

EXPLANATORY NOTES

Employment Rights Act 2025

Chapter 36

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EXPLANATORY NOTES—EMPLOYMENT RIGHTS ACT 2025

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EMPLOYMENT RIGHTS ACT 2025

EXPLANATORY NOTES

What these notes do

- These Explanatory Notes relate to the Employment Rights Act 2025 which received Royal Assent on 18 December 2025 (c. 36).
- 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 Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act means in practice; provide background information on the development of policy; and provide additional information on how the Act affects existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

1 The Employment Rights Act 2025 ("the Act") delivers the key legislative reforms set out in the Government's Plan to Make Work Pay[1]. The Act updates and enhance existing employment rights and makes provision for new rights; makes provision regarding pay and conditions in particular sectors; and makes reforms in relation to trade union matters and industrial action. It further creates a new regime for the enforcement of employment law.

2 The Act 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 and discrimination • 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 • Employment of children on heritage railways
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 of the Adult Social Care Negotiating Body in England and Social Care Negotiating Bodies in Scotland and Wales • Seafarers
Part 4: Trade Unions and	This Part makes provision in relation to trade unions and industrial

[1] https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf

Industrial Action, including Schedule 6	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 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: Miscellaneous and 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 has set the country on the path of national renewal, building a Britain for all on the firm foundations of security, respect and opportunity. That means creating an economy that delivers for businesses and for working people. Creating the best environment for business includes maximising job security to raise productivity, improve skills and cut the costs of staff turnover. Meanwhile, offering opportunity and security for working people requires profitable businesses that are supported to invest and grow.

Ending One-Sided Flexibility

4 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.

5 The Act introduces a right to a guaranteed hours contract which reflects the hours qualifying workers regularly work over a reference period. The Act also introduces a right to a reasonable notice of shifts and a right to payment for shift cancellation and curtailment at short notice for eligible workers. The Act provides for these rights to apply to agency workers as well as directly-engaged workers.

Family Friendly Rights

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

7 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 Act amends 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 also expands 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.

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

9 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 Act will ensure that Paternity Leave and Parental Leave is a 'day one' right.

10 Previously, all Paternity Leave and Pay must have been taken before Shared Parental Leave and Pay began. The Act removes this restriction, enabling parents to take their Paternity Leave and Pay after their Shared Parental Leave and Pay.

11 Parental Bereavement Leave was previously the only 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 Act introduces a new right to Bereavement Leave, allowing employees to take leave from work to grieve the loss of other loved ones, including pregnancy loss before 24 weeks.

12 The Act also provides for the Government to undertake a review of the duties people can take time off work to do under the Time Off for Public Duties legislation, with specific reference to Special Constables.

Dismissal

13 The Act contains a number of measures related to dismissal and redundancy.

14 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 Act reduces this qualification period to six months and removes the existing power to change the length of this qualifying period via secondary legislation. It also reduces the qualifying period from two years to six months for an employee's right to receive a written statement of reasons for their dismissal from their employer on request.

15 Currently, compensatory awards for unfair dismissal claims are capped at the lower of 52 weeks gross pay or £118, 223. The Act removes this cap.

16 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 Act restricts 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 certain changes to their contract of employment, those dismissals are 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.

17 Collective consultation and notification requirements apply when an employer is proposing to make 20 or more employees redundant at one establishment. The Act 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.

18 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 Act increases the maximum period of the protective award from 90 days' pay to 180 days' pay.

19 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 Act ensures 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

20 The Act contains a number of measures to promote fairness and equality at work.

21 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 Act gives the Secretary of State the power to require employers to publish an equality action plan alongside the disclosure required by section 78 of the Equality Act 2010.

22 The Act also enables regulations to require the same organisations to inform the government of those organisations, also required to report, which they received outsourced work from.

23 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 Act therefore strengthens protections against harassment by introducing three amendments to the Equality Act 2010's harassment provisions.

24 The Worker Protection (Amendment to the Equality Act 2010) Act 2023 came into force on 26 October 2024. This introduced a legal duty on employers to take "reasonable steps" to prevent sexual harassment of their employees. This Act amends the duty to require employers to take 'all reasonable steps' to prevent sexual harassment of their employees. This means 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 mirrors the 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.

25 This Act also amends the Equality Act 2010 to introduce an obligation on employers not to permit harassment of their employees by third parties.

26 In addition, this Act introduces 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 allows the Government to make regulations at a later date.

27 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 ERA 1996 ERA 1996This Act 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.

28 The Act also voids any provision in a Non-Disclosure Agreement between a worker and employer which seeks to stop a worker from speaking out about harassment and discrimination they have experienced.

Fair Pay and Conditions

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

30 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 Act 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.

31 The Act establishes the School Support Staff Negotiating Body ("SSSNB") with a remit for remuneration, terms and conditions of employment, and training and career progression for school support staff in England. It gives the Secretary of State powers to make regulations ratifying agreements reached by the SSSNB on school support staff terms and conditions, or making other provision in the absence of agreement, and makes provision about the effect of these regulations. The Act provides that regulations cannot alter an employee's remuneration or terms and conditions to their detriment or prevent them being employed on more favourable terms It also gives the Secretary of State a power to issue statutory guidance in relation to school support staff remuneration, terms and conditions of employment or training and career progression.

32 Currently, there is no legislatively supported or mandated sectoral collective bargaining in the social care sector. This Act enables 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.

33 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 Act removes the requirement to earn at least the Lower Earnings Limit in order to be eligible for SSP.

34 The Act also 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 came into effect on 6 April 2025.

35 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 will normally work.) The Act removes the provision that means SSP is not payable for the first three qualifying days. It also allows 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.

36 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 Act ensures 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.

37 The Act provides 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.

38 The Act 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

39 The Act contains a number of measures to update trade union legislation.

40 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 Act repeals 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 lapse.

41 The Act repeals amendments made by the Trade Union Act 2016 to the Trade Union and Labour Relations (Consolidation) Act 1992. These changes 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 are retained such as, the Certification Officer's freedom from ministerial direction.

42 The new provisions in the Act 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 Act abolishes the 10-year requirement for unions to ballot members on political fund maintenance, simplifies the information requirements for industrial action ballots and notice to employers, extends the expiry of mandate for industrial action from 6 to 12 months, and ensures that trade unions provide a 10-day notice period for industrial action.

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

44 The Government believes that there are currently no clear and consistent rules regulating access to workplaces for trade union members meeting and representing their members. The Act provides a legal framework for employers and unions to negotiate access agreements, making 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.

45 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 Act ensures 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 Act 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.

46 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 Act ensures legislation will be compatible with ECHR and ensures that protections against detriments for trade union representatives and members extend to industrial action. This will be delivered via secondary legislation. The Act also removes 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.

47 There is currently no duty on employers to inform their workers of their right to join a trade union. The Act introduces this duty and requires 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 ERA 1996.

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

48 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 Act updates blacklisting legislation to protect a wider range of people from blacklisting due to trade union membership or activity.

Enforcement

49 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.

50 The Act allows 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.

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

52 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 Act allows for the regulation of umbrella companies, and for enforcement by the Employment Agency Standards Inspectorate (and subsequently, the Fair Work Agency).

53 The Act also provides for the Health and Safety Executive and the Office of Rail and Road to produce guidance setting out the circumstances in which 14-16 year olds may undertake voluntary work in heritage railways settings, with regard to section 1 of the Employment of Women, Young Persons and Children Act 1920.

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 ("ERA 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, reasonable notice of shifts and payments for cancelled, moved 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 ("TULRCA") 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.

Commentary on Provisions

Part 1: Employment Rights

Zero hours workers, etc

Section 1: Right to guaranteed hours

65 This Section amends Part 2A of the ERA 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

66 New Section 27BA of the ERA 1996 outlines the new right to guaranteed hours.

67 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).

68 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.

69 Subsection (3) sets out the qualifying criteria for the right to guaranteed hours for a reference period. It provides that a worker will be a qualifying worker if:

a. during the reference period the worker was employed by the employer under one or more contracts, including zero hours contracts, zero hours arrangement or a contract that provides a number of hours that is below the hours threshold that will be specified in regulations.

b. the worker had worked some hours under the contract(s) they had with the employer (reference period hours), or where the worker has a contract that provides a number of hours, the hours worked by the worker exceeded the number of hours provided for in the contract.

c. the hours the worker worked during the reference period satisfied any conditions set by regulations in relation to the regularity of the hours, the number of hours worked, or any another condition otherwise specified.

d. the worker was not an agency worker or other type of excluded worker as specified by regulations when they worked the hours during the reference period. Further information about guaranteed hours and agency workers can be found in Part 1 of Schedule A1 of the ERA 1996.

70 Subsection (4) provides that a reference to the term 'reference period' means either the initial reference period or each subsequent reference period.

71 Subsection (5) defines the initial reference period to mean a period:

a. beginning with either the day on which the right to guaranteed hours offer comes into force (the commencement day) if the worker is employed by the employer on that day or, when the worker is not employed by the employer on the commencement day, the first day they are employed by the employer.

b. and ending on a day specified by regulations. i.e. the length of the initial reference period will be set in regulations.

72 Subsection (6) defines the 'subsequent reference period' to mean a period beginning and ending on days specified in regulations.

73 Subsection (7) provides that where a worker is a qualifying agency worker under Schedule A1 of the ERA 1996, and that agency worker accepts a guaranteed hours offer from a hirer after a reference period so that (respectively) they become a worker and an employer, that worker will not be entitled to a new initial reference period. Instead, the former agency worker's next reference period will be a subsequent reference period.

74 Subsection (8) defines 'qualifying worker' and 'the relevant reference period' for the purpose of this Chapter 2.

75 Subsection (9) 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 (9) 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.

76 Subsection (10) provides that subsection 11 applies where a worker is on a contract or arrangement which allows the employer to make a number of hours work available over a period longer than the reference period but provides no or little information as to when the hours must be worked exactly (e.g. if the initial reference period was 12 weeks long and the worker is on an annualised hours contract and must work 200 hours per year with no other information). Subsection (10) provides that "the unassigned hours" means hours that may be made available during the longer period (i.e. all of the days the hours could be made available whether in the reference period or another period) for the purpose of subsection (11).

77 Subsection (11) provides a calculation to determine an 'apportioned number' of the unassigned hours so that it can be established whether a worker on this type of contract or arrangement would be a qualifying worker. The apportioned number is effectively then treated as if it were the minimum number of hours that need to be given to the worker by the employer during the reference period under the worker's contract or arrangement.

78 Subsection (12) provides that when the worker has a contract for more than one longer period the calculation in subsection (11) should be applied separately to each longer period.

79 Subsection (13) 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.

80 Subsection (14) 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.

81 Subsection (15) places a statutory duty on the Secretary of State to consult persons, as the Secretary of State considers appropriate, before making the first regulations to specify when the initial reference period is to end and when a subsequent reference period is to begin and end.

82 Subsection (16) provides that 'excluded worker' will be described in regulations.

New Section 27BB

83 New Section 27BB of the ERA 1996 sets out the requirements relating to guaranteed hours offers for the purposes of this Chapter 2.

84 Subsection (1) provides that a guaranteed hours offer must either vary the worker's existing terms and conditions of employment (subject to the provisions of subsection (6)) or offer to enter into a new worker's contract. The offer must also include terms that provide the worker with hours that reflect the hours the worker worked during the reference period.

85 Subsection (2) allows for regulations to be made that would mean that a guaranteed hours offer is only valid where the conditions at subsection (3) are satisfied.

86 Subsection (3) provides the conditions referred to at subsection (2) are that the guaranteed hours offer must set out which days of the week and times the hours in the offer are to be provided and worked, or the working pattern of which the hours offered are to be provided and worked. The days and times or working pattern set out in the offer should reflect how the hours were provided and worked during the reference period.

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

88 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).

89 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 was working under a worker's contract at the start of the reference period, they are still working under that contract when the offer is made and they did not have any other contracts during the reference period.

90 Subsection (7) makes the following provisions around where a guaranteed hours offer takes the form of varied terms and conditions.

91 Where there is a term in the worker's contract that would allow the employer to terminate the contract due to a limiting event and it is not reasonable for the worker's contract to be of a limited term – as there is no 'limiting event' justifying termination – the variation in contract must remove this term, i.e. the variation must propose the term of the contract to become permanent. An example of a 'limiting event' will be where a worker is providing cover for another worker's leave, and the worker on leave returns.

92 The only terms and conditions which should be varied by the offer should be the number of hours and any terms and conditions required for the offer to reflect the number of hours worked during the reference period under subsections (1) and when those hours need to be provided and worked under subsection (2) or (4).

93 Subsection (8) makes the following provisions around where the guaranteed hours 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 cannot, on the whole, provide less favourable terms and conditions (unless in relation to working hours and length of employment) than the terms and conditions the worker worked under during the reference period. This is in addition to reflecting the number of hours worked during the reference period under subsections (1) and when those hours need to be provided and worked under subsection (2) or (4). However, where section 27BC applies (where the worker had more than one contract or had terms that were varied during the reference period) that offer must comply with section 27BC(2), rather than this subsection, in relation to circumstances in which the employer may propose less favourable terms and conditions.

94 Subsection (9) provides that it is reasonable for the new contract to be a limited-term contract in certain circumstances. These include if a limited-term contract would be reasonable where an employer only needs the worker to perform a specific task, or if the worker is only needed until an certain event occurs (or does not occur) or if the employer has another temporary need for the worker as specified by regulations.

95 Subsection (10) places a statutory duty on the Secretary of State to consult before making regulation which may specify other temporary needs for work. Such consultation would include consulting with persons representing the interests of seasonal workers, persons representing the interests of seasonal employers, and other persons as the Secretary of State considers appropriate.

96 Subsection (11) 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.

97 Subsection (12) provides that the Secretary of State may make regulations which make provision about when a guaranteed hours offer is treated as having been made.

98 Subsection (13) defines 'reference period hours'.

New Section 27BC

99 New Section 27BC of the ERA 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.

100 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. the worker worked for the employer under more than one contract, during the relevant reference period and these contracts did not have the same terms and conditions (other than those relating to working hours and length of employment) – i.e. they worked for the employer under various contracts which contain different terms and conditions during the reference period – or

c. the worker worked under a single contract during the relevant reference period, but their terms and conditions (other than those relating to working hours and length of employment) were varied during the reference period. i.e. the employer had varied their contract during the reference period.

101 Subsection (2) provides that – where subsection (1) applies (i.e. the worker had various terms and conditions during the relevant reference period) – the employer's offer of guaranteed hours in the form a new contract which proposes new terms and conditions, can (in addition to the working hours which must be provided under Section 27BB(1) and (2) or 27BB(1) and (4)) – when taken as a whole be 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), i.e. 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 when:

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.

102 Subsection (3) provides that – if an employer relies on subsection (2) (providing terms and conditions that do not replicate the best the worker had during the reference period) 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.

103 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, as set out in accordance with section 27BB(11).

New Section 27BD

104 New Section 27BD of the ERA 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.

105 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'.

106 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 is a 'relevant termination'.

107 Subsection (3) clarifies which contract or arrangement needs to be considered when a worker works for an employer under more than one worker's contract or arrangement during the relevant reference, offer or response period. It clarifies that where a relevant termination takes place of the contract or arrangement that the worker last worked for before the end of the relevant reference, offer or responses period, 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.

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

a. the qualifying worker terminated their contract (resigned), for a reason they were entitled to resign for, apart from where they have resigned because of their employer's conduct, OR

b. the employer terminated the worker's contract fora qualifying reason(s) for doing so (a reason of the type mentioned in Section 98(1)(b) of the ERA 1996) and the employer acted reasonably in the circumstances, in treating the reason as sufficient for terminating the contract i.e. the dismissal was not unfair as per section 98 of ERA 1996, OR

c. 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 e.g. to perform a specific task and the worker has completed that task.

109 Subsection (5) provides other circumstances that will be considered a relevant termination where there is an arrangement between a qualifying worker and employer and whether the worker or employer terminates the arrangement would be done in an equivalent way to the termination of a worker's contract would be considered a relevant termination under 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).

110 Subsection (6) provides that regulations may specify circumstances where there are exceptions to the duty to offer guaranteed hours (s. 27BA(1)) in relation to a reference period. Where one of these exceptions applies and an offer for guaranteed hours has already been made, the offer of guaranteed hours will be treated as withdrawn. The exceptions apply only in relation to each reference period rather than being open-ended exceptions that apply continuously.

111 Subsection (7) sets out a non-exhaustive list of matters that the Secretary of State must have particular regard to when exercising the power to make exceptions. The matters are:

a. the benefit to workers of receiving a guaranteed hours offer under provisions relating to the right to guaranteed hours, and

b. the desirability of preventing the same provisions from having a significant adverse effect on employers who are dealing with exceptional circumstances.

112 Subsections (8)- provides that where an offer has been made and subsequently is treated as withdrawn, the employer must notify the worker that the offer is treated as withdrawn by no later than the end of the response period.

113 Subsection (9) provide that where an exception applies by virtue of the regulations made under 27BD(6) so that either the duty to provide a guaranteed hours offer does not apply or that an offer should be treated as withdrawn, the employer must notify the worker of this, setting out which provision of the regulations made under 27BD(6) makes them except from the duty.

114 Subsection (10) 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.

115 Subsection (11) 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(8) or (9), and when a notice is treated as having been given under s. 27BD(8) or (9).

116 Subsection (12)(a) provides that, when determining whether there is a relevant termination when a worker's contract or arrangement is for a limited term and the term has come to an end under subsection (4)(c) or (5)(b) of Section 27BD, subsection (9) of Section 27BB should be applied, which sets out the circumstances in which it would be reasonable for a worker's contract to be entered into as a limited-term contract.

117 For the same purposes, subsection (12)(b) provides that, it will be presumed that a limited term contract has not been entered into reasonably, 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., This presumption will prevail in these circumstances unless the employer can show the contrary i.e. the successive limited-term contracts were reasonably entered into. In such cases where the limited term contract is presumed to not have been entered into reasonably, the end of such limited term contract will not be considered as a relevant termination under the requirements of s. 27BD(4)(c) and (5)(b), and the employer will not be excepted from its duty to make a guaranteed hours offer.

118 Subsection (13) 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(119)(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

119 New Section 27BE of the ERA 1996 makes provisions around the acceptance or rejection of the guaranteed hours offer by the worker.

120 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) (an exception applying).

121 Subsection (2) provides that where the offer of guaranteed hours takes the form of an offer to vary terms and conditions of the contract that was in force when the offer was made, and that contract is still in force, and the offer is accepted by the worker by giving the required notice to the employer, 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)).

122 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 give notice to accept or refuse the offer of guaranteed hours, unless the offer has been withdrawn due to a relevant termination under Section 27BD(2) or due to an exception applying under the 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.

123 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 gives notice to accept the offer – 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 any existing contract on that day.

124 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.

125 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).

126 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.

127 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.

128 Subsection (9) defines the term 'the response period' in this section to have the same meaning as set out in section 27BD.

129 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

130 New Section 27BF of the ERA 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).

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

132 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.

133 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.

134 Subsection (4) states that where under subsection (3) it was not reasonable to consider at that time 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

135 New Section 27BG of the ERA 1996 makes provisions for workers to make complaints to an employment tribunal.

136 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 to a reference period but their employer has not made an offer by the end of the offer period.

137 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:

a. Section27BB(1) and (3) where regulations that apply are made under (2) i.e. the offer did not reflect the hours worked in the reference period, and/ or did not provide which days and time or working pattern the hours were to be provided to reflect the reference period. OR

b. Section 27BB(1) and (4) where no regulations are made under s. 27BB(2) i.e. that the offer did not reflect the hours worked in the reference period and/ or did not provide when the hours were to be provided and worked to reflect the reference period hours.

138 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 either:

a. varies the worker's terms and conditions in a way that is not permitted undersection 27BB(6) (e.g. varying terms of a worker who had more than one contract),

b. varies the worker's terms and conditions in a way that does not comply with the requirements outlined at section 27BB(7) (e.g. does not remove limited terms unreasonably or varies other terms), or

c. varies the worker's terms and conditions in a way that does not comply with the requirements outlined at section 27BB(8) (e.g. proposes a limited term where unreasonable and the varied terms are less favourable than the terms worked under during the reference period).

139 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.

140 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.

141 Subsection (6) provides that a complaint under subsections (2), (3) or (4) 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) (relevant termination) or 27BY(3) (exclusion as a result of a collective agreement) or regulations under section 27BD(6) (exception applying).

142 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(8) or (9) 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(8); has given a notice under section 27BD(8) or (9)(b) in circumstances when they should not have done; or the notice given in purported compliance with section 27BD(9) does not refer to any provision of the regulations or refers to the wrong provision.

143 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).

144 Subsection (9) defines 'the last day of the offer period' with reference to s. 27BB(11)(a).

New Section 27BH

145 New Section 27BH of the ERA 1996 makes provisions around the time limits for complaints to be made to employment tribunals.

146 Subsection (1) provides that a complaint that the duty to guaranteed hours offer applied but the worker did not receive an offer under section 27BG(1) must be made to the tribunal within re six months of the day after the last day of the offer period.

147 Subsection (2) provides that a complaint that the offer the worker received did not reflect the hours they had worked during the reference period under section 27BG(2) must be made to the tribunal within six months of the day after the day when that offer referred to is made.

148 Subsection (3) provides that a complaint that the offer the worker received contains a variation that are not permitted under section 27BG(3) or that it is a reduced offer due to being provided less hours under section 27BG(4) must be made to the tribunal within six months of the day after the day when the guaranteed hours offer referred to is made.

149 Subsection (4) provides that a complaint that the worker was not eligible for an offer to guaranteed hours due to being provide less hours under section 27BG(5) must be made to the tribunal within six months of the day after what would have been the last day of the offer period had the duty arisen.

150 Subsection (5) provides that a complaint that a employer failed to give notice of the duty not applying or offer being withdrawn under section 27BG(7)(a) must be made to the tribunal within six months of the day after the day on (or before) which the notice should have been given.

151 Subsection (6) provides that a complaint that an employer gave notice of the duty did not applying or offer being withdrawn in circumstances where they should not have under section BG(7)(b) or that the notice did not contain the correct information under section 27BG(7)(c) must be made to the tribunal within six months of day after the day on which the notice is given.

152 Subsection (7) provides that a complaint that the worker has not received the required information about their right to guaranteed hours offers under section 27BG(8)(a) must be made to the tribunal within six months of the day after the last day of the initial information period.

153 Subsection (8) provides that a complaint that the worker has not continued to have access to the required information under section 27BG(8)(b) must be made to the tribunal within six months of the day on which the worker first becomes aware of the failure to which the complaint relates.

154 Subsection (9) provides the tribunal the ability to still consider a complain made to it under section 27BG after the six-months has elapsed if the tribunal is satisfied that it was not reasonably practicable for a worker to bring a complaint within the time limit.

155 Subsection (10) provides the tribunal can extend the time limits set out in section 27BH(1) to (8) under Section 207B of the ERA 1996 where such extensions would facilitate conciliation before proceeding were issued.

New Section 27BI

156 New Section 27BI of the ERA 1996 makes provisions around the awards which may be made by employment tribunals.

157 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.

158 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.

159 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.

160 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) (complaints relating to the worker being provided less hours during the reference period to reduce the amount of hours required to be provided in an offer or to prevent the duty to provide an offer arising).

161 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 ERA 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.

Section 2: Shifts: rights to reasonable notice

162 This Section inserts a new Chapter 3 into Part 2A of the ERA 1996, consisting of new sections 27BJ - 27BO, in order to create rights to reasonable notice of shifts and changes to shifts for individuals on zero hours contracts, zero hours arrangements and other specified contracts.

New Section 27BJ

163 Section 27BJ creates a right for workers to be given reasonable notice of their shifts.

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

165 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.

166 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 that contract does not specify when those shifts will take place.

167 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 (although see subsection (6) regarding shifts that are extended). This provision is made because the timing of the worker's other shifts are guaranteed in their contract and so they already have notice of such shifts.

168 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.

169 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.

170 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 that other contract.

171 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.

172 What is "reasonable" will depend on all the circumstances of a case. Subsection (4) creates a presumption that notice is not reasonable 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.

173 Accordingly, in a claim to a tribunal that notice given to a worker was not reasonable, the tribunal must find 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 in the circumstances.

174 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 reasonable 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.

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

176 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 the timings of which 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.

177 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

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

179 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.

180 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.

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

a. notice of cancelling the shift is not reasonable if given less than an amount of time to be specified in regulations 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 an amount of time to be specified in regulations 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 an amount of time to be specified in regulations before the shift is due to start or if it is given on or after the start of the shift.

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

New Section 27BL

183 Section 27BL makes supplementary provision in relation to Sections 27BJ and 27BK.

184 Subsection (1) provides that the duties at sections 27BJ or 27BK do not apply to shifts that would be, would have been or are being worked by agency workers (as Part 2 of Schedule A1 makes separate provision in respect of agency workers).

185 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 a shift, including additional hours for a shift the timing of which 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.

186 Subsection (4) clarifies that the rights to reasonable notice in sections 27BJ and 27BK apply even if the employer made a request to 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.

187 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 and have agreed to work.

188 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

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

190 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)(c), then the right to reasonable notice at section 27BK(2) is taken to have not applied to that cancellation, movement or curtailment.

191 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 the employer having failed 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 the employer having failed to give reasonable notice of the same cancellation, movement of curtailment.

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

New Section 27BN

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

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

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

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

197 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 a cancellation of a shift, the six months runs from the date on which the shift was due to start.

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

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

New Section 27BO

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

201 Subsection (1)(a) provides that, where an employment tribunal finds a complaint under section 27BN 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.

202 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 fair in the circumstances. Under subsection (2) however, the compensation may not exceed the maximum amount to be specified by the Secretary of State in regulations.

203 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.

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

204 This Section inserts a new Chapter 4 into Part 2A of the ERA 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

205 Subsection (1) of Section 27BP creates a duty (subject to exceptions in section 27BR) 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 the employer cancels, moves or curtailed a qualifying shift at short notice. As the duty applies to cancellations, movements and curtailments by the employer, the duty does not apply to cancellations, movements and curtailments initiated by the worker.

206 The qualifying shift must be one that the employer has informed the worker they are required to work, that the employer has requested the worker to work and the worker has agreed to work, or that the worker has suggested working and the employer has agreed to the worker working. This latter scenario would include shifts that an employer agreed a worker could work after swapping it with another worker.

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

208 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.

209 Subsections (3) and (4) deal with workers who have 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 and that contract guarantees the timing of (some) work, i.e., provides for one or more 'guaranteed shifts'.

210 Subsection (3) provides that a shift is also a "qualifying shift" when it is being worked, is to be worked or would have been worked under such a contract and the timings of the shift in question does not overlap with the timing of a 'guaranteed shift'.

211 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. Workers are not entitled to payment for the cancellation, movement or curtailment of a shift whose timing is guaranteed in the contract, other than in the case of extensions as provided for by subsection (4), as such changes should amount to a breach of contract and accordingly give rise to a separate remedy.

212 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.

213 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 will 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. Alternatively, where notice is given on or after the start of the shift (e.g., if during the shift the worker is informed that some hours have been moved so that the shift is ending later), that notice is short notice.

c. under subsection (6)(c), where 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 now due to start.

d. under subsection (6)(d), where 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 on 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.

214 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.

215 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.

216 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. A shift is also considered to be moved where part of a shift is moved or where a shift is divided by more than an amount of time to be specified in regulations and the result is that the shift ends later, for example, if a shift is changed from 9am to 5pm to 9am to 12pm and 4pm to 9pm. 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.

217 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.

218 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)(b)) requiring a worker to reasonably believe that they would be needed to work the shift).

New Section 27BQ

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

220 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, moved or curtailed, 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-12pm to 1pm-3pm), may not specify an amount greater than what the worker would have earned from working the original shift. So, in the example, the payment amount may not be higher than what the worker would have earned from working 9am to 12pm;

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. So, in the example, the payment amount may not be higher than what the worker would have earned from working 9am to 10am;

d. under subsection (1)(d), where a shift is curtailed but not moved 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. So, in the example, the payment amount may not be higher than what the worker would have earned from working 9am to 10am.

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

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

223 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

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

225 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).

226 Subsection (1)(b) provides that workers must reasonably believe they would be needed to work the 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 but still agrees to work the shift will 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.

227 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, i.e., create exceptions.

228 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.

229 Subsection (3) ensures that employers do not have to disclose information in the notice under subsection (2) that is commercially sensitive or that they would otherwise be prohibited from disclosing, including the disclosure of any personal data that will contravene data protection legislation. Subsection (4) provides that 'data protection legislation' has the same meaning as in the Data Protection Act 2018.

230 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.

