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Public Bill Committee

EMPLOYMENT RIGHTS BILL

Fifth Sitting

Tuesday 3 December 2024

(Morning)

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Saturday 7 December 2024

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The Committee consisted of the following Members:

Chairs: Sir Christopher Chope, Graham Stringer, † Valerie Vaz, David Mundell

† Bedford, Mr Peter *(Mid Leicestershire)* (Con)
Darling, Steve *(Torbay)* (LD)
† Fox, Sir Ashley *(Bridgwater)* (Con)
† Gibson, Sarah *(Chippenham)* (LD)
† Gill, Preet Kaur *(Birmingham Edgbaston)* (Lab/Co-op)
† Griffith, Dame Nia *(Minister for Equalities)*
† Hume, Alison *(Scarborough and Whitby)* (Lab)
† Kumaran, Uma *(Stratford and Bow)* (Lab)
† Law, Chris *(Dundee Central)* (SNP)
† McIntyre, Alex *(Gloucester)* (Lab)
† McMorrin, Anna *(Cardiff North)* (Lab)
† Madders, Justin *(Parliamentary Under-Secretary of State for Business and Trade)*
† Midgley, Anneliese *(Knowsley)* (Lab)
† Murray, Chris *(Edinburgh East and Musselburgh)* (Lab)
† Pearce, Jon *(High Peak)* (Lab)
† Smith, Greg *(Mid Buckinghamshire)* (Con)
† Tidball, Dr Marie *(Penistone and Stocksbridge)* (Lab)
† Timothy, Nick *(West Suffolk)* (Con)
† Turner, Laurence *(Birmingham Northfield)* (Lab)
† Wheeler, Michael *(Worsley and Eccles)* (Lab)

Kevin Maddison, Harriet Deane, Aaron Kulakiewicz, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 3 December 2024

(Morning)

[Valerie Vaz *in the Chair*]

Employment Rights Bill

9.25 am

The Chair: Good morning, everyone. Will everyone please switch their electronic devices off or to silent mode?

We now begin line-by-line consideration of the Bill. The selection list for today's sittings is available in the room and on the parliamentary website. It shows how the clauses, schedules and selected amendments have been grouped for debate. The purpose of grouping is to limit, in so far as is possible, the repetition of the same points in debate. The amendments appear in the amendment paper in the order in which they relate to the Bill.

A Member who has put their name to the lead amendment in a group is called first; in the case of a stand part debate, the Minister will be called first. Other Members are then free to indicate by bobbing that they wish to speak in the debate. At the end of a debate on a group of amendments, new clauses or new schedules, I shall again call the Member who moved the lead amendment or new clause. Before they sit down, they will need to indicate whether they wish to withdraw the amendment or new clause, or to seek a decision. If any Member wishes to press any other amendments in a group to a vote—including grouped new clauses and new schedules—they will need to let me know. I shall use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules following the debates on relevant amendments. I hope that explanation is helpful.

I remind Members about the rules on declarations of interests, as set out in the code of conduct. We will not go around the room now, but if you want to speak, you should declare your interest at that time.

Clause 1

Right to guaranteed hours

Greg Smith (Mid Buckinghamshire) (Con): I beg to move amendment 137, in clause 1, page 2, line 6, at end insert—

"**27ABA Reference to an employer**

(1) For the purposes of Chapters 2 to 4 of this Part, references to an 'employer' do not apply to an employer defined as a small and medium sized enterprise under subsection (2).

(2) For the purposes of this section, a 'small and medium sized enterprise' means an organisation or person employing 500 or fewer employees."

This amendment would exclude small and medium sized enterprises from the Bill's provisions on zero hours contracts.

The Chair: With this it will be convenient to discuss the following:

Amendment 138, in clause 7, page 24, line 33, leave out subsections (3) to (5) and insert—

"(3) In paragraph (b) of subsection (1), after 'shall', insert ', in the case of an employer with fewer than 500 employees,'

(3B) In subsection (1), after paragraph (b), insert—

'(c) may, in the case of an employer with 500 or more employees, refuse the application only if—

(i) the employer considers that the application should be refused on a ground or grounds listed in subsection (1ZA), and

(ii) it is reasonable for the employer to refuse the application on that ground or those grounds.

(1ZA) The grounds mentioned in subsection (1)(b) are—

(a) the burden of additional costs;

(b) detrimental effect on ability to meet customer demand;

(c) inability to re-organise work among existing staff;

(d) inability to recruit additional staff;

(e) detrimental impact on quality;

(f) detrimental impact on performance;

(g) insufficiency of work during the periods the employee proposes to work;

(h) planned structural changes;

(i) any other grounds specified by the Secretary of State in regulations.'

(4) After subsection (1ZA) insert—

'(1ZB) If an employer with 500 employees or more refuses an application under section 80F, the notification under subsection (1)(aa) must—

(a) state the ground or grounds for refusing the application, and

(b) explain why the employer considers that it is reasonable to refuse the application on that ground or those grounds.'

(5) After subsection (1D) insert—

(1E) The steps which an employer with 500 employees or more must take in order to comply with subsection (1)(aza) include, among others, any steps specified in regulations made by the Secretary of State."

This amendment would exclude small and medium sized enterprises—here defined as employers with fewer than 500 employees—from the Bill's provisions on flexible working requests.

Amendment 139, in clause 16, page 30, line 24, at end insert—

"(1D) For the purposes of subsection (1A), an 'employer' means an organisation or person employing 500 or more employees."

This amendment would exclude employers with fewer than 500 employees from the Bill's duty for employers to prevent harassment.

Amendment 141, in schedule 2, page 110, leave out paragraph 1 and insert—

"1 In section 108 of the Employment Rights Act, for subsection (1), substitute—

(1) In the case of an employer with 500 or more employees, section 94 does not apply to the dismissal of an employee unless the employee has been continuously employed for a period of not less than two years ending with the effective date of termination."

This amendment would exclude employers with fewer than 500 employees from the removal of the qualifying period for the right not to be unfairly dismissed.

Amendment 142, in schedule 2, page 112, line 5, at end insert—

"(1A) Regulations under subsection (1) shall apply only to employers with 500 or more employees."

This amendment would exclude employers with fewer than 500 employees from regulations relating to removing the qualifying period for the right not to be unfairly dismissed.

Amendment 140, in clause 22, page 33, line 44, at end insert—

"(aa) 'employer' means a person employing 500 or more employees."

This amendment would exclude employers with fewer than 500 employees from the Bill's provisions on dismissal for failing to agree a variation of contract.

Greg Smith: It is a pleasure to serve under your chairmanship, Ms Vaz, on this bright and breezy December morning. It will be the new year by the time we finish our consideration of the Bill—let us see whether we are all as fresh after Christmas as we are today.

I shall briefly talk through the Opposition's rationale for each of the grouped amendments. The lead amendment, amendment 137, seeks to exclude small and medium-sized enterprises from the Bill's provisions on zero-hours contracts. The amendment is part of a set of amendments in my name intended to ameliorate the burden of the Bill for small and medium-sized businesses, defined as those with 500 or fewer employees.

The Parliamentary Under-Secretary of State for Business and Trade (Justin Madders): Will the shadow Minister give way?

Greg Smith: I know where the Minister is going.

Justin Madders: I refer to my registered interests and my trade union membership.

The shadow Minister might well have anticipated my question. Obviously, we acknowledge that the Bill is being brought through at good pace, which means that sometimes mistakes occur. I cannot help but notice that the amendment on today's paper is slightly different from the one that appeared in previous weeks, which excluded businesses with 500 or more employees, rather than 500 or fewer. Will he clarify whether he is seeking to cosy up to big business or that was indeed an error?

Greg Smith: I am almost grateful for the Minister's intervention. He was very perceptive to note the minor clerical error in the amendment that was previously submitted. That has now been corrected. Of course, the Conservative party stands with all business, but particularly with small and medium-sized enterprises, which, I can clarify for the record, we define as those with 500 or fewer employees.

The Regulatory Policy Committee has rated as red the identification of options and the choice of the policy in the Bill on zero-hours contracts and guaranteed hours. That means, in effect, that the Government have not justified the provisions in the Bill, the problem they are trying to solve, why they are needed or why they would work. The provisions on zero-hours contracts will create additional burdens on all businesses. The Opposition are particularly concerned about smaller businesses, which have less resource and resilience to cope with the measures: they do not have large HR or legal departments to help them navigate the additional requirements that will be placed on them. The Institute of Directors told us in its evidence that

"crafting the requirement for accessing guaranteed hours as something that employers need to be constantly calculating for all employees whenever they work beyond their fixed hours, and then making offers to people, some of whom would want to receive those offers and some of whom would not, seems to us the most administratively complex and costly way of delivering on the proposal."—[*Official Report, Employment Rights Public Bill Committee,* 26 November 2024; c. 11, Q4.]

I am confident that the Minister will try to refute these points and somehow paint the amendment as creating a two-tier workforce, which it would not. I urge the Government to recognise the bureaucracy burden and risk that the zero-hours contract provisions will create for smaller businesses in particular. Providing for guaranteed offers of hours after 12 weeks would create a lot of additional administration for our small and medium-sized enterprises. I gently ask the Minister how credible he thinks it is that employees will reject offers made and that the process will have to start all over again.

