# PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

## Fourth Delegated Legislation Committee

# DRAFT EMPLOYMENT RIGHTS (AMENDMENT, REVOCATION AND TRANSITIONAL PROVISION) REGULATIONS 2023

*Tuesday 5 December 2023*

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

**not later than**

**Saturday 9 December 2023**

**The Committee consisted of the following Members:**

*Chair:* Clive Efford

† Bell, Aaron *(Newcastle-under-Lyme)* (Con)
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
† Creasy, Stella *(Walthamstow)* (Lab/Co-op)
† Dixon, Samantha *(City of Chester)* (Lab)
† Double, Steve *(St Austell and Newquay)* (Con)
Edwards, Sarah *(Tamworth)* (Lab)
† Firth, Anna *(Southend West)* (Con)
† Garnier, Mark *(Wyre Forest)* (Con)
† Henry, Darren *(Broxtowe)* (Con)
† Hollinrake, Kevin *(Parliamentary Under-Secretary of State for Business and Trade)*
† Logan, Mark *(Bolton North East)* (Con)
† Madders, Justin *(Ellesmere Port and Neston)* (Lab)
Phillips, Jess *(Birmingham, Yardley)* (Lab)
† Saxby, Selaine *(North Devon)* (Con)
† Stafford, Alexander *(Rother Valley)* (Con)
Stephens, Chris *(Glasgow South West)* (SNP)
Tarry, Sam *(Ilford South)* (Lab)

Kevin Maddison, *Committee Clerk*

**† attended the Committee**

# Fourth Delegated Legislation Committee

*Tuesday 5 December 2023*

[Clive Efford *in the Chair*]

## Draft Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023

2.30 pm

**The Parliamentary Under-Secretary of State for Business and Trade (Kevin Hollinrake):** I beg to move,

That the Committee has considered the draft Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023.

It is a pleasure to speak with you in the Chair, Mr Efford.

The Government have set out their ambition for the UK to become the best regulated economy in the world, as in the "Smarter regulation to grow the economy" paper published in May 2023. The central regulatory focus of this Government is on how we can improve regulation across the board to reduce burdens, push down the cost of living and drive economic growth.

By ensuring that we have the best regulated economy, we can develop an environment conducive to innovation and business confidence. That will ensure that we support the UK economy to grow and to enable prosperity across society. That is particularly important following Brexit, with significant quantities of out-of-date, unworkable and unnecessary EU laws still on our statute book. On 12 May 2023, the Government launched a consultation on three areas that could benefit from reform and where we could remove unnecessary bureaucracy: record-keeping requirements under the working time regulations; simplifying annual leave and holiday pay calculations in the working time regulations; and consulting and consultation requirements under TUPE, or the Transfer of Undertakings (Protection of Employment) Regulations 1981 and 2006.

The proposals seek not to remove rights—the UK has one of the best workers' rights records in the world—but instead to remove unnecessary bureaucracy in how those rights operate, allowing business to benefit from the additional freedoms that we have through Brexit. By backing British business, this draft statutory instrument supports one of the five areas outlined by the Prime Minister in his speech on 22 November setting out the Government's strategy to grow the economy.

The working time regulations are derived from the EU working time directive. They create various entitlements for workers, including minimum rest breaks and maximum working hours, as well as an entitlement to paid annual leave. Those regulations provide important protections to workers, but they can also place disproportionate burdens on business in relation to recording working hours and other administrative requirements. That is why we consulted on removing the effects of the 2019 judgment of the Court of Justice of the European Union, which held that employers must have an objective, reliable and accessible system enabling the duration of the time worked each day by each worker to be measured.

Our proposed regulations make it clear that employers will not be required to keep burdensome and disproportionate records of the daily working hours of each worker. Instead, employers will need to keep adequate records and demonstrate compliance with their working time obligations. That clarification could help to save businesses around £1 billion a year without changing workers' rights.

The Government recognise the importance of consultation with employees and employee representatives on TUPE transfers. However, employers can find certain aspects of the consultation process burdensome. Before a TUPE transfer, the current employer and the new employer need to consult the affected workforce's existing representatives, or arrange elections for employees to elect new representatives if they are not already in place before the transfer. We want to simplify the process for businesses where worker representatives are not already in place.

Currently, microbusinesses have the flexibility to consult directly with workers rather than hold elections. This draft SI will extend that flexibility to small businesses—those with fewer than 50 employees—undertaking a transfer of any size, and to businesses of all sizes involved in transfers of fewer than 10 employees if no existing employee representatives are in place. That means they will not be required to undertake the time-consuming process of arranging elections for new employee representatives.

