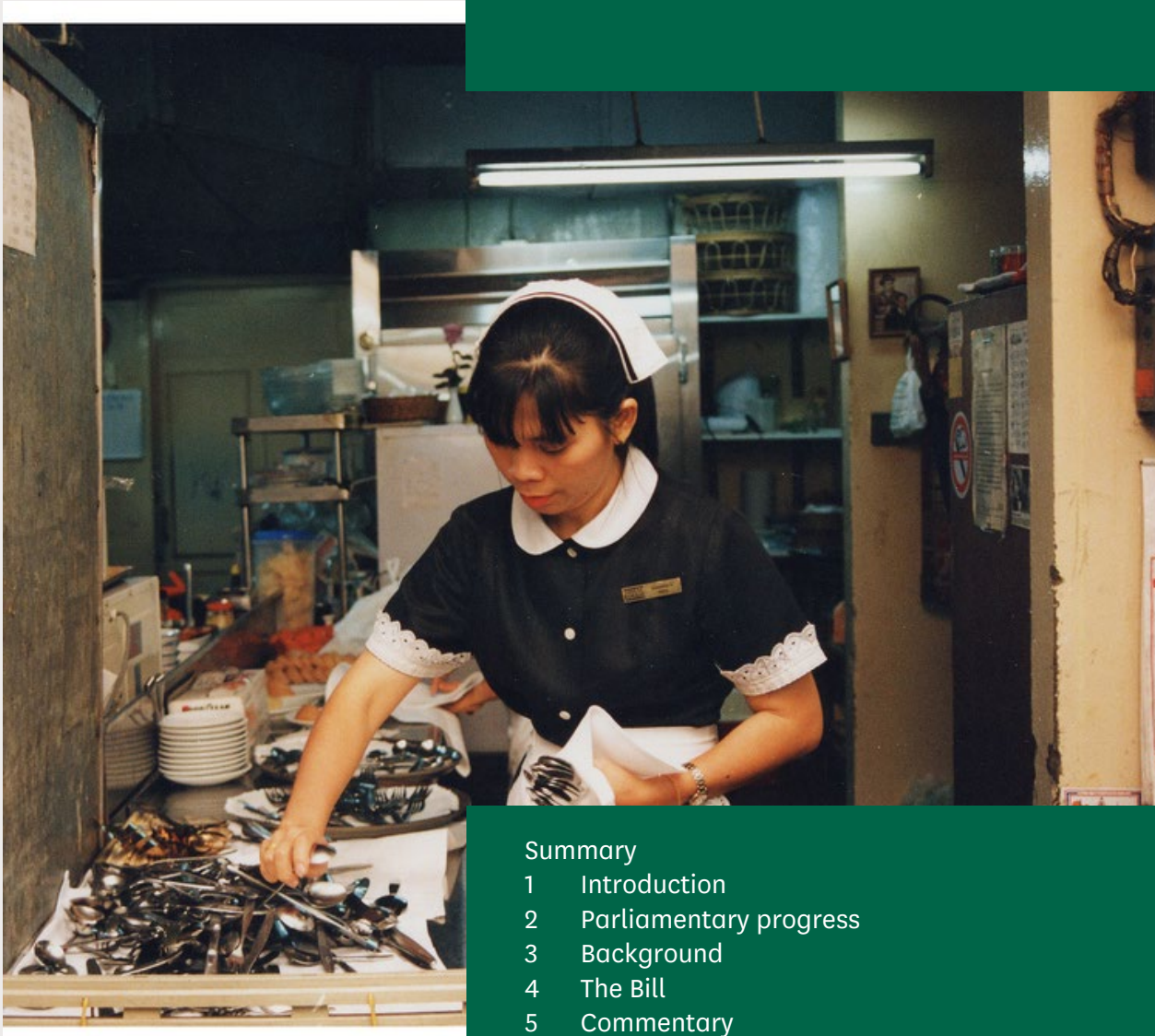


Research Briefing

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Employment (Allocation of Tips) Bill 2022-23: Progress of the Bill



Summary

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Summary

The [Employment \(Allocation of Tips\) Bill 2022-23](#) is a Private Member's Bill, originally sponsored by Conservative MP Dean Russell who came eighth in the [Private Members' Bill ballot](#) for the 2022-23 session. The Bill's current sponsor is Conservative MP Virginia Crosbie.

