# PARLIAMENTARY DEBATES

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OFFICIAL REPORT
GENERAL COMMITTEES

## Public Bill Committee

# EMPLOYMENT RIGHTS BILL

*Sixth Sitting*

*Tuesday 3 December 2024*

*(Afternoon)*

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**not later than**

**Saturday 7 December 2024**

**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*

*(Afternoon)*

[Graham Stringer *in the Chair*]

## Employment Rights Bill

### Clause 1

Right to guaranteed hours

2 pm

**The Parliamentary Under-Secretary of State for Business and Trade (Justin Madders):** I beg to move amendment 6, in clause 1, page 7, line 7, leave out

"(or has most recently been working)".

*This amendment is consequential on amendment 10.*

**The Chair:** With this it will be convenient to discuss Government amendments 7 to 10.

**Justin Madders:** It is a pleasure to see you in the Chair, Mr Stringer. I apologise in advance to the Committee because amendment 10 is rather technical, as several amendments are this afternoon. The amendment is required to clarify wording and intent. It clarifies which worker's contract or arrangement needs to be considered, in cases where a worker has worked under multiple contracts or arrangements during a relevant period, when determining whether there has been a relevant termination of a contract or arrangement such that the duty to make a guaranteed hours offer does not apply, or a guaranteed hours offer that has been made is to be treated as withdrawn.

Amendment 10 effectively means that once there is a relevant termination in such cases, the provision is not treated as meaning that the duty ceases to apply where the worker goes on to be offered further limited-term contracts from the employer. It is essentially a clarification and an anti-avoidance measure. Given that there are rather a lot of those today, I will not detain the Committee any longer.

*Amendment 6 agreed to.*

*Amendments made:* 7, in clause 1, page 7, line 10, leave out

"(or has most recently been working)".

*This amendment is consequential on amendment 10.*

Amendment 8, in clause 1, page 7, line 16, leave out

"(or has most recently been working)".

*This amendment is consequential on amendment 10.*

Amendment 9, in clause 1, page 7, line 19, leave out

"(or has most recently been working)".

*This amendment is consequential on amendment 10.*

Amendment 10, in clause 1, page 7, line 20, at end insert—

"(2A) Where a qualifying worker works for an employer under more than one worker's contract, or in accordance with the terms of more than one arrangement, during—

(a) the relevant reference period,

(b) the offer period, or

(c) the response period,

the references in subsections (1) and (2) to the worker's contract or (as the case may be) the arrangement are to the worker's contract under which, or (as the case may be) the arrangement in accordance with the terms of which, the qualifying worker last worked for the employer before the end of the period in question."—*(Justin Madders.)*

*This amendment clarifies which worker's contract or arrangement needs to be considered, in multiple contract/arrangement cases, when determining whether there has been a relevant termination of a contract or arrangement such that the duty to make a guaranteed hours offer does not apply or a guaranteed hours offer that has been made is to be treated as withdrawn.*

**Justin Madders:** I beg to move amendment 11, in clause 1, page 8, line 7, at end insert—

"(5A) Where, by virtue of subsection (2), a guaranteed hours offer made by an employer to a qualifying worker is treated as having been withdrawn, the employer must, by no later than the end of the response period, give a notice to the qualifying worker stating this to be the case.

(5B) Where, by virtue of regulations under subsection (5)—

(a) an employer who would otherwise have been subject to the duty imposed by section 27BA(1) in relation to a qualifying worker and a particular reference period is not required to make a guaranteed hours offer to the qualifying worker, or

(b) a guaranteed hours offer made by an employer to a qualifying worker is treated as having been withdrawn,

the employer must give a notice to the qualifying worker that states which provision of the regulations has produced the effect referred to in paragraph (a) or (b) (as the case may be).

(5C) A notice under subsection (5B) must be given by an employer to a qualifying worker—

(a) where it is required to be given by virtue of paragraph (a) of that subsection, by no later than the end of the offer period;

(b) where it is required to be given by virtue of paragraph (b) of that subsection, by no later than the end of the response period.

(5D) The Secretary of State may by regulations make provision about—

(a) the form and manner in which a notice under subsection (5A) or (5B) must be given;

(b) when a notice under subsection (5A) or (5B) is to be treated as having been given."

*This amendment requires an employer to give a notice to a qualifying worker where the employer's duty to make a guaranteed hours offer to the worker does not apply, or an offer already made is treated as having been withdrawn, as a result of proposed section 27BD(2), or regulations made under proposed section 27BD(5), of the Employment Rights Act 1996.*

**The Chair:** With this it will be convenient to discuss Government amendments 13 to 15, 19, 20, 23, 44 and 45.

**Justin Madders:** Amendment 11 will introduce a duty on employers to inform workers when an exemption applies and the employer is exempt from their obligation to offer a worker a guaranteed hours contract. Any exemptions to the duty to offer guaranteed hours will be defined in regulations.

Amendment 11 will also introduce a duty on employers to inform workers where an offer of guaranteed hours already given is to be treated as withdrawn because a relevant termination has taken place. That will ensure that workers are aware of when they are not receiving a guaranteed hours offer because an exemption applies. It will allow workers to check that the exemption is applicable to them, and then enable them to enforce their right to guaranteed hours where an exemption is not applicable.

Associated consequential amendments 14, 19 and 44 will ensure that workers will be able to take a complaint to an employment tribunal if the worker is not provided with a notice of exemption or a notice of the withdrawal of an offer already made. That will also be the case where a notice has been provided but should not have been, or where a notice has been provided but cites the wrong exemption.

Amendment 13 will introduce a new duty on employers that will ensure that workers who would likely qualify for a guaranteed hours offer are aware of certain information about the right to guaranteed hours. That will help to ensure that workers are informed about the new right and can therefore take decisions about their working hours during their reference period based on the information they receive about their possible right to a guaranteed hours offer.

Further consequential amendments 15, 23 and 45 have been made to ensure that a worker may enforce their right to be informed about the right to a guaranteed hours offer by taking a complaint to an employment tribunal. A consequential amendment 20 has been made to define the period within which a complaint of this nature may be taken to a tribunal. I think we might get to that later in relation to the general application of extended time limits.

**Greg Smith** (Mid Buckinghamshire) (Con): It is a pleasure to serve under your chairmanship, Mr Stringer. As a precursor to my comments on these specific amendments, I note that the sheer volume of Government amendments that we are considering really goes to show that the Bill might have met a political objective in being published in 100 days, but that it was not ready to be published in those 100 days. At worst, that is a discourtesy to the House and, at best, it shows that the legislation simply has not been drafted properly. These changes simply would not have been necessary had due diligence been done on the Bill before it was published.

I would like to focus on amendment 13 from this group of amendments. That amendment requires employers to give their employees access to certain information to be specified in regulations—we are back to our old friend of regulations to come. Let me ask the Minister the following: what information will amendment 13 require employers to make available? Why? And what further burden will be imposed later down the line by regulations, thanks to the power taken in the clauses? Employees will be able to take their employer to a tribunal for not providing this information, as provided for in amendment 15, so I suggest to the Committee and the Minister that it is vital that we can understand the requirements that the clause will place on employers.

**Justin Madders:** I am grateful for the shadow Minister's questions. No doubt during the passage of the Bill we will come back on several occasions to that point about the number of amendments. I just place on record my gratitude to the civil service and the Office of the Parliamentary Counsel for their work in getting the Bill published to the parliamentary deadline that was politically set. Of course, lots of Bills have amendments as they progress. As is consistent with our wish to engage thoughtfully, we may still have further amendments.

As for the shadow Minister's questions, it is entirely usual to put that sort of detailed information in regulation, and we would not normally specify it in a Bill. We are trying to ensure that workers who are captured by the zero-hours legislation are aware that they are captured by it and are entitled to certain rights, such as the offer of a guaranteed hours contract. This is about making sure that some of the most vulnerable people in society, who are often exploited by zero-hours contracts, are at least given the information to ensure that their rights are enforced. We will work with businesses and employers, and representatives and trade unions on the precise detail of the information to be provided, but this is about making sure that all parties are aware of their legal obligations. I hope that the shadow Minister understands that this is an important part of the legislation.

*Amendment 11 agreed to.*

**Justin Madders:** I beg to move amendment 12, in clause 1, page 8, leave out lines 8 and 9 and insert—

"(6) For the purposes of subsection (3)(c) (and subsection (4)(b), which applies subsection (3)(c))—

(a) subsection (8) of section 27BB (when it is reasonable for a worker's contract to be entered into as a limited-term contract) applies as it applies for the purposes of that section;

(b) it is to be presumed, unless the contrary is shown, that it was not reasonable for the worker's contract to have been entered into as a limited-term contract if the work done by the qualifying worker under the worker's contract was of the same or a similar nature as the work done under another worker's contract under which the qualifying worker worked for the employer—

(i) where the period in question is the relevant reference period, during that period;

(ii) where the period in question is the offer period, during that period or the relevant reference period;

(iii) where the period in question is the response period, during that period, the relevant reference period or the offer period."

*This amendment adds a rebuttable presumption to the existing provision made by proposed section 27BD(6) of the Employment Rights Act 1996. The presumption will apply when determining whether there has been a relevant termination for the purposes of that section such that the duty to make a guaranteed hours offer does not apply or a guaranteed hours offer that has been made is to be treated as withdrawn.*

The amendment will close a potential loophole that could mean that workers might not be entitled to a guaranteed hours offer if they are employed on a series of limited-term contracts to undertake the same or similar work. It will do that by adding a rebuttal presumption, that it will not be considered reasonable to have entered into a limited-term contract where a worker undertook work that was the same or similar in more than one contract during the relevant period. That means that the relevant termination provisions would not apply and the employer would not be excepted from its duty to offer guaranteed hours. An employer would have to offer guaranteed hours to the worker, even if that worker's last contract was terminated at the end of the relevant period, unless it was reasonable for the employer to have entered into a limited-term contract with the worker and the presumption is rebutted, which could then lead to a relevant termination.

Under proposed new section 27BB(8) of the Employment Rights Act 1996—as referred to in the amendment—it is "reasonable" for an employer to enter into a limited-term contract with a worker if the worker is needed only to perform a specific task and the contract will end when it

*[Justin Madders]*

is performed; if the worker is needed only until some event occurs and the contract will then end; or if the worker is needed only for some other temporary need to be specified in regulations.

To be clear, whether it is "reasonable" for the employer to enter into a limited-term contract during the relevant periods affects only whether the right to guaranteed hours applies. If such a contract is not "reasonable", it is still a lawful contract and may, of course, be an acceptable means of conducting business. As such, the presumption introduced by the amendment would apply only to determine whether there was a relevant termination of a limited-term contract, where a worker is engaged on a series of limited-term contracts doing the same or similar work. The presumption will not prevent an employer from engaging a worker on a series of fixed-term contracts, but it will act as an anti-avoidance measure to ensure that an employer cannot get around its duty to offer guaranteed hours by engaging the worker on a series of limited-term contracts even though they are actually doing the same work.

**Greg Smith:** Amendment 12 states that it is to be presumed by tribunals

"that it was not reasonable for the worker's contract to have been entered into as a limited-term contract"

if the work done

"was of the same or a similar nature"

as the work undertaken by other employees, with the following conditions:

"(i) where the period in question is the relevant reference period, during that period;

(ii) where the period in question is the offer period, during that period or the relevant reference period;

(iii) where the period in question is the response period, during that period, the relevant reference period or the offer period."

I have stressed the wording of the amendment because I would be grateful if the Minister could clarify what protection the clause is designed to give employees. The vast majority of businesses reading that could easily be forgiven for getting slightly confused. Why is that wording necessary, particularly on this measure, to create the protections that I think I understand the Government want to achieve? The amendment might result in confusion from most businesses.

**Alex McIntyre** (Gloucester) (Lab): It is a pleasure to serve under your chairmanship, Mr Stringer. I am grateful to the Minister for introducing this amendment. It makes a lot of sense to make sure that we avoid the opportunity for unscrupulous employers to try to get around the legislation by entering into a series of short-term/fixed-term contracts so that they do not have to make anybody an offer.