231 Subsection (6) provides that an employer is not required to give a notice under subsection (2) if the employer pays the worker the amount that they would have had to pay to the worker under section 27BP(1) for the same hours had an exception not applied within the timeframe

specified for payment under section 27BP(5). Accordingly, no notice needs to be provided under subsection (2) if an exception applies but an employer nonetheless pays the worker within the timeframe for making the short notice payment.

232 Subsection (7) provides that the hours to which a payment relates for the purposes of subsection (6) are to be calculated in accordance with section 27BS(4).

New Section 27BS

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

234 Subsection (1) provides that the right to receive a payment under section 27BP(1) does not affect the worker's contractual rights to remuneration.

235 Subsection (2) provides that where the employer makes a 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.

236 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.

237 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 are those 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 (e.g. where a shift is moved from 9am-12pm to 1pm-3pm), the hours are those 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 (e.g. where a shift is moved from 9am-11am to 10am-12pm), the hours are those 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 (e.g. where a 9am-1pm shift changes to 10am to 1pm), the hours are those that would have been worked if the original shift had not been amended.

New Section 27BT

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

239 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.

240 Subsections (1)(b) and (c) enable workers to bring a claim where they consider that their employer has breached the duty to provide a notice (of the relevant exception and reasons why it applies) 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 (made under section 27BR(1)(c)), does not contain an explanation of why the exception is considered to apply or contains an explanation that is inadequate or untrue.

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

242 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 (in accordance with regulations made under section 27BP(5)).

243 Under subsection (3), a complaint that an employer unreasonably failed to give a notice under section 27BR(2) must be brought within six months from the day after the date on which the notice under section 27BR(2) should have been given (in accordance with regulations made under section 27BR(5)(b)).

244 Under subsection (4), a complaint that the notice given by an employer under section 27BR(2) does not refer to any provision of the regulations (made under section 27BR(1)(c)), does not contain an explanation of why the exception is considered to apply or contains an explanation that is inadequate or untrue must be brought within six months from the day after the date on which the notice under section 27BR(2) is given.

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

246 Subsection (6) provides that section 207B of the ERA 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

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

248 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.

249 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 fair in the circumstances, but not exceeding the maximum amount to be specified in regulations made by the Secretary of State.

250 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 tribunal orders the employer 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).

251 Subsection (4) provides that a tribunal must have regard to the seriousness of the matter complained of in determining whether to require the employer to pay an award under subsection (2) and the value of the award.

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

252 This Section inserts a new Chapter 5 into Part 2A of the ERA 1996, consisting of new section 27BV, and introduces Schedule 1, which inserts new Schedule A1 into the ERA 1996. Taken together, these establish similar rights for agency workers as Sections 1-3 do for directly-engaged workers.

New Section 27BV

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

254 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, i.e., a hirer;

b. does not work (or is not to work) under a worker's contract with that other person, i.e., they are not employed by the hirer; and

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.

255 Subsection (2) provides that references to an agency worker in this Part include, when necessary, a former agency worker, and references to a work-finding agency and a hirer are to also include references to former work-finding agency and former hirer, when the reference is to a former agency worker.

256 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); and

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

257 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, i.e., a hirer, they are not in the employment of.

258 Subsections (5) to (7) introduce the relevant parts of Schedule A1 of the ERA 1996 establishing the rights to guaranteed hours, reasonable notice of shifts and payments for shifts that are cancelled, moved or curtailed at short notice for agency workers.

259 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

260 Schedule 1 of the Act inserts new Schedule A1 into the ERA 1996.

New Schedule A1

New Part 1: Right to guaranteed hours

261 New Part 1 of the new Schedule A1 of the ERA 1996 makes provision about the new right to guaranteed hours for agency workers, as defined in new section 27BV of the ERA 1996. The provisions are broadly similar (with some differences) to the provisions of chapter 2 of Part 2A (right to guaranteed hours) of the ERA 1996.

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

263 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.

264 Subparagraph (2) explains that paragraph 5 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.

265 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).

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

a. the initial reference period, or

b. each subsequent reference period.

267 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.

268 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.

269 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.

270 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.

271 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.

272 Subparagraph (10) places a statutory duty on the Secretary of State to consult persons, as the Secretary of State considers appropriate, before making the first regulations to specify when the initial reference period is to end and when a subsequent reference period is to begin and end.

273 Subparagraph (11) provides that an 'excluded agency worker' will be described in regulations.

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

275 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.

276 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.

277 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 on which work will be made available, 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.

278 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 (then the direct employer) and to be worked by the agency worker (then the directly engaged worker) would be required to work (for example, any time 7am to 9pm Monday to Friday). 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.

279 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.

280 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,

b. must propose terms and conditions relating to pay that comply with paragraph 3,

c. must propose terms and conditions relating to "additional matters" that, taken as whole, are no less favourable than those the agency worker had while working for the end hirer during the relevant reference period,

d. where paragraph 4 applies (i.e. where terms and conditions have varied during the reference period), that comply with subparagraph (2) of that paragraph.

281 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 subparagraph 7(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.

282 Subparagraph (8) places a statutory duty on the Secretary of State to consult persons representing the interests of agency workers who do seasonal work, persons representing the interests of hirers to whom agency workers are supplied to do seasonal work, and other persons as the Secretary of State considers appropriate, before making the first regulations to specify what counts as a 'temporary need' in relation to paragraph 2(7)(c)).

283 Subparagraph (9) provides that for the purposes of subparagraphs (6)(b) and (10), terms and conditions relate to 'pay' if they relate to any payment to a worker in connection with the worker's employment. This will include fees, bonuses, commissions and holiday pay.

284 Subparagraph (10) provides that terms and conditions relate to 'additional matters' if they are not terms and conditions which will be required to establish the number of hours that reflects the hours worked in a relevant reference period or when those hours should be provided and worked (as set out in sub-paragraphs (1) and (2) or (1) and (4)), and do not relate to length of employment or pay.

285 Subparagraph (11) provides that regulations 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.

286 Subparagraph (12) provides that regulations may provide when a guaranteed hour offers is to be treated as having been made.

287 Subparagraph (13) defines 'reference period hours', with reference to its meaning in paragraph 1(3).

288 Paragraph 3 makes further provision about the terms and conditions of guaranteed hours offers relating to pay.

289 Subparagraph (1) establishes that a guaranteed hours offer made by a hirer to a qualifying agency worker must comply with one of four conditions (A to D) in relation to terms and conditions relating to the qualifying agency worker's pay:

290 Subparagraph (2) sets out that under Condition A, the terms and conditions relating to pay will be no less favourable than the most favourable terms and conditions relating to pay that a qualifying agency worker had while working for the hirer during the relevant reference period.

291 Subparagraph (3) sets out that under Condition B, the terms and conditions relating to pay will be no less favourable than the least favourable terms relating to pay that a qualifying agency worker had while working for the hirer during the relevant reference period, and the proposal of such terms will constitute a proportionate means of achieving a legitimate aim.

292 Subparagraph (4) sets out that under Condition C, the terms and conditions relating to pay will be no less favourable than those of a comparable worker at the end of the relevant reference period or, where there was more than one comparable worker, no less favourable than the most favourable terms and conditions relating to pay of a comparable worker at the end of the relevant reference period.

293 Subparagraph (5) sets out that under Condition D, where there was more than one comparable worker, the terms and conditions relating to pay do not meet Condition C but the terms and conditions of employment relating to pay will be no less favourable than those of at least one other comparable worker at the end of the relevant reference period, and the proposal of such terms will constitute a proportionate means of achieving a legitimate aim.

294 Subparagraph (6) requires that if a hirer relies on Conditions B, C or D when making a guaranteed hours offer to a qualifying agency worker, they will be required to give notice to the agency worker which states that they have done so and, where either Condition B or D applies, explains how the proposed terms and conditions constitute a proportionate means of achieving a legitimate aim.

295 Subparagraph (7) states that this notice needs to be given to the qualifying agency worker no later than the same day and in the same form and manner as the guaranteed hours offer, with reference to paragraph 2(11) in that respect.

296 Subparagraph (8) defines a worker as a 'comparable worker' in relation to an agency worker if they are employed by the same hirer to do work that is the same or broadly similar to the work performed by the agency worker (with regard given, where relevant, to whether the worker and agency worker have a similar level of qualifications and skills), and if they are employed to work at the same place. Where there is no worker employed by the hirer at the same place as the agency worker who does the same or broadly similar work, a comparable worker may be employed at any other place.

297 Subparagraph (9) establishes that the definition of terms and conditions in relation to pay as set out in Paragraph 2(9) (sums payable to a worker in connection with their employment) apply in relation to this Paragraph 3 as it applies for the purposes of paragraph 2(6)(b) and (10).

298 Subparagraph (10) establishes that references in Paragraph 3 to terms and conditions relating to 'pay' that an agency worker had when working for a hirer refer to any sums payable to the agency worker in connection with that work. This will include fees, bonuses, commissions and holiday pay.

299 Paragraph 4 makes further provision about the terms and conditions of guaranteed hours offers relating to additional matters, where these terms and conditions were not the same varied during the reference period.

300 Subparagraph (1) provides that this paragraph applies where, during the relevant reference period, the terms and conditions relating to additional matters were not the same throughout the relevant reference period.

301 Subparagraph (2) provides that the guaranteed hours offer may propose terms and conditions of employment relating to additional matters that, taken as a whole, are less favourable than the most favourable terms and conditions relating to additional matters 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 additional matters 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.

302 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.

303 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(11)).

304 Subparagraph (5) clarifies that the definition of terms and conditions of employment relating to 'additional matters' as set out in new sub-paragraph 2(10) applies to this paragraph 4.

305 Paragraph 5 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.

306 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.

307 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.

308 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

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

d. in the circumstances the hirer has acted reasonably in treating the reason (or principal reason) as sufficient for telling the work-finding agency supplying the agency worker to stop supplying them. Work-finding agency is defined at new section 27BV of the ERA 1996.

309 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.

310 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.

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

312 Subparagraph (7) establishes a non-exhaustive list of matters that the Secretary of State must have particular regard to when exercising the power set out in subparagraph (6). The matters are:

a. the benefit to agency workers of receiving a guaranteed hours offer under the provisions relating to the right to guaranteed hours, and

b. the desirability of preventing the same provisions from having a significant adverse effect on hirers who are dealing with exceptional circumstances.

313 Subparagraph (8) 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.

314 Subparagraph (9) 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 will 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.

315 Subparagraph (10) provides that a notice under subparagraph (9) must be given to a qualifying agency worker:

a. where (9)(a) applies, before the end of the offer period;

b. where (9)(b) applies, before the end of the response period.

316 Subparagraph (11) provides that the way in which a notice under subparagraph (8) or (9) must be given, and when a notice under subparagraph (8) or (9) is to be treated as having been given, may be defined in regulations.

317 Subparagraph (12) 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(11)(a) if no guaranteed hours offer is made.

318 Subparagraph (12) 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.

319 Paragraph 6 makes provision around the acceptance or rejection of a guaranteed hours offer.

320 Subparagraph (1) provides that where a guaranteed hours offer is not treated as having been withdrawn under paragraph 5(2) or regulations under paragraph 5(6), the qualifying agency worker may accept or reject the offer by giving notice to the hirer before the end of the response period.

321 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.

322 Subparagraph (3) provides 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).

323 Subparagraph (4) clarifies that, where a qualifying agency worker accepts a guaranteed hours offer from a hirer after a reference period so that (respectively) they become a worker and an employer, there will not be a new initial reference period in relation to the former agency worker. Instead, the former agency worker's next reference period will be a subsequent reference period.

324 Subparagraph (5) 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.

325 Subparagraph (6) 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.

326 Subparagraph (7) defines 'the response period' in the same way as in paragraph 5.

327 Subparagraph (8) 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,

328 Then paragraph 6(1) ceases to apply, regarding the offer when notice is given, and a guaranteed hours offer can no longer be accepted or rejected.

329 Paragraph 7 relates to provision of information to agency workers about the right conferred by Part 1 of Schedule A1.

330 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 work-finding 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.

331 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.

332 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.

333 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.

334 Paragraph 8 makes provision for agency workers to present complaints to employment tribunals against hirers.

335 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.

336 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 (that the offer provides a number of hours which reflects the reference period hours, and the conditions requiring that the offer sets out the days and times where work must be done, or a working pattern), or

b. otherwise, paragraphs 2(1) and 2(4) (read with any regulations in force under paragraph 2(5)(a)) (that the offer provides a number of hours which reflects the reference period hours and also some terms as to when the hours of work are to be provided and worked).

337 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) (the offer must be of a limited-term if reasonable for it to be entered into as such contract, the terms relating to pay must comply with paragraph 3, and the additional matters must taken as a whole be no less favourable than those that applied when working under the supervision and direction of the hirer during the relevant reference period).

338 Subparagraph (4) provides that an agency worker may present a complaint to an employment tribunal that the duty to offer guaranteed hours under paragraph 1(1) 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 under paragraph 1(1) by making such a reduced offer.

339 Subparagraph (5) provides that an agency worker may present a complaint to an employment tribunal that the duty to offer guaranteed hours under paragraph 1(1) 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.

340 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 5(2) (relevant termination), regulations under 5(6) (exception) or in accordance with Section 27BY(3) (exclusion resulting from a collective agreements).

341 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 5(8) or 5(9);

b. gave the agency worker a notice under paragraph 5(8) or 5(9)(b) when they should not have; or

c. gave the agency worker a notice supposedly in compliance with paragraph 5(9) that does not refer to any provision or refers to the wrong provision.

342 Subparagraph (8) defines 'the last day of the offer period' as the day defined by paragraph 2(11)(a) as the last day on which a guaranteed hours offer may be made relative to that reference period.

343 Paragraph 9 makes provision for agency workers to present complaints to employment tribunals against work-finding agencies.

344 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.

345 Subparagraph (2) provides that an agency worker can present a complaint against the work-finding agency that the duty imposed by paragraph 1(1) will 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), preventing them to become a qualifying agency worker.

346 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 5(2) (relevant termination) or paragraph 5(6)(exceptions) or in accordance with Section 27BY(3) (exclusion resulting from a collective agreement).

347 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.

348 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 7(1) or (2).

349 Paragraph 10 makes provision around the time limits for complaints to employment tribunals on time limits.

350 Subparagraph (1) provides that an employment tribunal must not consider a complaint under paragraph 8(2) 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 8(8).

351 Subparagraph (2) provides that an employment tribunal must not consider a complaint under paragraph 8(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.

352 Subparagraph (3) provides that an employment tribunal must not consider a complaint under paragraph 8(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.

353 Subparagraph (4) provides that an employment tribunal must not consider a complaint under paragraph 8(5) or 9(2) unless it is presented before the end of the 6-month period beginning the day after what will have been the last day of the offer period (as defined by paragraph 8(8)) if the duty to offer guaranteed hours had applied.

354 Subparagraph (5) provides that an employment tribunal must not consider a complaint under paragraph 8(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 (with reference to paragraph 5(8) and (10)).

355 Subparagraph (6) provides that an employment tribunal must not consider a complaint under paragraph 8(7)(b) or (c) unless it is presented before the end of the 6-month period beginning the day after the notice is given.

356 Subparagraph (7) provides that an employment tribunal must not consider a complaint under paragraph 9(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 8(8)).

357 Subparagraph (8) provides that an employment tribunal must not consider a complaint under paragraph 9(5)(a) unless it is presented before the end of the 6-month period beginning the day after the last day of the initial information period (as set by paragraph 7(3) or (4)).

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

359 Subparagraph (10) provides that if the employment tribunal is satisfied it was not practical for a complaint under paragraph 8 or 9 to be presented before the 6-month period, it may consider the complaint if presented within a further period that the tribunal considers reasonable.

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

361 Paragraph 11 provides for remedies for well-founded claims to the employment tribunals.

362 Subparagraph (1) provides that where an employment tribunal finds a complaint under paragraph 8 or 9 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.

363 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.

364 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).

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

a. as the number of weeks' pay specified in secondary legislation for complaints under paragraphs 8(1), 8(2), 8(3), 8(7) or 9(5);

b. as the amount specified in regulations for paragraphs 8(4), 8(5), 9(1) or 9(2).

366 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 8(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);

367 Subparagraph (6) provides that in calculating a week's pay to determine the permitted maximum of compensation, where the complaint is under paragraph 9(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.

368 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.

369 Paragraph 12 enables regulations to change the effect of this Part 1 (right to guaranteed hours for agency workers).

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

a. a hirer is not required by this Part of this Schedule (right to guaranteed hours for agency workers) 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 8).

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

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

a. an Act of Parliament, including the ERA 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

373 New Part 2 of Schedule A1 to the ERA 1996 creates new rights to reasonable notice of shifts and changes to these for agency workers, as defined in new section 27BV of the ERA 1996, which is similar to the rights to reasonable notice for directly engaged workers created by section 2.

374 Paragraph 13 sets out the application of Part 2 to shifts worked by agency workers.

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

376 Subparagraphs (2) to (4) provide that Part 2 does not apply to an excluded shift and provide a power to specify what constitutes an "excluded shift" in regulations. In particular, subparagraph (4) provides that shifts may be excluded by reference the number of hours to be worked during the shift, whether alone or taken together with other shifts, being more than a specified number and a shift corresponding to the time of a shift provided for by a worker's contract between the agency worker and a work-finding agency or another person involved in the supply or payment of the agency worker.

377 Subparagraph (5) provides that in Part 2, '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 and '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.

378 Paragraph 14 creates a right to reasonable notice of shifts for agency workers.

379 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 that they are required or requested to work, i.e. shifts that the agency worker is obliged to undertake by virtue of the worker's contract or arrangement between the agency worker and the work-finding agency, or that the agency worker is requested to undertake. Accordingly, notice of a shift can be provided by the work-finding agency or the hirer directly but either way the notice must be reasonable.

380 What is "reasonable" will depend on all the circumstances of a case. Subparagraph (2) creates a presumption that notice is not reasonable 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.

381 Accordingly, in a claim to a tribunal that notice given to an agency worker was not reasonable, the tribunal must find the notice to be unreasonable where it is given within less than the specified timeframe unless the work-finding agency or hirer can show that the notice was reasonable in the circumstances.

382 For example, notice of a shift given in less than the specified timeframe could be reasonable where an agency worker is needed to provide cover for a 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 hirer could reasonably have been expected to plan shifts sooner and accordingly ensure that the agency worker is provided with 14 days' notice, notice of 7 days could be unreasonable.

383 Subparagraph (3) defines 'notice of a shift' for this paragraph, as well as in paragraphs 15 and 16, as notice of how many hours are to be worked and when the shift is to start and end.

384 Paragraph 15 creates a right to reasonable notice of cancellations of or changes to a shift for agency workers.

385 Subparagraph (2) provides that (subject to paragraph 18), agency workers are entitled to reasonable notice from the work-finding agency or the hirer if a shift is cancelled, there is a change to when the shift is to start or end, or where there is a reduction in the number of hours to be worked during the shift because of a break in the shift.

386 Subparagraph (1) provides that the duty in paragraph (2) applies when the agency worker has been given notice of a shift by the work-finding agency or hirer. Further, where the shift is one that the agency worker was requested to work, the agency worker must have agreed to work that shift.

387 Subparagraph (3) creates a presumption that, unless the contrary is shown:

a. notice of cancelling the shift is not reasonable if given less than an amount of time to be specified in regulations 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 an amount of time to be specified in regulations 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 an amount of time to be specified in regulations before the shift is due to start or if it is given on or after the start of the shift.

388 Paragraph 16 makes provision concerning the liability of the work-finding agency and hirer .

389 Subparagraph (1) provides that the work-finding agency is liable for a breach of paragraph 14 or 15 to the extent that they are responsible for the breach, i.e., to the extent that they are responsible for the agency worker not getting reasonable notice.

390 Likewise, subparagraph (2) provides that the hirer is liable for a breach of paragraph 14 or 15 to the extent that they are is responsible for the breach, , i.e., to the extent that they are responsible for the agency worker not getting reasonable notice. Accordingly, both the work-finding agency and the hirer may be liable for a failure to provide reasonable notice, for example, if the hirer did not provide notice to the work-finding agency that they needed the agency worker in sufficient time and then the work-finding agency was then slow to pass that notice onto the agency worker.

391 Subparagraph (3) however provides that the hirer is not responsible, and therefore not liable, for a breach of paragraph 14 or 15, if the hirer gives notice to the work-finding agency of the shift, or cancellation or change to the shift, and that notice enables the work-finding agency to give reasonable notice to the agency worker. Accordingly, the work-finding agency should be solely liable for failure to provide reasonable notice if the hirer provided notice to the work-finding agency in sufficient time but they fail to pass that onto the agency worker within a timeframe that provides them with reasonable notice.

392 Subparagraph (4) provides that regulations may provide that the work-finding agency is solely responsible, and thus liable, for a breach of paragraph 14 or 15 where the hirer is a person of a certain description to be defined in the regulations. This will allow for exemption from liability of persons which will otherwise be liable as hirers. In such cases, the agency worker will however still be entitled to reasonable notice.

393 Paragraph 17 sets out supplementary details to paragraphs 14 to 16.

394 Subparagraph (1) provides that an agency worker is not entitled to reasonable notice of a shift under paragraph 14 where the agency worker suggests working a shift (for example, where the agency worker suggests working overtime). However, where the work-finding agency or hirer agrees to the agency worker's suggestion but they change or cancel that shift, the agency worker is entitled to reasonable notice of changes to or cancellation of the shift under paragraph 15.

395 Subparagraph (2) clarifies that the rights to reasonable notice in paragraphs 14 and 15 apply even if a request is made to multiple workers to work the same shift (e.g. via a group text message or app) but not all of them are needed to work that shift.

396 Subparagraph (3) then clarifies that, in such scenarios, a cancellation includes an agency worker not being needed to work a shift because others have agreed to work it. Accordingly, agency 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 and have agreed to work.

397 Subparagraph (4) provides that the Secretary of State may by regulations make provision about the form and manner in which notice under paragraphs 14, 15 and 16 must be given, and when notice under those paragraphs is to be treated as having been given.

398 Paragraph 18 sets out the interaction between the right to reasonable notice of cancellations and changes to shifts 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 ERA 1996.

399 Subparagraph (1) provides that, where a work-finding agency is required to make a payment to an agency worker under paragraph 22 in relation to a shift that is cancelled, moved or curtailed at short notice, or would have been required to make such a payment, but was excepted from doing so under regulations made under paragraph 24(1)(c), then the right to reasonable notice at paragraph 15(2) is taken to have not applied to that cancellation, movement or curtailment.

400 Therefore, where the work-finding agency is required to make a payment under paragraph 22 for short notice cancellation, movement or curtailment of a shift, an agency worker cannot also receive compensation for failure to provide reasonable notice of the same cancellation, movement or curtailment. Similarly, where a work-finding agency is excepted from making such a payment under paragraph 22 and therefore the agency worker is not entitled to such payment, the agency worker is also not entitled to compensation for failure to provide reasonable notice of the same cancellation, movement of curtailment.

401 Subparagraph (2) provides that the terms used have the same meaning as in paragraph 22.

402 Paragraph 19 makes provision for agency workers to enforce the rights to reasonable notice granted in paragraphs 14 and 15.

403 Subparagraph (1) provides that agency workers can bring a claim to an employment tribunal where they have not received reasonable notice contrary to paragraph 14 and 15.

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

405 Subparagraphs (3) to (5) make provision about time limits for bringing a claim under subparagraph (1).

406 Under subparagraph (3), a complaint must be brought within six months of the relevant date. For example, where the complaint is that reasonable notice was not given of a cancellation of a shift, the six months runs from the date on which the shift was due to start.

407 Subparagraph (4) enables tribunals to extend the time limits at subparagraph (3) by a reasonable period where the tribunal is satisfied that it was not reasonably practicable for the claim to be presented before then.

408 Subparagraph (5) provides that section 207B of the ERA 1996 applies so that the time limit at subparagraph (3) can be extended to allow for conciliation to take place.

409 Paragraph 20 makes provision about the remedies that a tribunal may award where it finds a complaint under paragraph 19 well-founded.

410 Subparagraph (1)(a) provides that, where an employment tribunal finds a complaint under paragraph 19 well-founded, the tribunal must declare that to be the case, i.e., it must make a declaration that the agency worker was provided with unreasonable notice in breach of paragraph 14 or 15.

411 Subparagraphs (1)(b) and (2) enable an employment tribunal to make an order for the respondent, i.e., the work-finding agency and/or hirer, to pay the agency worker compensation for financial loss suffered by the agency worker as a result of the unreasonable notice which the tribunal considers fair in the circumstances. Under subparagraph (2) however, the compensation may not exceed the maximum amount to be specified by the Secretary of State in regulations.

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

413 Subparagraph (4) provides that where a tribunal makes an award of compensation to an agency worker and both the work-finding agency and the hirer are respondents, the amount of compensation payable by each of them is to be an amount the tribunal considers fair having regard to the extent of the respondent's responsibility for the breach related to the complaint. Therefore, where both the work-finding agency and the hirer are responsible, and in turn liable, for the failure to provide reasonable notice (as determined in accordance with paragraph 16) and both have been added as respondents to the claim, the compensation payable should be split between them to the extent that they are each responsible for the failure to provide reasonable notice.

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

414 New Part 3 of Schedule A1 to the ERA 1996 creates a new right to payment for shifts that are cancelled, moved or curtailed at short notice for agency workers, as defined in new section 27BV of the ERA 1996, which is similar to the right for directly engaged workers created by section 3.

415 Paragraph 21 sets out the application of Part 3 to shifts worked by agency workers.

416 Subparagraph (1) provides that Part 3 applies to a shift that would be, would have been or is being worked by an agency worker.

417 Subparagraph (2) provides that in Part 3, '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 and '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.

418 Paragraph 22 creates the right to payment for shifts that are cancelled, moved or curtailed at short notice for agency workers.

419 Subparagraph (1) creates a duty (subject to exceptions in paragraph 24) on work-finding agencies to make a payment, of an amount to be specified in regulations made by the Secretary of State, to an agency worker each time there is a cancellation, movement or curtailment of their shift at short notice.

420 For the duty to arise, the shift must be one that the agency worker is required to work for the hirer, that the agency worker has been requested to work for the hirer and the agency worker has agreed to work, or that the agency worker has suggested working for the hirer and this has been agreed. This latter scenario would include shifts that a hirer or work-finding agency agreed an agency worker could work after swapping it with another worker.

421 For the duty to arise, the cancellation, movement or curtailment must also arise by virtue of the worker's contract or arrangement that the agency worker has with the work-finding agency and therefore the duty does not apply to cancellations, movements or curtailments initiated by the agency worker.

422 Subparagraph (2) concerns when a payment under subparagraph (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.

423 Subparagraph (3) defines what "short notice" means for the purposes of the Part in relation to cancellation, movement or curtailment of a shift and therefore the amount of notice that must be given to avoid liability to make a payment. 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 subparagraph (3)(a), where a shift is cancelled, the short notice period ends with when the shift would have started.

b. under subparagraph (3)(b), where 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. Alternatively, where notice is given on or after the start of the shift (e.g., if during the shift the agency worker is informed that some hours have been moved so that the shift is ending later), that notice is short notice.

c. under subparagraph (3)(c), where 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 now due to start.

d. under subparagraph (3)(d), where 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 on or after the start of the shift (e.g. if during the shift the agency 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.

424 Subparagraph (4) 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 to an agency worker.

425 Subparagraph (5) provides that a shift counts as being "moved" if its start time is changed by more than an amount of time specified in regulations. A shift is also considered to be moved where part of a shift is moved or where a shift is divided by more than an amount of time to be specified in regulations and the result is that the shift ends later, for example, if a shift is changed from 9am to 5pm to 9am to 12pm and 4pm to 9pm. The Secretary of State can make regulations to prescribe a maximum amount of time by which shifts can be moved at short notice without having to make a payment under this paragraph.

426 Subparagraph (6) clarifies that a request to work a shift includes a request made to multiple workers (e.g. via a group text message or app) in circumstances where the hirer does not need the shift to be worked by all of those to whom the request is made.

427 Subparagraph (7) then clarifies that, in such scenarios, a cancellation includes an agency worker not being needed to work a shift because others have agreed to work it. Accordingly, agency 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 paragraph 24 (in particular, paragraph 24(1)(b)) requiring the agency worker to reasonably believe that they would be needed to work the shift).

