

## **UKHOSPITALITY'S SUBMISSION TO THE BUSINESS AND TRADE COMMITTEE INQUIRY INTO 'MAKE WORK PAY: EMPLOYMENT RIGHTS BILL'**

### **About UKHospitality**

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

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

### **Executive summary**

- **UKHospitality supports the principles of the Bill** – balancing flexibility and making work more attractive is vital. However, we have concerns about some of the language that has been used around the Bill that has detracted from getting the details right. The Bill is an ambitious step toward improving workers' rights, but its success depends on balancing these rights with the operational realities and growth needs of businesses large, medium and small.
- **Cumulative costs on the sector:** The Budget, and particularly employer NICs changes, have made the operational environment, into which these reforms will be introduced, much tougher. The sheer breadth of the Bill will itself result in significant costs in terms of operational and management time, systems and policy changes, as well as direct costs. Many of the reforms on their own are low-impact but the package combined is significant.
- **Implementation:** the Government should recognise the specific needs of sectors like hospitality that rely on flexibility and seasonal workers. For instance, 12-week reference periods for guaranteed hours contracts pose a significant challenge, especially for small coastal and rural hospitality and leisure businesses.
- **Adequate time for transition and effective consultation:** UKHospitality strongly believes that the Government must allow adequate time for businesses, especially smaller businesses, to adapt their operations and therefore government must consult on specifics, such as notice periods and shift compensations.
- **Address wider workforce challenges:** Whilst implementing the Bill, the Government must address broader workforce challenges, including skills development and economic inactivity, to complement the Bill's aims and support sectors like hospitality who are already facing significant staff and skill shortages. There should be a compatibility of approach to different Government policies – e.g. the Employment Rights Bill policies should not undermine Get Britain Working.

### **Overview of UKHospitality's position on key measures within the Bill of relevance**

- Statutory Sick Pay from Day One of sickness – We understand the Government’s rationale about deterring presenteeism when people have a contagious illness. However, we have concerns about the impact of this measure on absence levels, with it seemingly offering a greater incentive to take a ‘sick day’. Relaxing the rules for sick pay will come at a significant cost for business which will have to invest in a lot more operational time to manage. **We therefore recommend a compromise position of Day 2 of sickness for Statutory Sick Pay to apply.**
- Trade Union access and recognition – most of our member businesses are comfortable with the rules around trade union access to sites, provided there are clear rules that ensure service is not compromised. However, there are concerns that removing thresholds for recognition will lead to the unintended consequence of a handful of team members delivering trade union recognition, where it is not wanted or needed.
- Guaranteed hours contracts – we welcome the Government’s consideration of the views of employers and employees and its decision to move away from a policy of an outright ban on zero hours contracts. However, challenges still remain with the government’s proposals:
  - **Reference period** – the current proposal of 12 weeks is too short for seasonal businesses. Ireland has 52-week reference period, and the sector is generally supportive of this position. In order to provide a full assessment of the seasonal nature of hospitality, we recommend that the reference period is set to 26 weeks.
  - **Clarity on exclusions** – we need the government to provide further details on the types of contracts excluded. For instance, fixed term contracts and genuine casual work. Clarity on genuine casual work is especially important for the contract catering sector, which supports many yearly events such as the Grand National, Wimbledon or Festivals, where people will work for 1 or 2 weeks so that they can support and attend these events.
  - **Overly onerous enforcement** – we are concerned that there is a lack of clarity over what constitutes an offer of employment and that it should not be too onerous on employers. For instance, they should not need to draft a full contract and it should just involve a basic conversation with the employee on what their entitlement to a contract should look like. We believe it is clear that many employees in hospitality and leisure will not want to have a guaranteed hours contract. On this point, the recording of employee opt-outs should not be overly onerous for the employer. There should also be at least a 6-month period between having to re-offer a guaranteed hours contract if one has been turned down.
- Notice of shifts and compensation for cancellation of shifts – we fully understand the principle underpinning these and our members always aim to provide good notice of shifts. However, there are a number of significant issues within the government’s proposals that need to be resolved:
  - **Reasonable notice for changes in shifts** – we are concerned that this will be left open to Employment Tribunals to decide, which could be seen as pragmatic, however, it also adds to the uncertainty businesses are facing. It should also be noted that within hospitality and leisure, team members will often shift between themselves and this should clearly not be impacted by legislative changes.
  - **Levels of compensation** – we understand that this will be determined through consultation post-Royal Assent. This again adds to business uncertainty. We would

welcome a flexible approach to compensation levels depending on the level of notice of cancellation of shift.