We spoke at length this morning about making sure that responsible employers are encouraged, but ensuring that the loopholes are closed is equally important. Although Government Members are seeking to comment on the number of amendments, this is an example where the amendments are excellent and very well thought through. It makes an awful lot of sense to take into account the responses from experts and the consultation responses that the Department is receiving to make sure that the legislation works not only for businesses, but for employers. The amendment is very sensible, and I encourage everyone to vote in favour of it.

2.15 pm

**Sarah Gibson** (Chippenham) (LD): As I am sure the Minister knows, the Liberal Democrats as a group are convinced that a lot of elements of this Bill go a long way towards strengthening workers' rights. There is no doubt about that. However, when I see these amendments and listen to the comments of Opposition colleagues, I am constantly concerned about what I am beginning to see as the plight of small and medium-sized businesses that are not being taken into consideration. This amendment alone is hugely complicated to understand. I have visions of contractors and small businesses in the construction industry in my constituency, who quite often are the employer, coming home after a long day's work to do the admin side of their business and trying to unravel this. I highlight the construction industry because fixed-term contracts for employees are not only common, but incredibly useful. Building projects—like this one, with the works we are doing here—do actually come to a finite conclusion, and a fixed-term contract is therefore appropriate. I express my continuing concerns about this matter and some of the other amendments in connection with small businesses.

**Michael Wheeler** (Worsley and Eccles) (Lab): It is a pleasure to serve under your chairmanship, Mr Stringer. I will speak to these Government amendments collectively, because although they are incredibly technical, we must not lose sight of their purpose, which is to promote good employment. If there are loopholes and readily available routes by which employers can avoid the measures laid out in this Bill, we will see good employers undercut and workers not feeling the benefits. I welcome this as part of the Government doing their job to strengthen the legislation by introducing well thought out amendments to close loopholes and ensure that it is as strong as it can be. I commend this and the other amendments as being not simply technical—although they are—but part of what really gives the Bill teeth in achieving its purposes.

**Sir Ashley Fox** (Bridgwater) (Con): It is a pleasure to serve under your chairmanship, Mr Stringer. I would like the Minister to deal with these points when he concludes, because I am concerned about the effect of an amendment that is as complicated as Government amendment 12 is on the small businesses that make up the bulk of business in my constituency. They will not have the benefit of an employment lawyer, such as the hon. Member for Gloucester, and they will not have an HR department. I ask the Minister to glance at the wording of the amendment and imagine that you do not spend your day job in a solicitor's office, or a trade union office, or perhaps in the Palace of Westminster. You are wondering whether to employ someone and then you read that

"it is to be presumed, unless the contrary is shown, that it was not reasonable for the worker's contract to have been entered into as a limited-term contract if the work done by the qualifying worker under the worker's contract was of the same or a similar nature as the work done under another worker's contract under which the qualifying worker worked for the employer—

(i) where the period in question is the relevant reference period, during that period;

(ii) where the period in question is the offer period, during that period or the relevant reference period;

(iii) where the period in question is the response period, during that period, the relevant reference period or the offer period."

There are all sorts of technical legal terms used. The point is that you want this to apply to all small businesses, no matter how small—whether they have one, or two, or three employees. This point applies generally to the Bill. When the assessment of the Bill put the costs at £5 billion, the majority of which would fall on small businesses, I think it had exactly this sort of legal gobbledegook in mind. Very small businesses are going to have to deal with this, and they will probably not be able to understand it.

**Alex McIntyre:** I am grateful to the hon. Gentleman for touting out my services as a legal adviser, but I have committed to not taking any second jobs, and certainly none that involves legal services in the Cayman Islands. What I will say is that all of us here, as individuals, are governed by laws in our day-to-day lives. I doubt that many Members will be familiar with, on a detailed basis, the provisions of the Consumer Rights Act 2015, for example, but there are guidance documents and the Money Saving Expert is fantastic. If you ever have an issue with one of your financial products, there is always a guide that can be provided. I am sure that alongside the Bill there will be updated guidance—from ACAS, for example. Does the hon. Member for Bridgwater agree that although small businesses may not be able to take legal advice, there will be guidance documents? They are not expected to read the whole Bill line by line. There will be guidance, on websites such as that of ACAS, that is readily available to all employers, in which they will be able to get an explanation of some of these provisions.

**The Chair:** Order. There are just two points I wish to make, as lightly as I can. First, if hon. Members refer to "you", they are referring to me. We use the normal debating protocols that apply in the Chamber. Secondly, if hon. Members wish to do so and catch my eye, they can speak more than once in a debate, so interventions should be kept as precise and short as possible.

**Sir Ashley Fox:** I am grateful for your guidance, Mr Stringer. To answer the intervention from the hon. Member for Gloucester, I am sure that small businesses will receive guidance from Money Saving Expert, ACAS and Citizens Advice, but the problem is that if they get it wrong, they will be sued and it will cost them money. That will be a real fear in their minds. Then a small businessman, faced with this sort of gobbledegook, asks himself, "Are you going to take the risk of employing that extra person, faced as you are with the fact that they get their rights from day one?" It all adds up to the cumulative effect of small businesses being less likely to employ people. It adds to the cost and the burden. It is a great shame that the Government are bringing in such vast amounts of detailed amendments and expecting small business owners to make sense of them.

**Steve Darling** (Torbay) (LD): It is a pleasure to serve under your chairmanship, Mr Stringer. I would like to amplify the issues raised from the Opposition side of the room. There are serious concerns, and we need to ensure that the regulations are as simple as possible and easy for employers to understand. I fear that this is a charter for HR consultants and lawyers, rather than driving the agenda that I am sure most people in the room genuinely wish to see being driven forward. I ask the Minister whether, before we reach the end of this Bill stage, further simplification could be brought forward.

**Jon Pearce** (High Peak) (Lab): It is a pleasure to serve under your chairship, Mr Stringer. The Agency Workers Regulations 2010 came into force in October 2011, under the leadership of David Cameron and the coalition, and there is similar wording in the agency worker regs. Regulation 9(4)(a) states that

"the most likely explanation for the structure of the assignment, or assignments, mentioned in paragraph (3) is that H, or the temporary work agency supplying the agency worker to H, or, where applicable, H and one or more hirers connected to H, intended to prevent the agency worker from being entitled to, or from continuing to be entitled to, the rights conferred by regulation 5".

The legislation that we are considering is not out of the ordinary in its complexity. This is just necessary—

**Sir Ashley Fox:** Would the hon. Gentleman accept that this legislation will be imposed on businesses with perhaps one employee? There will be no exemption for any minimum size.

**Jon Pearce:** Yes, I would, and it is entirely right that it should be. We have to have a level playing field within the UK; otherwise, we see all the perverse incentives that hon. Members, including the shadow Minister, the hon. Member for Mid Buckinghamshire, are keen to avoid. We cannot have a two-tier workforce.

Returning to my original point, law is often complex in the way it is written, but that does not mean it will be complex in its application. It will only be complex where there are attempts to avoid it. It is absolutely right that the law is tight on this so that we do not have huge amounts of avoidance within the business sector from unscrupulous employers. Most employers, as we know, do not exploit zero-hours contracts, for example, so it is entirely right that we make sure that those who wish to exploit them cannot.

**Sarah Gibson:** The hon. Member for High Peak quotes an equally incomprehensible piece of legislation. It occurs to me that some time ago, the banking industry was accused of a similar problem when it spoke to its clients and was obliged to improve its conversation and make sure that it was intelligible. Surely this is an opportunity for us to be able to do the same. If we are going to apply legislation to sole practitioners, effectively, who are taking on one or two employees, is it so much to ask that we do not have one single sentence that lasts an entire paragraph?

**Jon Pearce:** Will the hon. Lady give way?

**Sarah Gibson:** I will not for a second, but will afterwards, if that is okay. I have spent the last 20 years deciphering the Town and Country Planning Act 1990, and recently had the pleasure of teaching two postgraduate students the Fire Safety Act 2021. Neither of those two pieces of legislation are easily understandable, and it does not help the industry that I know so well, which is employers who come straight out of school and into industry.

*[Sarah Gibson]*

They do a fantastic job, but they do not need added complication. I believe that the hon. Member for Bridgwater makes a good point in saying that it is not beyond us to make legislation slightly easier to read. Sorry, I was going to give way.

**The Chair:** Minister, would you care to respond?

**Justin Madders:** We have had a good debate on this amendment. It is fair to say that my reaction when I first saw the amendment was similar—that it is quite wordy. However, that is the way our legislation is crafted in this country, and it is not unusual. We will make sure that when we drill down into the practical applicability of the Bill, we produce regulations. There will be guidance on gov.uk. ACAS will get involved.

The amendment is intended to deal with a particular situation. I do not believe most employers will behave in that way, but we know that some might, and that some will deliberately avoid their obligations to give a right to a guaranteed-hours contract. It may be, in the words of the hon. Member for Bridgwater, "gobbledegook", but I can assure him that ACAS documents and Government guidance on employment rights are not gobbledegook; they are easily accessible. We are committed to making sure that when the Bill is passed, the legislation is easily accessible, because it will not work otherwise. That is clearly part of our aim.

It is pretty clear what section 27BB(8) actually means in terms of when it will be reasonable not to offer guaranteed hours, but I appreciate that that is very easy for us sat in this room to say, having indulged in the niceties of the legislation. It is not what will end up on businesses' doorsteps. We will not give them a copy of the Bill through the post and say, "Knock yourselves out." They will get proper support and guidance because that is how we want our employment relations to work. We want them to be practical; we want them to be effective; we want people to be able to understand what their rights and obligations are. On that note, I commend the amendment to the Committee.

*Amendment 12 agreed to.*

*Amendments made:* 13, in clause 1, page 10, line 11, at end insert—

*"Information*

**27BEA Information about rights conferred by Chapter 2**

(1) An employer who employs a worker who it is reasonable to consider might become a qualifying worker of the employer in relation to a reference period (whether the initial reference period, or a subsequent reference period, as defined in section 27BA) must take reasonable steps, within the initial information period, to ensure that the worker is aware of specified information relating to the rights conferred on workers by this Chapter.

(2) An employer who is subject to the duty in subsection (1) in relation to a worker must take reasonable steps to ensure that, after the end of the initial information period, the worker continues to have access to the specified information referred to in that subsection at all times when—

(a) the worker is employed by the employer, and

(b) it is reasonable to consider that the worker might become (or might again become) a qualifying worker of the employer in relation to a reference period.

(3) "The initial information period", in relation to a worker and the worker's employer, means the period of two weeks beginning with—

(a) where the worker is employed by the employer on the day on which section 27BA(1) comes into force ("the commencement day"), the commencement day, or

(b) where the worker is not so employed, the first day after the commencement day on which the worker is employed by the employer.

(4) But where, on the day referred to in subsection (3)(a) or (b), it was not reasonable to consider that the worker might become a qualifying worker of the employer in relation to any reference period, subsection (3) is to be read as if it provided for the "initial information period" to mean the period of two weeks beginning with the day on which it becomes reasonable so to consider.

*Enforcement".*

*This amendment imposes a duty on employers to ensure workers who have the potential to qualify for a guaranteed hours offer are aware of, and continue to have access to, certain information (to be specified in regulations).*

Amendment 14, in clause 1, page 11, line 11, at end insert—

"(4A) A worker may present a complaint to an employment tribunal that the worker's employer—

(a) has failed to give to the worker a notice under section 27BD(5A) or (5B);

(b) has given to the worker a notice under section 27BD(5A) or (5B)(b) in circumstances in which the employer should not have done so;

(c) has given to the worker a notice in purported compliance with section 27BD(5B) that does not refer to any provision of the regulations or refers to the wrong provision."

