



Public Bill Committee on Employment Rights
Sent via email to scrutiny@parliament.uk

11 December 2024

Dear Public Bill Committee,

I am writing following the oral evidence I gave to the Public Bill Committee on Employment Rights on Tuesday 26 November. Alongside this letter, we have enclosed our formal written evidence to the Bill Committee on this matter, which will have a significant impact on hospitality businesses, and its employees.

As I emphasised during my evidence session, UKHospitality and the broader sector is supportive of the principle of the Employment Rights Bill as we strongly believe that balancing flexibility and making work more attractive is vital for ensuring a happy and productive workforce. We are therefore supportive of a number of measures included in the Bill, including those relating to family-friendly policies, unfair dismissal and union access.

We believe that the Bill is an ambitious step toward improving workers' rights, but its success depends on balancing these rights with the operational realities and growth needs of businesses large, medium and small. It is therefore vital that the Employment Rights Bill is not viewed solely through the prism of office jobs, which we believe has often been the case.

The Government should recognise the cost and operational challenges a number of the measures in the Bill will create for businesses, especially consumer facing ones, such as those in the hospitality sector. On the issue of the cost, the Budget, and particularly the employer NICs changes, have made the operational environment, into which the reforms will be introduced, much tougher. The sheer breadth of the Bill will itself result in significant costs in terms of operational and management time, systems and policy changes, as well as direct costs. Many of the reforms on their own are low-impact but the package combined is significant. We estimate that it will cost hospitality businesses in excess of £500 million per year.

As it moves towards implementation of the Bill, the Government should recognise the specific needs of sectors like hospitality that rely on flexibility and seasonal workers. For instance, 12-week reference periods for guaranteed hours contracts pose a significant challenge, especially for small coastal and rural hospitality and leisure businesses. We also believe that there are specific challenges around notice periods and shift compensations that require further clarification.

On the whole, whilst the Bill is vast, unfortunately in critical areas there is very little detail, which makes scrutiny incredibly difficult and implementation for businesses even harder. Our strong recommendation is therefore for the Government to allow adequate time for businesses, especially



smaller businesses, to adapt their operations and for the government to consult on specific aspects, such as notice periods and shift compensations, reference periods, and changes to the waiting period on statutory sick pay.

Thank you again for taking the time to hear from UKHospitality during the evidence session, and if any further information in addition to this letter or our formal response, please contact the team at policy@UKHospitality.org.uk.

Your sincerely,

Allen Simpson
Deputy CEO, UKHospitality



UKHOSPITALITY'S SUBMISSION TO THE PUBLIC BILL COMMITTEE ON THE EMPLOYMENT RIGHTS BILL

About UKHospitality

UKHospitality is the trade association for the nation's hospitality sector. Hospitality is a major part of the economy, employing 3.5 million people, generating £140 billion in economic activity and paying £54 billion in taxation. The sector is present in every part of the country.

Hospitality provides a wide range of employment. It frequently offers a first job, or an opportunity to return to the workforce. It provides flexibility so people, including students, carers and parents can work around their other responsibilities, while offering fast-track career progression.

Executive summary

- **UKHospitality supports the principles of the Bill** – balancing flexibility and making work more attractive is vital. However, we have concerns about some of the language that has been used around the Bill that has detracted from getting the details right. The Bill is an ambitious step toward improving workers' rights, but its success depends on balancing these rights with the operational realities and growth needs of businesses large, medium and small.
- **Cumulative costs on the sector:** The Budget, and particularly employer NICs changes, have made the operational environment, into which these reforms will be introduced, much tougher. The sheer breadth of the Bill will itself result in significant costs in terms of operational and management time, systems and policy changes, as well as direct costs. Many of the reforms on their own are low-impact but the package combined is significant.
- **Implementation:** the Government should recognise the specific needs of sectors like hospitality that rely on flexibility and seasonal workers. For instance, 12-week reference periods for guaranteed hours contracts pose a significant challenge, especially for small coastal and rural hospitality and leisure businesses.
- **Adequate time for transition and effective consultation:** UKHospitality strongly believes that the Government must allow adequate time for businesses, especially smaller businesses, to adapt their operations and therefore government must consult on specifics, such as notice periods and shift compensations as soon as possible with a substantial implementation period.