Amendment 138 is similar to amendment 137 in what it seeks to do, but excludes small and medium-sized enterprises—again, defined as those with fewer than 500 employees—from the Bill's provisions on flexible working requests. The RPC has said that the Government have presented "little evidence" that employers are refusing requests for flexible working unreasonably. When I talk to businesses in my constituency, I do not come across any complaints that flexible working is being refused unreasonably; I find many businesses that have, certainly in the post-covid era, made huge offers to their employees of working from home, mixed hours and working around the school run, or whatever it might be. It does not seem to me to be a particular problem in most businesses that I speak to. I want to give the Minister the opportunity to present some of his evidence for the necessity of these provisions. What led to the decision that these flexible working clauses are needed? If they are not, I urge the Government to accept our amendment to exempt SMEs from them.

Jon Pearce (High Peak) (Lab): The amendments may create a two-tier workforce, as the shadow Minister suggested. Does he know how many employees in the UK would not have the benefit of these rights if we made the amendments he is suggesting?

Greg Smith: I understand the point the hon. Gentleman is trying to make, but the Opposition's concern is that the burdens that the Bill's provisions—including this one—place on many businesses will actually result in fewer jobs in the overall labour market in the United Kingdom. I cannot for one second accept that anybody in this House wants there to be fewer jobs in the economy as a whole. If small businesses are placed under the burdens that are addressed by the amendments, and do not make additional hires or take the risk on individuals for jobs, we will be in a very bad place. If small businesses—the backbone of our economy—are not hiring, not growing and not going on to become medium-sized and large businesses, the people who pay for that are workers and people looking for a job or to progress their careers.

Alex McIntyre (Gloucester) (Lab): I refer the Committee to my membership of GMB and Community, and to my former membership of the Employment Lawyers Association.

I am somewhat confused by the shadow Minister's comments. On the one hand, he says that every business in his constituency offers flexible working already and

[Alex McIntyre]

therefore there is no requirement for this legislation; on the other hand, he says it is such a burden to businesses that it will stop them employing people. If everyone is doing it already and we are still employing people, what is the problem?

Greg Smith: I did not say that every business is offering flexible working. I said that, having visited businesses in my constituency, I am yet to find a problem around any business's offering flexible working, or any employee or constituent with a complaint about an inability to get flexible working—quite the opposite, in fact.

If we consider the cumulative impact of all the measures in the Bill, they will certainly place a burden on business. The Opposition are trying to ensure that we take only those measures that will work—only those that will have a direct positive impact and will not be a burden on the HR department. Well, most small businesses do not have an HR department; often, it is the director or another member of the team who has to take on that additional job and understand the burden of regulation, on top of whatever their main contract has them doing. If we get rid of the measures that are simply not necessary, that will mean less of a burden on businesses, notwithstanding the point, which the hon. Member for Gloucester rightly highlighted, that the majority of businesses that I speak to do not have a problem offering flexible working—perhaps some businesses in other Members' constituencies do.

The point of going through the Bill line by line in Committee is to metaphorically kick the tyres to ensure that its provisions are not a burden on business and will not have unintended consequences. As I said earlier, I cannot for one second believe that anybody in this House wants to see fewer jobs in the overall economy.

Sarah Gibson (Chippenham) (LD): I draw the Committee's attention to my declaration of interests. I have run a small business for the last 20 years. It would probably even be considered a microbusiness, because a lot of professional services are. In the south-west, acquiring and retaining professional staff is extremely difficult for small businesses—certainly, retaining them is. Does the shadow Minister not think that if we create a two-tier system, where someone working for a larger business has better rights than someone working for a small business, it will be even more difficult for small businesses to hire and retain staff?

Greg Smith: The point we have to look at, across the six amendments that we are considering in this group, is the reality of small and medium-sized businesses. I congratulate the hon. Lady on running her own business. I was self-employed for 15 years before I was a Member of this House, so I understand the challenges. Small and medium-sized businesses are the backbone of our economy but, by definition, because they are small or medium sized, they struggle—as she rightly says—not just to employ across the piece, but to obtain the legal advice, HR advice and professional services to help them navigate the panoply of regulations, rules and laws that this place has passed over the generations, as the current Government are seeking to do again through this Bill.

The way I look at politics, the best way to govern is to ensure as light a touch as possible on business and to limit the necessity of sourcing additional HR and professional services and so on that small businesses just cannot afford. If they are forced down the route of sourcing expensive professional services, that will have a knock-on effect on the real wages that they can pay to their staff and on the ultimate cost to the consumer of whatever service or product they are providing—that is a basic law of economics.

Although I would never advocate a two-tier approach in principle, there is a real difference between businesses in our economy that can simply have massive HR and legal services departments, without having to outsource them or bring them in at expensive rates, and businesses that cannot. If we accept that reality, perhaps we can look at the burden of additional regulations that might be necessary to help real people and real businesses to grow the economy, so that small businesses can become medium and then large businesses, and can be successful.

The Opposition tabled amendment 138 to exempt small businesses from the flexible working provisions. As I said, small businesses are being clobbered by the Government. Retail, hospitality and leisure relief has been cut, which has led to increased business rates bills, and employer national insurance contributions are going up, which Bloomberg economists estimate will cost 130,000 jobs. I cannot see the justification for putting those provisions in the Bill. We would be grateful if the Minister could provide a full and frank rationale for them—or, if not, support our amendment.

Amendment 139 would exclude businesses with fewer than 500 employees from the Bill's duty on employers to prevent third-party—I stress third-party—harassment. Of course, harassment in any form is totally, deeply and completely unacceptable in our country, and I am in no way trying to say otherwise, but the RPC has said that the Government have not provided "sufficient evidence" of the prevalence of third-party harassment or its impact to justify the approach taken in the Bill. I genuinely believe that every hon. Member wants to ensure that nobody in this country is harassed in any way, but, through that lens, we need to understand the evidence for the necessity of this particular provision about third-party harassment.

Alison Hume (Scarborough and Whitby) (Lab): I draw the Committee's attention to my declaration of interests and my membership of the trade unions Unison and the Writers' Guild of Great Britain.

I am pleased that the Bill will increase protection from sexual harassment, being one of those middle-class women of a certain age—the Government's commitment to holding workplace offenders to account cannot come soon enough. Last week, we heard that there is strong evidence that the majority of sexual harassment in the workplace, particularly in retail and hospitality, comes from third parties—a client, customer or patient. Surely, the hon. Member would agree that it is essential that employers can take reasonable steps to prevent harassment by third parties, because the net effect on the victim is the same whether that behaviour comes from a direct co-employee or a third party.

Greg Smith: I am grateful to the hon. Lady, who makes an accurate and fair point. I repeat that harassment of any form, sexual or whatever, is deeply and totally

unacceptable and wrong, and must be stamped out. The point that the Opposition are probing in amendment 139 is the proportionality of the impact on businesses—particularly small businesses—given the control that they have over third parties, and whether other laws that are already on the statute book should be used to fully ensure that anybody guilty of any form of harassment is brought to justice under the law. We are trying to understand how the particular measure in clause 1 would work, and its proportionality.

9.45 am

Laurence Turner (Birmingham Northfield) (Lab): I again draw attention to my declarations in the Register of Members' Financial Interests and my membership of the Unite and GMB trade unions.

Does the shadow Minister recognise that the prominent case of the Presidents Club harassment, which was exposed by the *Financial Times* some years ago, did apply to an employer that employed fewer than 500 people? That was specifically in respect of sexual harassment. The House has accepted the principle that measures should be put in place to prevent third-party sexual harassment; it did so last year, through the private Member's Bill process—including for the SMEs that the shadow Minister refers to. The most famous case on third-party harassment was the Bernard Manning case in 1996, which covered racial harassment; and recent tribunal judgments, including in 2019, have exposed gaps in the law. So does the shadow Minister recognise that there are important proven cases of third-party harassment that go beyond the current legal framework, that would be remedied by the provisions in the Bill?

Greg Smith: I am grateful to the hon. Gentleman. I will not seek to mislead the Committee by saying that I am across the Presidents Club case, but I am aware of the Manning case. Undoubtedly there are holes in the law, because harassment does take place in workplaces and outside workplaces up and down the land. Conservative Members categorically want that stamped out and want those guilty of those offences to face justice. However, as we go through the Bill line by line, we need to ask ourselves, "Does this proposal work, or are there other laws—criminal laws if necessary—to ensure that the authorities have the absolute ability to bring such prosecutions and ensure that those guilty of these horrible crimes are brought to justice?"

Amendments 141 and 142 are part of the set of amendments around ensuring that SMEs are not given undue burdens. These are about excluding employers with fewer than 500 employees from the removal of the qualifying period for the right not to be unfairly dismissed. RPC, which has had a lot to say about the Bill, has said that the day one unfair dismissal rights are estimated to cost businesses around £43.2 million per year.

Justin Madders: The shadow Minister may be familiar with this line of questioning, because it is basically the same issue as earlier. I may have misinterpreted the way that amendment 141 interplays with the Employment Rights Act 1996, but the amendment refers to

"an employer with 500 or more employees,"

although the explanatory note then says 500 or fewer. Will the shadow Minister clarify what the intention is?

