A FIRST LOOK AT THE EMPLOYMENT RIGHTS BILL AND WHAT IS LEFT UNSAID: DELEGATED POWERS, PLANNED CONSULTATIONS AND GOVERNMENT AMENDMENTS

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1. Introduction

The Employment Rights Bill was introduced into Parliament this month and received its second reading in the House of Commons on 21 October. The Bill has been described by the Hansard Society as "primarily 'framework' or 'skeleton' legislation" with much left to secondary legislation. In addition, the government anticipates making a range of amendments to the Bill following consultations run in tandem with the legislative process. In these respects, the Bill may raise rule of law concerns as it has been recognised (see e.g., the Rule of Law Checklist adopted

by the Council of Europe's Venice Commission) that the scope of executive law-making powers, whether law-making procedures allow sufficient scrutiny of proposed legislation, and whether the resulting legal frameworks provide legal certainty, all impact on the rule of law. This comment piece does not take a view on whether this complex Bill fully satisfies rule of law requirements in these areas. Instead, it maps out the some of the main reform proposals and identifies key standards on delegated powers and government amendments, which parliamentarians and others should consider during further stages of the Bill's passage.

2. Background to the Employment Rights Bill

The Labour Manifesto committed to introducing legislation within 100 days to implement 'Labour's Plan to Make Work Pay: Delivering a New Deal for Working People'. The Employment Rights Bill was introduced into the House of Commons on 10 October 2024, within 100 days of the Labour government coming into office, and second reading took place on 21 October.

The Bill proposes 28 individual employment reforms. As set out in the Explanatory Notes accompanying the Bill, it is in six parts and contains six schedules:

- Part 1 (including Schedules 1-2) "provides for the reform of employment rights in the following areas: zero hours workers, etc; flexible working; statutory sick pay; tips and gratuities, etc; entitlements to leave; protection from harassment; dismissal".
- Part 2 concerns "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".
- Part 3 (including Schedule 3) "makes provision in relation to: pay and conditions of school support staff in England; the establishment of the Adult Social Care Negotiating Body".
- Part 4 "makes provision in relation to trade unions and industrial action".
- Part 5 (including Schedules 4-7) "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" and the "provisions will bring together existing state labour market enforcement functions as well as some new state enforcement functions".
- Part 6 sets out general provisions.

An ECHR memorandum has also been published, addressing issues arising under the European Convention on Human Rights. In addition, a series of factsheets with further details on the measures included in the Bill were published on 18 October and a set of impact assessments were published on 21 October. We have not yet had opportunity to consider these in detail.

3. Next Steps to Make Work Pay

The Bill is framed as the "first phase" of delivering the 'Plan to Make Work Pay'. On 10 October 2024 (the same day as the Bill was introduced into Parliament) the government published a policy paper, 'Next Steps to Make Work Pay', which sets out a timetable for its plans.

The Next Steps paper explains that the government will publish "a limited number of targeted consultations" and that some may lead to government amendments to the Bill during its

passage (para 11). In addition, it explains that "further detail on many of the policies in the Bill" will be set out in regulations, and in some cases in codes of practice, after Royal Assent (para 12). The government anticipates that most reforms will take effect no earlier than 2026 and reforms of unfair dismissal will take effect no sooner than Autumn 2026 (para 12). The paper also notes that where appropriate the government will publish guidance to assist stakeholders to make the necessary changes (para 13).

The Next Steps paper also sets out a range of wider reforms and government plans to deliver measures outside of the Employment Rights Bill including via existing powers and non-legislative routes, and via the Equality (Race and Disability) Bill on which the government states it will begin consulting "in due course" with a draft Bill to be published during this parliamentary session for pre-legislative scrutiny (page 14).

In the longer-term, the Next Steps paper highlights 10 areas where further review or consultation is expected: parental leave; carers' leave; surveillance technologies and negotiations with trade unions and staff representatives; single 'worker' status; protections for the self-employed; issues relating to the Transfer of Undertakings (Protection of Employment) regulations and process; health and safety guidance and regulations; raising collective grievances; issues relating to public procurement; and extending the Freedom of Information Act (FOIA) to private companies that hold public contracts and to publicly funded employers (pages 14-15).

