under subsection (3) may specify different claim periods for different statutory pay provisions, but that these regulations may not provide for the claim period to be greater than six years ending with the day on which the notice is given.

1588 Subsection (5) states the regulations made under subsection (3) are subject to the affirmative resolution procedure.

1589 Subsection (6) provides that a notice of underpayment may relate to sums due before the coming into force of this clause and subsection (7) provides that a notice may not relate to a sum that became due before the day on which this Billis passed.

1590 Subsection (8) states that subsection (7) does not apply to a notice of underpayment that relates to any sum due under section 17 of the NMWA 1998.

1591 Subsection (9) also refers to clause [109(3)], which makes provision about issuing replacement notices of underpayment.

Clause 103– Notices of underpayment: further provision

1592 This clause makes further provision about notices of underpayment, such as setting out information requirements for a notice of underpayment.

1593 Subsection (1) states that where a notice of underpayment relates to more than underpaid individual, names or descriptions can be used to identify them.

1594 Subsection (2) sets out what information the notice of underpayment must specify for each underpaid individual it relates to.

Clause 104 – Penalties for underpayment

1595 This clause makes provision for the penalties that a notice of underpayment will include.

1596 Subsection (1) states that a notice of underpayment must require the liable party to pay a penalty to the Secretary of State (subject to the next clause).

1597 Subsection (2) states the penalty must be paid before the end of the 28-day period beginning with the day the notice was given.

1598 Subsections (3) to (6), read together, set out the amount of the penalty that the liable party is required to pay. Subsections (3) and (4) state that the penalty is calculated by reference to the total amounts owed to each underpaid individual to whom the notice relates and is 200% of the sum specified in the notice of underpayment as the sum due to that individual on the relevant day.

1599 Subsection (5) provides that if the amount determined under subsection (4) is greater than £20,000 then the amount considered when calculating the penalty is to be £20,000. Subsection (6) sets out that if a penalty calculated in subsection (3) would be less than £100, the penalty specified in the notice is to be £100.

1600 Subsection (7) provides that the Secretary of State may, by regulations, amend the amounts and percentages set out in this clause.

1601 Subsection (8) states that regulations under subsection (7) are subject to the affirmative resolution procedure.

Clause 105 – Further provision about penalties

1602 This clause sets out further provisions when imposing civil penalties.

1603 Subsections (1) and (2), read together, provide that Secretary of State may issue directions to specify circumstances where the requirement for a notice of underpayment to impose a penalty should not apply. Any such directions can be revoked or amended by a further direction.

1604 Subsection (3) sets out that, if a notice of underpayment imposes a requirement to pay a penalty, the notice must specify the amount of the penalty, how the penalty has been calculated, and the due date for the penalty to be paid.

1605 Subsection (4) sets out that, in effect, the penalty is halved if the penalty and arrears are paid within 14 days.

1606 Subsection (5) sets out that penalties received by the Secretary of State in accordance with clause 104 is to be paid into the Consolidated Fund.

Clause 106 – Suspension of penalty where criminal proceedings have been brought, etc

1607 This clause sets out that the penalty is suspended pending relevant criminal proceedings.

1608 Subsection (1) sets out that subsection (3) applies where the Secretary of State proposes to issue a notice of underpayment involving a penalty and it becomes apparent to them that relevant criminal proceedings have been or may be brought.

1609 Subsection (2) defines "relevant criminal proceedings" as proceedings against the liable party for a labour market offence in respect of any act or omission that the notice of underpayment relates to.

1610 Subsection (3) sets out that a notice of underpayment can include provision suspending the requirement to pay the penalty until a notice terminating the suspension is given to the liable party under subsection (4).

1611 Subsection (4) provides that Secretary of State can terminate the penalty suspension via a "penalty activation notice". This subsection further sets out that a penalty activation notice can be issued if relevant criminal proceedings have concluded without the liable party having been convicted of a relevant labour market offence, or if proceedings will not be brought.

1612 Subsection (5) provides that, in effect, the penalty is due 28 days after the penalty activation notice is given.

1613 Subsection (6) provides that in cases where the liable party on the notice is convicted of a relevant labour market offence, the requirement to pay the penalty must be withdrawn.

Clause 107 – Appeals against notices of underpayment

1614 This clause provides for an appeals process against the issue of a notice of underpayment or any requirements imposed by the notice of underpayment.

1615 Subsection (1) sets out the that a person can appeal the decision to give the notice, any requirement on the notice to pay a sum to an individual, and/or any requirement in the notice to pay a penalty.

1616 Subsection (2) sets out that an appeal must be made within 28 days beginning with the day on which the notice is given.

1617 Subsection (3) sets out three grounds for appeal against the decision to give the notice:

a. Firstly, that no sum referenced on the notice was due to any individual referenced;

b. Secondly, that every sum referenced on the notice had been paid before the end of the period mentioned in clause 100(1)(b);

c. Thirdly, that every sum referenced on the notice was due before the relevant claim period, or before Royal Assent of the Employment Rights Bill.

1618 Subsection (4) sets out five grounds for appeal against the requirement to pay a sum to an individual:

a. Firstly, that a sum referenced on the notice was not due to the individual referenced;

b. Secondly, that a sum referenced on the notice had been paid before the end of the period mentioned in clause 100(1)(b;

c. Thirdly, that any sum referenced on the notice was due before the claim period, or before Royal Assent of the Employment Rights Bill;

d. Fourthly, that a sum referenced in the notice is incorrect;

e. Fifthly, that a replacement notice refers to an individual who was not on the original notice.

1619 Subsection (5) sets out two grounds for appeal against the requirement to pay a penalty:

a. Firstly, that the notice was given in circumstances specified in a direction under clause 105;

b. Secondly, that the penalty has been incorrectly calculated.

1620 Subsection (6) sets out that if the tribunal allows an appeal against the decision to issue the notice, the tribunal must cancel the notice.

1621 Subsection (7) sets out that if the tribunal allows an appeal against the requirement to pay a sum to an individual or the requirement to pay a penalty, it must rectify the notice accordingly. Once rectified, the notice of underpayment as effect as if it had been given on the day the tribunal makes its determination.

1622 Subsection (8) provides that for the purposes of this clause "the specified day" and "the specified provision" mean the day and provision set out in subsection (2)(a) and (2)(d) respectively of the clause 103. This subsection also defines "tribunal" as an employment tribunal in England and Wales or Scotland, and an industrial tribunal in Northern Ireland.

Clause 108 – Withdrawal of notice of underpayment

1623 This clause provides for the Secretary of State to withdraw a notice of underpayment that is incorrect in some way and makes provision for situations where a replacement notice of underpayment is not issued.

1624 Subsection (1) provides that the Secretary of State may issue a notice of withdrawal if it appears to them that a notice of underpayment is incorrect (and that notice has not already been withdrawn or cancelled).

1625 Subsection (2)(a) provides that where a notice of underpayment is withdrawn and no replacement notice of underpayment is given under clause 109, any penalty that has been paid by or recovered from the person in accordance with the original notice must be repaid to them. This repayment should include interest at an appropriate rate for the period starting from the point at which the penalty was recovered. Subsection (2) (b) provides that any appeal against the withdrawn notice must be dismissed.

1626 Subsection (3) states that "the appropriate rate" at which interest should be paid under subsection (2)(a) means the rate that was specified in section 17 of the Judgments Act 1838 on the date the sum was paid or recovered.

1627 Subsection (4) sets out that a notice of withdrawal issued in circumstances where subsection (2) applies must the must indicate the effect of subsection (2). However, a failure to do so does not make the withdrawal ineffective.

Clause 109 – Replacement notice of underpayment

1628 This clause provides for the Secretary of State to issue a replacement notice of underpayment where an earlier notice has been withdrawn.

1629 Subsection (1) provides that the Secretary of State may issue a replacement notice if they consider that the same condition has been met that led to them issuing the withdrawn notice under subsection (1) of clause 100.

1630 Subsection (2) sets out that the replacement notice may not relate to any individual to whom the original notice did not relate.

1631 Subsection (3) provides that the claim period for a replacement notice is the period beginning with the claim period for the original notice and ending with the day on which the replacement notice was issued. A replacement notice may therefore relate to sums that have become due since the day on which the original notice was issued.

1632 Subsection (4) states that the replacement notice must set out the differences between it and the original notice that it is reasonable for the Secretary of State to consider are material and explain the effect of such a notice as set out in clause 110. Subsection (5) however states that failure to comply with subsection (4) does not make the replacement notice ineffective.

