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Dear Lord Strathclyde,

**Government response to the Report of the Select Committee on the Constitution on
the Employment Rights Bill**

I would like to thank the Select Committee on the Constitution for its report of 4 April 2025. The report makes a valuable contribution to the scrutiny of the Employment Rights Bill ("the Bill") by ensuring the proposals are grounded in sound constitutional principles.

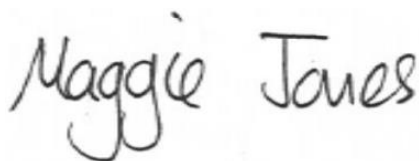
The Bill concluded its passage of Lords Committee stage on 24 June 2025 and is due to start Lords Report Stage on 14 July.

The Select Committee raised five points in its report. I am grateful to the Select Committee for highlighting these matters and hope the response will reassure you that the Government takes your concerns seriously. I share your commitment to ensuring that delegated legislation and Henry VIII powers are used appropriately. I trust the response demonstrates that we have implemented sufficient safeguards and additional measures for the enforcement powers and to ensure continued access to the justice system.

I appreciate your recommendations and welcome the opportunity to re-examine these matters in greater depth. The Government's response is attached to this letter.

I look forward to continuing to work with the Select Committee as the Bill progresses.

Best wishes,



BARONESS JONES OF WHITCHURCH
Parliamentary Under-Secretary of State (Minister for Legislation)
Department for Business and Trade

GOVERNMENT REPONSE TO THE SELECT COMMITTEE ON THE CONSTITUTION'S SEVENTH REPORT: EMPLOYMENT RIGHTS BILL

Recommendation 1

Delegated powers and a lack of policy detail. Reliance on delegated powers

The volume of these delegated powers allows the possibility for significant influence over the policy implemented under the Bill, which would be effected without the parliamentary scrutiny which primary legislation would receive. This inhibits proper scrutiny of the policies proposed in the Bill. Therefore, in our view, this represents an inappropriate delegation of powers. The House may wish to consider whether the delegation of powers in clauses 1 to 4 of the Bill provides Parliament with sufficient detail to effectively scrutinise the proposed policies

1. The Committee raised particular concerns in this respect in relation to the delegated powers set out in Clauses 1 to 4, which cover the “zero hours workers” measures.
2. The main detail of the new rights are included on the face of the Bill. It is essential that these are applied in a way that works for businesses and workers so that they deliver the intended benefits in a proportionate way. The delegated powers in these clauses will allow the Secretary of State to make regulations to provide more of the technical details, such as to specify notice requirements.
3. In some cases, delegated powers have been taken where, due to the novel nature of the policy, a degree of flexibility is required to keep the provisions up to date with the changing nature of employment practices or to respond to previously unidentified consequences or changes in employers’ practices, particularly in the event of potential avoidance measures.
4. For instance, specifying an ‘hours threshold’ which determines which contracts with a set minimum number of hours would be in scope of the right to guaranteed hours would prevent employers from moving their workers from zero hours contracts to a contract guaranteeing – for example – one hour per week, to avoid the duty to offer guaranteed hours. This would not provide the protections that the Bill intends for workers in relation to security and predictability. Taking this power will enable the Secretary of State to make changes to the hours threshold in light of evolving work practices, or in light of new evidence emerging around working hours and the practical impact of the new rights.
5. As recognised by the Committee, the Government acknowledges that final policy decisions taken on matters set out within secondary legislation will alter the number of workers in scope of the protections. The Government is taking this into account when considering what aspects of the policy are appropriate for public consultation, to ensure that interested parties across a spectrum of opinions will have the chance to provide input. Furthermore, policy impact has informed the Government’s thinking on using the affirmative procedure for some regulations to ensure that both Houses of Parliament have the opportunity to debate the matters.
6. Additionally, the Government has tabled amendments to the Bill to add some constraints to the exercise of the power at Section 27BD(6). The power would allow the Secretary of State to specify circumstances in which the obligation on employers to offer guaranteed hours does not apply or no longer applies. The amendment would add considerations the Secretary of State must have regard to when exercising the power,

specifically so that he would have to consider the benefit to workers of receiving a guaranteed hours offer under the provisions, and the desirability of preventing the provisions having a significant adverse effect on employers dealing with exceptional circumstances.