During the second reading debate, Gareth Bacon MP (Con), Shadow Minister (Justice, London, and Business and Trade), was critical of the planned timetable, pointing out that the Bill "has been rushed to the House so quickly that it contains fewer than half of the measures included in the plan to make work pay—a fact recognised by the Government's "Next Steps to Make Work Pay" document". He also noted that a "vast amount of it will require secondary legislation to take effect". While it may be appropriate for a government to bring forward a broad policy programme through a series of bills rather than just one, the point about the use of secondary legislation requires further discussion as the delegated powers may impact the rule of law.

4. The Employment Rights Bill and what is left unsaid: delegated powers, planned consultations and government amendments

The Employment Rights Bill as introduced runs to 150 pages and we will not be considering all of the proposals here. For an overview and some preliminary analysis of the key provisions see for example here, here and here, as well as this House of Commons Library research briefing on the Bill.

As noted in the Introduction, in this first look at the Bill, we will consider the mechanics and timelines behind some of the headline reforms to identify what is left unsaid, highlighting in particular some of the delegated powers in the Bill and where consultations are planned by government.

Zero hours workers, etc

As explained here, the Bill "does not go so far as to 'ban' zero hours contracts" and instead Clause 1 includes "fairly detailed provisions setting out a new obligation on employers to make

a 'guaranteed hours offer' to qualifying workers" which will "essentially require an employer to make work available to the worker for a minimum number of hours, reflecting the average of those worked over a reference period". Many of the details will be set out in regulations. Clause 2 of the Bill provides for rights to reasonable notice of a shift, and to reasonable notice of cancellation of or change to a shift. Clause 3 provides for a right to payment for cancelled, moved and curtailed shifts in certain circumstances. Some details will be set out in regulations, including the amount to be paid to a worker in such cases. Clauses 4 to 6 also fall under the heading of zero hours workers, etc, and include repeal of the Workers (Predictable Terms and Conditions) Act 2023, which has not been commenced.

The government refers to ending "exploitative" zero hours contracts, and has stated that it will consult on how "subsequent review periods should work with employers and trade unions, ensuring they are reasonable and proportionate for both workers and employers" (Next Steps, para 22) and on the best way to adapt and apply these measures to agency workers (Next Steps, para 23). In addition, it will consult on "what constitutes 'low hours' for each measure, which will be set in regulations" (Next Steps, para 24).

Flexible working

Clause 7 of the Bill proposes to make limited changes to the existing position on requests for flexible working. Among other things, it provides for 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" (Explanatory Notes, para 255). The government has committed to "develop the detail of the approach in consultation and partnership with business, trade union and third sector bodies" (Next Steps, para 17).

Statutory sick pay

Clauses 8 and 9 of the Bill would remove the waiting period and lower earnings threshold for Statutory Sick Pay (SSP). The Bill would set the weekly rate of SSP at £116.75 or the prescribed percentage of the employee's normal weekly earnings, whichever is lower. The Bill "enables the Secretary of State to prescribe, by order… what the percentage, or percentages, should be" for this purpose, and this is "consistent with the existing power of the Secretary of State to amend, by order, the flat rate of SSP" (Explanatory Notes, para 265). The government has stated that it will consult on "what the percentage replacement rate for those earning below the current flat rate of Statutory Sick Pay should be, and will bring this change forward through a government amendment to the Bill during its passage" (Next Steps, para 11).

Tips and gratuities, etc

Clause 10 relates to written policies about allocating tips and would introduce requirements to consult and to review.

Entitlements to leave

Clauses 11 and 12 of the Bill would remove the qualifying period of employment for parental leave and paternity leave. Clause 13 would remove the restriction on employees taking paternity

leave following shared parental leave. Clause 14 of the Bill amends existing legislation on parental bereavement leave to provide for a more general entitlement to bereavement leave. A "'bereaved person' will be defined in regulations by reference to the employee's relationship with the person who has died" (Explanatory Notes, para 284).

Protection from harassment

Clauses 15 to 18 of the Bill relate to protection from harassment. As explained here, the Worker Protection (Amendment of Equality Act 2010) Act 2023, which comes into force on 26 October 2024, introduces a "new legal duty on employers to take reasonable steps to prevent sexual harassment of their workers". The Employment Rights Bill would strengthen protection against harassment and in particular Clause 17 would introduce "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" (Explanatory Notes, para 294).