1633 Subsection (6) provides that if Secretary of State withdraws a replacement notice, they can't issue a further replacement notice as a result of the withdrawal. Subsection (7) however provides that otherwise nothing in this clause affects the ability of Secretary of State to issue notices of underpayment in relation to any underpaid individual.

Clause 110 – Effect of replacement notice of underpayment

1634 This clause sets out the effect of a replacement notice issued under clause 109.

1635 Subsection (1) sets out that this clause applies when a notice of underpayment is withdrawn under clause 108, and a replacement notice is issued in accordance with clause 109.

1636 Subsection (2) sets out that if an appeal made under clause 107 against the original notice is ongoing, the appeal has effect as if it was made against the replacement notice, and the person given the notice can appeal the replacement notice only if the original appeal is withdrawn.

1637 Subsection (3)(a) states that any penalties paid under the original notice are considered as paid under the replacement notice. Subsection (3)(b) explains that if the penalty under the replacement notice is less than an amount already paid under the original notice, the excess amount must be refunded with interest at the appropriate rate.

1638 Subsection (4) specifies that 'the appropriate rate' mentioned in subsection (3)(b) is the rate specified in section 17 of the Judgments Act 1838.

Clause 111 - Enforcement of requirement to pay sums due to individuals

1639 This clause addresses the recovery of arrears when the requirement to pay those arrears contained in a notice of underpayment is not complied with within the specified period.

1640 Subsection (1) sets out that the Secretary of State can make an application to the court for an order where it appears to the Secretary of State that the liable party has failed to comply with a requirement to pay the arrears contained in a notice of underpayment to an underpaid individual.

1641 Subsection (2) provides that an application can only be made if the liable party's appeal rights are exhausted (which is defined at subsection (6)), and the relevant 28-day period has ended.

1642 Subsection (3) provides that if the court is satisfied that the notice was given to the liable party (without being withdrawn) and the liable party has failed to comply with the requirement to pay a sum to the underpaid individual, it must order the liable party to comply within the period specified in the order.

1643 Subsection (4) provides that nothing in this clause prevents an underpaid individual from recovering the sums owed to them.

1644 Subsection (5) sets out that the liable party's appeal rights are exhausted if:

a. The 28-day period ended without an appeal being made;

b. An appeal has been withdrawn;

c. An appeal has been determined, and the notice has not been cancelled.

1645 Subsection (6) defines terms used in this clause. "Relevant 28-day period" refers to the period of 28 days starting from the day on which the notice was given (or, where clause 107 (7)b) applies, the day on which the rectified notice was given), and "court" refers to the county court in England and Wales; the sheriff in Scotland; and a county court in Northern Ireland.

Clause 112 –Enforcement of requirement to pay penalty

1646 This clause outlines the procedures for recovering penalties when a notice of underpayment imposing a requirement to pay a penalty is not complied with.

1647 Subsection (1) states that in England and Wales, penalties are recoverable as if they were payable under a county court order.

1648 Subsection (2) provides that, in Scotland, penalties can be enforced like an extract registered decree arbitral with a warrant for execution from the sheriff court.

1649 Subsection (3) states that in Northern Ireland, penalties are recoverable as if they were payable under a county court order.

1650 Subsection (4)(a) states that where action is taken to recover a penalty under this clause in relation to England and Wales, the penalty is to be treated as if it were judgment of the county court for the purposes of section 98 of the Courts Act 2003 (register of judgments and orders etc). Subsection (4)(b) states that where such action is taken in relation to Northern Ireland, for the purposes of Article 116 of the Judgments Enforcement (Northern Ireland) Order 1981 (register of judgments), the penalty is to be treated as if it were a judgment in respect of which an application has been accepted under Article 22 or 23(1) of that Order.

1651 Subsection (5) defines "penalty" as a penalty payable under a notice of underpayment.

Powers relating to civil proceedings

Clause 113 – Power to bring proceedings in employment tribunal

1652 This clause gives the Secretary of State the power to bring proceedings in employment tribunals in England and Wales, and Scotland.

1653 Subsection (1) sets out that the Secretary of State may bring proceedings in an employment tribunal, in place of a worker, where the worker has a right under relevant legislation to bring the proceedings themselves and it appears to the Secretary of State that they are not going to do so.

1654 Subsection (2) sets out that subsection (1) does not give the Secretary of State power to present a complaint in relation to any right of a worker under the Agricultural Sector (Wales) Act 2014 or the Agricultural Wages (Scotland) Act 1949. It also does not give the Secretary of State power to bring proceedings where a notice of underpayment has been given under clause 100 of this Bill.

1655 Subsection (3) sets out that any proceedings brought by the Secretary of State are to be dealt with by the employment tribunal as if brought by the worker, and for the purposes of the proceedings any references to the worker in any enactment should be read as a reference to the Secretary of State.

1656 Subsection (4) provides that, despite subsection (3), any powers of an employment tribunal to make declarations, decisions, awards or other orders are exercisable in relation to the worker and not the Secretary of State.

1657 Subsection (5) makes it clear that appeals can be brought by the Secretary of State and the worker.

1658 Subsection (6) provides that the Secretary of State is not liable to a worker for anything done (or not done) in connection with this power.

1659 Subsection (7) sets out that, for the purposes of this clause, "worker" is defined more widely to include an individual who is a worker for the purposes of Part 4A of the Employment Rights Act 1996 (see section 43K(1) of that Act) and includes individuals seeking employment as a worker.

Clause 114 – Power to provide legal assistance

1660 This clause gives the Secretary of State the power to provide legal assistance to persons who are or who may become party to civil proceedings – in England and Wales, and Scotland – relating to employment or trade union law or the law of labour relations.

1661 Subsection (2) sets out assistance can take the form of legal advice, representation or any other form of assistance. But subsection (3) provides that the power to offer assistance in subsection (2) does not permit the Secretary of State to provide or arrange for the provision of facilities for dispute settlement.

1662 Subsection (4) makes provision for situations where proceedings relate partly to employment or trade union law or the law labour relations ("employment-related matters"), and partly to other matters. The Secretary of State may provide assistance under this clause to any aspect of the proceedings. The Secretary of State may continue to offer assistance if the proceedings cease to relate to be employment-related matters, but under subsection (4(b)(ii)) they are not required to do so.

1663 Subsection (5) provides that this power does not affect any restrictions that have been imposed either by enactment or the court or tribunal in relation to representation.

1664 Subsection (6) sets out that legislative provisions requiring insurance or an indemnity in respect of advice connected to a settlement agreement does not apply to advice provided by the Secretary of State under this clause.

Clause 115 – Recovery of costs of legal assistance

1665 This clause gives the Secretary of State a power to recover costs in connection with providing legal assistance.

1666 Subsection (1) sets out that cost recovery is applicable where the Secretary of State has assisted a person under clause 114 in relation to proceedings, and the person becomes entitled to their costs (or expenses in Scotland) in the proceedings. Subsection (2) sets out that in these circumstances the Secretary of State's expenditure in giving the assistance is to be charged on sums paid to the person by way of costs or expenses and can be enforced as a debt to the Secretary of State.

1667 Subsections (3) and (4) set out the relationship between this clause and the legal aid regimes in England and Wales (subsection 3) and Scotland (subsection 4), to the effect that sums due under those regimes take precedence over sums due under this clause.

1668 Subsections (5) and (6) set out that the Secretary of State may, by regulations, make provision for how the expenditure of the Secretary of State incurred when providing legal assistance is to be calculated for the purposes of subsection (2).

1669 Subsection (7) provides that any regulations made under subsection (5) are subject to the negative resolution procedure.

Labour market enforcement undertakings

Clause 116: Power to request LME undertaking

1670 This clause gives the Secretary of State the power to request a labour market enforcement (LME) undertaking where the Secretary of State believes that a person has committed, or is committing, a labour market offence (as defined in clause 148).

1671 Subsection (2) allows the Secretary of State to give the person a notice: (a) identifying what labour market offence the Secretary of State believes has been or is being committed, (b) giving the Secretary of State's reasons for that belief, and (c) inviting the person to give the Secretary of State an LME undertaking in the form attached to the notice.

1672 Subsection (3) defines an LME undertaking as an undertaking by the person giving it to comply with any prohibitions, restrictions and requirements set out in the undertaking (see clause 117).

Clause 117: Measures in LME undertakings

1673 This clause sets out what a measure is in relation to an LME undertaking and the purposes for which it may be included in an LME undertaking.

1674 Subsection (1) provides that an LME undertaking may include a prohibition, restriction or requirement, each of which is a "measure". A measure must fall within subsection (2) or (3) (or both) and the Secretary of State must consider that the measure is just and reasonable.