Greg Smith: I am clear that it should be 500 or fewer. I will not pretend to guess how some of the misdrafting may have occurred; it happens to all parties when they are in government and in opposition. I can remember a couple of errors in Bill Committees when I was sat on the Back Benches on the opposite side from the then Opposition. I apologise to the Committee for any errors. For the clarity of the record, we mean 500 or fewer employees when we are defining an SME.

To be asked to give Government the power to make regulations with no idea what the regulations imposed on businesses will be, is clearly not a position we want to be in. The Government admit that the day one unfair dismissal rights could have negative impacts on employment and hiring, which could include incentivising employers to turn to temporary or fixed-term workers. The day one unfair dismissal rights could make it more difficult for those unemployed or economically inactive to access jobs, through overall negative impacts on employment and/or a strengthening of insider power. Alex Hall-Chen from the Institute of Directors warned the Committee that

"under the current system, employers are very likely to take a risk on hiring a borderline candidate who may not have quite the right experience or qualifications, but they will now be much less likely to take that risk because the cost of getting it wrong will be considerably higher."—[*Official Report, Employment Rights Public Bill Committee,* 26 November 2024; c. 8, Q2.]

There are important questions about what that means for people on the fringes of the labour market, especially as they are precisely the people the Government say that they need to get back into work to meet their 80% employment rate target.

We should all reflect on this point from the evidence that we heard last week: very many people in our society deserve a second chance in life. They might have made mistakes before, or be on a path to rehabilitation from offending or something else—whatever it might be—and I would hate it if people who found themselves in that position were not able to get a second chance. Employers that are willing to give second or even third chances should have the best empowerment to do so, to get people who find themselves in that position into work and on to the path to a better life.

I fear that the unintended consequence of the legislation will be to shut many people who find themselves in that position out of the ability to get a job, to improve their lives and to get themselves on to a better path. SMEs will feel the burden of the new regulations particularly acutely without large HR and legal teams, as I have said.

Mr Peter Bedford (Mid Leicestershire) (Con): The Bill as drafted seems to skew a competitive advantage in favour of large businesses. Earlier, my hon. Friend mentioned that small and medium-sized businesses are the key to economic growth in our country. These amendments will enable them to compete evenly because, as he says, they do not have large HR functions, or the support mechanisms that large businesses have. The amendments will redress the unfairness in the Bill.

Greg Smith: I am grateful to my hon. Friend for that input. He is absolutely right, and his argument hits the nail on the head. The point we are trying to get across through the amendments in my name and that of my hon. Friends in Committee is that small businesses

[Greg Smith]

sometimes just do not have the resource to go through the heavy, burdensome regulations that big businesses can navigate. Mega-businesses probably have more employees in their HR or legal department than most small businesses have altogether.

Laurence Turner: I am grateful to the shadow Minister for giving way; he has been generous with his time. On the point about perverse incentives, does he accept that if this group of amendments were in force, it would create a perverse incentive for the creation of umbrella companies and other forms of employment law evasion? If we are to enforce the provisions that we seek to pass in the Bill, instead of introducing a new dimension to employment law through the exemptions that he proposes, the only way to do that is to have a consistent approach across employers.

Greg Smith: I understand the hon. Gentleman's point about umbrella companies. He almost tempts me to get on to one of my hobby horses, which is IR35, but that would be way out of scope, so I promise not to go there.

My principal point is that there are always unintended consequences. And yes, in some respects, while acknowledging the reality of the contribution that small businesses make to our economy and their ability to meet a heavy regulatory demand, there may have to be other steps around that to prevent the further perverse incentives that the hon. Gentleman mentions. But I come back to my central argument: if we clobber small businesses down, there will be fewer jobs, and small businesses will not be growing, which means that the whole UK economy is not growing. His Government purport to want to see the economy grow. The Budget flew in the face of that, but, if we take as read the desire of all Members to see a growing economy in the United Kingdom, we cannot have that without small business, medium-sized enterprises or, frankly, the self-employed.

Let us not forget that, as we came out of the 2008 crash and through the coalition years, a huge part of economic growth came from the growth of self-employment, which led to those self-employed registering as companies, growing and—many of them—being a huge success story. If the Bill has the unintended consequence of reducing the incentive for entrepreneurs to set up on their own, start a business and employ people, that is a very unhappy place to be.

Michael Wheeler (Worsley and Eccles) (Lab): I refer the Committee to my declaration in the Register of Members' Financial Interests and my trade union memberships. When the shadow Minister listed the groups upon whom growth depends, he seemed to miss a rather large group—the workers. Does he accept that the purpose of the Bill is to create good employment and valued workforces? As we heard in evidence, good employment and valued workforces lead to increased productivity. Opposition Members are often keen to refer to the cumulative burden. As we are now on their fourth or fifth amendment, all in the same vein—about excluding millions of workers in this country from the benefits of the Bill—does he accept that the cumulative effect is to create a set of wrecking amendments that will remove the benefits of this Bill from millions of people in this country?

Greg Smith: The hon. Gentleman makes his point well, but I fundamentally disagree that these are in any way, shape or form wrecking amendments. Where we have common ground and where we do agree is that, of course, no business is anything without its employees—the people who actually do the work. However, where I think he and I may disagree, and I do not want to put words into his mouth, so I invite him to intervene on me again if I get this wrong, is about the person who has risked their capital—who has either borrowed money or risked money to have to start that business— who runs that business, who is the director of that business, being as much a working person as everybody else within it. Businesses only exist because of human beings—before our AI overlords come in and take over everything, way into the future. Of course, workers are at the hub of that, but the people who run the businesses are as much working people as everybody else.

To come back to the central point, there will be no workers, or fewer workers, if there are not people to actually employ them in the first place. If the Bill's unintended consequences are that SMEs—and perhaps larger businesses, but to be frank, it is more likely to be SMEs—are disincentivised from taking people on, disincentivised from growing their workforce, I do not think anybody will be happy.

Michael Wheeler: The shadow Minister invited clarification and an intervention. I do not think that anyone is disputing some of what he says, though we will dispute much. In the context of the Bill, he talks much about, as he put it, the mounting burden, but with little evidence—though he seems to quite like evidence when referencing the RPC. Does he accept, though, that the fundamental principle of the Bill is a rebalancing within the economy between workers and their employers, that nothing in it goes beyond that, and that some rebalancing is actually needed within that relationship for growth across the whole economy?

Greg Smith: I understand the hon. Gentleman's point. Of course, it is no surprise that a Labour Government would seek to bring in such a Bill. We knew it was coming; it was in their manifesto. We will come to the question of whether they really needed to rush this out in 100 days, given the number of Government amendments that we will consider later. It is, by definition, a rebalancing, and I hesitate to say this for perhaps the fourth, fifth or sixth time, but this process is about kicking the tyres.

I welcome our debate in Committee. The point of a Bill Committee is to go through provisions in far more detail than we can on Second Reading in the main Chamber, or even on Report or Third Reading further down the line. Even if Conservative Members would not have gone about making changes in this way, we need to be certain that the Government of the day succeed in their aims. The Labour party has a mandate to govern the country and we want to be a constructive Opposition. Although we might not agree with everything that the Government do—or maybe nothing that they do—it is in the country's interest that they succeed. Therefore, kicking the tyres on the Bill and ensuring that unintended consequences are ironed out in Committee is a good debate to have and a fundamental purpose behind why we will all will spend our Tuesdays and Thursdays together through to the end of January.

10 am

Nick Timothy (West Suffolk) (Con): On the cumulative effect of the pressures that are building on business, during our evidence sessions last week with various witnesses, the compelling point was made that we should not look at the Bill in isolation. The impact assessment states that the costs are a minimum £5 billion a year for business. Some witnesses thought that that was actually an underestimate, and that the true figure will be higher and will grow when more details emerge as we go through this process. We should also look at the Bill alongside decisions such as the equalisation of the national living wage for young people, the increase in employer's national insurance contributions and other business taxes that were in the Budget. I thought my hon. Friend might want to say something about the cumulative effects of all those decisions.

Greg Smith: My hon. Friend is right. The cumulative impact of other measures should be considered in the round. I might gently push back by saying that some of those matters are perhaps not fully in scope of the amendments that we are discussing. However, he is absolutely right that the Bill has to be considered in the light of other factors relating to other decisions in Government, be that fiscal events or other legislation. That goes to the nub of this set of amendments. This is about whether some of the measures are proportionate given the Government's original intent in the Bill, and whether some of the original intent in the Bill, from which these amendments seek to exclude SMEs, will be the metaphorical straw that breaks the camel's back.

Amendment 140 excludes employers with fewer than 500 employees from the Bill's provisions on dismissal for failing to agree a variation of contact—this is also part of our set of amendments. We have questions about the wisdom of clause 22, or at least we seek reassurance from the Minister that it will not prevent employers from improving working conditions or working practices. I would like to remove yet another burden on small and medium-sized business unless and until the Government can prove that that measure is needed and proportionate, and that, critically, the benefits will outweigh the costs.

Alex McIntyre: My experience in business goes way back. My parents ran a small business and, although I would not say I was a worker at it, I helped out from the age of nine. I got my first job at a small business when I was 12, and I worked in the hospitality trade throughout my school and university years, all at small and medium-sized enterprises. I spoke last week about the fact that I was on a zero-hours contract for the most part while I was there. I then became an employment lawyer advising businesses, from start-ups to FTSE 100 companies and global conglomerates. So I have some experience in these matters, and I am very grateful to be on the Committee.

