Written evidence submitted by Mitie (ERB69)

About Mitie

Mitie is Britain's leading Facilities Management and Transformation partner. We work with over 3,000 organisations across both the public and private sectors, maintaining and transforming their buildings and property estates to create efficient, safe, clean, and sustainable spaces.

We are experts in engineering, security, building decarbonisation and cleaning & hygiene services. Our workforce of 72,000 exceptional colleagues provides essential services that keep the country running. From critical national infrastructure, to supporting railway hubs, airports, retailers and hospitals, over 7.5 million people pass through the sites we look after every day.

We have a diverse range of colleagues representing 147 nationalities, from Cleaners and Security Officers through to Heat Pump Engineers, Data Analysts and in professional functions like Accountancy and HR.

As one of the UK's largest employers, we ensure our colleagues have sustainable careers which offer opportunities to develop, learn and progress, with fair pay, terms and conditions. From addressing an ageing workforce and the gender imbalance in the engineering sector by championing graduates and apprentices, to pioneering cleaning, security, and cellular networking specific apprenticeships across our business, we are dedicated to offering opportunities to our workforce.

We look forward to engaging with the Government on this matter in the best interest of our people.

Executive summary

The Government has set out an important agenda that leaves British workers with more security, flexibility and enhanced protection.

As one of Britain's largest employers, we wholeheartedly agree that the Government is right to formalise much of what businesses are already doing to address where working conditions are being neglected across the labour market. At Mitie, we are steadfast in our ambition to create opportunities for our people and be a great place to work. As the champion of frontline workers, this includes offering a range of benefits that are unrivalled in our industry. We have over 1,300 apprentices in our business and also ensure that our people have a stake in the success of our business by giving every colleague free Mitie shares for four years running.

As highlighted by the Government, the new framework must strike a balance between the needs of both employers and employees; ensuring any additional legislation put in place enables today's workforce to deliver business goals while leading satisfying lives. Given the decline in growth and productivity the country has seen, it's critical that the employment rights agenda is informed by practical insights from a range of businesses to ensure there is a long-term positive outcome, especially at a time when many businesses are already struggling with higher wage bills and escalating costs.

Whilst some trends persist throughout the economy, what is and is not working can vary from sector to sector and business to business, it's critical that any changes are proportionate and sensible to accommodate all sizes and sectors of our economy.

However, in some instances, the Bill proposes a 'one-size-fits-all' approach, without understanding the impact the Bill may have not just on SMEs, but large businesses that contribute significantly to the UK's economy**.**

Please see more detail on each below.

Statutory Sick Pay

We would recommend looking at how this works in other countries and analysing the levels of success similar reforms have had in balancing improving employee wellbeing without having a detrimental impact on productivity.

When deciding the percentage rate, the Government should also consider how changes to SSP compare with other financial support levers offered by the state. For example, people who are unemployed can receive up to £90.50 through the Job Seekers Allowance. SSP should not be significantly below this figure, as it may create an unhelpful situation where employees on long-term sick leave find it more financially beneficial to resign and claim Job Seekers Allowance instead. In terms of Universal Credit, it is also important to consider its impact on the overall financial wellbeing of employees.

As well, we would also recommend linking the rate of SSP to the National Minimum Wage (NMW), as a % of NMW rather than a separate weekly rate, so that it maintains parity with movements in the NMW over time. Finally, we recommend SSP is defined as an hourly rate like NMW rather than daily rate which creates potential complexities for shift workers.

Day one rights

For day-one rights for unfair dismissal alone, the Government analysis predicts a 15% rise in employment tribunal claims. This will have a significant cost impact for businesses. In addition, most cases are outstanding for around 18 months – two years, without significant investment in the tribunal system they will be unable to cope with a 15% increase in workload.

As the Bill stands, it's unclear how changes to unfair dismissal rights would work in practice, especially when interacting with a "statutory probationary period".

For example, there could be a variety of "fair" reasons available to employers, or a different standard of proof for the general obligation to act "reasonably" if dismissing during the probationary period. It is also unclear whether employers will have any scope to extend probationary periods if a longer period is needed to assess suitability.

Whilst we support the need for employees to be treated fairly in the early stages of their employment, it is also important that employers get a reasonable chance to assess a new employee's performance, capability and suitability for the role without the threat of litigation. Employees already have protection if they are dismissed for a discriminatory or automatically unfair reason from day one of employment.

We would suggest that aligning the probationary period with the qualifying period for unfair dismissal would better streamline the dismissal process, making it easier for both employees and employers to understand their respective rights and obligations. A shorter, six-month qualifying period would still provide employers with enough time to assess an employee's performance, capability, and suitability for the role. At the same time, it would offer employees increased protection against unfair dismissal at an earlier stage in their employment. We believe this would balance the interests of employers and employees whilst still achieving the aim of the legislation.

However, if the proposal is implemented, as outlined in the *Next Steps to Make Work Pay*[1] policy paper, we encourage the Government to consult businesses on how this would work during 'an initial period of employment' and what the exceptions for dismissal should be.