~~1675~~ Subsection (2) states that the purpose of a measure is either to prevent or reduce the risk of non-compliance with the relevant enactment; or to bring to the attention of interested parties the existence of an undertaking, the circumstances in which it was given, and any remedial action taken.

1676 Subsection (3) allows the Secretary of State to specify measures in regulations.

1677 Subsection (4) requires regulations under subsection (3) to be subject to the affirmative resolution procedure.

1678 Subsection (5) sets out that the Secretary of State may not: (a) invite a person to give an LME undertaking, or (b) agree to the form of an undertaking unless the Secretary of State reasonably

believes that at least one measure in the undertaking is necessary for the purpose mentioned in subsection (6).

1679 Under subsection (6), that purpose is to prevent and reduce the risk of the subject: (a) committing a further labour market offence under the relevant enactment, or (b) continuing to commit the labour market offence.

1680 Subsection (7) states that an LME undertaking must set out how each measure is expected to achieve that purpose.

1681 Subsection (8) defines 'relevant enactment' as the enactment under which the Secretary of State believes the labour market offence concerned has been or is being committed.

Clause 118: Duration of LME undertakings

1682 This clause sets out the duration of an LME undertaking, including when the undertaking has effect from, the maximum period of an undertaking and release of an undertaking.

1683 Subsection (1) explains that an undertaking has effect from: (a) the time when it is accepted by the Secretary of State, or (b) any later time specified in the undertaking for this purpose.

1684 Subsection (2) states that an LME undertaking has effect for the period specified in the undertaking.

1685 Subsection (3) states that the maximum period for an LME undertaking is two years.

1686 Subsection (4) gives the Secretary of State the power to release the subject from an LME undertaking, meaning effectively to terminate the undertaking.

1687 Subsection (5) requires the Secretary of State to release a subject from an LME undertaking if, at any point during the period for which the undertaking has effect, the Secretary of State believes that no measures are necessary for the purpose in clause 117(6).

1688 Where the Secretary of State releases the subject from an LME undertaking, subsection (6) requires the Secretary of State to take appropriate action to bring that fact to the attention of: (a) the subject, and (b) any other persons likely to be interested.

Clause 119: Means of giving notice under clause 116

1689 This clause explains how a notice requesting an LME undertaking may be given.

1690 Under subsection (1), a notice may be given by: (a) delivering it to the person, (b) leaving it at the person's proper address, (c) sending it by post to the person's address or, (d) subject to subsection (6), sending it to the person by electronic means.

1691 Subsection (2) states that a notice to a body corporate may be given to any officer of that body.

1692 Subsection (3) states that a notice to a partnership may be given to any partner.

1693 Subsection (4) states that a notice to an unincorporated association (other than a partnership) may be given to any member of the governing body of the association.

1694 Subsection (5) explains that the proper address of a person is the person's last known address. In the case of a body corporate or an officer of the body, the proper address is the body's registered or principal office in the United Kingdom. In the case of a partnership or partner, or an unincorporated association or a member of its governing body, the proper address is the principal office of the partnership or association in the United Kingdom.

1695 Subsection (6) allows a notice to be sent to a person by electronic means only if: (a) the person has indicated that notices under clause 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.

1696 Subsection (7) states that a notice sent by electronic means is, unless the contrary is proved, deemed to have been given on the working day after the day on which it was sent.

1697 Subsection (8) defines 'electronic address', 'officer', and 'working day'.

Labour market enforcement orders

Clause 120: Power to make LME order on application

1698 This clause is about the court's power to make an LME order on application by the Secretary of State.

1699 Subsection (1) states that the court may issue an LME order in relation to a person if the court is satisfied, on the balance of probabilities, that the person has committed, or is committing, a labour market offence, and the court considers it just and reasonable to issue the order.

1700 Subsection (2) states that an LME order may either prohibit or restrict a person from doing anything, or require them to do anything, set out in the order.

1701 Subsection (3) explains that an application for an LME order is to be made by complaint.

1702 Subsection (4) defines the appropriate court as a magistrates' court, the sheriff or a summary sheriff, or a court of summary jurisdiction, according to where the conduct constituting the relevant offence took or is taking place.

Clause 121: Applications for LME orders

1703 This clause sets out the process for applying for LME orders.

1704 Under subsection (1), the Secretary of State may apply for an LME order to be made under clause 120 relating to a person (the "proposed respondent") where the Secretary of State has given the proposed respondent a notice under clause 116, and the proposed respondent either refuses to give an LME undertaking or fails to provide it within the negotiation period.

1705 Under subsection (2), the Secretary of State may also apply for an LME order if the proposed respondent has given an LME undertaking but has not complied with it.

1706 Subsection (3) provides that, in subsection (1), "the negotiation period" refers to the period of 14 days beginning with the day after the day on which the notice in subsection (1) was given or a longer period if agreed between the Secretary of State and the proposed respondent.

Clause 122: Power to make LME order on conviction

1707 This clause is about the court's power to make an LME order where a person is convicted of a labour market offence.

1708 Under subsection (1), this clause applies where a court deals with someone in respect of a conviction for a labour market offence.

1709 Subsection (2) provides that the court may make an LME order if the court considers it is just and reasonable to do so.

1710 LME orders may only be made in addition to either: (a) a sentence imposed for the offence, or (b) an order that conditionally discharges the person, or, in Scotland, an order that discharges the person absolutely.

Clause 123: Measures in LME orders

1711 This clause makes provision about measures that may be included in LME orders. It mirrors the provisions for measures in an LME undertaking (see clause 117).

Clause 124: Further provision about LME orders

1712 Subsection (1) provides that LME orders last for the time period stated in the order.

1713 Subsection (2) sets the maximum duration for an order at two years.

1714 Subsection (3) prevents an order being made in respect of an individual who is under 18.

1715 Subsection (4) gives the court the power, if making an LME order, to release the respondent from any LME undertaking given in relation to the labour market offence concerned and to discharge any other LME order in force against the respondent made by that court or any other court in the same part of the United Kingdom.

Clause 125: Variation and discharge of LME orders

1716 This clause sets out the circumstances in which either the respondent or Secretary of State may apply to the court to vary or discharge an LME order.

1717 Subsection (2) provides who may make such an application. This is either the respondent or the Secretary of State.

1718 Subsection (3) provides that an application is to be made by complaint in England and Wales and in Northern Ireland.

1719 Subsection (4) sets out which court may vary or discharge an LME order as appropriate in England and Wales, in Scotland, and in Northern Ireland.

Clause 126: LME orders: appeals

1720 This clause sets out the circumstances in which a respondent may appeal against an LME order.

1721 Subsection (1) explains that the respondent may appeal against the making of an LME order or the making of or refusal to make an order varying or discharging an LME order.

1722 Subsection (2) explains that the appeal will be heard by the Crown Court in England and Wales, the Sheriff Appeal Court in Scotland and a county court in Northern Ireland.

1723 Subsection (3) allows the court hearing the appeal to make any orders which may be necessary to give effect to the decision on the appeal or any incidental or consequential orders that appear to it to be just and reasonable.

1724 Subsection (4) states that if an LME order is changed under subsection (3), it is still considered an order from the court that first made the order for the purpose of clause 125.

1725 Under subsection (5), a person may appeal against the making of an LME order on conviction under clause 122 in the same way as if it were a sentence for a labour market offence.

Safeguards etc

Clause 127: Evidence of authority

1726 This clause creates a requirement to provide evidence of authority to carry out enforcement functions under Part 5.

1727 Subsection (1) applies the requirement to any person exercising an enforcement function of the Secretary of State or any power of an enforcement officer appointed by the Secretary of State, except the power to bring proceedings in an employment tribunal under clause 113.

1728 Subsection (2) provides that a person must produce identification showing their authority to act, if required to do so. Persons referred to in subsection (1) are not required to provide this evidence proactively.

Clause 128: Warrants

1729 This clause sets out further provision in relation to a warrant issued under clause 95 or 99.

1730 Subsection (1) provides that a warrant under clause 95 or 99 may be executed by any enforcement officer.

1731 Subsection (2) provides that a warrant under clause95 or 99 can authorise persons to accompany any enforcement officer who is executing it.

1732 Subsection (3) sets out that persons 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.

1733 Subsection (4) stipulates that the person authorised may exercise such a power only in the company of, and under the supervision of, an enforcement officer.

1734 Subsection (5) introduces Schedule 8 which contains further provision about:

a. applications for warrants under clause 95 or 99, and

b. warrants issued under clause 95 or 99.

1735 Subsection (6) stipulates that the entry of premises under a warrant issued under clause 95 or 99 is unlawful unless it complies with the provisions of Part 3 of Schedule 8 (execution of warrants).