The draft regulations also introduce reforms to holiday entitlement and pay. Working patterns have changed significantly over the past decade, and the existing legislation governing holiday pay and entitlement does not fully align with current working practices. These regulations simplify and address concerns about the calculation of holiday entitlement for employers, and make entitlement clearer for all irregular hours and part-year workers. In addition, the reforms could provide significant savings to businesses by reducing the red tape and complexity of calculating holiday pay and entitlement. We have defined irregular hours and part-year workers in these regulations to ensure the terms are clear to employers and the workers to whom some of these reforms apply.

The regulations respond to the Supreme Court judgment in the 2022 case Harpur Trust *v.* Brazel, which accorded part-year workers a larger holiday entitlement than part-time workers who work the same total number of hours across the year. To address that disparity, the regulations introduce a simplified method to calculate holiday entitlement for irregular hours and part-year workers. Entitlement will be calculated as 12.07% of hours worked in a pay period in the first year of employment and beyond. That accrual method was widely used before the Harpur Trust judgment and better reflects what workers have actually worked in the current leave year. The introduction of that accrual method could save businesses up to £150 million a year over the long term. The regulations also introduce a method to work out how much leave an irregular hours or part-year worker has accrued when they take maternity or family-related leave or sick leave to ensure that those workers are not unfairly disadvantaged when on leave.

We are also legislating to allow the introduction of rolled up holiday pay for irregular hours and part-year workers. Rolled up holiday pay is where an employer includes an additional amount with every payslip to cover a worker's holiday pay, as opposed to paying holiday pay when a worker takes annual leave. We consulted on introducing rolled up holiday pay for all workers, but after taking into account stakeholder feedback, we decided to introduce it as an additional method of calculating holiday pay for irregular hours and part-year workers only.

Employers do not have to use rolled up holiday pay for those workers if it does not suit their businesses, and can instead continue to use the 52-week reference period to calculate holiday pay. Employers who use rolled up holiday pay will calculate it based on the worker's total earnings in a pay period. That will avoid the complexity of applying the rolled up holiday calculation to different rates of holiday pay. We consulted on a further reform—the introduction of a single annual leave entitlement with a single rate of pay—but we will not be introducing it as part of this package.

The regulations maintain the two distinct pots of annual leave and the two existing rates of holiday pay so that workers continue to receive four weeks at the normal rate of pay and 1.6 weeks at the basic rate. That is due to feedback received through stakeholder engagement. We will assess the take-up of rolled up holiday pay and consider more fundamental reforms to the rate of holiday pay in the future. We are supporting employers by providing clarity in regulations on which types of payments are included when calculating the normal rate of pay.

In addition to the three reforms mentioned above, this statutory instrument mitigates the risk that the removal of interpretive effects on employment law could lead to a reduction in workers' rights by restating the following three principles: the right to carry over annual leave where an employee has been unable to take it due to being on maternity or other family-related leave or sick leave; the right to carry over annual leave where the employer has failed to inform the worker of their right to paid annual leave or has not enabled them to take it; and the rate of pay for annual leave accrued under regulation 13 of the working time regulations.

The SI also revokes the European Co-operative Society (Involvement of Employees) Regulations 2006 and the Working Time (Coronavirus) (Amendment) Regulations 2020. The main European co-operative society regulations were repealed in 2021, and the involvement of employees regulations therefore no longer have any effect in practice. The covid regulations were introduced as temporary legislation intended to prevent workers from losing annual leave entitlement if they are unable to take it due to the effects of covid. Therefore, those regulations are no longer needed.

The scope of the SI is limited to Great Britain other than the revocation of the European Co-operative Society (Involvement of Employees) Regulations 2006, which extends to Northern Ireland. Employment law in Northern Ireland is a transferred matter. We are confident that the changes comply with our international legal obligations, including those in the EU-UK trade and co-operation agreement.

Under this Government, we have seen employment reach near-record highs. The number of payroll employees for September 2023 was 30.2 million—370,000 higher than this time last year and 1.2 million higher than before the pandemic. Through Brexit, we regained the ability to regulate autonomously, and we are using the new freedoms to ensure that our regulations are tailored to the needs of the UK economy.

In addition to providing cost and admin savings for businesses, the reforms aim to provide clarity on complex holiday pay legislation so that it is simpler for employers to follow and comply with. Approximately 1.5 million workers will be affected by the holiday pay reforms. By simplifying the legislation, workers will receive the holiday entitlement and holiday pay to which they are entitled. The restatement of the three principles that I mentioned will retain existing rights. I commend the regulations to the Committee.