Let me go back to my experience on a zero-hours contract. We are talking about amendments that would take out SMEs from many of these provisions, and I want to draw on two of my experiences and say why I think this issue is important. I mentioned the first last week: when I was on a zero-hours contract at the hotel that I worked at in my later teens, everybody in that business was on a zero-hours contract. As a 15-year-old, I was quite happy to be on a zero-hours contract. I had to balance it with playing rugby and my studies, but in the summer I could flex up and work longer hours. However, for many of my colleagues, that was their full-time job; it was the job that paid their rent or mortgage—if they had been lucky enough to buy a house—looked after their kids and provided the heating each winter. But when it came to it, it was open to abuse, and the manager I had would vary hours based not on demand, but on whether she liked the individual or not.

I remember vividly that one week a colleague refused—quite rightly, I would say—to take the manager's personal shopping up to her fourth-floor flat, because he was really busy behind the bar; he was the only barman on shift. He usually worked between 50 and 60 hours a week; for the next month, he was given five hours a week. He had two children, and rent to pay. I just do not agree with the amendment suggesting that that is fine and that that abuse of someone's rights could continue indefinitely.

Mr Bedford: The example the hon. Gentleman has just given would be covered anyway by employment law. If an individual is being discriminated against, they could take that to a tribunal under current employment law. The amendment would not in any way dilute the rights that currently exist in that respect.

Alex McIntyre: Well, the individual would be able to raise a grievance, but discrimination requires it to be related to a protected characteristic, and there is no protected characteristic saying that just because someone disagrees with a manager, he would be able to bring a claim under the Equality Act 2010 for discrimination. He might be able to raise a grievance about that, but that requires an employer to have a fair grievance process and to actually follow through. Is that individual, who is already on very low pay and struggling to pay his rent and feed his kids, going to take that grievance through a tribunal system that the previous Government allowed to really suffer? Eighteen to 24 months is the standard waiting time to get any form of justice, so I do not think it is appropriate to say that he would be able just to go to a tribunal. What he really needed was guaranteed hours and small businesses being prevented from abusing people by saying that they can continue to work 60 hours but not offering them a regular-hours contract.

My second point is on sexual harassment or harassment by third parties. When I was 15 years old, I worked at a Christmas party for midwives at that same hotel, and during that party I was sexually assaulted in the workplace. I was groped by the midwives and told that because I was only 15, they would be able to teach me a thing or two. When I approached my manager about it, he said I should enjoy that kind of attention because I was a man. I am really conscious that female colleagues suffered way worse than I did. Just because businesses are smaller, that does not mean that the impact on victims and people working there is any less.

However, the wording of the Bill is "all reasonable steps", and the "reasonable" test is taken into account when tribunals consider such matters and what reasonable steps need to be taken by businesses. The size of a business is often something that tribunals will take into

[Alex McIntyre]

account when they look at what "all reasonable steps" would mean. In my example, there were reasonable steps that could have been taken, but I was told that I had to get back in there and carry on working with that party. Excluding small businesses would prevent them from having the duty to look after their employees when they are suffering harassment in the workplace.

To come back to the point made by the hon. Member for Mid Leicestershire about competing evenly, my hon. Friend the Member for Birmingham Northfield has already talked about some of the perverse outcomes that the amendment might lead to. Unscrupulous employers who want to get around the legislation in whatever way they can might end up setting up umbrella companies in order to do that if this amendment were passed. A two-tier employment system would be a barrier to growth for companies, because it would say, "If you grow your company and continue to do well, you are going to put additional regulation on to the company." There would be a perverse incentive for businesses to grow to 499 employees and stop there.

Sir Ashley Fox (Bridgwater) (Con): On the hon. Gentleman's point about employers wanting to set up separate entities to keep below a limit, he will be aware that in the Budget the Chancellor increased the employment allowance, to protect small businesses from her otherwise devastating increase in national insurance charges, and there is no indication that the Exchequer is incapable of managing that. Equally, with small business rate relief, there is no indication that local councils cannot distinguish between employers that are setting up different business and those that are taking advantage of that. Why does the hon. Gentleman think that employers would be able to exploit what he describes as a loophole—but what we would say is there to protect small businesses—and yet the Government are perfectly happy to have similar allowances for national insurance and through rate relief?

Alex McIntyre: If we are looking at the numbers, I am glad that somebody on the Opposition Benches is finally acknowledging that we have massively increased employment allowance, taking many small businesses out of paying national insurance contributions altogether. It is nice to finally have some recognition of some of the good stuff this Government are doing for small businesses.

To return to the point, though, there is a big difference between having four employees, which would allow somebody to employ people on the national living wage, and having 500 employees. It would be much easier for a large business to exploit the kind of loopholes that are being suggested by reorganising itself into blocks of 499 employees than it would be for a business of a couple of thousand employees to be split into organisations of four employees or fewer, so I think that that is what is much more likely to happen.

I will not name names, but I have been in the trade for a long time, and whenever there is employment legislation, businesses will be considering how best to deal with it, and some are more aggressive than others. In this case, aggressive employers would potentially exploit that loophole, as my hon. Friend the Member for Birmingham Northfield suggested. We are creating a level playing field, which is an important part of this Bill. We heard in evidence last week that many employers are already doing so many of the good things in this Bill. This is a levelling of the playing field, to stop people undercutting good employers with what are, quite frankly, shoddy employment practices.

To sum up, I fully support the Bill, and I do not support the amendment. We should not create a two-tier employment system, where instances such as those that I and my colleagues suffered, like others working on zero-hours contracts in small and medium-sized enterprises, are allowed to go unchecked. We should continue to create a level playing field, as the Minister has suggested. It is important that we encourage all small and medium-sized enterprises to be good employers because, as the hon. Member for Chippenham said, staff retention in small and medium-sized enterprise is difficult. Being good employers—offering flexible working and ensuring that people have regular hours, if that is what they are working—can only benefit small and medium-sized enterprises, as they grow and expand their businesses.

Sarah Gibson: As I have stated, I am concerned for small businesses and have spoken to many across my constituency of Chippenham that are extremely concerned about the cumulative effects of these measures on businesses without an HR department and about the huge cost they will impose. However, although I welcome the amendment, I am seriously concerned that if we create a system in which the rights of those who work for small businesses are curtailed, that will affect their ability to take on extra staff.

I feel as though I could have supported the amendment if it had been drafted for seriously small businesses, rather than SMEs of up to 500 employees. I struggle to think of a firm in my constituency with that many employees that does not have an HR department, because they would be struggling as a single employer—I used to struggle as the HR department of my own business with 15 employees. If the number of employees in the amendment could be brought down to around 20, it would be much more acceptable to those kinds of small businesses, but as it is, I would find it difficult to support.

Laurence Turner: I rise to make two brief points that have not been made in this debate. The first, which is narrow, is that we already have a legal definition of SMEs under the Companies Acts 2006, which defines the upper limit as 249 employees. I acknowledge that the previous Government's position was to extend to new regulations the higher thresholds that those on the shadow Front Bench are seeking to put forward through these amendments. I am happy to be corrected, but I do not believe that any legislation incorporating that position was subsequently carried. There is a serious point here. These may be probing amendments—we will find out shortly—but this process is not the right point to introduce a new legal definition.

10.15 am

Sir Ashley Fox: The hon. Gentleman makes a serious point that 250 employees is the current legal definition. If the Opposition were to show flexibility in accepting that 250 definition, would he and the Labour party accept the amendments for small and medium-sized businesses with up to 250 employees?

Laurence Turner: My personal view is that they should not be accepted, but the hon. Gentleman surely knows that he should not seek an opinion on the party position from a Back-Bench MP.

My second point is on the sectors that would be affected by the amendments. My hon. Friend the Member for Gloucester made an incredibly powerful contribution, which we all thank him for having the courage to make, about his experience in the hospitality industry. I want to talk about the social care sector, and it is important to remember that one in three workers on a zero-hours contract in England works in adult social care.

In a former life, I spent many hours going through the corporate structures of social care employers, and their accounts and other filings. It is commonplace for an individual care home to be constituted as an individual employer, even though they ultimately all share a common ownership structure, so what appears to be a small business is often not one. During the pandemic, there was a complex interaction between care workers on zero-hours contracts and a lack of access to statutory sick pay, and there was a direct link between SSP coverage and high rates of infection, and indeed deaths, in those homes among both workers and residents.

The measures in the Bill will make real progress. Going back to points that have been covered already, I fear that this group of amendments will have serious unintended and perverse consequences, and I encourage Members to vote against it.

Justin Madders: I congratulate the shadow Minister on tabling the amendments and on the measured way in which he presented them. However, it will not come as any surprise to him to hear that we will not be able to support any of them.

The intention of amendment 137—or amended amendment 137—is to exclude SMEs from the provisions in clauses 1, 2 and 3. As we understand it, the additional amendments would commit the Government to exempting employers with fewer than 500 employees from measures designed to improve access to flexible working, from their obligations not to permit the harassment of their employees by third parties, from unfair dismissal provisions and from the measure designed to stop unscrupulous fire and rehire practices.

I understand that the general thrust of the shadow Minister's argument was about the impact on SMEs and the lack of an evidence base for some of the policies. The general response has to be that we will not accept a two-tier system of employment rights in this country. We believe that everyone should have the same rights and protections in the workplace, and that is fundamental to our principles.