Schedule 8 – Warrants under Part 5

1736 This Schedule sets out further provision in relation to:

a. applications for warrants under clause 95 or 99, and

b. warrants issued under clause 95 or 99.

1737 Paragraph 2 of Part 2 of the Schedule makes provision in relation to applications for warrants. It sets out that:

a. where an enforcement officer applies for a warrant, the officer must:

i. state the ground on which the application is made,

ii. state the provision of this Bill under which the warrant would be issued,

iii. specify the premises which it is desired to enter, and

b. identify, so far as is practicable, the purpose for which entry is desired;

i. 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; and

ii. the officer must answer on oath any question that the justice hearing the application asks the officer.

1738 Paragraphs 3 to 5 of Part 2 of the Schedule contain safeguards in connection with the power of entry conferred by a warrant.

1739 Paragraph 3 sets out that a warrant authorises an entry to the premises on one occasion only.

1740 Paragraph 4 provides that a warrant must specify:

a. the name of the person who applies for it,

b. the date on which it is issued,

c. the provision of this Bill under which it is issued, and

d. the premises to be entered.

1741 Paragraph 4 (2) provides that a warrant must identify, so far as is practicable, the purpose for which entry is desired.

1742 Paragraph 5 provides that two copies are to be made of a warrant:

a. in the case of a warrant issued in electronic form, the copies must be clearly marked as copies;

b. in the case of a warrant issued otherwise than in electronic form, the copies must be clearly certified as copies.

1743 Part 3 of the Schedule makes provision relating to the execution of warrants. Clause 128(6) makes it clear that entry of premises under a warrant issued under clause 95 or 99 is unlawful unless it complies with the provisions of this Part of Schedule 8.

1744 Paragraph 6 states that a warrant must be executed within three months of the date it is issued.

1745 Paragraph 7 provides that the 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.

1746 Paragraph 8 deals with enforcement officers showing evidence of authority and giving copies of warrants.

1747 Subparagraph (1) provides that 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:

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.

1748 Subparagraph (2) provides that where the occupier of premises to be entered under a warrant is not present when an enforcement officer seeks to execute it, but some other person who appears to the officer to be in charge of the premises is present, subparagraph (1) has effect as if any reference to the occupier were a reference to that other person.

1749 Subparagraph (3) provides that 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.

1750 Paragraph 9 deals with securing premises after entry. It provides that 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.

1751 Paragraph 10 deals with the return and retention of warrants.

1752 Subparagraph (1) sets out that 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.

1753 Subparagraph (2) sets out who the appropriate person is for the purposes of subparagraph (1).

1754 Subparagraph (3) sets out that 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.

1755 Subparagraph (4) sets out that 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.

Clause 129: Items subject to legal privilege

1756 This clause provides safeguards regarding the protection of legal professional privilege.

1757 Subsection (1) provides that nothing in Part 5 of the Bill requires a person to produce any document, or provide any information, which the person would be entitled to refuse to produce or provide in High Court proceedings on the grounds of legal professional privilege, or in Court of Session proceedings on the grounds of confidentiality of communications.

1758 Subsection (2) defines "communications" for the purposes of this safeguard.

Clause 130: Privilege against self-incrimination

1759 This clause concerns protection against self-incrimination.

1760 Subsection (1) provides that the clause applies where a person provides information in response to a requirement under clause 93.

1761 Subsection (2) makes provision about criminal proceedings against a person who has provided such information. It provides that no evidence relating to such information may be introduced, and no questions may be asked about the information, either by or on behalf of the prosecution.

1762 Subsection (3) provides that subsection (2) does not apply if the evidence is introduced by the person providing the information, or if a question about the information is asked by or on behalf of that person.

1763 Under subsection (4), subsection 2 also does not apply if the proceedings are for certain offences listed in paragraphs (a) to (d).

Clause 131: Information relating to the intelligence services, etc

1764 This clause introduces restrictions on both the use of investigatory powers under clauses 93 and 94 in respect of persons servings in an intelligence service and on the use of powers of entry conferred by Part 5 of the Bill in relation to premises used for intelligence service purposes.

1765 Subsection (1) provides that neither the power to obtain documents or information (clause 93) or the related power to enter premises to obtain documents or information (clause 94) may 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.

1766 Subsection (2) provides that the powers of entry contained in Part 5 of the Bill cannot be used to gain entry to premises, or parts of premises, that are used for intelligence service purposes unless the condition in subsection (3) is met.

1767 Subsection (3) provides that the condition referred to in subsections (1) and (2) is met if the Secretary of State is satisfied and certifies that exercise of the power will not be contrary to the public interest or prejudicial to national security, the prevention or detection of serious crime, or the economic well-being of the United Kingdom. Subsection (4) provides that the Secretary of State may impose conditions on the exercise of the powers in any certificate issued under subsections (1) or (2).

1768 Subsection (5) provides that no provision in Part 5 of the Bill requires an individual to produce documents containing intelligence service information or provide intelligence service information, unless the Secretary of State has issued a certificate under subsection (1).

1769 Subsection (6) defines key terms used in the clause, to provide clarity. In particular, the term "intelligence service information" is defined as information that has been obtained directly or indirectly from, or which relates to, an intelligence service or a person acting on behalf of an intelligence service.

Disclosure of information

Clause 132: Disclosure of information

1770 This clause provides for an information sharing gateway between the Secretary of State and enforcement officers and other persons. It also clarifies the extent to which the information obtained by the Secretary of State and enforcement officers can be used by them in connection with their enforcement functions.

1771 Subsection (1) provides definitions for the terms "enforcing authority", "enforcement function" and "civil proceedings function" which are used in this clause.

1772 Subsection (2) permits a person to share information with an enforcing authority for the purpose of exercising an enforcement function or a civil proceedings function.

1773 Subsection (3) provides that information obtained by an enforcing authority in connection with carrying out an enforcement function or a civil proceedings function can be used by an enforcing authority in connection with the exercise of any other enforcement function, or by the Secretary of State in connection with a function of the Secretary of State under this Part.

1774 Subsection (4) allows the Secretary of State to share information obtained by an enforcing authority in connection with the exercise of an enforcement function or a civil proceedings function with a person, where doing so is relevant to carrying out an enforcement function, a civil proceedings function or a function of the Secretary of State under this Part.

1775 Subsection (5) permits the Secretary of State to disclose information obtained in connection with the exercise of an enforcement function or civil proceedings function to a person specified in Schedule 9 if the disclosure is made for the purpose of the exercise of that person's own function.

1776 Subsection (6) allows the Secretary of State to amend Schedule 9 by regulations.

1777 Subsection (7) provides that regulations under subsection (6) are subject to the affirmative resolution procedure.

1778 Subsection (8) provides that clauses 133 to 135 contain further provision about disclosure of information under this clause.

Schedule 9 – Persons to whom information may be disclosed under clause 132

1779 This Schedule lists the persons that the Secretary of State may disclose information to under clause 132. These persons are listed under the following headings in the Schedule: authorities with functions in connection with the labour market or the workplace, law enforcement and border security, local government, health and social care bodies, and other persons. Under subsection (6) of clause 132, the Secretary of State may, by regulations, amend this list.

Clause 133: Disclosure of information: supplementary provision

1780 Subsection (1) states that information disclosed under clause 132 does not breach an obligation of confidence owed by the person making the disclosure or any other restriction on disclosure of information.

1781 Subsection (2) outlines that information provided under clause 132 must not contravene the data protection legislation or be a disclosure prohibited by Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

1782 Subsection (3) provides that in subsection (2), "data protection legislation" holds the same meaning as in section 3 of the Data Protection Act 2018.

1783 Subsection (4) states that clause 132 does not limit circumstances where information may be disclosed, except as provided by that clause.

Clause 134: Restriction on disclosure of HMRC information

1784 Subsection (1) states that for an enforcing authority to share HMRC information, authorisation must be obtained from the Commissioners for His Majesty's Revenue and Customs ("the Commissioners").

1785 Subsection (2) states that any person with whom the enforcing authority has shared HMRC information must also obtain authorisation from "the Commissioners" in order to share the information any further.

1786 Subsection (3) provides that subsections (1) and (2) do not apply to national minimum wage information.

1787 Subsection (4) refers to a contravention of subsections (1) or (2) where a person's identity is stated or can be identified from information disclosed. If such a contravention occurs, section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies as it does in relation to a contravention of section 20(9) of that Act.