428 Paragraph 23 provides further details on how the powers in new paragraph 22 can be exercised.

429 Subparagraph (1) provides that regulations made to specify the payment amount under 22(1) may not specify an amount that is greater than what the agency worker would have earned had the shift not been cancelled, moved or curtailed, i.e. that regulations:

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

b. under subparagraph (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-12pm to 1pm-3pm), may not specify an amount greater than what the agency worker would have earned from working the original shift. So, in the example, the payment amount may not be higher than what the agency worker would have earned from working 9am to 12pm;

c. under subparagraph (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 agency worker would have earned had they worked the part of the original shift that was moved, or moved and curtailed. So, in the example, the payment amount may not be higher than what the agency worker would have earned from working 9am to 10am;

d. under subparagraph (1)(d), where a shift is curtailed but not moved 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 agency worker would have earned had they worked the hours that will not now be worked. So, in the example, the payment amount may not be higher than what the agency worker would have earned from working 9am to 10am.

430 Subparagraph (2) clarifies that regulations under paragraph 22(1) may specify different payment amounts depending on how short the notice was.

431 Subparagraph (3) provides that the period for short notice, to be set in regulations under paragraph 22(3), may not be greater than 7 days.

432 Paragraph 24 provides for exceptions to the duty to make payment for a cancelled, moved or curtailed shift.

433 Subparagraphs (1)(a), (2) and (3) provide that the requirement to make a payment under paragraph 22 does not apply to an excluded shift and provide a power to specify what constitutes an "excluded shift" in regulations. In particular, subparagraph (3) provides that shifts may be excluded by reference the number of hours to be worked during the shift,

whether alone or taken together with other shifts, being more than a specified number and a shift corresponding to the time of a shift provided for by a worker's contract between the agency worker and a work-finding agency or another person involved in the supply or payment of the agency worker.

434 Subparagraph (1)(b) provides that the agency worker must reasonably believe they would be needed to work the shift that they were requested to work in order to be entitled to payment under paragraph 22. 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, an agency worker who sees that another worker has already accepted the shift but still agrees to work the shift will not be entitled to a payment for short notice cancellation if they are informed at short notice that they are not needed to work the shift.

435 Subparagraph (1)(c) provides a power to the Secretary of State to specify other circumstances where the duty at paragraph 22 does not apply, i.e., create exceptions, whether those circumstances relate to the work-finding agency, hirer or otherwise.

436 Subparagraph (4) provides that, where a work-finding agency is not required to make a payment to an agency worker because of the circumstances in regulations under subparagraph (1)(c) apply, 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.

437 Subparagraph (5) ensures that work-finding agencies do not have to disclose information in the notice under subparagraph (4) that is commercially sensitive or that they would otherwise be prohibited from disclosing, including the disclosure of any personal data that will contravene data protection legislation. Subparagraph (6) provides that 'data protection legislation' has the same meaning as in the Data Protection Act 2018.

438 Subparagraph (7) provides a power to the Secretary of State to specify in regulations how and in what form a notice made under subparagraph (4) must be given and when it is deemed to be given.

439 Subparagraph (8) provides that a work-finding agency is not required to give a notice under subparagraph (4) if they pay the agency worker the amount that they would have had to pay to the agency worker under paragraph 22 for the same hours had an exception not applied within the timeframe specified for payment under paragraph 22(2). Accordingly, no notice needs to be provided under subparagraph (4) if an exception applies but a work-finding agency nonetheless pays the agency worker within the timeframe for making the short notice payment.

440 Subparagraph (9) provides that the hours to which a payment relates for the purposes of subparagraph (8) are to be calculated in accordance with paragraph 25(4).

441 Paragraph 25 explains how the right to payment for short notice cancellation, movement or curtailment of shifts under paragraph 22 relates to remuneration due under the agency worker's contract.

442 Subparagraph (1) provides that the right to receive a payment under paragraph 22 does not affect the agency worker's contractual rights to remuneration.

443 Subparagraph (2) provides that where the work-finding agency makes a contractual payment to an agency 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 work-finding agency's liability to pay under paragraph 22, i.e. is counted towards the payment due.

444 Conversely, subparagraph (3) provides that, if the work-finding agency makes a payment for short notice cancellation, movement or curtailment required under paragraph 22, that counts towards discharging any liability on the part of the work-finding agency to pay contractual remuneration for the same hours.

445 Subparagraph (4) explains how the hours to which a payment relates for the purposes of this subparagraph are to be calculated, as follows:

a. where a shift has been cancelled, the hours are those that would have been worked (by virtue of the worker's contract or arrangement between the work-finding agency and the agency worker) if the shift had not been cancelled;

b. where a shift has been moved, or moved and curtailed, and no part of the shift now corresponds to the time of the original shift (e.g. where a shift is moved from 9am-12pm to 1pm-3pm), the hours are those that would have been worked (by virtue of that worker's contract or arrangement) 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 (e.g. where a shift is moved from 9am-11am to 10am-12pm), the hours are those that would have been worked (by virtue of that worker's contract or arrangement) 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 (e.g. where a 9am-1pm shift changes to 10am to 1pm), the hours are those that would have been worked (by virtue of that worker's contract or arrangement) if the original shift had not been amended.

446 Paragraph 26 enables agency workers to bring a claim to an employment tribunal where they consider that the duties set out in Part 3 have been breached.

447 Subparagraph (1)(a) enables agency workers to bring a claim where they consider that the work-finding agency has breached the duty to make payment under paragraph 22 by failing to make the whole or any part of the payment.

448 Subparagraphs (1)(b) and (c) enable agency workers to bring a claim where they consider that the work-finding agency has breached the duty to provide a notice (of the relevant exception and reasons why it applies) under paragraph 24(4) where, under subparagraph (1)(b), they allege that the work-finding agency unreasonably failed to provide notice, or, under subparagraph (1)(c), they allege that the notice given does not refer to any provision or refers to the wrong provision of the regulations (made under paragraph 24(1)(c)), does not contain an explanation of why the exception is considered to apply or contains an explanation that is inadequate or untrue.

449 Subparagraphs (2) to (6) make provision about time limits for bringing a claim under subparagraph (1).

450 Under subparagraph (2), a complaint that that a work-finding agency has breached the duty to make payment under paragraph 22 must be brought within six months from the day after the date on which payment under paragraph 22 was or should have been made (in accordance with regulations made under paragraph 22(2)).

451 Under subparagraph (3), a complaint that a work-finding agency unreasonably failed to give a notice under paragraph 24(4) must be brought within six months from the day after the date on which the notice should have been given (in accordance with regulations made under paragraph 24(7)(b)).

452 Under subparagraph (4), a complaint that the notice given by a work-finding agency under paragraph 24(4) does not refer to any provision or refers to the wrong provision of the regulations (made under paragraph 24(1)(c)), does not contain an explanation of why the exception is considered to apply or contains an explanation that is inadequate or untrue must be brought within six months from the day after the date on which notice under paragraph 24(4) is given.

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

454 Subparagraph (6) provides that section 207B of the ERA 1996 applies so that the time limits at subparagraphs (2) to (4) can be extended to allow for conciliation to take place.

455 Subparagraphs (7) and (8) provides that, where the agency worker is complaining that the notice given under paragraph 24(4) refers to the wrong provision of the regulations (made under paragraph 24(1)(c)) or contains an explanation that is inadequate or untrue, and the work-finding agency claims it was provided information for the notice by the hirer which was wrong, inadequate or untrue (and accordingly claims the hirer is at fault for the notice not meeting the requirements), the work-finding agency can request that the hirer is added as a party to the proceedings before the tribunal has reached a decision on the merits of the claim. The tribunal must grant such an application except where it is made after the hearing begins, in which case the tribunal may refuse it.

456 Subparagraph (9) however provides a power to provide in regulations that subparagraph (7), and therefore subparagraph (8), do not apply in relation to specified descriptions of hirers. This enables regulations to be made to prevent hirers from being taken to tribunal under these provisions.

457 Paragraph 27 makes provision regarding the remedies that a tribunal may award where they find a complaint under paragraph 26 well-founded.

458 Subparagraph (1) provides that, where a tribunal finds that the work-finding agency has breached the duty to make payment under paragraph 22, 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 under paragraph 22 where no payment has been made or any further amount due where the work-finding agency has paid too little.

459 Subparagraph (2) provides that, where a tribunal finds a claim in respect of a notice of an exception (brought under subparagraph 26(1)(b) or (c)) well-founded, 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 fair in the circumstances, but not exceeding the maximum amount to be specified in regulations made by the Secretary of State.

460 Subparagraph (3) provides that an employment tribunal may not order a work-finding agency to pay an amount under subparagraph (2) in relation to notice of an exception where the tribunal orders the work-finding agency to pay the agency worker the amount due under paragraph 22. Therefore, agency workers are prevented from obtaining an additional payment where a work-finding agency gave a notice of an exception and it is found that an exception did not apply, meaning that the agency worker is entitled in any event to payment of the amount due under paragraph 22.

461 Subparagraph (4) provides that a tribunal must have regard to the seriousness of the matter complained of in determining whether to require the work-finding agency to pay an award under subparagraph (2) and the value of the award.

462 Subparagraph (5) provides that, if a tribunal adds a hirer as a party to the proceedings in accordance with paragraphs 26(7) and (8) and the tribunal finds the complaint (regarding the notice referring to wrong provisions, or the explanation being inadequate or untrue) well-founded and accordingly awards compensation, the tribunal can order the hirer to pay such a proportion of the compensation as is fair where it finds that they did provide the work-finding agency with information for the purposes of the notice that was wrong, inadequate or untrue. Accordingly, hirers can be required to pay compensation where the notice under paragraph 24(4) does not meet the requirements due to them providing information that is wrong, inadequate or untrue.

463 Under subparagraph (6), in these cases where the hirer is required to pay compensation, the hirer is treated as an employer for the purposes of sections 12A and Part 2A of the Employment Tribunals Act 1996, and accordingly penalties can be imposed on the hirer where there are aggravating circumstances in the case (under Section 12A of that Act) or they fail to pay the compensation due (under Part 2A of that Act).

464 Paragraph 28 makes provision for the recovery of payments made by the work-finding agency from the hirer.

465 Subparagraph (1) provides that a work-finding agency is entitled to recover from a hirer a payment made to an agency worker under paragraph 22 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.

466 This right only applies where the payment was made under a "pre-existing arrangement" involving the work-finding agency and the hirer. "Pre-existing arrangement" is defined in subparagraph (3) as an arrangement (which includes 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 Act 2025 was passed and that has not been modified by the work-finding agency and the hirer after then.

467 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 so that payment cannot be recovered from such hirers under these provisions (albeit they could be recovered anyway if the contract or arrangement between the hirer and work-finding agency allows this).

468 Subparagraph (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 27(1)(b).

469 Subparagraph (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.

470 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.

Section 5: Collective agreements: contracting out

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

472 Subsection (2) inserts a new Chapter 6 into Part 2A of the ERA 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.

473 Subsection (3) amends section 203 of the ERA 1996 to allow for the rights in Chapters 2 to 5 (including Schedule A1) to be contracted out of.

New Section 27BW

474 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.

475 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 will, in line with subsection (2)(c), become contractual terms. Collective agreements can also exclude some rights but not others (e.g. they 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

476 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.

477 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.

478 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 will be for the work-finding agency/"other party" to negotiate this with the union. The agency worker will then be opted out of duties imposed on end hirers, regardless of the end hirer they are working for.

479 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 22(1). Such replacement terms will, in line with subsection (2)(c), 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

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

481 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 continue to be incorporated into the worker's contract (as per sections 27BW(c) and 27BX(c)). For example, a collective agreement could provide 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 a worker's contract, the right to guaranteed hours will not apply to the worker if the collective agreement itself ceases to be in force.

482 Subsection (2) provides that, where the replacement terms from a collective agreement become incorporated into a worker's contract (as per sections 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.

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

484 Subsection (3) provides that, where the replacement terms from a collective agreement become incorporated into a worker's contract (as per sections 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.

485 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.

486 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.

487 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 8(7)(b) of Schedule A1 (concerning complaints about notices that a guaranteed hours offer is treated as having been withdrawn). Therefore the same time limit for bringing a complaint (six months beginning with the day after the day on which the notice is given) and the same remedies apply.

488 Where the conditions in sections 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 are no longer excluded.

489 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 (regarding guaranteed hours) ceasing to be incorporated into a worker's contract on the reference periods and initial information period.

490 Subsection (8) provides that the initial reference period recommences on the day when the worker is employed again by the same employer, or, in the case of an agency worker, is again working under the direction and supervision of the hirer.

491 This subsection 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.

492 Subsection (8) correspondingly provides that the initial information period begins again on the day when the worker is employed again by the same employer, or, in the case of an agency worker, on the day when the agency worker's contract or arrangement with the same work-finding agency is in force again. This means that workers become entitled to be made aware of the information to be specified under section 27BF and paragraph 7 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 (agency) worker).

493 This is however subject to new section 27BF(4) and paragraph 7(4) of Schedule A1 ERA 1996, which make provision about the initial information period in cases where it was not reasonable to consider that a worker will be a qualifying (agency) worker.

New Section 27BZ

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

495 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

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

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

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

Section 6: Amendments relating to sections 1 to 5

499 This Section inserts new Chapter 7 (General) into Part 2A of the ERA 1996, consisting of new sections 27BZ2 and 27BZ3, to make provision on interpretation and powers.

500 Subsection (2) inserts Schedule 2 which makes amendments consequential to Sections 1 to 5.

New Section 27Z2

501 Section 27BZ2 makes provision for the interpretation of Part 2A of the ERA 1996.

502 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 ERA 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 ERA 1996 and clarifies that this such arrangements can include contracts other than worker's contracts. "Arrangement" is also defined when used by itself and not as part of the term "zero hours arrangement", and means an arrangement whether contractual or not which is not a worker's contract.

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

New Section 27BZ3

504 Subsection (1) of new section 27BZ3 provides that regulations under Part 2A of the ERA 1996 (as amended by Sections 1 to 5, including Schedule A1) may make different provision for different purposes and make provision subject to exceptions.

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

Schedule 2 – Consequential amendments relating to sections 1 to 5

506 Schedule 2 makes amendments to the Insolvency Act 1986, the Employment Tribunals Act 1996, the Employment Rights Act 1996 and the Bankruptcy (Scotland) Act 2016 in consequence of sections 1 to 5, including Schedule 1.

507 Paragraph 1 amends the Insolvency Act 1986 to make payments under section 27BP(1) of, and paragraph 22(1) of Schedule A1 to, the ERA 1996 (payments for cancelled, moved or curtailed shifts) preferential debts when an employer becomes insolvent.

508 Paragraphs 2 to 5 amend the Employment Tribunals Act 1996.

509 Paragraph 3 amends terms used in section 12A of the Employment Tribunals Act 1996 relating to financial penalties where there are aggravating features in a case so that the section, and Part 2A of that Act regarding civil penalties for non-payment of tribunal awards, applies to the wider range of potential claimants and respondents in scope of the provisions inserted into the ERA 1996 by sections 2 to 6, including Schedule 1, and this Schedule. For example, the definitions of "worker" and "employer" in section 230 of the ERA 1996 are expanded by new section 27BJ(7) of the ERA 1996 (inserted by section 2) to include individuals who would be a worker if they worked the shift and those they would be employed by respectively. Paragraph 3 ensures that, if such an individual successfully brings a claim that their employer (i.e., the person they would be employed by) has breached their right to reasonable notice of a shift, that 'employer' could be subject to a financial penalty under section 12A of the Employment Tribunals Act 1996 (as well as under Part 2A of that Act, which, by virtue of section 37Q, uses the same terms), if appropriate.

510 Paragraph 4 amends section 16 of the Employment Tribunals Act 1996 to expand the Secretary of State's power to make regulations to recoup universal credit, jobseeker's allowance, income support or income-related employment and support allowance that a worker has received, from their employment tribunal award. This amendment allows the Secretary of State to make regulations to recoup such benefits from the wider range of potential claimants and respondents in scope of, and awards that can be received under the provisions inserted into ERA 1996 by sections 1 to 5, including Schedule 1, and this Schedule.

511 Paragraph 5 amends section 18 of the Employment Tribunals Act 1996 so that the new types of claims created by sections 1 to 5, including Schedule 1, are "relevant proceedings" for the purpose of conciliation. This means that, before a person presents an application to institute such proceedings, the prospective claimant must contact ACAS (the Advisory, Conciliation and Arbitration Service) to enable a conciliation officer to promote a settlement.

512 Paragraphs 2 to 30 amend the Employment Rights Act 1996.

513 Paragraph 7 amends section 27 of the ERA 1996 to provide for payments under section 27BP(1) of, and paragraph 22(1) of Schedule A1 to, the ERA 1996 (payments for cancelled, moved or curtailed shifts) to be treated as "wages" for the purposes of the provisions on unlawful deductions of wages in Part 2 of the ERA 1996. Where a worker has not received a payment under section 27BP(1) or paragraph 22(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.

514 Paragraphs 8 and 9 make amendments to Section 27A (exclusivity terms unenforceable in zero hours contracts) and Section 27B (power to make further provision in relation to zero hours workers) of the ERA 1996 in consequence of the fact that, on the commencement of section 6, definitions (including the definitions of "zero hours contract" and "zero hours arrangement"),

other interpretation provisions and general provisions on making regulations applicable to Part 2A of the ERA 1996 will be contained in new Sections 27BZ2 and 27BZ3. The amendments also ensure alignment of terms used in Section 27B with the definitions in new Section 27BZ2.

515 Paragraphs 10 and 11 inserts Sections 47H and 47I into the ERA 1996 to create new rights not to be subjected to a detriment on grounds related to the zero hours rights, as outlined below.

516 Paragraph 12 amends section 48 of the ERA 1996 to enable complaints to be made to an employment tribunal for breach of the new rights not to be subjected to a detriment in Sections 47H and 47I of the ERA 1996. Amendments are also made to ensure that the usual provisions for bringing detriment complaints apply, for example, to provide that it is for the relevant respondent to show the ground on which any act, or deliberate failure to act, that is alleged to constitute a detriment, was done.

517 Paragraph 13 amends section 49 of the ERA 1996 to make provision for the applicable remedies for successfully complaints of breaches of the new rights not to be subjected to a detriment in Sections 47H and 47I of the ERA 1996 in line with provisions for other detriment claims. In particular, amendments are made to limit compensation paid when a worker who is not an employee makes a claim 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.

518 Paragraphs 14 and 15 inserts Sections 104BA and 104BB into the ERA 1996 to create new grounds for automatic unfair dismissal relating to the right to guaranteed hours, as outlined below.

519 Paragraph 16 amends section 105 (redundancy), by adding the reasons outlined at section 104BA as reasons by which an employee will be unfairly selected for redundancy. Reasons outlined at section 104BB in relation to agency workers are similarly included in new subsection (7BZB).

520 Paragraph 17 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).

521 Paragraph 18 amends section 184 of the ERA 1996 to add payments under section 27BP(1) of, and paragraph 22(1) of Schedule A1 to, the ERA 1996 (payments for cancelled, moved or curtailed shifts) to the list of payments that can be claimed from the Secretary of State on the insolvency of an employee's employer under Part 12 of the ERA 1996.

522 Paragraphs 19 to 23 amend Part 13 of the ERA 1996 regarding particular types of employment. This provides for the provisions inserted into the ERA 1996 by sections 1 to 5, including Schedule 1, and this Schedule to apply to House of Commons and House of Lords staff but not to those employed in police service nor to service personnel in the armed forces. By virtue of paragraph 22, the provisions will also apply to employment on board a ship registered in the register maintained under section 8 of the Merchant Shipping Act 1995, where certain conditions are met, including that the worker does not work wholly outside Great Britain.

523 Paragraph 24 amends section 202 of the ERA 1996 so that, where in the opinion of a Minister of the Crown the disclosure of any information would be contrary to the interests of national security, nothing in the provisions inserted into the ERA 1996 by sections 1 to 5, including Schedule 1, and this Schedule requires disclosure of the information and no person shall disclose the information in any proceedings in any court or tribunal relating to any of these provisions.

524 Paragraph 25 amends section 205 of the ERA 1996 so that complaints about breaches of the provisions inserted into the ERA 1996 by sections 1 to 5, including Schedule 1, and this Schedule are to be made to an employment tribunal and not otherwise (e.g., they cannot be made by way of a complaint in the civil courts for breach of statutory duty). The exception is complaints under paragraph 28 of Schedule A1 to the ERA 1996 inserted by Schedule 1 regarding recovery of payments from hirers, which can be instituted in the civil courts.

525 Paragraph 26 amends section 206 of the ERA 1996 to ensure that, in the event of a worker's or the employer's death, or the death of another respondent in the case of agency workers, tribunal proceedings under the provisions inserted into the ERA 1996 by sections 1 to 5, including Schedule 1, and this Schedule can still be instituted, continued or defended as appropriate by a personal representative of the deceased.

526 Paragraph 27 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 section 225. Where complaints are made to an employment tribunal under section 27BG(1), (2) (3), (7), which relate to a breach of the guaranteed hours rights, including where a guaranteed hours offer has not been made or one has been made but is incompliant for instance, then the calculation date is the date on which the worker was last employed by the employer under a worker's contract. In relation to a claim under section 27BG(8) which relate to the information rights in the rights to guaranteed hours, the calculation date is the date the complaint was presented to the tribunal, if employed then by the employer, otherwise the latest date before that on which the worker is employed. A new subsection (B1) is added to section 225 to set the calculation date where a complaint is made to an employment tribunal under section 27BY(5), relating to a notice being wrongly given to withdraw a guaranteed hours offer under chapter 6 of Part 2A of the ERA (collective agreements: contracting out).

527 Paragraph 28P amends section 227 (maximum amount of week's pay) so that the statutory cap applies to an award of compensation made under section 27BI(1)(b), for a successful complaint relating the guaranteed hours rights where the compensation award is calculated using a number of week's pay.

528 Paragraph 29 amends section 235 (definitions for purposes of the Act) to amend existing definitions of 'limited-term contract' and 'limiting event' so that they also refer to an "other worker's contract", as well as the definition of "week", which has a specific definition at paragraph 10 of Schedule A1 for those purposes instead.

529 Paragraph 30 amends section 236 (orders and regulations) to provide for certain regulation-making powers introduced by sections 1 to 5, including Schedule 1, to be subject to the affirmative procedure, where appropriate.

530 Paragraph 31 amends the Bankruptcy (Scotland) Act 2016 to add payments under section 27BP(1) of, and paragraph 22(1) of Schedule A1 to, the ERA 1996 (payments for cancelled, moved or curtailed shifts) to the list of payments that are treated as preferred debts when an employer becomes insolvent.

New Section 47H

531 New section 47H of the ERA 1996 makes provision for a worker not to be subjected to any detriment by the employer on the grounds that:

a. the worker accepted – or proposed to accept – an offer of guaranteed hours made as a result of the duty to make such offer under section 27BA(1) of the ERA 1996;

b. the worker rejected – or proposed to reject – an offer of guaranteed hours made as a result of the duty to make such offer under section 27BA(1) of the ERA 1996. This includes cases where a worker is treated as having rejected an offer as they have not responded;

c. the worker 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 of the ERA 1996 (inserted by section 2) 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 will 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. the worker brought proceedings against the employer for breach of the provisions inserted by sections 1 to 3 and 5 (under section 27BG, section 27BN, section 27BT or section 27BY(5) of the ERA 1996), whether or not the worker referred to the possibility of bringing such proceedings. It is immaterial whether or not the employer failed to comply with the duties they are alleged to have breached but the claim must be made in good faith;

e. the worker alleged that there were circumstances which will constitute grounds for bringing such proceedings. Again, it is immaterial whether or not the employer failed to comply with the duties they are alleged to have breached but the claim must be made in good faith; or

f. the worker is, or that the employer believes the worker is, entitled to a guaranteed hours offer.

532 Under subsection (5), this section 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 (because an employee in such a case can bring a claim for unfair dismissal in line with new section 104BA of the ERA 1996 in relation to guaranteed hours claims).

New Section 47I

533 New section 47I of the ERA 1996 makes equivalent provision to new section 47H for agency workers. However, the agency worker must not be subjected to a detriment by a "relevant person", which, under subsection (6), is the work-finding agency, hirer or another person involved in the supply or payment of the agency worker (for example, an umbrella company).

534 The section provides that agency workers must not to be subject to detriment by a relevant person on the grounds that:

a. the agency worker accepted – or proposed to accept – an offer of guaranteed hours made as a result of the duty to make such offer under paragraph 1(1) of Schedule A1 to the ERA 1996 (inserted by Schedule 1);

b. the agency worker rejected – or proposed to reject – an offer of guaranteed hours made as a result of the duty to make such offer under paragraph 1(1) of Schedule A1 to the ERA 1996. This includes cases where an agency worker is treated as having rejected an offer as they have not responded;

c. the agency worker declined to work a shift based on a reasonable belief that the employer failed to comply with a duty under paragraph 14 or 15 of Schedule A1 to the ERA 1996 to provide reasonable notice in relation to that shift. For example, a work finding agency must not stop offering the agency worker hours or reduce their hours on the basis that the agency worker has refused to work such a shift, as this will amount to "detriment". Detriment for the purposes of this section could also include an agency worker being sued for breach of a term of their contract that requires them to work a shift that is notified to the agency worker with, what the agency worker reasonably believes to be, unreasonable notice in breach of paragraph 14 or 15;

d. the agency worker brought proceedings for breach of the provisions inserted by Schedule 1 (under paragraphs 8,9, 19 or 16 of Schedule A1 to or section 27BY(5) of the ERA 1996), whether or not the agency worker referred to the possibility of bringing such proceedings. It is immaterial whether or not the relevant duties were not complied with but the claim must be made in good faith;

e. the agency worker alleged that there were circumstances which will constitute grounds for bringing such proceedings. Again, it is immaterial whether or not the relevant duties were not complied with but the claim must be made in good faith; or

f. the agency worker is, or the relevant person believes they are, entitled to a guaranteed hours offer.

535 Under subsection (5), this section does not apply where the agency worker is an employee, and the detriment amounts to dismissal within the meaning of Part 10 of the ERA 1996 (because an employee in such a case can bring a claim for unfair dismissal in line with new section 104BB of the ERA 1996 in relation to guaranteed hours claims).

New Section 104BA

536 New section 104BA of the ERA 1996 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 made as a result of the duty to make such offer under new section 27BA(1) of the ERA 1996;

b. rejected – or proposed to reject – an offer from their employer of guaranteed hours made as a result of the duty to make such offer under section 27BA(1) of the ERA 1996. This includes cases where an employee is treated as having rejected an offer as they have not responded;

c. brought proceedings against the employer for breach of the provisions inserted by sections 1 and 5 (under section 27BG(4), (5) or 7(b) or section 27BY(5) of the ERA 1996), or alleged that there were circumstances which would constitute grounds for bringing such proceedings, whether or not the worker referred to the possibility of bringing such proceedings. It is immaterial whether or not the employer failed to comply with the duties they are alleged to have breached but the claim must be made in good faith. Subsection (3) refers to s. 104 ERA 1996 in relation to automatic unfair dismissal due to the assertion of a statutory right in respect of other proceedings under section 27BG of the ERA 1996; or

d. believes the employee is, entitled to a guaranteed hours offer, and the reason for the dismissal is that the employer sought to avoid the necessity to comply with their duty to make a guaranteed hours offer.

537 Subsection (7) defines 'reference period' with reference to the meaning it is given in new section 27BA(4) of the ERA 1996.

New Section 104BB Guaranteed hours: agency workers

538 New section 104BB of the ERA 1996 makes equivalent provision to new section 104BA for agency workers. However, the dismissal of an agency worker who is an employee, would be made by a "relevant person" who is their employer, which, under subsection (6), has the same meaning as under new section 47I(6)(a) or (c), being either is the work-finding agency, or another person involved in the supply or payment of the agency worker (for example, an umbrella company).

539 Under new section 104BB, 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 from their employer of guaranteed hours made as a result of the duty to make such offer under new paragraph 1(1) of Schedule A1 to the ERA 1996 worker's contract in compliance with the right to guaranteed hours, or

b. rejected - or proposed to reject - an offer of guaranteed hours made as a result of the duty to make such offer under new paragraph 1(1) of Schedule A1 to the ERA 1996 to enter into a worker's contract in compliance with the right to guaranteed hours This includes cases where the employee is treated as having rejected an offer as they have not responded; or

c. brought proceedings for breach of the provisions inserted by Schedule 1 (under paragraphs 9(1) or 9(2) of Schedule A1 to the ERA 1996), or alleged the existence of any circumstances for bringing proceedings whether or not the employee referred to the possibility of bringing such proceedings. It is immaterial whether or not the relevant duties were not complied with but the claim must be made in good faith. Subsection (3) refers to s. 104 ERA 1996 in relation to automatic unfair dismissal due to the assertion of a statutory right in respect of other proceedings under paragraph 9 of Schedule A1 to the ERA 1996; or

d. is, or the relevant person believes they are, entitled to a guaranteed hours offer, and the reason for the dismissal is that the employer sought to avoid the necessity to comply with their duty to make a guaranteed hours offer.