*This amendment is consequential on amendment 11.*

Amendment 15, in clause 1, page 11, line 11, at end insert—

"(4B) A worker may present a complaint to an employment tribunal that the worker's employer has failed to comply with—

(a) the duty imposed by section 27BEA(1);

(b) the duty imposed by section 27BEA(2)."*—(Justin Madders.)*

*This amendment is consequential on amendment 13.*

2.30 pm

**Justin Madders:** I beg to move amendment 16, in clause 1, page 11, line 18, leave out "three" and insert "six".

*This amendment would increase the time limit for bringing proceedings under the new section 27BF(1) of the Employment Rights Act 1996 from three months to six months.*

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

Government amendments 17, 18, 21, 22, 28, 29, 33 to 36 and 83.

Government new clause 10—*Increase in time limits for making claims.*

Government new schedule 2—*Increase in time limits for making claims.*

Government amendments 108 and 109.

**Justin Madders:** This group of amendments is not quite as daunting as it sounds, because they all deal with the same point, which is the extension of time limits for making claims.

New schedule 2 amends time limits for making claims in employment tribunals from three months to six months. In recent years, as we know, demand has increased sharply. Increasing the time limit from three to six months will help to reduce pressure on the employment tribunal system, allowing parties to try to resolve their differences before resorting to formal litigation. The amendments apply to time limits for the majority of employment tribunal claims, including claims under the Employment Rights Act 1996, the Trade Union and Labour Relations (Consolidation) Act 1992 and the Equality Act 2010. If Members are interested, the full list of claims is set out in the new schedule.

Government amendments 16 to 18, 22, 28, 29, 33 to 36 and 83 ensure that the change is reflected for cases relating to rights that will be introduced by the Bill. Amendments 16 to 18 and 22 will increase the time limit for taking a claim to an employment tribunal that relates to the right to guaranteed hours from three months to six months. Amendments 28 and 29 will increase the time limit for taking a claim that relates to the right to reasonable notice of shifts from three months to six months. Amendments 33 to 36 will increase the time limit for taking a claim that relates to the right to payment for a cancelled, moved or curtailed shift from three months to six months. Amendment 83 will increase the time limit for taking a claim that relates to whether a worker, or a former worker, believes they have been subject to a detriment by an employer on grounds of industrial action.

Finally, Government amendment 21 is a small technical amendment, which will correct an incorrect section reference. The words "this section" currently refer to section 27BG, which relates to time limits for bringing a complaint, but they should—as I am sure everyone noticed—refer to section 27BF, the correct section under which a complaint may be brought to an employment tribunal.

On a more general note, Members may be aware that a number of years ago, the Law Commission recommended that the time limit for bringing employment tribunal claims should be increased from three months to six months. This set of amendments simply seeks to implement that recommendation.

**Greg Smith:** Quite a list of amendments and edits to the 100-day-old Bill.

I will start where the Minister left off. The amendments extend the time for employees to bring a case to the employment tribunal from three to six months if they believe their employer has breached the duties imposed by the Bill. That includes the provisions around zero-hours contracts and the right to reasonable notice. In that light, a reasonable question would be: why were the provisions not included in the Bill on introduction? What changed? Was that an oversight, or something never originally intended to be included in the Bill? What is the rationale? Furthermore, what is the rationale for increasing the period from three to six months? That is not a modest change—not a matter of a couple of days, a fortnight or something that most people might deem reasonable; that is a substantial shift. It is only right and proper that the Minister, when he responds, gives a full explanation for such a huge change from the original provisions in the Bill.

Data from His Majesty's Courts and Tribunals Service shows the backlog in employment tribunals, with outstanding cases increasing 18% on last year. To add in additional burdens will add to the overall burden on the service, so as part of the consideration of the Bill and of the amendments it is crucial to understand what the Government will do not just to clear that backlog, but to create the capacity in the service to deal with the increase in demand that the Bill will undoubtedly bring about. I shall be grateful if the Minister will comment on his discussions with the Ministry of Justice to deliver on that.

Businesses, especially small and medium-sized enterprises, rely on the tribunals service being able to process claims quickly so, if the Government are to bring about such a huge and significant change to demand on the service, they should put in place the relevant steps. Have the Government undertaken any assessment of the impact that such an extension will have on employment tribunals, or the likely number of claims? It would help to know what, under the amendments, the Government's assumptions are—will the level of increase that the Opposition fear come about?

Is there a model—I fully accept that such models are rarely 100% accurate, but they give the country and the service planners an important ballpark figure to be working around, going into the future—and, off the back of that, what is the impact on businesses, particularly small and medium-sized enterprises? If there is no such modelling—if there is no ballpark figure that the Government are working to—why not?

My final question on this group of amendments is: why does the Minister believe that it is proportionate or sensible to double the window in which an employee can bring a claim? Surely the three-month window is sufficient. As I said, the Opposition would like to understand why that doubling is so necessary.

**Alex McIntyre:** Apologies, Mr Stringer, if I inadvertently used "you" in my previous intervention. That was a mistake; I apologise.

I am grateful to the Minister for tabling these amendments. This is an important set of suggestions to extend time limits for bringing lots of tribunal claims. In my previous professional experience, the change will benefit businesses up and down the country, because one of the biggest issues for anyone involved in advising employers on employment law is the rush to bring employment tribunal proceedings, owing to the three-month time limit. It often stops negotiations from progressing fully, preventing an out-of-court agreement being reached at an early stage. In a commercial setting, most businesses are given six years to bring claims under contract against other businesses. It is only really in employment law that we have such a narrow window for people to bring their claims.

I am interested in the shadow Minister's comments on employment tribunals—they are broken, but the responsibility for breaking the employment tribunals sits firmly on Opposition Members. We had years of under-investment in our courts and tribunals, and we

*[Alex McIntyre]*

have really long backlogs. The issue there for employers is that, given the actions of the previous Government, they are spending far too much money on people like me, as such proceedings take a significant amount of time.

**Greg Smith:** I understand why, in our combative political system, the hon. Gentleman wants to bring up the previous Government's record. I gently suggest that the covid pandemic had a big impact on all court backlogs, be it tribunals or otherwise, and I ask him to reflect on the fact that the Bill will add to the pressure on the tribunal service. How much does he think it will add? Given that the Labour party is in government and in charge, rather than just pointing the finger at the previous Government, can he tell us what will materially happen to increase capacity in the tribunal service?

**Alex McIntyre:** The Committee received a submission from Lewis Silkin, a leading legal expert in the field of employment law. It says that some of the Government's proposals will lead to a reduction in claims, and certainly in complex claims such as those that many employees with less than two years' service may make under the Equality Act 2010 because they do not qualify for unfair dismissal rights.

The tribunal deals with unfair dismissal claims very quickly. Such claims tend to receive one, two or three days of consideration by a tribunal, at the most, whereas Equality Act claims are often listed for longer than a week. Giving people unfair dismissal rights from day one will reduce the number of people who have to bring Equality Act or whistleblowing claims to try to fit their circumstances, and that will mean a reduction in the number of tribunal sitting days.

I will not step on the Minister's toes when it comes to the Department's modelling for tribunals, but it is important to remember that as a result of the measure, more people will be able to negotiate and negotiations will be more sensible. Let us think about the anatomy of an employment tribunal claim. Day one starts when something happens to an individual. In the case of being sacked or being discriminated against, that thing is quite traumatic, so in the first week or so, employees are not generally thinking about their legal options. That is one week gone already. Then people have to look at getting legal advice, contact their trade union and look at the options available, all of which take time. By the time they are in a position to think, "Perhaps I will negotiate with the employer," they are already two months down the line.

If an employee rushes through an employment tribunal claim, the practical implications are that the claim is really complex, the employee does not quite understand their legal claims and an awful lot of tribunal time and business time is spent on trying to clarify things. If we give employees longer, we will find that more claims are sensibly put. Employees will have obtained legal advice or sought support from their trade unions, and they will have had time to negotiate with employers about potential out-of-court settlements.

This is important and, most significantly, it is about access to justice: many people who are timed out of bringing a claim did not even realise that they had one in the first place. Not everyone has immediate access to the knowledge that they have rights at work and that employment tribunals exist, so it is important that we try to level the playing field to ensure that employees have time to bring claims in the best possible way. Not everyone is a lawyer. Individual employees, like many small businesses, do not have the benefit of being able to call up their local employment lawyer to get advice on potential claims. Preparing a claim takes time, and the measure means that employees will be able to make more sensible claims.

It is a very positive change, and I am glad that it is being made. The Law Commission recommended several years ago that the time limit should be extended from three to six months, so this is not an arbitrary time that has been plucked out of nowhere; it is based on Law Commission suggestions, as I understand it. I encourage all hon. Members to vote in favour of the measure.

**Steve Darling:** The hon. Member for Gloucester has ably made the legal case for why this measure is a worthwhile way to support our communities. I am aware, from my 30 years of supporting people in Torbay, that quite often those who are less legally literate face real challenges in getting themselves organised within the three-month period. The measure will support those who would otherwise fall by the wayside. It is a real opportunity for employers to make sure that tribunal applications are appropriate and to support those in greater need in our communities. I truly welcome it, and I am sure that my hon. Friend the Member for Chippenham does as well.

2.45 pm

**Laurence Turner** (Birmingham Northfield) (Lab): I follow my hon. Friend the Member for Gloucester and the hon. Member for Torbay, who both made very able speeches.

The shadow Minister, the hon. Member for Mid Buckinghamshire, asked about the justification for extending the current time limit from three to six months. One argument is set out in the Law Commission's 2020 report, which argues that some of the current problems that employment tribunals experience are linked to late applications and the onerous requirement for applications, particularly in equalities cases, to demonstrate that there was a clear justification or inability regarding not submitting a claim in time. Those edge cases are adding to the current backlog and creating the incentive, which has been discussed already in this Committee, for people to bring cases under the Equality Act 2010, which is putting severe pressure on the limited number of specialist employment tribunal judges who deal with equalities matters.

Another argument is that there is an inconsistency in the law, because the time limit for equal pay cases is six months. The effect of these measures would be to equalise the time limit for other unfair dismissal and discrimination claims with that of equal pay.

In the previous Government's 2021 response to the Law Commission's report, they said—I hope this is taken in the constructive spirit with which it is intended—that the recommendations were welcome, but that it was not the right time to make such changes. I am therefore keen to hear the shadow Minister's position on this

extension, because the last Government's position seemed a little like St Augustine's prayer—"Let us equalise access to justice, but not yet!" I very much welcome the fact that these measures have been brought forward and that we now have a chance to equalise that time limit.

Last week, we heard from one of the witnesses, Joeli Brearley, that:

> "I was pushed out of my job the day after I informed my employer that I was pregnant, and it was the tribunal time limit that prevented me from taking action against my employer."—[*Official Report, Employment Rights Public Bill Committee,* 26 November 2024; c. 84, Q79.]

There are many such cases where, because of someone's particular circumstances, they are not able to bring a case, or the burden of bringing a case within three months is too onerous. The requirement in equalities cases for a claimant to prove that an extension was just and equitable, or that it had not been reasonably practicable to bring a case in time, is adding to that burden on the tribunal system.

The Law Commission's report was published in 2020, so the then Government had four years to model the impact of the changes that they were considering. If Conservative Members know of any impact analyses undertaken under the previous Government, I would very much like to hear about them.

**Dr Marie Tidball** (Penistone and Stocksbridge) (Lab): I thank my hon. Friends the Members for Birmingham Northfield and for Gloucester for their ably made speeches outlining the very good and pragmatic reasons for the measure. They made points about ensuring that there is a good preliminary process to prevent litigation and laid out all the evidence with regard to the Law Commission.

The shadow Minister asked the Minister about principle, which my hon. Friends the Members for Birmingham Northfield and for Gloucester also touched on. It is clear that, after 14 years of Conservative Members not considering principle when it comes to access to justice, we are making these changes particularly for disabled employees and women who often have very complex lives. Disability is not static—it is dynamic, and health conditions fluctuate—so three months is a very short time period for people to put a case together if they have complex and fluctuating health conditions. It is right that the measure brings that time period up to the level of other equalities cases.

It is also fair to say that many working people have a huge amount to juggle in their day-to-day lives. For me, it is a point of great principle that this Government want to make it easier for them to access their rights and to access justice by giving them more time, being cognisant, as we are, of the many challenges that they might face just to keep a roof over their heads and to keep their family in a stable and supported situation.