1788 Subsection (5) provides definitions of terms used in subsections (1) to (4) above.

Clause 134: Restriction on disclosure of intelligence service information

1789 This clause places restrictions on disclosure of intelligence service information. Subsection (1) provides that clause 132(2) does not permit a person to disclose information to an enforcing authority where the person is serving in an intelligence service, or where the information is intelligence service information. However, this does not affect any disclosures made in accordance with intelligence service disclosure arrangements.

1790 Subsection (2) states that an enforcing authority must not disclose intelligence service information without authorisation from the appropriate service chief, defined at subsection (4).

1791 Subsection (3) provides that, if an enforcing authority has shared intelligence service information with a person, that person cannot further share the information without authorisation from an appropriate service chief.

1792 Subsection (4) defines an "appropriate service chief" and other terms referred to in the clause.

Offences

Clause 136: Offence of failing to comply with LME Order

1793 This clause provides for the offence of not complying with an LME order (subsection (1)). A person commits an offence if they have no reasonable excuse for failing to comply with the order.

1794 Subsection (2) sets out the penalties that may apply if a person is found guilty of this offence. Penalties depend on whether convictions are summary or on indictment and on the relevant legal jurisdiction (i.e. England and Wales, Scotland or Northern Ireland).

Clause 137: Offence of providing false information or documents

1795 This clause provides for the offence of providing false information or documents in response to a request for information made under this Part.

1796 Under subsection (1), an offence is committed if a person produces, or knowingly causes or allows to be produced, any information or document that is materially false, and the person providing it is either aware that it is false or has not taken reasonable action to confirm its accuracy. The offence relates to any information or document provided in response to a reasonable requirement made by a person exercising enforcement powers under Part 5.

1797 Subsections (2) and (3) set out the penalties that may apply in England and Wales, Scotland and Northern Ireland.

Clause 138: Providing false information or documents: national security etc defence

1798 This clause provides an exemption from liability for the offence of providing false information or documents under clause 137, subject to the Secretary of State being satisfied that certain conditions are met.

1799 Subsection (1) states that a person is not liable for the commission of the offence of providing false information or documents under clause 137 if the Secretary of State issued them with a certificate.

1800 Subsection (2) provides the Secretary of State may only issue a certificate under subsection (1) if they are satisfied it is necessary for the person to engage in conduct amounting to an offence if such conduct is in the interests of national security, is for the purposes of preventing or detecting serious crime, or is in the interests of the economic well-being of the United Kingdom.

1801 Subsection (3) allows the Secretary of State to revoke a certificate issued under subsection (1) at any time.

1802 Subsection (4) defines "crime" and "serious crime" for the purposes of this clause, to provide clarity about when, under subsection (2), the Secretary of State may issue a certificate.

Clause 139: Offence of obstruction

1803 This clause provides for the offence of obstruction.

1804 Subsection (1) provides that a person commits an offence through intentional obstruction or, without reasonable excuse, failing to comply with requirements imposed by a person carrying out an enforcement function.

1805 Subsection (2) defines "enforcement function" as (a) an enforcement function of the Secretary of State, or (b) a power of an enforcement officer other than a power to bring proceedings in an employment tribunal.

1806 Subsections (3) and (4) set out the penalties that may apply if a person is found guilty of this offence. In all cases, guilty persons may be subject to imprisonment, fines or both, but the exact length of any imprisonment, or level of any fine, will depend on whether the conviction is in England and Wales, Scotland or Northern Ireland

1807 Subsection (5) provides that a person is not required to answer questions or provide information if that would lead to self-incrimination.

Recovery of enforcement costs

Clause 140: Power to recover costs of enforcement

1808 This clause gives the Secretary of State a power to provide for the payment of charges relating to costs incurred in carrying out enforcement activities under Part 5 of the Bill.

1809 Subsection (1) sets out that the Secretary of State can through regulations make provision requiring relevant persons to pay a charge as a means of recovering enforcement costs incurred in relation to them.

1810 Subsection (2) defines "enforcement costs" and "relevant person" for the purposes of this clause:

a. "enforcement costs", in relation to a relevant person, means any costs incurred in connection with the exercise of enforcement functions in relation to the person;

b. "relevant person" means a person who has failed to comply with any relevant labour market legislation.

1811 Subsection (3) provides that the regulations may make the amount of a charge a fixed amount, or an amount calculated by reference to an hourly rate. It also allows the regulations to provide that the amount of a charge is to be determined in accordance with the regulations.

1812 Subsection (4) enables the regulations to provide that the Secretary of State is to determine the amount of charges in line with a scheme made and published by the Secretary of State. The regulations may make provision about such schemes, including the principles governing them.

1813 Subsection (5) outlines that regulations under this clause can include, amongst other things, provision about:

a. charges being payable only in specified circumstances;

b. reductions, exemptions and waivers;

c. how and when charges are to be paid;

d. collection or recovery of payments;

e. charging of interest on unpaid charges;

f. resolution of disputes relating to the payment of charges, including provision for the making of appeals to a court or tribunal.

1814 Subsection (6) makes regulations under this clause subject to the negative resolution procedure.

Supplementary

Clause 141: Offences by bodies corporate

1815 This clause provides that where an offence is committed by a body corporate, officers of the body may also be found guilty of that offence in certain circumstances.

1816 Under subsection (1), an officer is also guilty of the offence if proved that the offence was committed with the officer's consent or connivance or because of the officer's neglect. The officer is liable to prosecution and punishment.

1817 Subsection (2) defines an officer in relation to a body corporate for the purposes of establishing an offence under subsection (1).

1818 Subsection (3) applies subsection (1) to the acts and defaults of members of a body corporate where such members manage the body's affairs.

Clause 142: Application of this Part to partnerships

1819 This clause explains how an offence committed under Part 5 applies to partnerships.

1820 Subsection (1) provides that where a partnership is not regarded as a legal person and an offence is committed by a partner, another partner shall be guilty of the offence if proved that the offence was committed with that other partner's consent or connivance or because of their neglect. Both partners are liable to prosecution and punishment.

1821 Subsection (2) explains that where an offence is alleged to have been committed by a partnership that is a legal person, proceedings may be brought against the partnership in the firm name.

1822 Subsection (3) applies certain elements of criminal procedure, including court rules about service of documents, to a partnership as if it were a body corporate.

1823 Subsection (4) requires fines imposed on a partnership on its conviction of an offence to be paid out of the funds of the partnership.

1824 Subsection (5) provides that where a partnership commits an offence, a partner is also guilty if proved that the offence was committed with that partner's consent or connivance or because of the partner's neglect. The partner is liable to prosecution and punishment.

1825 Subsection (6) provides that, in subsections (1) and (5), a "partner" includes a person purporting to act as a partner.

1826 Subsection (7) explains that explains that a partnership is not regarded as a legal person if it is not regarded as such under the law of the country under which it was formed.

Clause 143: Application of this Part to unincorporated associations

1827 This clause explains how offences apply to unincorporated associations.

1828 Subsection (1) provides that an unincorporated association is to be treated as a legal person for the purposes of this Part in a case falling within subsection (2).

1829 Subsection (2) provides that cases fall within scope of this provision when they relate to labour market offences (as defined in clause 148) for which it is possible to bring proceedings against unincorporated associations in the name of the association.

1830 Subsection (3) explains that offences allegedly committed by an unincorporated association may be brought against the association in the name of the association.

1831 Subsection (4) applies certain elements of criminal procedure, including the rules of court relating to the service of documents, to an unincorporated association as if it were a body corporate.

1832 Subsection (5) requires fines imposed on an association following its conviction of a labour market offence to be paid out of the funds of the association.

1833 Subsection (6) provides that where an unincorporated association corporate commits an offence, an officer is also guilty if proved that the offence was committed with that officer's consent or connivance or because of the officer's neglect. The officer is liable to prosecution and punishment.

1834 Subsection (7) defines "officer" in relation to an association for the purposes of this clause.

Clause 144: Application of this Part to the Crown and Parliament

1835 This clause establishes that the provisions of Part 5 of the Bill are binding on the Crown but makes clear that no contravention of any provision in this Part by the Crown makes the Crown criminally liable. It also provides for certain exemptions in relation to the exercise of powers of entry into His Majesty's private estates and the Palace of Westminster, and also provides that the Secretary of State may certify that the powers of entry are not exercisable in relation to Crown premises for reasons of national security.

1836 Subsection (1) provides that subject to this clause and clause 131, the provisions in Part 5 of the Bill apply to the Crown and provisions apply to Crown premises in the same way as other premises.

1837 Subsection (2) defines Crown premises for the purposes of this clause.

1838 Subsection (3) provides that no contravention of any provisions in this Part makes the Crown criminally liable but provides for actions or omissions of the Crown to be declared unlawful by the High Court or the Court of Session in Scotland.