2.41 pm

**Justin Madders** (Ellesmere Port and Neston) (Lab): It is a pleasure to see you in the Chair this afternoon, Mr Efford. It is just over a year since we were in these rooms for the Committee stage of what became the Retained EU Law (Revocation and Reform) Act 2023. For those who were not lucky enough to attend those debates—my hon. Friend the Member for Walthamstow was a regular attender—we discussed at length the potential for EU-derived protections to be removed or watered down. During the Committee and on Report, we tabled numerous amendments to seek to protect UK workers from the loss of key EU-derived rights, but we were told that the amendments were not necessary. Indeed, the then Minister for Industry and Investment Security, who led that Bill through Committee—the hon. Member for Wealden (Ms Ghani)—said:

"The Government have no intention of abandoning our strong record on workers' rights, having raised domestic standards over recent years to make them some of the highest in the world."—[*Official Report, Retained EU Law (Revocation and Reform) Public Bill Committee,* 22 November 2022; c. 144.]

These regulations show us that things have not quite turned out like that. As much as the Government might assert that the draft regulations do not constitute a reduction in workers' overall level of entitlement and protection, we think that the overall effects will see some workers left with fewer entitlements and protections, with many being out of pocket to the tune of hundreds of millions of pounds as a result of the regulations.

There is no doubt that the regulations will have a negative impact, in particular, on irregular and part-year workers, as well as having the potential to impact on the EU-UK trade and co-operation agreement, which contains a non-regression clause on workers' rights. The Minister said when he opened this debate that he was confident that the regulations complied with the TCA, but will he tell us what discussions he has had with his EU counterparts about these proposals and whether he has received legal advice to confirm that the regulations do not constitute a regression that is actionable under the TCA?

Although we have serious reservations about the impact of the draft regulations, we will not oppose their passing due to the inclusion of some important protections that are being restated from retained EU law. Workers cannot risk losing those protections and we must not put them in jeopardy.

I start with the restated elements. We are encouraged that important principles from the working time regulations and its associated case law will be restated into British

*[Justin Madders]*

law. The right to carry over annual leave when an employee has been unable to take it due to being on maternity or sick leave, and in situations where an employer has failed to inform them of their right to take it, are important principles that need retaining.

Taken in isolation, those protections are undoubtedly welcome, but they are part of a wider package that contains controversial elements that we would never support. That is why it is disappointing that we will not be able to vote on individual elements of the package but will vote on the whole lot. Although we welcome the Government's U-turn on the original Bill that removed the threat of the automatic sunset on all regulations, there is still a cliff edge on the interpretative effects of retained EU law, and that is coming rapidly into sight.

We have until the end of this month to restate those interpretations because they will no longer apply from 1 January 2024; opposing the regulations outright would risk the loss of those protections.

First I will consider holiday pay, which appears to be most affected by the regulations. Perhaps the most controversial element of the changes is the introduction—reintroduction, should I say—of rolled up holiday pay, which was considered unlawful following the 2006 European Court of Justice decision Robinson-Steele *v*. RD Retail Services. That interpretation of the law has been replicated since in numerous courts in both the UK and the EU.

Rolled up holiday pay is when workers receive their holiday pay as it accrues as part of their normal wages. That means that a worker receives payment for leave but it does not mean that they are given an express right to take their leave. They are not paid for when they do take time off, so there is a perverse incentive not to take the time off and instead to accrue the holiday pay entitlement.

In practice—this is absolutely clear; there is no ambiguity about this—rolled up holiday pay can be a deterrent to taking time off work. We know how important time off and rest is to a worker's health and wellbeing and how important it is to maintain healthy and safe workplaces. Indeed, the original directive had health and safety at its heart, recognising that daily, weekly and annual time off were essential for a worker's wellbeing.

I do not think that ensuring that people have sufficient time off from work ought to be considered a controversial proposition, but the Government have now, in part at least, abandoned that principle. That begs the question of why they have decided to make the changes. It is not as if the consultation that they launched earlier this year showed a resounding support for the move; in fact, 45% of the respondents to the consultation were of the view that the changes should not be introduced. Only 12% registered their support. Given that there is so little support, why have the Government gone ahead and introduced the changes? I suggest that no problem is being solved—there is no overwhelming call for a particular problem to be fixed. This is an ideological move.