The Bill had its first reading on 15 June 2022 and passed second reading on 15 July 2022. The Bill completed its committee stage on 12 October 2022 without amendment. It is listed for remaining stages on 20 January 2023.

The [explanatory notes for the Bill](#) (PDF) were drafted by the Department for Business, Energy and Industrial Strategy.

Background

In 2015 there were media reports of unfair tipping practices by major restaurant chains and other hospitality outlets, such as deducting from tips before passing them on to workers. This led to calls for reform to require employers to pass on all tips and service charges in full.

There were renewed calls for reform during the Covid-19 pandemic amid concerns that changing payment habits were seeing a fall in cash tips alongside wider challenges for the hospitality sector. The Government said in September 2021 [80% of all UK tipping now happens by card](#), rather than cash, and suggested this means businesses are less likely to pass tips onto staff.

There have been a number of Government consultations and proposals in this area, beginning with a 2015 [Call for Evidence on tips, gratuities, cover and service charges](#). This was followed by [a 2016 consultation on Tips, gratuities, cover and service charges](#): proposals for further action seeking feedback on whether employers should be prevented from making any deductions from such payments.

In 2018 the Government announced its intention to legislate to prevent employers from making deductions from tips, as part of a package of [New measures to support workers, businesses, and entrepreneurs](#). Measures to meet this commitment were included in the Employment Bill proposed in the [December 2019 Queen's Speech](#). The Employment Bill was not ultimately introduced in the 2019-21 session and did not reappear in the 2021 or 2022 Queen's Speeches.

What does the Bill do?

The Employment (Allocation of Tips) Bill would amend the Employment Rights Act 1996 to insert new legal obligations on employers. These would require employers to ensure that all tips, gratuities and service charges they receive or exercise control over must be paid to workers in full without deductions and by the end of the following month. It would also introduce obligations to ensure the fairness of arrangements to distribute those tips among workers, either when distributed by the employer or via an independent [tronic](#).

Under the Bill, the Secretary of State would be able to introduce a new code of practice about the fair and transparent distribution of qualifying tips, gratuities and service charges which would help to indicate what would count as a fair distribution for the purposes of the new legal obligations.

These provisions would apply both to those working directly for hospitality businesses and to agency workers supplied to work in those businesses.

Employment tribunals would be able to enforce these new rights and provide remedies if they were breached.

1 Introduction

The [Employment \(Allocation of Tips\) Bill 2022-23](#), Bill 21 of the 2022-23 session, was introduced on 15 June 2022 by Conservative MP Dean Russell as a Private Member's Bill, presented to Parliament through the ballot procedure. The Bill's current sponsor is Conservative MP Virginia Crosbie.

The Bill would create new legal obligations on employers to ensure all tips, gratuities and service charges they receive or exercise control over must be paid to workers without any deductions, as well as ensuring that the distribution of those tips among workers is fair.

The Bill extends to England, Wales and Scotland, but not Northern Ireland.

The [explanatory notes for the Bill](#) (PDF) were drafted by the Department for Business, Energy and Industrial Strategy with the consent of then sponsor Dean Russell MP.

The new legal obligations on tips will come into effect on a date to be specified by the Secretary of State through future regulations.

The explanatory notes state under the financial implications of the Bill that “there will be new costs created with respect to additional claims made to an employment tribunal as a result of the legislation.”¹

¹ [Employment \(Allocation of Tips\) Bill, Explanatory Notes](#), Para 115

2

Parliamentary progress

First reading of the [Employment \(Allocation of Tips\) Bill 2022-23](#) was on 15 June 2022. The long title of the Bill is:

A Bill to ensure that tips, gratuities and service charges paid by customers are allocated to workers.

The Bill passed second reading on 15 July 2022 and completed its committee stage on 12 October 2022 without amendment. It is listed for remaining stages on 20 January 2023.

2.1

Second reading debate

The Bill received its second reading on Friday 15 July 2022. It was passed without division and all members who spoke, from both sides of the House, were supportive of the principles of the Bill. The Bill's then sponsor Dean Russell MP explained the purpose of the Bill as being to ensure fairness for workers:

People who work in hospitality should not need to rely on tips as part of their salary. I am absolutely clear in the Bill that it is not about topping up salaries; it is about a gratuity, tip or service charge in addition. However, employees should be able to keep them. That should be at the heart of what we do, and that is what this Bill will do. That is why I say that fairness is key, because we all have a sense of fairness. We know what is right and wrong, and we know that if we give somebody some money to say thank you, they should be able to keep that money or choose to share it with others. That is key. A great deal of work has been done over the past few weeks to try to get this proposed legislation right, and I hope that people will see that in the Bill and that the code of practice will cover that.