The need to strengthen access to justice in such circumstances is important. We heard a great deal in the evidence presented to us about the many barriers for various groups and about the effect of the measure on women. It will give women an opportunity to have a longer period of time at the most challenging and complex moments of their life, such as during pregnancy and post birth, which seems to be eminently sensible and principled.

**Uma Kumaran** (Stratford and Bow) (Lab): It is a pleasure to once again serve under your chairship, Mr Stringer. I refer the Committee to my declaration in the Register of Members' Financial Interests and I am a member of the GMB. My hon. Friend the Member for Penistone and Stocksbridge spoke powerfully—

2.51 pm

*Sitting suspended for a Division in the House.*

3.5 pm

*On resuming—*

**The Chair:** Uma Kumaran, your speech was interrupted. Would you like to continue?

**Uma Kumaran:** Thank you, Mr Stringer. I am glad Members got some steps in and I hope they have come back reinvigorated.

Members across the Committee have spoken eloquently today about why they support the bold measures in the Bill, which is the best upgrade to worker's rights that we have seen in a generation. I pay particular tribute to my hon. Friend the Member for Gloucester for sharing his personal story. That is why we are here; it is about the people behind those stories. The Bill is about making a difference to people's lives.

We started this month by marking World AIDS Day. The National AIDS Trust supports the amendments to increase the time limit for claims from three months to six, to bring the Bill in line with the Law Commission's 2020 recommendation. With a diagnosis such as HIV/AIDS, three months is nothing. When a person is diagnosed, they have to go to their doctor, assess the impact the diagnosis will have on their life, and in some cases discuss how to break it to their family, friends and employers. Adding a ticking time limit of three months for their job and their livelihood can be so distressing. That is why I remind Members to remember the people behind the stories—the people we seek to serve and to help.

This is not just about the people; it also impacts business, as we have heard from Opposition Members. We have seen inclusive employers standing with the National AIDS Trust, not just in the UK but around the world, to support the asks that were brought forward to mark World AIDS Day. That is why I urge Members to support the amendments to increase the time limit from three months to six.

**Sir Ashley Fox:** There is one point that I would like the Minister to clarify. Some of his colleagues have said that, by extending the limit from three months to six, we will avoid a large number of claims, as there will be more time to negotiate and they will be concluded in good time. Other colleagues have said that this is an access to justice point, since lots of claims are being missed out because the time limit is too short. Can the Minister clarify, for the benefit of small businesses, whether they will face more or fewer claims? It seems to me that the Government have not decided whether this is a reform to reduce the number of claims that small businesses will face, or whether it will significantly increase the number of claims. Whatever the justice of each individual claim, small business owners will have

*[Sir Ashley Fox]*

to deal with its legal consequences and devote time to it. I think they would appreciate knowing whether there will be more or fewer claims.

**Uma Kumaran:** Statistically, less than 1% of women who have been subject to pregnancy or maternity discrimination pursue a claim in an employment tribunal. While making the case for business, it is important to realise that we are talking about a very small percentage of people. As we heard from my hon. Friend the Member for Penistone and Stocksbridge, these things can make a huge difference to people's lives, and we are talking about very specific amendments that will make a real difference to the lives of working people.

**Nick Timothy** (West Suffolk) (Con): I want to add a couple of thoughts, not so much about the principle of the amendments, but about what they say about the process. I note what the hon. Member for Birmingham Northfield said about the history and about the Law Commission having made its proposals in 2020. That rather adds to our confusion about why the amendments are being introduced in Committee and why they were not part of the Bill on Second Reading. I would be grateful if the Minister could tell us a little about the preparation of the Bill and what his officials said at the time of Second Reading about how many more amendments would be necessary in Committee and about its readiness. Will he also tell us more about the precise impact of the amendments, and what they mean for the Bill's impact assessment?

**Justin Madders:** We have had a pretty wide-ranging debate. Generally, there has been support for the amendments. I welcome the Liberal Democrats' support and hope they carry on in the same spirit for the rest of the Bill—we will see about that.

On the principle of what we are trying to achieve, let me take the Committee back to a time before the advent of the employment lawyer, when we had a thing called industrial tribunals. Industrial tribunals were about having a speedy and informal way to resolve industrial disputes where there was an individual issue. As time has passed, employment law has grown and industrial tribunals have become employment tribunals, and the original time limits have not been able to keep pace with the range of developments.

A number of examples have been given for why some people will not be able to enforce their rights, because of the strict time limits. Equally, there is evidence that enabling a longer period between a claim being discovered and a tribunal deadline being set means that there is more opportunity for parties to try to resolve their differences. On maternity leave in particular, I recall many occasions when a woman has returned to work and tried to crack on with things but been discriminated against all the time, yet because of the understandable pressures and her eagerness to try to get on, she has not acted as quickly as she should have done.

I will give a recent practical example of a constituent who came into my surgery. He had been involved in a road traffic accident while he was working, and he had been dismissed for that. He was not a member of a trade union and had taken no legal advice on his situation. Clearly, I am not in a position to give him legal advice, because I am not insured to do so, but I pointed out to him that he might want to think about talking to someone about his rights with respect to unfair dismissal. The point I am trying to make is that I was having that conversation two months after he was dismissed, which does not give him—or, indeed, the employer—much time to try to resolve things. It would be preferable for that individual to have the opportunity to have a dialogue with his employer, possibly get a process done correctly, and be reinstated. Because the time limits are so pressured, though, if he did go away and take legal advice, he will probably have been told that the only realistic avenue for him was to put a claim in as soon as possible.

There will be real benefits to the amendments, not just for making sure that people are able to enforce their rights, but in giving people more opportunity and time to resolve their differences before proceeding to litigation. For that reason, the impact assessment has not really been able to pin down a particular figure for the impact of these measures. It is probably fair to say that there are a number of other measures in the Bill that may impact tribunal claims, not least the introduction of the fair work agency. The possibility for that agency to enforce holiday pay claims and wages claims, for example, could take a significant burden off the tribunal.

Let me return to the original point of the amendments. They are about removing anomalies and giving people more time to resolve their differences. It has been an anomaly in the law for many years that equal pay claims and redundancy pay claims can be brought up to six months after the termination of employment, but most other claims cannot. Indeed, there are some claims that, depending on where they are progressed, can take even longer, such as certain types of employment-related claims that go through county court. This is about ensuring consistency.

3.15 pm

I refer the Committee to the Law Commission's original objectives when it undertook the research, which were to

"remove unnecessary anomalies, discrepancies and issues which arise from the demarcation of jurisdictions in the fields of discrimination and employment law; increase efficiency by ensuring that employment and discrimination cases are, where possible, determined by the judges who are best equipped to hear them; and review overall whether the demarcation of jurisdictions and the restrictions on employment tribunals' jurisdiction are fit-for-purpose and in the interests of access to justice."

There are a number of other recommendations in the report that touch on some of those issues, but I believe that a number of those objectives are met by the amendments we are discussing.

A number of Members from other parties have asked why these amendments have only come forward now. I think it is fair to say that it was always our intention to table amendments on employment time limits, but because this is about equalising employment rights in terms of tribunal limits across the board, it involved a whole series of amendments to other legislation that simply were not ready in the time we had before publication of the Bill. It was clear in our manifesto, and it has been clear in all the conversations we have had with those we have engaged and consulted with, that we intended to do this, and I think that is why there has been a general acceptance that it is the right thing to do.

The shadow Minister talked about the doubling of time limits. I do not think he actually said these words, but it was almost implied that that would lead to a doubling of claims.

**Greg Smith** *indicated dissent.*

**Justin Madders:** He is shaking his head—that is good. I certainly do not envisage that to be the case, but we recognise there is a backlog in the employment tribunals. Like many public services, they are under pressure, and there is a plan to recruit more judges in the new year.

**Jon Pearce:** I want to pick up a point that the shadow Minister made about the effect of the pandemic on the backlog of employment tribunal claims. When the last Labour Government left office, the time between a claim being brought and the first hearing was about 30 weeks. By 2019—pre-pandemic—it had increased to 38 weeks. We are now at about 55 weeks. We have seen a huge increase in that time, but it was already rising significantly pre-pandemic.

**Justin Madders:** There are a whole range of Government performance indicators where trends were already going in the wrong direction before covid hit, and that is just another of them. We recognise that there is more to be done to deal with the backlog, which is why we intend to recruit more judges in the new year. We hope that the Bill will not increase demand on the tribunal service, and that the extra time we are giving and the other powers we are giving the fair work agency will encourage people to resolve their disputes without going to litigation. We understand that it is a tremendous expense to go to employment tribunal, and of course, by that point, the employment relationship is already fractured beyond repair. This is the right thing to do, it is consistent with the Law Commission's recommendations, and we think it will improve access to justice.

*Amendment 16 agreed to.*

*Amendments made:* 17, in clause 1, page 11, line 22, leave out "three" and insert "six".

*This amendment would increase the time limit for bringing proceedings under the new section 27BF(2) of the Employment Rights Act 1996 from three months to six months.*

Amendment 18, in clause 1, page 11, line 26, leave out "three" and insert "six".

*This amendment would increase the time limit for bringing proceedings under the new section 27BF(3) of the Employment Rights Act 1996 from three months to six months.*

Amendment 19, in clause 1, page 11, line 28, at end insert—

"(3A) An employment tribunal must not consider a complaint under section 27BF(4A)(a) relating to a notice unless it is presented before the end of the period of six months beginning with the day after the day on or before which the notice should have been given (see section 27BD(5A) and (5C)).

(3B) An employment tribunal must not consider a complaint under section 27BF(4A)(b) or (c) relating to a notice unless it is presented before the end of the period of six months beginning with the day after the day on which the notice is given."

*This amendment is consequential on amendment 14.*

Amendment 20, in clause 1, page 11, line 28, at end insert—

"(3C) An employment tribunal must not consider a complaint under section 27BF(4B)(a)unless it is presented before the end of the period of six months beginning with the day after the last day of the initial information period (see section 27BEA(3) and (4)).

(3D) An employment tribunal must not consider a complaint under section 27BF(4B)(b) unless it is presented before the end of the period of six months beginning with the day on which the worker first becomes aware of the failure to which the complaint relates."

*This amendment is consequential on amendment 15.*

Amendment 21, in clause 1, page 11, line 30, leave out "this section" and insert "section 27BF".

*This amendment corrects an incorrect section reference.*

Amendment 22, in clause 1, page 11, line 31, leave out "three" and insert "six".

*This amendment is consequential on amendments 16, 17 and 18.*

Amendment 23, in clause 1, page 11, line 36, leave out "(3)" and insert "(3D)".—*(Justin Madders.)*

*This amendment is consequential on amendment 20.*

*Question proposed*, That the clause, as amended, stand part of the Bill.

**Justin Madders:** Here we are, three and a bit hours in, and we are on the stand part debate for clause 1. I hope we can make swifter progress, but I am sure Members will appreciate that we have debated a number of amendments to this clause, from both sides of the Committee.

I will talk a little about clause 1, because it is central to our aim to improve working relations in this country. It introduces a new right to guaranteed hours, which, alongside some of the other measures in the Bill, will address the issue of one-sided flexibility by ensuring that those who are in scope of the Bill receive a baseline of security and predictability that has been sadly lacking to date.

Our ability to care for loved ones, provide essentials, look after our health and deal with life and its challenges all relies on an element of predictability in our circumstances and finances. We know that a stable base makes us more resilient and more able to deal with challenges that come our way. Raising children, supporting family and our communities, making mortgage and rent payments, effective budgeting, and regular exercise are all good for the individual and for our society, and none combines easily with the unpredictability that some people face in their working lives.

The proposed provisions on guaranteed hours and on notice regarding shifts, which we will come to in due course, will go some way to helping the many workers who work regularly—often for the same employer, and some of them for years—but who do not have the security of knowing there will be a pay packet next week or next month. These proposals, which are the result of engagement with employers and social partners, will introduce fair and proportionate duties. Many of these have already been adopted by our most forward-looking employers. The duties are rightly ambitious but also, if we continue to work collaboratively, workable and achievable.