Dismissal

Clauses 19 to 22 relate to dismissal. In particular, as explained here, the Bill would "repeal the current two-year qualifying period for unfair dismissal" and also introduce "a power for ministers to make regulations governing dismissal during 'an initial period of employment'". The government has committed to consulting on "the length of that initial statutory probation period; the Government's preference is 9 months" and notes that it will also "engage further during the passage of the Bill on how we can ensure the probation period has meaningful safeguards to provide stability and security for business and workers" (Next Steps, para 29). The government has also committed to consulting on "how it interacts with Acas' Code of Practice on Disciplinary and Grievance procedures" (Next Steps, para 30). It also intends to consult on "what a compensation regime for successful claims during the probation period will be, with consideration given to tribunals not being able to award the full compensatory damages currently available" (Next Steps, para 31).

The Bill also seeks to tackle the practices of "fire and rehire" and fire and replace". There will be a "limited defence" if "(a) the reason for the variation was to eliminate, prevent or significantly reduce, or significantly mitigate the effect of, any financial difficulties which at the time of the dismissal were affecting, or were likely in the immediate future to affect, the employer's ability to carry on the business as a going concern or otherwise to carry on the activities constituting the business, and (b) in all the circumstances the employer could not reasonably have avoided the need to make the variation". If these conditions are met, the Bill sets out factors that must be considered in determining whether the dismissal is fair or unfair, including "any matters specified for the purposes of this subsection in regulations made by the Secretary of State". There is more consultation to take place here. The government has stated that "[a]s key remedies to end this practice, we are committed to consult on lifting the cap of the protective award if an employer is found to not have properly followed the collective redundancy process as well as what role interim relief could play in protecting workers in these situations" (Next Steps, para 26).

Procedure for handling redundancies

Clauses 23 to 24 relate to collective redundancy. The government has also stated that "measures to introduce powers to allow the UK to strengthen workers' rights at sea and implement international conventions relating to seafarer employment" will be added to the Bill via amendment during its passage (Next Steps, para 27).

Public sector outsourcing and protection of workers

Among other things, Clause 25 would "amend the Procurement Act 2023 to create a power for a Minister of the Crown to make regulations and to impose a duty to publish a statutory code of practice" (Explanatory Notes, para 361). 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, with each group on different terms and conditions, commonly known as a 'two-tier workforce'" (Explanatory Notes, para 361).

Duties of employers relating to equality

Clause 26 relates to equality action plans. Regulations may require employers (with 250 or more employees) to develop and publish an equality action plan with regard to "prescribed matters related to gender equality", and to publish "prescribed information relating to the plan". Matters relating to gender equality include "(a) addressing the gender pay gap, and (b) supporting employees going through the menopause". In this regard, the government has stated that "[l]arge employers will also be required to produce action plans on how to address their gender pay gaps and on how they will support employees through the menopause" and that "[t]his will be backed up by a Regulatory Enforcement Unit for equal pay" (Next Steps, para 34). It has been commented that "[t]his may be a public body with powers to pursue claims which are notoriously difficult, costly and time consuming for individuals". Clause 27 concerns the provision of information relating to outsourced workers.

Connected to this, the government has stated that some measures will be delivered through its Equality (Race and Disability) Bill, mentioned above, such as "extending pay gap reporting to ethnicity and disability for employers with more than 250 staff and measures on equal pay; extending equal pay rights to protect workers suffering discrimination on the basis of race or disability; ensuring that outsourcing of services can no longer be used by employers to avoid paying equal pay; and, implementing a regulatory and enforcement unit for equal pay with involvement from trade unions" (Next Steps, page 14). As noted above, the government has stated that it will begin consulting on this legislation in due course (Next Steps, page 14).

Pay and conditions in particular sectors

Clause 28 relates to school support staff, and Clauses 29 to 44 relate to adult social care. In particular, the Bill gives the Secretary of State the power to create an Adult Social Care Negotiating Body (Explanatory Notes, para 455) and outlines the matters within the remit of the body including remuneration and the terms and conditions of employment of social care workers (Explanatory Notes, para 460). The government has stated that the Bill will enable it "to bring forward a framework for a Fair Pay Agreement process in the adult social care sector"

and has committed to "launch a consultation soon to consider exactly how the Fair Pay Agreement should work" (Next Steps, para 20).