7. Corresponding amendments have been tabled to the equivalent powers relating the guaranteed hours provisions for agency workers in Schedule A1.
8. These constraints would provide further detail as to how the power would be exercised, while retaining the Government's ability to undertake a consultation on its uses.

Recommendation 2

Henry VIII clauses and ongoing consultation

We believe that the use of Henry VIII powers to accommodate intended consultation leaves a constitutionally inappropriate degree of uncertainty. The House may wish to consider whether these clauses are an appropriate use of Henry VIII powers

9. Henry VIII powers have only been taken where strictly necessary to ensure the effectiveness of the legislation and maintain flexibility to update legislation to respond to changes in the economy or labour market. The regulations made under Henry VIII powers will be subject to the draft affirmative procedure, ensuring that both Houses retain a key say and vote on any final proposals in these areas.
10. This concern is raised in relation to Clauses 24 and 25. The purpose of both Clauses is to provide more effective protection to pregnant women, new mothers and those returning from extended family leave.
11. Clause 24 amends section 49D in Part 5B of the Employment Rights Act 1996 (ERA). The existing power in section 49D allows for the regulation of dismissals on the ground of redundancy during and after "the protected period of pregnancy", whereas the extended power would also allow for the regulation of dismissals on the other four grounds for potentially fair dismissal during the same period. Proposed new section 49E adds supplementary provision to both the existing power and the extended power.
12. In Clause 24 the introduction of the supplementary provisions is to make sure the entitlement and any process related to it works in the way intended and that it meets the needs of employees and employers. Those provisions will enable the regulations to distinguish between different cases and circumstances, which is vital given the protection of section 49D will now extend beyond redundancy to all five potentially fair grounds for dismissal.
13. The supplementary provisions also contain two Henry VIII powers (section 49E(f) and (e)). These particular Henry VIII powers exist across the statutory framework establishing family leave entitlements. Their purpose is to ensure that employees retain statutory protections in a wide range of circumstances.
14. The first Henry VIII power has been used in the past to allow provision to be made for an employee to choose between overlapping contractual or statutory rights without losing statutory protections which underpin the exercise of rights to leave, supporting an employee to pursue their preference in this scenario.

15. The second enables modification of the calculation of a week's pay (including, for example, in the calculation of statutory redundancy payments). This has been used in the past to ensure that an employee who has been receiving statutory family payments (usually lower than their average pay) is not disadvantaged as a result.
16. Therefore, we would like to reassure the Committee that the presence of these supplementary provisions will enable regulations to mirror provisions made in regulations about family statutory leave entitlements, to ensure consistency and ease of use for employers and employees. Furthermore, the use of regulations in this way enables the protection established to keep pace with any changing workplace practices in the future (for example, to accommodate occupational schemes which employers might develop which provide dismissal protections which go beyond the minimum standards in legislation).
17. Clause 25 extends powers that already exist in the ERA that make provision about: (a) dismissal for *any reason* during Maternity Leave, Adoption Leave, Shared Parental Leave, Neonatal Care Leave, and Bereaved Partner's Paternity Leave; and (b) dismissal *on grounds of redundancy* after an employee returns to work from those forms of statutory family leave. Those powers are extended to allow for the regulation of dismissals for *reasons besides redundancy* for a period after employees have returned to work from one of these leave types.
18. The Henry VIII powers the Constitution Committee refer to in Clause 25 already exist for each of these statutory family leave entitlements. They have also been exercised in the past for the purpose outlined above in relation to Clause 24: to ensure that an employee retains the benefit of statutory protections in a wide range of circumstances, and to prevent any disadvantage when future calculations are made of their average pay over a period which would otherwise include a period of statutory leave.
19. These Henry VIII powers are therefore already available for the regulation of dismissal for redundancy both during and after a period of statutory leave, and of dismissal for reasons other than redundancy during the period of leave. Clause 25 will mean that the same powers will be available to support the extension of regulation of dismissal for any reason to the period after return to work.
20. Clauses 24 and 25 establish the requisite powers for delivering the Plan to Make Work Pay commitment to enhance protections against dismissal for pregnant women and new mothers, and it is correct that we will consult on the operational detail of this policy commitment. The main objective of the policy is to support pregnant women and new mothers to return to and remain in employment. Our public consultation will seek views on whether new parents more generally should be included in the enhanced dismissal protection policy.