I will now explain the effects of each new section inserted into the Employment Rights Act 1996 by clause 1—this is effectively a series of new clauses inserted into our favourite, the 1996 Act. The first is new section 27BA,

*[Justin Madders]*

which outlines a new duty that will be placed on employers to offer qualifying workers guaranteed hours based on those hours worked during the reference period. While I hear and am considering the calls for the reference period to be put on the face of the Bill, at the moment the intention is for it to be specified in regulations. It is expected to be 12 weeks. The reason why consideration is being given to putting the initial and subsequent reference periods in regulations rather than in the Bill is that that will allow changes to be made to those periods. This is a novel right and we want to consider the emerging evidence on how it works in practice and, indeed, how it is evaded. However, I hear the calls about the need for certainty, and I will continue to engage with all relevant parties on whether this is something that we should put on the face of the Bill.

New section 27BA outlines the qualifying criteria for this new right, which will be targeted at workers who are on zero-hours contracts or zero-hours arrangements, or have some guaranteed hours—up to a maximum number that will be defined in regulations—but work in excess of those hours, and whose hours over the reference period meet the conditions for regularity or number. Agency workers are not in the scope of the new section, but separate provisions may be made for them using the power in new section 27BV. We recently closed a consultation on applying the rights to guaranteed hours, notice of shifts and payment for cancelled shifts to agency workers. We will now analyse the responses to that consultation and consider whether to seek to amend the Bill later during its passage.

The conditions for regularity and number of hours worked that must be satisfied during the initial reference period, as well as conditions for subsequent reference periods, will be set out in regulations following consultation. That will enable us to ensure that the measure is appropriately targeted at those workers who work regularly and in excess of their contracted hours. Although our intention is to minimise exemptions, regulations may be made to exclude categories of workers from the provisions, providing us with the flexibility to adjust the scope of this new right over time to respond to emerging practices. I have to say that at this stage I am not able to conceive of any particular exemptions that would apply, but I think it is important that we keep that power in the Bill.

New section 27BB sets out the requirements that a guaranteed hours offer must meet. It allows a guaranteed hours offer to take the form of either a variation of terms and conditions or a new contract, depending on the circumstances. A guaranteed hours offer may take the form of an offer to vary terms and conditions only if the worker worked under a single worker's contract from the beginning of the relevant reference period until the day after an offer is made or later. That would allow all other terms of the contract, other than hours and length of employment, to be kept the same.

Where a worker has been engaged on more than one worker's contract between the beginning of the reference period and the making of a guaranteed hours offer, that offer should take the form of an offer to enter into a new worker's contract. Where a new contract is proposed, it must propose terms and conditions that, taken as a whole, are no less favourable than the terms and conditions relating to matters other than working hours and length of employment that the qualifying worker had when working for the employer during the relevant reference period.

New section 27BB also allows regulations to set out details on how it is to be determined whether the hours offered in the guaranteed hours offer reflect those worked during a reference period. It also makes provisions around the use of limited-term contracts by employers offering guaranteed hours. "Limited-term contracts" means fixed-term contracts and those that are to end by virtue of a limiting event. That ensures that employers can continue to use limited-term contracts where it is reasonable to do so.

The new section provides that, where the guaranteed hours offer takes the form of an offer to vary terms and conditions, the contract should usually become permanent. That should be done by removing the provision stipulating the termination of the contract by virtue of a limiting event, unless it can be said on the day after the offer is made that it would be reasonable for that contract to be entered into for a limited term.

The use of a limited-term contract will be regarded as reasonable where the worker is needed only to perform a specific task and the contract ends after it is completed, or likewise for a particular event, or in other circumstances where the employer considers there is a temporary need, as set out in the regulations. For example, if would be reasonable for a contract to be of a limited term where a worker is providing cover for a colleague on parental leave.

New section 27BC sets out requirements for a guaranteed hours offer where that offer takes the form of an offer to enter into a new worker's contract and a worker has had more than one set of terms and conditions during the reference period. Its provisions will protect workers from being moved on to the worst of all the terms and conditions that they worked under during the reference period. Where an employer makes an offer of guaranteed hours with less favourable terms than the best the worker worked under the during the reference period, new section 27BC introduces a duty on employers to give the worker a notice explaining how the proposed terms and conditions constitute a

"proportionate means of achieving a legitimate aim."

This will help to protect workers against being given less favourable terms and conditions in contravention of the aims of the Bill.

New section 27BD provides for exceptions to the duty to offer guaranteed hours, including circumstances in which an offer already made should be treated as having been withdrawn. Exceptions will apply if the worker's contract or arrangement is terminated during the reference period or offer period and it is a "relevant termination". Similarly, where an offer of guaranteed hours has been made and there is a relevant termination of that worker's contract during the response period, the offer will be treated as having been withdrawn.

A relevant termination takes place where the worker decides to terminate the worker's contract through no fault of the employer; the employer had a qualifying reason for terminating the contract and acted reasonably in treating that reason as sufficient to terminate the contract; or a worker's limited-term contract ends by virtue of a limiting event and it was reasonable for that

contract to have been entered into for a limited term. A qualifying reason is a reason that, when an employer is dismissing an employer, can be a fair reason for dismissal under section 98 of the Employment Rights Act 1996.

New section 27BD also allows regulations to be made to specify circumstances in which the duty to offer guaranteed offers does not apply, and it is that section that sets out offer and response periods. The response period, during which a worker must respond to an offer, will begin on the day after an offer is made and its duration will be set out in regulations.

We have made amendments to new section 27BD that will require employers to inform a worker when circumstances exist that exempt them from their duty to offer guaranteed hours, and similarly where a guaranteed hours offer is treated as having been withdrawn as a result of an exemption applying. That will ensure that workers are aware of which exemption applies, and that their employer has not merely failed to offer guaranteed hours. Any exemptions will of course be defined in regulations. Similarly, a further amendment requires that a notice is given where a guaranteed hours offer is treated as having been withdrawn as a result of a relevant termination. We have made further amendments to the new section, designed to close a potential loophole.

As previously drafted, the provisions could have meant that in situations where an employer employs a worker on a series of short-term contracts and the last contract of the period terminates with a limiting event, that could have been treated as a relevant termination. As a result, an employer might not have been required to offer the worker guaranteed hours. The amendment has added a rebuttable presumption, which presumes that it is unreasonable for an employer to engage a worker on a series of limited-term contracts to undertake the same work, and that would therefore not be a relevant termination excepting the employer from their duty to offer guaranteed hours. If the employer fails to rebut that presumption, no exception will apply and the employer will still be required to offer guaranteed hours.

New section 27BE sets out how the worker accepts or rejects an offer, and when the new contract or varied terms and conditions are deemed to take effect. It provides that a worker who does not respond to an offer will be treated as having rejected it, because we would not wish workers to be moved on to guaranteed hours if they had not specifically agreed to them. It provides for regulations to set the form and manner in which the worker must respond to the employer's offer, and when the response is taken as having been given.

3.30 pm

**Chris Law** (Dundee Central) (SNP): On new section 27BE, there is a lack of formality relating to the worker's right to refuse an offer of a regular-hours contract. Indeed, the risk is that workers could be coerced into rejecting an offer if it is clear that the employer would prefer the existing arrangements to continue. There are similar arrangements in respect of the working time regulations on workers' right to opt out of the 48-hour working week; by contrast with the Bill's provisions on zero-hours contracts, the working time regulations do not apply to all workers, and those who opt-out may revoke their decision to do so, although there are arguably no adequate safeguards there either.

The Secretary of State will have the power to make regulations about the form and manner of the notice under proposed new section 27BE, and reference is made to a response time that is undefined, but the question is whether it would be appropriate for Parliament to give the Minister stronger guidance by requiring that the response period should be at least one week; that the worker has a right to seek advice from an independent trade union before making a decision; that the worker has a right to be accompanied by a trade union official under section 10 of the Employment Relations Act 1999 in any meeting to discuss an offer; and that the worker may revoke a rejection of an offer at any time on giving one week's notice to the employer. Does the Minister agree that those safeguards need to be incorporated into the Bill so that an employee is not coerced by their employer into rejecting a contract that is not in their best interest?

**Justin Madders:** A lot of the questions the hon. Member asked will be dealt with by the regulations and by the anti-detriment provisions of the Bill. If he would like to see specific provisions in the Bill, he should have tabled amendments, but I believe we will address a lot of the detail he raised in due course. We are clear that this has to be a freely agreed contract between both parties. The employer should make the offer and the employee should be able to agree, of their own free will, on whether they wish to accept it. We will look closely at the coercion issue, because that has been raised with us.

Government amendment 13 introduces new section 27BEA of the 1996 Act. It will introduce a duty on employers to take reasonable steps to make a potentially qualifying worker aware of their right to guaranteed hours should they meet the required conditions—that is, to draw workers' attention to the new right and to the fact that they may be eligible for it.

New section 27BF provides for workers to bring an employment tribunal claim to enforce their right to guaranteed hours. A worker may make a complaint if no guaranteed hours offer is made to a qualifying worker; if an offer is made but does not comply with the requirements relating to a guaranteed hours offer, such as offering work for a number of hours that reflects the hours worked during the reference period, or the offer does not comply with the regulations relating to such requirements; if the offer includes a prohibited variation to a worker's terms and conditions; and if the offer does not comply with the requirements on the use of limited-term contracts, the prohibition on varying other terms, or the applicable requirements where the employer offers less favourable terms.

To ensure that all rights are supported by appropriate protections, the Government amendments have added further grounds. Thus, a worker may make a complaint to an employment tribunal if the employer fails to provide a notice stating that they are exempt from the duty to make a guaranteed hours offer and which exemption applies, or fails to provide a notice stating that a guaranteed hours offer is treated as having been withdrawn further to an exemption applying or to a relevant termination; if the employer gives a notice to the worker stating that they are exempt from the duty to offer guaranteed hours when they should not have done so; if the employer gives the worker a notice relating to an exemption that does not refer to any exemption as

*[Justin Madders]*

set out in the regulations, or that relates to the wrong exemption; and if the employer fails to comply with the duties to provide workers with information about the right to guaranteed hours.

New section 27BG outlines the time limit during which a worker may take their complaint to tribunal. Government amendments have been tabled to allow workers to take cases within six months, as opposed to three months, which is to align the Bill's provisions with the changes we have talked about already. We have also tabled amendments that are consequential on the new rights included in the Bill, and also on the new grounds to make a complaint to the employment tribunal. Those relate to the additional requirements to serve a notice under new section 27BD, and to the claims related to the information rights.

Finally, new section 27BH provides for the remedies to a well-founded complaint. It provides that tribunals must make a declaration if there has been a breach and may award compensation to be paid from the employer to the worker. In common with other existing employment rights, the compensation must not exceed a permitted maximum, which will be set out in regulations as a multiple of a number of weeks' pay. I commend clause 1 to the Committee.

**Greg Smith:** I am grateful to the Minister for that comprehensive outline of clause 1 but, as I reflect on our debate over today's two sittings on the amendments to clause 1—the Government amendments that now form part of clause 1 and the Opposition's substantive amendments, which were not accepted, and our probing amendments, which did not produce the answers we were looking for—I remain concerned that, putting aside some of the noble intentions beneath the Bill, there is still the lack of clarity we have spoken about regarding so many areas of clause 1.

The Minister himself admitted earlier that some things are still to be consulted on and that others are yet to be brought forward through secondary legislation. I am afraid that just does not cut it for businesses up and down the country that are still struggling with the aftermath of covid, the invasion of Ukraine and so many other factors. They need certainty. They need to know, if the rules of the game are changing, exactly what they are changing to—not some ballpark or some in-principle movement towards, but precisely the rules that they are being asked to play by.