The ideological approach is especially true of the proposal in the regulations to place entirely in the employer's hand whether to allow a conventional paid holiday or rolled up holiday pay for irregular and part-year workers. Why is that the employer's rather than the worker's decision? It is clear that the measure will exacerbate the disparity of power in many workplaces. Workers on low pay and who are vulnerable will more likely end up with sub-optimal annual leave arrangements, with very little real power to challenge them. They are also liable to be exploited by employers, who can use the added complexity around the role of holiday pay to make their remuneration less generous. There is a risk that including holiday pay as part of the hourly rate could be presented as an increase in wages or a reason to hold down pay. Owing to the complexity of the arrangement many may not realise that, in receiving rolled up holiday pay, their entitlement to paid time off is no longer there. Has the Minister considered those impacts—particularly given that the regulations also contain looser requirements for monitoring hours worked? What steps will be taken to ensure that low paid workers are protected from exploitation?

The other key change under the regulations is to make annual leave different in respect of the decision made in Harpur Trust *v*. Brazel, which the Minister mentioned, in 2021. That, by the way, was a UK Supreme Court decision, which secured the principle that all workers are entitled to a minimum of 5.6 weeks' annual leave per year, to be paid at the ordinary rate of pay.

The Supreme Court specifically rejected the employer's argument that the statutory minimum paid annual leave entitlement should be calculated on the basis of 12.07% of the annual hours worked. It reinforced the point that statutory minimum paid annual leave does not "accrue" through each annual leave year; rather, the 5.6 weeks' leave exists to be taken when the worker requests it. It is clear that that decision did not please the Government as the draft regulations have clearly been designed to reverse the effect of the judgment. What is included in the regulations completely undermines a sovereign UK court's decision—our own Supreme Court, not the European Court of Justice. What efforts will the Government make to assist workers who have difficulty in accessing their full holiday entitlement because of the way the new accrual system will work?

The worst aspect is probably that the Government appear to be focusing on effectively cutting holiday pay entitlement for some workers. The impact assessment calculates that workers could lose up to £248 million a year as a result of reducing the amount of paid holiday accrued by irregular hours and part-time workers. Described euphemistically in the impact assessment as a "transfer to employers" that is an astonishing and strange priority for the Government. We are talking about almost a quarter of a billion pounds a year in cash coming straight out of people's pockets. Is the Minister proud that his Government are doing that during a cost of living crisis? Is that levelling up? Is that a benefit of Brexit?

Overall, the regulations represent detrimental changes to the rights of irregular hours and part-year workers. One would expect, at the very least, the definitions of those workers to be tighter. However, several stakeholders have raised concerns that the definitions of irregular hours and part-year workers in proposed new regulation 15F are vague and will leave workers and employers uncertain about their rights. One stakeholder called them "a mess" that

> "beg more questions than they answer".

A worker is classified as working irregular hours in the regulations

"if the number of paid hours that they will work in each pay period during the term of their contract in that year is, under the terms of their contract, wholly or mostly variable."

What "each pay period" means is not clear, and neither is the phrase "wholly or mostly variable". Who can say whether they work wholly or mostly variable hours? Where is the tightness in that definition? What will the Minister do to ensure clarity about that?

On one reading, the regulations mean that every worker who periodically works paid overtime could be impacted by the changes. Such an interpretation would cause chaos. I hope that the Minister will clarify that in his closing speech. It is equally unclear whether regulations intend to restrict the definition to zero-hours contract workers or whether those on short-hours contracts, whereby a worker has a small number of guaranteed hours with variable work on top, will also be included.

What about those workers who have more than one contract with an employer or do variable hours for part of the year and fixed hours for another part? Will the Minister clarify their position before the regulations become law?

I am afraid that the definition of a part-year worker is not much clearer. I note that the proposed definition excludes workers with annual contracts who are not required to work for parts of the year when they are not paid. Do the regulations mean that the hundreds of thousands of term-time only staff who work for education employers and are paid a salary across 12 months, but for the 39 weeks that they work each year, will not be affected? Again, will the Minister clarify that in his closing remarks?

The draft regulations are inconsistent and appear at odds with existing requirements for the calculation of a week's pay under the Employment Rights Act 1996. The side-effect of that is important because calculating a week's pay is necessary for separate employment rights, such as statutory redundancy pay and maternity/paternity pay. The definitions may not be clear, but what is clear is that there will be a great deal of uncertainty. That will almost certainly require further litigation in the courts, which will come at a further cost to businesses and employees and add further strain to an already stretched court system.

