

## BUSINESS AND TRADE COMMITTEE INQUIRY ON THE PLAN TO MAKE WORK PAY SUBMISSION FROM THE BRITISH RETAIL CONSORTIUM

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### About the BRC

The BRC is the lead trade association for UK retail.

Our purpose is to make a positive difference to the retail industry and the customers it serves, today and in the future.

Retail is the ‘everywhere economy’, a vital part of the socio-economic fabric of the UK. The industry makes up 5% of UK GDP and is the largest private sector employer, providing 3 million direct jobs and 2.7 million more in the supply chain. Retail has a presence in every village, town and city across the country.

Over 200 major retailers are members of the BRC, with thousands of smaller, independents represented by BRC’s trade association members. Together, these businesses operate across all retail channels and categories and deliver over £350 billion of retail sales per year.

We build the reputation of the retail industry, work with our members to drive change, develop exceptional retail leaders, and use our expertise to influence government policy so retail businesses thrive and consumers benefit. Our work helps retailers trade legally, safely, ethically, profitably and sustainably.

### General

Before discussing the details of the Employment Rights Bill and their impacts, the BRC would like to highlight the wider regulatory and economic environment currently impacting retailers and some recommendations regarding the government consultation process.

Retail is the largest private sector employer, with three million direct jobs and 2.7 million more in the supply chain, contributing over £100bn per annum to GDP. Due to its size and reach, the industry can contribute huge value as a partner to government, supporting the reinvigoration of high streets, creating flexible jobs, particularly at entry level, and helping to deliver the government’s ambitions for growth.

The October 2024 Budget was particularly challenging for the industry. The changes to employer National Insurance contributions, which will cost retailers over £2.3bn from next April, are particularly significant, as retail employs large numbers of people in entry-level and part-time roles. The National Living Wage increase is expected to cost a further £2.7bn. These new costs are on top of other upcoming regulatory costs – the new packaging levy is expected to cost another £2bn from next October.

While we appreciate the government’s focus on improving the fiscal situation and investing in public services, and the role businesses play in supporting these efforts, the scale of these costs and the speed at which they will occur create a cumulative burden that will inevitably lead to job losses and higher prices.

With the lens of a challenging business environment, ensuring employment rights reforms are fit for purpose, do not lead to unintended consequences and are workable is now more vital than ever.

The BRC welcomes the opportunity to share our views on the Bill with the Committee, both in writing and as part of the oral evidence sessions on 28 November. We would, however, like to raise some concerns with the government’s consultation process on the measures in the Bill:

1. **Visibility of forward plan:** In order to provide an understanding of what is to be expected and when, clarity of the timetable of future consultations will support the opportunity for all stakeholders to engage effectively.
2. **Scope:** Consultations need to provide the opportunity to engage in the full breath of particular policies. For example, the Zero hours consultation only looked at one particular aspect of the policy (how/if it

## Written submission from the British Retail Consortium (ERB0028)

could apply for agency workers). As we highlight in our submission, it's the wider aspects of guaranteed hours proposals where we have significant concerns on the practicality of proposals.

3. **Duration:** The short duration of the first four consultations has hindered the quality and legitimacy of the responses, particularly due to the timing of the Autumn Budget. Moving forward, a 12-week consultation period is essential to provide stakeholders with sufficient time to fully engage with and assess the proposals.
4. **Interaction between proposals:** It is important to ensure different policies work well together. We'd advise ensuring future consultations are subsequent, not in parallel. The outcome of some proposals might impact others and, therefore, the policy development of these should follow a logic order.

We would also like to stress the importance of ensuring policies are workable for businesses. We are completely aligned on need to ensure responsible employment practices, weed out unscrupulous players and fully support measures to crack down on the small minority of employers – in whatever industry, who exploit the people who work for them. But adding new processes which do not improve outcomes for employees of responsible employers or hinder already effective practices will increase costs, reduce flexibility and opportunities particularly for entry level jobs or those from disadvantages backgrounds.

### Executive summary

- As responsible employers, retailers are committed to working collaboratively with Government and unions to ensure the workable implementation of the Employment Rights Bill.
- Retail is the largest private sector employer in the UK and so the impacts of the Bill will be felt acutely in the industry and its supply chains.
- There are significant concerns over the cost impact of the Bill on the retail industry, which faces an additional £7bn a year in costs from the Autumn Budget and forthcoming regulation.
- The Bill has the potential to significantly and disproportionately increase complexity and cost for retailers and limit their ability to provide flexible work.
- There should be a workable approach to implementing the Bill and secondary legislation to avoid unintended consequences.

### Written evidence

A positive industrial framework is good for employees, employers and the economy. Retailers place the utmost value on their employees and invest heavily to ensure that people from all backgrounds have access to rewarding, flexible employment with clear paths to career progression.