Summary of UKHospitality's key policy positions on the Bill

- **Zero Hours Contracts**
 - Extend the reference period for guaranteed hours to at least 26 weeks to accommodate for seasonality of hospitality businesses.
 - Clarify exclusions for fixed-term and genuine casual contracts.

- Simplify enforcement requirements, such as opt-out recordings and re-offering contracts after six months.
- The Bill is unclear on “reasonable notice” for Shift notice and cancellations, as well as the levels of compensation employees will have the right to.
- **Flexible Working**
 - Hospitality jobs inherently offer flexibility, but some measures in the Bill may limit hiring for flexible roles. Many roles in hospitality cannot accommodate remote work.
- **Statutory Sick Pay**
 - Support for deterring presenteeism but we have concerns over abuse and business costs.
 - Start sick pay from Day 2, not Day 1.
 - Set sick pay at 50% for workers earning below the lower earnings limit.
- **Family Leave**
 - Welcome removal of the qualifying period for paternity and parental leave and expanded eligibility for bereavement leave, despite potential business costs.
- **Protection from Harassment**
 - Support for protecting employees but request clearer definitions of “all reasonable steps” to avoid overburdening smaller businesses.
 - Advocate for sector-specific guidance and legislation aligned with existing good practices.
- **Unfair Dismissal**
 - We support Day 1 unfair dismissal rights with a 9-month probation period and a light-touch approach during probation.
- **Fire and Rehire**
 - Agree with addressing exploitative practices but we need clearer distinctions to avoid penalising reasonable contract changes.
- **Collective Redundancy**
 - We believe the existing system works well and oppose removing the "establishment" test or increasing penalties for breaches.
- **Industrial Relations**
 - We are concerned about removing the ballot turnout threshold and the 40% support threshold at recognition stage.
- **Enforcement**
 - We welcome the establishment of the Fair Work Agency to guide and enforce compliance but it’s important that it focus on guidance over punitive actions.

Context of the proposed measures in the Employment Rights Bill

The Employment Rights Bill will come at considerable cost to hospitality and leisure businesses, predominantly through a vastly increased administration burden. The sheer breadth of the Bill will itself result in significant costs in terms of operational and management time, systems and policy changes, as well as direct costs. Many of the reforms on their own are low-impact but the package combined is significant. We estimate that it will cost hospitality businesses in excess of £500 million per year.

The Bill therefore needs to be seen in the context of the recent Budget, and particularly the changes made to employer NICs, which have made the operational environment, into which these reforms will be introduced, much tougher. With businesses facing a £3.4bn bill following the Budget, hospitality and leisure employers are very concerned about how they can sustain current employment levels.

UKHospitality's detailed response to the key measures announced in the Bill

1. Zero hours contracts

16.9% of all hospitality workers are on Zero Hours Contracts, which is the highest proportion of any sector. 63% of workers on Zero Hours Contracts in hospitality are happy with the number of hours they work, and only 13% of workers on these types of contracts are looking for a new role.

We are therefore pleased that the Government has considered the views of employers and employees and moved away from a policy of an outright ban on zero hours contracts. However, challenges still remain with the government's proposals:

Guaranteed hours contracts

- **Reference period** – the current proposal of 12 weeks is too short for seasonal businesses. Ireland has a 52-week reference period, and the sector is generally supportive of this position. In order to provide a full assessment of the seasonal nature of hospitality, we recommend that the reference period is set to at least 26 weeks.
- **Clarity on exclusions** – we need the government to provide further details on the types of contracts excluded. For instance, fixed term contracts and genuine casual work. Clarity on genuine casual work is especially important for the contract catering sector, which supports many yearly events such as the Grand National, Wimbledon or Festivals, where people will work for 1 or 2 weeks so that they can support and attend these events.
- **Overly onerous enforcement** – we are concerned that there is a lack of clarity over what constitutes an offer of employment and that it should not be too onerous on employers. For instance, they should not need to draft a full contract and it should just involve a basic conversation with the employee on what their entitlement to a contract should look like. We believe it is clear that many employees in hospitality and leisure will not want to have a guaranteed hours contract. On this point, the recording of employee opt-outs should not be overly onerous for the employer. There should also be at least a 6-month period between having to re-offer a guaranteed hours contract if one has been turned down.