Trade unions and industrial action, etc

Clauses 45 to 71 relate to trade unions and industrial action and it has been commented that the Bill "significantly strengthens the power of trade unions". We will consider only two examples here. First, the Bill provides for a right to a statement of trade union rights which a worker's employer must give the worker at certain times. It also provides that the Secretary of State "may prescribe (a) information that must be included in the statement; (b) the form which the statement must take; (c) the manner in which the statement must be given". Second, "[v]arious thresholds for trade union recognition and voting have … been lowered, including: [g]ranting the Secretary of State the power to lower the threshold for compulsory trade union recognition applications from 10% of the workforce to anywhere between 2-10% of the same" (see here).

Alongside the Bill, the government has committed to "consult to modernise the legislative framework that underpins our trade unions" (Next Steps, para 39). It also notes that while it "will repeal legislation that has led to an overly conflictual approach to industrial relations and contributed to the worst disruption in decades… in places this will leave us with a legal framework that is over three decades old, so we will seek views on several measures to update and reform this framework to hardwire negotiation, engagement and dispute resolution" (Next Steps, para 39). In particular, the government will "seek views on measures to remove the 10-year ballot requirement on political funds and simplify the amount of information unions are required to provide in industrial action notices, with a view to bringing forward Government amendments to the Bill" and it will "seek views on how to strengthen provisions to prevent unfair practices during the trade union recognition process" (Next Steps, para 39).

It is also worth noting at this stage that the Bill would repeal the Strikes (Minimum Service Levels) Act 2023. In a Written Statement to Parliament on 9 September 2024, the Parliamentary Under-Secretary of State for Business and Trade, Justin Madders MP, commented in this regard that "[m]inimum service levels unduly restrict the right to strike and undermine good industrial relations" and noted that "[t]he introduction of the Strikes (Minimum Service Levels) Act 2023 was met with widespread condemnation from employers and trade unions". From a legal certainty perspective, he noted that "[a]lthough the ability of employers to give work notices will legally continue until the Strikes (Minimum Service Levels) Act 2023 has been formally repealed and amendments to the [Trade Union and Labour Relations (Consolidation) Act 1992] are accordingly reversed, in this interim period we have strongly encouraged employers to seek alternative mechanisms for dispute resolution, including voluntary agreements, rather than imposing minimum service levels".

Enforcement of labour market legislation

Clauses 72 to 112 relate to enforcement of labour market legislation. In particular, the Bill "provides for the creation of a new labour market enforcement body to enforce labour market legislation that will be an executive agency of the Department for Business and Trade" and this will involve "the abolition of an existing non-departmental public body (the Gangmasters and Labour Abuse Authority - GLAA) and the Secretary of State taking responsibility for enforcement

of relevant labour market legislation" (Explanatory Notes, para 925). Of note, Part 1 of Schedule 4 "sets out the relevant labour market legislation that the Secretary of State has overarching responsibility to enforce" and Part 2 of Schedule 4 "gives the Secretary of State powers to amend the list of relevant labour market legislation" (Explanatory Notes, paras 728 and 729). It has been commented that "[t]he new Agency will have broad enforcement powers, which could prove more effective at tackling poor employment practices than individual employee challenges" however "[t]he potential for further areas of employment law to come within the Agency's remit will also be an area to watch".

The government has stated that it "will establish the Fair Work Agency which will bring together existing enforcement functions, including minimum wage and statutory sick pay enforcement; the employment tribunal penalty scheme; labour exploitation and modern slavery; as well as introducing the enforcement of holiday pay policy" (Next Steps, para 35). The previous government consulted on setting up a new single enforcement body for employment rights, but nothing came of this.

Finally, while we are discussing enforcement and access to justice issues, it is well documented that the Employment Tribunal backlog is getting worse, and some have raised concerns over whether legislative changes proposed in the new Employment Rights Bill could "overwhelm the already strained employment tribunal system". Others have questioned the value of new rights if litigation before the Tribunal takes years to resolve. In its 'Plan to Make Work Pay', Labour said it would "increase the time limit within which employees are able to make an employment claim from three months to six months". More recently, the government has stated that "[m]easures to extend the time limit for bringing claims to Employment Tribunals" will be added to the Bill via amendment (Next Steps, para 27). Whether such steps will be sufficient to address the access to justice concerns raised here remains to be seen.