I will address some of the specific points. The shadow Minister mentioned the RPC's criticism of our proposals on zero-hours contracts. There is legion evidence about the impact of those contracts on individuals. I am grateful to my hon. Friend the Member for Gloucester, who spoke movingly about his own personal experience, including of third-party harassment. His example of the individual who was, effectively, punished when they refused to take a bag of shopping upstairs was telling, and it showed the risks of the power balance in zero-hours relationships. I think that that individual, having already been punished for refusing to take shopping upstairs, would have received similar retribution had he raised a grievance. That goes to show some of the challenges of the power balance for people working on zero-hours contracts.

There is considerable evidence on the impact of the zero-hours contracts. According to the Chartered Institute of Personnel and Development, 22% of workers on zero-hours contracts do not believe that their contractual arrangements suit their life, and the previous Government's Taylor review in 2017 found that many workers on zero-hours contracts struggled with that one-sided flexibility and power imbalance, where employers often require employees to be available.

Dr Marie Tidball (Penistone and Stocksbridge) (Lab): I thank the Minister for his speech so far. We heard a lot from the Opposition about the cumulative impact on business, and I wonder whether he might say something about the cumulative benefit for workers. We know that 2 million zero-hours workers may benefit from the changes in the Bill, and we also heard evidence last week from a number of small businesses, or those who work with them, that they do not want a two-tier system. They said there are benefits in these provisions that will lead to not only better quality rights for those currently on zero-hours contracts but happier businesses with a more productive workforce.

Justin Madders: On a very fundamental level, if an employee has less money coming than in the previous week, they face a challenge in paying their bills, whether that is their mortgage, their rent or whatever costs they face. That is a very clear challenge to individuals on zero-hours contracts. A great number of studies show that people in insecure work have lower levels of job satisfaction and poorer physical and mental health, and there are also issues linked to lower levels of work productivity. As my hon. Friend mentioned, there is evidence that proper workforce planning is good for businesses, as well as individual workers. I am afraid that any exceptions creating a two-tier labour market would just exacerbate some of the challenges we see in that area. That would create a downward pressure, distort competitiveness at the expense of larger businesses and, as we have heard, create a disincentive for smaller businesses to grow.

Chris Law (Dundee Central) (SNP): I have heard the Minister reference two-tier rights in employment law several times. I want to raise a fundamental issue in this Bill: zero-hours contracts and the different legal categories of a worker. It is a general principle that labour law should be universal in its application, and our labour rights should apply to everyone who works for others. I just wanted some clarification, as without clarification on the legal status of all those who work, the rights in the Bill are allocated piecemeal.

I will give some examples: some rights are given to employees with contracts of employment; some rights are given to limb (b) workers, such as Deliveroo riders in Independent Workers Union of Great Britain *v.* Central Arbitration Committee and Deliveroo last year, or gig workers who are denied the status of employees; and some rights are given to other new ad hoc definitions of workers, such as workers on non-contractual zero-hours arrangements. The situation of the false self-employed,

[Chris Law]

including those employed by umbrella companies or personal service companies, as well as anomalous workers such as foster carers, is not otherwise dealt with, and their rights are left opaque. Fundamentally, I am asking whether a new clause is required to ensure that all rights contained within the Bill apply to workers defined as

"any individual who is engaged by another to provide labour and is not, in the provision of that labour, genuinely operating a business on his or her own account".

Justin Madders: I understand the point that the hon. Member is making. I think it would not need a new clause but a new Bill, because there is a whole range of very complicated issues about worker status. It is something that we are committed to looking at in our "Next Steps" document, and there is a whole range of issues in that sector. The hon. Member referred to foster carers—I should clarify for the record that I am a foster carer. Personally, I would not consider that to be employment, but I know there are others who believe that it is. He also mentioned various arrangements within the gig economy, and the shadow Minister mentioned IR35. We can very quickly get into a very detailed argument about who would be classed as a worker and who would not, and that needs a much more considered and lengthy examination. That is why, as much as we would have liked to, we were not able to get it in the Bill in the time allowed, but I absolutely understand the point the hon. Member is making.

On the amendments before us, the disincentive for an employer to grow would, unfortunately, be an unintended consequence of their provisions. There could even be a scenario where there would be an argument in an employment tribunal about how big an employer actually was. My hon. Friend the Member for Birmingham Northfield talked about some of the complicated structures that we see, and we know that some employers deliberately structure themselves to avoid particular laws. That would go against the policy objectives, which are to create a level playing field across the board, avoid undercutting and ensure that best practice is spread throughout.

We must not create a two-tier system. That is not consistent with what we are trying to achieve. It would harm not just workers, but small businesses, and, as the hon. Member for Chippenham said, would create an incentive for workers at smaller employers to leave. If someone does not get any protection for two years working for one employer, they will go and work for someone who will give them that protection. That applies to lots of the other rights as well.

On the unfair dismissal amendment, there was a brief period in the 1980s where there was a slightly different employer size qualification for unfair dismissal. I think it was 21—some way below the number that the shadow Minister is proposing—but even the Thatcher Government decided that was not a tenable situation and removed that in the end. I gently point out to the shadow Minister that the amendment as drafted would not have the effect that he hopes. I hope he will not push it to a vote.

On the issues about the impact on small employers, that is why we have legislated to include a statutory probationary period to ensure that there is not an undue burden on businesses.

Jon Pearce: I should refer to my entry in the Register of Members' Financial Interests and my membership of the GMB.

The shadow Minister talks about employment rights from day one and the extra burden, when the reality is that cases of discrimination and whistleblowing can be brought on day one. Giving some structure to the probationary period will actually assist many employers. In my experience in private practice advising businesses, many of them found themselves subject to claims of discrimination because they failed to go through a proper process. The Bill will assist businesses in giving a greater structure and could potentially lessen the burden on employers with regard to the threat of litigation.

Justin Madders: I think I understand the point my hon. Friend is making: sometimes, an individual who is aggrieved about their treatment will find a legal claim to pursue the employer even if it does not necessarily fit their circumstances. Giving a much clearer structure for employers will hopefully allow closure—I think that is probably the right word—for both sides.

The shadow Minister asked about the evidence on flexible working. I refer him to a Flexible Jobs Index survey in 2023 which found that nine in 10 people wanted to work flexibly, but only six in 10 were able to do so. There is clear evidence, and we heard plenty in the evidence sessions about that.

I will briefly touch on the issue of third-party harassment. My hon. Friend the Member for Birmingham Northfield gave a scholarly run-through of some of the issues, but for the benefit of the Committee, third-party harassment was actually unlawful for the five years between 2008 and 2013, and I am certainly not aware of businesses claiming that that was an undue burden. That was repealed in 2013 because, at the time, it was considered that there were broader protections available regarding third-party harassment. However, that interpretation was challenged in the Nailard judgment in 2018, which found that employees were not in fact protected against third-party harassment. One of the intentions behind the Bill is to close that gap. We think it is absolutely fundamental that, if someone is being harassed at work, it should not matter how big their employer is. Harassment is unacceptable in all its forms, whoever someone works for and however big their employer is, and we intend to close that gap.

10.30 am

On the size of the employer, again, my hon. Friend the Member for Birmingham Northfield made a sound point that 500 employees would be a new departure from the accepted definitions, and I think that some estimates suggest that up to 15 million people would be affected by that. That is an awful lot of people to be locked out of basic employment rights; we believe that these are fundamental protections for this country and we are not going to accept a diminution of rights for people on that scale. We think that there is enough in the Bill to create a baseline of security and certainty for the entire country. There was plenty of evidence last week about the importance of that, and that is why I urge the shadow Minister to withdraw his amendment.

Greg Smith: I think that we have had a good—possibly lengthy for a Bill Committee—debate on this group of six amendments. My fundamental concern and argument is around the cumulative impact and the risk of the unintended consequence—I do not think we have got the reassurance we require on that—that these measures could actually dissuade SMEs. I accept that we can debate how to precisely define SMEs, from the Liberal Democrats' quite low-ball position of around 20, to the 249 mark, or to the 500 mark in our own amendments but, if the net result—the unintended consequence—is fewer jobs overall in the economy, nobody wins.

I certainly want to reassure the Committee, on the point about third-party harassment, that the Opposition absolutely want all forms of harassment stamped out, for sure. I thank the hon. Member for Gloucester for sharing his personal story with the Committee; clearly what happened to him was wholly unacceptable, and I am very sorry that he had to endure it, as many other people do around the country. The question that we are posing is whether this the right law to do it, or are there other laws required to be as firm as humanly possible to stamp down on those unacceptable behaviours? Our point stands—that concern stands—that this measure could, in the words of the hon. Member for Birmingham Northfield, actually create a "perverse incentive" for employers not to give people that chance in life, not to grow their workforce, and not to take that risk or that gamble that, in turn, would grow the economy, which I think we all want them to do.

As we are mindful of the need to probe this measure a little bit further and to get some of those definitions right, we reserve the right to revisit this on Report but, for the time being, we will not be pushing any of those six amendments to a Division. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Greg Smith: I beg to move amendment 149, in clause 1, page 2, line 29, leave out

"a number of hours ('the minimum number of hours') not exceeding a specified number of hours"

and insert

"two hours or fewer per week ('the minimum number of hours')".