...

The Bill will provide greater transparency for employers and workers in teams regarding how tips should be treated; that will be clear to everyone. It will create a level playing field for the majority of businesses that already pass on tips to workers fairly and transparently, ensuring that they know that other businesses will do the same as they have always done. As we have already mentioned, through the Bill consumers will have the confidence that the full value of their tips will go to workers, and the premise of the Bill is that 100% of tips will go to the workers. The code of practice will agree how that will be shared²

² [HC Deb, 15 July 2022](#) cc622-623

Responding for the Government, then Minister Jane Hunt confirmed that the Government would support the Bill, saying the new rules would help protect workers in the hospitality sector and give confidence to consumers:

I am pleased to confirm that the Government will support this Bill. Bringing these new rules into force will give new protections to millions of workers in industries where tipping is common, such as hospitality. This is especially crucial now as we continue to recover from the pandemic.

...

In conclusion, bringing forward these new rules will protect more than 2 million workers from bosses who do not currently do the right thing, and give them an avenue for seeking remedies. Businesses will be assured that they are not being undercut by companies where bosses are keeping tips for themselves, and consumers will have increased confidence that their tips are going to the workers they intended them for. The new rules are backed by previous Government evidence and analysis. The Government are therefore pleased to support this private Member's Bill.³

Change of sponsor

Following the appointment of the Bill's original sponsor, Dean Russell MP, to the Government position of Parliamentary Under Secretary of State (Minister for Enterprise and Markets) to the Department for Business, Energy and Industrial Strategy on 20 September 2022, Virginia Crosbie MP replaced Dean Russell as the Bill's sponsor.⁴

From 20 September 2022 – 27 October 2022, while serving as Minister for Enterprise and Markets, the Bill's original sponsor Dean Russell was instead the responsible Minister for the Bill.

2.2

Committee stage

On 12 October 2022 the Bill was considered by a Public Bill Committee chaired by Labour MP Siobhain McDonagh. See the Annex to this paper for the full membership. No amendments were tabled.

The Bill's new sponsor, Conservative MP Virginia Crosbie, explained the purpose and function of each of the Bill's clauses.⁵ SNP MP David Linden spoke to offer "my support and that of my party for the whole Bill, from clauses 1 to 15".⁶ Other committee members made brief interventions in favour of the Bill.

³ [HC Deb, 15 July 2022](#) cc636-638

⁴ [Employment \(Allocation of Tips\) Bill Deb, 12 October 2022](#), c9

⁵ [Employment \(Allocation of Tips\) Bill Deb, 12 October 2022](#), c5

⁶ [Employment \(Allocation of Tips\) Bill Deb, 12 October 2022](#), c8

Dean Russell, who at the time was the responsible Minister for the Bill (see “Change of sponsor” above) responded on behalf of the Government that he was pleased to see the Bill progressing:

This is about fairness. The issue of protecting workers’ tips is not only close to my heart but incredibly important to so many. I am grateful that we have cross-party support, as indicated today and on Second Reading, to help to take the Bill forward.⁷

It was proposed and agreed that all clauses stand part of the Bill, which was accordingly to be reported without amendment.⁸

The remaining stages are listed for Friday 20 January 2023.

⁷ [Employment \(Allocation of Tips\) Bill Deb, 12 October 2022, c9](#)

⁸ [Employment \(Allocation of Tips\) Bill Deb, 12 October 2022, c14](#)

3 Background

3.1 Context: tipping in the UK

Workers in the sector

In the three months to March 2020, there were 2.53 million jobs in the hospitality sector in the UK, representing 7.1% of total UK employment.⁹ The hospitality industry has higher proportions of younger workers, foreign-born workers¹⁰, part-time workers and workers from minority ethnic backgrounds compared to other sectors.¹¹ Median hourly pay in hospitality is the lowest of all sectors in the UK.¹²

There was a fall in the number of workers in the accommodation and food service sector during the pandemic. From January-March 2020 to October-December 2021, the number of workers in the sector fell by 3.6% (90,000).¹³ This compares to a 1.3% decline in jobs across all industries.¹⁴

The Government consultation on tipping in 2016 (see section 2.4 below) opened with a statement that “There are some 150,000 businesses in the hospitality, leisure and service sectors where tipping is common” and that these employed “around 2 million workers between them.”¹⁵

Value of tipping

According to a November 2019 survey by the hospitality website Caterer.com, hospitality workers in the UK receive on average £29 per day in tips, while those in London receive £75 a day. According to the Caterer.com Director, Neil Pattison, over a year this can add up to over £6,500 to an average worker’s salary, and to over £17,000 for a worker in London.¹⁶

⁹ ONS, Workforce Jobs, [via NOMIS Workforce jobs by industry](#)

¹⁰ Resolution Foundation, [Home and away: The UK labour market in a post-Brexit world](#), 16 December 2020, page 21 and 26.