5. Standards regarding the use of delegated powers and government amendments

The government may have met its self-imposed 100-day deadline for introducing the Employment Rights Bill but this may yet turn out to have been at the cost of best practice in law-making. As we have seen above, much is left to secondary legislation and the government already anticipates making amendments to its own bill following consultations being run in parallel with the legislative process.

Ahead of the Bill's introduction, the Hansard Society cautioned that "rushing the policy development and drafting of the Bill to meet an unrealistic, self-imposed 100-day deadline is not an acceptable reason for Ministers to take powers for themselves (and their successors) to legislate at a later date - especially through a process that allows for less parliamentary scrutiny than primary legislation". In an episode of the Hansard Society's Parliament Matters podcast, Dr Ruth Fox further emphasised the long-term and wider impacts of delegated powers, noting that "once ministers have these powers, they've then got them in perpetuity" and "obviously not just them, future ministers. … it also lays precedence for future bills".

While many have welcomed the policy aims in the Bill as well as the planned consultations and period of transition before new changes take effect, the Bill has also been criticised by the Federation of Small Businesses, a key affected group, as a "rushed job, clumsy, chaotic and

poorly planned". During second reading, Kevin Hollinrake MP (Con), the Shadow Secretary of State for Business and Trade, argued that "[p]roper consultation is working with business, listening, taking your time and not rushing things—the exact opposite of what the Government have done" due to a "misguided promise to Labour's trade union paymasters that legislation would be introduced within 100 days". In the same debate, Sarah Gibson MP (Lib Dem) emphasised that "[a]lthough we support as much consultation as possible, the lack of detail in the Bill does not facilitate certainty and stability for businesses or workers".

Government amendments

The extensive use of delegated powers in the Bill – on which there is now a detailed body of standards as we discuss below – and the plan to table government amendments after the Bill has started its passage through Parliament, both raise concerns. While we agree that broad public consultation will be valuable, the lack of firm provision on some aspects of the Bill at this stage will impact scrutiny. In this respect, the Public Bill Committee is now able to receive evidence on the Bill and the first sitting is expected on 26 November. The Committee is scheduled to report by 21 January 2025.

In a 2019 report, 'The Legislative Process: The Passage of Bills Through Parliament', the House of Lords Constitution Committee noted that while "[t]he addition of large numbers of Government amendments late in a bill's passage in response to Parliament's scrutiny is usually welcomed", it is "not, however, normally appropriate to insert new or substantial policy content into a bill at a late stage, as this may result in inadequate parliamentary scrutiny" (para 53). It stated that "[w]here the House of Commons only sees substantial new policy material for the first time during consideration of Lords amendments, it may wish to consider how to ensure there is sufficient time to scrutinise those provisions" (para 54) and recommended that "where the Government adds substantial new policy material to a bill late in its passage, the bill—or at least the new provisions—should be re-committed to allow for additional debate and scrutiny" (para 55). The Cabinet Office Guide to Making Legislation similarly emphasises that "[e]very amendment the Government makes to a bill delays its progress" (page 174). It sets out that "Government amendments to bills after introduction must therefore be kept to a minimum and will only be agreed by the PBL [Parliamentary Business and Legislation] Committee if they are considered essential to ensure that the bill works properly. To avoid a government defeat or otherwise significantly ease handling in Parliament" (page 174).

It is therefore desirable that any government amendments are brought forward as soon as possible to enable full scrutiny in both the House of Commons and the House of Lords.

Delegated powers

There are established procedures for examining whether delegated powers in bills are appropriate. In keeping with this, the government has produced a delegated powers memorandum to accompany the Employment Rights Bill and to assist the Delegated Powers and Regulatory Reform Committee (DPRRC) with its scrutiny of the Bill. The memorandum "identifies the provisions of the Bill that confer powers to make delegated legislation" and "explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected". It is striking that the memorandum considers over 80 delegated

powers in the Employment Rights Bill, including 7 so-called "Henry VIII powers" which are powers to amend primary legislation through secondary legislation.