Businesses will, of course, comply with any legislation passed by this House and this Parliament, but this provision is an unreasonable ask of them, whether in respect of what would constitute a low-hours contract, fixed-term contracts for qualifying workers or agency workers, or the exact definition of the reference period. It is simply an unacceptable proposition to those who run businesses, particularly, as multiple parties have said today, small businesses, be they microbusinesses or medium-sized enterprises—I fully accept that we can debate the exact number of employees that constitutes a small or medium-sized enterprise.

I recognise many of the good points the Minister made in his speech, and there are many things that we in the Opposition can get behind—at least in principle, if not in the precise lettering of the detail—but the lack of clarity, the Henry VIII powers in some parts and the "still to consult" parts in others make it very difficult for the Opposition to support clause 1 as it currently stands.

As I said earlier, we want to be a constructive Opposition. We might not agree with the Government's standpoint on many things, but it is important for the United Kingdom that they succeed in their endeavours and that they do not provide an environment in which there will be fewer jobs, not more, with businesses being more reticent to take on new members of staff. That goes particularly to the points around how people who are deserving of a second chance in life, no matter what has happened to them before, may not get that opportunity because it is too big a risk for small businesses that are struggling to get around all the new regulations, rules and laws.

I particularly highlight again the point about small businesses just not having the capacity to deal with new regulation. As has been said, they do not have HR departments or in-house legal services, and they cannot necessarily afford to hire them in if they are to continue producing their products or selling their services to the great British public, or wider than that. I urge the Minister to go back to the Department, focus on where the detail is lacking and put an offer to the House and the wider country. Our business community need not necessarily agree with it, but they should be comfortable that they can understand it and put in place the measures for their employees and businesses. To ensure their growth and success, they desperately require certainty.

**Laurence Turner:** I will not keep the Committee long. A lot has rightly been said about the need for certainty for business, but we should remember that the other side of the coin is the need for workers to have certainty. I was contacted recently by a constituent who works a zero-hours contract in the hospitality sector. He is unable to get a mortgage because the bank will not grant that facility to him due to the nature of his contract. At the level of the individual, this means economic activity and family planning being put on hold.

In parts of the economy, there are employment situations—we do not, of course, tar all employers with the same brush, but if there were no bad employers there would be no need for trade unions—in which people are turning up to work, sometimes in digital form, to find shifts being mediated through applications, not even through people. It is the 21st-century equivalent of a foreman standing at the factory gate and allocating shifts on an arbitrary basis. We have heard today about the potential, which is too often realised, for favouritism and abuse of that facility.

We have had good debate about a number of details regarding the changes in the Bill. The changes in clause 1 will be welcomed by people who work in the retail sector, including in my constituency, and in other sectors that have high rates of zero-hours contract working, including the care sector. I very much welcome the clause.

**Sarah Gibson:** Despite some of my concerns, I would like to lend my support to the clause, because the guarantees for workers are important. I caveat that by saying that the guidance for SMEs must be clear and

must come out soon, so that there is less concern in the business community about taking on staff. Currently, I see an unintended consequence in SMEs, certainly in the near future, not taking on staff because of the fear of additional costs.

While I am on my feet, I would like to make a correction for the record in respect of this morning's debate. In the debate on amendment 137, although the shadow Minister made a comment about this in his closing speech, it was not my intention to suggest that the Liberal Democrats wish to alter the current definition of SMEs from being 249 employees. I want to make sure that is clear.

**Justin Madders:** To pick up on the points made by my hon. Friend the Member for Birmingham Northfield, this is about who we are trying to help. This clause is primarily about low-income workers who do not currently have the security and certainty of regular hours. They are more likely to be young, female or from an ethnic minority background. We have heard about the real impact that can have and about the power imbalance when an employer holds all the cards. To use my hon. Friend's imagery, it is effectively like pointing to people at the factory gate and deciding whether they get work that day or not. We must move on from the indignity of that arrangement.

I welcome the support from the Liberal Democrats. It is worth saying that there was general, albeit caveated, support from the witnesses we heard from in last week's evidence sessions.

I will tackle head-on the shadow Minister's criticism about the lack of clarity and the need for certainty. Of course we want to give business certainty. I am sure that after the last few years of Conservative Government, we are all crying out for certainty, and there will be certainty. We are at an early stage of the legislative process for this Bill. It will be taken through Committee and through the Lords, and then there will be further consultation, secondary regulations and codes of practices, after which the laws will be implemented. As the Liberal Democrat spokesperson, the hon. Member for Chippenham, said, there is anxiety out there for businesses, but we are a long way off introducing this legislation, because there is so much more to do, and it is important that we do it. We want to get it right, we want to get clarity and certainty, and we want to ensure that this is an effective piece of legislation.

3.45 pm

*Question put*, That the clause, as amended, stand part of the Bill.

*The Committee divided:* Ayes 16, Noes 4.

**Division No. 2]**

**AYES**

| | |
|---|---|
| Darling, Steve | McMorrin, Anna |
| Gibson, Sarah | Madders, Justin |
| Gill, Preet Kaur | Midgley, Anneliese |
| Griffith, Dame Nia | Murray, Chris |
| Hume, Alison | Pearce, Jon |
| Kumaran, Uma | Tidball, Dr Marie |
| Law, Chris | Turner, Laurence |
| McIntyre, Alex | Wheeler, Michael |

**NOES**

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

*Question accordingly agreed to.*

*Clause 1, as amended, ordered to stand part of the Bill.*

## Clause 2

SHIFTS: RIGHTS TO REASONABLE NOTICE

**Greg Smith:** I beg to move amendment 145, in clause 2, page 13, line 25, leave out

"a specified amount of time"

and insert "48 hours".

*This amendment defines reasonable notice of a requestor requirement to work a shift as 48 hours.*

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

Amendment 146, in clause 2, page 14, line 17, leave out

"a specified amount of time"

and insert "48 hours".

*This amendment defines reasonable notice for the cancellation of a shift as 48 hours.*

Amendment 147, in clause 2, page 14, line 22, leave out

"a specified amount of time"

and insert "48 hours".

*This amendment defines reasonable notice for the cancellation of a shift as 48 hours.*

Amendment 148, in clause 2, page 14, line 28, leave out

"a specified amount of time"

and insert "48 hours".

*This amendment defines reasonable notice for the cancellation of a shift as 48 hours.*

**Greg Smith:** The amendments are intended to probe the Government's thinking, as once again it is not clear to us in the Opposition whether they have done the necessary policy work to justify the approach taken in the Bill. The impact assessment clearly shows the administrative cost that the Bill will have in shift and workforce planning, with estimated costs of some staggering £320 million to business. I would like to ask the Minister what evidence there is for the late cancellation or alteration of shifts being a problem of such magnitude that it requires legislation. The Bill does not set out what would be a reasonable notice period for cancelling a shift, and the Government must be clear what they actually intend to do in that respect.

This is a serious point. The burdens that this provision would place on small business would undoubtedly be considerable. Some small businesses cannot always, in every circumstance, guarantee shifts; that is perfectly reasonable. For example, a small furniture-making business with two employees has issues with the supply chain. It cannot provide work until the materials have actually arrived, but the employer in those circumstances could have no idea how long it will take for those materials to materialise—perhaps they are specialist materials or something that has to come from abroad and is delayed in shipping channels. Attacks by Houthis on shipping

*[Greg Smith]*

have caused supply chain problems, for example. In those circumstances, those businesses find themselves in a very sticky place and it would be unreasonable to try to argue that they should absolutely guarantee those shifts to their workers.

**Alex McIntyre:** I understand the hon. Gentleman's point about uncertainty in certain industries meaning that businesses may not be able to guarantee shifts.

I want to ask two questions. First, cannot certain industries take out insurance policies to account for some of those unforeseen circumstances, particularly when it comes to shipping? Secondly, what about the uncertainty for employees for whom losing a day's work would mean a deduction of 20% on a five-day working week? If someone told the hon. Gentleman that his salary would be reduced by 20% next week, would he not find that difficult?

**Greg Smith:** I am grateful for the intervention. On the hon. Gentleman's first point, yes, of course there are insurance policies that many businesses will take out. But the example I just gave is one I can see affecting many businesses in my own constituency; there is a strong furniture making heritage around Prince's Risborough in Buckinghamshire. There are very small businesses that do an incredible job and make some fantastic furniture, but they are microbusinesses with only a couple of employees and they operate on tight margins. They would not necessarily be able to bake the additional cost of a very expensive insurance policy into their bottom line without significant pressure on their overall business.

I accept that I am not talking about every or possibly the majority of businesses; my point in the amendments is that some circumstances might need a more sympathetic ear. In such cases, it could be argued reasonably and sympathetically that businesses in such a sticky spot would be unable to meet the requirements that the Bill sets out. Supply chain problems are just one example.

I take on board the second point made by the hon. Member for Gloucester, although, as I said in one of the earlier debates, I was self-employed for 15 years before entering this place in 2019. Some clients varied every month their requirements of the services that I provided back then. It was frustrating: nobody wants to be in that position, but it is sometimes a business reality, particularly if the ultimate client is struggling for whatever reason—their supply chain or the fact that they are just not doing very well so they need to throttle service provision up and down. I know that my example is not the same as that of a direct employee, but sometimes business needs a sympathetic ear.

To come back to my earlier point, nobody wants people not to be in a secure employment environment. Sometimes, however, things happen in businesses. Businesses in the automotive sector have shed quite a lot of jobs in recent weeks—look at Stellantis and Ford. Sometimes these things happen. With greater flexibility, perhaps more jobs overall can be saved in the short, medium and long terms, rather than having in every circumstance rigid rules that do not allow businesses that flexibility. I suggest that most people would want jobs to be saved rather than lost through that level of rigidity.

I will continue with my questions to the Minister about these probing amendments. In the furniture company example that I gave, what notice would an employer have to give? What do the Government expect an employer in such circumstances to do? From the hefty number of amendments that the Government have tabled, it looks as though small businesses are going to have to pay those employees for hours not actually worked; and even this will be through no fault whatever of the actual business in question.

Given that the Regulatory Policy Committee has flagged the risk that employers, often in fluctuating demand sectors such as hospitality and retail, may respond by scheduling fewer shifts to avoid penalties for cancellations and the consequential lost output to the economy, I would be grateful for the Minister's appraisal of whether the provisions on short notice cancellations will support or inhibit the Government's aim of actually achieving economic growth.

**Justin Madders:** I am grateful for the shadow Minister's amendment. If it is a probing amendment, he has asked a lot of reasonable questions. There are, of course, things that we will be hoping to address today and during the passage of the Bill—and, indeed, the subsequent regulations.

The first thing to say is that we do not believe that it is right at this stage to put the time into the Bill; we want to give ourselves flexibility to respond to how the issue works in practice and to changing circumstances by doing that in secondary legislation. However, the hon. Gentleman has asked a perfectly reasonable question: who are we trying to help? What is our purpose?

Our purpose is to try to help those people who simply do not have that security in their lives at the moment. Research from the Living Wage Foundation suggests that 25% of insecure workers have had their shifts cancelled unexpectedly, with 88% receiving less than full shift compensation. Many workers receive their shift schedules without reasonable notice, and that prevents them from being able to effectively plan their work, social lives and other responsibilities.

Living Wage Foundation data found that in quarter 2 of 2023, 78% of workers received less than two weeks' advance notice of shifts, with 5% of workers receiving less than one week. That can disadvantage workers' ability to effectively plan their future income, particularly when that relates to budgeting for regular outgoings when shifts are cancelled, moved or curtailed at short notice. The impact on workers can include an increased reliance on debt and an inability to forecast income or find substitute work, childcare expenses and, on some occasions, travel expenses. Such implications represent the sort of one-sided flexibility that we are trying to deal with.

Evidence suggests that the income insecurity premium could be worth as much as £160 million per year, but the issue is really going to be about that benefit targeting businesses in the right way. We believe that good management practice can deal with an awful lot of this without the need to resort to legislation.

**Alison Hume** (Scarborough and Whitby) (Lab): Last week, we heard from companies that say they are good employers and offer security of shifts to their workers. Would the Minister agree that companies that offer

their workers the right to payment for cancelled, moved or curtailed shifts are in fact good employers and therefore have nothing to fear from the Bill?