- **Notice of shifts** – most businesses aim to give a substantial period as it is good for the business and the employee. However, hospitality is a sector often governed by short-term demand and flexibility which is crucial to meet business growth.
- **There is a specific concern around the definition of cancellation of shifts** – a business may ask its team members simultaneously, in order to be efficient, whether they are able to cover a shift, for instance through a WhatsApp group message, when someone calls in sick. Under current proposals we believe that this could be counted as an offer of work. If so, when more than one person wanted to work, then the others who had also offered to work may be able to claim cancellation of shift.

## **1. How the Bill will contribute to the Government's stated goal of achieving the fastest growth in the G7**

UKHospitality is supportive of the principles that underline the Employment Rights Bill and we agree that better worker protections can improve job satisfaction and retention, indirectly boosting economic productivity. We therefore welcome the majority of family-friendly measures announced in the Bill, including Day 1 right to paternity leave and unpaid parental leave, as well protections against dismissal for pregnant workers.

However, the direct cost impact of the proposals within the Bill on business must be acknowledged. We estimate that the policies contained in the Employment Rights Bill will cost hospitality and leisure business in excess of £500 million per year. In the context of the government's recent Budget, which added an additional £3.4bn onto business costs through the changes to employer NICs, increases in the National Living Wage and the cut to Business Rates Relief, this is a huge cost to bear. 85% of UKHospitality membership are already saying they're going to have to cut staff hours and jobs, whilst 95% of our businesses say they're going to have to cut investment in the high street and a similar proportion increase prices.

In this context, many of the measures in the Employment Rights Bill will only add to the administrative and compliance costs for businesses, particularly in labour-intensive sectors like hospitality, which in turn could further slow investment and expansion. The Government should ensure sufficient transition periods and clear, consistent guidance to mitigate these effects. We therefore strongly urge the government to undertake further consultation with business on key areas such as guaranteed hour contracts and notice of shifts so that we get the policy detail right and it is fair to both employer and employee.

On costs, more than 95% of member businesses have expressed concerns (71.1% very concerned and 24.4% somewhat concerned) about the Government's plans to remove the existing requirements to serve waiting days before receiving Statutory Sick Pay. We understand the Government's rationale about deterring presenteeism when people have a contagious illness, however, our sector strongly believes that the proposed measure will be seen by some employees to provide a greater incentive to take a 'sick day'. There are instances within hospitality and leisure, as with other sectors, of employees taking days off as sick at short notice due to myriad (often) unjustified reasons. Such instances directly impact the ability of a business to be able to operate effectively and could mean them having to cancel bookings or even closing their business at short

notice due to not having the required staff to provide the service. We therefore recommend a compromise position of Day 2 of sickness for Statutory Sick Pay to apply.

More broadly, it is vital that as part of the Employment Rights Bill that the Government does not remove the flexibility that both employers and employees need. We welcome Government's moves to take into account the views of employers and employees and move away from a policy of a complete ban on zero hours contracts. In our sector, 63% of those on zero-hour contracts are happy with the number of hours they work. However, we are concerned that the 12-week reference period on a guaranteed hours contracts as well as plans for stricter rules on shift notice might reduce operational agility, particularly in sectors that depend on demand-driven scheduling, like hospitality. Indeed, many small businesses, especially coastal businesses, are highly seasonal, weather dependent and only open certain months of the year. We have therefore recommended a 26-week reference period as a compromise position, but our sector and others need further engagement on this.