The Employment Rights Bill should be carefully scrutinised to ensure it meets best practice and standards regarding the use of delegated powers, such as those set out by the DPRRC in its Guidance for Departments on the role and requirements of the Committee. The DPRRC considers bills when they are introduced into the House of Lords and the Committee's recommendations are made in reports to the House, so we can look forward to reading its assessment of the delegated powers in the Employment Rights Bill.

For the time being, we will consider the following summary set out in the government's delegated powers memorandum (para 11, underline added):

> *The delegated powers in the Bill fall into three categories. First there are provisions which create new delegated powers which will give effect to the new or amended regimes and set out technical details to support their operation, or which follow existing legislative precedent in relation to employment rights. Second there are powers 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 relationships and where consultation will take place on the detailed implementation of the policy. Finally, there are general provisions which are required for the bill to have effect.*

Each of these categories requires some preliminary comment. According to the Cabinet Office Guide to Making Legislation, cited above, "[i]t may be appropriate for a bill to delegate legislative powers to a minister or other person so that they can make further legislative provision by regulations, order or some other form of subordinate legislation after the bill becomes an Act" (page 138). However, as regards technical matters, the fact that "the detailed policy has not been developed yet and there is not enough time to develop it" or "the measures are very technical in nature" are "examples of reasons which, on their own, are unlikely to be a sufficient justification for the inclusion of a delegated power in a bill" (para 15.4). With regard to flexibility, the Hansard Society Compendium of Legislative Standards for Delegating Powers in Primary Legislation (with reference to reports of the DPRRC) indicates that "[a] claim that flexibility is required in the way that primary legislation can be modified constitutes insufficient justification, as Ministers through delegated legislation are not the only ones capable of legislating flexibly" and "Parliament is capable of legislating flexibly in primary legislation" (para 1.30). As regards general provisions, the Cabinet Office Guide sets out "various circumstances in which it might be appropriate for a bill to contain delegated powers" including, for example "to fill in a level of detail which it would be more appropriate to deal with by delegated powers, this may include minor, consequential, transitional, technical or administrative matters" (para 15.1).

The government's explanation is set out in detail in its 90-page delegated powers memorandum. It will be important for Parliament to closely examine the memorandum and the government's justifications for seeking the delegated powers in the Bill and for the selected parliamentary scrutiny procedures. Best practice and standards regarding the use of delegated powers – including those highlighted above from the DPRRC and the Cabinet Office – need to be fully considered in relation to each of the powers taken in the Bill.

6. Concluding remarks

The excessive use of delegated legislation is a threat to the rule of law and to democratic law-making. In a recent report co-authored by Bingham Centre researchers, 'Delivery vs Deliberation: Lessons in Law-Making from the Last Parliament', the IPPR identified several areas of "democratic depletion" in the law-making process in the last parliament, including that the previous government "concentrated its power through the excessive use of delegated legislation". The report suggested that the new parliament provides a "fresh start to learn the lessons from recent trends" and recommended that "the use of delegated legislation should be carefully circumscribed and scrutinised".

Indeed, the Attorney General Lord Hermer KC appeared to signal a new approach to the use of delegated legislation when he stated during his swearing-in speech that the new government would "seek to promote the highest standards in how we legislate – seeking to increase accessibility and certainty" including by "not abusing the use of secondary legislation". Then again last week in the 2024 Bingham Lecture on the Rule of Law, Lord Hermer spoke of a "reset" and the need for "a much sharper focus on whether taking delegated powers is justified in a given case, and more careful consideration of appropriate safeguards".

Parliament should carefully consider whether this ambition has been met in the government's new Employment Rights Bill. As Lord Hermer cautioned, while secondary legislation has "an indispensable role to play in a modern, regulated society… excessive reliance on delegated powers, Henry VIII clauses, or skeleton legislation, upsets the proper balance between Parliament and the executive" which "not only strikes at the rule of law values … but also at the cardinal principles of accessibility and legal certainty".

Through the Rule of Law Monitoring of Legislation project, the Bingham Centre will continue to monitor the Employment Rights Bill as it progresses through Parliament, focusing on Parliament's scrutiny of delegated powers in the Bill, particularly the Henry VIII powers and any constraints imposed in that respect, and government amendments including those brought forward as a result of its planned consultations.