For the past 18 months, we have been working with HR professionals from across our membership to understand the impact of the Plan to Make Work Pay and Employment Rights Bill (the “Bill”) on retail. We welcome the opportunity to share the industry’s views and concerns with the Committee.

It is important to consider the changes set out in the Bill, and their potential impact on retailers, in the context of significant ongoing cost pressures on the industry. The uplift to the National Minimum and Living Wages and the changes to employer NIC contributions, announced at the Autumn Budget and applying from April 2025, will cost retailers an estimated £5.06bn. There will be a £140m uplift to business rates for larger ratepayers, and a considerably reduced level of discount for smaller ratepayers, also from next April. Implementing forthcoming regulation is also adding to retailer costs: the new Extended Producer Responsibility packaging levy, applying from October 2025, will add around £2bn a year.

This cumulative burden will, in the short-term at least, place upwards pressure on inflation, hold back retail investment and lead to job losses. At a time of soaring business costs, it is crucial that the proposals in the Bill do not add further administrative complexity and cost to retailers, which would exacerbate these economic consequences. We note that the Government’s Impact Assessments for the Bill forecasts a cost of £300-800m for retailers and believe that the Government should be laser-focused on ensuring the Bill comes at a sustainable quantum to the industry.

It should also be noted that the Regulatory Policy Committee has issued a ‘not fit for purpose’ opinion for the Government’s Bill Impact Assessments, noting that “it would be proportionate to undertake labour market and

broader analysis to understand the overall impact on employment, wages and output, and particularly, the pass-through of employer costs to employees.” The opinion also notes that the Impact Assessments assessed by the RPC require further analysis and evidence regarding the rationale for intervention, options proposed and their justification<sup>1</sup>.

The BRC suggest a review of the impact assessment (IA) takes place ahead of any further consultations. Striking the right balance between enhancing workers' rights and businesses' viability is essential to protect jobs. Taking account of the significant cost pressures from the Budget and forthcoming regulation, and the RPC's red rating of the IA, it is very challenging for retailers to assess how/if the proposals could work in practice.

### **Day one rights**

The Bill proposes the scrapping of the two-year qualifying period for unfair dismissal, although probation periods will be maintained, with a nine-month period put forward by government. We are supportive of the proposed probationary period as it would allow retailers to assess the suitability of new hires for a given job. However, as it remains to be seen how the new probationary period would work in practice, it is difficult to assess the precise impact it would have on retailer hiring practices. However, if the process adds extra cost to retailers, there is likely to be a resulting decrease in business' willingness to hire.

The probationary process should be as light touch as possible to avoid placing significant new administrative burdens, which would likely lead to a reduction in new hires, on businesses. A number of retailers already have existing probation periods of less than nine months and any changes to these processes will add administrative complexity and cost. It is crucial that probation periods can be operated in a cost-effective manner, or else the proposed changes may impact on retailers' willingness to take on new hires, particularly impacting those from certain cohorts such as young workers and prison leavers, for example.

### **Guaranteed hours and zero-hours contracts**

There is very little use of zero-hours contracts in retail, with 0.3% of the workforce currently having a zero-hours contract, often at the employee's request. Employee surveys have identified flexibility in working hours as a key element valued by retail employees and, often in the run up to Christmas, there is a temporary need for additional staff.

The Bill gives the Secretary of State the powers to set exemptions on the duty on employers to make an offer of guaranteed hours to a qualifying worker at the end of every reference period. These will be set in secondary legislation, and we would welcome clarity on how these are to be determined and designed. There are also provisions for time-limited contracts, when it reasonable to expect, that work is needed to perform a specific task, related to an event or there is a temporary need for certain services. We would also welcome clarity on the definition of 'reasonable' in this context.

There are significant concerns that the right to have guaranteed hours – combined with the proposed 12-week reference period – will place an excessive and disproportionate burden on retailers. If the right to have guaranteed hours is enacted, many retailers will have to offer employees guaranteed hours on a daily basis – even when employees are not seeking them – and offers of overtime may be reduced to limit potential liabilities. There is also concern that the proposed 12-week reference period would not allow for fluctuating labour demand across industries including retail.

We believe that a right to request – rather than a right to have – guaranteed hours would strike a balance which would not place onerous requirements on retail businesses. This would allow employees who are genuinely seeking a non-time limited contract the ability to request guaranteed hours.

If, however, the government maintains its current proposal, it is crucial that the reference period and processes for offering guaranteed hours are workable.

### **Statutory Sick Pay**

The proposal to remove the waiting limit for Statutory Sick Pay (SSP) to apply alongside the lower earnings limit has the potential to significantly increase retailer costs by millions of pounds. This would limit their ability to offer enhanced sick pay schemes and Occupational Health (OH) provisions for example in cases of bereavement. It is

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<sup>1</sup> [RPC Opinion: Employment Rights Bill](#), 25 November 2024

important that a balance is struck so that that employees aren't incentivised to miss work, which would create significant disruption for, and place further cost on, retail businesses. We would welcome clarity on whether employees would be required to self-certify.