Firstly, including "probationary reasons" as a potentially fair reason for dismissal enables employers to assess the suitability and capability of new employees within a reasonable time frame. A probationary period allows employers to determine whether an employee has the required skills, knowledge and attitude for the job, and to address any performance or conduct issues. During this period, employers can offer additional training, guidance and support to help the employee improve and adapt to their new role.

Moreover, probationary reasons as a potentially fair reason for dismissal would ensure that employers have the flexibility to manage their workforce in response to the changing requirements of their business. Whilst other potentially fair reasons for dismissal may apply during the probationary period, such as "capability", "conduct" or "illegality", creating a new category can ensure that employers can act efficiently in cases where dismissal may be necessary for the benefit of the overall organisation and that it is clear what process should be followed. As seems to be recognised in the *Next Steps to Make Work Pay* policy paper, it is appropriate that the process to be followed during a probationary period should be more "light-touch" than what would generally be required in order to satisfy the requirements of a fair conduct or capability process. Employers need the ability to respond to issues that could have significant negative implications for the business.

If the proposal is implemented as outlined in the *Next Steps to Make Work Pay policy paper,* we would also suggest including redundancy and business restructure as reasons for dismissal during the probationary period. Whilst this is not ideal for either party, companies may need to adjust their workforce based on fluctuations in market demand, financial constraints, or changes in business strategy. Including redundancy and business restructure as grounds for dismissal provides employers with the flexibility to adapt their workforce, accordingly, ensuring the company's long-term viability. For employees during their probationary period, it would seem proportionate that a more simplified process is available in these instances.

Proposed amendments:

- *Rather than repealing s108(1) of the Employment Rights Act 1996 (as per s19 of the Employment Rights Bill), we would suggest amending s108 so that the qualifying*

[1] Next Steps to Make Work Pay (web accessible version) - GOV.UK

period is reduced from two years to a suitable probationary period (e.g. six or nine months)

- *Amend s98(2) of the Employment Rights Act 1996 by adding as new (e) "probationary reasons" (or similar)*

Zero hours contracts

We understand the logic of providing guaranteed hours in specific situations. However, if all employers were required to ensure guaranteed hours, flexible employment could be undermined.

Some of our 72,000-strong workforce rely on more flexible contracts to enable them to manage both their personal and business needs. This includes workers who seek temporary employment contracts, such as low earners, individuals with caring responsibilities, students or low skilled workers, who may not meet the traditional entry requirements to apply as a direct applicant, or other people who have a preference to work for multiple employers. Flexible employment provides a genuine route to work for these groups and enables businesses to remain agile, which is critical for productivity. In certain cases, the Bill should consider exceptions to the duty to make an offer.

In addition, it is crucial to consider that shifts may change for various reasons, and the definition of "reasonable notice" could be subjective depending on the industry, job role, and individual worker preferences. For example, at Mitie, we employ around 100 Close Protection Officers (CPOs), who work with high-profile individuals, including Government ministers, who may have irregular schedules. As their clients' plans change, officers' shifts must be adjusted accordingly to ensure continued protection. As well, if new information regarding a threat or incident emerges, shifts may need to be altered to provide adequate coverage and protection for the customer. We also have employees who are employed specifically as Relief Officers whose job is to provide short notice cover where needed (for example due to sickness absence). It is inherent within the role that any notice of a shift may be last-minute.

As well, before enshrining penalty fines in law, it is important that the Government outlines what is considered "short notice" for cancellation or curtailment. As the Resolution Foundation highlights, measuring the full extent of this problem is difficult, as well deciding what the optimum notice of shift changes should be for both employers and employees. It is important the Government works with businesses to understand the complexity of hours insecurity, as well as permitting some flexibility for employers that need to adapt to fluctuating demand.

Fire and rehire

We understand the concern that "fire and rehire" practices may have been abused by some employers, seeking to impose detrimental changes without negotiation or consultation, and therefore agree that the Government should look to restricting its use in a sensible way.

However, interim relief is rarely a suitable mechanism to resolve disputes. Keeping employees on the payroll during interim relief may create operational challenges, particularly if the business needs to adjust staffing levels due to changes in market demand or because of

restructuring efforts. For example, if an employer has reduced its workforce due to genuine redundancy reasons (e.g. a factory shutdown) then requiring that same employer to continue employing individuals when there is no work to be done not only creates an impossible situation for the employer, but also prevents the employee from starting work elsewhere. Irrespective of any procedural defects, forcing employers and employees to continue employment in these circumstances is unlikely to represent a better outcome for either party.

Furthermore, the Government has recognised there needs to be some exceptions such as when changes are essential for avoiding undue financial harm to the business. We urge the Government to work with businesses that can provide credible evidence of when the practice is necessary to ensure exceptions in place are the right ones. This way, the Government can better understand how to crack down on misuse of practice whilst not creating a system that damages the majority of compliant and reputable businesses.