¹¹ Resolution Foundation, [Ethnic minorities in the hospitality sector](#), December 2020, pages 3-6

¹² ONS, ASHE, [Earnings and hours worked, industry by two-digit SIC: ASHE Table 4](#) (revised), October 2021, accessed May 2022. Sector labelled as “Accommodation and food service”.

¹³ ONS, [Labour Market overview December 2020](#), Dataset A01 (table 6), 15 December 2020

¹⁴ See Library briefing: [Coronavirus: Impact on the labour market](#) (20 April 2022)

¹⁵ Department for Business, Innovation & Skills, [Government consultation on tipping, gratuities, cover and service charges](#) (PDF), May 2016

¹⁶ [Hard-working hospitality staff can expect £20 million in tips over the festive period, according to research conducted by Caterer.com in November 2019](#), Caterer.com [accessed 12 July 2022]

These estimates pre-date the Covid-19 pandemic, which led to falls in cash tipping in the UK according to accountancy firm Buzzacot, who described how:

the pandemic has seen a change in behaviour regarding cash handling that's resulted in a significant decrease in customers using cash to settle bills. This has a knock-on effect to staff who have historically relied on cash tips to supplement their wages.¹⁷

Reported reasons for this include the rise in businesses only accepting card payments, a rise in customers who do not carry cash, and the increasing use of apps that can be used to order and pay for food. The [Government said in September 2021](#) that 80% of all UK tipping now happens by card, rather than cash, and suggested this means businesses are less likely to pass tips onto staff.¹⁸

Tip allocation via trons

Currently many tips, gratuities and service charges are distributed via special pay arrangements known as trons. Sometimes instead of an employer being responsible for overseeing the arrangements to share tips, this responsibility is given to someone known as a troncmaster, which can be one of the serving staff or a third party. According to HMRC, the “troncmaster is responsible for operating PAYE on all payments made from the tronc, including any share of cash tips.”¹⁹ For more information on the operation of trons, see [Government Guidance on tips, gratuities, service charges and trons](#).²⁰

3.2

2015 reports of unfair tipping practices

During 2015 there were a series of news reports of unfair tipping practices at a number of hospitality outlets across the UK.

Pizza Express was accused of deducting 8% of tips paid to staff on credit and debit cards.²¹ Las Iguanas was reported to have a policy requiring staff to pay back 3-5.5% of their total table sales in cash to the restaurant each night, leading to a petition which prompted them to change their policy.²²²³ Côte restaurant was criticised for retaining the 12.5% service charge automatically

¹⁷ Mark Taylor, [How has COVID-19 impacted tipping?](#), Buzzacott, [accessed 12 July 2022]

¹⁸ HM Government, [All tips to go to staff under government plans to enhance rights of 2 million workers](#), GOV.UK, 24 September 2021.

¹⁹ HMRC, [2022 to 2023: Employer further guide to PAYE and National Insurance contributions](#), GOV.UK 7 June 2022

²⁰ HMRC, [Guidance on tips, gratuities, service charges and trons](#), GOV.UK, 5 May 2022

²¹ Lisa Bachelor, [“Pizza chain’s angry staff launch protests over slice taken off their hard-earned tips”](#), The Guardian, 9 August 2015

²² Lisa Bachelor, [“Restaurants’ tipping policy ‘forces waiters to pay to work’](#)”, The Guardian, 23 August 2015

²³ Robin Priestly, [“Las Iguanas – Campaign Victory!”](#), 38 Degrees, 28 September 2015

added to bills.²⁴ Wahaca, Giraffe, Strada, Ask Italian, Zizzi and Jamie's Italian, among other chains, all made the news for their company policies on tipping in 2015 as well, with many of them changing their practices in response to public criticism.²⁵