The impact assessment suggests that there will be significant savings to business, but does not appear to consider the costs of satellite litigation while the mess is cleared up. If the savings from reducing reporting requirements will really be £1.2 billion a year, why on earth did not the Government take the opportunity to level up holiday pay so that the additional 1.6 weeks could be paid at the same potentially higher rate that the four weeks is paid at?

Even the simple act of equalising the way different elements of holiday entitlement are calculated could have saved businesses money because it would mean that they had to make fewer calculations. It would have guaranteed parity for everyone on all elements of their holiday pay. It would also have been consistent with what our courts said as recently as October, when the Supreme Court, in its judgment in Chief Constable of the Police Service of Northern Ireland *v.* Agnew and others, specifically held that all paid annual leave, from wherever it is derived, must be viewed as a composite whole and forms part of the same pot. Yet the regulations do the opposite. They not only override UK court decisions, but fail to take the opportunity to level up—something that the Government claim they wish to do for people throughout the country.

The change also ignores the Government's consultation, which showed that 70% of respondents said that holiday pay should be paid at the same rate. The Minister said that the Government chose not to make that change in response to stakeholders' concerns, but it is clear from the consultation responses that most stakeholders thought it was a good idea. Why did he take a different view?

Turning to changes to record keeping and the changes to TUPE. Under the current regulations employers must keep adequate records to show that the working time for all workers does not exceed 48 hours a week. Now, the regulations will say, in effect, "You can keep records if you like, but you don't have to." Making sure that employers keep these records is already an issue—the impact assessment found that 26% of businesses do not formally record the working hours of their workforce—and enforcement is so pitiful that the Health and Safety Commission records only one prosecution in respect to this since 2007, despite the labour force survey showing that, since 2012, the proportion of night workers working over eight hours per day has risen from 40% to 50%—again, beyond the legal maximum. It is clear that workers are not being adequately protected now, so it seems perverse in the extreme to weaken protections further by removing these reporting requirements.

The proposals also contradict the 2019 judgment in Federación de Servicios de Comisiones Obreras *v.* Deutsche Bank, which stated that the employers must have an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured. The case held that records must be kept in relation to the right to a minimum daily rest period of 11 consecutive hours in each 24-hour period; the right to a minimum uninterrupted period of rest of 24 hours in each seven day period; and of course the maximum weekly working time limit.

That judgment made it clear that record keeping was, in fact, important for the health and safety of workers, and was not something that could become subservient to pure economic factors. That is surely right. Ensuring that workers are able to work safely is more important than the pursuit of profit. This matters not just in private businesses, but in the public sector as well. The British Medical Association says:

"From the perspective of doctors, it is essential that the daily working hours are recorded to ensure both that doctors are fairly paid for the hours they are working rather than those that are scheduled to work (which are routinely a significant underestimation of how long a doctor will have to work depending on what kind of shift they undertake) and the working hours of doctors do not exceed the contractual and legislative safeguards put in place. Any attempt to undermine the recording of these hours will have a profound, long lasting and damaging impact on doctors and the wider functioning of the NHS. In the context of enduring NHS pressures and the scale of stuff for the staffing crisis, such a change to the recording of daily working hours poses significant risk to staff retention and wellbeing, as well as having a detrimental impact on patient care."

The BMA also says:

"Without guarantees that the hours they have worked will be accurately remunerated or that they will not be subject to rotas which breach the safeguards that protect them and their patients, more doctors could leave the NHS. The health service cannot afford to lose any more doctors."

*[Justin Madders]*

I think we all understand where the BMA is coming from. What discussions has the Minister had with his ministerial colleagues in the Department for Health and Social Care? Is he not a little bit concerned that the BMA says the removal of these records will have

"a profound, long lasting and damaging impact"

on the NHS?

We argue that better enforcement and strengthening of the law to prevent workers from being exploited is needed, not regulations that fly in the face of court judgements. It would be easier to accept the Government's arguments that these requirements are too onerous for a business were there not already stringent obligations on employers to keep records to show compliance with the national minimum wage. It seems clear to me that putting in requirements to ensure that workers are not overworked would not only have health and safety benefits, but would lead to a productive and happier workforce. Would businesses not prefer alternative ways of monitoring the hours of their employees? Did the Government consider any other approaches? If they did, I would be grateful if the Minister told us what other approaches were considered before this decision was arrived at.