1839 Subsection (4) clarifies that the general immunity for the Crown from criminal liability does not apply to employees of the Crown and that the provisions of Part 5 apply to them as they do to other persons.

1840 Subsection (5) confers on the Secretary of State the power to certify that the powers of entry in this Part of the Bill are not exercisable in relation to Crown premises if it appears appropriate in the interests of national security.

1841 Subsection (6) clarifies that the powers of entry in the Bill are not exercisable in relation to His Majesty's private estates or the parliamentary estate.

1842 Subsection (7) states that His Majesty's private estates have the definition set out in section 1 of the Crown Private Estates Act 1862 for the purposes of exempting them from being subject to the powers of entry in this Bill.

Clause 145: Abolition of existing enforcement authorities

1843 Subsection (1) of this clause abolishes two existing public bodies currently involved in labour market enforcement.

1844 Paragraph (a) of subsection (1) abolishes the Gangmasters and Labour Abuse Authority, which was created under the Gangmasters (Licensing) Act 2004, as amended by the Immigration Act 2016. As a consequence, paragraph (a) of subsection (2) of this clause repeals section 1 of the Gangmasters (Licensing) Act 2004.

1845 Paragraph (b) of subsection (1) abolishes the Director of Labour Market Enforcement – a statutory office holder created under the Immigration Act 2016. As a consequence, paragraph (b) of subsection (2) repeals section 1 of the Immigration Act 2016.

Clause 146: Consequential and transitional provision

1846 This clause relates to the relevant provisions in the Bill that contain consequential amendments and transitional provisions relating to Part 5.

1847 Subsection (1) introduces Schedule 10 which contains consequential amendments relating to Part 5.

1848 Subsection (2) introduces Part 1 of Schedule 11, which provides for the making of schemes in relation to the abolition of the Gangmasters and Labour Abuse Authority and the Director of Labour Market Enforcement. These schemes would provide for the transfer of staff, property, rights and liabilities to the Secretary of State.

1849 Subsection (3) introduces Part 2 of Schedule 11 which contains other transitional and savings provisions in relation to Part 5.

Schedule 10 – Consequential amendments relating to Part 5

1850 Schedule 10 makes consequential changes to various Acts of Parliament as a result of Part 5 of the Bill. Part 5 provides for the Secretary of State to enforce relevant labour market legislation, as listed in Part 1 of Schedule 7. It is envisaged that this enforcement will be carried out by a new labour market enforcement body, that will be an executive agency of the Department for Business and Trade. This will involve the abolition of an existing non-departmental public body (the Gangmasters and Labour Abuse Authority (GLAA)) and of the Director of Labour Market Enforcement (see clause 145).

1851 Part 1 of Schedule 10 makes consequential changes to the following Acts in relation to existing powers under relevant labour market legislation:

- Employment Agencies Act 1973.
- Part 2A of Employment Tribunals Act 1996.
- National Minimum Wage Act 1998.
- Gangmasters (Licensing) Act 2004. The amendments to the Gangmasters (Licensing) Act 2004 include preserving the current position for enforcing the prohibitions in that in relation to Northern Ireland.
- The Modern Slavery Act 2015.

1852 Part 2 of Schedule 10 makes additional consequential changes to the following Acts:

- Public Records Act 1958.
- Parliamentary Commissioner Act 1967.
- Superannuation Act 1972.
- House of Commons Disqualification Act 1975.
- Northern Ireland Assembly Disqualification Act 1975.
- Employment Protection Act 1975.
- Police and Criminal Evidence Act 1984.
- Companies Act 1985.
- Trade Union and Labour Relations (Consolidation) Act 1992.

- Criminal Justice and Public Order Act 1994
- Deregulation and Contracting Out Act 1994.
- Employment Tribunals Act 1996
- Employment Relations Act 1999.
- Immigration and Asylum Act 1999.
- Finance Act 2000.
- Regulation of Investigatory Powers Act 2000.
- Freedom of Information Act 2000.
- Police Reform Act 2002.
- Employment Relations Act 2004.
- Civil Partnership Act 2004.
- Pensions Act 2004.
- Serious Organised Crime and Police Act 2005.
- Natural Environment and Rural Communities Act 2006.
- Regulatory Enforcement and Sanctions Act 2008.
- Employment Act 2008.
- Equality Act 2010.
- Financial Services Act 2012.
- Modern Slavery Act 2015.
- Small Business, Enterprise and Employment Act 2015.
- Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.
- Immigration Act 2016.
- Investigatory Powers Act 2016.
- Police and Crime Act 2017.
- Data Protection Act 2018.
- Sentencing Act 2020
- Police, Crime, Sentencing and Courts Act 2022
- Procurement Act 2023.

Schedule 11 - Transitional and saving provision relating to Part 5

1853 This Schedule sets out transitional and savings provisions relating to Part 5. Part 1 of this Schedule provides powers to make transfer schemes in relation to the abolition of the Gangmasters and Labour Abuse Authority (GLAA) and the Director of Labour Market Enforcement and Part 2 makes other transitional and savings provision.

1854 Paragraph 1 provides for the Secretary of State to make a staff transfer scheme to enable GLAA employees to become members of the Secretary of State's staff, which can provide for, amongst other things, the terms and conditions of employment and for calculating continuous employment.

1855 Subparagraphs (3) to (5) enable, in specific circumstances, provision to be made in a staff transfer scheme in relation to whether or not a member of GLAA staff is to be transferred.

1856 Paragraph 2 provides for the for the Secretary of State to make a property transfer scheme to enable the property, rights and liabilities of the GLAA and of the Director of Labour Market Enforcement to be transferred to the Secretary of State.

1857 Paragraph 3 makes provision to ensure continuity of anything done by or in relation to the GLAA or the Director where staff, property, rights and liabilities are transferred under either a staff transfer scheme or a property transfer scheme.

1858 Paragraph 4 provides for either type of scheme to include supplementary, incidental, transitional or consequential provision.

1859 Paragraph 5 defines "designated", "the Director" and "the GLAA" for the purposes of this Part of the Schedule.

1860 Paragraph 6 makes provision to ensure the continuity of labour market enforcement functions. Under this paragraph, anything already done by or in relation to a relevant person prior to commencement of the relevant clauses continues as if done by the Secretary of State.

1861 Sub-paragraph (4) defines "relevant person" for the purpose of this paragraph. Paragraph 6(4)(e) includes an enforcement officer acting for the purposes of the Gangmasters (Licensing) Act 2004 as a relevant person, apart from functions done by or in relation to enforcement officers in Northern Ireland appointed under paragraph 15 of Schedule 2 to the Gangmasters (Licensing) Act 2004.

1862 Paragraph 7 provides for continuity of requests for, and retention of, information. Under this paragraph any existing requests for information made under a repealed provision immediately before the commencement day of that repeal are to be treated as being made by the Secretary of State under the corresponding provision of the Bill. Similarly, any information retained under a power of a repealed provision before commencement of that repeal is to be treated as retained under the power in clause 97 of this Bill.

1863 Paragraph 8 makes provision for the continuity of functions carried out by labour abuse prevention officers. Any action taken by or involving such an officer under section 114B of the Police and Criminal Evidence Act 1984 (PACE) before the relevant day (when paragraph 63 of Schedule 10 comes into force) will be treated as if it was done by or in relation to a relevant enforcement officer on and after that day. Similarly, if an action related to a function of a labour abuse prevention officer was in progress before the relevant day, it can be continued by a relevant enforcement officer on and after that date.

1864 Sub-paragraph (3) defines "labour abuse prevention officer" and "relevant enforcement officer" for the purpose of this paragraph.

1865 Paragraph 9 provides for continuity of applications for warrants. Under this paragraph, if an application for a warrant under section 17 of the Gangmasters (Licensing) Act 2004 was made before the relevant date (when paragraph 38 of Schedule 10 takes effect) but not yet determined or withdrawn, it will be treated as an application for a warrant under clause 99 of this Bill.

1866 Paragraph 10 makes provision for the continuity of issued, but unexecuted warrants. If a warrant was issued under section 17 of the 2004 Act before the relevant date but not yet executed, it will be treated as issued under clause 99 of this Bill (but clause 128 and Schedule 8 of this Bill will not apply).

1867 Paragraph 11 provides for the continuity of things done in relation to LME undertakings and orders before the repeal of sections 14 to 30 of the Immigration Act 2016 takes effect, including that any such existing undertakings and orders will be treated as an LME undertaking or order under this Bill.