**Justin Madders:** I thank my hon. Friend for her intervention. That is indeed the overall message from every provision in the Bill: that good employers are doing lots of these things already. Those things represent the kind of practice that we want to encourage and even to legislate for, because there is plenty of evidence that good workforce planning and valuing employees increases business efficiency and improves productivity; those are, of course, secondary to the individual benefits to the workers. However, the policy is specifically targeted to benefit low income workers in particular—people who are more likely to be younger, female or from ethnic minority backgrounds.

There is also a wellbeing background. Extensive research has reported that the impact of on-call contracts, with short or no-notice cancellation of shifts adding to insecurity, leads to considerable increases in anxiety. There have been quite a lot of representations to the Low Pay Commission about that, with concerns about workers on flexible or variable contracts not being able to suitably assert their rights due to fears of repercussions, being zeroed down or having no additional dialogue with the employer.

4 pm

As my hon. Friend the Member for Scarborough and Whitby mentioned, a lot of the evidence the Committee heard last week from witnesses was positive. Unite said that it heard about shift cancellations far too often in hospitality. The Women's Budget Group noted that it is a problem, particularly for women, as we have already stated. Often, it means that associated childcare costs have to be paid: even if the shift has not been carried out, they still have to pay for the childcare. On the small employer point, the Association of Convenience Stores said that was something it knew already. It said:

"By and large, we set out shifts; we have clear shifts that are worked to. It would be rare that a shift got cancelled at short notice."—[*Official Report, Employment Rights Public Bill Committee,* 28 November 2024; c. 106, Q105.]

We think that is something the best businesses do already. We do not see why it would be a huge burden on businesses, but the benefits to employees, the levelling of the playing field, the increase in worker wellbeing and the financial benefits are there for all to see. That is why I urge the shadow Minister to withdraw his amendment.

**Nick Timothy:** I am sorry to test everyone's patience. We have heard at different points during the proceedings that "Good employers do this already." Undoubtedly, that is true, and where employers want to be able to offer certainty, they will. The full quote the Minister just read was "by and large", because employers cannot do that in all circumstances, even those that set themselves up to be that thoughtful. Does the Minister recognise that where businesses do not do the things in the Bill, it is not necessarily because they are bad employers? Obviously, some employers may be bad. If he recognises that, does he therefore recognise that through standardisation and an increase in things such as compliance costs, the Bill is, in a cumulative sense, adding costs to businesses that are not bad employers?

**Justin Madders:** As the hon. Member will know, the total cost to businesses from the Bill, as set out in the impact assessment, is about 0.4% of total employer costs. We absolutely acknowledge that there are many good employers out there who do this already, and we hope that there are many employers who do not who will feel that it is a positive once the legislation comes in. We want to take them on that journey and inform them why this is a positive thing and a benefit for their workforce. Importantly, they will see that the playing field is levelled and hopefully be able to compete more ably with others who might in the past have undercut them. But part of that will be making sure that they have access to good advice, good support and a guiding hand to make sure that the clear policy outcomes we want to see from the Bill are actually delivered. On that note, Mr Stringer, I ask the shadow Minister to withdraw his amendment.

**Greg Smith:** I remain very concerned about some of the real-world applications. I accept that it will have a negative impact in a minority of cases. The purpose of our amendment, as I said, was to probe the Government, so I am happy to confirm that we will withdraw it.

I beg to ask leave to withdraw the amendment.

*Amendment, by leave, withdrawn.*

**Justin Madders:** I beg to move amendment 24, in clause 2, page 13, line 42, leave out

"from what time on which day"

and insert

"when the shift is to start and end".

*This amendment requires notice of a shift to include when the shift is to end (as well as how many hours are to be worked and from when).*

**The Chair:** With this it will be convenient to discuss Government amendments 25 to 27.

**Justin Madders:** I am afraid we are back into some of the more technical minor amendments, on which I will not detain the Committee too long.

Amendment 24 will ensure that employers have to give reasonable notice of not only when a shift starts and how many hours it will be worked, but also when it will end. The Government's intention is to avoid a scenario whereby a worker is notified of the start time and total duration of a shift, but does not receive reasonable notice of whether those hours will be in a single block, or whether there may be a large break.

The current drafting would allow an employer to specify that a worker is required to work, for example, for three hours from 9 am on Friday, without specifying whether the shift will be from 9 to 12, or from 9 to 10 and then again from 12 to 2. In either scenario, the notice would meet the requirements to be a notice of the shift. The amendment closes this potential loophole. Some of my own children have gone into work and then been told to go and have a two-hour lunch break—unpaid. We clearly want to avoid that through this amendment.

I turn briefly to Government amendments 25 to 27, which will ensure that workers are entitled to reasonable notice where an employer cuts working hours from the middle of a shift as well as from the start or end. The current drafting would arguably allow employers to reduce

*[Justin Madders]*

the number of working hours in the middle of a shift without giving reasonable notice. The amendments close that loophole, ensuring that workers have to be given reasonable notice if an employer decides to change the hours of a shift by reducing the hours in the middle.

**Greg Smith:** I will be brief in my response to these Government amendments, which make the requirement for the right to reasonable notice of cancellation or changing of shifts more onerous. I spoke to these principles during our debate on the previous set of amendments in my name, but I ask the Minister gently now, why were these provisions not included in the Bill on introduction? Was it an oversight? Will there be a repeat of the line, "It was the intention but we just didn't do it", or is it something else? I would be grateful for clarification.

As I argued during the debate on the previous set of amendments—this point is relevant to this set too—why are these amendments so necessary? Does the Minister really think it a proportionate burden to place on businesses, particularly in those cases where there will be fair and reasonable grounds for a business not needing to provide notice of a change in shift to an employee? What assessment have the Government made of the cost to businesses, given that they will now essentially have to pay for work not done, without recourse to force majeure provisions or whatever it might be—where it is genuinely not their fault that they cannot provide the work to their workers for whatever reasons? Force majeure is a well-established principle in all sorts of sectors across the world.

I urge the Minister to consider carefully how he can ensure that out-of-control eventualities are looked after in the Bill; otherwise I fear it will create a scenario where particularly the smallest businesses—those one, two or three-employee businesses—are placed in a very difficult financial position. I cannot believe that the Government believe that is the just and right thing to do, and that they could not come up with some other safeguards to protect those microbusinesses—those small enterprises—that might find themselves in a sticky spot.

**Anneliese Midgley** (Knowsley) (Lab): I refer Members to my declaration of interests. I am also a member of Unite and the GMB. It was said in an evidence session last week that in hospitality—a sector that we are very focused on improving in the Bill—

"employers bring in too many workers for shifts and say: 'Sorry, we do not need you any more. Go home.' They then cancel a shift without any compensation for the workers for their travel time". —[*Official Report, Employment Rights Public Bill Committee,* 26 November 2024; c. 76-77, Q71.]

As many of my hon. Friends have said, while we are considering the burden on business, we must also consider the burden on workers. We are trying to level the playing field and make a more equal way, where workers are considered.

**Greg Smith:** I do understand the hon. Lady's point. Nobody wants to see people turned away as they turn up for work, with their employer saying, "Sorry, no work today." That is not a position that we want anybody else to find themselves in, but I am trying to make another point.

Let us take the hospitality sector as an example, which has had a pretty rough time since covid. It is one of the sectors—be it pubs, restaurants or attractions—that is struggling the most to recover from the pandemic. There are certainly times when I turn up to a pub in my constituency, perhaps on a Tuesday night, and it is completely empty and has no bookings. That is not necessarily the pub's fault, but it will be a problem if there is an absolute requirement for the pub still to pay its full staff rota because it was full the previous Tuesday night and needed all those staff. I think this is one of those real-world examples where there has to be a little bit of flexibility; businesses have to be able to say, "Sorry, we've got no bookings tonight." Worse than that, there might be the nightmare scenario that the beer delivery has not arrived and there is not actually any beer to sell.

**Michael Wheeler:** Does the shadow Minister accept that it is not the fault of the worker either? In fact, the employer has more control over the situation, on balance. On his example of planning out work, especially bookings, employers would know that there were no bookings further in advance than on the day—there are comparable examples across other industries—so giving notice of that on the day is completely and utterly unacceptable. The cost, in terms of proportion of income, is disproportionately borne by the worker, not the business, and these measures we are discussing are a proportionate way to rectify the situation.

**Greg Smith:** Fundamentally, I agree that it is not the worker's fault either—I am absolutely at one with that. I made it very clear that I do not want to see anyone turn up for work only to be turned away and told, "Sorry, no work today." That is not a great place for anyone to be. I absolutely understand and accept the hardship that that will place on someone who will perhaps not get that day's wages, but I think there should be greater flexibility in circumstances where it is not the business's fault either; those situations may be few and far between, but they will happen in hospitality, and they may happen in some manufacturing sectors where supply chain problems have occurred, as we discussed earlier.

If we force businesses into a place where they have to shell out significant amounts of money for no gain—as we discussed earlier, the workers are the ones who produce the services, goods, products or whatever it might be that enables the business to have the money in order to pay people in the first place—and we push them into a place where their low margin is eroded even further by paying for things that are completely outside their control, then those businesses may well go bust.

We are talking about the hospitality sector—and we are seeing pubs close virtually every week. That is a very sad state of affairs, particularly in rural communities, where the pub is often the beating heart of a village, or certainly the social hub. It is not just a place for a pint; pubs do a lot of social good as well. We are seeing pubs close far too frequently for all sorts of reasons, often because of the low margins and other factors that have come in—I will resist the temptation to go too hard on the Budget. There is a cumulative impact, and this measure could well be the straw that brings the whole house down. I want the Minister and Government

Members to reflect on where we could bake in other forms of safeguard and flexibility, so that the Government do not put a number of businesses on to that sticky wicket.

**Anneliese Midgley:** Can I clarify whether the shadow Minister believes that workers should shoulder all the burden, and that businesses should bear no responsibility?

**Greg Smith:** No, I do not accept that. It is not helpful to see this as either/or. As I explained, there is a symbiotic relationship between businesses and their workers—their employees. Neither succeeds without the other. It is therefore not the case that I, in any way, shape or form, want to put all the burden on one or the other; what I am arguing for, and what I hope Members in all parts of the Committee can reflect on and appreciate, is some of those real-life, lived-experience and real-world examples, where things just do not go very well and people find themselves—

**Jon Pearce:** Will the hon. Gentleman give way?

4.15 pm

**Greg Smith:** I am very happy to do so once I finish this train of thought—we are getting far more debate in Committee than we do in the main Chamber.

We have to find the balance, where we do not just point the finger at the business owner or the worker, but see them as a symbiotic being—because neither side can survive or thrive without the other.

**Jon Pearce:** I am grateful to the shadow Minister for giving way so often. I want to address a principle: the Working Time Regulations 1998 established that if an employee, or indeed an employer, wishes to take holiday, the statutory notice period will be twice as much as the holiday taken. That is the same principle in the Bill, in that it is perfectly reasonable for a worker who does not have guaranteed hours to be given notice when work is not available. That statutory principle has been in place since the last century, so this is not outwith what every worker should expect. It is perfectly reasonable that if a worker has been told that work is available, they should be given reasonable notice if it is not. The shadow Minister's Government kept to that principle, and it is perfectly applicable to employees and workers in this situation as well.

**Greg Smith:** The hon. Gentleman is right about the principle of notice for holiday—that is quite clearcut. Holiday is pretty much always planned, although there are circumstances in which someone might need to take leave at very short notice—perhaps they have one of those dreaded phone calls that a relative is seriously ill, so they have to leave to be with them, or there might be some other pressing emergency. I think most employers will be flexible and compassionate about such emergency circumstances, ensuring that an employee can be with a relative who has been in an accident or is critically ill, for example.

Generally speaking, though, holiday is planned—just as, generally speaking, the availability of work is planned—but as with emergency situations when someone might need rapid time off, other emergency or out-of-control situations might affect a business. It would then put an intolerable pressure on that business suddenly to have to pay someone an amount of money that might be more than they would even have earned in that day—selling beer or cake in the hospitality sector, or producing a cabinet in furniture making, or whatever it might be.