Recommendation 3

Creation of criminal liability by delegated legislation

We do not consider the Government's explanation to provide sufficient justification for the creation of criminal liability by regulations, and reiterate our view that criminal offences ought to be the product of primary, and not secondary, legislation. Clause 54 should be amended to remove the power to create criminal offences by regulations.

21. This concern is in relation to Clause 54 which amends the Merchant Shipping Act 1995 to insert a new section 84A which confers powers to make regulations giving effect to international agreements relating to maritime employment. The clause includes a power to provide for criminal offences.
22. New section 84A(1) would confer powers to give effect to two named conventions, the Maritime Labour Convention and the Work in Fishing Convention. Section 84A(2) is intended to allow for implementation of future (or unspecified) international agreements as they relate to maritime employment.
23. We recognise the Committee's concerns about the creation of criminal offences by delegated legislation but consider this approach which follows long-standing practice to be appropriate in the circumstances.
24. The UK's existing implementation of the Maritime Labour Convention and the Work in Fishing Convention is made through regulations made under powers in the Merchant Shipping Act 1995 (MSA), most often sections 85 and 86, and section 2(2) of the European Communities Act 1972 (ECA). Regulations made using these powers include provision for breach of their requirements to be a criminal offence. For example, the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 amongst other provision set minimum standards for seafarers' hours of work and rest and requires access to shore leave. These protections are important for the health, safety and wellbeing of seafarers, and failure to maintain protect those rights in certain circumstances are rightly made offences.
25. The use of the ECA power was needed because MSA powers were not always sufficient to implement the UK's obligations. As a consequence of the repeal of the ECA, the Government lacks complete powers to implement these international agreements, and particularly the Maritime Labour Convention which is regularly amended. This measure is intended to restore those powers for the purpose of implementing international agreements related to maritime employment, to ensure we can continue to comply with our international obligations, and in doing so improve working conditions for seafarers.
26. We consider that it would not be practical to use primary legislation to implement Maritime Labour Convention amendments that should have related offences because of how often the Convention is amended, and the limited time available in which to implement amendments. Typically, the Code to the Maritime Labour Convention is amended every three years and amendments take effect internationally two-and-a-half years after they are agreed. The UK must implement amendments within this timeframe to avoid breaching its international obligations or notify the International Labour Organization of its disagreement or intent to implement them late, which may be

reputationally damaging. This can be challenging in the context of a significant volume of international maritime obligations to implement, with the need to develop proposals to implement them, consult and take account of responses, and draft legislation. We consider it appropriate to maintain the existing approach, evident in sections 85 and 86 of the MSA, of implementing these requirements through delegated legislation with the ability to create offences when needed.

27. While we intend to retain the power to create offences through regulations, in light of the concerns raised by the Delegated Powers and Regulatory Reform Committee about the use of the first-time affirmative procedure, we intend to amend the Bill to make the new section 84A(2) MSA power to make regulations to give effect to future (or unspecified) agreements subject to the affirmative procedure for all uses. This follows a similar approach taken in section 128 of the MSA, and will strengthen Parliamentary scrutiny of the use of these powers and the creation of offences.

Recommendation 4 **Enforcement powers**

The Government should set out what appropriate safeguards it will put in place for the exercise of potentially wide-ranging enforcement powers under this Bill.