1868 Paragraph 12 provides that information obtained under section 9 of the Employment Agencies Act 1973 or section 26(1) of the Immigration Act 2016 and held by an officer for the purposes of the 1973 Act becomes vested in the Secretary of State when paragraph 2 of Schedule 10 (which repeals section 8A of the 1973 Act (appointment of officers)) takes effect.

1869 Paragraph 13 provides that references in clause 132 to "information obtained by the Secretary of State" in connection with any enforcement function include: information obtained by virtue of Paragraph 12 of this Schedule; information held under sections 15(2) and 16(2) of the National Minimum Wage Act 1998 prior to changes made by Schedule 10 of this Bill (which repeal sections 15 and 16) taking effect; and, information obtained under a property transfer scheme under paragraph 2 of this Schedule.

1870 Paragraph 14 provides that the repeal of section 9 of the Employment Agencies Act 1973 (inspection) does not prevent prior statements by a person, given before the day of that repeal, from being used as evidence against that person in criminal cases on or after that day.

1871 Paragraph 15 provides that, after the coming into force of paragraph 30(2)(b) of Schedule 7 to this Bill, the reference in that paragraph to an investigation by or on behalf of the Secretary of State in relation to any order made under section 14 of the Modern Slavery Act 2015 includes an investigation carried out by a labour abuse prevention officer.

1872 Paragraphs 16 and 17 set out additional provision for the continuity of requirements to notify the Gangmasters and Labour Abuse Authority under slavery and trafficking prevention orders made under the Modern Slavery Act. Those requirements will have effect as a requirement to notify the Secretary of State.

1873 Paragraph 18 provides that the repeal of sections 19 to 19H of the National Minimum Wage Act 1998 made by paragraph 23 of Schedule 10 does not apply in relation to notices of underpayments served before the repeal comes into force, except so far as provided for by paragraph 6(1) or (2) of this Schedule.

1874 Paragraph 19 provides that the consequential amendments made by paragraphs 17 to 23 of Schedule 10 to the National Minimum Wage Act 1998 and the consequential amendments made to other legislation by paragraphs 68(2), 81 (a) and 85(b) of Schedule 10 do not affect any provision of the National Minimum Wage Act 1998 for the purpose of legislation relating to agricultural wages in England, Scotland, Wales and Northern Ireland.

1875 Paragraph 20 provides that consequential amendment made by subparagraph (4)5(6) of Schedule 10 does not affect regulations made by the relevant Northern Ireland department, in relation to appeals, before the coming into force of that amendment using powers contained in paragraph 11 of Schedule 2 to the Gangmasters (Licensing) Act 2004.

Interpretation of this Part

Clause 147: Meaning of "non-compliance with relevant Labour Market legislation"

1876 This clause defines what constitutes "non-compliance with relevant labour market legislation" for the purposes of this Part of the Bill. It sets out the different actions or omissions that would be considered non-compliant under relevant labour market legislation. The term is used in relation to the content of both the labour market enforcement strategy (see clause 81) and the annual report (see clause 82), both of which the Secretary of State is required to prepare and publish. The term is also used in relation to the investigatory powers available under clauses 83 and 84.

1877 Subsection (1) provides three categories of non-compliance: failure to comply with any requirement, restriction, or prohibition imposed by relevant labour market legislation, breaching conditions of a licence granted under section 7 of the Gangmasters (Licensing) Act 2004 and committing a labour market offence.

1878 Subsection (2) states that non-compliance includes the failure to pay a relevant sum as required by Part 2A of the Employment Tribunals Act 1996.

Clause 148: Interpretation: general

1879 This clause provides definitions of key terms used throughout Part 5 of the Bill.

1880 Subsection (1) defines the "Advisory Board" to refer to the Board established under clause 90, which provides advice to the Secretary of State regarding labour market enforcement.

1881 It also defines "ancillary offence" as a range of secondary offences connected to labour market offences, including attempts to commit, conspiracy, incitement, or aiding and abetting such offences. It also includes offences under Part 2 of the Serious Crime Act 2007.

1882 The subsection also defines ''business'' as a trade or profession, and any activity carried on by a body of persons. It also defines "employee" and "employer" as having the same meaning as in section 230 of the Employment Rights Act 1996 and defines "employer's association" as having the same meaning as in section 122 of the Trade Union and Labour Relations (Consolidation) Act 1992. It also defines "trade union" as having the same meaning as in section 1 of that same Act.

1883 The subsection defines "enforcement function" and "enforcement officer". "Enforcement function" refers to the Secretary of State's enforcement responsibilities as defined in clause 88. "Enforcement officer" means a person appointed by the Secretary of State under clause 87(3) to carry out enforcement functions.

1884 The subsection defines "labour market offence", "LME order", "LME undertaking", "non-compliance with relevant labour market legislation",". "Labour market offence" is defined to include both direct offences under labour market legislation and any ancillary offences related to such offences. "LME order" and "LME undertaking" refer to specific enforcement measures as defined under clauses 120(2) and 116(3), respectively. "Non-compliance with relevant labour market legislation" is defined by clause 147 and includes a failure to meet statutory requirements, breaches of licence conditions, and labour market offences.

1885 The subsection defines terms that relate to the Secretary of State's power to issue notices of underpayment and penalties in respect of non-payment of statutory pay rights. "Liable party", "underpaid individual" and "relevant day" have the meaning given in clause 100(1), "notice of underpayment" refers to a notice described in clause 100(2) , and a "statutory pay provision" refers an enactment as defined in clause 100(7) .

1886 "Worker", except as used in clause 99, adopts the definition given in the Employment Rights Act 1996, as set out in section 230 of that Act. Therefore, "worker" means an individual who has entered into or works under a contract of employment or any other contract.

1887 Subsection (2) clarifies the meaning of "premises" for enforcement purposes.

1888 Subsection (3) provides definitions for terms used in subsection (2).

Part 6: General

Clause 149: Increase in time limits for making claims

1889 This clause introduces Schedule 12, 'Increase in time limit for making claims.'

Schedule 12: Increase in time limits for making claims

1890 This schedule 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.

1891 Paragraph 1 substitutes "three" with "six" where it occurs in the Safety Representatives and Safety Committees Regulations 1977.

1892 Paragraph 2 substitutes "three" with "six" where it occurs in the Trade Union and Labour Relations (Consolidation) Act 1992.

1893 Paragraph 3 substitutes "three" with "six" where it occurs in the Pension Schemes Act 1993.

1894 Paragraph 4 substitutes "three" with "six" where it occurs in the Employment Rights Act 1996.

1895 Paragraph 5 substitutes "three" with "six" where it occurs in the Health and Safety (Consultation with Employees) Regulations 1996.

1896 Paragraph 6 substitutes "three" with "six" where it occurs in the Working Time Regulations 1998.

1897 Paragraph 7 substitutes "three" with "six" where it occurs in the National Minimum Wage Act 1998. It is intended that this amendment should have a consequential effect on the provisions of the following enactments that reference this section:

a. the Agricultural Wages Act 1948;

b. the Agricultural Sector (Wales) Act 2014;

c. the Agricultural Wages (Scotland) Act 1949;

d. the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 (S.I. 1977/2151 (N.I. 22)).

1898 Paragraph 8 substitutes "three" with "six" where it occurs in the Employment Relations Act 1999.

1899 Paragraph 9 substitutes "three" with "six" where it occurs in the Transnational Information and Consultation of Employees Regulations 1999 in respect of complaints to employment tribunals in Great Britain. Sub-paragraph (3) makes separate provision to preserve the three-month time limit for complaints to industrial tribunals in Northern Ireland.

1900 Paragraph 10 substitutes "three" with "six" where it occurs in the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.

1901 Paragraph 11 substitutes "three" with "six" where it occurs in the Civil Aviation (Working Time) Regulations 2004.

1902 Paragraph 12 substitutes "three" with "six" where it occurs in the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.

1903 Paragraph 13 substitutes "three" with "six" where it occurs in the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1904 Paragraph 14 substitutes "three" with "six" where it occurs in the Cross-border Railway Services (Working Time) Regulations 2008.

1905 Paragraph 15 substitutes "three" with "six" where it occurs in the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009.

1906 Paragraph 16 substitutes "three" with "six" where it occurs in the Agency Workers Regulations 2010.

1907 Paragraph 17 substitutes "three" with "six" where it occurs in the Equality Act 2010.

1908 Paragraph 18 substitutes "three" with "six" where it occurs in the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018.

Clause 150: Orders and regulations under Employment Rights Act 1996: procedure

1909 This clause amends section 236 of the Employment Rights Act 1996 to enable the combination of orders or regulations made under that Act, that would otherwise be subject to different Parliamentary procedures (or no Parliamentary procedure), in a statutory instrument which is subject to the affirmative procedure.