In order to ensure economic growth and outstrip the OBR growth predictions so that the UK can become the fastest growing country in the G7, the government must not undermine the flexibility that is so needed by employers in hospitality and leisure and welcomed by the majority of its employees. There is potential to do this, but it will need a more business-friendly approach from Government to employment costs and flexibility.

## **2. Whether the Employment Rights Bill will adequately protect workers, improve security at work and raise living standards in every part of the country.**

We are supportive of the Bill's intentions to enhance worker protections. Indeed, most of our member businesses are comfortable with the rules around trade union access to sites, provided there are clear rules that ensure service is not compromised. However, there are concerns that removing thresholds for recognition will lead to unintended consequences of a handful of team members delivering trade union recognition, where it is not wanted or needed.

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

More broadly, it must be acknowledged that whilst the Bill is vast in some critical areas there is very little detail and so scrutiny is challenging. For example, very little detail is available on the government's intentions for reference periods, compensation for cancelled shifts and notice of shifts. Additionally, there is no consultation at all on key elements of employment law – such as changing the rules on Statutory Sick Pay. As a sector we want to work with the government to get these policies right, and ensure they are deliverable and don't have unintended consequences. We are therefore calling for a full and detailed government-led consultation and an implementation period for businesses to deliver on the new requirements.

We accept that measures on guaranteed hours contracts, unfair dismissal, family-friendly policies and equality measures could have a positive impact on improving security at work, as well as raising living standards for some. However, the cumulative costs for employers, particularly in high-turnover, low-margin sectors like hospitality and leisure businesses could counteract these benefits by slowing wage growth and/or reducing hiring. This will be especially true in small businesses and in

more rural or coastal parts of the country where demand is more seasonal, and therefore a flexible workforce is key to being a profitable and successful business.

### **3. Impact on businesses, particularly investment rates, start-up rates, labour supply, and employment rate.**

We are clear that the increased administrative burdens and labour costs of the Employment Rights Bill may deter investment and dampen entrepreneurial activity, particularly in small businesses. As noted previously in the response, business confidence within the sector is critically low following the Autumn Budget, and without clear sector-specific guidance and a gradual rollout, the measures included within the Bill are only going to further dampen that. We therefore support the establishment of the Fair Work Agency, which should aim to provide guidance on issues as much as enforcement to avoid issues arising.

In terms of labour supply, many students, older people, carers and single parents choose to work in hospitality and leisure because of the flexibility the sector provides.

- 57% of the hospitality workforce work 30 hours or less a week, with 37% working 20 hours or less.
- 38.7% of the hospitality workforce is 16 – 24 years old – by far the highest of any sector.
- Hospitality is one of the industries with the highest number of female workers, with 54.2% of women.
- More than 17% of our workforce is equality act disabled.
- Nearly 20% of the hospitality workforce is made up of ethnic minority groups.

Hospitality and leisure businesses provide jobs for everyone, everywhere, regardless of their circumstances or what they are seeking from work. However, we are concerned that the measures in the Bill could reduce employment opportunities by making flexible arrangements less viable. At the same time, increased regulatory requirements may reduce overall job creation, particularly for part-time and entry-level roles prevalent in our sector. This has been further exacerbated by the lowering of the employer NICs threshold at the Autumn Budget, which is regressive in nature, and will impact lower paid workers more.

### **4. How to ensure adequate protection against exporting poor labour standards, including concerns over forced labour in international supply chains.**

As a sector, hospitality businesses are people focused, and rely on a happy and healthy productive workforce to deliver high-quality customer service. Due to the domestic nature of our frontline businesses, the exportation of labour is a very low risk. However, increased automation is highly likely, with member businesses telling us that many are considering rapid changes in this regard to due increased labour, energy costs and taxation.

In the supply chain, it is likely that some providers will move operations overseas because of the increased costs of employment created by the Bill. As such, it is imperative that the government works with international partners to monitor reporting requirements under the Modern Slavery Act

and align internationally. The hospitality sector already operates a modern slavery protocol to eliminate exploitation in its supply chains.