540 Subsection (7) defines the o 'reference period' as having the same meaning as in paragraph 1(4) of Part 1 of Schedule A1 to the ERA 1996.

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

541 This Section repeals the Workers (Predictable Terms and Conditions) Act 2023, which has never been commenced.

Section 8: Exclusivity terms in zero hours arrangements

542 This Section amends section 27B of the ERA 1996 on exclusivity terms in zero hours arrangements to change the definition of "non-contractual zero hours arrangement" to "zero hours arrangement" and make related amendments. The amendments to the definition clarify that such arrangements can be contracts other than worker's contracts. The definition is aligned with the new definition in new section 27BZ2 of the ERA 1996 created by section 6 of this Act, which will replace the definition in section 27B of the ERA 1996 once section 6 it is brought into force.

Flexible working

Section 9: Right to request flexible working

543 This Section amends Sections 80G and 80H of the ERA 1996.

544 Subsection (2) amends section 80G of the ERA 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 ERA 1996 in a reasonable manner.

545 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).

546 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.

547 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 ERA 1996.

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

549 Subsection (7) amends Section 202 of the ERA 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 will 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) are exempt from disclosing any information related to flexible working requests if, in the opinion of a Minister, it will be contrary to national security.

Statutory Sick Pay (SSP)

Section 10: Statutory sick pay: removal of waiting period

550 This section 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.

551 Subsections (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.

552 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.

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

554 Subsection (6) repeals subsection (1) of section 155 of the Social Security Contributions and Benefits Act 1992 which provides that SSP is not payable for the first three qualifying days in any period of entitlement ('waiting days').

555 Subsection (7) repeals subsection (2)(b) of section 156 of the Social Security Contributions and Benefits Act 1992 which is obsolete with the removal of waiting days.

Section 11: Statutory sick pay: lower earnings limit etc

556 This section amends Part 11 of 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 their earnings level, are entitled to SSP.

557 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 came into effect on 6 April 2025.

558 Subsection (3) repeals paragraph 2(c) of Schedule 11 to the Social Security Contributions and Benefits Act 1992 so that earning below the lower earnings limit is no longer a circumstance in which a period of entitlement to SSP does not arise.

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

559 This section 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. Section 12 mirrors section 10 of this Act to make equivalent amendment to Northern Ireland legislation, in line with the principle of parity as set out in section 87 of the Northern Ireland Act 1998.

560 Subsections (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.

561 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.

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

563 Subsection (6) repeals subsection (1) of section 151 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 which provides that SSP is not payable for the first three qualifying days in any period of entitlement ('waiting days').

564 Subsection (7) repeals subsection (2)(b) of section 152 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 which is obsolete with the removal of waiting days.

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

565 This section 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 their earnings level, are entitled to SSP. Section 13 mirrors section 10 of this Act to make equivalent amendment to Northern Ireland legislation, in line with the principle of parity as set out in section 87 of the Northern Ireland Act 1998.

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

567 Subsection (3) repeals paragraph 2(c) of Schedule 11 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 so that earning below the lower earnings limit is no longer a circumstance in which a period of entitlement to SSP does not arise.

Tips and gratuities, etc

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

568 Subsection (1) clarifies that the new requirements are added as an amendment to Section 27I of the ERA 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.

569 Subsection (2) inserts new subsection (2A) into section 27I of the ERA 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 must carried out before the employers produce their written tipping policy.

570 Subsection (3) inserts new subsections (3A), (3B) and (3C) into section 27I of the ERA 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 ERA 1996.

571 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.

572 Subsection (3C) clarifies that an employer must consult the appropriate persons described in the new subsection (2A) during every review of the written policy.

573 Subsection (4) inserts new subsections (7) and (8) into section 27I of the ERA 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

Section 15: Parental Leave: removal of qualifying period of employment

574 This Section amends section 76 of the ERA 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.

Section 16: Paternity Leave: removal of qualifying period of employment

575 This Section amends sections 80A and 80B of the ERA 1996.

576 Subsection (1) amends section 80A of the ERA 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.

577 Subsection (2) amends section 80B of the ERA 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.

Section 17: Ability to take Paternity Leave following Shared Parental Leave

578 This Section amends the ERA 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.

579 Subsection (1) amends section 80A of the ERA 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 will no longer have any effect.

580 Subsection (2) amends section 80B of the ERA 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 will no longer have effect.

581 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.

582 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 ERA 1996.

Section 18: Bereavement Leave

583 This Section amends section 80EA of Part 8 of the ERA 1996 (parental bereavement leave) to provide an entitlement to bereavement leave including pregnancy loss.

584 Subsection (2) amends the title of Chapter 4 of Part 8 from "Parental Bereavement Leave" to "Bereavement Leave".

585 Subsection (3) makes numerous amendments to section 80EA of the ERA 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.

586 Subparagraphs (a) to (c) provide that a "bereaved person" will be defined in regulations by reference to the employee's relationship with the person who has died. This includes an employee who has suffered the loss of a pregnancy of a kind to be specified in regulations, or an employee who has a specified relationship with such a person or a specified relationship with a child who had been expected to be born. The regulations will be made by affirmative procedure.

587 Subsection (3) subparagraphs (d) to (i) make related amendments to section 80E. These require that, in the case of bereavement leave in respect of a pregnancy loss or 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 loss. The regulations must also specify that, where more than one loss is experienced and the relationship to the employee is captured in regulations, the employee is entitled to leave in respect of each loss. Regulations can also make provision for how the leave is to be taken. In a case where a child carried past 24 weeks of pregnancy or 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 Subparagraph (j) amends section 80EA of ERA 1996 to provide a definition of pregnancy loss as the 'ending of a pregnancy after less than 24 weeks in any way other than by a live birth' or 'IVF embryo transfer loss'.

589 Subsections (4) to (11) make other amendments to the ERA 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.

590 Subsections (12) to (14) make amendments to other legislation in consequence of the introduction of statutory bereavement leave.

Section 19: Review of extent of right to time off for public duties

591 Section 50 of the ERA 1996 provides employees with a statutory right to reasonable time off to undertake specific public duties.

592 Clause (21A), subsections (1) and (1A) add a legislative commitment for the Government to review the list of duties under Section 50. Subsections (1B) and (2) set out that the Secretary of State must publish a report on the findings of the review within 12 months of this act being passed, with specific reference to Special Constables and whether they should be included in the list of duties under Section 50.

Protection from Harassment

Section 20: Employers to take all reasonable steps to prevent sexual harassment

593 This Section amends section 40A(1) of the Equality Act 2010 (employer duty to prevent sexual harassment of employees), to add the word "all" before "reasonable steps".

Section 21: Harassment by third parties

594 This Section 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).

595 New subsection (1A) provides that an employer must not permit a third party (such as a customer or client) to harass an employee.

596 New 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.

597 New subsection (1C) defines a "third party" as a person other than the employer or a fellow employee.

Section 22: Sexual harassment: power to make provision about "reasonable steps"

598 This Section amends the Equality Act 2010.

599 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.

600 Subsection (3) inserts that any regulations made under this power will be subject to the affirmative procedure.

New Section 40B

601 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.

602 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.

603 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.

604 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.

Section 23: Protection of disclosures relating to sexual harassment

605 This Section amends Part 4A of the ERA 1996 (protected disclosures) to explicitly include sexual harassment as a relevant failure in relation to disclosures qualifying for protection.

606 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.

607 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).

Section 24: Contractual duties of confidentiality relating to harassment and discrimination

608 This Section makes amendments to the ERA 1996 which voids any provision in an agreement between a worker and their employer, such as a contract of employment or settlement agreement, insofar as it prevents a worker from speaking out about relevant harassment or discrimination.

609 Subsection (2) introduces a new section 202A into the ERA 1966.

610 Subsections (3) and (4) of the new clause provide that new section 202A of ERA 1996 does not apply in relation to the Armed Forces and the Security Services.

611 Subsection (5) of the new clause provides that regulations made under section 202A will be subject to the draft affirmative procedure.

New Section 202A

612 Subsection (1) also voids any provision in an agreement between a worker and their employer that prevents a worker from speaking out about their employer's response to the relevant harassment or discrimination, or an allegation relating to it.

613 Subsection (2) provides that relevant harassment or discrimination includes conduct which the worker or a co-worker has suffered or is alleged to have suffered, or conduct carried out or alleged to be carried out by the employer or a co-worker. "Harassment" and "discrimination" are defined in line with the existing definitions in sections 13, 15 to 19A, 21(2) and 26 of the Equality Act 2010.

614 Subsection (3) of this Amendment gives the Secretary of State the power to make regulations to set out conditions which, if satisfied by an agreement ("excepted agreement"), mean that agreement will not be void under subsection 202A(1).

615 Subsection (4) gives the Secretary of State the power to, by regulations, provide that an excepted agreement is nevertheless void insofar as it prevents the worker speaking about relevant harassment and discrimination or their employer's response, to a person specified in the regulations, for a purpose specified in the regulations or in circumstances specified in the regulations.

616 Subsection (5) gives the Secretary of State the power to, by regulations, expand the types of individuals the section applies to beyond those that meet the definition of "worker" in section 230(3) of ERA 1996 by reference to specified circumstances or a specified type of "relevant contract". "Relevant contract" is defined in subsection 202A(6).

617 Subsection (8) applies the provision to police officers and cadets.

Dismissal

Section 25: Right not to be unfairly dismissed: qualifying period and compensatory awards

618 This section amends Part 10 of the ERA 1996 which relates to unfair dismissal.

619 Subsection (2) amends section 108 of the ERA 1996, which sets the qualifying period for ordinary unfair dismissal claims. It is amended so that the required period of continuous employment to make an ordinary unfair dismissal claim is reduced from two years to six months.

620 Subsection (3) repeals section 124 of the ERA 1996 (limit of compensatory award etc) to remove the limit on the compensatory award that tribunals can award in unfair dismissal cases.

621 Subsection (4) amends section 209(5) of the ERA 1996 to remove a reference to section 108(1) so that the Secretary of State can no longer use the power in section 209(5) to vary the length of the qualifying period for unfair dismissal using secondary legislation.

622 Subsection (5) introduces Schedule 3 which contains minor and consequential amendments in relation to this section.

Schedule 3: Minor and consequential amendments relating to section 25

623 Paragraph 1 makes minor and consequential amendments to the ERA 1996.

624 Subparagraph (2) amends section 92 of the ERA 1996. This changes the qualifying period for employees' right to request a written statement of the reasons for their dismissal from two years to six months.

625 Subparagraph (3)(a) amends section 108(3) of the ERA 1996. This adds dismissals where section 4(3)(b) of the Rehabilitation of Offenders Act 1974 applies (which concerns dismissals in relation to spent convictions and their disclosure) to the list of exceptions where the qualifying period does not apply, making it a day one right not to be unfairly dismissed due to having or failing to disclose a spent conviction.

626 Subparagraph (3)(b) repeals section 108(3)(k) and (o) of the ERA 1996 to remove references to legislation which is no longer in force.

627 Subparagraphs (4), (5), (6), (8)(a), (9) and (10) make further amendments to the ERA 1996 to remove references to section 124 of the ERA 1996 (limit of compensatory award etc) which is being repealed by section 25(3) of this Act.

628 Subparagraph (7) amends section 205A(10) of the ERA 1996 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.

629 Subparagraph (8)(b) amends section 209(5) of the ERA 1996 to remove a reference to section 92(3) of the ERA 1996 so that the Secretary of State can no longer use the power in section 209(5) to vary the length of the qualifying period before an employee can access the right to request a written statement of the reasons for their dismissal.

630 Paragraph 2 amends the Employment Relations Act 1999 to remove references to, provisions relating to, and amendments to section 124 of the ERA 1996 (limit of compensatory award etc) which is being repealed by section 25(3) of this Act.

631 Paragraph 3 repeals section 15 of the Enterprise and Regulatory Reform Act 2013. This removes the Secretary of State's existing power to vary the limit of the compensatory award for unfair dismissal by statutory instrument.

632 Paragraph 4 amends the Coronavirus Act 2020 to repeal a prospective amendment to section 124 of the ERA 1996 (limit of compensatory award etc) which is being repealed by section 25(3) of this Act.

633 Paragraph 5 expands on the general power to make consequential amendments in section 154 of this Act as a consequence of repealing section 124 of the ERA 1996 (limit of compensatory award etc).

634 Subparagraph (1) includes a non-exhaustive list of amendments that can be made using the power in section 154 of this Act in consequence of the repeal of section 124 of the ERA 1996 (limit of compensatory award etc), including:

a. amending section 34 of the Employment Relations Act 1999 which is the power to change the compensatory award based on indexing.

b. creating a new power for the Secretary of State to vary any award limit in legislation which is currently limited by reference to section 124 of the ERA 1996 (limit of compensatory award etc).

c. making consequential amendments as a result of (a) or (b).

635 Subparagraph (2) provides definitions of the key terms, "relevant provision", "relevant sum" and "relevant limit" used in paragraph 5 and specifies that a reference to section 15 of the Enterprise and Regulatory Reform Act 2013 refers to its status immediately before its repeal by paragraph 3.

636 Subparagraph (3) sets out a non-exhaustive list of provisions that fall under "relevant provisions" for the purposes of paragraph 5 as they set award limits by reference to section 124 of the ERA 1996 (limit of compensatory award etc).

637 Subparagraph (4) details that any power made under subparagraph (1)(b) includes the power to set different compensation limits for different groups of people to which compensation is payable, for example different amounts for different job sectors.

638 Subparagraph (5) provides that no matter when section 124 of the ERA 1996 (limit of compensatory award etc) is repealed, the power in section 154 of this Act includes the power to amend section 49(7A) and (7B) of the ERA 1996, which deal with remedies for suffering detriment in employment, as a result of the repeal.

Section 26: Dismissal during pregnancy

639 This Section amends Part 5B of the ERA 1996 which gives the Secretary of State the power to make provision in regulations about redundancy during or after a protected period of pregnancy.

640 Subsection (3) inserts "or dismissal" into the heading of section 49D after "Redundancy".

641 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".

642 Subsection (5) amends subsection (3) of section 49D to insert "or (1A)" after "subsection (1)".

643 Subsection (6) inserts new section 49E into Part 5B.

644 Subsection (7) inserts "or dismissal" into the heading of Part 5B of the ERA 1996 after "Redundancy".

645 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 will have been entitled to had she first informed her employer.

646 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

647 New Section 49E permits regulations under section 49D to include various specified matters.

648 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)).

649 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)).

650 The Regulations may modify the way in which a week's pay is calculated in Chapter 2 of Part 14 of the ERA 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)).

651 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)).

652 The Regulations can deal differently with different cases or circumstances (section 49E(g)).

Section 27: Dismissal following period of statutory family leave

653 This Section amends the provisions in the ERA 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").

654 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.

655 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.

656 Subsection (4) makes the equivalent amendment for Shared Parental Leave, amending section 75J(1)(b) (shared parental leave: redundancy and dismissal) which enables regulations under sections 75E (shared parental leave: birth) and 75G (shared parental leave: adoption) to make provision about dismissal during "or after" that leave.

657 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.

658 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.

659 Subsection (6) makes the equivalent amendment for Neonatal Care Leave, amending section 80EH of the ERA 1996, which enables regulations to make provision about dismissal during "or after" that leave.

Section 28: Dismissal for failing to agree to variation of contract, etc

660 This Section amends the ERA 1996 by adding new sections 104I, 104J and 104K which provide for two new types of automatically unfair dismissal related to fire and rehire and fire and replace practices and a process for considering whether dismissals made to effect non-restricted variations are unfair.

661 Subsections (2) and (3) amend Part 10 (unfair dismissal) of the ERA 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 restricted variation to their contract, or if the employer dismisses the employee to replace or to re-engage them on varied contractual terms containing a restricted variation, unless the employer can demonstrate they fall within one of the exemptions in new section 104I(8) or (9). It also inserts new section 104J which sets out matters which the Employment Tribunal should consider when considering the fairness of a dismissal for refusing to agree a non-restricted variation, or in order to replace or to re-engage the employee on varied contractual terms containing only non-restricted variation(s). Section 104K is also inserted to make it an automatic unfair dismissal where an employee is dismissed in order to replace them with a non-employee, unless the employer can demonstrate they fall within one of the exemptions in new section 104K(4) or (5).

662 Subsection (4) makes a consequential amendment to the heading of section 105 of the ERA 1996 due to the addition of s104K.

663 Subsection (5) makes consequential amendments to add references to s104I and s104K into section 108(3) of the ERA 1996. The effect of this is that there will be no qualifying period of employment for those bringing unfair dismissal claims under these sections.

664 Subsection (6) provides that regulations made using the powers in s104I, 104J(5)(f) and s104K(7)(d) will be subject to the affirmative procedure.

New Section 104I

665 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). This means that section 104I does not apply to employees employed by private individuals for non-business reasons.

666 Subsection (2) provides that a dismissal will be unfair where the reason for the dismissal is that an employer has sought to make a restricted variation to the employee's contract to which the employee did not agree or where the employer sought to make more than one variation, the employee did not agree to a number of variations that included a restricted variation.

667 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.

668 Subsection (4) sets out for the purposes for subsection (3) what a 'varied' contract of employment is. The effect of this is that there must be a restricted variation for a dismissal to be automatically unfair under subsection (3) of section 104I of ERA 1996.

669 Subsection (5) lists the changes to an employment contract which are treated as 'restricted variations'. These include reductions to or removals of sums payable to the employee, which would cover any reductions to base pay and other forms of contractual pay such as contractual allowances, contractual enhanced redundancy pay, etc. These also include variations to measures of amount of work done where these determine an element of pay, which would cover, for example, changes to contractual targets which are linked to pay. These also include variations relating to pensions, variations of the number of hours required to be worked by an employee, and reductions to time off an employee is entitled to take. In this section 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.

670 Subsection (5)(e) allows the Secretary of State to set out in regulations which variations to the timing or duration of a shift are to be restricted variations.

671 Subsection (5)(g) allows the Secretary of State to set out additional variations that will be restricted variations by specifying them in regulations.

672 Subsection (5)(h) provides that a variation which will insert a term in a contract of employment that enables the employer to make any of the restricted variations without the employee's agreement, for example by a variation clause, is also a restricted variation.

673 Subsection (6) gives the Secretary of State power to make regulations which limit the restricted variation in section (5)(a) (reductions to sums payable to an employee) to exclude certain expenses and benefits in kind.

674 Subsection (7) provides that subsection (1) will not apply where the dismissal takes place before the employee has started work.

675 Subsection (8) provides that subsection (1) will not apply where an employer that is not a local authority can show:

a. the reason for the restricted variation was to eliminate, prevent, significantly reduce or significantly mitigate the effects of any financial difficulties which, at the time of the dismissal, were affecting or likely in the immediate future to affect:

b. the employer's ability to carry on the business as a going concern; or

c. where an employer is a public sector employer, the financial sustainability of carrying out the employer's statutory functions (and subsection (12) defines "public sector employer" and "statutory functions");

d. in all the circumstances the employer could not reasonably have avoided the need to make the restricted variation.

676 Subsection (9) provides that if the employer is a local authority (as defined in subsection (12)), subsection (1) will not apply if it can show that:

a. at the time of dismissal took place, the local authority is under a relevant intervention direction (as defined in subsection (12)) by the Secretary of State, Welsh Ministers or Scottish Ministers;

b. the 'relevant intervention direction' specifies that the reason, or one of the reasons, for the giving of the direction is that the authority is undergoing financial difficulties, and contains provision relating to the financial management or financial governance of the local authority;

c. the reason for the restricted variation(s) to the contract was to eliminate or significantly reduce, or significantly mitigate those financial difficulties; and

d. the local authority could not reasonably have avoided the need to make the restricted variation.

677 Subsection (10) explains that where the employer is a public sector employer or local authority, the employment tribunal, when determining whether or not the employer could have reasonably avoided the need to make the restricted variation, should apply the same principles as would be applied by a court on an application for judicial review.

678 If an employer can demonstrate that subsection (8) or (9) 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.

679 Subsection (11) 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 representatives 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 (11)(e) of new section 104I also provides the Secretary of State with a power to specify other factors which must be considered, in secondary legislation.

680 Subsection (12) includes definitions of various terms used in this section. For an English local authority, a 'relevant intervention direction' is a direction made by the Secretary of State in relation to the local authority's failure to meet its best value duty, which either directs the authority to take specified actions to comply with the duty, or directs that specified functions of the local authority are to be exercised by the Secretary of State or their nominee (known as commissioners).In Wales and Scotland, a 'relevant intervention direction' refers to similar intervention powers exercisable by the Welsh and Scottish Ministers, respectively. Subsection (12) define Welsh and Scottish local authority.

681 Subsection (13) provides that relevant intervention directions under subsection (9)(a) include intervention directions that were given before the day the Employment Rights Act 2025 was passed.

New section 104J

682 This Section sets out an enhanced process for considering whether dismissals made to effect non-restricted variations are unfair.

683 Subsection (1) provides that this enhanced process in subsection (5) applies 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). This means that section 104J does not apply to employees employed by private individuals for non-business reasons.

684 A reason for dismissal falls within subsection (2) where an employee is dismissed for refusing to agree a variation to an employment contract which is not a restricted variation ("restricted variation" is defined in section 104I(5)).

685 A reason for dismissal falls within subsection (3) where an employer dismisses an employee to enable them to employ another person, or re-engage the employee, to carrying out substantially the same duties, on a varied contract of employment.

686 Subsection (4) sets out for the purposes for subsection (3) what is a 'varied' contract of employment. The effect of this is that it only includes variations which are not restricted variations.

687 Subsection (5) sets out that, in cases to which subsection (1) applies, an Employment Tribunal is required to have regard to the factors listed in this subsection when determining whether the dismissal was fair or unfair, under ordinary unfair dismissal rules. These factors include the reason for the variation, anything offered in return for agreeing to the variation, and any consultation carried out by the employer, including with independent trade unions or other persons representing the interests of the employee. Section 104J(5)(f) allows the Secretary of State to make regulations specifying additional matters which must be taken into account under subsection (5).

688 Subsection (6) includes definitions of various terms used in this section.

New section 104K

689 This Section makes it automatically unfair for an employer to dismiss an employee if the dismissal was to replace the employee with a non-employee (such as a self-employed contractor or agency worker) to carry out substantially the same work, unless the dismissal was wholly or mainly attributable to the fact that the requirements of the business to carry out that work have reduced (or are expected to reduce), or the employer can meet an exemption for financial difficulties.

690 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 is to enable the employer to replace the employee with an individual who is not an employee of the employer. This means that section 104J does not apply to employees employed by private individuals for non-business reasons.

691 Subsection (2) sets out further detail as to when an employer will be considered to have replaced the employee with an individual who is not an employee of the employer for the purposes of subsection (1). It provides that:

a. the replacement individual must be carrying out activities for the purposes of the employer's business in pursuance of a relevant contract (a contract, other than a contract of employment, to which the employer is a party (whether or not the individual is a party to it);

b. those activities must be the same, or substantially the same, activities as the employee (or the employee taken with other employees) carried out before being dismissed; and

c. the employee's dismissal is not attributable to the fact that the requirements of the employer's business for those activities to be carried out have ceased or diminished (or are expected to do so).

692 Subsection (2) also clarifies that this can include cases where the replacement individual is the same person as the employee who has been dismissed.

693 Subsection (3) provides that subsection (1) will not apply where the dismissal takes place before the employee has started work.

694 Subsections (4) to (6) provide an exemption for this automatic unfair dismissal at which mirrors the exemption in section 104I, so that an employer will qualify for the exemption where the reason for the replacement with a non-employee is to eliminate, prevent, significantly reduce or significantly mitigate the effect of any financial difficulties that were affecting or likely in the immediate future to affect the employer's ability to carry on the business as a going concern (or equivalent for public sector employer or local authorities) and the employer could not have reasonably avoided the need to make the replacement.

695 If the employer meets the exemption, the Tribunal will still need to assess whether the dismissal was fair or unfair. Subsection (7) sets out a (non-exhaustive) list of factors for the Tribunal to consider when determining whether the dismissal was fair or unfair, including any consultation carried out with the employee, trade unions, or any other appropriate representatives. Subsection 104K(7)(d) allows the Secretary of State to make regulations specifying additional matters which must be taken into account under subsection (7).

696 Subsection (8) provides relevant definitions for the section, mirroring those in subsection 104I(12).

697 Subsection (9) provides that relevant intervention directions under subsection (5)(a) includes intervention directions that were given before the day the Employment Rights Act 2025 was passed.

Part 2: Other Matters Relating to Employment

Procedure for handling redundancies

Section 29: Collective redundancy: extended application of requirements

698 This Section 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.

699 Subsection (2)(a-c) amends Section 188 of 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 employees (as defined in new section 195A TULRCA) are proposed to be made redundant at more than one establishment.

700 Subsection (2)(d) creates a new subsection (2A) of Section 188 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.

701 Subsection (2)(e) amends subsection (4) of Section 188 TULRCA so that paragraph (c) of subsection (4) applies only where the proposed redundancies are at a single establishment, and inserts a new paragraph (ca) setting out the information that must be provided to relevant employee representatives where the redundancies are proposed across multiple establishments.

702 Subsection (3)(a) and (b) amend Section 193 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 defined in new Section 195A of TULRCA) are proposed to be made redundant across more than one establishment.

703 Subsection (3)(c)-(h) makes consequential amendments to Section 193 TULRCA to reflect the new requirement to notify the Secretary of State where a threshold number of redundancies have been made, and the related changes to the structure of Section 193.

704 Subsection (4) makes consequential amendments to Section 193A TULRCA to reflect the re-structuring of subsections within Section 193 TULRCA.

705 Subsection (5) inserts a new Section 195A into 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.

706 Subsection (6) amends Section 197 TULRCA to correct an incorrect cross-reference, made by subsequent amending legislation, so that this section now refers to section 188(1A) (minimum consultation periods). This does not change the law, which can already be interpreted to refer to the correct cross-reference, but it does improve the clarity and accessibility of the law and puts the position beyond doubt.

707 Subsection (6) also amends section 197 TULRCA so that the Secretary of State has the power to amend section 193(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 section 193 for 20-99 redundancies, as well as the existing power to amend the notification periods set out under section 193 for 100 or more redundancies.

708 Subsection (7) amends s198A, in consequence of the changes to the collective consultation requirements made by this section. 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, before the transfer takes place, 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 reflects the revised requirements in section 188 TULRCA, as amended by this section.

New Section 195A TULRCA

709 Subsection (1) provides that, in Chapter 2 of Part 4 of TULRCA, references to the threshold number of employees refer to the number of employees specified in regulations made under section 195A.

710 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.

711 Subsection (3) ensures that any threshold set by regulations cannot be lower than 20 employees.

712 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.

713 Subsection (5) allows the Secretary of State to make different provision in respect of different descriptions of employer, or different provision in respect of different provisions of Chapter 2 of Part 4 of TULRCA.

714 Subsection (6) allows regulations made under this section to make any necessary incidental, supplementary or transitional provisions.

715 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.

Section 30: Collective redundancy consultation: protected period

716 This Section allows an employment tribunal to impose a higher protective award on employers who fail to comply with their collective redundancy consultation obligations.

717 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. A protective award may be made by the tribunal where an employer fails to comply with their collective redundancy consultation obligations.

718 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.

Section 31: Collective redundancy notifications: ships' crew

719 This Section amends s193A of TULRCA. It requires 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.

720 Subsection (1) provides that subsections (2-5) amend s193A of TULRCA.

721 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.

722 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.

723 Subsection (3) amends s193A(1) so that it provides that s193 of TULRCA (as amended by this Act), 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.

724 Subsection (4) amends s193A(2) to provide that where the vessels are registered outside Great Britain, these Sections 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.

725 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.

726 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

Section 32: Public sector outsourcing: protection of workers

727 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.

728 Subsection (2) inserts new Part 5A (Outsourcing: Protection of workers) into the Procurement Act 2023.

729 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.

730 Subsection (4) amends section 122 of the Procurement Act 2023 to provide that regulations made under this power must use the affirmative procedure.

731 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.

732 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.

733 Subsection (7) amends Schedule 9A of the Procurement Act 2023 to provide that the new Part 5A applies 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

734 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.

735 Section 83A(2) specifies that "appropriate authority" within Part 5A means a Minister of the Crown, the Scottish Ministers or the Welsh Ministers.

736 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.

737 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.

738 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.

739 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.

740 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).

741 Procurement arrangements are defined in section 114 of the Procurement Act 2023.

742 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.

743 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.

744 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 includes 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.

745 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.

746 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.

747 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.

748 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.

749 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.

750 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.

751 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 Sections within their contracts.

752 Section 83D(2) provides that an appropriate authority may amend or replace the code of practice and must republish it if it does so.

753 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.

754 Section 83D(4) provides that contracting authorities must have regard to any code of practice published under subsection (1).

755 Section 83E provides definitions for various terms used in this Section.

756 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

Section 33: Equality action plans

757 This Section amends the Equality Act 2010 to enable obligations to be imposed on employers in relation to equality action plans.

758 Subsection (1) provides that the Equality Act 2010 is amended.

759 Subsection (2) inserts new section 78A into the Equality Act 2010.

760 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

761 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.

762 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".

763 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.

764 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.

765 Subsections (6) provides that regulations may not require an employer to publish information more frequently than every 12 months.

766 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.

767 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.

Section 34: Provision of information relating to outsourced workers

768 Subsection (1) provides that the Equality Act is amended.

769 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.

770 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.

771 Subsection (4) amends section 154 of the Equality Act 2010 as above, in relation to cross-border public authorities.

Annual leave records

Section 35: Duty to keep records relating to annual leave

772 This is Section 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.

773 Subsection (1) provides that the Working Time Regulations 1998 will be amended as follows.

774 Subsection (2) insert new regulation 16B - Records relating to annual leave entitlement into the Working Time Regulations 1998 under Part 2 (rights and obligations concerning working time).

775 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).

776 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

777 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)).

778 Subsection (1)(b) of new regulation 16(B) states the records need to be retained for 6 years from the date they were made.

779 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

Section 36: Extension of regulation of employment businesses

780 This Section 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).

781 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).

782 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.

783 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.

784 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).

785 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.

786 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.

787 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 will, for example, not matter that the fee is also paid in consideration of additional services.

788 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).

Employment of children on Heritage Railways

Section 37: Guidance about the employment of children on heritage railways

789 Subsection (1) requires the Health and Safety Executive and the Office of Rail and Road to produce guidance setting out the circumstances in which 14-16 year olds who are volunteering on heritage railways in Great Britain are, or are not, to be regarded as being employed in 'an industrial undertaking' for the purposes of section 1 of the Employment of Women, Young Persons and Children Act 1920. The guidance will clarify what sorts of activities are likely to be safe, appropriate and suitable for young volunteers, offering a clear benchmark for reasonable activities and assisting Inspectors with enforcement decisions.

790 Subsection (2) requires the Office of Rail and Road as the independent safety regulator for Heritage Railways and Tramways and the Health and Safety Executive as the regulator for workplace health and safety legislation, to work together to publish the guidance as set out in Subsection (1) which may be revised and any revisions will be published.

791 Subsection (3) explains the definition of a heritage railway, the inclusion of the scope to cover heritage tramways and the timescale of 12 months to be from the day the Act is passed.

Part 3: Pay and Conditions in Particular Sectors

Chapter 1: School Support Staff

Section 38: Pay and conditions of school support staff in England

792 This Section introduces Schedule 4 which establishes the School Support Staff Negotiating Body and makes further provision in relation to it.

Schedule 4 – Pay and conditions of school support staff in England

793 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.

794 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.

795 Paragraph 3 of Schedule 4 disqualifies the chair of the School Support Staff Negotiating Body from membership of the House of Commons.

796 Paragraph 4 of Schedule 4 provides that paragraph 8, Schedule 2 Education Act 2002 has effect subject to provision made by regulations under new Part 8A of that Act.

797 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

798 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

799 This section describes the matters that fall within the remit of the School Support Staff Negotiating Body, these matters being the renumeration; 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"

800 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).

801 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".

802 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".

803 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", we proposed in our consultation that this might be staff such as executives working within academies and/or persons whose terms and conditions of employment are determined in accordance with agreements of other bodies.

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

804 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

805 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.

806 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.

807 Subsection (3) requires the School Support Staff Negotiating Body to consider matters referred to it, having regard to specified factors.

808 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).

809 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

810 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.

811 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.

812 Subsection (3) requires the School Support Staff Negotiating Body to consider matters referred to it, having regard to any specified factors.

813 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).

814 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

815 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.

816 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.

817 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

818 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).

819 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.

820 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

821 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).

822 Subsection (2) allows the Secretary of State to specify factors that the School Support Staff Negotiating Body must have regard to 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.

823 Subsection (3) requires the School Support Staff Negotiating Body to reconsider the agreement, having regard to specified factors.

824 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).

825 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

826 Subsection (1) provides that this section applies where the School Support Staff Negotiating Body has submitted an agreement following reconsideration under section 148I.

827 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.

828 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.

829 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.

New section 148K Powers of Secretary of State in absence of SSSNB agreement

830 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.

831 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.

832 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

833 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

834 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.

835 Subsection (2) provides that a person's remuneration is to be determined and paid in accordance with an agreement ratified by regulations.

836 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.

837 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.

838 Subsection (6) provides that regulations made by the Secretary of State under section 148H(2)(a) or section 148J(2)(a) cannot alter an existing term or condition of a person's employment to their detriment or prevent them being employed on a term or condition that is more favourable than a corresponding term that will otherwise be imposed in their contract of employment by those regulations and disapplies subsections (2) to (5) for these purposes.

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

839 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.

840 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.

841 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.

842 Subsection (8) provides that regulations made by the Secretary of State under section 148J(2)(d), section148K(2)(b) or section148K(4)(b) cannot alter an existing term or condition of a person's employment to their detriment or prevent them being employed on a term or condition that is more favourable than a corresponding term that will otherwise be imposed in their contract of employment by those regulations and disapplies subsections (4) to (7) for these purposes.

New section 148O Regulations: supplementary

843 Subsections (1) provides that regulations made under part 8A may apply retrospectively.

844 Subsection (2) 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 (3) provides that they must include provision about the publication of the agreement or other document.

New section 148P Guidance

845 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.

846 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.

847 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.

848 Subsection (4) provides that local authorities, governing bodies of schools maintained by local 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

849 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

850 This section defines terms used in the Part.

Schedule 12A The School Support Staff Negotiating Body

851 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.

852 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.

853 Paragraph 3, new schedule 12A requires the members of the School Support Staff Negotiating Body to include an independent chair.

854 Paragraph 4, new schedule 12A requires only those members representing school support staff or employer organisations to have voting rights.

855 Paragraph 5, new schedule 12A allows the Secretary of State to provide administrative support to the School Support Staff Negotiating Body.

856 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.

857 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.

858 Paragraph 8, new schedule 12A defines terms used in the schedule.

Chapter 2: Social Care Workers

859 This Chapter establishes sectoral agreements in the adult social care sector in England and in the social care sectors in Scotland and Wales. The Chapter creates a framework for establishing "Negotiating Bodies" in England, Scotland and Wales. Regulations establishing these bodies must provide that these bodies are 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 allows for agreements to set out minimums for pay and other terms and conditions for social care workers, which the Secretary of State, Scottish Ministers, or Welsh Ministers (referred to below as the "appropriate authorities") have powers to ratify through regulations. If ratified, minimums for pay and terms and conditions for social care workers will be set in accordance with the agreement.

The Social Care Negotiating Bodies

Section 39: Power to establish Social Care Negotiating Body

860 Subsection (1) gives the Secretary of State the power to create an Adult Social Care Negotiating Body for England.

861 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.

862 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.

863 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.

864 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.

Section 40: Membership, procedure, etc of Negotiating Body

865 This Section gives the appropriate authority the power to make regulations setting out further provision about the Negotiating Body they have established under Section 36.

866 Subsection (1) sets out that this power to make regulations applies where the appropriate authority has established a Negotiating Body.

867 Subsection (2) sets out that the appropriate authority may make provision in regulations under this Section 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.

868 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.

869 Regulations may also provide for anyone else of a specified description to be appointed as members of the Negotiating Body.

870 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.

871 Subsection (5) allows regulations under this Section 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.

Section 41: Matters within Negotiating Body's remit

872 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.

d. 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.

873 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.

Section 42: Meaning of "social care worker"

874 This Section defines the meaning of "social care worker" for the purposes of this Chapter.

875 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".

876 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

Section 43: Consideration of matters by Negotiating Body

877 This Section 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.

878 Subsection (1) establishes that an appropriate authority may make provision about the consideration by the Body of matters within its remit.

879 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.

880 Subsection (3) defines "specified" as specified in the regulations.

Section 44: Reconsideration by Negotiating Body

881 This Section 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.

882 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.

883 Subsection (2) allows the appropriate authority to set out in regulations what happens where an agreement is referred back to a Negotiating Body.

884 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.

885 Subsection (4) defines "specified" as specified in the regulations.

Section 45: Failure to reach an agreement

886 This Section gives the appropriate authority the power to make provision in circumstances where a Negotiating Body is unable to reach an agreement.

887 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.

888 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

Section 46: Power to ratify agreements

889 This Section gives the appropriate authority the power to ratify agreements submitted to them by a Negotiating Body (this includes agreements submitted to them following reconsideration).

890 Subsection (1) provides the appropriate authority with the power to ratify an agreement if that agreement has been submitted in accordance with regulations under Sections 40 or 41.

891 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.

Section 47: Effect of regulations ratifying agreement

892 This Section sets out the effect of regulations made by the appropriate authority to ratify agreements under Section 43, ensuring that changes to a social care worker's remuneration or other terms or conditions set out in an agreement take effect within the social care worker's contract, unless such changes if given effect would alter an existing term or condition of the contract to the social care worker's detriment or would prevent the social care worker's contract from including terms and conditions that are more favourable than those set out in the agreement.

893 Subsection (1) refers to the appropriate authority's power to ratify agreements through regulations under the circumstances outlined in Section 43.

894 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.

895 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.

896 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.

897 Subsection (5) provides that regulations made by the Secretary of State under Section 43 cannot alter an existing term or condition of a social care worker's employment to their detriment or prevent them from being employed on a term or condition that is more favourable than a corresponding term that would otherwise be imposed in their contract of employment by those regulations and disapplies subsections (2) to (4) for these purposes.

Power of appropriate authority to deal with matters

Section 48: Power of appropriate authority to deal with matters

898 This Section 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, unless such changes if given effect would alter an existing term or condition of the contract to the social care worker's detriment or would prevent the social care worker's contract from including terms and conditions that are more favourable than those set out in the agreement .

899 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.

900 Subsection (2) sets out that the appropriate authority may by regulations make provision about the matter.

901 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.

902 Subsection (4) outlines that if provision is made within subsection (3), then subsections (5) to (7) will apply (but see subsection (8)).

903 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.

904 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.

905 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.

906 Subsection (8) provides that regulations made by the Secretary of State under section 45 cannot alter an existing term or condition of a social care worker's contract to their detriment or prevent them being employed on a term or condition that is more favourable than a corresponding term that would otherwise be imposed in their contract of employment by these regulations and disapplies subsections (5) to (7) for these purposes.

Guidance etc

Section 49: Guidance and codes of practice

907 This Section gives the appropriate authority power to make regulations about the issuing of guidance and codes of practice.

908 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 Section 40 or Section 41; and,

b. regulations made by the authority under Section 45.

909 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).

910 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.

911 Subsection (4) sets out that if the regulations provide for a consequence for failing to comply with a duty in relation to the guidance or code, the regulations must provide for the guidance or code to be laid before the appropriate legislature and subject to the procedure specified in the regulations.

912 Subsection (5) defines "appropriate legislature" to mean Parliament in the case of regulations made by the Secretary of State; the Senedd Cymru in the case of regulations made by the Welsh Ministers; and the Scottish Parliament in the case of regulations made by the Scottish Ministers. It also sets out that 'specified' means specified in the regulations.

Enforcement

Section 50: Duty of employers to keep records

913 This Section outlines the power of the Secretary of State to create provisions regarding the keeping of records.

914 Subsection (1) gives the Secretary of State the power to make regulations requiring employers to:

a. keep records of a specified description and in a specified form and manner; and,

b. preserve those records for a specified period.

915 Subsection (2) sets out that the power to make regulations under this Section 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).

916 These sections will 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.

917 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.

918 Subsection (3) defines "specified" as meaning specified in the regulations.

Agency Workers

Section 51: Agency workers who are not otherwise "workers"

919 This Section 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".

920 Subsection (1) sets out that this Section applies to the agency workers that meet the conditions in (a) to (c).

921 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.

922 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 ERA 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).

923 Subsection (4) operates so that where a worker's contract is deemed to exist under this Section 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 Sections 44(2) and (3), and 45(5) and (6).

Supplementary and general

Section 52: Regulations under section 46 or 48: supplementary

924 This section provides that regulations made under Sections 43 or 45 may apply retrospectively.

925 Subsection (1) sets out that regulations made under Sections 43 or 45 may have a retrospective effect.

926 Subsection (2) means that regulations made under Section 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.

927 Subsection (3) states that if these regulations do refer to the documents at subsection (2) (a) or (b), then they must include a provision about the publication of the agreement or other document.

Section 53: Regulations under this Chapter

928 This Section makes further provision about the regulations that may be made under this Chapter.

929 Subsection (1) allows regulations to confer a discretion on a person when dealing with any matter.

930 Subsection (2) sets out that regulations ratifying an agreement under Section 43 are subject to the negative resolution procedure.

931 Subsection (3) sets out that regulations under any other provision of this chapter are subject to the affirmative resolution procedure.

Section 54: Status of agreements, etc

932 This Section (1) gives the Secretary of State the power to, by regulations, 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.

Section 55: Interpretations of this Chapter

933 This Section outlines the definitions used in this chapter.

934 Subsection (2) states that where an agreement is ratified in part, any reference in this Chapter to a ratified agreement is a reference to the part of the agreement that has been ratified.

Chapter 3: Seafarers

Section 56: Seafarers' wages and working conditions

935 This Section introduces Schedule 5 which amends the Seafarers' Wages Act 2023.

Schedule 5 – Seafarers' wages and working conditions

936 Paragraph 1 provides that the Schedule amends the Seafarers' Wages Act in accordance with paragraphs 2-23.

937 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.

938 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.

939 Paragraph 9 inserts Chapter 3 to the Act, "Remuneration Regulations and Declarations".

940 Paragraph 10 inserts Part 3: Seafarers' Working Conditions" containing new Sections 4E-4G.

941 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.

942 Paragraph 20 inserts the heading "Part 5: General and Final Provisions".

943 Paragraph 21 inserts new section 16A.

944 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".

945 Paragraph 23 inserts a definition of "declaration" which refers to all three categories of declaration.

946 Paragraph 24 amends the title of the Act to the Seafarers (Wages and Working Conditions) Act 2023.

New Section 4A

947 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.

948 Subsection (2) sets out that these regulations are to be known as "remuneration regulations".

949 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.

950 Subsection (4) provides that they can apply to all relevant services or one or more relevant services of a specified description.

951 Subsection (5) provides that a service can be described in relation to the route operated by the service, or other things.

952 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

953 Section 4B sets out the requirements on harbour authorities to request a remuneration declaration.

954 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).

955 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.

956 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).

957 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

958 Section 4C sets out requirements regarding the nature of remuneration declarations.

959 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).

960 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.

961 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.

962 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.

963 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

964 Subsection (1) provides that national minimum wage equivalent is an hourly rate specified in regulations.

965 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.

966 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.

967 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.

968 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.

969 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 will receive if they qualified for the national minimum wage.

New Section 4E

970 Section 4E is called "Safe working regulations".

971 Subsection (1) provides that a seafarer means a person who is on a ship providing a relevant service.

972 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.

973 Subsection (3) provides that they may also make provision for the management and mitigation of risks arising from fatigue suffered by seafarers.

974 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.

975 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.

976 Subsection (6) provides that regulations under subsections (2), (3) or (5) are referred to as "safe working regulations".

977 Subsection (7) allows safe working regulations to impose requirements on the operator of a relevant service.

978 Subsection (8) provides that safe working regulations can apply to all relevant services or one or more services of a specified description.

979 Subsection (9) provides that the service may be described by reference to the route operated by the service, among other things.

New Section 4F

980 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.

981 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.

982 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).

983 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

984 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).

985 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.

986 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.

987 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.

988 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.

989 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.

990 Subsection (7) provides that the references to operations in subsection (6) include its operations outside UK territorial waters.

New Section 16A

991 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).

992 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.

Section 57: International agreements relating to maritime employment

993 Section 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

994 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.

995 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.

996 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.

997 Subsection (5) sets out that new section 84B makes further provision for the regulations under Section 84A.

New Section 84B

998 Subsection (1) provides that in subsections (2) to (9), "regulations" means regulations under section 84A.

999 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.

1000 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.

1001 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.

1002 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.

1003 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.

1004 Subsection (7) allows that in specified cases, regulations may provide specified persons each commit an offence created by the regulations under subsection 6.

1005 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.

1006 Subsection (9) provides that the power to make regulations includes power to make consequential, supplementary, incidental or transitional provisions.

1007 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.

1008 Subsection (11) provides that regulations made under the powers in Section 54 giving effect to international agreements relating to maritime employment cannot be used to bring into force an agreement, or amendment to an agreement, before the UK has ratified it. The effect of this is that, by implication, such regulations can be made ahead of ratification. This allows the UK to have the necessary implementing legislation in place prior to ratification, in accordance with the Government's usual practices, enabling the UK to fulfil its international obligations in a timely manner.

1009 Subsection (12) provides that nothing in section 84B is to be construed as restricting the generality of section 84A.

1010 Subsection (13) provides that a statutory instrument containing regulations under section 84A(2) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament (affirmative resolution procedure).

1011 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

Section 58: Right to statement of trade union rights

1012 Subsection (1) specifies that the TULRCA is amended in accordance with the following subsections (2) to (6).

1013 Subsection (2) inserts a new section (136A) into TULRCA. This section is titled "Right to statement of trade union rights".

1014 Subsection (3) amends section 284 (exceptions for share fishermen) TULRCA, to insert reference to section 136A. Subsection (4) of Section 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.

1015 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 Act 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

1016 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.

1017 Subsection (2) provides for the specific situations in which the written statement of the worker's right to join a trade union must be provided.

1018 Subsection (2) paragraph (a) establishes that the written statement of the worker's 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 ERA 1996.

1019 Subsection (2) paragraph (b) specifies that the written statement of the worker's 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.

1020 Subsection (3) sets out that the Secretary of State may prescribe the following specifics of the written statement of the worker's 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.

1021 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 Act.

1022 Subsection (5) sets out that in this section (section 42 of the Employment Rights Act), the meaning of the terms "worker" and "employer" have the same meaning as is specified in Section 230 of the ERA 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."

1023 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.

1024 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

Section 59: Right of trade unions to access workplaces

1025 This Section 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".

1026 Subsection (2) inserts Chapter 5ZA, Rights of Trade Unions to access workplaces, into TULRCA, sections 70ZA to 70ZN.

1027 Subsection (3) amends section 263 (proceedings of the Central Arbitration Committee) of TULRCA 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.

1028 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.

1029 Subsection (5) makes consequential amendments to section 263A.

1030 Subsection (6) makes consequential amendments to section 264.

1031 Subsection (7) makes a consequential amendment to the Employment Relations Act 2004.

New Section 70ZA

1032 Section 70ZA (Access agreements), subsection (1) provides that section 70ZA applies for the purposes of the Chapter.

1033 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".

1034 Subsection (5) defines communication with workers.

1035 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.

1036 Subsection (8) introduces sections 70ZB to 70ZK as making provision about entering into access agreements.

1037 Subsections (9) and (10) introduce the remaining sections.

1038 Subsection (11) introduces Section 70ZL as containing general limitations on provisions made under this Chapter.

New Section 70ZB

1039 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.

1040 Subsections (2) and (4) sets out the process for the trade union to make an access request, and for the employer to provide a response notice to that request.

1041 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.

1042 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

1043 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

1044 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.

1045 Firstly, that a qualifying trade union gives an access request.

1046 Secondly, that the employer provides a response notice before the end of the response period.

1047 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.

1048 Finally, the union and employer need to notify the Central Arbitration Committee ("CAC") jointly of those terms.

1049 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

1050 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.

1051 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.

1052 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.

1053 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.

1054 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.

1055 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.

1056 Subsection (7) provides that a determination must be in writing and state the reasons for that determination.

New Section 70ZF

1057 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.

1058 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(6)) 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.

1059 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.

1060 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.

1061 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.

1062 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.

1063 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

1064 Section 70ZG (variation and revocation of access agreements), subsection (1) provides that the parties may vary or revoke the agreement.

1065 Under subsection (2) this must be done in writing.

1066 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.

1067 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.

1068 Subsection (5)(b) provides that the variation or revocation only has effect after the CAC has been notified.

New Section 70ZH

1069 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.

1070 Subsection (2) provides that the complaint must be made within three months of the act complained of.

1071 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.

1072 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.

1073 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

1074 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).

1075 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.

1076 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.

1077 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.

1078 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.

1079 Subsection (4) provides that a complaint is to be made within three months of the act complained of.

1080 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)).

1081 Subsection (6) provides that the amount of the penalty is what the CAC considers appropriate, subject to provision made in regulations under section 70ZJ.

1082 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.

1083 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.

1084 Subsection (9) provides that the CAC must pay into the Consolidated Fund any penalty amounts received under subsection (5)(b).

1085 Subsection (10) provides that for the purposes of this section a reference to conduct also includes a person not doing something.

New Section 70ZJ

1086 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.

1087 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).

1088 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.

1089 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.

1090 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

1091 Section 70ZK (Enforcement of access agreements: supplementary provision) makes further provision for the enforcement of access agreements.

1092 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.

1093 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.

1094 Subsection (3) provides that complaints under section 70ZH and 70ZI must be in writing and in such form as the CAC may require.

1095 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.

1096 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

1097 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 will constitute a breach).

1098 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.

1099 Subsection (2)(b) also prevents these terms from being specified by the CAC as a term of an access agreement under section 70ZE.

1100 Subsection (2)(c) disallows the CAC from exercising any functions under section 70ZH and 70ZK so as to require or authorise a prohibited activity.

1101 Subsection (3) provides definitions for terms used in this Chapter: "consent"; "personal data"; "data subject"; "data protection legislation" and "UK GDPR".

New Section 70ZM

1102 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.

1103 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

1104 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. Subsection (4) inserts new section 236ZA.

1105 Subsections (5) and (6) make consequential amendments to section 263A and section 264.

1106 Subsection (7) makes a consequential amendment to the Employment Relations Act 2004.

New Section 236ZA

1107 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.

1108 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.

1109 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.

1110 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.

1111 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.

1112 Subsection (7) makes procedural provision in relation to a Committee consisting of a single member.

1113 Subsection (8) makes procedural provision in relation to a Committee consisting of a panel of three members.

1114 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.

1115 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.

1116 Subsection (11) sets out that the Committee may determine its own procedure, subject to the provisions of this section.

Trade union recognition

Section 60: Trade union recognition

1117 This Section introduces Schedule 6 to the Act.

Schedule 6 – Trade union recognition

1118 This schedule amends Schedule A1 of TULRCA.

1119 Schedule A1 of TULRCA 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.

1120 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.

1121 The following paragraphs briefly describe Schedule A1 as it stands prior to amendment by the Act.

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.

1122 A significant number of the changes made by this Section and the new Schedule 6 of this Act 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.

1123 *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.

1124 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.

1125 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.

1126 *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 will be likely to favour recognition.

1127 *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.

1128 *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.

1129 *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.

1130 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.

1131 *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.

1132 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

1133 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.

1134 Paragraph 2 explains that Part 6 of this Schedule contains consequential amendments to the Employment Relations Act 2004.

1135 This new Schedule amends 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 is submitted 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, substitute a "required percentage" test (not to be greater than 10% or less than 2%) for the level of trade union membership in the bargaining unit for acceptance by the CAC of the union's application for recognition, remove the requirement at the time of application that the union is likely to secure a majority in a recognition ballot, and remove the requirement that, in a recognition ballot, at least 40% of those entitled to vote must support the union's application.

1136 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 the reader will find these provisions and the paragraphs of Schedule A1 that they relate to:

a. Paragraph 5(2) (Paragraphs 13A(6), 13A(7) and 14(1A) of Schedule A1, acceptance of applications: multiple applications);

b. Paragraph 5(5) (Paragraph 14(5A) of Schedule A1, acceptance of applications: multiple applications);

c. Paragraph 11(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 12(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 20(2) (Paragraph 35(1A) of Schedule A1, admissibility of applications: existing collective agreement);

f. Paragraph 21, (Paragraph 36(1A) of Schedule A1, admissibility of applications: minimum support);

g. Paragraph 22(3) (Paragraph 38(2A) of Sch. A1, admissibility of applications: overlapping bargaining unit);

h. Paragraph 27(2) (Paragraph 44(1A) of Sch. A1, validity of applications: existing collective agreement);

i. Paragraph 28 (Paragraph 45(2) of Schedule A1, validity of applications: minimum support);

j. Paragraph 29(3) (Paragraph 46(3) of Schedule A1, validity of applications: overlapping bargaining unit).

1137 This new Schedule to the Act, amends the requirement that a union demonstrates that it has 10% membership of the proposed bargaining unit on application to the Central Arbitration Committee and replaces 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.

1138 The provisions in respect of the required percentage test and achieving a 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:
Required percentage test

a. Para. 5(3), (4), (6) and (7) (Para. 14 of Sch. A1, acceptance of applications: multiple applications);

b. Para. 21 (Para. 36(1) of Sch. A1, admissibility of applications: minimum support);

c. Para. 28 (Para. 45(1) of Sch. A1, validity of applications: minimum support);

d. Para. 34 (Para. 51(2)(c) of Sch. A1, competing applications);

e. Para. 42(2) and (3) (Para. 86(2) and (3) of Sch. A1, new bargaining unit: assessment of support);

f. Para. 44 (Para. 88(1) of Sch. A1, powers of CAC where majority of workers are not members of union);

g. Para. 65 (Para. 171B of Sch. A1, meaning of "the required percentage");

Simple majority

h. Para. 819(3) (Para 29(3) of Sch. A1, result of ballot);

i. Para. 43 (Para. 87 of Sch. A1, powers of CAC where majority of workers are members of union);

j. Para. 44 (Para. 88 of Sch. A1, powers of CAC where majority of workers are not members of union).

1139 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"

1140 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

1141 Paragraph 4 places new duties on employers to provide names, dates of birth and job categories of workers in the bargaining unit, normally within 5 working days of the Central Arbitration Committee receiving an application for recognition. The Schedule also provides for enforcement powers in case of non-compliance by an employer, ultimately enabling the Central Arbitration Committee to make a declaration that the union has been recognised. These changes have been made to give effect to the policy aim of ensuring that only those workers who were part of the bargaining unit at the time when the application was received are counted for the purposes of the recognition process.

1142 Paragraph 4 therefore requires an employer to provide certain information about the workers in a bargaining unit, normally within five working days after the employer is notified of a trade union recognition application. The duty does not include workers who joined the bargaining unit after the application was received by the Central Arbitration Committee, as they cannot vote in any potential ballot arising from the application.

1143 Paragraph 4 makes further amendments to Schedule A1 by inserting after paragraph 13 of Schedule A1, new paragraphs 13A and 13B.

1144 Sub-paragraph 13A(1) clarifies that this section applies where the Central Arbitration Committee has received an application for statutory recognition under paragraphs 11 and 12 of Schedule A1, and where it has given notice to the employer of receipt of the application.

1145 Sub-paragraph 13A(2) requires the employer to comply as far as is reasonably practicable with the duties set out in new paragraph 13A(3).

1146 Sub-paragraph 13A(3) lists the four duties that the employer must comply with. These duties are:

a. to give to the Central Arbitration Committee within the relevant period, the specified information in relation to each of the relevant workers. New sub-paragraph 13A(4) defines the relevant period as five working days after the Central Arbitration Committee has given notice to the employer of receipt of a statutory union application (or longer if the CAC specifies). Sub-paragraph 13A(5) defines the relevant information as the worker's name, their date of birth and the category of worker the individual worker falls under. Sub-paragraphs 13A(6) and 13A(7) define relevant workers as those workers who were employed in the proposed, agreed or decided bargaining unit when the recognition application was received by the Central Arbitration Committee.

b. if the relevant workers change as a result of an appropriate bargaining unit being agreed by the parties or decided by the Central Arbitration Committee, to give to the Central Arbitration Committee, within the relevant period, the specified information in relation to each of those who are now the relevant workers.

c. to take reasonable steps to ensure that the information given to the Central Arbitration Committee under the first two duties above does not include any information relating to an individual who is not a relevant worker.

d. to inform the Central Arbitration Committee, as soon as reasonably practicable, of any worker who ceases to be a relevant worker in the bargaining unit.

1147 New Paragraph 13B provides for an enforcement mechanism where the employer does not comply with the four duties listed in new paragraph 13A(3).

1148 Sub-paragraph 13B(1) sets out the circumstances where the Central Arbitration Committee will issue a remedial order under new-subparagraph 13B(2). These circumstances are that the employer has failed to comply with one of the four duties and the statutory recognition application under paragraph 11 or 12 of Schedule A1 is still in progress. Sub-paragraph 13B(7) clarifies that an application is still in progress so long as none of the events listed in that sub-paragraph have occurred.

1149 Sub-paragraph 13B(2) provides that the Central Arbitration Committee may issue a remedial order requiring the employer to take steps to remedy the failure within a period specified by the Central Arbitration Committee.

1150 Sub-paragraph 13B(3) requires the Central Arbitration Committee to notify the parties where it is satisfied that the employer has failed to comply with the remedial order.

1151 Sub-paragraph 13B(4) requires the notice to set out that the Central Arbitration Committee may declare under new sub-paragraph 13B(6) that the union or unions are recognised for collective bargaining where the conditions set out under new sub-paragraph 13B(5) are met.

1152 The conditions under sub-paragraph 13B(5) will be that the Central Arbitration Committee is satisfied that the employer has failed to comply with a remedial order; the application under paragraphs 11 or 12 of Schedule A1 is still in progress; the bargaining unit has been agreed or decided upon; and that the Central Arbitration Committee has decided that the application is not invalid under paragraphs 11(2) or 12(2) of Schedule A1.

1153 Paragraph 5 of the new Schedule amends paragraph 14 (acceptance of applications including multiple applications) of Schedule A1.

1154 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.

1155 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

1156 Paragraph 6 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

1157 Paragraph 7 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

1158 Paragraph 8, 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).

1159 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

1160 Paragraph 9 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.

1161 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.

1162 Subparagraphs (3) and (4) of 19G define who the relevant workers are.

1163 Subparagraph (5) of 19G defines the access request period of 5 working days.

1164 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.

1165 Paragraph 9 also 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.

1166 Subparagraph (2) of 19H sets out that the CAC must try to help the parties reach an agreement during the negotiation period.

1167 Subparagraph (3) of 19H sets out that the negotiation period is 20 working days starting the following day after the CAC gives the union notice that its application is accepted (or longer if the CAC specifies).

1168 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.

1169 Subparagraph (5) of 19H sets out that the CAC's notice must contain reasons for the CAC reaching that conclusion.

1170 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.

1171 Paragraph 9 also 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 20 working days negotiation period a voluntary access agreement and the application is in progress.

1172 Subparagraph (2) of 19I set out that the CAC must decide whether the CAC can have access to the workers and on what terms.

1173 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.

1174 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.

1175 Paragraph 9 also 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.

1176 Subparagraph (2) of paragraph 19J defines an access agreement.

1177 Subparagraph (3) of paragraph 19J requires the parties to comply with the access agreement.

1178 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.

1179 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.

1180 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) of Schedule A1.

1181 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.

1182 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.

1183 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.

1184 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.

1185 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.

1186 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.

1187 Paragraph 9 also 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.

1188 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.

1189 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 will be agreed or determined and then the CAC will consider making a declaration under either subparagraph.

1190 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.

1191 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.

1192 Paragraph 9 also 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

1193 Paragraph 10 of the Schedule inserts after new paragraph 19L a new paragraph 19M in relation to unfair practices.

1194 Subparagraph (1) of paragraph 19M sets out that the parties must refrain from using any unfair practice.

1195 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.

1196 Subparagraph (3) of paragraph 19M defines what is the relevant ballot and the relevant workers.

1197 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.

1198 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.

1199 Subparagraph (6) of paragraph 19M provides for Ministers or ACAS to issue Codes of Practice in relation to new paragraph 19M.

1200 Paragraph 10 of the Schedule also 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).

1201 Subparagraph (2) of paragraph 19N sets out the stages of the recognition process after which a complaint cannot be made.

1202 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.

1203 Paragraph 10 of the Schedule also inserts new paragraph 19O after new paragraph 19N. 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.

1204 Subparagraph (2) of paragraph 19O states that the CAC must make a declaration that the complaint is well founded.

1205 Subparagraph (3) of paragraph 19O enables the CAC to order the offending party to take specified steps within a specified period.

1206 Subparagraph (4) of paragraph 19O sets out the circumstances where subparagraph (5) below applies.

1207 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.

1208 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).

1209 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).

1210 Paragraph 10 of the Schedule also inserts new paragraph 19P after new paragraph 19O.

1211 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. 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

1212 Paragraph 11 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 11 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.

1213 Paragraph 12 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

1214 Paragraph 13 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.

1215 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.

1216 Paragraph 14 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.

1217 Paragraph 15 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 Act, 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 earlier in the recognition process, again where the CAC notifies the parties that an application has been accepted.

1218 As a result, some of the duties on the employer will, following the passage of this Act, relate to the recognition process as a whole, not just the ballot. That is why paragraph 15 of the Schedule removes references to the second, fourth and fifth duties from paragraph 26 of Schedule A1 as these duties, in relation to the recognition process as a whole, are now provided for elsewhere.

1219 Paragraph 15 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.

1220 Paragraph 15 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.

1221 Paragraph 15 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).

1222 Paragraph 16 of the Schedule supplements paragraph 27 of Schedule A1 by inserting additional circumstances relating to breaches of obligations under Schedule A1.

1223 New subparagraph 27ZA 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.

1224 New subparagraph 27ZB 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.

1225 New subparagraph 27ZC 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.

1226 New subparagraph 27ZD 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.

1227 Paragraph 17 of the Schedule deletes paragraphs 27A to 27F of Schedule A1.

1228 Paragraph 18 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.

1229 Paragraph 19 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

1230 Paragraph 20 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.

1231 Paragraph 20 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.

1232 Paragraph 21 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.

1233 Paragraph 22 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.

1234 Paragraph 24 of the Schedule amends paragraph 40 (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.

1235 Paragraph 25 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 previous policy.

1236 Paragraph 26 of the Schedule amends paragraph 41 (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

1237 Paragraph 27 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.

1238 Paragraph 27 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.

1239 Paragraph 28 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.

1240 Paragraph 29 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.

1241 Paragraph 31 of the Schedule makes consequential amendments to paragraph 48 of Schedule A1 (validity of applications: union not entitled to be recognised).

1242 Paragraph 32 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 no 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.

1243 Paragraph 33 of the Schedule makes consequential amendments to paragraph 49 of Schedule A1 (validity of applications: union required to cease bargaining arrangements).

Competing applications

1244 Paragraph 34 of the Schedule amends paragraph 51 (competing applications) of Schedule A1 by deleting the reference to the 10% membership test and substituting this with the 'required percentage test'.

Voluntary recognition

1245 Paragraph 35 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

Changes relevant to appropriateness of bargaining unit

1246 Paragraphs 36 to 39 of the Schedule prevent employer circumvention of the freeze on the bargaining unit by making a Part III application on the basis that the bargaining unit is no longer appropriate due to a substantial change in the number of workers in that bargaining unit. This will place a bar of three years preventing an employer submitting a Part III application (changes to the bargaining unit) on the ground that the bargaining unit is no longer appropriate due to a substantial change in the number of workers in that bargaining unit.

Access agreements

1247 Paragraph 40 of the Schedule inserts after paragraph 81 new paragraphs 81A to 81F in relation to access agreements. This mirrors paragraph 9 of the Schedule in relation to statutory recognition applications under paragraph 11 or 12 of Schedule A1. However, paragraph 40 of the Schedule, and new paragraphs 81A to 81F that it inserts, relate to applications to the CAC under paragraph 66 or 75 of Schedule A1 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.

1248 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.

1249 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.

1250 Subparagraph (5) of 81A defines the access request period of 5 working days following notice by the CAC of acceptance of an application.

1251 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.

1252 Paragraph 40 of the Schedule inserts after paragraph 81A 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.

1253 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.

1254 Subparagraph (3) of 81B sets out that the negotiation period is 20 working days starting the following day after the CAC gives notice that the application is accepted (or longer if the CAC specifies).

1255 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.

1256 Subparagraph (5) of 81B sets out that the CAC's notice must contain reasons for the CAC reaching that conclusion.

1257 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.

1258 Paragraph 40 of the Schedule inserts after paragraph 81B 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 20 working days negotiation period on a voluntary access agreement and the application is in progress.

1259 Subparagraph (2) of 81C set out that the CAC must decide whether the CAC can have access to the workers and on what terms.

1260 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.

1261 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.

1262 Paragraph 40 of the Schedule inserts after paragraph 81C 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.

1263 Subparagraph (2) of paragraph 81D defines an access agreement, the terms of which may be agreed by the parties or decided by the CAC.

1264 Subparagraph (3) of paragraph 81D requires the parties to comply with the access agreement.

1265 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.

1266 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.

1267 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.

1268 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.

1269 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.

1270 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.

1271 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 Qualified Independent Person (QIP) who oversees a ballot, has no effect.

1272 Subparagraph (11) of paragraph 81D sets out that personal data has the same meaning as in the Data Protection Act 2018.

1273 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.

1274 Paragraph 40 inserts after paragraph 81D 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.

1275 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.

1276 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.

1277 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).

1278 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).

1279 Paragraph 40 inserts after paragraph 81E 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

1280 Paragraph 41 of the Schedule inserts after new paragraph 81F new paragraphs 81G to 81J in relation to unfair practices. This mirrors paragraph 10 of the Schedule in relation to statutory recognition applications under paragraph 11 or 12 of Schedule A1. However, paragraph 41 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.

1281 Subparagraph (1) of paragraph 81G sets out that the parties must refrain from using any unfair practice.

1282 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.

1283 Subparagraph (3) of paragraph 81G defines what is the relevant ballot and the relevant workers.

1284 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.

1285 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.

1286 Subparagraph (6) of paragraph 81G provides for Ministers or ACAS to issue Codes of Practice in relation to new paragraph 81G (unfair practices).

1287 Paragraph 41 of the Schedule also 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).

1288 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).

1289 Subparagraph (4) of paragraph 81H sets out that the complaint period is 5 working days after the closing of the ballot.

1290 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.

1291 Paragraph 41 of the Schedule also 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.

1292 Subparagraph (2) of paragraph 81I states that the CAC must make a declaration that the complaint is well founded.

1293 Subparagraph (3) of paragraph 81I enables the CAC to order the offending party to take specified steps within a specified period.

1294 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.

1295 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.

1296 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).

1297 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.

1298 Paragraph 41 of the new Schedule also inserts new paragraph 81J after new paragraph 81I.

1299 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

1300 Paragraph 42 of the Schedule amends paragraph 86 (new bargaining unit: assessment of support) of Schedule A1 by replacing the 10% membership 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.

1301 Paragraph 43 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.

1302 Paragraph 44 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 (likely majority support) on application, while modifying the reference to the first requirement from 10% membership in the bargaining unit to the 'required percentage test'.

1303 Paragraph 45 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.

1304 Paragraph 46 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

1305 Paragraph 47 of the Schedule inserts, after paragraph 116, new paragraphs 116A to 116G in relation to access agreements.

1306 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.

1307 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.

1308 Subparagraph (3) of 116A defines the access request period of 5 working days after the CAC gives notice of acceptance of the relevant application.

1309 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.

1310 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.

1311 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.

1312 Subparagraph (3) of 116B sets out that the negotiation period is 20 working days starting the day after the CAC gives notice of acceptance of the relevant application.

1313 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.

1314 Subparagraph (5) of 116B sets out that the CAC's notice must contain reasons for the CAC reaching that conclusion.

1315 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.

1316 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.

1317 Subparagraph (2) of 116C states that the CAC must decide whether the union can have access and on what terms, during the adjudication period.

1318 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.

1319 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.

1320 Subparagraph (1) of 116D states that this paragraph applies if a derecognition application is in process and an access agreement is agreed.

1321 Subparagraph (2) of 116D defines an access agreement.

1322 Subparagraph (3) of 116D requires the parties to comply with the access agreement.

1323 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.

1324 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.

1325 Subparagraph (6) of 116D defines a relevant meeting for the purposes of subparagraphs (4) and (5).

1326 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.

1327 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.

1328 Subparagraph (9) of 116D clarifies that "personal data" has the same meaning as in section 3 of the Data Protection Act 2018.

1329 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.

1330 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.

1331 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.

1332 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.

1333 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 or order the employer to refrain from campaigning where the application is under paragraph 112.

1334 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.

1335 Paragraph 116F sets out the remedy where the employer fails to comply with an order under paragraph 116E to refrain from campaigning. The workers making the derecognition application and the union may enforce the order as if it were an order of the county court or sheriff.

1336 Subparagraphs (1) and (2) of 116G set 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

1337 Paragraph 48 of the Schedule inserts after new paragraph 116G new paragraphs 116H – 116L in relation to unfair practices.

1338 Subparagraph (1) of 116H sets out that the parties must refrain from using any unfair practice in relation to a derecognition application under paragraph 106, 107 or 112.

1339 Subparagraph (2) of 116H 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.

1340 Subparagraph (3) of 116H defines what is the relevant ballot and the relevant workers, for the purposes of the definition of an unfair practice in subparagraph (2).

1341 Subparagraph (4) of 116H 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.

1342 Subparagraph (5) of 116H 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.

1343 Subparagraph (6) of 116H states that duties imposed by new paragraph 116H do not confer any rights on a worker, and do not affect any other rights that the worker may have.

1344 Subparagraph (7) of 116H provides for Ministers or ACAS to issue Codes of Practice in relation to new paragraph 116H.

1345 Paragraph 116I sets out the process for complaints to the CAC regarding non-compliance with the requirements of paragraph 116H.

1346 Subparagraph (1) of 116I sets out that a party may complain to the CAC where the other party has not complied with the duties in new paragraph 116H.

1347 Subparagraph (2) of 116I sets out the stages of the derecognition process after which a complaint cannot be made.

1348 Subparagraphs (3), (4) and (5) of 116I 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.

1349 Paragraph 116J sets out the process if the CAC finds that a complaint under paragraph 116I is well-founded.

1350 Subparagraph (2) of 116J states that the CAC must make a declaration that the complaint is well founded.

1351 Subparagraph (3) of 116J enables the CAC to order the offending party to take specified steps within a specified period.

1352 Subparagraph (4) of 116J sets out the circumstances where subparagraph (5) below applies: where the CAC has informed the union of a ballot.

1353 Subparagraph (5) of 116J 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.

1354 Subparagraph (6) of 116J sets out that the CAC can make orders, issue notices or declarations at any time prior to certain events occurring under (a-d).

1355 Subparagraph (7) of 116J 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 116H (unfair practices).

1356 Subparagraph (8) of 116J clarifies that the CAC can make multiple orders under subparagraph (3).

1357 Paragraph 116K 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 116J(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 116J.

1358 Paragraph 116L relates to where the CAC has made an order against the employer in relation to a derecognition application by workers under paragraph 112.

1359 Subparagraph (2) of 116L 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: in the same way as an order of the court or sheriff.

Ballots

1360 Paragraph 49 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.

1361 Paragraph 50 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 Act, 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.

1362 As a result, some of the duties on the employer will relate to the derecognition process as a whole, not just the ballot. That is why paragraph 50 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.

1363 Paragraph 50 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.

1364 Paragraph 50 of the Schedule inserts duties on the employer, where a ballot has been ordered by the CAC under new paragraph 116J 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.

1365 Paragraph 50 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.

1366 Paragraph 51 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), as if an order of the court or sheriff.

1367 Paragraph 52 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.

1368 New subparagraph 119ZB is inserted by paragraph 52 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 116I of Schedule A1.

1369 New subparagraph 119ZC is inserted by paragraph 52 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.

1370 New subparagraph 119ZD is inserted by paragraph 52 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 116J(5).

1371 Paragraph 53 of the Schedule deletes paragraphs 119A to 119I of Schedule A1. Unfair practices are now addressed earlier in Schedule A1.

1372 Paragraph 54 of the Schedule amends paragraph 120 (costs of the ballot) of Schedule A1. In particular, if the ballot is ordered under paragraph 116J(5) following a well-founded complaint about an unfair practice, the costs are to be borne in proportions determined by the CAC.

1373 Paragraph 55 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

1374 Paragraph 56 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.

1375 Paragraph 57 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.

1376 Paragraph 58 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.

1377 Paragraph 59 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.

1378 Paragraph 60 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 116H to 116K) that apply to such derecognition applications from the employer.

1379 Paragraph 61 of the Schedule amends paragraph 133 (ballot on derecognition) of Schedule A1 by 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.

1380 Subparagraph (3) of paragraph 61 of the Schedule also amends references into subparagraph (2) of paragraph 133 of Schedule A1.

Derecognition where union not independent

1381 Paragraph 62 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.

1382 Paragraph 63 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 116HG to 116L) that apply to such derecognition applications from the employer.

1383 Paragraph 64 of the Schedule amends paragraph 147 (ballot on derecognition) of Schedule A1 by inserting correct references.

Part 5 – Meaning of "the required percentage"

1384 Paragraph 65 of the Schedule inserts after paragraph 171A of Schedule A1 a new paragraph 171B that sets out provisions in relation to the "required percentage".

1385 Subparagraph (1) of new paragraph 171B clarifies that "the required percentage" means 10% of the membership of the bargaining unit.

1386 Subparagraph (2) provides that the Secretary of State may bring forward regulations to vary this required percentage to a percentage between 2% and 10%.

1387 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.

1388 Subparagraph (4) requires that any regulations must be made under the affirmative procedure needing approval by both Houses of Parliament.

Part 6 – Consequential amendments

1389 Paragraph 66 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

Section 61: Political funds: requirement to pass political resolution

1390 This Section 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.

1391 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.

1392 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.

Section 62: Requirement to contribute to political fund

1393 This Section 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 sections 82, 84 and 84A of the Trade Union and Labour Relations (Consolidation) Act 1992.

1394 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) to (6), set out below.

1395 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.

1396 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.

1397 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.

1398 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.

1399 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

1400 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.

1401 Subsection (2) defines an "opt-out notice".

1402 Subsection (3) provides that an opt-out notice has effect on and after the "relevant day" unless the member withdraws that notice.

1403 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 earlier of a day specified in, or determined in accordance with, the rules of the union and 1 January in the year following the year in which the opt-out notice is given.

1404 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").

1405 Subsection (6) describes how a member of a trade union can serve an opt-out notice or a withdrawal notice on the trade union.

1406 Subsection (7) states that the Secretary of State must, within 3 months of the new section 84 coming into force, publish guidance about the kind of provision it encourages trade unions to make in their rules, for the purposes of the determination under subsection (4) of an appropriate date to give effect to member opt-out notices before the subsequent 1 January after the notice was given.

1407 Subsection (8) enables the Secretary of State to revise guidance published under subsection (7).

New Section 84A

1408 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.

1409 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.

1410 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.

1411 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.

1412 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).

1413 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.

1414 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.

1415 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.

1416 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.

1417 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.

Section 63: Deduction of trade union subscriptions from wages in public sector

1418 This Section 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 to provide 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.

1419 Subsection (1)(b) makes a consequential amendment to section 296 of the Trade Union and Labour Relations (Consolidation) Act 1992, to remove the reference to section 116B(10).

1420 Subsection (2) removes section 15 of the Trade Union Act 2016.

Facilities provided to trade union representatives and members

Section 64: Facilities provided to trade union officials and learning representatives

1421 This Section amends the Trade Union and Labour Relations (Consolidation) Act 1992 in accordance with subsections (2)-(6).

1422 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.

1423 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).

1424 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).

1425 Subsection (7) makes consequential amendments to section 10 (right to be accompanied) of the Employment Relations Act 1999.

Section 65: Facilities for equality representatives

1426 This Section inserts new Section 168B into the Trade Union and Labour Relations (Consolidation) Act 1992.

1427 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), 172 (time off: remedies),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.

1428 Subsection (11) makes consequential amendments to section 18 (conciliation: relevant proceedings) of the Employment Tribunals Act 1996 as a result of new section 168B.

1429 Subsection (12) makes consequential amendments to section 104 (unfair dismissal for assertion of statutory rights) of the ERA 1996 as a result of new section 168B.

New section 168B

1430 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.

1431 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;

c. Providing information, advice or support to qualifying members of the trade union in relation to matters relating to equality in the workplace;

d. Consulting with the employer on matters relating to equality in the workplace;

e. Obtaining and analysing information on the state of equality in the workplace;

f. Preparing for any of the things mentioned in paragraphs (a) to (e).

1432 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.

1433 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.

1434 Subsection(5) states that only one notice under subsection (4)(b) may be given in respect of any one employee.

1435 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.

1436 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.

1437 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.

1438 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.

1439 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.

1440 Subsection (12) defines an equality representative and equality in the workplace.

Section 66: Facility time: publication requirements and reserve powers

1441 This Section 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).

1442 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 came 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.

1443 Subsection (1) removes sections 172A and 172B from the Trade Union and Labour Relations (Consolidation) Act 1992.

1444 Subsection (2) removes sections 13 and 14 of the Trade Union Act 2016.

Blacklists

Section 67: Blacklists: additional powers

1445 This Section amends section 3 of the Employment Relations Act 1999 to extend the Secretary of State's powers to make regulations to include prohibitions to lists that are not prepared for the purposes of discrimination, but that subsequently are used for that. This enables 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.

1446 Subsection (1) specifies that the Section amends section 3 of the Employment Relations Act 1999 (blacklists).

1447 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.

1448 Subsection (3) inserts a new subsection (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.

1449 Subsection (4)(a) amends subsection 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.

1450 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

Section 68: Industrial action ballots: turnout threshold

1451 This Section 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.

1452 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) to (5), set out below.

1453 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.

1454 Subsection (3) 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.

1455 Subsection (4) 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.

1456 Subsection (5) 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.

1457 Following the above changes, subsection (6) 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.

Section 69 – Industrial action ballots: support thresholds

1458 This Section 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. Taking into account Section 68 above, 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.

1459 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) and (3), set out below.

1460 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.

1461 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.

1462 Following the above changes, subsection (4) removes section 3 of the Trade Union Act 2016.

Section 70: Industrial action ballots: information to be included in notices to employers

1463 This Section 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 and workplace and to provide an explanation of how the total number of employees concerned was determined by the union.

Section 71: Industrial action ballots: information to be included on voting paper

1464 This Section amends the Trade Union and Labour Relations (Consolidation) Act 1992 to reverse the effect of section 5 of the Trade Union Act 2016.

1465 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.

1466 Repealing this means the law reverts 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.

1467 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.

1468 Subsection (2) sets out that as a consequence of the amendments made by subsection (1), section 5 of the Trade Union Act 2016 is removed.

Section 72: Period after which industrial action ballot ceases to be effective

1469 This Section 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 (with no possibility of extending this further).

Section 73: Electronic balloting

1470 This Section 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.

1471 Subsection (1) removes section 4 of the Trade Union Act 2016.

1472 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 certain provisions of the Trade Union and Labour Relations (Consolidation) Act 1992.

Notice to employers of industrial action

Section 74: Notice to employers of industrial action

1473 This Section 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 Section 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 reduces 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.

1474 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.

1475 Subsection (2) sets out that as a consequence of the amendments made by subsection (1), section 8 of the Trade Union Act 2016 is removed.

Industrial action: picketing

Section 75: Union supervision of picketing

1476 This Section 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.

1477 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.

1478 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.

1479 Subsection (2) consequentially removes section 10 of the Trade Union Act 2016.

Protection for taking industrial action

Section 76: Protection against detriment for taking industrial action

1480 This Section 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.

1481 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.

1482 Subsection (3) makes consequential amendments to section 296 (meaning of "worker") of the Trade Union and Labour Relations (Consolidation) Act 1992.

1483 Subsection (4) makes consequential amendments to section 18 (conciliation: relevant proceedings) of the Employment Tribunals Act 1996.

1484 Subsection (5) makes consequential amendments to section 104 (unfair dismissal for assertion of statutory rights) of the ERA 1996.

New section 236A

1485 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.

1486 Subsection (2) defines protected industrial action.

1487 Subsection (3) provides that no account may be taken of the repudiation of any act by a trade union as mentioned in section 21 in relation to anything which occurs before the end of the next working day after the day on which the repudiation takes place.

1488 Subsection (4) provides that regulations may prescribe detriment of any description.

1489 Subsection (5) 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.

1490 Subsection (6) 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.

1491 Subsection (7) provides that a worker or former worker has no other remedy for infringement of the right conferred by this section.

1492 Subsection (8) defines "worker" and "employer".

New section 236B

1493 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.

1494 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.

1495 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

1496 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

1497 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.

1498 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.

Section 77: Protection against dismissal for taking industrial action

1499 This Section amends the Trade Union and Labour Relations (Consolidation) Act 1992 so that protection under section 238A against dismissal applies irrespective of 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).

1500 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.

1501 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

Section 78: Repeal of provisions about minimum service levels

1502 This Section 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.

1503 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 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, also fall away completely.

1504 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.

1505 Subsection (3) states that the Strikes (Minimum Service Levels) Act 2023 is repealed.

Certification Officer

Section 79: Annual returns: removal of provision about industrial action

1506 This Section 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.).

1507 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.

1508 Subsection (2) consequentially removes section 7 of the Trade Union Act 2016.

Section 80: Annual returns: removal of provision about political expenditure

1509 This Section 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.

1510 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended according to subsections (2) to (6) below.

1511 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.

1512 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.

1513 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.

1514 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.

1515 Subsection (6) removes reference to section 32ZB so the requirement to provide information about political expenditure no longer applies to federated employers' associations.

1516 Subsection (7) consequentially removes section 12 from the Trade Union Act 2016.

Section 81: Removal of powers to enforce requirements relating to annual returns

1517 This Section 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.

1518 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended in accordance with subsections (2) to (5) below.

1519 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.

1520 Subsections (3)-(5) remove references to 32ZA, 32ZB and 32ZC.

1521 Subsection (6) consequentially removes section 18 of the Trade Union Act 2016 and subsections (3) and (4) of Section 63 of this Act (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).

Section 82: Removal of investigatory powers

1522 This Section repeals subsections (1) and (2) of section 17 of the Trade Union Act 2016 which gave the Certification Officer specific investigatory powers.

1523 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 will be amended by sections (2) to (6) below.

1524 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.

1525 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.

1526 Subsection (5) removes section 256C of the Trade Union and Labour Relations (Consolidation) Act 1992 so that Schedule A3 no longer has effect.

1527 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.

1528 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.

1529 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.

Section 83: Powers to be exercised only on application

1530 This Section 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.

1531 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) to (9) below.

1532 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.

1533 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.

1534 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.

1535 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.

1536 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.

1537 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.

Section 84: Removal of power to impose financial penalties

1538 This Section 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.

1539 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) and (3) below.

1540 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.

1541 Subsection (3) removes Schedule A4 which sets out the detail of the power to impose financial penalties.

1542 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.

Section 85: Removal of power to impose levy

1543 This Section removes the power of the Certification Officer to impose a levy by repealing the effect of section 20 of the Trade Union Act 2016.

1544 Subsection (1) provides that the Trade Union and Labour Relations (Consolidation) Act 1992 is amended by subsections (2) and (3) below.

1545 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.

1546 Subsection (3) removes the requirement for the Certification Officer to report on the levy in their annual report to the Secretary of State.

1547 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.

Section 86: Appeals to Employment Appeal Tribunal

1548 This Section 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.

1549 Subsections (2)-(6) amend the Trade Union and Labour Relations (Consolidation) Act 1992 to refer to appeals arising on questions of law.

General

Section 87: Employment Outside Great Britain

1550 This Section amends subsections(1) and (1A) of section 285 of the Trade Union and Labour Relations (Consolidation) Act 1992. Section 285(1) disapplies the collective redundancy notification requirements and certain other requirements for employees are who "working" outside Great Britain. Section 285(1A) disapplies the requirements of sections 145A to 151 where under his contract personally to do work or perform services a worker who is not an employee works outside Great Britain. This section 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.

Section 88: Regulations subject to the affirmative resolution procedure

1551 This Section 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.

Section 89: Devolved Welsh authorities

1552 This Section 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 no longer exist in the Trade Union and Labour Relations (Consolidation) Act 1992, section 1 is repealed. In addition, this Section removes the definition of "devolved Welsh authority".

1553 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.

1554 Subsection (b) removes section 1 from the Trade Union (Wales) Act 2017.

Part 5: Enforcement of Labour Market Legislation

General

Section 90: Enforcement of labour market legislation by Secretary of State

1555 This Section gives 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 gives powers to enforcement officers.

1556 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 Act.

1557 Subsection (2) clarifies that for the purposes of enabling the Secretary of State to perform the enforcement function, Part 5 of this Act confers powers both on the Secretary of State and on enforcement officers.

1558 Subsection (3) defines "enforcement officer" as a person appointed by the Secretary of State under this Section.

1559 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.

1560 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 Section 119 or to provide legal assistance under Section 120.

1561 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.