Clause 151: Power to make consequential amendments

1910 This clause confers a power on the Secretary of State to, by regulations, make provision that is consequential on any provision made by the Bill. This includes the ability to amend provisions made by or under primary legislation (but only in relation to primary legislation passed or made before the end of the Parliamentary session in which this Bill is passed as an Act). Primary legislation in this context means an Act of the UK Parliament, measures or Acts of the National Assembly for Wales or an Act of Senedd Cymru, an Act of the Scottish Parliament and Northern Ireland legislation.

1911 This power is exercised by way of regulations. The use of this power to amend or repeal primary legislation is subject to the affirmative Parliamentary procedure, otherwise the negative procedure applies.

Clause 152: Power to make transitional or saving provision

1912 This clause allows the Secretary of State to, by regulations, make such transitional or saving provisions as the Secretary of State considers appropriate in connection with the coming into force of any provision in the Bill.

1913 Any regulations made under this clause may make provision in addition to or different from that made by the Bill; and make any adaptations for provisions of this Bill which are appropriate because of other provisions of this Bill not yet having come into force.

Clause 153: Regulations

1914 This clause sets out various procedural aspects relevant to the making of regulations under the Bill by statutory instrument (except for commencement regulations made under clause 156).

1915 Subsection (2) sets out that regulations made under the Bill may, make different provision for different purposes and may contain supplementary, incidental, consequential, transitional or saving provision.

1916 Subsections (4) and (5) explain what is meant by references in the Bill to the negative procedure and the affirmative procedure. Under the negative procedure, regulations must be laid after making and can be annulled by resolution in either House.

1917 References to "the affirmative procedure" are to the draft affirmative procedure, whereby regulations must be debated and affirmed by both Houses of Parliament before they can be made.

1918 Any provision that may be included in an instrument under this Bill subject to the negative procedure may also be made regulations subject to the affirmative procedure.

Clause 154: Financial provisions

1919 This clause sets out that expenditure incurred under the terms of this Bill is to be met from supplies provided by Parliament.

Clause 155: Extent

1920 This clause sets out the territorial extent of the Bill.

1921 With the exception of clauses 12, 13 and 30, Parts 1, 2 and 4 of the Bill extend to England and Wales and Scotland.

1922 Clauses 12 and 13 of the Bill extend to Northern Ireland only.

1923 Chapter 1 of Part 3 of the Bill extends to England and Wales only.

1924 Chapter 2 of Part 3 of the Bill extends to England and Wales and Scotland.

1925 Clause 30, Chapter 3 of Part 3, and Parts 5 and 6 of the Bill extend to England and Wales, Scotland and Northern Ireland.

1926 Except as set out in subsection (5), amendments or repeals made by the Bill have the same extent as the provision amended, revoked or repealed.

1927 Schedule 12, paragraphs 9(3) and (4), which provide for three-month industrial tribunal time limits in Northern Ireland under the Transnational Information and Consultation of Employees Regulations 1999, extend to Northern Ireland only. Paragraphs 10, 12 and 13, which amend time limits to six months in working time regulations related to merchant shipping, and fishing vessels, as well as time limits in the Transfer of Undertakings (Protection of Employment) Regulations 2006, extend to England and Wales, and Scotland.

Clause 156: Commencement

1928 This clause sets out the manner in which provisions in the Bill will be commenced.

1929 Subsections (1) and (2) set out which provisions of this Bill come into force on Royal Assent and 2 months after Royal Assent respectively.

1930 In respect of all other provisions, subsection (3) allows the Secretary of State to make regulations setting out the days such provisions come into force.

1931 Subsection (4) sets out that regulations made under subsection (3) may make different provision doe different purposes.

Clause 157: Short title

1932 This clause provides that the short title of the legislation will be the Employment Rights Bill.

Commencement

1933 Clause 156 provides for the commencement of the provisions in this Bill.

1934 Clause 75 (repeal of minimum service levels legislation) and clauses 151 to 155, this clause and clause 157 come into force on Royal Assent.

1935 Clauses 58, 59, 60, 63, 64, 66, 67, 68, 69, 70, 71, 72, 77, 79, 80, 81, 83, 84 and 86 come into force two months after the day on which Royal Assent is given.

1936 The remaining provisions of this Act will come into force on such day as the Secretary of State may appoint by regulations. Different days may be appointed for different purposes.

Financial implications of the Bill

1937 The Government has produced a series of impact assessments for the provisions in the Bill, which provide an initial estimate of the costs and benefits to stakeholders. Consideration of the financial implications of the Bill are set out in the impact assessments.[1]

Parliamentary approval for financial costs or for charges imposed

1938 The House of Commons passed a money resolution for this Bill at Second Reading on 21 October 2024.

1939 The money resolution covers potential new government expenditure arising out of the following provisions of the Bill:

a. Clause 10 – Statutory sick pay: removal of waiting period;

b. Clause 11 - Statutory sick pay: lower earnings limit etc;

c. Clause 30 – Public sector outsourcing: protection of workers;

d. Part 3 – The School Support Staff Negotiating Body and the Adult Social Care Negotiating Body for England;

e. Clause 56 – Right of trade unions to access workplaces;

f. Clause 57 and Schedule 6 - Trade union recognition; and

g. Part 5 – the Fair Work Agency.

1940 No ways and means resolution were required as the Bill does not authorise any new taxation or similar charges. However, the money resolution authorised the paying in of money to the Consolidated Fund that arises as a result of

a. the amendments made by clause 56 (rights of trade unions to access workplaces),

b. clause 104 (penalties for underpayment), and

c. the amendments made to section 15 of the Gangmasters (Licensing) Act 2004 by paragraph [40] of Schedule 8.

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[1] Employment Rights Bill: impact assessments - GOV.UK

Compatibility with the European Convention on Human Rights

1941 The Government does not consider that the Bill raises any significant issues in relation to the European Convention on Human Rights. Accordingly, Baroness Jones of Whitchurch has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect.

Compatibility with the Environment Act 2021

1942 Baroness Jones of Whitchurch of the view that the Bill as published does not contain provisions which, if enacted, would be considered environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Duty under Section 13C of the European Union (Withdrawal) Act 2018

1943 As required under the Windsor Framework (Constitutional Status of Northern Ireland) Regulations 2024 which amend the European Union (Withdrawal) Act 2018 the Minister in charge of a Bill will need to make a written statement about the consistency of that Bill with the UK internal market.

1944 Baroness Jones of Whitchurch is of the view that the Bill as published does not contain provisions which affect trade between Northern Ireland and the rest of the UK. Accordingly, no statement under that section has been made.

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland ?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
1 Employment Rights Clause 1 - 11 Schedules 1 and 2	Yes	Yes	No	Yes	No	No	No
1 Employment Rights Clauses 12 and 13	No	No	No	No	No	Yes	Yes
11 Employment Rights Clauses 14 to 26 Schedule 3	Yes	Yes	No	Yes	No	No	No
2 Other Matters Relating to Employment Clauses 27 - 29	Yess	Yes	No	Yes	No	No	No
2 Other Matters Relating to Employment Clause 30	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2 Other Matters Relating to Employment Clause 31 – 32	Yes	Yes	No	Yes	No	No	No
2 Other Matters Relating to Employment Clauses 33 - 34	Yes	Yes	No	Yes	No	No	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland ?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
3 Pay and Conditions in Particular Sectors Clause 35 Schedule 4	Yes	No	No	No	No	No	No
3 Pay and Conditions in Particular Sectors Clauses 36 –52	Yes	Yes	Yes	Yes	Yes	No	No
3 Pay and Conditions in Particular Sectors Clause 53 Schedule 5	Yes	Yes	No	Yes	No	Yes	No
3 Pay and Conditions in Particular Sectors Clause 54	Yes	Yes	No	Yes	No	No	No
4 Trade Unions and Industrial Action etc. Clauses 55 – 86 Schedule 6	Yes	Yes	No	Yes	No	No	No
5 Enforcement of Labour Market Legislation Clauses 87 – 148 Schedules 7 to 11	Yes	Yes	No	Yes	No	Yes	Yes
Part 6 General Clauses 149 –	Yes	Yes	No	Yes	No	Yes	No

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	**Extends to E & W and applies to Wales?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Scotland ?**	**Legislative Consent Motion process engaged?**	**Extends and applies to Northern Ireland?**	**Legislative Consent Motion process engaged?**
157 Schedule 12							

EMPLOYMENT RIGHTS BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Employment Rights Bill as brought from the House of Commons on 14 March 2025 (HL Bill 81).

Ordered by the House of Lords to be printed, 14 March 2025

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS