Title: **Preventing employer deductions from worker tips**	Impact Assessment (IA)
IA No:	**Date:** 15/06/2022
RPC Reference No: RPC-3346(2)-BEIS	**Stage:** Final
Lead department or agency: Department for Business, Energy and Industrial Strategy	**Source of intervention:** Domestic
Other departments or agencies:	**Type of measure:** Primary legislation
	Contact for enquiries: Simi.Bhamra@beis.gov.uk

Summary: Intervention and Options

RPC Opinion: Green

Cost of Preferred (or more likely) Option (in 2019 prices, 2020 present value)			
Total Net Present Social Value	**Business Net Present Value**	**Net cost to business per year**	**Business Impact Target Status**
- £435.6m	- £1,921.0m	£ 223.2m	Qualifying provision

What is the problem under consideration? Why is government intervention necessary?

There is evidence that some employers have acted unfairly when it comes to tips, for example by charging an excessive administration fee for handling tips or even keeping the whole of these payments from their staff who had rightfully earned them. The government wants to ensure that tips left for workers will go to them in full, thereby providing a better deal for workers who are often in low-paying sectors. With existing voluntary guidance not being adhered to by some businesses, we will introduce new legislation setting out an obligation that employers in all sectors must not make any deductions from tips received by their staff other than those required under tax law. Employers will also be obliged to distribute tips in a way that is 'fair and transparent'.

What are the policy objectives and the intended effects?

The policy's objective is that tips and other payments for service left for workers will go to them in full. This will end the unfair deduction practices that came to light in various media reports and the responses to our Call for Evidence in 2015. Ensuring low-paid workers retain the tips intended for them represents a cost to the employers that were previously making deductions and a benefit to those workers now keeping 100% of their tips. Once netted out, this transfer between workers and businesses registers as zero, leading to a negative net present value once compliance costs are accounted for. However, this measure will provide significant financial benefits to low-paid workers, averaging around £200 per worker per year, and we expect the positive distributional impacts to significantly outweigh the costs (see paragraph 83 onwards for further discussion of this).

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The government has considered two policy options:
Option A – Do nothing – that is, maintain the current policy framework (self-regulation) in relation to payments for service.
Option B – Legislate to introduce an obligation that employers must not make any deductions from payments for service, other than those required under tax law, and that they must distribute them in a way that is fair and transparent.
We do not favour option A. Despite the existing Code of Best Practice, campaigns by worker organisations and ongoing media coverage of the issue, transparency to consumers and deductions from payments for service remain a concern. We prefer option B which would directly tackle the issue identified.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 5 years after implementation year

Does implementation go beyond minimum EU requirements?	N/A			
Is this measure likely to impact on trade and investment?	N/A			
Does this measure comply with our international trade and investment obligations, including those arising under WTO agreements, UK free trade agreements, and UK Investment Treaties?	N/A			
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)	**Traded:** N/A	**Non-traded:** N/A		

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: .... Date: ....

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)		
2021	2022	10	**Low:** -779.6	**High:** -276.9	**Best Estimate:** -497.0

COSTS (£m)	**Total Transition** (Constant Price) Years		**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	5.7	1	477.8	**4118.1**
High	10.6		140.5	**1219.6**
Best Estimate	7.6		253.7	**2191.5**

Description and scale of key monetised costs by 'main affected groups'

The main affected group is businesses. They will incur one-off transitional costs consisting of familiarisation costs and other administrative costs due to necessary changes to workers' contracts (whenever these already mention tips) and payroll systems (to remove deductions). More importantly, they will face recurring (annual) costs as they no longer make deductions from payments for service, other than those required under tax law.

Other key non-monetised costs by 'main affected groups'

The government will specify that certain arrangements for handling tips, such as 'troncs', are presumed to be fair and transparent. This could potentially encourage more businesses to use troncs, which could in turn reduce the national insurance contributions paid to the Exchequer. There is also a risk that businesses adjust to the policy by reducing workers' basic pay or increasing prices for consumers, but we consider that these potential effects are unlikely.

BENEFITS (£m)	**Total Transition** (Constant Price) Years		**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A	N/A	500.0	**440.0**
High	N/A		446.2	**3841.2**
Best Estimate	N/A		196.9	**1694.6**

Description and scale of key monetised benefits by 'main affected groups'

The main affected group is workers. Those who currently experience deductions being made from their tips (i.e. in restaurants, pubs and bars, where we assume that deductions are prevalent) will benefit from the policy in that they will receive the sums previously deducted by employers and see their overall remuneration increase. This represents a transfer of income from businesses. Since this transfer will mainly benefit low-paid workers, there will be significant positive distributional effects beyond our best estimate of benefits.

Other key non-monetised benefits by 'main affected groups'

Businesses and consumers will potentially benefit from the policy in several ways. Firstly, workers may become more productive and more motivated to provide a good service. This would in turn reduce staff turnover and disputes over the allocation of tips and improve the business' reputation and customer loyalty. Secondly, consumers who wish to reward good service will have the assurance that all their tips will reach the workers who provide the service. Thirdly, workers in the hospitality industry will see an increase in their net wages once tips are distributed fairly.

Key assumptions/sensitivities/risks | 3.5

The main risk of our analysis relates to our evidence regarding deductions from tips – in terms of both magnitude (how high these deductions are) and scope (in which industries they are prevalent). We base our main assumption on evidence from media reports and the responses to our Call for Evidence published in 2015 and have tested it with stakeholders since then. The risk is that we overestimate or underestimate costs to businesses as a result. We carry out sensitivity analysis by utilising other pieces of evidence.

BUSINESS ASSESSMENT (Option B)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs: 254.6	**Benefits:** 0.0	**Net:** 254.6	1115.8

Evidence Base (for summary sheets)

Policy context

1. The government is committed to ensuring that tips left for workers will go to them in full. To this end, we will introduce new legislation setting out an obligation that employers in all sectors must not make any deductions from tips received by their staff other than those required under tax law. Moreover, employers must distribute tips in a way that is fair and transparent. Supplementary guidance as to what a 'fair and transparent' handling of tips means in practice will be published after passage of the legislation in the form of a statutory Code of Practice.

2. The government already has a policy in place regarding the treatment of tips. A voluntary Code of Best Practice, developed in collaboration with industry, worker and consumer groups, was published in September 2009 to improve the information available concerning the treatment of these payments and to increase transparency in this area (see annex A for more details on the principles of the Code of Best Practice)[1].

3. However, there is evidence that some employers, including high-profile restaurant chains, have acted unfairly when it comes to tips, for example by charging an excessive administration fee for handling tips or even keeping the whole of these payments from their staff who had rightfully earned them[2]. Some employers have also required workers to pay a 'table charge' or 'shift charge' based on a proportion of sales made during a particular period of work – a practice which may not be directly related to tips but is often seen as a means for employers to retain some of them. There is currently no legal requirement for employers to distribute all tips to workers, or allocate a particular proportion of tips to them, nor is there any obligation to provide them with information regarding what proportion of tips are retained.

4. Following media reports pointing out these practices, the government launched a Call for Evidence in August 2015 to investigate the underlying issues[3]. We received 165 responses from consumers, workers and employers from different backgrounds. The evidence provided showed that respondents were either not sure whether their organisation signed up to the Code of Practice or knew that they did not. Most workers and consumers were not aware of the Code of Best Practice at all. This Code was outlined within the Call for Evidence, and most workers and consumers did not think that it provided a fair and transparent process for handling tips. As far as employers are concerned, the majority were aware of the Code of Best Practice and thought that it provided a fair and transparent process, but some did not share this opinion and a few recognised that they did not adhere to the principles of the Code.

5. In our follow-up consultation[4], the government set out three policy objectives and presented seven proposals. The objectives were that tips should be discretionary (it should be clear to consumers that they are voluntary), received by workers, and clear and transparent to consumers and workers in terms of how the payments are treated. The proposals included options to prevent or limit the practice of employers charging an administration fee or making any other deductions from tips than those required under tax law. Responses to our consultation were largely in favour of an intervention by the government.

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[1] 'A Code of Best Practice on Service Charges, Tips, Gratuities and Cover Charges'. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/453089/09-1327-national-minimum-wage-code-of-best-practice-tips.pdf

[2] See, for example, the following reports from the BBC, the Guardian and the Evening Standard:
https://www.unitetheunion.org/news-events/news/2021/june/hospitality-tipping-law-needed-as-pizza-express-becomes-latest-restaurant-to-unfairly-deduct-staff-tips/
https://www.bbc.co.uk/news/business-44156313
https://www.theguardian.com/business/2021/sep/06/staff-accuse-byron-burger-chain-over-changes-to-service-charge
https://www.standard.co.uk/news/uk/restaurant-chain-c-te-takes-entire-service-charge-instead-of-giving-it-to-staff-a2918366.html
https://www.standard.co.uk/news/london/now-bill-s-restaurants-take-service-charge-chain-is-accused-after-standard-s-cote-revelations-a2920506.html

[3] Available at: https://www.gov.uk/government/consultations/tips-gratuities-cover-and-service-charges-call-for-evidence

[4] Available at: https://www.gov.uk/government/consultations/tips-gratuities-cover-and-service-charges-proposals-for-further-action

6. Although some high-profile restaurant chains have voluntarily improved their practices since our Call for Evidence[5], trade unions still make substantiated representations to the government about unfair deductions from tips made by some employers, and reports of such deductions still appear in the press from time to time. The government undertook significant engagement with stakeholders, including employers' representatives, trade unions and lawyers specialising in employment law and the hospitality sector. Following this, the government announced that it would introduce an obligation that employers must not make any deductions from tips received by their staff other than those required under tax law[6]. This Impact Assessment estimates the costs incurred by businesses as a consequence of this policy. We assess this against an alternative, 'do-nothing' scenario, where the existing non-legislative measures would remain in place.

Industry background

7. The new obligation that employers must not make any deductions from tips received by their staff (other than those required under tax law) will be applicable to all sectors across the UK. However, the industries that are expected to be the most affected are restaurants and mobile food service activities (hereafter referred to as 'restaurants'), beverage serving activities (hereafter referred to as 'pubs and bars'), hotels and similar accommodation, taxi operation, gambling and betting activities, hairdressing and other beauty treatment (these sectors are collectively referred to as 'tipping industries' hereafter)[7], with the main effects anticipated to be in restaurants, pubs and bars (hereafter referred to as the 'hospitality sector'). Indeed, the vast majority of responses to our Call for Evidence and consultation came from the hospitality sector.

8. We acknowledge that this definition of 'tipping industries' is pivotal to the analysis that is undertaken within this Impact Assessment, with the estimates of costs based on these sectors and their turnover. Analysis of responses to our Call for Evidence, in addition to further, more recent sense-checks with stakeholders, has led us to consider that the aforementioned sectors appropriately cover the range of possible tipping industries.

9. There are currently about 126,000 businesses operating in food and beverage serving activities, where leaving tips is common practice. We anticipate that tipping also exists in a further 62,000 businesses which provide services such as hotel accommodation, taxi, gambling and betting activities, and hairdressing. We assume that 100% of these businesses are in the private sector[8].

10. Tipping industries are an important part of the economy, employing about 2.5 million workers (that is, 11.3% of total employment) and generating a gross value added of £58.9billion per year (that is, 2.6% of the economy), as shown in Table 1 below.

Table 1. Overview of tipping industries

Industry	Number of businesses	Number of workers	As a % of total employment	Gross value added (£bn)	As a % of gross domestic product (GDP)
Restaurants and mobile food service activities (1)	89,130	1,071,000	4.8%	22.3	1.0%
Beverage serving activities (2)	37,544	493,000	2.2%	11.4	0.5%

[5] Several restaurant chains have changed their 'tipping policy' since 2015. See, for example, the following reports from the BBC and the Guardian:
https://www.bbc.co.uk/news/business-45701799

[6] The announcement is available at: https://www.gov.uk/government/news/new-legislation-to-ensure-tips-and-gratuities-go-to-employees

[7] Tipping industries have the following codes in the UK Standard Industrial Classification of Economic Activities 2007 (SIC 2007): Restaurants and mobile food service activities (5610), Beverage serving activities (5630), Hotels and similar accommodation (5510), Taxi operation (4932), Gambling and betting activities (9200) and Hairdressing and other beauty treatment (9602).

[8] Our analysis of the ONS Annual Population Survey (which covers the period June 2020-July 2021) shows that 99% of jobs in tipping industries are in the private sector. With the data source subject to sampling errors, we round this to 100%.

Hotels and similar accommodation	9,889	369,000	1.6%	13.8	0.6%
Taxi operation	8,038	209,000	0.9%	1.2	0.1%
Gambling and betting activities	1,026	82,000	0.4%	6.4	0.3%
Hairdressing and other beauty treatment	43,437	319,000	1.4%	3.8	0.2%
Restaurants, pubs and bars (1 + 2)	126,674	1,564,000	7.0%	33.8	1.5%
All tipping industries	189,064	2,543,000	11.3%	58.9	2.6%

Gross value added figures are at current prices. Employment and GDP for the UK economy (used to calculate percentages) come from the Business Population Estimates and GDP quarterly national accounts, respectively.

Source: ONS Annual Business Survey, 2019 final results (inflated to 2021 prices)[9]; Business Population Estimates 2021[10]; GDP quarterly national accounts Q1-Q4 2020[11], BEIS's calculations.

11. Tipping practices vary dependent upon the sector and type of establishment. Nevertheless, in the hospitality sector, there are generally two types of payments for service: firstly, tips and gratuities which are freely given and can be paid in cash or by card; and secondly, service charges (optional or not) which are often added as a percentage of the bill and can also be paid in cash or by card. The legislation proposed by the government covers all these types of payments for service (including non-optional service charges), which will hereafter be referred to as 'payments for service'.

12. There is sometimes another type of payment for service, namely cover charges, but these are rarer and often mandatory, and they do not benefit workers. The government is of the opinion that cover charges are a supplement to the price of the core service (i.e. the price of menu items) and should not be covered by the policy. Definitions of the different payments for service, legal ownership and tax rules are given in annex B.

Rationale for intervention

Equity considerations

13. The average pay of workers in tipping industries is below economy-wide average pay levels (mean pay is between £9.87 and £13.00 per hour compared to an economy-wide mean of £17.75, as shown in Table 2 below). Many of these industries have been identified by the Low Pay Commission as a 'low-paying sector' (namely restaurants and mobile food service activities, beverage serving activities, hotels and similar accommodation and hairdressing and other beauty treatment)[12]. This means that they employ a high number or large proportion of low-paid workers (that is, workers paid within 5p of the relevant minimum wage rate). For example, in the hospitality sector[13], 38% of workers are projected to earn the National Minimum Wage rate in 2022[14].

14. In this context, payments for service can be a significant part of workers' income and deductions made on these payments adds to the inequality between workers in these industries and those in the wider economy. Ensuring that payments for service will go to them in full would provide a better and fairer deal for workers.

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[9] Available at: https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/bulletins/nonfinancialbusinesseconomyukandregionalannualbusinesssurvey/2019finalresults

[10] Available at: https://www.gov.uk/government/statistics/business-population-estimates-2021

[11] Available at: https://www.ons.gov.uk/economy/grossdomesticproductgdp/timeseries/ybha/pn2#othertimeseries

[12] National Minimum Wage Low Pay Commission Report 2018, page 233. Available at: https://www.gov.uk/government/publications/national-minimum-wage-low-pay-commission-2018-report

[13] The hospitality sector is defined as the following SIC codes: Restaurants and mobile food service activities (5610), Beverage serving activities (5630), Hotels and similar accommodation (5510).

[14] BEIS analysis of ASHE data. Numbers published in NMW/NLW IA 2022

Table 2: Average (mean) hourly pay (excluding overtime) for employees in tipping industries, by industry, 2021

Industry	Mean hourly pay	Median hourly pay
Restaurants and mobile food service activities	9.87	8.95
Beverage serving activities	11.68	9.16
Hotels and similar accommodation	12.09	10.10
Taxi operation	10.10	9.09
Gambling and betting activities	13.00	10.29
Hairdressing and other beauty treatment	11.64	9.09
Whole economy	**17.75**	**14.25**

Source: ONS Annual Survey of Hours and Earnings 2021[15] and BEIS calculations. This survey covers only employees, not self-employed people.

Market failures

15. Many different practices for handling payments for service create a complex environment for consumers who wish to reward good service with these payments. This causes a form of imperfect information, whereby consumers are unsure how their reward will be passed on to workers and might make irrational choices as a result. According to a YouGov survey conducted in 2019 on 2,012 adults, 95% of people will leave a tip or service charge in some form or amount when paying at a restaurant. However, 64% of respondents are less confident that the waiter/waitress received the full tips when paid by card compared to leaving cash[16].

16. This could potentially lead to inefficient outcomes for the economy. For example, in a restaurant, consumers who do not know exactly how payments for service are distributed might leave too little or too much money compared to what they would have left otherwise, thus not rewarding the service that they receive at its fair value and giving staff the wrong incentives. By ensuring that all payments for service left for workers will go to them in full, the policy aims to address this market failure.

17. The fact that some employers make deductions from payments for service left by consumers constitutes another form of market failure in that they exert their market power to prevent these payments from reaching workers. In low-paying sectors, it is sometimes difficult for workers to change jobs, which can be due to a lack of information on outside opportunities or, in some localities, a lack of alternative employers. To a certain extent, employers therefore have a monopsony power and can increase their profits or lessen working conditions at the expense of workers. The policy also aims to address this market failure.

Policy objective

18. The policy aims to ensure that payments for service left for workers will go to them in full. This will end the unfair deduction practices that came to light in the responses to our Call for Evidence in 2015, and various other media reports and surveys in recent years, and contribute to the government's overarching objective that every worker is paid fairly for their work.

19. The new legislation introduces an obligation that employers in all sectors must not make any deductions from payments for service received by their staff other than those required under tax law and, moreover, that they must distribute them in a way that is fair and transparent. Supplementary guidance as to what a 'fair and transparent' handling of payments for service

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[15] Earnings and hours worked, industry by four-digit SIC: ASHE Table 16.6a. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2021

[16] https://docs.cdn.yougov.com/ex6qi9rqbb/YouGov%20-%20Tipping%20Results.pdf

means in practice will be published after passage of the legislation in the form of a statutory Code of Practice.

20. In practice, the new obligation will apply to individual premises or establishments, which means that payments for service could not be distributed across different establishments within a chain, and these payments will have to be distributed by the end of the month following the one in which they were received (assuming a monthly pay reference period which is the case for most NLW/NMW workers). Nevertheless, the guidance will allow the continuation of 'troncs', whereby payments for service are pooled and distributed by an internal or external troncmaster (who should not be the business owner), as well as informal pooling arrangements where there is no input from the employer or a troncmaster (see more complete definitions of existing handling arrangements in annex B).

21. Finally, employers will have to keep records of payments for service received and distributed, which are sufficient to demonstrate compliance. This mirrors existing record-keeping requirements specified in the National Minimum Wage regulations. Workers will have a right to access some of this information, allowing them to understand the amount of payments for service collected and how they are distributed.

Consultation

22. In May 2016, the government published a consultation document setting out its objectives with respect to payments for service and outlining several proposals to achieve these objectives. We believed that all payments for service should be subject to three policy objectives: they should be discretionary (it should be clear to consumers that they are voluntary), received by workers, and how the payments are treated should be clear and transparent to consumers and workers. The proposals, which can be found on pages 5 and 6 of the consultation document (see annex D), included options to prevent or limit the practice of employers charging an administration fee or making any other deductions from payments for service than those required under tax law.

23. We received 173 responses from consumers, workers and employers (see the government's response in annex D). Respondents were split when asked whether the current policy framework was 'appropriate to ensure that workers receive a fair share from discretionary payments for service'. However, among those who answered the question about which policy options would meet this objective, nearly 70% favoured workers retaining tips without any deductions by their employer, and the employer paying the costs of handling tips. Looking specifically at responses from employers' and workers' representatives, we found that most employers favoured non-legislative approaches to increase transparency and were not in favour of an outright ban on deductions from payments for service. Most trade unions thought that employers should not be able to make any deductions from payments for service.

24. Since our consultation, the government has continued to hold discussions with stakeholders, such as employers' and workers' representatives and lawyers specialising in employment law and the hospitality sector, and to monitor tipping handling practices in media reports. We have intensified these discussions in the months leading up to the introduction of the new legislation.

Policy options

25. This Impact Assessment considers two options which are assessed through a cost-benefit analysis and against the policy objectives set out above:

    <u>Option A</u> – Do nothing – that is, maintain the current policy framework in relation to payments for service.

    <u>Option B</u> – Legislate to introduce an obligation that employers must not make any deductions from payments for service, other than those required under tax law, and that they must distribute them in a way that is fair and transparent.

Option A: Do nothing

26. As previously mentioned, there currently exists a voluntary Code of Best Practice, which was published in 2009. This was developed in collaboration with industry, worker and consumer groups to improve information regarding the treatment of payments for service. In lieu of new legislation, the status quo would prevail and the Code of Best Practice would remain as the best source of information.

27. We do not favour option A. Despite the Code of Best Practice, campaigns by worker organisations and ongoing media coverage of the issue, transparency to consumers and deductions from payments for service remain a concern. As highlighted within responses to our Call for Evidence and consultation, there is a low level of awareness regarding how to treat payments for service, in addition to some confusion caused from other Codes being available[17].

Option B: Legislate to prevent employer deductions from payments for service

28. Our preferred option, option B, would prevent employers from making deductions from payments for service left for workers other than those required under tax law (to pay income tax and national insurance contributions). Businesses would incur transitional and recurring administrative costs to adjust to the new obligation as well as recurring policy costs due to the forgone deductions from payments for service. By contrast, workers would benefit from a transfer of income from businesses equal to the sums currently deducted from payments for service. In theory, there could be other, indirect impacts on prices and wages, but these are uncertain, and we do not monetise them as they are difficult to robustly estimate.

Other options considered:

29. The government has previously considered other options, that would look to increase transparency for consumers (by ensuring that discretionary payments for service are indeed 'discretionary') and/or updating the voluntary Code of Best Practice or applying a statutory Code of Best Practice.

30. We have decided against implementing these options, as we assessed that neither would meet the policy objectives. Reiterating the 'discretionary' nature of such payments would change behaviours only indirectly. With regards to the voluntary Code of Best Practice, while this self-regulation approach would avoid increasing the administrative burden on businesses, it would only affect those choosing to opt in. Considering responses to our Call for Evidence and consultation about the lack of effectiveness of the current Code of Best Practice and the persistence of unfair practices despite ongoing media coverage of the issue, we have not pursued this option.

Approach to appraisal

Framework for analysing impacts

31. The framework that we use to assess the impacts of our preferred option can be illustrated by a flowchart representing the flow of income from consumers to businesses to workers. In terms of payments for service, some are given directly to workers and retained in full by them, which constitutes a direct transfer between individuals. These are tips and gratuities paid in cash which are the property of workers (see legal ownership rules in annex B). However, most payments for service are paid by card and flow from consumers to businesses and then to workers. There is sometimes a disconnect as the sums paid by consumers do not flow to workers in full as consumers would expect because of the involvement of businesses. Indeed, service charges (regardless of the method of payment used), as well as tips and gratuities paid by card, are the legal property of businesses which can lawfully (if not morally) retain 100% of them. Our

[17] For example, UK Hospitality's Guidance on good practice principles for fair tipping. Available at: https://www.ukhospitality.org.uk/page/TipsTroncsCodeofPractice

preferred option would expedite this flow of income and allow workers to receive the full amounts that they are due.

Figure 1: The flow of payments for service from consumers to businesses to workers

32. Businesses sometimes use a tronc between stages 2 and 3 to pool payments for service and have them distributed by a troncmaster. The policy will allow the continuation of these arrangements whereby employers have no input in the allocation of payments for service among workers, as they will be deemed fair and transparent. Rather, the new obligation placed on employers will apply only at the stage where they make the payments for service available to the troncmaster.

33. The main groups affected by the policy would be businesses and workers. The former would incur administrative costs to adjust to the new obligation, and they would lose the income that they currently receive from making deductions from payments for service. The latter would benefit from a transfer of income from businesses equal to the sums currently deducted from payments for service. The net impact for society would be a small economic cost due to the administrative costs, as most of the impacts of the policy would take the form of a transfer of income.

34. There could potentially be some other, indirect impacts on businesses, workers, consumers and for the Exchequer but these are uncertain and we do not monetise them. For example, businesses could compensate their loss by increasing prices or decreasing wages. The policy could also encourage more businesses to use troncs, as these would be deemed fair and transparent, which would have implications for national insurance contributions collected by the Exchequer. We discuss these indirect, non-monetised impacts further below in paragraph 94.

Counterfactual

35. Our counterfactual is option A, the ‘do-nothing’ scenario. This option would maintain the status quo, including the current Code of Best Practice. As suggested by the persistence of deductions from payments for service in recent years despite ongoing media coverage of the issue, this would probably not result in any changes to practices of handling and distributing payments for service. We do not monetise the costs and benefits of this option, as there would be no new economic costs or benefits resulting from it and current transfers between consumers, businesses and workers would remain unchanged.

Appraisal period

36. As the policy does not include a sunset clause , we use a default time horizon of ten years to assess costs and benefits, as suggested by HM Treasury’s Green Book.

Data quality

37. There is no definitive source of data on the amounts of payments for service and deductions made by employers. National datasets about individuals from the Office for National Statistics (ONS), such as the Labour Force Survey (LFS) or the Annual Survey of Hours and Earnings (ASHE), do not provide estimates of payments for service per se. ASHE does provide data on ‘incentives’ and ‘other’ payments, but these represent a small share of the income of the workers in question, which is not consistent with evidence from this sector. Consequently, the analysis in this Impact Assessment utilises other sources.