1562 Subsection (8) limits the scope of the Secretary of State's enforcement authority such that the Secretary of State is not permitted to bring proceedings in Scotland for an offence.

Schedule 7 – Legislation subject to enforcement under Part 5

1563 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 in relation to a worker (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 relating to annual leave 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 offences of slavery, servitude and forced or compulsory labour (section 1) or human trafficking (sections 2 and 4) 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.
- Section 47(2) (entitlement of social care workers to be paid in accordance with ratified agreements of Negotiating Body) and 48(5) (entitlement of social care workers to be paid in accordance with regulations made by Secretary of State, etc) of this Act.

1564 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.

1565 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 will bring enforcement of that legislation in scope of the Secretary of State's enforcement functions.

1566 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.

1567 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.

1568 Subparagraph (4) defines key terms, including "the appropriate Northern Ireland department" and "transferred matter".

1569 Subparagraph (5) provides that regulations made to amend Part 1 of Schedule 7 may also make necessary consequential changes to Sections 491 (enforcement functions of Secretary of State), 925 (delegation of functions, Section 103 (power to give notice of underpayment, and 150 (meaning of non-compliance with relevant labour market legislation).

1570 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.

1571 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.

Section 91: Enforcement functions of the Secretary of State

1572 This Section specifies the functions that fall within the meaning of any reference to an enforcement function in Part 5, and those which do not.

1573 Subsection (1) outlines that the enforcement functions of the Secretary of State include: functions granted under Part 5 of this Act, functions provided under other relevant labour market legislation and any additional function carried out to enforce relevant labour market legislation.

1574 Subsection (2) explicitly states the following functions are not enforcement functions of the Secretary of State: the power to appoint enforcement officers under Section 90, functions related to delegation under Section 92, functions relating to the Advisory Board under Section 93, the creation and submission of strategies and reports under Sections 95 or 95, any function under or by virtue of Section 116 or 117 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 giving directions or making subordinate legislation.

Section 92: Delegation of functions

1575 This Section provides for the Secretary of State to make arrangements with a public authority to carry out delegable functions on their behalf. The Section 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.

1576 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.

1577 Subsection (2) defines a “delegable function” as being any of the Secretary of State’s enforcement functions as defined under this Act (see section 91), 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.

1578 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.

1579 Subsection (4) provides for the Secretary of State to make payments to public authorities in respect of performing any function on their behalf.

1580 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.

1581 Subsection (6) defines a "public authority" as a person whose functions are of a public nature.

Advisory Board

Section 93: Advisory board

1582 This Section 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.

1583 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.

1584 Subsection (2) specifies that the Board must consist of at least nine members appointed by the Secretary of State.

1585 Subsection (3) provides that board members hold and vacate their position in accordance with the terms and conditions of their appointment.

1586 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).

1587 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).

1588 Subsection (6) gives the Secretary of State the power to determine and provide remuneration or allowances for Board members.

1589 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 Sections 116 and 117.

Strategies and reports

Section 94: Labour market enforcement strategy

1590 This Section requires the Secretary of State to prepare and publish a labour market enforcement strategy within specified timescales. This must give an assessment of levels of non-compliance with labour market legislation as well as a proposal for the enforcement activity that will be undertaken to address it.

1591 Subsection (1) mandates the Secretary of State to produce and publish a strategy before every relevant three-year period.

1592 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) requires the strategy to deal with other matters that the Secretary of State considers appropriate for the strategy to cover.

1593 Subsection (3) allows the Secretary of State to revise the enforcement strategy at any time and requires any revision to be published.

1594 Subsection (4) mandates the Secretary of State to consult the Advisory Board when preparing or revising the enforcement strategy.

1595 Subsection (5) requires the Secretary of State to lay before Parliament and the Northern Ireland Assembly a copy of the enforcement strategy.

1596 Subsection (6) defines "relevant three-year period" and "strategy period" to provide clarity on when each enforcement strategy should be issued.

Section 95: Annual reports

1597 This Section 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.

1598 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.

1599 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.

1600 Subsection (3) requires the Secretary of State to consult the Advisory Board before each annual report is published.

1601 Subsection (4) requires the Secretary of State to lay before Parliament and the Northern Ireland Assembly a copy of every annual report.

1602 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

Section 96: Power to obtain documents or information

1603 This Section 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.

1604 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.

1605 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.

1606 Subsection (3) defines 'enforcement purpose' for the purposes of this Section.

Section 97: Power to enter premises in order to obtain documents, etc

1607 This Section 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 Section 98.

1608 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.

1609 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.

1610 Subsection (4) gives an enforcement officer the power to seize any documents produced, inspected or examined.

1611 Subsection (5) defines 'enforcement purpose' and 'equipment'.

Section 98: Power to enter dwelling subject to warrant

1612 This Section makes it a requirement for an enforcement officer to obtain a warrant from a justice before being able to enter a dwelling under Section 97. In this Section "enforcement purpose" has the same meaning as in Section 97 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.

1613 Subsection (1) sets out that an enforcement officer may not by virtue of Section 97 enter any dwelling unless a justice has issued a warrant authorising the officer to do so.

1614 Subsection (2) sets out that a justice may issue a warrant under this Section 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.

1615 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.

1616 For further provision about warrants under this Section, see Section 131 and Schedule 8.

Section 99: Supplementary powers in relation to documents

1617 This Section provides for additional powers in relation to documents.

1618 Subsection (1) relates to powers under Sections 96 or 97 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).

1619 Subsection (2) gives the Secretary of State the power to inspect or examine any documents provided under Section 96.

1620 Subsection (3) gives the Secretary of State or an enforcement officer the power to take copies of any documents which are provided under Section 96 or inspected, examined or produced under Section 97.

Section 100: Retention of documents

1621 This Section sets out the circumstances in which documents may be retained.

1622 Subsection (1) applies this Section to any document provided in response to a requirement under Section 96 or seized under Section 97.

1623 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.

1624 Subsection (3) makes clear that no documents may be retained for either of the purposes in subsection (2) if a photograph or copy will be sufficient for that purpose.

Other powers to investigate non-compliance

Section 101: Powers of enforcement officers under the Police and Criminal Evidence Act 1984

1625 This Section 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 Section indicates that provision is made under section 114B of the Police and Criminal Evidence Act 1984.

Section 102: Offences relating to gangmasters: power to enter premises with warrant

1626 This Section 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.

1627 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.

1628 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, will 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 will 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)).

1629 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 Section 97(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.

1630 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.

1631 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 Section. 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).

1632 Subsection (8) states that definition in section 4 of the Gangmasters (Licensing) Act 2004 of acting as a gangmaster also applies to this Section, just as it does in that Act.

1633 Subsection (9) explains that warrants issued under this Section are also subject to Section 131 and Schedule 8 of the Act, which provide additional procedural and operational details.

Notice of Underpayment

Section 103 – Power to give notice of underpayment

1634 This Section, and the Sections 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 to the Secretary of State.

1635 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.

1636 Subsection (2) defines a notice of underpayment as a notice given under this Section that requires the liable party to pay the required sum (which is defined in the next Section) to an underpaid individual within 28 days of the notice being issued.

1637 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 Section 105.

1638 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.

1639 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.

1640 Subsection (6) states that a notice of underpayment cannot be given by the Secretary of State if proceedings have already been brought via Section 116, and these proceedings have not been finally determined or discontinued.

1641 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.

Section 104 – Calculation of the required sum

1642 This Section sets out how the required sum included in the notice of underpayment must be calculated.

1643 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;

b. the sum determined in accordance with regulations under subsection (2) (if applicable).

1644 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 will have been higher if calculated at the time the notice was issued, rather than at the time the underpayment occurred.

1645 Subsection (3) states that the regulations made under the above subsection (2) cannot make provision in relation to the National Minimum Wage Act 1998.

1646 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.

Section 105 – Period to which notice of underpayment may relate

1647 This Section defines the period to which a notice of underpayment may relate.

1648 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.

1649 Subsection (2) defines a 'claim period' as the period of six years ending with the day on which the notice is given.

1650 Subsection (3) provides that the Secretary of State may, by regulations, amend the length of the claim period.

1651 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.

1652 Subsection (5) states the regulations made under subsection (3) are subject to the affirmative resolution procedure.

1653 Subsection (6) provides that a notice of underpayment may relate to sums due before the coming into force of this Section and subsection (7) provides that a notice may not relate to a sum that became due before the day on which this Actis passed.

1654 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.

1655 Subsection (9) also refers to Section 112(3), which makes provision about issuing replacement notices of underpayment.

Section 106– Notices of underpayment: further provision

1656 This Section makes further provision about notices of underpayment, such as setting out information requirements for a notice of underpayment.

1657 Subsection (1) states that where a notice of underpayment relates to more than underpaid individual, names or descriptions can be used to identify them.

1658 Subsection (2) sets out what information the notice of underpayment must specify for each underpaid individual it relates to.

Section 107 – Penalties for underpayment

1659 This Section makes provision for the penalties that a notice of underpayment must include.

1660 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 Section).

1661 Subsection (2) states the penalty must be paid before the end of the 28-day period beginning with the day the notice was given.

1662 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.

1663 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) will be less than £100, the penalty specified in the notice is to be £100.

1664 Subsection (7) provides that the Secretary of State may, by regulations, amend the amounts and percentages set out in this Section.

1665 Subsection (8) states that regulations under subsection (7) are subject to the affirmative resolution procedure.

Section 108 – Further provision about penalties

1666 This Section sets out further provisions when imposing civil penalties by a notice of underpayment.

1667 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.

1668 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.

1669 Subsection (4) sets out that, in effect, the penalty is halved if the penalty and arrears are paid within 14 days.

1670 Subsection (5) sets out that penalties received by the Secretary of State in accordance with Section 107 are to be paid into the Consolidated Fund.

Section 109 – Suspension of penalty where criminal proceedings have been brought, etc

1671 This Section sets out that the penalty is suspended pending relevant criminal proceedings.

1672 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.

1673 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.

1674 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).

1675 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.

1676 Subsection (5) provides that, in effect, the penalty is due 28 days after the penalty activation notice is given.

1677 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.

Section 110 – Appeals against notices of underpayment

1678 This Section provides for an appeals process against the issue of a notice of underpayment or any requirements imposed by the notice of underpayment.

1679 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.

1680 Subsection (2) sets out that an appeal must be made within 28 days beginning with the day on which the notice is given.

1681 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 Section 103(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 Act.

1682 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 Section 103(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 Act;

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.

1683 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 Section 108(1);

b. Secondly, that the penalty has been incorrectly calculated.

1684 Subsection (6) sets out that if the tribunal allows an appeal against the decision to issue the notice, the tribunal must cancel the notice.

1685 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.

1686 Subsection (8) provides that for the purposes of this Section "the specified day" and "the specified provision" mean the day and provision set out in subsection (2)(a) and (2)(d) respectively of Section 106. This subsection also defines "tribunal" as an employment tribunal in England and Wales or Scotland, and an industrial tribunal in Northern Ireland.

Section 111 – Withdrawal of notice of underpayment

1687 This Section 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.

1688 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).

1689 Subsection (2)(a) provides that where a notice of underpayment is withdrawn and no replacement notice of underpayment is given under Section 112, 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.

1690 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.

1691 Subsection (4) sets out that a notice of withdrawal issued in circumstances where subsection (2) applies must indicate the effect of subsection (2). However, a failure to do so does not make the withdrawal ineffective.

Section 112 – Replacement notice of underpayment

1692 This Section provides for the Secretary of State to issue a replacement notice of underpayment where an earlier notice has been withdrawn under section 111.

1693 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 Section 103.

1694 Subsection (2) sets out that the replacement notice may not relate to any individual to whom the original notice did not relate.

1695 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.

1696 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 Section 113. Subsection (5) however states that failure to comply with subsection (4) does not make the replacement notice ineffective.

1697 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 Section affects the ability of Secretary of State to issue notices of underpayment in relation to any underpaid individual.

Section 113 – Effect of replacement notice of underpayment

1698 This Section sets out the effect of a replacement notice issued under Section 112.

1699 Subsection (1) sets out that this Section applies when a notice of underpayment is withdrawn under Section 111, and a replacement notice is issued in accordance with Section 112.

1700 Subsection (2) sets out that if an appeal made under Section 110 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.

1701 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.

1702 Subsection (4) specifies that 'the appropriate rate' mentioned in subsection (3)(b) is the rate specified in section 17 of the Judgments Act 1838.

Section 114 - Enforcement of requirement to pay sums due to individuals

1703 This Section 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.

1704 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.

1705 Subsection (2) provides that an application can only be made if the liable party's appeal rights are exhausted (which is defined at subsection (5)), and the relevant 28-day period has ended.

1706 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.

1707 Subsection (4) provides that nothing in this Section prevents an underpaid individual from recovering the sums owed to them.

1708 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.

1709 Subsection (6) defines terms used in this Section. "Relevant 28-day period" refers to the period of 28 days starting from the day on which the notice was given (or, where Section 110 (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 or summary sheriff in Scotland; and a county court in Northern Ireland.

Section 115 –Enforcement of requirement to pay penalty

1710 This Section outlines the procedures for recovering penalties when a notice of underpayment imposing a requirement to pay a penalty is not complied with.

1711 Subsection (1) states that in England and Wales, penalties are recoverable as if they were payable under a county court order.

1712 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.

1713 Subsection (3) states that in Northern Ireland, penalties are recoverable as if they were payable under a county court order.

1714 Subsection (4)(a) states that where action is taken to recover a penalty under this Section 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.

1715 Subsection (5) defines "penalty" as a penalty payable under a notice of underpayment.

Powers relating to civil proceedings

Section 116 – Power to bring proceedings in employment tribunal

1716 This Section gives the Secretary of State the power to bring proceedings in employment tribunals in England and Wales, and Scotland.

1717 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.

1718 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 Section 103 of this Act.

1719 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.

1720 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.

1721 Subsection (5) makes it clear that appeals can be brought by the Secretary of State and the worker.

1722 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.

1723 Subsection (7) clarifies these powers can cover all types of proceedings which can be brought in an employment tribunal. Additionally, this subsection provides that references to the Secretary of State in relation to their power to bring proceedings in the employment tribunal should be read as references to enforcement officers, which enables enforcement officers to exercise the powers of the Secretary of State under this Section.

Section 117 – Power to provide legal assistance

1724 This Section 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.

1725 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.

1726 Subsection (4) makes provision for situations where proceedings relate partly to employment or trade union law or the law of labour relations ("employment-related matters"), and partly to other matters. The Secretary of State may provide assistance under this Section 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.

1727 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.

1728 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 Section.

Section 118 – Recovery of costs of legal assistance

1729 This Section gives the Secretary of State a power to recover costs in connection with providing legal assistance.

1730 Subsection (1) sets out that cost recovery is applicable where the Secretary of State has assisted a person under Section 117 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.

1731 Subsections (3) and (4) set out the relationship between this Section 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 Section.

1732 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).

1733 Subsection (7) provides that any regulations made under subsection (5) are subject to the negative resolution procedure.

Labour market enforcement undertakings

Section 119: Power to request LME undertaking

1734 This Section 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 Section 151).

1735 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.

1736 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 Section 123).

Section 120: Measures in LME undertakings

1737 This Section 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.

1738 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.

1739 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.

1740 Subsection (3) allows the Secretary of State to specify measures in regulations.

1741 Subsection (4) requires regulations under subsection (3) to be subject to the affirmative resolution procedure.

1742 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).

1743 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.

1744 Subsection (7) states that an LME undertaking must set out how each measure is expected to achieve that purpose.

1745 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.

Section 121: Duration of LME undertakings

1746 This Section 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.

1747 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.

1748 Subsection (2) states that an LME undertaking has effect for the period specified in the undertaking.

1749 Subsection (3) states that the maximum period for an LME undertaking is two years.

1750 Subsection (4) gives the Secretary of State the power to release the subject from an LME undertaking, meaning effectively to terminate the undertaking.

1751 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 Section 120(6).

1752 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.

Section 122: Means of giving notice under Section 122

1753 This Section explains how a notice requesting an LME undertaking may be given.

1754 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.

1755 Subsection (2) states that a notice to a body corporate may be given to any officer of that body.

1756 Subsection (3) states that a notice to a partnership may be given to any partner.

1757 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.

1758 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.

1759 Subsection (6) allows a notice to be sent to a person by electronic means only if: (a) the person has indicated that notices under Section 119 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.

1760 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.

1761 Subsection (8) defines 'electronic address', 'officer', and 'working day'.

Labour market enforcement orders

Section 123: Power to make LME order on application

1762 This Section is about the court's power to make an LME order on application by the Secretary of State.

1763 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.

1764 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.

1765 Subsection (3) explains that an application for an LME order is to be made by complaint.

1766 Subsection (4) defines the appropriate court as a magistrates' court in England and Wales, the sheriff or a summary sheriff in Scotland, or a court of summary jurisdiction in Northern Ireland, according to where the conduct constituting the relevant offence took or is taking place.

Section 124: Applications for LME orders

1767 This Section sets out the process for applying for LME orders.

1768 Under subsection (1), the Secretary of State may apply for an LME order to be made under Section 126 relating to a person (the "proposed respondent") where the Secretary of State has given the proposed respondent a notice under Section 119, and the proposed respondent either refuses to give an LME undertaking or fails to provide it within the negotiation period.

1769 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.

1770 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 under section 119 was given or a longer period if agreed between the Secretary of State and the proposed respondent.

Section 125: Power to make LME order on conviction

1771 This Section is about the court's power to make an LME order where a person is convicted of a labour market offence.

1772 Under subsection (1), this Section applies where a court deals with someone in respect of a conviction for a labour market offence.

1773 Subsection (2) provides that the court may make an LME order if the court considers it is just and reasonable to do so.

1774 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 (subsection (3)).

Section 126: Measures in LME orders

1775 This Section makes provision about measures that may be included in LME orders. It mirrors the provisions for measures in an LME undertaking (see Section 120).

Section 127: Further provision about LME orders

1776 Subsection (1) provides that LME orders last for the time period stated in the order.

1777 Subsection (2) sets the maximum duration for an order at two years.

1778 Subsection (3) prevents an order being made in respect of an individual who is under 18.

1779 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.

Section 128: Variation and discharge of LME orders

1780 This Section 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.

1781 Subsection (2) provides who may make such an application. This is either the respondent or the Secretary of State.

1782 Subsection (3) provides that an application is to be made by complaint in England and Wales and in Northern Ireland.

1783 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.

Section 129: LME orders: appeals

1784 This Section sets out the circumstances in which a respondent may appeal against an LME order.

1785 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.

1786 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.

1787 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.

1788 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 Section 128.

1789 Under subsection (5), a person may appeal against the making of an LME order on conviction under Section 125 in the same way as if it were a sentence for a labour market offence.

Safeguards etc

Section 130: Evidence of authority

1790 This Section creates a requirement to provide evidence of authority to carry out enforcement functions under Part 5.

1791 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 Section 116.

1792 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.

Section 131: Warrants

1793 This Section sets out further provision in relation to a warrant issued under Section 98 or 102.

1794 Subsection (1) provides that a warrant under Section 98 or 102 may be executed by any enforcement officer.

1795 Subsection (2) provides that a warrant under Section 98 or 102 can authorise persons to accompany any enforcement officer who is executing it.

1796 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.

1797 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.

1798 Subsection (5) introduces Schedule 8 which contains further provision about:

a. applications for warrants under Section 98 or 102, and

b. warrants issued under Section 98 or 102.

1799 Subsection (6) stipulates that the entry of premises under a warrant issued under Section 98 or 102 is unlawful unless it complies with the provisions of Part 3 of Schedule 8 (execution of warrants).

Schedule 8 – Warrants under Part 5

1800 This Schedule sets out further provision in relation to:

a. applications for warrants under Section 98 or 102, and

b. warrants issued under Section 98 or 102.

1801 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:

b. state the ground on which the application is made,

c. state the provision of this Act under which the warrant will be issued,

d. specify the premises which it is desired to enter, and

e. identify, so far as is practicable, the purpose for which entry is desired;

f. 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

g. the officer must answer on oath any question that the justice hearing the application asks the officer.

1802 Paragraphs 3 to 5 of Part 2 of the Schedule contain safeguards in connection with the power of entry conferred by a warrant.

1803 Paragraph 3 sets out that a warrant authorises an entry to the premises on one occasion only.

1804 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 Act under which it is issued, and

d. the premises to be entered.

1805 Paragraph 4(2) provides that a warrant must identify, so far as is practicable, the purpose for which entry is desired.

1806 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.

1807 Part 3 of the Schedule makes provision relating to the execution of warrants. Section 131(6) makes it clear that entry of premises under a warrant issued under Section 98 or 102 is unlawful unless it complies with the provisions of this Part of Schedule 8.

1808 Paragraph 6 states that a warrant must be executed within three months of the date it is issued.

1809 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.

1810 Paragraph 8 deals with enforcement officers showing evidence of authority and giving copies of warrants.

1811 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.

1812 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.

1813 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.

1814 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.

1815 Paragraph 10 deals with the return and retention of warrants.

1816 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.

1817 Subparagraph (2) sets out who the appropriate person is for the purposes of subparagraph (1).

1818 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.

1819 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.

Section 132: Items subject to legal privilege

1820 This Section provides safeguards regarding the protection of legal professional privilege.

1821 Subsection (1) provides that nothing in Part 5 of the Act requires a person to produce any document, or provide any information, which the person will 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.

1822 Subsection (2) defines "communications" for the purposes of this safeguard.

Section 133: Privilege against self-incrimination

1823 This Section concerns protection against self-incrimination.

1824 Subsection (1) provides that the Section applies where a person provides information in response to a requirement under Section 96.

1825 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.

1826 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.

1827 Under subsection (4), subsection (2) also does not apply if the proceedings are for certain offences listed in paragraphs (a) to (d).

Section 134: Information relating to the intelligence services, etc

1828 This Section introduces restrictions on both the use of investigatory powers under Sections 96 and 97 in respect of persons servings in an intelligence service and on the use of powers of entry conferred by Part 5 of the Act in relation to premises used for intelligence service purposes.

1829 Subsection (1) provides that neither the power to obtain documents or information (Section 96) or the related power to enter premises to obtain documents or information (Section 97) 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.

1830 Subsection (2) provides that the powers of entry contained in Part 5 of the Act 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.

1831 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).

1832 Subsection (5) provides that no provision in Part 5 of the Act 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).

1833 Subsection (6) defines key terms used in the Section, 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

Section 135: Disclosure of information

1834 This Section 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.

1835 Subsection (1) provides definitions for the terms "enforcing authority", "enforcement function" and "civil proceedings function" which are used in this Section.

1836 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.

1837 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 an enforcement function or civil proceedings function, or by the Secretary of State in connection with a function of the Secretary of State under this Part.

1838 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.

1839 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.

1840 Subsection (6) allows the Secretary of State to amend Schedule 9 by regulations.

1841 Subsection (7) provides that regulations under subsection (6) are subject to the affirmative resolution procedure.

1842 Subsection (8) notes that Sections 136 to 138 contain further provision about disclosure of information under this Section.

Schedule 9 – Persons to whom information may be disclosed under Section 135

1843 This Schedule lists the persons that the Secretary of State may disclose information to under Section 135. 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 Section 135, the Secretary of State may, by regulations, amend this list.

Section 136: Disclosure of information: supplementary provision

1844 Subsection (1) states that information disclosed under Section 135 does not breach an obligation of confidence owed by the person making the disclosure or any other restriction on disclosure of information.

1845 Subsection (2) outlines that information provided under Section 135 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.

1846 Subsection (3) provides that in subsection (2), "data protection legislation" holds the same meaning as in section 3 of the Data Protection Act 2018.

1847 Subsection (4) states that Section 135 does not limit circumstances where information may be disclosed, except as provided by that Section.

Section 137: Restriction on disclosure of HMRC information

1848 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").

1849 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.

1850 Subsection (3) provides that subsections (1) and (2) do not apply to national minimum wage information.

1851 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.

1852 Subsection (5) provides definitions of terms used in subsections (1) to (4) above.

Section 138: Restriction on disclosure of intelligence service information

1853 This Section places restrictions on disclosure of intelligence service information. Subsection (1) provides that Section 135 (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.

1854 Subsection (2) states that an enforcing authority must not disclose intelligence service information without authorisation from the appropriate service chief, defined at subsection (4).

1855 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.

1856 Subsection (4) defines an "appropriate service chief" and other terms referred to in the Section.

Offences

Section 139: Offence of failing to comply with LME Order

1857 This Section 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.

1858 Subsection (2) sets out the penalties that may apply if a person is found guilty of this offence. A person guilty of the offence is liable to imprisonment or a fine or both. 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).

Section 140: Offence of providing false information or documents

1859 This Section provides for the offence of providing false information or documents in response to a request for information made under this Part.

1860 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 been reckless as to whether it is. 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.

1861 Subsections (2) and (3) set out the penalties that may apply in England and Wales, Scotland and Northern Ireland. A person guilty of the offence is liable to imprisonment or a fine or both.

Section 141: Providing false information or documents: national security etc defence

1862 This Section provides an exemption from liability for the offence of providing false information or documents under Section 140, subject to the Secretary of State being satisfied that certain conditions are met.

1863 Subsection (1) states that a person is not liable for the commission of the offence of providing false information or documents under Section 140 if the Secretary of State issued them with a certificate.

1864 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.

1865 Subsection (3) allows the Secretary of State to revoke a certificate issued under subsection (1) at any time.

1866 Subsection (4) defines "crime" and "serious crime" for the purposes of this Section, to provide clarity about when, under subsection (2), the Secretary of State may issue a certificate.

Section 142: Offence of obstruction

1867 This Section provides for the offence of obstruction.

1868 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.

1869 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 under section 116 to bring proceedings in an employment tribunal.

1870 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, a fine 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.

1871 Subsection (5) provides that a person is not required to answer questions or provide information if that will lead to self-incrimination.

Recovery of enforcement costs

Section 143: Power to recover costs of enforcement

1872 This Section 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 Act.

1873 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.

1874 Subsection (2) defines "enforcement costs" and "relevant person" for the purposes of this Section:

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.

1875 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.

1876 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.

1877 Subsection (5) outlines that regulations under this Section 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.

1878 Subsection (6) makes regulations under this Section subject to the negative resolution procedure.

Supplementary

Section 144: Offences by bodies corporate

1879 This Section 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.

1880 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.

1881 Subsection (2) defines an officer in relation to a body corporate for the purposes of establishing an offence under subsection (1).

1882 Subsection (3) applies subsection (1) to the acts and defaults of members of a body corporate where such members manage the body's affairs.

Section 145: Application of this Part to partnerships

1883 This Section explains how an offence committed under Part 5 applies to partnerships.

1884 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.

1885 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.

1886 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.

1887 Subsection (4) requires fines imposed on a partnership on its conviction of an offence to be paid out of the funds of the partnership.

1888 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.

1889 Subsection (6) provides that, in subsections (1) and (5), a "partner" includes a person purporting to act as a partner.

1890 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.

Section 146: Application of this Part to unincorporated associations

1891 This Section explains how offences apply to unincorporated associations.

1892 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).

1893 Subsection (2) provides that cases fall within scope of this provision when they relate to labour market offences (as defined in Section 151) for which it is possible to bring proceedings against unincorporated associations in the name of the association.

1894 Subsection (3) explains that offences allegedly committed by an unincorporated association may be brought against the association in the name of the association.

1895 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.

1896 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.

1897 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.

1898 Subsection (7) defines "officer" in relation to an association for the purposes of this Section.

Section 147: Application of this Part to the Crown and Parliament

1899 This Section establishes that the provisions of Part 5 of the Act 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.

1900 Subsection (1) provides that subject to this Section and Section 134, the provisions in Part 5 of the Act apply to the Crown and provisions apply to Crown premises in the same way as other premises.

1901 Subsection (2) defines Crown premises for the purposes of this Section.

1902 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.

1903 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.

1904 Subsection (5) confers on the Secretary of State the power to certify that the powers of entry in this Part of the Act are not exercisable in relation to Crown premises if it appears appropriate in the interests of national security.

1905 Subsection (6) clarifies that the powers of entry in the Act are not exercisable in relation to His Majesty's private estates or the parliamentary estate.

1906 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 Act.

Section 148: Abolition of existing enforcement authorities

1907 Subsection (1) of this Section abolishes two existing public bodies currently involved in labour market enforcement.

1908 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 Section repeals section 1 of the Gangmasters (Licensing) Act 2004.

1909 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.

Section 149: Consequential and transitional provision

1910 This Section relates to the relevant provisions in the Act that contain consequential amendments and transitional provisions relating to Part 5.

1911 Subsection (1) introduces Schedule 10 which contains consequential amendments relating to Part 5.

1912 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 will provide for the transfer of staff, property, rights and liabilities to the Secretary of State.