28. The enforcement powers outlined in Part 5 of the Employment Rights Bill have been carefully considered. They are necessary to ensure effective compliance and uphold the rights of workers, particularly in sectors where exploitation and abuse are most prevalent.
29. Importantly, most powers are consistent with those already exercised by existing enforcement bodies such as the Employment Agency Standards Inspectorate (EASI), HMRC's National Minimum Wage enforcement team, and the Gangmasters and Labour Abuse Authority (GLAA). These agencies already operate with robust investigatory tools, including the power to enter premises, request documents, and interview individuals. They operate under existing powers in the Employment Agencies Act 1973, the National Minimum Wage Act 1998, the Gangmasters (Licensing) Act 2004 and the Modern Slavery Act 2015 respectively.
30. Crucially, the existing enforcement agencies operate these powers with significant safeguards in place, including adherence to clear published policies on how they use their powers, requirement for warrants in certain cases and oversight by the Independent Office for Police Conduct (IOPC) and Investigatory Powers Commissioner's Office (IPCO) for the GLAA's "police-style" powers (under the Police and Criminal Evidence Act 1984 (PACE)), and a clear complaints process. Powers of entry are also exercised in accordance with the Code of Practice – Powers of Entry (issued under section 48(1)(a) of the Protection of Freedoms Act 2012). All these safeguards will continue under the Fair Work Agency (FWA).
31. However, the Bill goes further by introducing additional safeguards. Notably, FWA officers will be required to obtain a warrant before exercising a power to enter dwellings, in contrast to the situation today where EAS and HMRC-NMW officers can enter dwellings without a warrant. Clause 128 and Schedule 8 to the Bill also lay down new and additional safeguards in relation to obtaining and executing warrants.

32. Additionally, FWA officers will be designated to use certain investigatory powers within their letters of appointment. The use of these powers will be guided by internal policies and standard operating procedures. The three existing agencies, which will be replaced by the FWA, all have guidance on the use of investigatory powers already. Similar internal policies, standard operating procedures and guidance documents governing the use of investigatory powers will be produced before the provisions in Part 5 of the Bill are commenced.
33. Specifically, on PACE powers – only those officers who currently use PACE powers within the GLAA will continue to have access to these powers once they are working in the FWA. These officers are already trained and qualified to use these powers, and we will ensure that they remain compliant in their use. The IOPC currently has oversight of the use of PACE powers. They will continue to provide oversight of these powers in the FWA.
34. When setting up the FWA we will be engaging extensively with the existing enforcement bodies, using the knowledge and experience gained from over 25 years' worth of successful enforcement regimes, to ensure a seamless transition.
35. These measures ensure that enforcement remains targeted, proportionate, and accountable – whilst giving enforcement officers the tools they need to tackle serious non-compliance effectively.

Recommendation 5

Access to justice - Recommendations on the impact of the Bill on the ability of employment tribunals to effectively enforce the proposals

The Government should provide further information about the potential impact on backlogs in employment tribunals likely to result from the projected increase in cases as a result of this Bill.

Furthermore, the Government should set out any additional measures it will put in place to ensure that the Bill's implementation will not adversely impact the efficient administration of justice or exacerbate the existing backlogs. The House may wish to satisfy itself that these mitigations are sufficient.

36. We recognise the Select Committee's concerns regarding the potential impacts of this Bill on Employment Tribunals. We would like to reassure the Select Committee that we will continue to assess these impacts, and we remain committed to relieving pressure on the Employment Tribunal system and delivering swifter access to justice.
37. The published Impact Assessments included an illustrative assessment of the impact on the Employment Tribunal system which we intend to refine over time by working closely with the Ministry of Justice, His Majesty's Courts and Tribunals Service, ACAS and wider stakeholders.
38. We intend to publish further analysis of the impact on Employment Tribunals, both in the form of an Enactment Impact Assessment when the Bill secures Royal Assent and further assessments when we consult on proposed regulations in line with our Better Regulation requirements.

39. The Government is already taking various steps to increase Employment Tribunal capacity, such as the deployment of legal officers, recruitment of additional judges, and increasing funding for ACAS.
40. We are committed to doing more in this area. A cross-Government working group is taking a holistic view of the dispute resolution system to optimise current levers. Ministers and officials are engaging with key stakeholders from trade unions, businesses representative organisations and other bodies, to inform our understanding of the challenges and potential options to address them. This includes looking at the role of ACAS and opportunities for the Fair Work Agency to take on enforcement where that would help both workers and businesses reach resolution more quickly without needing to go to an Employment Tribunal.
41. The time limit for bringing claims to the Employment Tribunal will also be increased from three months to six months through the Bill. This could provide employees and employers with more time to resolve disputes internally or through the conciliation process. The additional time alongside the consistent approach to time limits across jurisdictions will support employees to consider the merits of bringing a case to the Employment Tribunal, particularly in complex cases, as well as time to consider the legal costs and funding that may be required.