This amendment defines the number of hours that would constitute a "low hours" contract.

Hopefully we can have a little bit more speed with this debate. In amendment 149, we seek to define a low-hours contract to mean that fewer than two hours' work is made available during the week. I want to be clear with the Committee that this is a probing amendment, because we are not saying that two hours should constitute a low-hours contract. The Opposition want to know how the Government would define a low-hours contract. The probing amendment will hopefully enable us to understand the Government's intent fully.

The Government have sadly failed both to consult widely with business and to conduct proper policy development work, and they have thereby introduced a Bill without giving Members across the House a clue as to the actual objective of the definition of a low-hours contract. This is a simple and straightforward probing amendment. I would be grateful to the Minister for some clarity on the Government's definition of a low-hours contract and on what that definition will be used for.

Michael Wheeler: I appreciate that the shadow Minister has said that it is a probing amendment. I wish it was not quite so ridiculous, in all honesty—it is an utter low ball—but I will speak to it and to the clause it seeks to amend.

Greg Smith: I know the hon. Gentleman is new to the House, but sometimes one has to be a bit ridiculous to prove a point and to get answers. Does he agree?

Michael Wheeler: Well, I agree on my newness, and maybe as I gain more experience, I will encounter more ridiculousness in this place than I already have—in fact, I am sure I will. I wish to speak to the amendment, despite its probing nature. In my view, and I hope the Minister would agree, the clause is designed to promote stability and financial security for those who currently lack it because of the number of hours that are baked into their contracts. To set the bar as low as two hours would run counter to that purpose.

The measure has been widely trailed and debated in the run-up to the election and in this Committee. I highlight a few things that I hope the Minister will speak to with a view to that purpose. I hope that we would all agree that tackling the insecurity that millions of people in our economy face is a worthy aim, and that that is not limited just to those on zero-hours contracts but includes those on low-hours contracts who regularly work more than their set hours.

I spoke of a rebalancing earlier, and that is about fairness and the quality of employment. As part of that, it is only right that, where need is demonstrated, employees are offered—not given; there is still an element of choice—the opportunity to have those hours baked into their contracts, as is set out in the Bill. That would improve their financial security, their work-life balance, the predictability of their hours, and their ability to live their lives, to which their income is incredibly important.

I am looking forward to hearing the Minister roundly reject this amendment, but I also want him to address some other parts of the clause, specifically the inverse of the amendment, the phrase,

"not exceeding a specified number of hours".

I hope we would want to see this measure apply to as many workers—

Sir Ashley Fox: The hon. Gentleman spoke of the need for employees to have stability and security, but would he not agree that the Bill causes great instability and insecurity for many small business owners precisely because it is so vaguely and badly drafted? The Government have submitted 109 amendments of their own. There are two new schedules and large parts of the Bill that have been left to be amended by future regulations. The Minister spoke earlier about the probation period, but we do not know how long that will be. What is a low-hours contract? It has taken the Opposition to say, "How about two?"—a ridiculous number, we admit—to show that there are enormous parts of the Bill that are not properly drafted. Would it not be better for the Government to just take this Bill away and start again?

Michael Wheeler: I would not agree, which will not surprise the hon. Member. I gently suggest that the number of Government amendments will possibly provide the clarity that he asks for—they will be baked in, and

[Michael Wheeler]

will provide that clarity. This is part of the process of getting the provisions right for all involved. I would suggest that it reflects exactly the opposite of what the hon. Member suggests.

I return to the point about stability and instability. If the basis of the provision is to have hours regularly worked included in contracts, having that contractual term would provide not only stability for the employee, but predictability and stability for the employer. I am sure we can agree that stability all round is beneficial.

However, I come on to possible unintended consequences. The term,

"not exceeding a specified number of hours",

could do with some clarity, in order to provide that stability and to ensure that the measure applies to the widest number of people within our workforce, to fulfil the intended aim. There is also the phrase "regularity". Will the Minister consider how to clarify that term to provide the clarity that we would all welcome? Finally, I come on to the term, "excluded worker". As I have said, we want to see as many people as possible covered by the Bill, so that they feel the benefits of it. The provisions are measured, for both workers and employers. I would welcome the Minister's commitment to consider those points, as well as his roundly rejecting the ridiculous premise on which the amendment is based.

Justin Madders: I am grateful to the shadow Minister for clarifying that this is a probing amendment, and possibly also that it is a ridiculous amendment, although I am not sure that that is the best way to persuade us to accept it. He will not be surprised to hear that we will not accept it.

An important point has been raised, and my hon. Friend the Member for Worsley and Eccles has asked a number of questions about what the amendment is trying to achieve. As I understand it, the amendment would mean that only workers on zero-hours contracts or arrangements, and those with two hours or fewer guaranteed per week, would be covered by the regulations. It would also remove the power to make regulations setting the maximum number of hours for those low-hours contracts to be in scope of the provisions.

The low-hours concept will be crucial in determining how many workers end up in scope of the right to guaranteed hours. That is partly intended as an anti-avoidance measure, to prevent employers from avoiding the duty to offer guaranteed hours by moving a worker on to a contract guaranteeing a very small number of hours. I think we can all see that, if the shadow Minister's amendment were accepted, we would soon be talking in the lexicon about two-hours contracts, rather than zero-hours contract, and that would not deal with the questions of stability and security that we are trying to address.

We will consult on what we mean by low hours. We think it is very important to get this point absolutely right, and we understand that pitching it at a level that works for both the business and the worker will be absolutely critical. We are committed to working in partnership.

We are looking to clarify the provision in regulations. We understand that there are arguments about the detail being in the Bill, but the counter-argument is that putting the details in regulations gives us more flexibility to review the provisions as we move along. It is fair to say that we do not expect the number to end up being two hours. I do not think there has been any evidence put forward for that.

Greg Smith: As I said to the hon. Member for Worsley and Eccles, sometimes something a little obscure is needed in order to get noticed and to get an answer.

There is a serious question on what constitutes a low-hours contract. The Minister has just said he will consult, but presumably he will consult on a range—the consultation document will not be a blank piece of paper inviting people to say exactly what they think. What is the range in which the Government believe a low-hours contract should be defined, which will be within that consultation he has promised?

10.45 am

Justin Madders: The shadow Minister tempts me to pre-empt what we will put in the consultation. I have had a number of conversations with my hon. Friend the Member for Worsley and Eccles over many years, because he has great experience of the retail sector, where there is a great deal of insecurity of work. People who work in that sector can be on guaranteed hours of 16 hours a week but still face insecurity. Equally, a lot of the people that we are trying to help here have no guaranteed hours at all. There is an argument that anyone below full-time hours—again, there is a debate about what that means—could be within scope.

That is why we are holding a consultation, to enable us to understand exactly who will be affected—whether we are trying to catch everyone or target the people who suffer the greatest insecurity of work. That is the purpose of the consultation. I know the shadow Minister will probably want to get some figures out of me today, but I am afraid I will not be able to oblige.

Chris Law: I am sorry to stop the Minister in his tracks, but it is quite an important point. There is in the Bill what I would consider to be a loophole, which enables employers to offer a guaranteed-hours contract where there is work of a short-term nature. There are some issues with that. I would like to know the justifications for it, and whether it is going to consultation. Does it mean that people engaged on such terms will be engaged on a zero-hours basis, or will they be employed on a guaranteed-hours basis? It is not clear in the Bill. If the former, why is it not possible for such workers to have a guaranteed-hours contract if they otherwise meet the proposed statutory criteria? What safeguards will there be to ensure that the power is not abused, in order to avoid a guaranteed-hours contract? I am sure that, in the spirit of the Bill, we want to ensure that that is tightened. There is nothing in the Bill for that, either.

What is the difference between a short-term contract and a fixed-term contract? Will there be a legal status for someone engaged on a short-term contract? Are they an employee, a limb (b) worker, or neither? Lastly, will non-renewal of a short-term contract be a dismissal for the purposes of unfair dismissal in the case of workers who are employees? That is a lot of questions, but I want to know whether there will be further consultation that may result in amendments to the Bill.

Justin Madders: The hon. Gentleman asked so many questions that I did not have a chance to make a note of them. A lot of the issues he raised will be dealt with by amendments that we will debate today or later in the Bill's passage, but I take his points. We are trying to legislate in a way that prevents unintended consequences and loopholes. I would say to the shadow Minister, "Watch this space," and encourage him to take part in the consultation, but we cannot accept his amendment.

Greg Smith: It is no surprise that the Government are unwilling to accept the amendment; it is a probing amendment, so we would probably have been quite upset if they had. The fundamental point I still want to get at, while making clear the probing nature of the amendment and that we will withdraw it, is that while I am half reassured by the consultation, it is critical that there is clarity and definition for businesses out there that want to understand what is coming down the line in this piece of legislation. Everyone knows the parliamentary arithmetic at the moment; this will become law at some point during this Session.

While it is never an ideal scenario to legislate first and consult second—it is far better to do it the other way round—we need greater clarity, as soon as is humanly possible, on how the Government intend to define low-hours contracts as they go to consultation. I cannot accept that there will not be some floor and ceiling within the range that the Government seek to consult on, but I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Greg Smith: I beg to move amendment 152, in clause 1, page 3, line 2, after "not" insert

"on a fixed-term contract or".