Finally, as if that were not enough change to be included in one piece of secondary legislation, we also have a few provisions to amend the TUPE regulations. Under existing rules, in advance of a transfer of a business, the current employer and new employer need to inform and consult with the affected workers' existing representatives—typically trade union reps—or arrange elections for representatives. For the record, I refer to my entry in the Register of Members' Financial interests and my trade union membership. There is an exemption from this requirement already in place for businesses with fewer than 10 employees if there are not already representatives in place, but as the Minister outlined, this will now be extended to larger businesses: specifically, it will change the collective consultation requirements of businesses that employ fewer than 50 employees where a transfer affects fewer than 10 people. We have concerns about that.

We know how lax the Government have been about consultation requirements in other areas of the law, and I need not remind the Committee of the fact that some 43,000 employers have resorted to fire and rehire in recent years. We are also concerned about the way in which this will shift the balance of power during transfers, self-evidently placing more power in the hands of employers, which are clearly far better resourced than workers in these situations.

Transfers are a stressful and fearful time for employees in the business being taken over. They are likely to be worried about the potential for their position being abolished or the terms of their contract being changed, all the while feeling helpless that they do not have a collective voice to represent their interests. We do not think that the requirement to seek volunteers to fill the role of representatives is onerous or complex. On the contrary, consulting with individual workers can actually be far more complex and challenging. The changes encourage employers to move away from best practice, and do not assist good employers, which want to hear from their workforce. Instead of having questions and issues funnelled through a representative. They will now have to cover these issues for all individuals. In the circumstances, it is hard not to conclude that this simply represents another attack on collective workplace rights.

I will end there, Mr Efford, because I know that in a similar Committee last week, we did not leave enough time for the Minister to respond. I hope he has sufficient time today to address some of our concerns.

3.1 pm

**Stella Creasy** (Walthamstow) (Lab/Co-op): It is a pleasure to serve under your chairmanship this afternoon, Mr Efford, as we discuss a very important piece of legislation—I believe it is the first statutory instrument to come forward under the Retained EU Law (Revocation and Reform) Act 2023. The Minister says that there are countless pieces of bureaucracy retained from our relationship with Europe that the Government want to get rid of. My hon. Friend the Member for Ellesmere Port and Neston has done an admirable job in deconstructing the entirety of this statutory instrument. I have a few simple questions that I suspect my constituents, many of whom will be affected by the draft regulations, because many of them are in low paid, zero-hours, flexible work.

**Mark Garnier** (Wyre Forest) (Con): I hope the hon. Lady will forgive me for making an obvious point, but while I am delighted to be accompanied by many Government Members, I am wondering whether her Opposition colleagues have better things to do than to come here to discuss this "very important piece of legislation"?

**Stella Creasy:** I wonder about all the hon. Gentleman's colleagues of the female persuasion, who also appear to be missing from the Committee. That matters because I have some very simple questions for the Minister about the regulations, and it is rather notable that I am the only woman here to speak. The hon. Gentleman wants to play games; I want discuss the practicalities of the legislation and how it will affect the daily lives of our constituents. I hope we all recognise employment protections matter. After all, the reason why we have employment protections is that, although there are some brilliant employers who work very closely with our constituents to make sure they get the best out of them, unfortunately some employers are exploitative and not the kind of people we want to encourage. We have these rules because exploitation does not stop at our borders, and one of the reasons we signed up to common frameworks was our recognition that those bad employers could spread bad practice. Now that we have left the European Union and the protection that came from those frameworks, I have some questions for the Minister.

I welcome what the Minister said about the continuation of the rights under the Moreno Gómez case to do with taking full holiday entitlement outside of one's maternity period, but he will recognise that that case is relevant to his introduction of rolled up holiday pay. There was a very good reason why that court case ended in the decision that it was not fair to ask employees to take rolled up holiday pay. Women taking maternity leave were particularly affected by that and the impact of having their normal holiday pay calculation being affected by taking maternity pay.

I know the Minister did not talk specifically about that, but could he clarify the provision? There are women who work term-time hours or who are on zero-hours contracts who may now find themselves wondering what it might mean for them if their employer decides to extend rolled up holiday pay. Unfortunately, some employers were still doing this, but it was illegal and therefore people had rights; now, they will not have a right to resist it.

That brings me to my second question for the Minister. The regulations will be brought in from January next year. If our constituents are now being told that they are going to have rolled up holiday pay, what right do they have to challenge that if they feel it is not in their interests? My hon. Friend pointed out this is a transfer of £250 million a year from employees to employers because, frankly, rolling up means missing out on the hours that people are working. That is why the European Court of Justice felt it not fair to enforce the policy. What rights do employees who signed contracts on the basis that they were not going to have rolled up holiday pay and who are now facing it have? Will the Minister set those out?