38. The main sources of data used to inform our assumptions is our Call for Evidence, undertaken in 2015, a survey by 'The Staff Canteen' in 2019, and a YouGov poll in 2019. Arguably, these sources do not necessarily reflect the latest tipping practices, but they are the best available evidence and provide a conservative, upper bound to our estimates. This Impact Assessment accompanies a draft bill and we will look to refine our assumptions, where possible, prior to the publication of the final bill. Finally, estimates for the number, turnover and employment of businesses in tipping industries are taken from the ONS's Annual Business Survey, and estimates for card transactions from the trade association UK Finance.

Methodology for estimating payments for service and deductions

39. We estimate the amounts of payments for service and deductions only for restaurants, pubs and bars. For other tipping industries, the evidence we have both received and found has not robustly identified a similar issue being prevalent (for example, our Call for Evidence had representations from only 6 croupiers, who reported a practice of unfair deductions, and 1 taxi driver, compared to 54 responses from people working in hospitality). We therefore assume that they are already handling payments for service in a fair and transparent way. We acknowledge that this could potentially lead us to underestimate costs to businesses; however, we believe that this assumption is justifiable based on the evidence available.

40. Considering the lack of data on the amount of payments for service that are retained by employers in restaurants, pubs and bars, we use the turnover figures from the ONS's Annual Business Survey as a starting point. In restaurants, which exhibit the highest number of businesses and workers of all tipping industries, turnover was about £44.9 billion in 2021. In pubs and bars, it was about £25.2 billion. We consider these statistics to be robust evidence, as these two industries form part of a sector (accommodation and food service activities) which exhibits a high survey response rate (70.6% compared to a target of 69%)[18].To put them into perspective, turnover figures of other tipping industries are given in Table 3 below.

Table 3. Turnover of tipping industries, 2021

Industry	Turnover (£bn)
Restaurants and mobile food service activities (1)	44.9
Beverage serving activities (2)	25.2
Hotels and similar accommodation	23.1
Taxi operation	2.4
Gambling and betting activities	65.2
Hairdressing and other beauty treatment	5.0
Restaurants, pubs and bars (1 + 2)	70.1
All tipping industries	165.8

Source: ONS Business Survey 2019 results, inflated to 2021 prices using OBR GDP deflators.

41. The industry-specific guidance sent by the ONS to the Annual Business Survey's respondents in the 'catering' industry asks them to include in their turnover 'gratuities in the form of tips where collected with turnover and included in (their) accounts' and to exclude 'gratuities in the form of tips if they are not collected with turnover or not included in (their) accounts'[19]. Given the fact that businesses in the hospitality sector must include non-optional service charges in their VAT taxable turnover, but not other types of payments for service (tips, gratuities and optional service

[18] The target was communicated to BEIS by the ONS. The survey's quality measures are available at: https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/datasets/uknonfinancialbusinesseconomyannualbusinesssurveyqualitymeasures

[19] A 2011 version of this guidance is available at: http://doc.ukdataservice.ac.uk/doc/7451/mrdoc/pdf/7451_questionnaires_2011.pdf

charges)[20], and that they usually do the same in their financial accounts[21], we believe that turnover figures reported to the ONS are likely to include non-optional service charges but not other types of payments for service.

42. Nevertheless, we make the simplifying and conservative assumption that turnover figures do not include any payments for service at all, as we do not know the proportion of non-optional service charges out of total payments for service – although it is likely to be small considering the potential tax advantage for optional payments for service (see annex B for more details). Our approach is therefore likely to slightly overestimate payments for service and deductions.

43. We use the turnover figures of restaurants, pubs and bars reported to the ONS for our central estimate. For our low and high estimates, we utilise the standard errors of turnover figures published by the ONS for these industries.[22] For example, for restaurants, the standard error of the turnover is £637m, which means that there is a 95% chance that that the actual turnover is within £44,889 +/- 1.96 * £637m – that is, between £43,640 million, which we use for our low estimate, and £46,137 million, which we use for our high estimate. For pubs and bars, the standard error of the turnover is £472 million, which means that there is a 95% chance that that the actual turnover is within £25,205m +/- 1.96 * £472 – that is, between £24,281 million, which we use for our low estimate, and £26,130 million, which we use for our high estimate.

Table 4: Turnover estimates in restaurants, pubs and bars (£bn, 2021 prices)

	Low	Central	High
Restaurants	43.6	44.9	46.1
Pubs and bars	24.3	25.2	26.1
Total	67.9	70.1	72.2

Source: Table 3 and paragraph 45

44. According to a 'The Staff Canteen' survey of 1,000 adults carried out by Perry's Chartered Accountants in April 2019[23], 7% of British people never leave a tip, so we can infer that 93% of customers do in some form. This is often 10% of the bill, with more than half of respondents saying the latter is a fair amount. We assume that these proportions have not changed and that they include all types of payments for service since consumers often believe that service charges (whether they are optional or not) are actually tips and gratuities, and we use this for our central estimate. For our low estimate, we use an OpenTable survey of 2,000 adults carried out by OnePoll in February 2015[24], which found that 87% of British people always leave a tip. For our high estimate, we use a YouGov survey conducted in 2019 on 2012 adults[25] which finds that 5% of customers never leave tips, so we can infer that 95% of customers do tip in some form. We have tested these assumptions and confirmed with stakeholders and industry partners that approximately 90% is a reliable figure, and companies adding a discretionary service charge to the bill report that a very high percentage pay the charge with a leading hotel group reporting the figure at 98%.

45. We estimate the amount of payments for service in restaurants in 2021 by multiplying the turnover (£44.9 billion) by the percentage of people leaving tips (93%) and then by the proportion of the bill left as a tip (10%), which gives £4.2 billion for our central estimate. This survey is likely aimed at mid- and high-end restaurants, where tipping is more prevalent than in the rest of the

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[20] See HMRC's guidance at the following links:
https://www.gov.uk/government/publications/e24-tips-gratuities-service-charges-and-troncs
https://www.gov.uk/guidance/catering-takeaway-food-and-vat-notice-7091
https://www.gov.uk/hmrc-internal-manuals/vat-supply-and-consideration/vatsc06130

[21] We have checked several restaurant chains' annual reports and their accounting policies, and some indicate that voluntary gratuities are not to be recognised as revenue.

[22] Annual Business Survey 2019 results: quality measures
https://www.ons.gov.uk/businessindustryandtrade/business/businessservices/datasets/uknonfinancialbusinesseconomyannualbusinesssurveyqualitymeasures

[23] Available at: https://www.thestaffcanteen.com/News/how-do-britons-like-to-tip-survey-reveals-uk-tipping-culture#/

[24] Available at: http://www.otpressblog.com/opentable-reveal-which-brits-give-the-top-tips/

[25] https://docs.cdn.yougov.com/ex6qi9rqbb/YouGov%20-%20Tipping%20Results.pdf

industry (e.g. take-away food shops and mobile food stands), so this is likely to be a conservative estimate. The same calculation for pubs and bars gives £2.3 billion of payments for service in 2021. Again, this is likely to be a conservative estimate, as tipping is arguably less prevalent in pubs and bars than in restaurants.

46. For our low estimate, we multiply the turnover (£43.9 billion) by the percentage of people who leave a tip according to the OpenTable survey (87%), and then by the proportion of the bill left as a tip (10%), which gives £3.8 billion. The same calculation for pubs and bars gives £2.1 billion of payments for service in 2021.

47. For our high estimate, we multiply the turnover (£46.1 billion) by the percentage of people who leave a tip according to the OpenTable survey (95%), and then by the proportion of the bill left as a tip (10%), which gives £4.4 billion. The same calculation for pubs and bars gives £2.5 billion of payments for service in 2021.

Table 5: Value of payments for service (£bn, 2021 prices)

	Low	Central	High
Restaurants	3.8	4.2	4.4
Pubs and bars	2.1	2.3	2.5
Total	5.9	6.5	6.9

Source: paras 46-47

48. We know that the value of card payments for restaurants was £37.6 billion in 2019 (the latest pre-pandemic data available), according to figures from UK Finance[26]. We assume that this includes payments for service paid by card. For time consistency, we use the 2019 turnover of restaurants (£42.1 billion) and the payments for service in this industry (£3.9 billion in 2019 prices), and subtracting from this the value of card payments (£37.6 billion), we find the value of cash payments in restaurants (£8.7 billion). We assume that these include payments for service made in cash. Dividing the value of cash payments by the total value of payments gives the proportion of payments made in cash in restaurants (18%), and the proportion of payments made in card (82%). We assume the same proportion for pubs and bars. We use this as our central estimate for the ratio of cash to card payments and assume that this proportion has not changed drastically over time. Stakeholders have broadly agreed that this is correct based on our engagement with them.

49. The proportion of customers who said that they 'preferred' to leave a tip in cash in their response to our Call for Evidence was 67%. This gives a low estimate because a higher proportion of payments made in cash results in lower costs to businesses with our methodology, as deductions are less prevalent when it comes to payments for service in cash. Indeed, this reflects 'preferences' which do not necessarily always translate into actual payments and these preferences have probably evolved since our Call for Evidence in 2015 as card payments have become more prevalent in the whole economy. For our high estimate, we assume that 100% of tips are now made on card given the movement to cashless payments throughout the pandemic.

50. We then apply the central estimate (18% for cash and 82% for card) to the amount of payments for service (£4.2 billion) to obtain an estimate of the payments for service made in cash (£0.8 billion) and by card (£3.4 billion) in restaurants. The same calculation for pubs and bars gives £0.4 billion and £1.9 billion, respectively.

Table 6 Value of service payments made in cash and card in restaurants, pubs, and bars (£bn, 2021 prices)

	Low	Central	High (100% for card)

[26] Card Expenditure Statistics – October 2021, Table 3F (data covering the January – December 2019). Available on request at: https://www.ukfinance.org.uk/

	67% for cash and 33% for card	(18% for cash and 82% for card)	
Restaurants			
Cash	£2.5 bn	£0.8 bn	£0.0 bn
Card	£1.3 bn	£3.4 bn	£4.4 bn
Pubs and bars			
Cash	£1.4 bn	£0.4 bn	£0.0 bn
Card	£0.7 bn	£1.9 bn	£2.5 bn

Source: paras 48-50

51. Finally, we estimate the value of deductions from payments for service based on the responses to our Call for Evidence from people working in the hospitality sector. In particular, 40% of respondents reported deductions from payments for service in cash and 65% from payments for service by card. We use these proportions for our central and high estimates, but lower percentages (35% and 60%, respectively) for our low estimate, assuming that businesses have improved their practices since then. However, many respondents did not provide a figure for the average amount of deduction and those that did choose to answer this question are more likely to have experienced deductions. Therefore, due to this sample bias, we do not use the responses to our Call for Evidence about the average amount of deductions.

52. Based on engagement with stakeholders, we instead use 5% as the central estimate for deductions as this is the accepted norm and anything above this is seen as unusual. For our low estimate, we use 2% for the proportion of deductions as this is seen by industry as the average amount to cover the cost of card fees and commissions. Finally, we assume 10% for our high estimate to capture those firms that deduct more.

53. Applying these proportions to the amounts of payments for service calculated above gives central estimates of deductions of £15 million on payments for service in cash and £111 million on payments for service by card in restaurants in 2021; and £9 million and £62 million, respectively, in pubs and bars.

54. In sum, total deductions of £126 million in restaurants and £71 million in pubs and bars represents 0.28% of these industries' turnover. Table 4 summarises the key figures and assumptions described within this section.

Table 7: Total deductions on payments for service (£m, 2021 prices) [27]

	Low	Central	High
Restaurants	£33 m	£126 m	£285 m
Pubs and bars	£18 m	£71 m	£161 m
Total	£51 m	£197 m	£446 m
% of turnover	0.08%	0.28%	0.62%

Source: paragraph 51

Costs and benefits of preferred option

Businesses

Transitional costs

55. Businesses would first incur transitional costs because of the new obligation. These would consist of familiarisation costs and other one-off administrative costs due to necessary changes to workers' contracts and payroll systems. All businesses in tipping industries would incur

[27] In the central estimate, deductions from cash payments are calculated as £0.8bn x 40% x 5% for restaurants and £0.4bn x 40% x 5% for pubs and bars. For card payments this is calculated as £3.4bn x 65% x 5% for restaurants and £1.9bn x 65% x 5% for pubs and bars.

familiarisation costs, as they all potentially handle payments for service and would need to familiarise themselves with the new obligation placed on them. However, only businesses which do not currently comply with the new obligation would incur the other one-off administrative costs, as already-compliant businesses would not need to change their workers' contracts and payroll systems. Finally, although the new obligation will be applicable to all sectors, we assume that businesses in non-tipping industries would not incur any of these other transitional costs, as they do not handle payments for service at all.

56. In practice, businesses would need to mobilise managers, HR managers, lawyers and / or IT service providers for a certain number of hours to carry out these tasks (which we outline below). Transitional costs are therefore estimated by multiplying the average hourly pay of professionals with the required skill, uplifted by non-wage labour costs[28], by the number of hours required to perform these tasks and then by the number of businesses or workers affected.

Familiarisation costs

57. We assume that all businesses in tipping industries would need to familiarise themselves with the new obligation. While this assumption may somewhat overestimate the number of businesses affected, as not all these businesses necessarily handle payments for service, it may also overlook some smaller industries which do handle payments for service (for example, babysitting, newspaper delivery or milk delivery). We therefore consider this assumption to be broadly reflective of the businesses where tipping is prevalent.

58. We further assume that the HR manager or director would be responsible for this in all businesses. Using 2021 data from the Annual Survey of Hours and Earnings[29], we estimate £26.53 as the mean hourly pay (excluding overtime) of these professionals (and £31.28 when non-wage labour costs are included).

59. To inform the range of time taken for familiarisation, we have made use of the responses to a BEIS commissioned survey of employers, undertaken by YouGov. For a question on the time taken to familiarise (e.g. understand what the requirements and basic processes are) with the current statutory flexible working policy, the most common responses were 30 minutes to 1 hour (31%). Around 22% of businesses indicated that familiarisation would take more than an hour whilst 48% indicated less than 30 mins (with most of these responses in the 10 to 30 mins range). As a result of these responses, we use 30 mins as our central estimate, 10 mins as our low estimate, and 60 mins as our high estimate. This includes the time taken to locate the new legislation and supplementary guidance, read them and understand their implications. The government will provide guidance that is easy to access and understand, similar to the guidance published for the National Living Wage and National Minimum Wage[30]. As the new, light touch record-keeping requirements would also mirror those set out in the National Minimum Wage Regulations 2021[31], we do not anticipate that they would entail much additional familiarisation time.

60. The assumption of 30 mins to familiarise with a change to employment legislation has been commonly used in previous Impact Assessments (e.g. the National Living Wage in 2016, Employment Rights (Miscellaneous Amendments) Regulations 2019, and Agency Workers (Amendment) Regulations 2019). Based on the responses to the YouGov survey, we have used 10 mins as the lower bound: for example, this could apply to businesses that already have tronc systems in place or are already following government guidance. This matches the approach taken in the National Minimum Wage Impact Assessment for familiarisation with a minor change which would have straightforward implications for businesses.

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[28] 17.9% of wages, according to ONS data. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/indexoflabourcostsperhourilch/julytoseptember2020

[29] Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14.6a. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashetable14

[30] Available at: https://www.gov.uk/national-minimum-wage

[31] Available at: https://www.legislation.gov.uk/uksi/2021/329/contents/made

61. We estimate familiarisation costs to be £5.22 per business in our low estimate, £15.64 in our central estimate, and £31.28 in our high-cost scenario. With a total of 189,064 businesses in identified tipping industries, we can estimate total familiarisation costs to be approximately £3 million under the central scenario.

Other one-off administrative costs

62. Businesses would incur other one-off administrative costs due to necessary changes to workers' contracts and payroll systems. However, only businesses which do not currently comply with the new obligation would incur these costs, as already-compliant businesses (i.e. already-compliant businesses in hospitality as well as all businesses in other tipping industries, as these are already compliant by assumption) would not need to change their workers' contracts and payroll systems. We use the responses to our Call for Evidence and the proportion of people reporting deductions from payments for service by card (65%) to determine the proportion of workers and businesses who would find themselves in a non-compliant situation after passage of legislation. We also assume that respondents were equally distributed among different types of businesses. We use this data to assume that 65% of businesses are non-compliant with the code of best practice and would therefore incur costs from the new legislation.

63. As far as changes to workers' contracts are concerned, we assume that businesses would employ a lawyer (or staff with equivalent expertise, either in-house or externally) to agree the appropriate changes and would then incorporate these in their worker's contracts. According to recent consultation with the industry, it is rare to find contracts which state the conditions for handling and distributing payments for service or for deducting administrative charges, so assuming that all non-compliant businesses would need to change their workers' contracts is a conservative assumption. The mean hourly pay (excluding overtime) of a lawyer is £44.20 (and £52.11 when non-wage labour costs are included), according to provisional data from the Annual Survey of Hours and Earnings for 2021.[32] We assume that it would take about 30 minutes to draw up the appropriate amendments, based on the time required to amend a written statement of employment particulars, according to the Employment Law Admin Burdens Survey 2008[33]. We also assume that businesses would then be able to copy and paste these amendments in their workers' contracts without incurring further costs. There should be no need for discussions or negotiations with workers, as these changes would increase their income.

64. Multiplying the hourly pay of a lawyer by our assumption about the time required to amend a contract and then by the number of businesses which are currently non-compliant gives £2.1 million for total costs of changes to workers' contracts – that is, about £26 per business on average.

65. As far as changes to payroll systems are concerned, we consider, based on recent contacts with the industry, that medium and large businesses would simply need to amend a function making deductions in their system (or add a type of payment and leave it untaxed) rather than order more structural changes to their software; however, small and micro businesses are more likely to spend more time to make necessary changes, possibly in a manual way. We therefore assume that the former would not incur any costs and that the latter would need to contract an IT service provider for an hour to change their system. We have consulted payroll professionals through the Chartered Institute of Payroll Professionals (CIPP) on this question and the majority of responses were in line with our assumption. The hourly wage (excluding overtime) of the relevant IT service provider is £26.44 on average (and £31.17 when non-wage labour costs are included), according to provisional data from the Annual Survey of Hours and Earnings for 2021.

[32] The hourly wage of lawyers is the median hourly pay (excluding overtime) of Legal professionals N.E.C. (2419) in the SOC (Standard Occupational Classification) 2010, whose tasks include 'drafting and negotiating contracts on behalf of employers', according to the ONS's description of this unit group.

[33] 30 minutes is rounded up from 27 minutes, corresponding to the time required to carry out the tasks 'Gather' and 'Prepare' mentioned in the survey. We have excluded the time required to perform the task 'Familiarise', as this is captured elsewhere in our analysis, as well as the tasks 'Report' and 'Meet', as we assume that there should be no need for additional discussions to address workers' concerns, since the change would increase their income.

66. As we did for the costs of changes to workers' contracts, we assume that only businesses which do not currently comply with the new obligation would need to make changes to their payroll system – which calculates and records workers' wages and any other items on their payslip. By contrast, already-compliant businesses would not need to make such changes and correct the way they calculate pay packets, as they do not make any deductions from payments for service.

67. Multiplying the hourly pay of an IT service provider by our assumption about the time required to make necessary changes to a payroll system and then by the number of small and micro businesses currently non-compliant gives £2.5 million for total costs for changes to payroll systems – that is, about £31 per business on average.

<u>Recurring costs</u>

Transfers from businesses to workers

68. Our preferred option would introduce an obligation that employers must not make any deductions from payments for service received by their staff, other than those required under tax law, and that they must distribute them in a way that is fair and transparent. It has become common knowledge that, in addition to deductions for tax purposes (i.e. to pay income tax and national insurance contributions), further deductions from payments for service are sometimes made to cover administrative costs associated with the collection and handling of these payments, such as credit card fees. We know from our Call for Evidence and further engagement with the industry that these deductions may also be used to cover certain HR costs (e.g. staff food and drinks, recruitment and training, team activities and rewards) or treated as part of the business' general income.

69. These additional deductions are often set at a percentage of payments for service, regardless of how much payments for service have been received, but they sometimes take the form of a 'table charge' or 'shift charge' based on a proportion of sales made during a particular period of work. To reduce the number of assumptions that need to be made, and therefore reduce the uncertainty of this analysis, when referring to deductions from payments for service, we assume that they are all set at a percentage of payments for service. As explained in paragraphs 43-51, we estimate that deductions from payments for service totalled £126 million in restaurants and £71 million in pubs and bars in 2021.

70. We do not attempt to forecast the evolution of payments for service in the future and assume that deductions would remain constant in the counterfactual. Indeed, the policy does not prescribe how businesses must present payments for service to consumers, for example by banning non-optional service charges, so we do not anticipate much change in tipping behaviours. If we were to move to a full 'opt in' system, whereby payments for service would be completely discretionary, it could potentially lead to a reduction in the amounts left by consumers. Moreover, tipping is related to social norms and feelings[34], which this policy does not aim to directly address, so behaviours are unlikely to change substantially. We address the impact of covid-19 on consumer behaviour in the risks section of this impact assessment.

71. The main recurring cost to businesses is a transfer from businesses to workers totalling 197 million per year (that is, an average of £2,392 per non-compliant business in the restaurant, pubs, and bars industry)[35]. Businesses may want to recoup these losses through lower wages, higher prices or other means, and we discuss these indirect impacts in the sections on workers and consumers (although we do not monetise them due to high uncertainty). However, on balance, we do not consider this to be likely as current deductions represent less than 0.3% of the turnover of restaurants, pubs and bars. In fact, as mentioned previously, several businesses have stopped making deductions altogether, seemingly in response to the government's Call for Evidence and consultation in 2015 and the more recent announcement of the tipping legislation plans, without lowering wages or increasing prices.

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[34] Otherwise, one-time customers would never leave payments for service, as explained by Azar (2003). 'The social norm of tipping: a review'. Available at: https://ideas.repec.org/p/wpa/wuwpot/0309006.html

[35] 2021 prices.

Other recurring costs

72. To make the policy enforceable, all tipping industries' employers will be required to keep records of payments for service received and distributed sufficient to demonstrate compliance. This mirrors similar light touch record-keeping requirements specified in the National Minimum Wage regulations. Although the new obligation will be applicable to all sectors, we assume that businesses in non-tipping industries would not incur the costs of maintaining such records, as they do not handle payments for service at all.

    We assume that the professional who would typically carry out this record-keeping task is the manager in small and micro businesses and a member of the HR department in medium and large businesses. The hourly pay (excluding overtime) of these professionals varies from £12.05 to £20.02 on average (and from £14.21 to £23.61), when non-wage labour costs are included), depending on the industry considered, according to provisional data from the Annual Survey of Hours and Earnings for 2021.

73. We estimate how long employers would need to spend every year to maintain records sufficient to demonstrate compliance. For our estimates, we use data on the time required to keep records of working time in the Employment Law Admin Burdens Survey 2008. We believe that this is an appropriate proxy as, in both instances, the information to be recorded is similar in complexity.

74. For our low estimate, we calculate 11 minutes per worker per year based on the time taken to carry out the 'Gather' and 'Prepare' tasks. For our central estimate, we use 20 minutes taken from the time needed to carry out the 'Gather', 'Prepare', 'Report', and 'Meet' tasks. For our high estimate, calculate 25 mins using the same tasks as the central estimate with the addition of 'Familiarise'.

75. As shown in Table 8 below, we weight the average wages by industry by calculating the proportion of employees in micro and small businesses (where the mean wage of a manager in the industry would apply) and in medium and large businesses (where the mean wage of a HR employee is used).

76. As shown in Table 8 below, multiplying the hourly pay of the relevant professionals by our assumption about the time required to maintain appropriate records every year and then by the number of employees in each tipping industry gives approximately 13 million for total record-keeping costs per year under the central estimate – that is, about £70 per business on average. Under the low estimate, total costs would be 7 million, and in the high-cost scenario they would total 16 million.

Table 8. Record-keeping costs (annual)

Industry	Number of businesses	Number of employees	Weighted average of wages (£)*	Time required to keep records (hours)	Record-keeping costs (£m)**
Restaurants and mobile food service activities (1)	89,130	1,071,000	12.38	354,001	5.2
Beverage serving activities (2)	37,544	493,000	13.20	162,953	2.5
Hotels and similar accommodation	9,889	369,000	13.81	121,967	2.0
Taxi operation	8,038	209,000	14.65	69,081	1.2

Gambling and betting activities	1,026	82,000	13.34	27,104	0.4
Hairdressing and other beauty treatment	43,437	319,000	13.58	105,440	1.7
Restaurants, pubs and bars (1 + 2)	126,674	1,564,000	/	516,954	7.7
All tipping industries	189,064	2,543,000	/	840,546	13.0

* Uplifted for non-wage labour costs (17.9%).
** 2021 prices.

Note – We calculate for each tipping industry the proportions of employees in small and micro businesses (with up to 49 employees) and in medium and large businesses (with at least 50 employees), based on the Inter-Departmental Business Register. The weighted average of wages is then obtained through the following calculation: (percentage of total employees in small and micro businesses * hourly wage of manager) + (percentage of total employees in medium and large businesses * hourly wage of HR administrative professional). The wages of managers are the median hourly pays (excluding overtime) of the following SOC (Standard Occupational Classification) 2010 unit groups taken from the Annual Survey of Hours and Earnings: Restaurant and catering establishment managers and proprietors (1223), Publicans and managers of licensed premises (1224), Hotel and accommodation managers and proprietors (1221), Managers and directors in transport and distribution (1161), Leisure and sports managers (1225), Hairdressing and beauty salon managers and proprietors (1253). As for HR administrative professionals, we use Human resources administrative occupations (4138) for all industries (one of their tasks is to 'implement and maintain HR records systems', according to the ONS's description of this unit group.

Source: ONS Annual Business Survey 2019 results; Annual Survey of Hours and Earnings 2021; Eurostat; Employment Law Admin Burdens Survey 2008; BEIS's calculations.

77. Under our preferred option, workers will also have a right to access some of the information recorded by their employers, allowing them to understand the amount of payments for service collected and how they are distributed and, if needs be, present a claim for breach in an employment tribunal. If workers exercise this right, businesses will incur costs to respond with the appropriate information. We assume that workers in tipping industries would want to check that they receive the payments for service that they are due once a year, perhaps at the same time as they declare their cash tips and gratuities to HMRC.

78. This could potentially be an underestimate for workers in hospitality, as deductions are widespread in this sector and workers might want to access the relevant information more than once a year, particularly in the first year of the policy. However, we consider that workers in other tipping industries are likely to request information less frequently than once a year, as deductions are not such an issue in these industries, and that the overall number of requests should taper off in the future as workers become confident that their employer is compliant. On balance, we believe that it is reasonable to assume that workers in all tipping industries would request information once a year on average, over the ten years of the appraisal period.

79. In line with our approach to record-keeping costs, we assume that the professional who would typically put together the information requested by a worker is the manager in small and micro businesses and a member of the HR department in medium and large businesses. For our central estimate, the time required to respond to one request for information is assumed to be about 54 minutes, based on the time required to provide a written statement of employment particulars, according to the Employment Law Admin Burdens Survey 2008[36]. This is a conservative assumption, as it could be argued that all employers would need to do is print off a sheet with the relevant information and hand it to the worker. This is supported by consultation with payroll professionals at the Chartered Institute of Payroll Professionals (CIPP) who suggested that the relevant information would be readily available. Therefore, we use 30 minutes for our low estimate and 90 minutes for our high estimate reflecting the uncertainty on how businesses will provide this information.

[36] 54 minutes correspond to the time required to carry out the tasks 'Gather', 'Prepare', 'Report' and 'Meet' mentioned in the survey. We have excluded the time required to perform the task 'Familiarise', as this is captured elsewhere in our analysis.

80. As shown in Table 9 below, multiplying the hourly pay of the relevant professionals by our assumption about the time required to respond to workers' requests for information every year and then by the corresponding number of workers in each tipping industry gives £44 million for total annual costs of responding to workers' requests for information – that is, about £17 per worker on average. For the low estimate, this would be £25 million (£10 per worker) and for the high estimate it would be £73 million (£29 per worker). It is worth noting that these are indirect costs, as they do not directly arise as a result of the legislative requirements, but rather depend on workers' behaviour and whether they choose to exercise their right.

Table 9. Costs of responding to workers' requests for information (annual)

Industry	Number of workers	Weighted average of wages (£)*	Total time required to respond across all workers (hours)	Costs of responding to workers' requests for information (£m)**
Restaurants and mobile food service activities (1)	696,150	14.23	1,253,070	17.8
Beverage serving activities (2)	320,450	16.00	576,810	9.2
Hotels and similar accommodation	369,000	18.76	332,100	6.2
Taxi operation	209,000	23.23	188,100	4.4
Gambling and betting activities	82,000	21.13	73,800	1.6
Hairdressing and other beauty treatment	319,000	16.17	287,100	4.6
Restaurants, pubs and bars (1 + 2)	1,016,600	/	914,940	27.1
All tipping industries	1,995,600	/	1,796,040	43.9

* Uplifted for non-wage labour costs (17.9%).
** 2021 prices.

Note – We assume that workers currently working in a non-compliant situation (i.e. 65% of workers in restaurants, pubs and bars) would want to check records of payments for service twice a year, whereas others (including in other tipping industries) would want to do so once a year. The weighted average of wages of the relevant professionals putting together this information is calculated like for record-keeping costs.

Source: ONS Annual Business Survey, 2019 results; Annual Survey of Hours and Earnings 2021; Eurostat; Employment Law Admin Burdens Survey 2008; BEIS's calculations.

81. The right will be enforced via the Employment Tribunal process and therefore we assume any additional enforcement burdens placed on compliant businesses above and beyond the record keeping requirements above would negligible. Currently there is no fee for respondents in tribunal cases and given our assumption of full compliance we expect most cases would be settled before reaching a tribunal.

Indirect impacts

82. Our preferred option will potentially benefit businesses through indirect channels. Firstly, it is possible that workers' renumeration may reduce staff turnover and disputes over the allocation of payments for service and improve the establishment's reputation and customer loyalty. Secondly, in the longer term, preventing employers from making deductions from payments for service, other than those required under tax law, can be considered as a simplification measure. Beyond the need for businesses to familiarise themselves with the new obligation and keep appropriate records, there would be slightly reduced complexity in payroll management (as there would be one less entry for deductions in the system and one less line on payslips), and managers and workers would spend less time discussing how payments for service are allocated. However, we do not have robust evidence indicating that these indirect effects would occur, so we do not monetise them.

Workers

83. Under our assumptions, most workers in restaurants, pubs and bars (those who currently experience deductions being made from payments for service), whose wages are below economy-wide pay levels on average, would directly benefit from the policy. Indeed, they would receive the sums previously deducted by employers from payments for service and see their overall remuneration increase. These transfers of income from businesses back to workers would be equal to the amount of current deductions calculated above, that is, £197 million per year[37]. More concretely, workers who currently work for a non-compliant business would receive, on average, about £194 more in payments for service every year compared to a situation where the status quo would be maintained. This is calculated by dividing 197 million by the number of workers who work for a non-compliant business (65% of 1,564,000 workers in restaurants, pubs and bars).

84. It could be argued that, since these transfers of income would mostly benefit low-paid workers, the policy would have positive distributional impacts. The Treasury's Green Book suggests that 'when assessing costs and benefits of different options, it may be necessary or desirable to "weight" these costs and benefits, depending on which groups in society they fall on', in addition to the unweighted costs and benefits. This is based on the principle of the diminishing marginal utility of income, whereby the value of an additional pound of income is higher for a low-income recipient than for a high-income recipient.

85. If we were to use the Green Book's estimate of the elasticity of marginal utility with respect to income (1.3, based on a review of international evidence[38]), benefits to workers would amount to about £601 million per year. Indeed, following the Green Book's guidance, a welfare weight can be estimated by dividing median earnings of all workers (£491 per week) by median earnings of workers benefiting from the policy (those who work in restaurants, pubs and bars) – £208 per week[39], and raising this number to the power of 1.3. This gives a welfare weight of about 3.05 (which compares with a generic welfare weight of 2.4 given by the Green Book), which we multiply by our best estimate of benefits (£197 million per year) to obtain £601 million per year. However, we acknowledge that workers benefiting from the policy may have varying degrees of elasticity of marginal utility, both above and below the estimate provided by the Green Book's methodology. We therefore provide this estimate only for illustrative purposes.

86. Importantly, tips do not count towards 'pay' for the purpose of determining National Minimum Wage compliance. We consider that it is highly unlikely that employers would reduce basic pay to offset these transfers of income, as pay levels are already low and close to the legal minimum in tipping industries. Indeed, most of them are 'low-paying sectors' according to the Low Pay Commission, which means that they employ a high number or large proportion of workers paid within 5p of the relevant minimum wage rate. For example, 70% of waiters earned no more than £8.74 an hour (excluding overtime) in 2021 and 75% of bar staff no more than £8.92 an hour[40],

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[37] 2021 prices.

[38] Layard et al. (2008). 'The marginal utility of income'. Journal of Public Economics, Vol. 92, pp. 1846-1857

[39] ASHE 2021 Table 16.2a. Weighted average of median earnings for SIC codes 5610 and 5630 using number of jobs.

[40] Source: ONS Annual Survey of Hours and Earnings 2021. Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14.6a. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashetable14

which is only slightly above the National Living Wage applicable in April 2021 (£8.91 an hour). This is due to the high proportion of young workers within the waiting staff occupation, where in some cases the lower age NMW rates are paid rather than the NLW rate. Consequently, we do not monetise this potential indirect impact.

87. Finally, there is a risk that employers adapt to the policy by scrapping service charges altogether and refusing to take any tips and gratuities, whatever the method of payment used. However, we believe that it is highly unlikely to materialise, as there is high competition in the tipping industries and workers could easily move to businesses that do accept tips. Indeed, some businesses are already compliant with the policy without difficulty; employers would still need to offer competitive reward packages to staff; and it would be against the wish of their customers in many instances.

Consumers

88. By ensuring that payments for service left for workers will go to them in full, the policy would end the complexity due to the existence of many different practices for handling and allocating these payments. Consumers in tipping industries who wish to reward good service would have the assurance that any payments for service will reach the workers who provide the service and, incidentally, they would be fully aware of the difference between the price of menu items and that of the service that they receive from workers. As a result, they would have better information to maximise their utility and give the right incentives. We do not monetise this welfare impact, as it would require us to make numerous assumptions.

89. Indirectly, it is possible that workers will be more motivated to provide a good service, as their remuneration would be more aligned with the quality of the service that they provide. Consumers, like businesses, would benefit from a better service. However, we do not have robust evidence indicating that this indirect effect would occur, so we do not monetise it.

90. An indirect cost to consumers would arise if businesses were to increase prices in response to the policy. For example, they could potentially inflate the price of menu items to recoup the sums that they can no longer deduct from payments for service. This would result in a cost to all consumers.

91. However, we do not anticipate such indirect effects to materialise for two reasons. Firstly, as mentioned previously, current deductions from payments for service represent less than 0.3% of the turnover of restaurants, pubs and bars, and corresponding losses could be absorbed. Secondly, competitive pressures are relatively high in these industries, according to some measures of market concentration[41], which would make it difficult for businesses to increase their prices without a decrease in demand. Consequently, we do not monetise these indirect effects. Impacts of Covid on the hospitality sector, and tipping practices in terms of consumer behaviour, are discussed in the risk assessment below.

Government

92. The policy will stipulate that employers must distribute payments for service in a way that is fair and transparent. Supplementary guidance will be developed as to what a 'fair and transparent' handling of payments for service means in practice after passage of the legislation, and it will ensure that arrangements where there is no input from the employer continue to exist. For example, troncs and informal pooling arrangements of cash tips could be presumed to be fair and transparent. In the case where a tronc exists, the new obligation of fairness and transparency would apply only at the stage where the employer make the payments for service available to the troncmaster.

[41] For example, in every tipping industry except gambling and betting activities, the share of the turnover of the 5 largest businesses was below the corresponding weighted average measure across 608 sub-sectors of the economy in 2015-16, according to the Resolution Foundation. Source: Tomlinson and Bell. (2018). 'Is everybody concentrating? Recent trends in product and labour market concentration in the UK'. Available at: https://www.resolutionfoundation.org/publications/is-everybody-concentrating-recent-trends-in-product-and-labour-market-concentration-in-the-uk/

93. This formulation could potentially encourage businesses who do not currently use a tronc to set one up, although this cost to businesses is not discussed as it is an employer preference to use a tronc rather than a legal requirement. As indicated in annex B, if payments for service other than mandatory service charges are allocated without the input of the employer (e.g. through a tronc), they can be exempted from the payment of both employer and employee national insurance contributions. As a result, if the policy encourages the use of properly managed troncs, the Exchequer's receipts could be affected. This may also favour troncmaster service providers.

94. However, we do not monetise this potential, indirect impact. Firstly, the potential losses for the Exchequer are expected to be very small relative to its overall income: they would most likely be in the order of tens of millions of pounds, given the scale of transfers occurring, compared to an overall income in the hundreds of billions. Secondly, the likelihood of this actually occurring in reality is not clear. In any case, although it is plausible that the impact would effectively be a transfer from one economic agent to another, there would be no impact on the Net Present Social Value of the policy.

Wider economic impacts

95. There may also be indirect impacts on the wider economy. This could include lower wage growth for workers in tipping industries in the future, and further increases in inflation if businesses try to recoup lost profits through higher prices. If businesses are unable to pass on higher costs to consumers, then there may be reduction in employment benefits (such as bonuses, staff discounts etc) or lower profits. These impacts are not monetised as they are long term, and highly uncertain. Moreover as the cost to businesses of no longer making deductions from tips are very small – less than 0.3% of the industries' total turnover – we do not think these impacts are likely to be significant. There may also be employment impacts through a displacement effect of workers moving into this industry due to higher, albeit potentially less stable, remuneration.

Risks and uncertainty

96. The main risk of our analysis relates to our evidence base. The appraisal of the main costs to businesses relies on the estimate of the number of deductions made from payments for service in the hospitality sector. To come up with this estimate, we use the responses to our Call for Evidence and the proportion of respondents who reported deductions made on payments for service both in cash and by card, as well as information from stakeholders. If employers no longer make these deductions, we might overestimate costs to businesses and, by implementing the policy, impose undue administrative costs on businesses as they adjust to the new obligation. While we are aware that several high-profile restaurant chains have voluntarily improved their practices since 2015, trade unions still make substantiated representations to the government about unfair deductions from payments for service, and reports of such deductions still appear in the press from time to time. Although practices have improved in some restaurants, we have evidence that it is not the case in all of them.

97. There is also the risk that there are impacts of the pandemic that we have been unable to capture in this analysis. It is unlikely that consumer and businesses behaviours have changed substantially throughout Covid-19, although in restaurants, pubs, and bars consumers may be less inclined to tip due to financial struggles and businesses may be more likely to increase the proportion of tips they deduct. It is also difficult to estimate the impact of changes in technology throughout the pandemic. For example, a vast majority of restaurants have gone cashless over the course of the pandemic, with increasing popularity for app-based delivery services and QR code ordering instead of table service. The taxi operation industry has also seen changes, with a greater consumer preference for card-based payments and use of services such as Uber.[42] As consumers are more likely to tip with cash payments, the reduction of these may mean that there are fewer tips in tipping industries than in previous years, and that the assumptions used throughout this impact assessment have been unable to fully capture the new climate. To mitigate this risk, we have tested all of our assumptions with stakeholders who have asserted that

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42 Workers in this industry, and other workers in gig economy jobs, will benefit from the policy unless they are self-employed as this group does not fall into scope of the legislation.

they are fair. As making assumptions about behavioural changes in relation to tipping practices is difficult, we have undertaken a sensitivity analysis with low and high estimates to best capture the uncertainty.

98. On the other hand, it is also possible that we underestimate the scope of the issue. We base our appraisal on the assumption that deductions from payments for service are prevalent in restaurants, pubs and bars, but not in other tipping industries, nor in other sectors of the economy. The risk is that such deductions do exist in these other industries (some of which have a high turnover, such as gambling and betting activities), and that we might underestimate costs to businesses by excluding these from the scope of the analysis. As previously mentioned, our assessment of the evidence suggests that it is right to assume that other tipping industries are not affected by the issue in the same manner.

99. Additionally, most of our estimates of administrative costs (stemming from changes to workers' contracts and payroll systems, record-keeping requirements and responses to workers' requests for information) rely on the government's Employment Law Admin Burdens Survey which dates to 2008. Business practices and HR management processes have arguably evolved since then, but we believe that our estimates are likely to err on the conservative side. Indeed, administrative burden was already on a downward slope at the time of the survey, according to government's report, and digitalisation has probably made the administrative tasks in question simpler and quicker to perform.

100. Finally, as explained throughout the Impact Assessment, we do not monetise certain indirect costs and benefits, as they are too uncertain. These include potential impacts on prices, wages and national insurance contributions, as well as effects on the quality of service, staff motivation and consumer behavioural changes in the future. These indirect impacts depend on the response of various economic agents to the new obligation. At one end of the spectrum of outcomes, employers could end up refusing to take any payments for service, whatever the method of payment used. However, we consider that this is highly unlikely for the following reasons: some employers already comply with the policy without difficulty; employers would still need to offer competitive reward packages to staff; and refusing to take any payments for service would be against the wish of customers in many instances.

Small and Micro Business Assessment (SAMBA)

101. Throughout this Impact Assessment we have assumed that a set of sectors ('tipping industries') would be affected by the change in policy. This includes: restaurants, pubs/bars, hotels, taxi operation, gambling and hairdressing. Table 10 provides a breakdown of the number of enterprises in these sectors by business size.

Table 10. Enterprises in tipping industries, by business size

Industry	Number of businesses	Micro	Small	Medium	Large
Restaurants and mobile food service activities	89,130	79.7%	18.6%	1.3%	0.4%
Beverage serving activities	37,544	66.3%	32.2%	1.4%	0.2%
Hotels and similar accommodation	9,889	44.9%	40.2%	13.3%	1.6%
Taxi operation	8,038	75.4%	20.3%	3.4%	1.0%
Gambling and betting activities	1,026	61.3%	27.4%	7.5%	3.8%
Hairdressing and other beauty treatment	43,437	91.6%	7.9%	0.4%	0.0%
All tipping industries	**189,064**	79.5%	18.5%	1.7%	0.3%

Source: Business Population Estimates 2021.

102. We note that introducing legislation so that employers can no longer make any deductions from payments for service received by their staff (other than those required under tax law) would impact small and micro businesses. As shown above, 98% of tipping industries' businesses are of small or micro size. This is of similar proportion to that of their representation across the whole economy – 98% of enterprises in the UK are small or micro businesses. In total, there are 114,080 small and micro enterprises in the restaurants, pubs and bars, and 187,995 small and micro enterprises in all tipping industries.

103. As outlined previously, certain costs from this policy are incurred solely by small and micro businesses. Discussions with experts specialising in the hospitality sector suggested that medium and large businesses would not face any cost when changing their payroll system to adjust to the new legislation – we believe that these businesses would simply need to switch off a function in their payroll system. However, we assume that small and micro businesses would need to contract an external IT service provider for an hour to amend their payroll and accounting systems. While this may be a conservative assumption for all small and micro businesses, it reflects the variation in payroll practices across employers of different sizes. However, it should be noted that these costs are small relative to the turnover generated by these businesses (0.012% of micro businesses' turnover and 0.004% of small businesses' turnover).

104. Nevertheless, we believe that excluding small and micro businesses from this legislation would have a significant adverse impact on the effectiveness of the policy, as it would curtail the benefits that some workers receive (through the additional share of income that they would receive from payments for service). Moreover, standard regulations ensure a level playing field for all businesses operating in the impacted sectors. Universality minimises complexity for businesses to understand and comply with the measures; and, similarly, universality helps to minimise enforcement costs Therefore, **we do not exempt** small and micro businesses. We outline some further reasons below.

105. Exempting small and micro businesses would enable them to make deductions from payments for service, to the detriment of low-paid workers. This could create certain economic inefficiencies.

a. It would create a distortion in the market by distorting cost-competitiveness at the expense of medium and large businesses, which would undermine competition.

b. There would be labour supply effect, with workers (especially the most productive ones) likely to favour working for larger businesses where they would receive a 'fair' distribution of relevant payments for service. This would leave less productive workers to work for smaller businesses, which could create a misallocation of resources.

106. Additionally, we expect that a large proportion of the costs from this policy would stem from workers receiving a proportion of their payments for service that were previously retained by businesses, specifically in restaurants and pubs and bars. This cost burden is placed on all relevant businesses, irrespective of size. However, while 98% of enterprises in these industries are small or micro businesses, we know that a much lower proportion (about 45%) of these industries' turnover is generated by small or micro businesses[43]. As the main cost to business depends on current income from payments for service, which is highly dependent on turnover, the majority of costs are expected to be borne by larger businesses. This is illustrated in Table 11 below.

Table 11. Annual costs of no longer making deductions, by business size; low, central and high estimates (£m, 2021 prices)

[43] Business population estimates 2021, table 7. Available at: https://www.gov.uk/government/statistics/business-population-estimates-2021

Business size	Low	Central	High
Micro (1-9 employees)	13.8	44.5	100.9
Small (10-49 employees)	14.0	45.1	102.3
Medium (50-249 employees)	5.8	18.8	42.7
Large (250 or more employees)	27.5	88.4	200.4
All businesses	61.2	196.9	446.2

Source: BEIS's analysis of turnover estimates from Business Population Estimates 2021, BEIS's cost estimates of no longer making deductions (explained in paragraphs 64-68).

107. We believe that all businesses in tipping industries, irrespective of business size, would need to familiarise themselves with the new policy. Additionally, we assume that all types of businesses in the hospitality sector would incur a cost in changing their workers' contracts. Therefore, these one-off costs are not disproportionately targeted on small and micro businesses within these industries. Table 12 below provides a detailed breakdown of each cost, by business size.

108. Responses to our Call for Evidence did not highlight whether small and micro businesses were disproportionately more likely to make deductions from payments for service (and therefore would be more affected by this policy). Evidence from the media does suggest that large enterprises were more culpable of making deductions from their workers' payments for service; however, this is not a robust conclusion, as there is an inevitable bias towards large businesses being reported in the national media compared to small and micro businesses.

109. Nevertheless, we are mindful of the additional burden that this policy would place on small and micro businesses. We will aim to mitigate impacts on small and micro businesses. The government will produce guidance on what a 'fair' and 'transparent' distribution of payments for service is, which will be easily available to businesses of all sizes to keep down familiarisation costs. We will continue to seek views from small and micro businesses (and their representatives) to understand what further measures would assist the transition of the proposed legislation.

Table 12. Summary of costs, by business size, central estimates (£m, 2021 prices)

Types of costs / business size	Micro	Small	Medium	Large	All
Familiarisation	2.4	0.5	0.1	0.0	3.0
Changes to contracts	1.6	0.5	0.0	0.0	2.1
Changes to payroll	1.9	0.6	0.0	0.0	2.5
No longer making deductions	44.5	45.1	18.8	88.4	196.9
Recordkeeping requirements	10.3	2.4	0.2	0.0	13.0
Workers' requests for information	10.8	11.3	5.3	16.5	43.9

Total costs	**71.5**	**60.4**	**24.4**	**105.0**	**261.3**

Source: BEIS' calculations.

Wider Impacts

Statutory equality duties

110. The policy would potentially benefit all workers to whom payments for service are due in tipping industries, barring any long-term impact on the viability of businesses in these industries – which we do not anticipate. Nevertheless, workers with protected characteristics represent a higher proportion of the total number of workers in tipping industries than in the UK workforce. Therefore, this policy would benefit these workers relatively more than others. When looking at all tipping industries in aggregate, this is the case for men, people of Bangladeshi and Pakistani heritage, people with no religion and people aged from 35 to 49. A full Equality Impact Assessment can be found in annex C.

Economic impacts – Competition Impact Test

111. The proposed change in legislation is not expected to give rise to any negative impact on competition, as the new obligation will be applicable evenly across the economy.

Social impacts

<u>Health and wellbeing</u>

112. The new obligation is not expected to give rise to any health and well-being impacts.

<u>Human rights</u>

113. The new obligation is not expected to give rise to any human rights impacts.

Family Test

114. We consider that this policy will provide a net benefit to families, by making increase wages through regaining tips and service charges. This policy results in a transfer from employers to employees, increasing the wage of workers in predominantly low paid industries such as hospitality.

115. Statistics produced by the ONS (2020) suggest that employment has grown more quickly for single parents and hence the effect of the proposed increase in incomes through tips is therefore likely to have a disproportionally positive effect on this group. We therefore believe that this policy will have a positive impact on families coping with couple separation.[44]

116. Finally, the LPC have previously provided some analysis on how wage increases in cash terms will benefit families.[45]

[44] https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/families/bulletins/familiesandhouseholds/2020

[45] LPC 2019 report: https://www.gov.uk/government/publications/low-pay-commission-report-2019

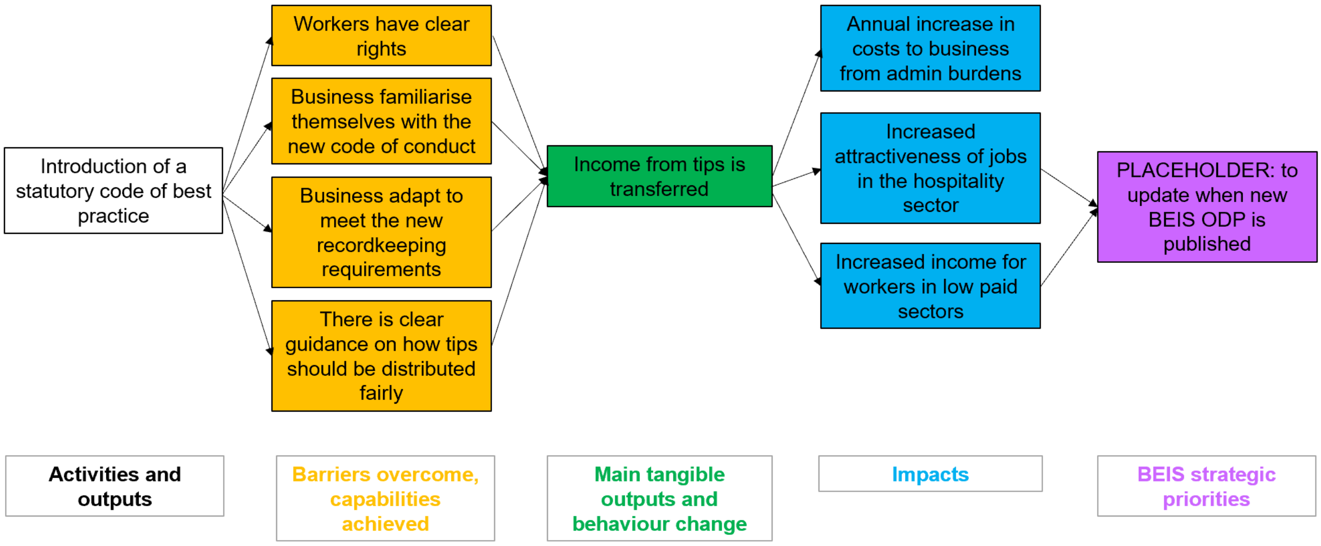
Monitoring and evaluation

117.To determine whether the policy has met its objectives, we will be monitoring its impacts as well undertaking a non-statutory post-implementation review (PIR) 5 years following its introduction.

118.The non-statutory PIR will seek to assess the following evaluation questions:

a. To what extent the policy has supplemented incomes for workers in tipping industries
b. Whether tips and service charges have been distributed fairly, and how this has been achieved.
c. If the burden on businesses is as estimated, including assumptions on recordkeeping, deductions, responding to requests for information, and any unintended consequences.
d. To what extent changes in consumer behaviour have affected tipping practices.

119.The Theory of Change below demonstrates how the introduction of a statutory code will lead to a transfer of income from businesses to predominantly low-paid workers, and the end impacts and benefits this will have. This is the causal basis on which we will evaluate the impact and success of the policy.



120.As such, we will use a range of data sources to assess the policy, particularly the 'impacts' stage of our Theory of Change. Firstly, we already have existing data that has been used throughout this impact assessment to inform assumptions to baseline the effects of this policy. This includes responses to our consultation and Call for Evidence on tipping deductions, stakeholder evidence on business practices, and ONS datasets such as ASHE and LFS to inform which sectors and workers are to be most impacted.

121.Moving forward, we will monitor and evaluate the impacts of this policy primarily by continuing to use ONS data and stakeholder engagement. For example, an increase in income for workers in low-paid sectors is the main impact of this policy. To assess this, we will hold discussions with stakeholders and workers to gauge whether they have seen a noticeable rise in income because of receiving all their tips. We can also use LFS and ASHE datasets to monitor the attractiveness of the hospitality sector, by analysing employment trends.

122.To monitor the extent to which tips have been distributed fairly, we can also assess non-compliance with the policy. We will look at the number of employment tribunal cases regarding tipping and service charges and their outcomes, using quarterly data. We will also consider additional data collection such as surveying workers in hospitality industries on how their employer collects and distributes tips. This would be commissioned out to external research companies, and any relevant findings would be available in publication of a report following completion.

123. We will primarily assess the administrative requirements placed on businesses through continued engagement with stakeholders. As per existing engagement with business representatives, we will be able to check in over the next 5 years to analyse the transitional and annual costs that businesses face. This would include the magnitude of familiarisation costs, adapting to new recordkeeping requirements, and responding to requests for information. Discussions with stakeholders informed the assumptions underpinning these costs in this impact assessment, and further engagement post-implementation is the most accurate way to monitor and evaluate this impact.

124. Finally, to monitor how consumer practices have changed in tipping, we would again consider commissioning survey or data collection methods to evaluate this. This research would examine how often consumers leave a tip, what proportion of the bill they usually leave, whether they pay a service charge or tip separately, and how confident they are that their server receives it.

125. Any engagement with stakeholders or analysis of published data will be undertaken by internal resources within BEIS, whereas any primary data collection or interview methods would be commissioned out to an external provider. The PIR published by BEIS will summarise the evidence that we gather on the policy's effectiveness, as well any learnings that can be applied to future policymaking.

Annexes

A – Current voluntary Code of Best Practice

The government previously worked with trade unions, business representatives and consumer groups to develop a Code of Best Practice on Service Charges, Tips, Gratuities and Cover Charges, which was published in September 2009. Businesses in all tipping sectors can sign up to it, including hotels and restaurants, gambling and betting outlets, hairdressing and other beauty therapy businesses, and taxi operations. The objective is to provide businesses with practical guidance on how to operate in a fair and transparent way and ensure that consumers have sufficient information to make an informed choice before they leave a tip or gratuity or pay a service charge.

Businesses participating in the Code acknowledge that the following four principles represent best practice in ensuring transparency in relation to service charges, tips, gratuities and cover charges:

- Businesses will clearly display on their premises prior to the point of purchase or choice their policy relating to mandatory and discretionary service charges, tips, gratuities and cover charges, and make this accessible.

- Businesses will have a process in place to deal with requests from customers about how and to whom all service charges, tips, gratuities and cover charges are distributed, and the level and purpose of deductions.

- Businesses should ensure that workers understand and are able to confidently explain the business' policy on service charges, tips, gratuities and cover charges to customers, or know where to direct customers for further information, and without risk of detriment.

- All workers should be fully informed on the distribution and breakdown of service charges, tips, gratuities and cover charges and the level and purpose of any deductions. Businesses should seek to reach agreement with workers on any change of policy.

Further details and examples of best practice are given in the Code.

B – Definitions and legislative frameworks

We used mainly the HMRC's guidance previously referenced and a guide recently published by the Hospitality Professionals Association (HOSPA) on tips and troncs[46] to outline the following definitions and rules.

Payments for service

Tips and gratuities are an uncalled for and spontaneous payment offered by a customer.

Service charges are an amount added to the customer's bill before it is presented to the customer. If it is made clear to the customer that the charge is a purely discretionary amount and there is no obligation to pay, the payment is a voluntary service charge. Where this is not the case, the payment is a mandatory service charge.

Besides payments for service, cover charges are a non-discretionary, mandatory amount added to the customer's bill, typically in respect of a specific item (such as bread or linen) or entertainment provided.

Methods of payment

All types of payments for service can be made with any method of payment (in cash, by credit/debit card, by cheque or other means).

Pooling and sharing arrangements

Troncs

A tronc is an arrangement by which payments for service are pooled and distributed to employees. It is up to the business to decide what proportion of the payments for service that are its property (see legal ownership rules below) is made available to the tronc. There is no obligation on the business to provide information on what proportion of these payments is retained and why. Cash tips and gratuities (which are not the property of the business) can be included in the tronc, provided the employees who own them give their agreement.

The employer may or may not be involved in deciding how the tronc's funds are shared among employees. If the employer decides not to be involved, she or he can appoint an internal or external troncmaster (who should not be someone involved in the strategic decision-making of the business), or allow staff to appoint one, who will be responsible for arrangements to share payments for service among employees. If the employer is not involved in the allocation, the sums made available to the tronc are exempt from national insurance contributions (see tax treatment rules below).

Informal pooling arrangements of cash tips and gratuities

To be accepted as informal by HMRC, a pooling arrangement must:

- Distribute monies at the end of a shift or a day and not accumulate funds over a longer period of time;
- Not amalgamate cash tips and gratuities with any tips or gratuities paid by card or any service charge proceeds;
- Not be dealt with by anyone who acts as a formal troncmaster;
- Not be managed, policed or controlled by the business.

Legal ownership

[46] Available at: https://www.hospa.org/en/weblog/2018/09/24/hospa-releases-detailed-guidance-tips-and-troncs-hospitality-industry/#.XD87J4qgK70

The proceeds of service and cover charges are the legal property of the business. This is the case regardless of the method of payment used. Amounts from tips and gratuities paid by card are also the property of the business. Consequently, 100% of these payments for service can lawfully be retained by the business.

Only sums from tips and gratuities paid in cash are the property of the employee who cannot be compelled to hand them over unless this has been agreed as part of the terms and conditions of employment, or the employee has been explicitly prohibited from accepting tips and gratuities from customers of the business.

Tax treatment

VAT

Payments for service are outside the scope of VAT when genuinely freely given. As far as service charges are concerned, if customers have a genuine option as to whether to pay them, they are not VAT taxable. However, mandatory service charges and cover charges fall within the VAT taxable turnover.

Income tax

All payments for service are subject to income tax, regardless of the method of payment used. If customers give tips and gratuities in cash directly to employees or leave them on the table and individual employees keep them without any involvement from the employer (including through an informal pooling arrangement), then PAYE (Pay As You Earn) does not apply and it is the responsibility of the employees to declare these amounts to HMRC. Otherwise, it is the employer (or the troncmaster) who must tax the payments for service at source.

When a tronc exists, two situations can arise[47]. Firstly, the employer is in possession of the funds. In this case, the employer is responsible for taxing the payments for service at source, even if it is the troncmaster who decides how they are shared among employees. Secondly, the employer has passed the funds to the troncmaster. In this case, the troncmaster is responsible for operating a PAYE scheme. It is worth noting that if the employer is involved in deciding how payments for service are shared among employees, or if mandatory service charges are distributed through the tronc, the employer is responsible for operating PAYE.

National insurance contributions

Any payment for service which is ‘of a gratuity’ or is ‘in respect of a gratuity’ (that is, all payments for service defined above except mandatory service charges and cover charges) is exempt from both employer and employee national insurance contributions (NICs) if it meets either of the following two conditions[48]:

- It is not paid, directly or indirectly, to the employee by the employer and does not comprise or represent monies previously paid to the employer, for example, by customers.
- It is not allocated, directly or indirectly, to the employee by the employer.

By definition, only cash tips and gratuities paid by the customer directly to the employee can satisfy the first condition. Any other payment for service passes through the employer’s hands. Arrangements where the employer is not involved in the allocation of payments ‘in respect of a gratuity’ satisfy the second condition. This is the case of troncs where someone other than the employer decides how funds are shared among employees.

[47] The legislation relating to arrangements to share payments for service is Regulation 100 of the Income Tax (Pay As You Earn) Regulations 2003. Available at: http://www.legislation.gov.uk/uksi/2003/2682/contents/made

[48] See paragraph 5, Part 10, Schedule 3 of the Social Security (Contributions) Regulations 2001. Available at: http://www.legislation.gov.uk/uksi/2001/1004/contents/made

Where an employer imposes a mandatory service charge (i.e. it is not 'in respect of a gratuity') and the money is paid out to employees, NICs are always due on the payments no matter what the arrangements are for sharing out the money.

Treatment for National Minimum / Living Wage purposes

Payments paid by the employer to the worker representing amounts paid by customers by way of a service charge, tip, gratuity or cover charge do not count towards minimum wage pay[49].

Consumer protection

The Consumer Protection from Unfair Trading Regulations 2008[50] protect consumers by prohibiting unfair commercial practices. In particular, traders are prohibited from misleading consumers in the way they provide (or fail to provide) information if such actions/omissions are likely to cause an average consumer to take a purchasing decision they would not otherwise have taken.

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[49] See the government's guidance on calculating the minimum wage, page 23. Available at: https://www.gov.uk/government/publications/calculating-the-minimum-wage

[50] Available at: http://www.legislation.gov.uk/uksi/2008/1277/contents/made

C – Equality Impact Assessment

Scope of this Equality Impact Assessment

Under the Equality Act 2010, the Department for Business, Energy and Industrial Strategy, as a public authority, is legally obligated to have due regard to equality issues when making policy decisions – the Public Sector Equality Duty – and in doing so:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

The protected characteristics consist of nine groups: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. This Equality Impact Assessment takes a summary view of the potential equality impacts of the policy designed to ensure that payments for service left for workers will go to them in full.

Background

In some industries, payments for service are a significant part of workers' income and ensuring that they will go them in full would provide a better deal for these workers who often are in low-paid jobs. For example, in restaurants, pubs and bars, 70% of waiters earned no more than £8.74 an hour and 75% of bar staff no more than £8.92 an hour in 2021[51], which is only slightly above the National Living Wage applicable in April 2021 (£8.91 an hour), which is the National Living Wage rate in force at that time. This is due to the high proportion of young workers within the waiting staff occupation, where lower NMW rates are paid rather than the NLW rate

Which protected groups are affected by this policy?

Overview

The industries that are expected to be the most affected are restaurants and mobile food service activities, beverage serving activities, hotels and similar accommodation, taxi operation, gambling and betting activities, hairdressing and other beauty treatment , with the main effects anticipated to be in restaurants, pubs and bars. We consider that the policy would not create any long-term viability issues for these industries and, as a result, that it would directly benefit workers to whom payments for service are due.

We use data from the Annual Population Survey, carried out by the Office for National Statistics (ONS) over the period April 2019-March 2020, to analyse the extent to which protected groups would benefit from the policy. This is the latest dataset available prior to the pandemic which may bias our results. The APS has the largest sample size of any household survey (approximately 320,000 respondents from England, Scotland and Wales) and provides employment data by industry for the following protected characteristics: age, disability, race, religion or belief, and sex. Data is not available for the other protected characteristics (gender reassignment, marriage and civil partnership, pregnancy and maternity, and sexual orientation), so these are not included in this Equality Impact Assessment. Our analysis considers people aged 16 or over who are in employment.

Analysis

Gender

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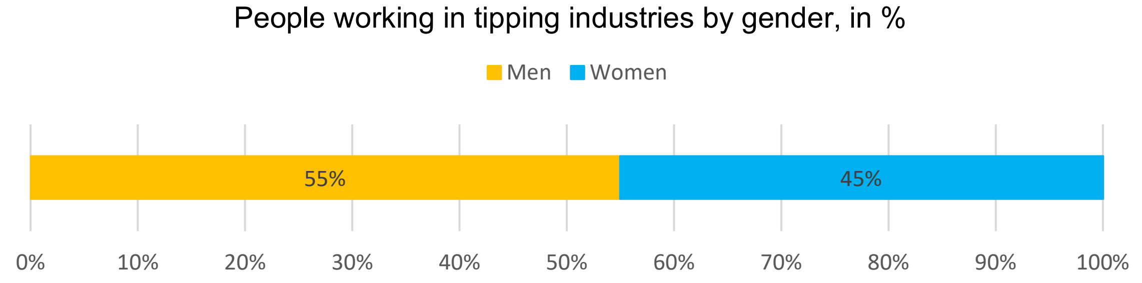
[51] Source: ONS Annual Survey of Hours and Earnings 2021. Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14.6a. Available at: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashetable14

Figure 2 below shows the gender breakdown of workers in tipping industries as defined above. About 55% of people working in these industries are men and 45% are women. By contrast, the UK workforce is made up of 53% men and 47% women. As a result, ensuring that payments for service left for workers will go to them in full could potentially have a disproportionately positive impact on men.