Proposed amendments:

- *S22 of the Employment Rights Bill inserts a new s104I into the Employment Rights Act 1996. We would suggest that this new section could be amended as follows (amendment in bold text):*
- *"(2) The reason within this subsection is that –*
    - *(a) the employer sought to vary the employee's contract of employment;* ***without good reason*** *and*
    - *(b) the employee did not agree to the variation."*
- *Similar wording could then be built in to (3) also. Whilst we appreciate that there would be an element of uncertainty introduced in terms of what would be considered to be a "good reason", employment tribunals are well-versed in making such judgments. Alternatively, as suggested above, the Government could work with responsible businesses that can provide credible evidence of when the practice is necessary to understand and identify specific limited exceptions*

Redundancy

Mitie strongly suggests that the Government retains the term "establishment" within the collective redundancy legislation. The concept of requiring collective consultation for proposed redundancies at

an "establishment" level, rather than across the entire business, has been held by the European Court of Justice (as it was then) to be not incompatible with the European Collective Redundancies Directive (Directive 98/59). This ensures consistency of interpretation with regulations in other EU member states. To promote the competitiveness of UK businesses and attract inward investment, the Government should carefully consider any potential amendments to maintain alignment with EU regulations. Striking this balance would help safeguard the UK's standing in the global market by reducing regulatory divergence while fostering a favourable business environment.

Using establishments as the basis for determining when collective consultation is required simplifies the process for both employers and employee representatives. Consultations can

be organised at the local level, focused on the effected unit or department, allowing for more tailored and manageable discussions about the specific circumstances and potential alternatives to redundancy. Grouping together otherwise unconnected redundancy exercises for collective consultation process creates an administrative burden for employers without clear benefits for the employees involved.

In addition, if the redundancy threshold were determined at the whole business level, some smaller establishments might be overlooked in the consultation process. Retaining the term "establishment" helps ensure that redundancies affecting employees at all levels are subject to an appropriate and meaningful consultation process.

Rather than remove the requirement for redundancies to be at one establishment, we would suggest that clarifying what constitutes an establishment would be a better way of ensuring those redundancies within the business that are genuinely connected are subject to collective consultation where the numbers require this.

Proposed amendments:

- *We would propose an **amendment to s188 of TULR(C)A 1992 to expressly define "establishment"**. This could include both a geographical and/or a functional component to reflect the ways in which companies tend to operate*

Industrial Relations

The Government has a clear and understandable goal – to improve representation and meaningful engagement in the workforce. However, the Bill assumes that unions are the primary and best channel for this.

The Government should hear from businesses and consider legislation or codes of practice that focus on other forms of representation and reflect how workplace representation is changing. For example, in response to 'MiVoice' survey data, which asked how Mitie can improve employee satisfaction, Mitie has set up a programme of employee listening sessions with senior management to hear views from across the business. The findings also showed how IT processes and addressing communication barriers were important. In response, we issued over 1,500 laptops over a six-month period and began building an employee app to better reach all our colleagues.

Additionally, the new industrial relations framework must balance improving trade union access and representation with the imperative to maintain the safety, security and smooth operation of critical facilities.

Currently, bargaining units are often identified by their skillset, aptitude, and their role in the business. However, often, security clearance and making sure they have the right training to access certain sites is an important factor which must be taken into consideration. This allows employers to adhere to safety regulations and ensure any potentials risks are managed appropriately.

At Mitie, we work with over 3,000 private and public sector clients, with our colleagues based on a range of customer premises including sensitive sites such as nuclear facilities, hospitals, and some of the UK's most prominent landmarks. Trade union (TU) representatives seeking entry permissions to nuclear sites and other locations with stringent health and safety requirements present a unique set of challenges.

TU reps normally have to go through the Government's Baseline Personnel Security Standard (BPSS) requirements, then Security Clearance or Developed Vetting. This can take between three to six months depending on the nature of the site. If access were to be allowed without the proper training, clearances and safety protocols, our customers would normally have a right to terminate the contract within 30 days.

Therefore, a more structured approach remains necessary, in which TU representatives work collaboratively with employers to gain the necessary clearances, participate in safety briefings, and follow the established guidelines for accessing specific locations within these sites. It is also important that certain sites could be made exempt. In these cases, the Government should source alternative solution for trade union access that which preserves the integrity of the safety and security measures in place.

Proposed amendments:

- *In Part 4 (46) sections 70ZB to 70ZF, which contains provisions about entering into access 10 agreements, we'd suggest clarifying exemptions for physical access to sites due to "unreasonable interference".* ***The Bill should acknowledge and outline when businesses can refuse access. Exemptions should include sites that are deemed sensitive such as nuclear facilities, military bases, some prominent landmarks and critical infrastructure***

- *As well, whilst we understand the need for simplifying industrial action ballots, the existing legislation balances the need to maintain productive workplace, whilst also ensuring workers' rights are upheld and views are listened to. Therefore,* ***we'd suggest removing or revising Part 4 (chapters 54-57)*** *in relation to amending section 226 (Requirement of ballot before action by trade union). Importantly,* ***the Bill should provide clarification on potential amends to section 226A of the 1992 act (providing ballot notice to employers****). Employers should have the crucial information needed to focus on the specific aspects of service delivery required for managing industrial action without enduring economic penalties or contract breaches when such action is authorised*

January 2025