What legal challenges is the Minister expecting? After all, one of the reasons why good employers do not use rolled up holiday pay is that if they get the calculation wrong, they leave themselves open to legal challenge and having to expend the amount of time and effort and energy that that takes up. It is better to have a process that records people's entitlements as they go along, even if it is a little bit more complicated, than to be landed with problems further down the line, whether from someone going on maternity leave, or from somebody who ends up working a lot more days than was perhaps intended in their rolled up holiday pay, because they are on a zero-hours contract and something happens—like Christmas. It is a great time of year for the Government to be looking at taking money out of the pockets of employees and putting it back into employers' pockets. People who work extra hours on zero-hours contracts might find they are entitled to more holiday, but a rolled up holiday pay policy will not cover that. What is the process for resolution?

We have talked a lot about our concerns for employees, but what about employers? If they get it wrong, what protection do they have under the draft regulations? I think that really speaks to the minister's understanding. Why did the Court come to that decision? It was not that rolled up holiday pay was seen as a terrible European plot; it was recognised that it probably was not in people's best interests because it created more problems than it resolved. This Government have taken a different approach. Did the Minister read the original judgment and decision? Why does he feel that this is in the better interests of the British public, who will now have to deal with the complexities the policy will introduce and deal with the inequality in power between themselves and their employer? Why does he disagree with the European judges who felt that, overall, this practice was not in the best interests of either employers or employees.

I hope the Minister understands where these questions are coming from. It is our surgeries that people will come into saying, "Hang on a minute! I've lost a day or possibly even weeks of holiday pay as a result of changes that you as an MP didn't really get a chance to vote for." This is being presented to us as a "like it or lump it" thing. I am sure that my colleagues, male and female, will get used to that, because the retained EU law Act has given the Government sweeping power to do just that and affect our constituents lives in these very practical, and probably not very welcome, ways in the year ahead.

3.8 pm

**Kevin Hollinrake:** I thank hon. Members for their valuable contributions.

We have been clear throughout the Brexit process that we have no intention of abandoning our strong record on workers' rights, having raised domestic standards over recent years to make them some of the highest in the world. The shadow minister always talks about the impact on workers—today, the impact on irregular and part-year workers. In our debates last week and today, I noticed that Opposition Members never once mentioned the rights of businesses or protections for businesses. It is always workers. Does the hon. Member for Ellesmere Port and Neston not understand that there is a balance to be struck between the rights of workers and the rights of businesses? I never hear Members of the new "party of business" taking the needs of business into account. Why does that never feature in any of his remarks?

**Justin Madders:** We do support business, but every time this Government bring forward legislation, it is about attacking workers. Is it not the same today? Is not taking £250 million out of workers' pockets an attack on workers?

**Kevin Hollinrake:** I do not accept that. Again, that speaks to the fact that the only organisations quoted in last week's debate and today's are the unions, such as the BMA. But I think what the if I can deal with his point, if I may, I think the

On the hon. Gentleman's point about part-year workers, there is no doubt that there is a £150 million saving for businesses, but he also talked about parity, and this is about parity. It is about two workers working in slightly different patterns but working the same hours every year having the equal amounts of holiday pay. That is what this is. Many people would consider the judgment that led to a difference to be unfair, a perverse outcome. What we're legislating for here is fairness across the board, whether people work a part-year or a full year.

**Stella Creasy:** The Minister is being a little bit uncharitable, given that a number of us have raised the impact on employers of the complexity of the scheme. What we recognise is that not every employer is a good employer, so both employees and employers are at risk from bad employment practices. It does not have to be a battle. I am troubled by an employment Minister who seems to think we have to pick a side. Some of us want best behaviour on both sides.

**Kevin Hollinrake:** It is quite the opposite. We do not pick a side; we try to help both sides and to achieve a balance. That is where we are. I never hear about that balance between both sides from the Opposition; all I hear is about the impact on workers and on unions. In the debate last week, not once did I hear once about the

*[Kevin Hollinrake]*

4 million working days lost to strikes, the 2 million operations cancelled, the hospital appointments cancelled, or the £3.5 billion impact on the hospitality sector.

**Justin Madders:** Was the Minister not listening when I when I talked about how having a different holiday pay calculation rate for the four weeks and the extra 1.6 was actually going to create more burden on businesses?