Notice of shifts and compensation for cancellation of shifts – we fully understand the principle underpinning these and our members always aim to provide good notice of shifts. However, there are a number of significant issues within the government’s proposals that need to be resolved:

- **Reasonable notice for changes in shifts** – we understand that this will be left open to Employment Tribunals to decide what is “reasonable”, which could be seen as pragmatic, however, it also adds to the uncertainty businesses are facing. Reasonable will mean different things in different circumstances – i.e. a last-minute replacement for a key member of the team who has been taken ill. It should also be noted that within hospitality and leisure, team members will often swap shifts between themselves and this should clearly not be impacted by legislative changes.
- **Levels of compensation** – we understand that this will be determined through consultation post-Royal Assent. This again adds to business uncertainty. We would welcome a flexible approach to compensation levels depending on the level of notice of cancellation of shift.
- **Notice of shifts** – most businesses aim to give a substantial period as it is good for the business and the employee. However, hospitality is a sector often governed by short-term demand and flexibility is crucial to meet business growth.
- **There is a specific concern around the definition of cancellation of shifts** – a business may ask its team members simultaneously, in order to be efficient, whether they are able to cover a shift, for instance through a WhatsApp group message, when someone calls in sick. Under current proposals we believe that this could be counted as an offer of work. If so, when more than one person wanted to work, then the others who had also offered to work may be able to claim cancellation of shift.

2. Flexible working

Hospitality brings jobs for everyone, everywhere, regardless of their circumstances or what they are seeking from work. By our nature, our businesses are flexible employers and allow people to work around their commitments as a carer, parent, student or their personal circumstances. 57% of the hospitality workforce work 30 hours or fewer a week, with 37% working 20 hours or fewer.

We are therefore concerned that some of the broader measures in the Bill seem intent on making it more difficult for our sector to hire people that want to work flexibly. Equally, there needs to be a balance in the type of flexibility – clearly many hospitality roles cannot be delivered from home, for example.

3. Statutory sick pay

We understand the Government’s rationale about deterring presenteeism when people have a contagious illness. However, we have concerns about the impact of this measure on absence levels, with it seemingly offering a greater incentive to take a ‘sick day’. More than 95% of member businesses have expressed concerns (71.1% very concerned and 24.4% somewhat concerned) about the Government’s plans to remove the existing requirements to serve waiting days before receiving Statutory Sick Pay. There are instances within hospitality and leisure, as with other sectors, of employees taking days off as sick at short notice due to myriad (often) unjustified reasons. Such instances directly impact the ability of a business to be able to operate effectively and could mean

them having to cancel bookings or even closing their business at short notice due to not having the required staff to provide the service. We have therefore recommended a compromise position of Day 2 of sickness for Statutory Sick Pay to apply.

Regarding the lower earnings limit, we asked our members to set out what percentage of average weekly earnings employees earning below Statutory Sick Pay should receive. There was a high degree of variance amongst the responses, however, it should be noted that more than 25% of respondents believed that those earning below the lower earnings limit should remain exempt from Statutory Sick Pay. These businesses noted that in many instances those working limited hours or earning below the threshold are not as dependent on income, often being students or young workers with fewer financial responsibilities, and perhaps even still living at home. As such there is real concern that there will be no motivation for individuals to attend work if they know they will receive some payment regardless.

However, as a sector we recognise the government's desire to ensure that where an employee is genuinely absent due to illness they should not be totally deprived of income, and they should be encouraged to take the necessary time off to recover. We are supportive of this principle. We do though need to recognise that the business, which must fund the cost, will inevitably need to bring in additional staff to cover the work and will therefore incur further costs. As such, we believe setting the amount of sick pay at 50% for those earning below the lower earnings limit strikes the right balance.

4. Family leave

Despite some of the family-friendly measures announced in the Bill potentially adding an extra-cost to business, our members are caring, flexible employers that work hard to motivate their staff. We therefore welcome and support the family friendly measures announced in the Bill, including removing the qualifying period for paternity leave and ordinary parental leave (so employees have the right from the first day of employment), and expanding eligibility for bereavement leave.