### **Flexible working**

Retail careers are popular in part due to the flexibility they offer, allowing people from diverse backgrounds and walks of life to work around pre-existing commitments and vary their working patterns according to other needs. In response to labour market conditions, retail jobs are becoming even more flexible so that they are even more accommodating for individuals, and in response to labour market conditions.

Likewise, the reasons to deny a flexible working request should be reviewed to ensure that those are reflective of modern working practices.

It is crucial that the Bill does not impede or limit the industry's ability to continue providing flexible employment to the many people who choose to work in retail for the flexibility it offers. We cover this in more detail under the 'Guaranteed hours' heading above.

### **Reasonable notice to shift changes and cancellations**

We note that without clarity on the definition of 'reasonable' and 'short' notice, it is difficult to comment fully on the proposals and how they will impact retailers. However, we strongly believe that the definitions should reflect the flexible nature of retail work and the realities of operating a retail business. By nature, shift cancellations and requests to fill shifts are often of a last-minute nature. Requests to fill shifts may be made to several colleagues to ensure that someone is available and should not trigger the right to compensation.

### **Single Enforcement Body**

The industry supports the establishment of a single enforcement body (SEB) and believes it could be more efficient at upholding workers' rights than the current system, if it:

- Is properly resourced
- Has strong stakeholder engagement processes
- Takes an approach which balances preventative actions with reactive enforcement, and
- Maintains the specialist skills each of the existing bodies has

Retailers have long supported the extension of licensing or 'fit-to-trade' checks to high-risk sectors such as garment manufacturing to create stronger protections for workers<sup>2</sup> and believes that this is where the focus for interventions should be. We would also welcome clarity on how the SEB will interact with other bodies such as the Health and Safety Executive and the tribunal process.

### **Dismissal and re-engagement**

In July 2024, the Government published its dismissal and re-engagement code of practice, statutory guidance for employers, employees and their representatives in dismissal and re-engagement scenarios. Our understanding is that the code of practice addresses the issues which the dismissal and re-engagement proposals in the Bill seek to do. We would therefore welcome clarity on whether the Government considers there to be a problem with the code itself or its enforcement, which merits the inclusion of proposals in the Bill. Employers are adapting to the code of practice amidst wider changes, and it would be prudent to assess its effectiveness before proceeding with a legislative intervention.

The proposed ban on dismissal and re-engagement would limit retailers' ability to make normal business decisions which ensure internal equity, and risks creating a situation where contracts of employment become overly complex to ensure they cover all possible business scenarios. It would have a negative impact on growth as retailers would be unable to transform and improve their businesses on a rolling basis.

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<sup>2</sup> [Tackling labour exploitation in UK garment factories](#), BRC, 14 October 2020

We believe that the exemptions to the automatic treatment of dismissals for failing to agree a change in contract as unfair, should be broader than those proposed.

### **Trade unions and industrial relations**

Many retailers have strong track records of engaging with unions and, constructively, achieving the best outcomes for employees and the businesses which employ them. Where arrangements with unions already exist, we encourage the development of ways of working for both employers and unions to adopt. This would create economic certainty and foster collaborative industrial relations.

A significant number of retailers also engage directly with their employees, so where there's currently no trade union recognition, there is still employee representation, and their voices are still heard.

As regards the Bill's trade union proposals, our overarching belief is that any changes to industrial relations should be designed with the benefit of the employee – rather than the employer or union – at their heart. Retailers want to ensure that employees are genuinely represented and heard, whether through an existing employee voice mechanism, a trade union, or both. The government should therefore focus on enabling employee choice and engagement whilst avoiding disruption which would impact on economic growth and jobs.

There is, however, some risk that the trade union proposals – in the way presented – could add significant administrative complexity.

There are concerns that the proposals to lower the threshold for union recognition could disrupt existing engagement with unions, risk undemocratic outcomes, compromise safety and – without a fair code of conduct – lack balance, potentially without a clear mandate from the majority of employees.

There is support for the objective of the proposed statutory right for trade union equality representatives to the time to support colleagues facing inequalities and discrimination and contribute to positive changes in workplaces, but do not believe this necessarily equates to a union, rather than employer, role. Two trade union representatives already have the right to accompany employees to formal meetings

However, any changes must not undermine current working employee engagement mechanisms – the focus should remain on maximising employee's voice, be that via unions or direct engagement.

Democratic mandate and true representation should remain at the core of these reforms. Our members have raised significant concerns about lowering the recognition threshold and its subsequent effects on employee representation. We would strongly advise against a reduction of the recognition threshold, as this is unlikely to lead to positive outcomes.