3.3

Government proposals

2015 call for evidence

On 30th August 2015 the Government launched a [Call for Evidence on tips, gratuities, cover and service charges](#), in response to concerns about the transparency and practice of deductions from tips in the hospitality sector.²⁶ The call for evidence closed on 10 November 2015. 183 responses were received and the Government concluded from analysis of responses that there was "broad agreement that intervention is required to improve the treatment and transparency of these payments."²⁷

2016 consultation

On 2 May 2016 the Department for Business, Energy & Industrial Strategy published a consultation on [Tips, gratuities, cover and service charges: proposals for further action](#). The consultation ran until 27 June 2016 and solicited feedback on a range of proposals to:

1. "Ensure transparency to consumers that discretionary payment for service is just that – 'discretionary'"
2. "Ensure workers receive a fair share from discretionary payments for service."
3. "Increase transparency for consumers and workers regarding the treatment of discretionary payments for service."²⁸

Specifically, the consultation sought feedback on whether employers should be prevented from making any deductions, other than those required for tax purposes, from discretionary payments for service, or limiting such deductions, as well as updating the voluntary [2009 Code of Practice](#)²⁹ and/or placing the Code of Practice on a statutory basis.

²⁴ Gabriella Bennett and Kaya Burgess, "[Côte restaurant under fire for keeping staff tips](#)", The Times, 22 August 2015

²⁵ Lisa O'Carroll, "[Mexican-style Wahaca is latest food chain to be accused of unfair tipping policy](#)", 3 October 2015

²⁶ HM Government, [Tips, gratuities, cover and service charges: call for evidence](#), 2 May 2016

²⁷ As above

²⁸ HM Government, [Tips, gratuities, cover and service charges: proposals for further action](#), GOV.UK, 24 September 2021

²⁹ Department for Business Innovation & Skills, [A Code of Best Practice on Service Charges, Tips, Gratuities and Cover Charges](#) (PDF), October 2009

On 1 October 2018 the Government announced its intention to legislate to prevent employers from making deductions from tips, as part of a package of [New measures to support workers, businesses, and entrepreneurs](#). The Government stated that “New legislation, to be introduced at the earliest opportunity, will set out that tips must go to the workers providing the service.”³⁰

The then Secretary of State for Business, Energy and Industrial Strategy, Greg Clark, confirmed these plans in a [written statement to the Commons on 9 October 2018](#).³¹ These proposals were then incorporated into the [Good Work Plan](#) published on 17 December 2018.³²

The Government [response to the consultation](#) on tips was published in full on 24 September 2021, five years after it originally ran. The consultation found “almost 70% of respondents favoured preventing any employer deductions from discretionary payments... though employers were far less likely to support this (24%).” The Government response concluded by reiterating its commitment to legislate in this area, saying that “The Employment Bill will be brought forward when Parliamentary time allows.”³³

Employment Bill

The [December 2019 Queen’s Speech](#) included mention of an Employment Bill that included measures for “ensuring that tips left for workers go to them in full”, alongside a range of other commitments.³⁴ The Employment Bill was not ultimately introduced in the 2019-21 session and did not reappear in the 2021 or 2022 Queen’s Speeches.^{35,36}

To date the Government has not introduced any legislation to implement this commitment.

However, in the Queen’s Speech debate 2022, then Labour Markets Minister Paul Scully responded to a request from Dean Russell MP for Government support for his campaign for a bill on this issue by repeating the Government’s commitments in this area:

My hon. Friend has done amazing work in raising the profile of ensuring that there is a fair system for tipping and that the tronc actually goes to those at the front end, who are often on low wages. As I have said, the primary purpose of our employment measures is to protect those who are at the lowest end

³⁰ HM Government, [New measures to support workers, businesses, and entrepreneurs](#), GOV.UK, 2 October 2018

³¹ HC Deb, 9 October 2018, c2WS

³² HM Government, [Good Work Plan](#), GOV.UK, 17 December 2018

³³ HM Government, [Government response to the consultation on tipping, gratuities, cover and service charges](#) (PDF), September 2021

³⁴ Prime Minister’s Office, [The Queen’s Speech 2019: Background briefing notes](#), 19 December 2019

³⁵ HM Government, [Queen’s Speech 2021](#), 11 May 2021

³⁶ HM Government, [Queen’s Speech 2022](#), 10 May 2022

especially. I reaffirm our commitment to building on my hon. Friend's continuing work in that area.³⁷