**Kevin Hollinrake:** The hon. Gentleman raises an interesting point. He is talking about a single pot of annual leave. We believe in maintaining two pots. Presumably he is talking about the four weeks at normal pay currently and 1.6 weeks at basic pay, and about raising the 1.6 weeks of basic pay to the level of normal pay, which actually costs employers more. How much more is he suggesting employers should pay to regularise that position?

**Justin Madders:** Can the Minister give us a figure for how much more this would be?

**Kevin Hollinrake:** It is incumbent on the hon. Gentleman to do that. We are maintaining the status quo. He wants to make that change. What is the figure for what he describes as a simpler position? Does he not agree that that would be a cost on business? It is simple as that, yet he throws that out as if it were no matter for employers, who would have to deal with the extra cost.

**Justin Madders:** The Minister pointed out that, apparently, this will save businesses £1.2 billion. I don't know if that is more or less than the change would cost, but I would have thought that it is something that could have been looked at, yet it does not appear to have been considered at all.

**Kevin Hollinrake:** I think we are back to the same place. As the hon. Gentleman knows, the £1.2 billion is largely the administrative costs of maintaining a recording position. What he wants to move to would cost a cost employers £1 billion. That is an interesting point.

Raising concerns that I think are scaremongering, The hon. Gentleman said that in future employers would be able to keep records "if they like". That is not the case, and he knows that. Why would he say that kind of thing? Employers are required to make and keep adequate records. He knows that from the legislation. He also raised some concerns about change expressed by one of the unions, but it is not a change, because these measures have not yet been implemented in the UK economy. Again, he raises those concerns that somehow this is detrimental to health workers, but that is not the case. Does he accept that?

In terms of the points on rolled up holiday pay raised by the hon. Gentleman and the hon. Member for Walthamstow, the Government believe the existing safeguards are proportionate in addressing current concerns about impacts on workers from rolled up holiday pay. Employers are already required to provide an opportunity for workers to take leave, and we have heard through our stakeholder engagement that this is taking place. We also have safeguards in relation to the 48-hour working week, where a worker cannot work more than 48 hours a week unless they choose to opt out.

In terms of consultations, employers will have to tell their workers if they intend to start using rolled up holiday pay, and this payment will have to be clearly marked on the worker's payslip. If employers need to make changes to terms and conditions, they must seek to reach an agreement with their workers or their representatives.

I think I have covered most of the points raised—I am sure I will be told if I have not. Our standards and our workers' rights were never dependent on membership of the EU—indeed, the UK provides stronger protections for workers than are required by EU law. For example, we have one of the highest minimum wages in Europe, and on 21 November, the Government announced that we will increase the national living wage for workers aged 21 and over by 9.8% to £11.44 an hour. That will certainly help the hon. Lady's constituents, some of whom may be low paid, as she said.

Our regulatory system is recognised globally, but we want to raise the bar even higher and deliver on our ambition to become the best regulated economy in the world, as we embrace our newfound freedoms outside the EU. By doing so, entrepreneurial businesses will have more opportunity to innovate, experiment and create jobs, and importantly, workers' rights will be protected. This will cement our position as a world-class place to work and to grow a business.

**Stella Creasy:** I asked a specific question about the impact of rolled up holiday pay on women who take maternity leave. The Minister confirmed in his statement that the protection that holiday pay should not be calculated during maternity leave was there, but he did not clarify what this would mean if a woman came back to a role, for example, and was then told she was on rolled up holiday pay.

**Kevin Hollinrake:** I am happy to address that point, too. The hon. Lady talked about people being notified about their leave entitlement, and I did refer to that in my response. Indeed, employers are required to provide an opportunity for workers to take leave in any circumstance, and we have heard through our stakeholder engagement this is taking place. If there are specific points she wants to raise, I am happy to respond in writing.

**Stella Creasy:** A woman on maternity leave does not accrue holiday pay because she is on maternity leave, so her holiday pay, if it is then being transferred into rolled up pay, could mean that she is at a disadvantage because she was on maternity leave; there is nothing to calculate her entitlement. I am sure that the Minister thought about this. I am sure that he thought about the protections for women on maternity leave. What would a woman's rights be if she was then moved to rolled up holiday pay?

**Kevin Hollinrake:** I will not clarify the position now, but I am happy to write to the hon. Lady. I commend the regulations to the Committee.

*Question put and agreed to.*

*Resolved,*

That the Committee has considered the draft Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023.

3.17 pm

*Committee rose.*