This amendment will exempt a worker on fixed-term contracts from being categorised as a "qualifying worker".

This too will hopefully be a relatively straightforward debate. The amendment seeks to exempt workers on fixed-term contracts from being categorised as qualifying workers. This is a probing amendment in my name, on behalf of the official Opposition. We would like to understand why it is proportionate, particularly for small and medium-sized enterprises, for the provisions on guaranteed hours to apply to workers on fixed-term contracts, given that we still do not know the length of the reference period. Is it proportionate for a business to have to make an offer of guaranteed hours to a worker whose contract will in any event come to an end just after the reference period? In last week's evidence sessions, some witnesses talked about workers who are perhaps on a very specific construction project with a definite end point—when the railway station is built, there is nothing left to build on that project—so it is not possible to escape the fixed-term nature of some contracts. Without knowing the length of the Government's proposed reference period, it is impossible to make a judgment on the effect of extending guaranteed hours to workers on those fixed-term contracts. I should be grateful if the Minister would provide clarity on that, so that this probing amendment can be put to bed, or further questions can be asked down the road.

Justin Madders: The shadow Minister will not be surprised to hear that we will resist the amendment. First, it is important to note that the Bill does not ban the use of fixed-term contracts, or seek to force employers to make workers on fixed-term contracts permanent. That is not our intention. We recognise that in some cases, a fixed-term contract will be the most appropriate one for both worker and employer. For example, under the Bill's provisions, it would be reasonable to enter into a limited-term contract where the contract is entered into for the worker to perform a specific task, and the contract will end once that task is completed. Many fixed-term contracts also already have clearly stated guaranteed hours within them.

However, where a fixed-term contract is used, we think it is important that within that fixed-term period, workers have the same right to guaranteed hours as those on permanent contracts. For eligible workers, if the fixed-term contract does not guarantee more hours than what are considered to be low hours as set out in the regulations—which we will come to in due course—and is longer than the anticipated reference period of 12 weeks, which we will continue to work on, then employers will be required to offer a guaranteed-hours contract for the remainder of the contract, reflecting the hours worked regularly over the reference period. The amendment would create a serious loophole in the legislation, allowing employers to use fixed-term contracts to evade the purposes of the legislation entirely. There would be no mechanism to prevent the use of a fixed-term contract for 12 weeks or longer, so eligible workers would not have certainty of their hours. We would open up a serious loophole, which I am afraid unscrupulous employers would exploit. I therefore ask the hon. Member to withdraw the amendment.

Greg Smith: I accept the points made by the Minister, but I still think there is a relative concern. We in no way, shape or form want to create loopholes—certainly not for any unscrupulous employer, and I want that to be very clear and on the record—but we do totally accept that there are some very legitimate fixed-term contracts out there, such as certain construction projects.

Justin Madders *indicated assent.*

Greg Smith: I hope, from the nodding coming from the Government Front Bench, that Ministers agree with this. We will withdraw the amendment, but this point needs considerably more debate as the Bill progresses to ensure that while no loopholes for the unscrupulous are created, and that protections are there for employers around fixed-term contracts.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Greg Smith: I beg to move amendment 151, in clause 1, page 3, line 2, after "worker" leave out

"(but see section 27BV for power to make provision about agency workers)".

This amendment is consequential on the amendment that removes the ability of the Secretary of State to make regulations to make provision for agency workers to have similar provision to the right to guaranteed hours.

The Chair: With this it will be convenient to discuss amendment 150, in clause 4, page 23, line 24, leave out "2,".

This amendment removes the ability of the Secretary of State to make regulations to make provision for agency workers to have similar provision to the right to guaranteed hours.

Greg Smith: There are just a couple more Opposition amendments to go before we get to some Government ones. Amendments 150 and 151 propose to exclude agency workers from the provisions on the right to guaranteed hours. The provisions in the Bill relating to agency workers are another example of the Government's not having done proper policy work before introducing the Bill. I fully understand their desire to get it out within 100 days, but sometimes, if a Government have a mandate for five years, 100 days can seem quite quick.

The Bill specifies that the right to guaranteed hours with reasonable notice of the cancellation of a shift does not apply to agency workers, but it includes a Henry VIII power to extend those provisions to agency workers at a later date. I therefore ask the Minister the following questions. Why is it not straightforwardly on the face of the Bill that those provisions apply to agency workers? Why the Henry VIII power? What is the policy decision? In the Government's mind, are agency workers included in the principle, as well as the letter, of this legislation? We have concerns about these provisions, which could be extended to agency workers. How would the employment relationship then work? Who would dictate the hours? If it is the end user rather than the agency, surely they become the employer? It all becomes rather confusing.

Is this measure an attempt to ban agency working by the back door? I think everyone would accept that agency workers are sometimes some of the biggest heroes in our economy, as they fill gaps when full-time workers on contracts are unable to get to work that day, for whatever reason—be it sickness or anything else—particularly in key professions such as nursing, healthcare and teaching.

Until the Government can explain their intention, the Opposition do not believe it is responsible for the House to give them the powers to entirely change at a later date the policy position set out on the face of the Bill. We need clarity right now, so that this Committee, and the whole House later in the Bill's progress, can come to a proper, informed decision.

Justin Madders: I am grateful to the shadow Minister for tabling these amendments. He will again be unsurprised to learn that we will not be accepting them.

The Bill fulfils our pledge to end exploitative zero-hours contracts. We are introducing a right to guaranteed hours to eligible workers on zero and low-hours contracts, to give them the greater security and stability that all workers deserve. Although workers may choose agency work because they value flexibility, they can also experience the one-sided flexibility and insecurity that we have talked about already. If we do not include a power to include agency workers, there is a risk that employers wishing to evade the Bill will simply shift their workforce on to agency work to avoid giving them rights.

Sir Ashley Fox: What is more important in relation to this amendment is that the Government are granting themselves a Henry VIII power to amend their own Bill. The Minister really should say whether agency workers are intended be within its scope. He must not just say, "We will make this up at a later date." We need clarity on that point. In previous Parliaments, the Labour party rightly criticised Conservative Governments for introducing Henry VIII clauses, but it is doing precisely the same thing because it has not actually made a decision. Will the Minister please answer this question: does he intend agency workers to be covered or not?

Justin Madders: I am grateful for the hon. Member's question. It is our intention to include agency workers, which is why we have been consulting. The consultation finished yesterday on how best to apply the Bill to agency workers, because we understand it is a different relationship. There are a range of considerations, which is why the power has been taken in this way. I am sure that the hon. Member would criticise me if we had set out the scope of the Bill without having taken that consultation first. We are concerned about ensuring that there is a level playing field and not creating another loophole. We will now engage with the responses that we have had to the consultation.

11 am

Laurence Turner: The Minister spoke about the insecurity that can hang over agency workers, and said that their employment situation does not always represent genuine flexibility. As someone who has been an agency worker, I can certainly identify with what he says. On the point around regulations, does he agree that this is a long-standing precedent in employment law, dating all the way back to the Employment Agencies Act 1973, under which the current agency workers regulations are made? In terms of powers, this is nothing new.

Justin Madders: I am grateful to my hon. Friend for his intervention. Much employment law, particularly in relation to agency workers, is dealt with by regulations; that is appropriate because of the detail required. It is not a break with the past, albeit I accept the criticisms that we may be seen to be taking part for ourselves; I think it is entirely consistent with the way this has operated previously. It is something that we shall now consider in terms of the responses to the consultation. For those reasons, I think the hon. Member for Mid Buckinghamshire should withdraw his amendment.

Greg Smith: I accept many of the Minister's points about the consultation, but as my hon. Friend the Member for Bridgwater has made clear, there is a Henry VIII power here. When legislation as wide as this is proposed, it is a big problem to have such a lack of clarity about where it will lead for agency workers, who are such a critical part of our economy and our workforce across many sectors. Given the Henry VIII element, we seek a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 14.

Division No. 1]

AYES

Bedford, Mr Peter	Smith, Greg
Fox, Sir Ashley	Timothy, Nick

NOES

Gibson, Sarah	Hume, Alison
Gill, Preet Kaur	Kumaran, Uma
Griffith, Dame Nia	Law, Chris

McIntyre, Alex	Pearce, Jon
McMorrin, Anna	Tidball, Dr Marie
Madders, Justin	Turner, Laurence
Midgley, Anneliese	Wheeler, Michael

Question accordingly negatived.

Greg Smith: I beg to move amendment 143, in clause 1, page 3, line 17, leave out "with the specified day" and insert

"18 months after the day on which the period began".

This amendment defines each initial reference period as being 18 months long.

The Chair: With this it will be convenient to discuss amendment 144, in clause 1, page 3, line 19, leave out "with the specified days" and insert

"18 months after the day on which the period began".

This amendment defines each subsequent reference period as being 18 months long.

Greg Smith: This is the last group of Opposition amendments for a little while. Amendments 143 and 144 would specify the length of the reference period as 18 months. The RPC, which was widely referenced in the first set of amendments, has said that the Government have not justified why they are pursuing—

Michael Wheeler: Will the hon. Member give way?

Greg Smith: That was quick, but go on.

Michael Wheeler: It is a quick intervention: I am just wondering whether the amendment's reference to 18 months is another example of the ridiculousness that we were talking about.

