

Second Reading Briefing

Employment Rights Bill

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Employment Law sub-committee welcomes the opportunity to consider and comment on the Employment Rights Bill¹ (“the Bill”) ahead of the second reading in the House of Lords scheduled for 27 March 2025. The sub-committee has the following comments to put forward for consideration.

General Comments

The Bill contains provisions that intend to deliver the key legislative reforms set out in the UK Government’s Plan to Make Work Pay.² The provisions in the Bill aim to update and enhance existing employment rights and make provisions for new rights, make provisions for new rights, make provision regarding pay and conditions in particular sectors, and make reforms in relation to trade union matters and industrial actions. The Bill also intends to create a new regime for the enforcement of employment law.³ The Bill extends to England and Wales, and Scotland.⁴ It has 119 clauses and 7 schedules.

Part 1 of the Bill extends to England and Wales, and Scotland. Part 1 of the Bill makes provision for the reform of employment rights in several areas including zero hours workers, flexible working, statutory sick pay, tips and gratuities, entitlements to leave, protection from harassment and dismissal.

Part 2 of the Bill covers other matters relating to employment and makes provision for the delivery of wider employment law reform including the procedure for handling redundancies, public sector outsourcing and duties of employers relating to equality. Part 2 extends to England and Wales, and Scotland.

Part 3 of the Bill extends to England and Wales only. We have no comments on Part 3 of the Bill.

¹ [Employment Rights Bill - Parliamentary Bills - UK Parliament](#)

² [LABOUR’S PLAN TO MAKE WORK PAY - Delivering A New Deal for Working People](#)

³ [Employment Rights](#)

⁴ Clause 117

Part 4 of the Bill extends to England and Wales, and Scotland. Part 4 makes provisions in relation to industrial action and traded unions.

Part 5 of the Bill 5 makes provision for enforcement of the labour market legislation by the Secretary of State, the provisions intend to bring new state enforcement functions and existing state labour market enforcements together. Part 5 extends to England and Wales, Scotland and Northern Ireland.

Part 6 sets out the general provisions of the Bill. Part 6 extends to England and Wales, Scotland and Northern Ireland.

We note the overall purpose of the Bill is to deliver a significant expansion of workers' rights and protections. The appropriate forum for enforcement of these additional rights and protections will, in the vast majority of cases, be the employment tribunal. The expansion of rights together with the recent amendments proposing to increase the time limit for presenting employment tribunal claims from three to six months, will result in an exponential rise in the number of claims requiring to be heard by the employment tribunal. As per Department of Business and Trade's own statistical analysis, based on current employment laws, there would be an increase in around 5200 claims with the extension time from 3 to 6 months.⁵ This does not factor in the significant workers rights proposed under the Employments Rights Bill. Further, we are mindful that there is circa 51,000 case backlog that current exists in the employment tribunal.⁶

The reality is that workers looking to enforce the new rights created by the Bill will face a very significant waiting time before their case is heard by an employment tribunal. Anecdotal evidence from our members highlights some cases in overburdened regions are currently being listed in 2027. Significant delay can mean that a fair hearing is no longer possible, this could be down to the unavailability of witnesses, claimants no longer being in the country, in extreme cases claimants no longer being alive, for instance, a disabled claimant with terminal cancer who passes away prior to any hearing commencing.

We are concerned that in enacting the Bill, in the absence of additional resources being allocated to the employment tribunal system, the Government is introducing a new package of rights which cannot be effectively enforced by individuals. Putting it bluntly, a new range of rights which cannot be enforced in a timely manner by workers, does little to increase workers rights overall.

We observe the recommendation of the Business and Trade Committee in its report, published 3 March 2025, Make Work Pay: Employment Rights Bill⁷, that the Government take prompt action to review employee, worker and self-employed status and tackle sham self-employment with a view to implementing reforms concurrent with the commencement of the Employment Rights Bill⁸.

⁵ [Employment Tribunal Extended Times](#)

⁶ [Tribunal Statistics Quarterly: April to June 2024 - GOV.UK](#)

⁷ [Make Work Pay: Employment Rights Bill](#)

⁸ See Pages 10-13, 37

We share that Committee's concern that a failure to address these issues now, may lead to more businesses seeking to engage labour on a self-employed basis in an attempt to avoid affording those working for them the new rights in the Bill.

We are concerned that the provisions in the Bill regulating use of zero hours contracts by introducing a right to guaranteed hours are overly complicated and lack clarity. There remain significant unanswered questions including what number of hours will be deemed to be "low hours", what reference periods will be used and whether contracting out by way of collective agreement will be permitted and what the impact of the proposed extension of the provisions to agency workers.

The UK Government's factsheet acknowledges that zero hours contracts can benefit both workers and employers. However, the proposals in their current form have the potential to be so complicated as to deter the use of zero hours contracts completely and encourage businesses to look at different ways of engaging workers. We would welcome further consultation on these proposals with a view to achieving simplicity and clarity.

With regard to the proposals for labour market enforcement, we would welcome further discussion of the powers being afforded to the new Fair Work Agency to enforce the labour market legislation specified in part 1 of schedule 7 of the Bill, and confirmation that the Fair Work Agency will be adequately resourced to fulfil its enforcement functions.





For further information, please contact:

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