Figure 2: Workers in tipping industries are predominantly men



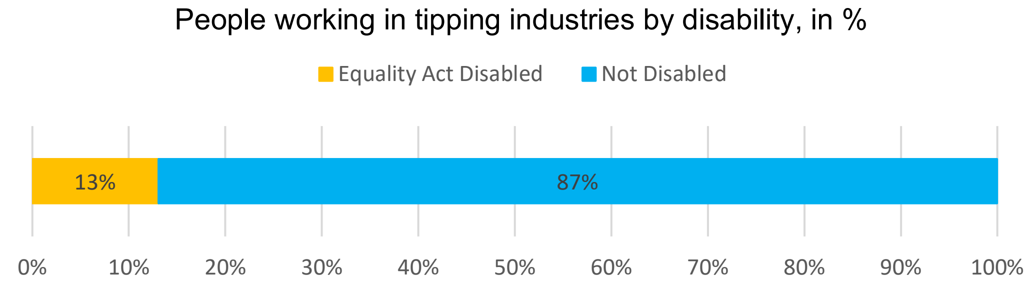
Source: Annual Population Survey, BEIS's calculations

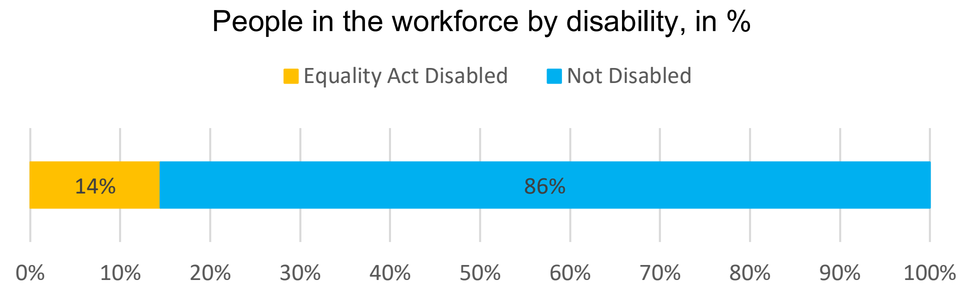
Nevertheless, looking at individual industries, the proportion of women is higher among people working in hotels and similar accommodation (55%) and in hairdressing and other beauty treatment activities (86%). The policy could potentially have a disproportionately positive impact on women in these industries.

Disability

About 13% of workers in tipping industries are considered to be disabled under the Equality Act 2010[52], compared to 14% in the wider workforce, as shown in Figure 3 below. Disabled workers are therefore likely to be slightly more affected by the policy than non-disabled workers.

Figure 3: Disabled people are represented almost evenly among tipping industries and the wider workforce





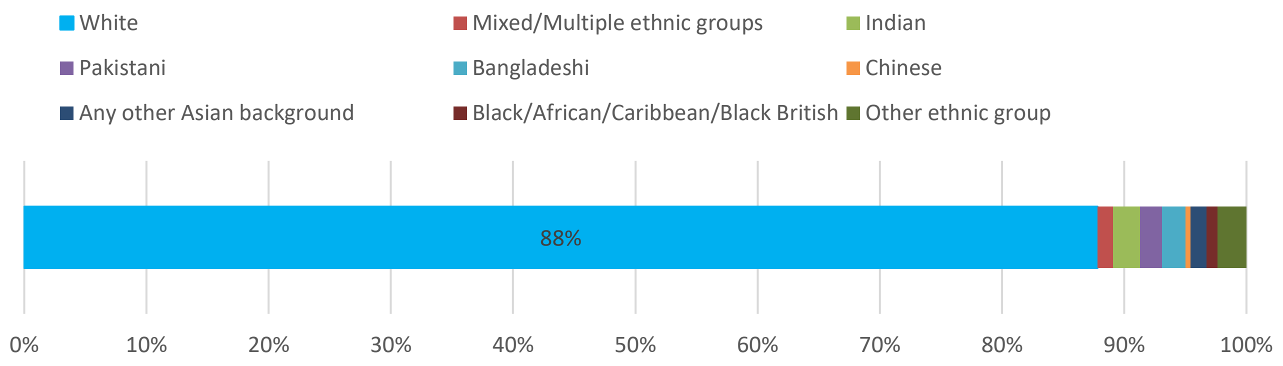
Source: Annual Population Survey, BEIS's calculations

Ethnicity

52 Under the Equality Act 2010, a person is considered to be disabled if he or she has a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on his or her ability to do normal daily activities.

Figure 4 below shows the breakdown of people working in tipping industries by ethnicity. White people represent about 88% of workers in these industries, compared to 87% in the wider workforce. The representation of other ethnicities is broadly in line with statistics for the wider workforce, except for people with a Bangladeshi background who are slightly more represented in tipping industries than in the wider workforce (2% versus 0.7%, respectively), which suggests that the policy could potentially have a disproportionately positive impact on this group.

Figure 4: Workers in tipping industries by ethnicity, in %



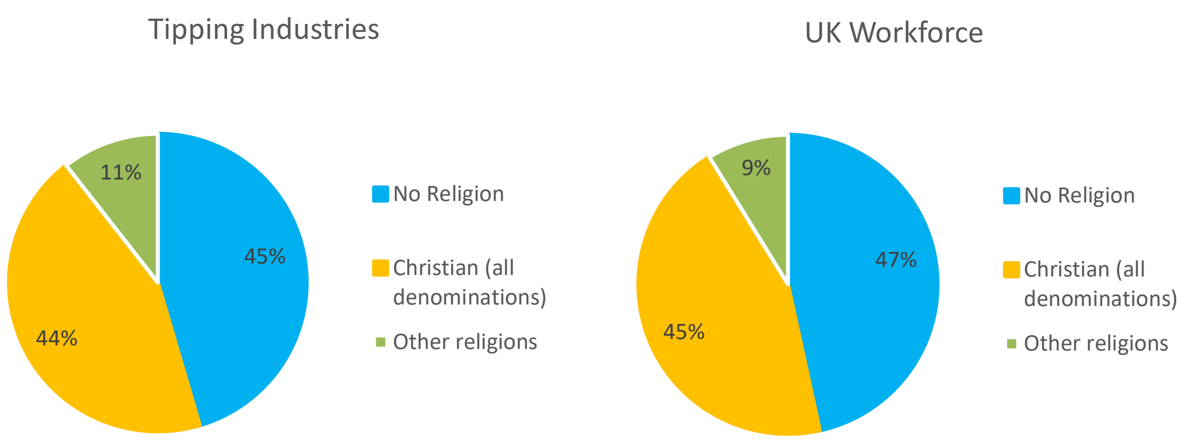
Source: ONS, BEIS's calculations

However, white people are more represented in certain tipping industries than in the wider workforce. For example, they account for 95% in pubs and bars, 91% in taxi operation, and 95% in gambling and betting activities as well as hairdressing and other beauty treatment activities (in each industry). Similarly, people with a Pakistani or Bangladeshi background are more represented in restaurants than in the wider workforce, accounting for 4% and 5% of workers in this specific industry, compared to 2% and 1% in the wider workforce, respectively. These groups could therefore be particularly more affected by the policy than other people in these specific industries.

Religion or belief

Figure 5 below shows the breakdown of people working in tipping industries by religion or belief. People with other religions are more represented in tipping industries than in the wider workforce (11% versus 9%, respectively), so the policy could have a disproportionately positive impact on them.

Figure 5: Workers in tipping industries and the wider workforce by religion or belief, in %



Source: ONS, BEIS's calculations

Looking at individual industries, there are more Muslim workers in restaurants than in the wider workforce (13% versus 4%); and more Christian workers in pubs and bars, hairdressing and other beauty treatment activities and taxi operation than in the wider workforce (50% in each industry, compared to 45%). The policy could therefore have a disproportionately positive impact on all these groups in these specific industries.

Age

The age distribution of people working in tipping industries is broadly in line with that of the wider workforce, except for people aged from 35 to 49 who are slightly more represented in tipping industries than in the wider workforce (36% versus 33%, respectively). As a result, the policy could disproportionately affect people in this age group.

Figure 6: Workers in tipping industries by age group, in %

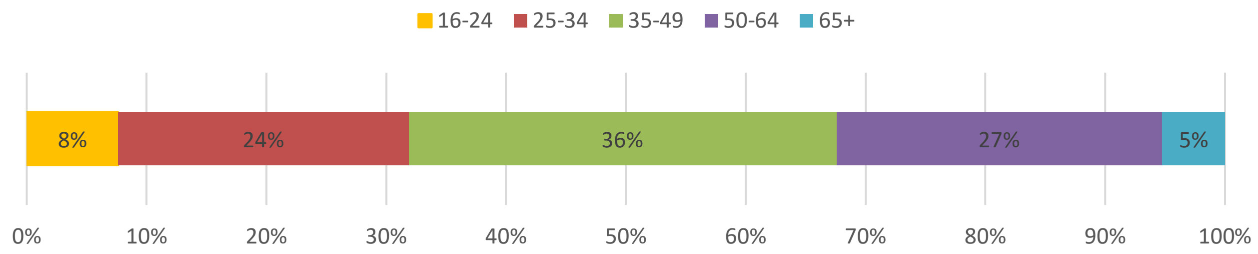
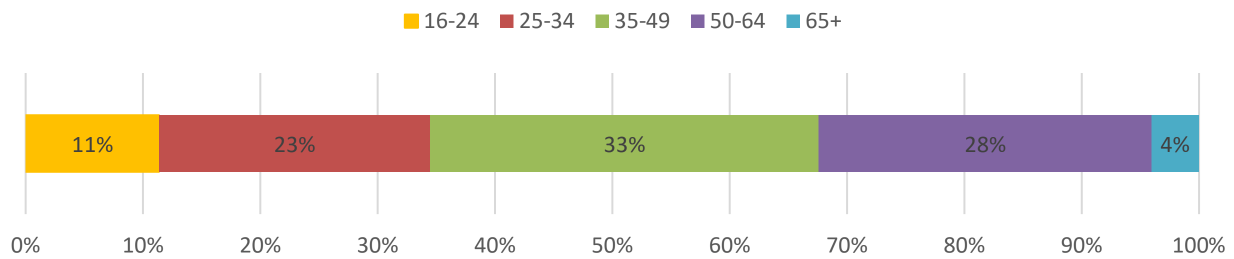


Figure 7: UK workforce by age group, in %



Source: ONS, BEIS's calculations

Delving into individual industries, people aged from 16 to 24 are more represented in pubs and bars (18%) than in the wider workforce; those aged from 25 to 34 are more represented in restaurants (31%), gambling activities (27%) and hairdressing (30%); workers between 35 and 49 years old are more likely to be found in taxi operation (45%), restaurants (38%) and hairdressing (37%); those from 50 to 64 years old are more predominant in hotels and similar accommodation (40%) and hairdressing and other beauty treatments (37%); and people aged 65 or over are more represented in hotels and similar accommodation (21%). These groups could potentially be disproportionally affected by the policy in these specific industries.

Conclusion

The policy would potentially benefit all workers to whom payments for service are due in tipping industries, barring any long-term impact on the viability of businesses in these industries – which we do not anticipate. Nevertheless, as our analysis of the Annual Population Survey data suggests, where workers with protected characteristics represent a higher proportion of the total number of workers in tipping industries than in the UK workforce, the policy would benefit these workers relatively more than others. When looking at all tipping industries in aggregate, this is the case for men, people of Bangladeshi and Pakistani heritage, people with no religion and people aged from 35 to 49.

D – The 2016 consultation on tipping

Pages 5-6

14.The Government believes that action is necessary to ensure any future discretionary payments for service meet these policy objectives. This consultation sets out the following options for change to achieve those objectives:

1) Ensure transparency to consumers that discretionary payment for service is just that – 'discretionary':

- Option 1A: The consultation asks for views on ways to ensure businesses make clear discretionary payments for service are just that - voluntary for the consumer;

- Option 1B: The consultation asks whether businesses should not be allowed to suggest a particular amount level of discretionary payment for service;

- Option 1C: The consultation considers the need for increased transparency regarding cover charges;

2) Ensure workers receive a fair share from discretionary payments for service.

- Options 2A, 2B and 2C: The consultation proposes options to prevent or limit the practice of additional charges on staff related to sales levels; and

- Option 2D: The consultation asks how well-managed tronc schemes can be encouraged which allocate tips across workers in a way which is agreed upon by the staff.

3) Increase transparency for consumers and workers regarding the treatment of discretionary payments for service. The consultation proposes options to:

- Option 3A: Update the current voluntary Code of Practice; and to

- Option 3B: Placing the voluntary Code of Practice on a statutory basis.