

Inquiry: Response to the Business and Trade Committee call for evidence on the Employment Rights Bill (**Bill**).

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Executive Summary

1. We expect most of the rights will support economic growth, encourage international investment and support worker security whilst raising living standards. This should be achieved through stability in the labour market and retention of skill within that labour market whilst ensuring employers receive some protection against misuse of the Bill through claim limitation periods and the retention of a limited probation period.
2. However, we believe that a 3-month limitation period for claims under some elements of this Bill could create challenges around access to justice and it is not weighted fairly against other time restrictions within the Bill.
3. We believe that a balance should also be struck when increasing a company's obligations to ensure that these obligations do not become unreasonable. We fear that in doing so, there is a risk that companies overreact to create unfair outcomes, and it could discourage international investment, hindering growth.
4. We strongly agree with the introduction of immediate bereavement and parental leave entitlement which is both equitable and should support worker mental health and improve living standards holistically.
5. An employer's obligations to support trade union work is supported. However, we believe that the approach could facilitate more reasonable discussions to support the often-contentious relationship between trade unions and employers. This recognises that both parties are working towards similar goals as both can benefit from growth.

Full Response

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

6. In the longer term, the right to request flexible working and the other rights improved by this Bill should improve economic growth nationally. We anticipate that the rights will support

economically valuable skilled workers so that they remain in the workforce. This may be of particular benefit to those with caring responsibilities. The introduction of these rights, albeit by force initially, should positively impact the culture of flexible working, much like the lockdowns affected the working from home culture. The cultural shift should encourage employers and employees to objectively assess the impact of restrictive or flexible working practices to find the most economically effective solution, rather than relying on untested and subjective fears. As a result, these rights should support the retention of economically valuable skilled workers. This has the additional benefit of decreasing the economic costs of training new workers because worker turnover should be reduced. Additionally, the existing skilled workers are encouraged to earn money and drive competition, accelerating growth and in-turn tax revenue.

7. In our view, to improve the prospect of growth, the rights granted should be balanced against a review of the universal credit structure. This review should ensure that the system supports the positive impact the Employment Rights Bill should have on the employment rate and national economic growth whilst supporting living standards.

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

8. The move to forcing employers to offer employees a guaranteed hours contract and right to payment for a cancelled, moved or curtailed shift (as well as many of the other rights proposed) should greatly improve security at work which in turn should raise the living standards. By giving employees security of income, their ability to financially plan and borrow should be greatly improved. This should allow them to invest in their own position, the wider economy, and reduce anxiety around managing outgoings. In turn, this should allow people to raise their living standards, obtain better quality and more permanent living accommodation and consistently save for unexpected costs.
9. However, the three-month limitation period at section 27BG and 236B of the Bill could lead to unfairness. People uneducated in the law or with more limited financial means may need to rely on pro bono legal advice services, like the clinic provided for by the University of Staffordshire. Waiting times at these free legal advice clinics can be long. Despite the intention being that individuals are able to access the Employment Tribunal without legal assistance, in reality, people are hesitant to do so. Even those who have the skill to do so often require legal assistance in some form. As one might imagine in the current high tax, low growth, high inflation economic environment, demand is high and waiting periods and response times are often long as the pro bono services themselves are often underfunded or in short supply. As a result, three months to decide to seek advice, obtain advice and draft and apply to a tribunal is a tight window for the lay person who will likely be, by the nature of the application, underfunded and going through a period of mental hardship. This could compound existing challenges to access to justice and result in an erosion of faith in the justice system and the rule of law.
10. A short discussion around the right to flexible working can be found at paragraph 4 above. Our concern regarding this provision relates to section 7(3)(1ZA)(a). This section sets out that the burden of additional costs is a ground for refusal of an application for flexible working. Whilst the need to explain a reasonable refusal is noted at section 7(4)(1ZB)(b), we wonder whether specific reference to the financial strength of the employer should be referred to. Whilst we acknowledge that small financial impacts on smaller businesses should be reasonable justifications for refusal, we argue that pushing larger businesses to shoulder some

financial burden to accommodate flexible working is equitable when compared with the potential positives as referred to at paragraph 4 above.

11. In our view, parental and bereavement leave should not need to be justified economically as this is a moral issue. However, we do believe that both will increase the living standards of workers by protecting their mental health and relationships which both feed back into economic stability and go some way to improving worker trust and confidence in the workplace within the United Kingdom.
12. Section 48 (2) suggests that the contribution to the political fund should be an opt out contribution, as opposed to the current opt in contribution. We believe that making the proposed change is inequitable. Contributions to any political fund or otherwise should be entirely optional and should require positive action to affect it to maintain fairness and transparency. The current opt-in approach, which we support, is in accordance with the expected standards of the Information Commissioner's Office. This avoids bias and removes the risk that trade unions make it difficult to opt out.