1913 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

1914 Schedule 10 makes consequential changes to various Acts of Parliament as a result of Part 5 of the Act. 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 is carried out by a new labour market enforcement body, an executive agency of the Department for Business and Trade. This involves 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 Section 149).

1915 Part 1 of Schedule 10 makes consequential changes to the following Acts in relation to existing provisions in relevant labour market legislation:

a. Employment Agencies Act 1973.

b. Part 2A of Employment Tribunals Act 1996.

c. National Minimum Wage Act 1998.

d. Gangmasters (Licensing) Act 2004. The amendments to the Gangmasters (Licensing) Act 2004 include preserving the current position for enforcing the prohibitions in that Act in relation to Northern Ireland.

e. The Modern Slavery Act 2015.

1916 Part 2 of Schedule 10 makes additional consequential changes to the following Acts:

a. Public Records Act 1958.

b. Parliamentary Commissioner Act 1967.

c. Superannuation Act 1972.

d. House of Commons Disqualification Act 1975.

e. Northern Ireland Assembly Disqualification Act 1975.

f. Employment Protection Act 1975.

g. Police and Criminal Evidence Act 1984.

h. Companies Act 1985.

i. Trade Union and Labour Relations (Consolidation) Act 1992.

j. Criminal Justice and Public Order Act 1994

k. Deregulation and Contracting Out Act 1994.

l. Employment Tribunals Act 1996

m. Employment Relations Act 1999.

n. Immigration and Asylum Act 1999.

o. Finance Act 2000.

p. Regulation of Investigatory Powers Act 2000.

q. Freedom of Information Act 2000.

r. Police Reform Act 2002.

s. Employment Relations Act 2004.

t. Civil Partnership Act 2004.

u. Pensions Act 2004.

v. Serious Organised Crime and Police Act 2005.

w. Natural Environment and Rural Communities Act 2006.

x. Regulatory Enforcement and Sanctions Act 2008.

y. Employment Act 2008.

z. Equality Act 2010.

aa. Financial Services Act 2012.

bb. Modern Slavery Act 2015.

cc. Small Business, Enterprise and Employment Act 2015.

dd. Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

ee. Immigration Act 2016.

ff. Investigatory Powers Act 2016.

gg. Police and Crime Act 2017.

hh. Data Protection Act 2018.

ii. Sentencing Act 2020.

jj. Police, Crime, Sentencing and Courts Act 2022.

kk. Procurement Act 2023.

Schedule 11 - Transitional and saving provision relating to Part 5

1917 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.

1918 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.

1919 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.

1920 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.

1921 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.

1922 Paragraph 4 provides for either type of scheme to include supplementary, incidental, transitional or consequential provision.

1923 Paragraph 5 defines "designated", "the Director" and "the GLAA" for the purposes of this Part of the Schedule.

1924 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 Sections continues as if done by the Secretary of State.

1925 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.

1926 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 Act. 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 Section 97 of this Act.

1927 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.

1928 Sub-paragraph (3) defines "labour abuse prevention officer" and "relevant enforcement officer" for the purpose of this paragraph.

1929 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 Section 105 of this Act.

1930 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 Section 105 of this Act (but Section 134 and Schedule 8 of this Act will not apply).

1931 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 Act.

1932 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.

1933 Paragraph 13 provides that references in Section 138 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 Act (which repeal sections 15 and 16) taking effect; and, information obtained under a property transfer scheme under paragraph 2 of this Schedule.

1934 Additionally, subparagraph (2) makes provision in relation to certain information previously disclosed by HMRC to enforcement authorities. This information is considered HMRC information for the purposes of section 137. Consequently, this information would be subject to the restrictions on onward disclosure laid down in section 137.

1935 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.

1936 Paragraph 15 provides that, after the coming into force of paragraph 30(2)(b) of Schedule 7 to this Act, 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.

1937 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 have effect as a requirement to notify the Secretary of State.

1938 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.

1939 Paragraph 19 provides that the consequential amendments made by paragraphs 17 to 24 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.

1940 Paragraph 20 provides that consequential amendment made by subparagraph 45(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

Section 150: Meaning of "non-compliance with relevant Labour Market legislation"

1941 This Section defines what constitutes "non-compliance with relevant labour market legislation" for the purposes of this Part of the Act. It sets out the different actions or omissions that will 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 Section 94) and the annual report (see Section 95), 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 Sections 96 and 97.

1942 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.

1943 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.

Section 151: Interpretation: general

1944 This Section provides definitions of key terms used throughout Part 5 of the Act.

1945 Subsection (1) defines the "Advisory Board" to refer to the Board established under Section 93, which provides advice to the Secretary of State regarding labour market enforcement.

1946 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.

1947 The subsection also defines ''business'' as a trade or profession, and any activity carried on by a body of persons. It also defines "employee" as having the same meaning as in section 230(1) of the ERA 1996 or Article 3(1) of the Employment Rights (Northern Ireland)

Order 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.

1948 The subsection defines "enforcement function" and "enforcement officer". "Enforcement function" refers to the Secretary of State's enforcement responsibilities as defined in Section 91. "Enforcement officer" means a person appointed by the Secretary of State under Section 90(3) to carry out enforcement functions.

1949 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 Sections 123(2) and 119(3), respectively. "Non-compliance with relevant labour market legislation" is defined by Section 150 and includes a failure to meet statutory requirements, breaches of licence conditions, and labour market offences.

1950 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 Section 103(1), "notice of underpayment" refers to a notice described in Section 103(2) , and a "statutory pay provision" refers an enactment as defined in Section 103(7).

1951 Subsections (2) and (5) insert definitions of "employer" and "worker" for the purposes of this part. These definitions extend the definitions of employer and worker so that they reflect the persons on whom requirements are imposed (in the case of subsection (2)) and rights conferred (in the case of subsection (5)) by sections 1 to 8 of this Act.

1952 Subsection (3) clarifies the meaning of "premises" for the purposes of Part 5.

1953 Subsection (4) provides definitions for terms used in subsection (3).

Part 6: General

Section 152: Increase in time limits for making claims

1954 This Section introduces Schedule 12, 'Increase in time limit for making claims.'

Schedule 12: Increase in time limits for making claims

1955 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.

1956 Paragraph 1 substitutes "three" with "six" where it occurs in the Safety Representatives and Safety Committees Regulations 1977.

1957 Paragraph 2 substitutes "three" with "six" where it occurs in the Trade Union and Labour Relations (Consolidation) Act 1992.

1958 Paragraph 3 substitutes "three" with "six" where it occurs in the Pension Schemes Act 1993.

1959 Paragraph 4 substitutes "three" with "six" where it occurs in the ERA 1996.

1960 Paragraph 5 substitutes "three" with "six" where it occurs in the Health and Safety (Consultation with Employees) Regulations 1996.

1961 Paragraph 6 substitutes "three" with "six" where it occurs in the Working Time Regulations 1998.

1962 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)).

1963 Paragraph 8 substitutes "three" with "six" where it occurs in the Employment Relations Act 1999.

1964 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.

1965 Paragraph 10 substitutes "three" with "six" where it occurs in the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.

1966 Paragraph 11 substitutes "three" with "six" where it occurs in the Civil Aviation (Working Time) Regulations 2004.

1967 Paragraph 12 substitutes "three" with "six" where it occurs in the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.

1968 Paragraph 13 substitutes "three" with "six" where it occurs in the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1969 Paragraph 14 substitutes "three" with "six" where it occurs in the Schedule to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006.

1970 Paragraph 15 substitutes "three" with "six" where it occurs in the Cross-border Railway Services (Working Time) Regulations 2008.

1971 Paragraph 16 substitutes "three" with "six" where it occurs in the European Public Limited-Liability Company (Employee Involvement) (Great Britain) Regulations 2009.

1972 Paragraph 17 substitutes "three" with "six" where it occurs in the Agency Workers Regulations 2010.

1973 Paragraph 18 substitutes "three" with "six" where it occurs in the Equality Act 2010.

1974 Paragraph 19 substitutes "three" with "six" where it occurs in the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018.

Section 153: Orders and regulations under ERA 1996: procedure

1975 This Section amends section 236 of the ERA 1996 to enable the combination of orders or regulations made under that Act, that will otherwise be subject to different Parliamentary procedures (or no Parliamentary procedure), in a statutory instrument which is subject to the affirmative procedure.

Section 154: Power to make consequential amendments

1976 This Section confers a power on the Secretary of State to, by regulations, make provision that is consequential on any provision made by the Act. 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 Act 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.

1977 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.

Section 155: Power to make transitional or saving provision

1978 This Section 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 Act.

1979 Any regulations made under this Section may make provision in addition to or different from that made by the Act; and make any adaptations for provisions of this Act which are appropriate because of other provisions of this Act not yet having come into force.

Section 156: Regulations

1980 This Section sets out various procedural aspects relevant to the making of regulations under the Act by statutory instrument (except for commencement regulations made under Section 159).

1981 Subsection (2) sets out that provision for the making of regulations made under this Act by Scottish Ministers is dealt with in the Interpretation and Legislative Reform (Scotland) Act 2010.

1982 Subsection (3) sets out that regulations made under the Act (except under section 159) may, make different provision for different purposes and may contain supplementary, incidental, consequential, transitional or saving provision.

1983 Subsections (5) and (6) explain what is meant by references in the Act 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.

1984 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.

1985 Any provision that may be included in an instrument under this Act subject to the negative procedure may also be made regulations subject to the affirmative procedure.

Section 157: Financial provisions

1986 This Section sets out that expenditure incurred under the terms of this Act is to be met from supplies provided by Parliament.

Section 158: Extent

1987 This Section sets out the territorial extent of the Act.

1988 With the exception of Sections 12 and 13, Parts 1, 2 and 4 of the Act extend to England and Wales and Scotland.

1989 Sections 12 and 13 of the Act extend to Northern Ireland only.

1990 Chapter 1 of Part 3 of the Act extends to England and Wales only.

1991 Chapter 2 of Part 3 of the Act extends to England and Wales and Scotland.

1992 Section 32, Chapter 3 of Part 3, and Parts 5 and 6 of the Act extend to England and Wales, Scotland and Northern Ireland.

1993 Except as set out in subsection (5), amendments or repeals made by the Act have the same extent as the provision amended, revoked or repealed.

1994 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 of Schedule 12, 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.

Section 159: Commencement

1995 This Section sets out the manner in which provisions in the Act will be commenced.

1996 Subsections (1) and (2) set out which provisions of this Act come into force on Royal Assent and 2 months after Royal Assent respectively.

1997 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.

1998 Subsection (4) sets out that regulations made under subsection (3) may make different provision for different purposes.

1999 Subsection (5) requires the Secretary of State, when deciding whether and when to make regulations under subsection (3) to bring section 68 (industrial action ballots: turnout threshold) into force, to have regard to the effects, or expected effects, of any provision made after this Act that permit industrial action ballots to be conducted via non-postal balloting on the proportion of votes in any such ballot.

2000 Subsection (6) sets out that the Secretary of State may not make regulation under subsection (3) to bring section 68 (industrial action ballots: turnout threshold) into effect, unless the Secretary of State has laid before Parliament a statement as to how the Secretary of State has had regard to the duty in subsection (5).

2001 Subsection (7) defines an "industrial action ballot", as cited in subsection (5), to mean a ballot for the purposes of section 226 of the Trade Union and Labour Relations (Consolidation) Act 1992 (ballots on industrial action).

Section 160: Short title

2002 This Section provides that the short title of the legislation will be the Employment Rights Act.

Commencement

2003 Section 159 provides for the commencement of the provisions in this Act.

2004 Section 19 (review of extent of right to time off for public duties, section 37 (guidance about the employment of children on heritage railways) section 78 (repeal of minimum service levels legislation) and Sections 154 to 158, this Section and Section 160 come into force on Royal Assent.

2005 Sections 61, 62, 63, 66, 67, 69, 70, 71, 72, 73, 74, 75, 80, 82, 83, 84, 86, 87 and 89 come into force two months after the day on which Royal Assent is given.

2006 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.

Annex A - Hansard References

2007 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Commons		
Introduction	10 October 2024	N/A
Second Reading	21 October 2024	Vol. [755] Col. [46]
Public Bill Committee Day One	26 November 2024	Vol. [N/A] Col. [01]
Day Two	28 November 2024	Vol. [N/A] Col. [95]
Day Three	3 December 2024	Vol. [N/A] Col. [175]
Day Four	5 December 2024	Vol. [N/A] Col. [253]
Day Five	10 December 2024	Vol. [N/A] Col. [321]
Day Six	12 December 2024	Vol. [N/A] Col. [391]
Day Seven	17 December 2024	Vol. [N/A] Col. [443]
Day Eight	7 January 2025	Vol. [N/A] Col. [515]
Day Nine	9 January 2025	Vol. [N/A] Col. [589]
Day Ten	14 January 2025	Vol. [N/A] Col. [659]
Day Eleven	16 January 2025	Vol. [N/A] Col. [755]
Report and Third Reading	11 March 2025	Vol. [763] Col. [818]
House of Lords		
Introduction	14 March 2025	Vol. [844] Col. [N/A]
Second Reading	27 March 2025	Vol. [844] Col. [1839]
Committee Day One	29 April 2025	Vol. [845] Col. [1110]
Day Two	08 May 2025	Vol. [845] Col. [1697]
Day Three	13 May 2025	Vol. [845] Col. [2070]
Day Four	19 May 2025	Vol. [846] Col. [46]
Day Five	21 May 2025	Vol. [846] Col. [276]
Day Six	03 June 2025	Vol. [846] Col. [623]
Day Seven	05 June 2025	Vol. [846] Col. [866]
Day Eight	10 June 2025	Vol. [846] Col. [1229]
Day Nine	16 June 2025	Vol. [846] Col. [1753]
Day Ten	18 June 2025	Vol. [846] Col. [2021]
Day Eleven	24 June 2025	Vol. [847] Col. [167]
Report Day One	14 July 2025	Vol. [847] Col. [1593]
Day Two	16 July 2025	Vol. [847] Col. [1853]
Day Third	21 July 2025	Vol. [848] Col. [39]
Day Four	23 July 2025	Vol. [848] Col. [257]
Third Reading	03 September 2025	Vol. [848] Col. [789]

These Explanatory Notes relate to the Employment Rights Act 2025 which received Royal Assent on 18 December 2025 (c. 36).

Stage	Date	Hansard Reference
Commons Consideration of Lords Amendments	15 September 2025	Vol. [772] Col. [1200]
Lords Consideration of Commons amendments	28 October 2025	Vol. [849] Col. [1218]
Commons Consideration of Lords Amendments	05 November 2025	Vol. [744] Col. [953]
Lords Consideration of Commons Amendments	17 November 2025	Vol. [850] Col. [553]
Commons Consideration of Lords Amendments	08 December 2025	Vol. [777] Col. [84]
Lords Consideration of Commons Amendments	10 December 2025	Vol. [851] Col. [258]
Commons Consideration of Lords Amendments	15 December 2025	Vol. [777] Col. [685]
Lords Consideration of Commons Amendments	16 December 2025	Vol. [851] Col. [664]
Royal Assent	18 December 2025	House of Lords Vol. [851]

Annex B - Progress of Bill Table

2008 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 1	Clause 1	Clause 1	Clause 1	Clause 1	Clause 1
Section 2	Clause 2	Clause 2	Clause 2	Clause 2	Clause 2
Section 3	Clause 3	Clause 3	Clause 3	Clause 3	Clause 3
			New Clause 4	New Clause 4	Clause 4
			New Clause 5	New Clause 5	Clause 5
Section 4	Clause 4	Clause 4	Clause 6	Clause 6	Clause 6
Section 5	Clause 5	Clause 5	Clause 7	Clause 7	Clause 7
Section 6	Clause 6	Clause 6	Clause 8	Clause 8	Clause 8
Section 7	Clause 7	Clause 7	Clause 9	Clause 9	Clause 9
Section 8	Clause 8	Clause 8	Clause 10	Clause 10	Clause 10
Section 9	Clause 9	Clause 9	Clause 11	Clause 11	Clause 11
		New Clause 10	Clause 12	Clause 12	Clause 12
		New Clause 11	Clause 13	Clause 13	Clause 13
Section 10	Clause 10	Clause 12	Clause 14	Clause 14	Clause 14
Section 11	Clause 11	Clause 13	Clause 15	Clause 15	Clause 15
Section 12	Clause 12	Clause 14	Clause 16	Clause 16	Clause 16
Section 13	Clause 13	Clause 15	Clause 17	Clause 17	Clause 17
Section 14	Clause 14	Clause 16	Clause 18	Clause 18	Clause 18
					New Clause 19
Section 15	Clause 15	Clause 17	Clause 19	Clause 19	Clause 20
Section 16	Clause 16	Clause 18	Clause 20	Clause 20	Clause 21
Section 17	Clause 17	Clause 19	Clause 21	Clause 21	Clause 22
Section 18	Clause 18	Clause 20	Clause 22	Clause 22	Clause 23
					New Clause 24
Section 19	Clause 19	Clause 21	Clause 23	Clause 23	Clause 25
Section 20	Clause 20	Clause 22	Clause 24	Clause 24	Clause 26
Section 21	Clause 21	Clause 23	Clause 25	Clause 25	Clause 27
Section 22	Clause 22	Clause 24	Clause 26	Clause 26	Clause 28
					New Clause 29
					New Clause 30
					New Clause 31
					New Clause 32
Section 23	Clause 23	Clause 25	Clause 27	Clause 27	Clause 33

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
			New Clause 28	New Clause 28	Clause 34
Section 24	Clause 24	Clause 26	Clause 29	Clause 29	Clause 35
Section 25	Clause 25	Clause 27	Clause 30	Clause 30	Clause 36
Section 26	Clause 26	Clause 28	Clause 31	Clause 31	Clause 37
Section 27	Clause 27	Clause 29	Clause 32	Clause 32	Clause 38
			New Clause 33	New Clause 33	Clause 39
			New Clause 34	New Clause 34	Clause 40
Section 28	Clause 28	Clause 30	Clause 35	Clause 35	Clause 41
Section 29	Clause 29	Clause 31	Clause 36	Clause 36	Clause 42
			New Clause 37	New Clause 37	Clause 43
Section 30	Clause 30	Clause 32	Clause 38	Clause 38	Clause 44
Section 31	Clause 31	Clause 33	Clause 39	Clause 39	Clause 45
Section 32	Clause 32	Clause 34	Clause 40	Clause 40	Clause 46
Section 33	Clause 33	Clause 35	Clause 41	Clause 41	Clause 47
Section 34	Clause 34	Clause 36	Clause 42	Clause 42	Clause 48
Section 35	Clause 35	Clause 37	Clause 43	Clause 43	Clause 49
Section 36	Clause 36	Clause 38	Clause 44	Clause 44	Clause 50
Section 37	Clause 37	Clause 39	Clause 45	Clause 45	Clause 51
Section 38	Clause 38	Clause 40	Clause 46	Clause 46	Clause 52
Section 39	Clause 39	Clause 41	Clause 47	Clause 47	Clause 53
			New clause 48	New clause 48	Clause 54
Section 40	Clause 40	Clause 42	Removed	Removed	
Section 41	Clause 41	Clause 43	Clause 49	Clause 49	Clause 55
Section 42	Clause 42	Clause 44	Clause 50	Clause 50	Clause 56
Section 43	Clause 43	Clause 45	Clause 51	Clause 51	Clause 57
Section 44	Clause 44	Clause 46	Clause 52	Clause 52	Clause 58
		New Clause 47	Clause 53	Clause 53	Clause 59
		New Clause 48	Clause 54	Clause 54	Clause 60
					New Clause 61
Section 45	Clause 45	Clause 49	Clause 55	Clause 55	Clause 62
Section 46	Clause 46	Clause 50	Clause 56	Clause 56	Clause 63
Section 47	Clause 47	Clause 51	Clause 57	Clause 57	Clause 64
Section 48	Clause 48	Clause 52	Clause 58	Clause 58	Clause 65
			New Clause 59	New Clause 59	Removed
Section 49	Clause 49	Clause 53	Clause 60	Clause 60	Clause 66
Section 50	Clause 50	Clause 54	Clause 61	Clause 61	Clause 67

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 51	Clause 51	Clause 55	Clause 62	Clause 62	Clause 68
Section 52	Clause 52	Clause 56	Clause 63	Clause 63	Clause 69
Section 53	Clause 53	Clause 57	Clause 64	Clause 64	Clause 70
Section 54	Clause 54	Clause 58	Clause 65	Clause 65	Clause 71
			Split clause 66	Split clause 66	Clause 72
Section 55	Clause 55	Clause 59	Clause 67	Clause 67	Clause 73
			Split clause 68	Split clause 68	Clause 74
			New Clause 69	New Clause 69	Clause 75
Section 56	Clause 56	Clause 60	Clause 70	Clause 70	Clause 76
Section 57	Clause 57	Clause 61	Clause 71	Clause 71	Clause 77
Section 58	Clause 58	Clause 62	Clause 72	Clause 72	Clause 78
Section 59	Clause 59	Clause 63	Clause 73	Clause 73	Clause 79
Section 60	Clause 60	Clause 64	Clause 74	Clause 74	Clause 80
Section 61	Clause 61	Clause 65	Clause 75	Clause 75	Clause 81
Section 62	Clause 62	Clause 66	Clause 76	Clause 76	Clause 82
Section 63	Clause 63	Clause 67	Clause 77	Clause 77	Clause 83
Section 64	Clause 64	Clause 68	Clause 78	Clause 78	Clause 84
Section 65	Clause 65	Clause 69	Clause 79	Clause 79	Clause 85
Section 66	Clause 66	Clause 70	Clause 80	Clause 80	Clause 86
Section 67	Clause 67	Clause 71	Clause 81	Clause 81	Clause 87
Section 68	Clause 68	Clause 72	Clause 82	Clause 82	Clause 88
Section 69	Clause 69	Clause 73	Clause 83	Clause 83	Clause 89
		New Clause 74	Clause 84	Clause 84	Clause 90
Section 70	Clause 70	Clause 75	Clause 85	Clause 85	Clause 91
Section 71	Clause 71	Clause 76	Clause 86	Clause 86	Clause 92
Section 72	Clause 72	Clause 77	Clause 87	Clause 87	Clause 93
Section 73	Clause 73	Clause 78	Clause 88	Clause 88	Clause 94
Section 74	Clause 74	Clause 79	Clause 89	Clause 89	Clause 95
Section 75	Clause 75	Clause 80	Clause 90	Clause 90	Clause 96
Section 76	Clause 76	Clause 81	Clause 91	Clause 91	Clause 97
Section 77	Clause 77	Clause 82	Clause 92	Clause 92	Clause 98
Section 78	Clause 78	Clause 83	Clause 93	Clause 93	Clause 99
Section 79	Clause 79	Clause 84	Clause 94	Clause 94	Clause 100
		New Clause 85	Clause 95	Clause 95	Clause 101
Section 80	Clause 80	Clause 86	Clause 96	Clause 96	Clause 102
Section 81	Clause 81	Clause 87	Clause 97	Clause 97	Clause 103

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 82	Clause 82	Clause 88	Clause 98	Clause 98	Clause 104
Section 83	Clause 83	Clause 89	Clause 99	Clause 99	Clause 105
			New Clause 100	New Clause 100	Clause 106
			New Clause 101	New Clause 101	Clause 107
			New Clause 102	New Clause 102	Clause 108
			New Clause 103	New Clause 103	Clause 109
			New Clause 104	New Clause 104	Clause 110
			New Clause 105	New Clause 105	Clause 111
			New Clause 106	New Clause 106	Clause 112
			New Clause 107	New Clause 107	Clause 113
			New Clause 108	New Clause 108	Clause 114
			New Clause 109	New Clause 109	Clause 115
			New Clause 110	New Clause 110	Clause 116
			New Clause 111	New Clause 111	Clause 117
			New Clause 112	New Clause 112	Clause 118
			New Clause 113	New Clause 113	Clause 119
			New Clause 114	New Clause 114	Clause 120
			New Clause 115	New Clause 115	Clause 121
Section 84	Clause 84	Clause 90	Clause 116	Clause 116	Clause 122
Section 85	Clause 85	Clause 91	Clause 117	Clause 117	Clause 123
Section 86	Clause 86	Clause 92	Clause 118	Clause 118	Clause 124
Section 87	Clause 87	Clause 93	Clause 119	Clause 119	Clause 125
Section 88	Clause 88	Clause 94	Clause 120	Clause 120	Clause 126
Section 89	Clause 89	Clause 95	Clause 121	Clause 121	Clause 127
Section 90	Clause 90	Clause 96	Clause 122	Clause 122	Clause 128
Section 91	Clause 91	Clause 97	Clause 123	Clause 123	Clause 129
Section 92	Clause 92	Clause 98	Clause 124	Clause 124	Clause 130
Section 93	Clause 93	Clause 99	Clause 125	Clause 125	Clause 131
Section 94	Clause 94	Clause 100	Clause 126	Clause 126	Clause 132
Section 95	Clause 95	Clause 101	Clause 127	Clause 127	Clause 133
		New Clause 102	Clause 128	Clause 128	Clause 134
Section 96	Clause 96	Clause 103	Clause 129	Clause 129	Clause 135
Section 97	Clause 97	Clause 104	Clause 130	Clause 130	Clause 136
		New Clause 105	Clause 131	Clause 131	Clause 137
Section 98	Clause 98	Clause 106	Clause 132	Clause 132	Clause 138
Section 99	Clause 99	Clause 107	Clause 133	Clause 133	Clause 139

Section of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
Section 100	Clause 100	Clause 108	Clause 134	Clause 134	Clause 140
Section 101	Clause 101	Clause 109	Clause 135	Clause 135	Clause 141
Section 102	Clause 102	Clause 110	Clause 136	Clause 136	Clause 142
Section 103	Clause 103	Clause 111	Clause 137	Clause 137	Clause 143
		New Clause 112	Clause 138	Clause 138	Clause 144
Section 104	Clause 104	Clause 113	Clause 139	Clause 139	Clause 145
			New Clause 140	New Clause 140	Clause 146
Section 105	Clause 105	Clause 114	Clause 141	Clause 141	Clause 147
Section 106	Clause 106	Clause 115	Clause 142	Clause 142	Clause 148
Section 107	Clause 107	Clause 116	Clause 143	Clause 143	Clause 149
Section 108	Clause 108	Clause 117	Clause 144	Clause 144	Clause 150
Section 109	Clause 109	Clause 118	Clause 145	Clause 145	Clause 151
Section 110	Clause 110	Clause 119	Clause 146	Clause 146	Clause 152
Section 111	Clause 111	Clause 120	Clause 147	Clause 147	Clause 153
Section 112	Clause 112	Clause 121	Clause 148	Clause 148	Clause 154
		New Clause 122	Clause 149	Clause 149	Clause 155
		New Clause 123	Clause 150	Clause 150	Clause 156
Section 113	Clause 113	Clause 124	Clause 151	Clause 151	Clause 157
Section 114	Clause 114	Clause 125	Clause 152	Clause 152	Clause 158
Section 115	Clause 115	Clause 126	Clause 153	Clause 153	Clause 159
Section 116	Clause 116	Clause 127	Clause 154	Clause 154	Clause 160
Section 117	Clause 117	Clause 128	Clause 155	Clause 155	Clause 161
Section 118	Clause 118	Clause 129	Clause 156	Clause 156	Clause 162
Section 119	Clause 119	Clause 130	Clause 157	Clause 157	Clause 163

Schedule of the Act	Bill as Introduced in the Commons	Bill as amended in Committee in the Commons	Bill as introduced in the Lords	Bill as amended in Committee in the Lords	Bill as amended on Report in the Lords
			Schedule 1	Schedule 1	Schedule 1
Schedule 1	Schedule 1	Schedule 1	Schedule 2	Schedule 2	Schedule 2
Schedule 2	Schedule 2	Schedule 2	Schedule 3	Schedule 3	Schedule 3
Schedule 3	Schedule 3	Schedule 3	Schedule 4	Schedule 4	Schedule 4
		Schedule 4	Schedule 5	Schedule 5	Schedule 5
			Schedule 6	Schedule 6	Schedule 6
Schedule 4	Schedule 4	Schedule 5	Schedule 7	Schedule 7	Schedule 7
		Schedule 6	Schedule 8	Schedule 8	Schedule 8
Schedule 5	Schedule 5	Schedule 7	Schedule 9	Schedule 9	Schedule 9
Schedule 6	Schedule 6	Schedule 8	Schedule 10	Schedule 10	Schedule 10
Schedule 7	Schedule 7	Schedule 9	Schedule 11	Schedule 11	Schedule 11
		Schedule 10	Schedule 12	Schedule 12	Schedule 12

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