Greg Smith: It is certainly probing. Like earlier amendments, it is intended to spark debate so that we can understand where the Government sit on the issue, what is coming down the line and what businesses can expect in the real world once the Bill receives Royal Assent at some point next year.

The last Conservative Government removed exclusivity clauses in zero-hours contracts, tackling those contracts that were potentially exploitative. The clause that the amendment seeks to amend is based on the flawed assumption that employers will exploit their employees and that all the power in the relationship lies with the employer. There is no doubt that some do, but the Opposition do not hold the presumption that all will. Those that do should be challenged, but the vast majority do not seek to exploit their employees.

The London School of Economics has found that zero-hours contract jobs have 25% more applicants than permanent positions in the same role. That flexibility is clearly sought after by employees. The author of the study said:

"Policymakers should be cautious with how heavily the use of zero-hours contracts is regulated."

The RPC has asked the Government to clarify the likelihood that the Bill's provisions on zero-hours contracts will increase unemployment and worklessness, and how far that risk is mitigated by zero-hours contracts remaining potentially available. I would be grateful if the Minister clarified the extent to which they will remain available. What is his view on the impact that the policy will have on workers who might like to work fewer than the guaranteed number of hours a day? Some people may desire that.

We believe the legislation should include the exact length of the reference period. I accept Government Members' point about the 18-month figure, but as I said to the hon. Member for Worsley and Eccles, it is about triggering a debate, kicking the tyres and getting to a reasonable but considered position on what the reference period should be. The Opposition's point is that we should know what it is. It is not just politicians in this House and the other place who need to know, but the real businesses, entrepreneurs and drivers of our economy who employ real people. They need to understand what the legislation is going to specify and what the rules are by which they are going to have to play the game.

Laurence Turner: The Workers (Predictable Terms and Conditions) Act 2023 sets the reference period at 12 weeks. The hon. Gentleman says that 18 months is probably an artificially high number. Does he think that the 12-week reference period, which the previous Government supported just 12 months ago, is in about the right place?

Greg Smith: The hon. Gentleman is absolutely right that the previous Government set the reference period at 12 weeks. What we do not have clarity on is whether the Bill will change that. Will the new Government shorten it or lengthen it? It is about clarity. This is a rushed Bill, published in 100 days. We do not have the answers or the hard data that we need for debate and that individual Members need so that they can go to businesses in their constituency and take a view before they vote on Report or on Third Reading.

We heard from several witnesses that the length of the reference period needs to account for seasonal work. UKHospitality has put 26 weeks forward as a sensible length. That is not necessarily the Opposition's position, but we would be foolish to ignore the evidence that the hospitality sector presented to us last week.

The amendment is intended to test what the Minister is planning and—ever the most critical question in politics—why. How will we ensure that the length will not be overly burdensome and that it will take account of the different needs of so many sectors?

Sarah Gibson: Like previous amendments, the amendment highlights a serious concern among quite a lot of local businesses to which I have spoken, especially SMEs, which is that a considerable amount of detail has not been included in the Bill and is being left to secondary legislation. Although consultation is highly welcome, it needs to happen as fast as possible, because the interim period between seeing the Bill and getting the detail is causing a huge amount of stress and uncertainty for businesses working in ever more complicated conditions.

Sir Ashley Fox: I want to talk about the reference period in relation to the hospitality and tourism industry, which is particularly important to my constituency of Bridgwater and to many other constituencies in the south-west of England. Clearly a lot of seasonal workers are employed, and although I would prefer there to be

[Sir Ashley Fox]

no reference period, the Government have a mandate to introduce one. Any reference period of less than 26 weeks will cause great difficulty for businesses that may start engaging people just before Easter and are looking for employment to end in September or October, according to their business need. The fact that that detail is left to secondary legislation causes concern to those businesses.

Alex McIntyre: Does the hon. Member not agree that most businesses in hospitality know their seasons very well? They come every year and they tend to operate on a relatively regular basis—that is how seasons work. As has been highlighted, businesses could use fixed-term contracts to ensure that they have appropriate staffing for the season. Those contracts would end at the appropriate time, negating the need for a longer reference period.

Sir Ashley Fox: I am grateful to the hon. Member for making that point, but in Burnham-on-Sea in my constituency there are many very small businesses, with perhaps two or three employees, that take on an extra person or two during the summer season. This summer has been particularly bad because there has been an awful lot of rain. Business needs change. The danger is that if there were a short reference period and we were fortunate enough to have a very hot and sunny April, May and June but a very wet July, August and September, businesses would be employing more staff because they had to, rather than because it was justified by the business conditions.

This is just not necessary. It is Government regulation for the sake of it, and it will make life more difficult for small business owners. Every time Government Members have risen to speak, they have declared that they are a member of one union or another, but very few have actually run a small business. I did run a small business. I was self-employed before I came to this place. It is challenging, because you are on your own: you take the decision whether to employ someone or not. Dare I say it, there are too few Government Members who have set up small businesses and who have actually employed people and experienced that challenge. That is part of why they do not understand how difficult this regulation would make life for some very small businesses.

Justin Madders: The amendment tabled by the hon. Member for Mid Buckinghamshire seeks to amend clause 1 to specify in the Bill that the initial and subsequent reference periods for the right to guaranteed hours will be 18 months long. I do not think he is prepared to concede that it is a ridiculous amendment, but shall we say that it was ambitious? Can we agree on that?

11.15 am

Greg Smith: Of course it is on the absurd end of the spectrum, but as I said to the hon. Member for Worsley and Eccles, that is to highlight the issue. Sometimes, when we have a total lack of clarity and of the information that real businesses need, as the hon. Member for Chippenham highlighted, we throw in a stone to try to get a proper answer. That is what the Opposition seek, and I will be incredibly grateful if the Minister now tells us what he wants the reference period to be.

Justin Madders: I am grateful to the shadow Minister for intervening, but there is not a total lack of clarity. We have been clear all along, including when we were in opposition, that the reference period should be 12 weeks. However, we want to continue dialogue with businesses to ensure that we get the right answer to the question of how long the reference period should be for guaranteed hours. As we heard, it is an established period that has been used in the previous Government's legislation, in the workers' predictable terms and conditions provisions and under the Agency Workers Regulations 2010. It is an established principle in law that 12 weeks is about right for a reference period. Nevertheless, we will continue to consult and engage with businesses, trade unions and all employers' organisations about whether it is right.

At the moment, our considered view is that 12 weeks is the right period; we certainly do not believe that 18 months is. *[Interruption.]* I think the shadow Minister is nodding. We do not think that 18 months is a realistic proposition. I understand the point about seasonal work, but 18 months would take us through half a dozen seasons. He will probably accept that that would not necessarily work.

As for why this measure is needed, the shadow Minister said that the Opposition do not presume that all employers set out to exploit their workforce. I make it clear that the Government do not presume that either; we believe that good businesses are good for their workers and good for the wider economy. We heard plenty of witnesses give evidence last week about the good industrial relations that they practise and the benefits for their workers. The point of the Bill, however, is that we know that not everyone is a good employer. We need to weed out bad practice, because we believe that all workers deserve the same protections in the economy.

The shadow Minister asked whether zero-hours contracts will still be available for those who might not want to work guaranteed hours. He will be aware that the legislation does not compel an individual to accept an offer of guaranteed hours; it has been set up in that way for the individual. There are examples of people—possibly including my hon. Friend the Member for Gloucester in his earlier years—whom zero-hours contracts suit better. If that is what he genuinely wants to continue working on, he is entitled to do so.

The hon. Member for Chippenham asked about the speed at which we are operating. I think she wants us to go faster, so she might need a word with the shadow Minister, who wants us to go a little slower. We are clear that we will take our time before we introduce a lot of the provisions, because we want to get the detail right and we want to engage with businesses. An awful lot of the press coverage is understandably raising anxiety levels, but a lot of it is based on speculation rather than on the law, because the law has not yet been set: the Bill has not been passed, and the regulations and the codes of practice that will follow have not been produced. It is important that we take our time, because we want to work with businesses as we produce information going forward.

The hon. Member for Bridgwater made a point about seasonal work that we heard on various occasions during our evidence sessions, but I think my hon. Friend the Member for Gloucester has answered it: if an employer knows that they will be busy for particular parts of the year, a fixed-term contract is the answer.

On the question of business experience, I can claim to have set up my own business when I was 17—I am not saying that it was a FTSE 100-listed effort or anything—and before I was elected I worked in the private sector for 20 years.

We do not think that the shadow Minister's amendment would deliver the policy outcome that we seek. I suspect he recognises that, too, so I invite him to withdraw it.

Greg Smith: Of course we will withdraw the amendment, but the critical question is why the Minister has referred to 12 weeks, but it is not in the legislation. As he considers tabling amendments of his own in Committee or on Report, I urge him to lock that in, so that certainty for business is on the face of the Bill, rather than things being left open.

Justin Madders: If we put 12 weeks on the face of the Bill, would the Opposition support it?

Greg Smith: Our own legislation last year cited 12 weeks. There is clearly a lot in the Bill that we oppose because we just do not think it works in the interests of British business or workers, but 12 weeks would at least give us some certainty that would be consistent with the previous Government. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ordered, That further consideration be now adjourned. —*(Anna McMorrin.)*

11.21 am

Adjourned till this day at Two o'clock.