5. Protection from harassment

Hospitality employers work very hard to try and protect their employees and we recognise that there must be a duty of care placed on them. However, we believe that the current wording on expanding employers' duties to prevent harassment of staff is too vague and open-ended, which leads to the presumption that employers must police all conversations and behaviour. This is especially challenging for smaller businesses who might not have the operational capability to deliver widespread training, especially at time when many are facing challenging cost pressures.

Hospitality businesses of course want to protect their team members from sexual harassment and already do a lot in this area. We have worked with the Equalities & Human Rights Commission to provide sector-specific guidance. If there is a need to legislate, it should focus on existing good practice. We therefore support this measure, however, further clarification is required on the determination of "all reasonable steps".

6. Unfair dismissal

We are broadly satisfied with the intentions of the Bill to provide unfair dismissal rights from Day 1, subject to a 9-month probation period, and a genuinely light-touch approach to dismissal within that timeframe, as the Bill currently alludes to.

7. Fire and rehire

We agree with the principle that it should be unfair to dismiss employees because they refuse to agree to a fundamental variation of their contract, such as their salary. However, we are concerned that the wording in the Employment Rights Bill (Clause 22) is too wide. It should be possible to distinguish clearly between instances of egregious and malevolent behaviour by an unreasonable employer seeking to impose seriously inferior terms and conditions on an employee and reasonable or practical changes to contractual terms based on good faith. The fact that such a distinction is not made in the proposed legislation means that the law 'swings from one extreme to the other'. The well publicised cases where employers acted poorly need to be addressed by a more focussed and proportionate response.

8. Collective Redundancy

We share the government's belief in the value of collective consultation to prevent or reduce the number of redundancies when business re-structuring/re-organisation arises. We believe that the existing law works effectively and do not support the provisions in the Employment Rights Bill to remove references to 'one establishment'. Employers would need to look across their business 'as a whole' instead of 'an establishment'. Such a change would fail to take account of the fact that the return on investment/profit at an individual site or outlet is fundamental to maintaining and strengthening business value. It would mean that the law in the UK would be more onerous than EU countries where the 'establishment test' still applies. We need to have a system for distinguishing between a large - scale redundancy exercise and batches of totally unrelated redundancies, i.e. where the redundancies are not part of the same overall proposal.

We are not aware of any problems with the law as it stands and do not see the need for reform or to increase the penalties for those who are in breach. Since the number of cases of intentional breach appears to be so small, this suggests the existing penalties do act as a disincentive.

9. Industrial Relations

Hospitality is one of those sectors where there has never been an especially high level of union membership and experience of collective bargaining or industrial action is very limited. However, hospitality businesses do place consultation and responsible employee relations at the heart of their business strategy.

Nevertheless, we are affected by failures in collective bargaining or industrial action in *other* sectors. In recent years this has been most evident in industrial action in public transport which has had a deeply damaging impact on many businesses in hospitality. We are, therefore, very interested in ensuring that a sensible framework for industrial relations is designed.



We support the government's emphasis on 'collaboration, proportionality and accountability' as principles of the new framework and would prefer the addition of a more explicit commitment to 'successful industrial relations.' In addition to businesses being accountable to their employees and unions being accountable to their members, the legitimate interests of shareholders and customers should be acknowledged.

We are not convinced with there is a need for a change to the thresholds needed for statutory recognition and believe that a simple majority, with no underpinning of a turnout requirement, is an insufficiently robust measure to build a strong industrial relations framework in a business. Similarly, we would not favour any reduction in the requirement to have at least 10% union membership in the bargaining unit. We support the government's desire to see recognition ballots conducted fairly and accept the need for tight regulation in this area. We hope that the isolated instances, where employers have been accused of acting in bad faith, have not led to an 'over-correction' and that the proposed set of rules will not be too rigid or burdensome.

On access agreements, we are concerned that the provisions do not reflect the practical challenges of providing it in a 'hospitality environment' where employees are working in public spaces and attending to customers. Furthermore, there is no limit on the number of trade unions seeking access across multiple sites at any one time. This could become unwieldy. Consideration should be given to 'setting aside' one union when another has already been granted access. An 'exclusivity period' could also be considered.

10. Enforcement

We support the establishment of the Fair Work Agency to bring together existing state enforcement functions. This should aim to provide guidance on issues as much as enforcement to avoid issues arising.