I hope that the hon. Gentleman appreciates where I am coming from. We are not talking about the vast majority of cases or the bulk of the economy here; we are talking about the unexpected emergency scenarios that are out of anyone's real ability to predict, which happen in the real world. I am therefore very concerned that the rigid provisions being proposed by the Government will put a number of businesses in a difficult place.

**Several hon. Members** *rose—*

**Greg Smith:** Oh, here we go. It is multiple choice.

**Alex McIntyre:** I want to drill down on an important point of principle that we should be considering. I do not want this to become a tale of woe from my previous career in hospitality, but I remember being docked three hours' pay by my boss because there were no customers for those three hours, and there is a similar point of principle here. I understand that there will be times when a restaurant is empty, but someone turning up to work will expect to get paid for that shift. Then there is the cost to the employee of going to work. People might have to secure childcare—I have recently had to look at the cost of childcare and the astronomical prices that are being charged—or pay to travel into work, and they might have paid in advance and be unable to get a refund. Why does the shadow Minister believe that the burden on the employee is less important than the burden on the business?

**Greg Smith:** I can assure the hon. Gentleman that, with three children, I am acutely aware of the cost of childcare. The point I am making, to go back to the one I made earlier to his hon. Friends, is that this is not "all or nothing". It is about recognising, to refer back to the answer I gave the hon. Member for High Peak, that at certain times, albeit not the majority of cases—in fact, far from the majority of cases—circumstances will arise that are beyond the business's and the employee's control, and they will push that business to the very edge. It is not a happy place or a good place to be, but there are some realities here that I think need much more careful reflection.

**Chris Law** *rose—*

**Greg Smith:** Here we go.

**Chris Law:** I have been both an employer and an employee in a number of situations, including in retail and hospitality, which we have been hearing about. The hon. Member talks about emergencies, and I understand that emergencies can happen—I have been an employer when we had an emergency situation. What usually happens in those circumstances is that people find other things to do. There is always stuff to do in a business—stuff that might otherwise get put to one side—so there will be an opportunity for employees to work with employers in emergency circumstances.

*[Chris Law]*

What I do not understand is this. At what point, in the hon. Member's mind, do employers notify employees? When do they say, "Look, there's a situation—it's an emergency. There is no chance at this time that I can help you come in. Would you consider not taking hours in this instance?" The hon. Member has talked about lived experience; I have spent many years in hospitality—I trained as a chef, and I know exactly what it is like working in restaurants and hotels. Lots of things happen, including empty restaurants, but there is also an onus on the employer to make sure that the restaurant has enough people in of an evening. If they are not there, it is not the employee's fault; it is the responsibility of the business. If the business is on its knees, then frankly that is in no way the fault of employee—unless, of course, they are not turning up for work or something. In truth, is it not the case that a business in that position is just not viable?

**Greg Smith:** I am grateful to the hon. Gentleman for his intervention. He is right that there may well be something else that can be done—perhaps a stocktake, or making a start on refurbishing the place, or whatever it might be—but that will not be the case in every circumstance. I can only repeat the point that I am not making this argument in respect of the majority of cases, or those that might affect a business that is already in distress; I am making it in respect of those few occasions that might take a business to that point or much closer to it. I cannot imagine that anybody on this Committee, or indeed any Member of this House, would want to see that unintended consequence.

**Laurence Turner** *rose—*

**Greg Smith:** I will take one more intervention.

**Laurence Turner:** I am grateful to the shadow Minister; I suspect he is setting some kind of record with the number of interventions he is taking. Earlier, he said that there may be alternative measures and protections to mitigate the problem that the Minister is seeking to address, whereby someone has been called to a shift but has arrived, incurring some cost, to be told that there is no work available. What alternative measures does the hon. Member have in mind?

**Greg Smith:** There are a number of options that could be looked at. The time set out in the regulations could be much more flexible. There could be safeguards for force majeure circumstances, which is common in a lot of contracts. There is no reason why that could not be in legislation. Or if the Government want to go down this path, albeit it is not something that Conservatives would propose, perhaps a more elegant way of going about it would be some sort of legislation on compulsory insurance against such eventualities that ensured that both sides were able to benefit—that the employee still got paid at least something, if not their full expected wage for the day, but the business was not directly out of pocket either. That would have to be tested in the insurance industry to see where premiums would come out, because they may well be unviable, but I gently suggest to the Government that it is a tyre worth kicking.

I conclude with a point I have made many times: this has to be about flexibility in real-world circumstances.

**Sarah Gibson:** The Minister made an extremely good point about the security that is required. It should not be an arbitrary 48 hours that is given. Specifying the time for each sector, presumably under guidance, would perhaps be the most appropriate thing.

I have talked many times to people in my constituency who work in the care sector and are employed to visit people in their own homes. They are given a start time for a shift and are quite often told that they will work a certain number of hours, but it is not clear until they turn up to the shift how much of a gap there will be between the times at which they are getting paid. That can leave them with shifts that last a considerable time but contain a gap of several hours, during which they might be miles from home and it might not be worthwhile going home for lunch, so they incur costs on their own time.

I welcome the attention to the lack of clarity about shift working specifically for home visits in the care industry. This is something that we need to look at. Perhaps there needs to be guidance on the time for each sector, because each sector has its own issues. That is certainly true when one looks at hospitality.

**Anneliese Midgley:** I am sorry for referring to the shadow Minister as "you" earlier, Mr Stringer; I was not suggesting that you needed to clarify whether you thought workers should shoulder all of the burden.

I want to remind hon. Members of some evidence that we were given last week in support of the right to reasonable notice of a shift. Matthew Percival from the CBI said that

"there are areas where the Bill can be a helpful step in the right direction. To give a few examples, we have previously supported the idea that it is wrong that you should turn up for work expecting an eight-hour shift, be sent home after two hours and only be paid for two hours. There should be a right for compensation there."

Jane Gratton from the British Chambers of Commerce said:

"As Matthew said on the compensation of shifts, we certainly support that, and we would be very happy about the fair work agency to create a level playing field and measures around workplace equity."—[*Official Report, Employment Rights Public Bill Committee,* 26 November 2024; c. 13, Q6.]

Allen Simpson from UKHospitality said:

"Again, reasonable notice is an important principle and there should be protections."—[*Official Report, Employment Rights Public Bill Committee,* 26 November 2024; c. 43, Q39.]

**Justin Madders:** The way the shadow Minister was intervened on made it feel like this was an Opposition amendment, but it is actually a Government amendment to deal with the issue of split shifts and the anti-avoidance measures. This is about rebalancing the level of risk faced by a worker and an employer. At the moment, the balance is shifted too far one way. We estimate in the impact assessment that the cost to businesses of this policy could be up to £320 million a year. Clearly, a lot of that will end up being transferred directly into workers' pockets. We hope that, through better workforce planning, that figure will go down and we will see improvements to the lives of those who will benefit from the Bill.

I will make one further point. The shadow Minister referred several times to force majeure situations. There is provision in a later clause, which we will not get to today, for us to set out in regulations when there might be exceptions to this provision. There are lots of potential arguments about whether the provision should apply, and we intend to consult further before the final regulations are published and debated.

4.30 pm

*Amendment 24 agreed to.*

*Amendments made:* 25, in clause 2, page 14, line 11, leave out from "employer" to end of line 13 and insert

"consisting of—

(i) a change to when the shift is to start or end;

(ii) a reduction in the number of hours to be worked during the shift because of a break in the shift;".

*This amendment accounts for the possibility of a shift being changed by hours being cut from the middle of the shift.*

Amendment 26, in clause 2, page 14, line 26, leave out from "of" to second "is" and insert

"any other change to a shift".

*This amendment is consequential on amendment 25.*

Amendment 27, in clause 2, page 15, line 13, leave out from "change" to end of line 14 and insert

"consisting of—

(i) a change to when the shift is to start or end;

(ii) a reduction in the number of hours to be worked during the shift because of a break in the shift,".

*This amendment is consequential on amendment 25.*

Amendment 28, in clause 2, page 16, line 4, leave out "three" and insert "six".

*This amendment would increase the time limit for bringing proceedings under the new section 27BM of the Employment Rights Act 1996 from three months to six months.*

Amendment 29, in clause 2, page 16, line 20, leave out "three" and insert "six".—*(Justin Madders.)*

*This amendment is consequential on amendment 28.*

*Question proposed,* That the clause, as amended, stand part of the Bill.

**Justin Madders:** I will not detain the Committee too long, because it feels like we have had the clause stand part debate already. I will briefly go through the provisions of clause 2, which creates the right to reasonable notice of shifts. As I set out when we discussed clause 1, we must tackle one-sided flexibility. Guaranteed hours is an important part of that, but we must also ensure that workers have reasonable notice of their shifts, so that they are enable to effectively plan their work and personal lives.

If someone's shift is moved but their pay is less than the cost of the babysitter, that is obviously a negative. If someone is offered a last-minute shift but it is 60 minutes away by bus and they have no car, they should not be penalised or have a black mark put against them if they are not able to take it up. We can do better than this. We want to establish a more balanced partnership between workers and employers, and we hope to do that with clause 2. It will still allow employers to make changes to shifts, but it will also provide incentives for employers to meet the standard of the best employers, encouraging better planning and engagement with their workers. These provisions to introduce a right to reasonable notice of shifts and to changes in them are a small but important step towards making the lives of many shift workers and their families feel a little more secure.

Clause 2 creates several new sections in the Employment Rights Act 1996. New section 27BI outlines the duty that will be placed on employers to give reasonable notice of shifts. That duty will apply to workers on zero-hours contracts and arrangements, as well as workers on other contracts that will be specified in regulations but are likely to be low-hours contracts. New section 27BJ specifies that employers must also give reasonable notice of any moves or changes of shifts. New section 27BK notes that, as for other sections, agency workers are not covered by this measure—new section 27BV provides a delegated power to make corresponding or similar provision in relation to agency workers. In addition, section 27BK specifies that workers are not entitled to reasonable notice of shifts that they themselves suggested they work. For example, they would not be entitled to reasonable notice of overtime that they themselves had suggested. That right does, however, apply where the employer agrees to a suggested shift and then later changes or cancels the shift. Finally, the section contains a power to make regulations about how the notice should be given and when it is treated as being given.

New section 27BL explains that, where an employer is required to make a payment to a worker because the employer has cancelled, moved or curtailed a shift at short notice, the worker cannot get compensation for lack of reasonable notice for the same cancellation, movement or curtailment. New section 27BM enables workers to complain to employment tribunals that their employer has failed to comply with the duties to give reasonable notice. New section 27BN provides that tribunals must make a declaration where they find for a complainant and may award compensation they consider appropriate to compensate the worker for financial loss suffered as a result of the failure to give reasonable notice. This compensation will be capped in regulations and, in line with common law on recoverable damages, compensation will also take account of the duty on the claimant to mitigate their losses.

**Greg Smith:** I will not detain the Committee for much longer because, as the Minister said, it felt as though we had the debate on the whole clause during the debates on the amendments. I reiterate my concern about some of the provisions in the clause. Although I accept that the Minister said that, further on in the Bill, there is provision for force majeure measures to be introduced, there is a gaping hole for those emergency, unexpected, out-of-control circumstances, and this clause fails to fill it. However, we will almost certainly return to that on Report, so we will not press the clause to a Division.

*Question put and agreed to.*

*Clause 2, as amended, accordingly ordered to stand part of the Bill.*

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

4.37 pm

*Adjourned till Thursday 5 December at half-past Eleven o'clock.*

## Written evidence reported to the House

ERB 29 Kinship

ERB 30 Jim Dickinson

ERB 31 Professor Simon Deakin, Professor of Law and Director of the Centre for Business Research, University of Cambridge

ERB 32 Investment Association

ERB 33 The Scout Association

ERB 34 Bliss

ERB 35 USDAW

ERB 36 Dr Michael Koch (Brunel University of London) and Professor Sarah Park (University of Leicester)