The impact the Bill will have on businesses, in particular investment rates, start-up rates, the supply of labour and the employment rate.

13. We expect that these changes will have a small impact on investment rates as the news of increased rights (change) creates some uncertainty. From our own practice, we have seen that uncertainty through change creates hesitation in investors, but we feel that the changes are not so costly that significant changes in investment rates will be seen. Conversely, the supply of labour and employment rate should increase as we would expect that workers have more faith in the labour market and see real benefits to their living standards through participation (as discussed at paragraphs 4 and 5 above).
14. The proposed sections 15 and 16 of the Bill and the inclusion of the word 'all' may place an unfair ethical and financial burden on employers. Despite the suggestion that the regulations will specify what steps should be undertaken, it is difficult to anticipate how this can have practical application to all industries, workforces and to apply fairly and consistently to all instances of harassment from a third party, including first time occurrences. This is not to understate the seriousness of harassment which can and should be dealt with by our criminal justice system. The words reasonable and all, in this context are antonymous, because taking all reasonable steps could in of itself be unreasonable, potentially causing significant cost and other consequences.
15. Putting the obligation onto business to prevent and investigate sexual harassment puts those companies at risk of reputational harm, where they are deemed to have failed to comply, even with the best of intentions due to the high threshold. International businesses who are considering expanding into the UK market, may be deterred from doing so, due to the perceived risk of reputational harm to their brand as a result of this high threshold. Whilst it is acknowledged that this is somewhat speculative, it is important to consider the international perception of regulation in the post-Brexit environment.
16. It is acknowledged that the proposal intends to introduce a new statutory probationary period, during which time a new employees' suitability can be assessed and a more light touch procedure can be followed. However, having two procedures running alongside each other is inherently problematic for both employers and employees and does not create certainty.

17. Section 19 of the Bill could negatively impact investment rates and start-up rates, if the statutory probationary period is not set at the correct period. The ability to quickly and cost effectively dismiss employees early on effectively gives employers a cooling off period by which to assess the value of their new workers. It should be acknowledged that interviews and CVs can be misleading and so employers should not be expected to rely solely on this subjective information. Removing the easy dismissal of workers early in the employment cycle could damage investor confidence in the UK labour market as investors cannot test employees before accepting a significant financial burden. Therefore, a qualifying period that is too short could discourage businesses from taking risks to grow teams and seek economic growth. However, the current two year period is in our view excessive, and serves to unfairly and negatively impact security for workers.
18. Instead, we would propose a 3-6 month probationary period to protect investor/employer confidence whilst affording employees improved work security. We would propose that equity would demand that employees should have a mirrored timeframe to bring a claim against a former employer, as an employer has to consider their suitability for a role, which should be reflected in an amended limitation period. The currently proposed 9 months probationary period takes far too much in the way of job security from employees and we feel that it does not support the landmark nature and spirit of the proposed legislation as a whole. Alternatively, we have considered whether the prospect of adding a reasonableness test into the probationary period, acknowledging that no two industries or roles are necessarily the same, would be beneficial. Despite the initial uncertainty that this would create, judicial precedent would assist with injecting certainty in the long term and would potentially offer greater protection to a broader section of the population, particularly lower paid and unskilled workers whilst protecting industry.
19. The obligations on employers to provide facilities within sections 50 and 51 should be subject to reasonableness. Example wording might include at sections 50(2)(b)(4)(b) and s51(2)(168B)(10)(b):

“to provide the employee with **adequate and reasonable** facilities,”

It is important to maintain good relationships between employers and trade unions to protect an effective and impactful relationship. Legislation governing this relationship can assist with this process by ensuring that any obligations on either party are to be carried out within reason and reasonably. This mirrors, for example, the relationship between a tenant and a landlord where parties have some competing interests but ultimately need to work towards some common goals, to protect the commercial success of the venture. The same principles should be applied here to the employer/employee/trade union relationship. In doing so, investment and start-ups are encouraged to enter the UK marketplace whilst protecting the supply of quality labour through effective trade union action.

20. We have some concerns about the removal of regulations and enforcement at sections 62-69 because trade unions are not as likely to be affected by, and thus not regulated by, market forces, unlike profit orientated organisations. In the absence of regulation from markets, architecture and social norms, the law should step in to ensure that regulation is effective and that trade unions act in compliance with reasonably expected standards. We are not familiar with the law surrounding trade unions and so it may be that adequate regulation exists elsewhere. However, we felt that the point should be raised to ensure that the discussion is being had considering the unusual model of a trade union.