3.4 Tips Bill 2021-22

On 21 June 2021 Dean Russell MP introduced the [Tips Bill 2021-22](#) as an Presentation Bill, described as “A Bill to prohibit employers retaining tips and gratuities intended for staff; to make provision about the division of tips and gratuities between staff; and for connected purposes.” The Bill was listed as withdrawn on 5 January 2022 without receiving a second reading.³⁸

PoliticsHome reported that the Bill was withdrawn by Dean Russell MP following a letter from then Small Business, Consumers and Labour Markets Minister Paul Scully promising Government legislation on the issue, saying “Russell has now withdrawn his Tips Bill after Scully confirmed the measures it covered will now be taken.” Dean Russell was quoted as saying “The small business minister and his team have been very supportive of the need to support workers rights for tips and assured me they will work with me on this important legislation.”³⁹

3.5 Private Members' Bill ballot 2022

The Private Members' Bill ballot for the 2022-23 session was held on 19 May 2022. The MPs drawn in the top seven positions on the ballot receive a guaranteed full day of debate on their Bill. Dean Russell, Conservative MP for Watford, was drawn in the eighth position on the ballot, meaning the Bill he wished to introduce would only receive a second reading after one of the top seven placed Members' Bills had been debated on the sitting Friday chosen.⁴⁰

On 15th June 2022, he introduced the Employment (Allocation of Tips) Bill for first reading in the Commons. It was received second reading on Friday 15 July 2022, where it was the second Private Member's Bill on the order paper for that day after the [Neonatal Care \(Leave and Pay\) Bill 2022-23](#).

³⁷ HC Deb, 12 May 2022 c295

³⁸ [Tips Bill 2021-22](#)

³⁹ Alain Tolhurst, “Restaurants Will Be Forced By Law To Pay Tips To Waiting Staff”, PoliticsHome, 21 September 2021

⁴⁰ [Private Members' Bill ballot: 19 May 2022](#), parliament.uk, 19 May 2022

4

The Bill

The Bill is comprised on 15 clauses and no schedules. The Bill would amend the Employment Rights Act 1996 to insert a new Part 2B on tips, gratuities and service charges.

The Bill extends to England, Wales and Scotland (**Clause 13**). The main provisions of the Bill would come into force on a day appointed by the Secretary of State by regulations (**Clause 14**).

4.1

Clause 1: Tips, gratuities and service charges

Clause 1 would amend the Employment Rights Act 1996 to insert a new clause 27C on qualifying tips, gratuities and service charges. The new clause would incorporate a range of key definitions into the 1996 Act including “employer-received tips”, “worker-received tips” and “qualifying tips, gratuities and services charges”. Other key definitions such as “employer” and “worker” are already defined in the 1996 Act.

A qualifying tip, gratuity or service charge would include employer-received tips and worker-received tips which are subject to employer control or significant influence (or connected to such tips). The explanatory notes provide an example of control as when an employer directs that tips are shared amongst other workers. On the other hand, where an employer allows workers to keep cash tips which they have individually received it is unlikely that the employer would have exercised control.⁴¹

A tip, gratuity or service charge would be included in these provisions even if they were described as something else (new subsection 27C(3)) and the explanatory notes confirm that it would not make a difference whether it is a mandatory or discretionary charge for the customer to pay.⁴² New subsection 27C(8) would mean that amounts that are not paid in money can qualify as a tip, gratuity or service charge but only if they are paid in the form of a “voucher, stamp, token or similar item” which is of a fixed value expressed in monetary terms and are capable of being exchanged for money, goods or services. The explanatory notes provide the example of casino chips being included in this, but that a bottle of wine wouldn’t be.⁴³

⁴¹ [Employment \(Allocation of Tips\) Bill, Explanatory Notes](#), para 22

⁴² [Employment \(Allocation of Tips\) Bill, Explanatory Notes](#), para 23

⁴³ [Employment \(Allocation of Tips\) Bill, Explanatory Notes](#), para 24

New subsection 27C(6) would mean that any deductions made from the amount paid by the customer would be disregarded and any payment of VAT would similarly not be included in the definition of a tip, gratuity or service (subsection 27(7)).

4.2

Clause 2: How tips etc must be dealt with

Clause 2 would insert new clauses 27D and 27E into the Employment Rights Act 1996. These new clauses would make provision for how an employer must deal with qualifying tips, gratuities and service charges.

New Clause 27D would require an employer to ensure that the total amount of qualifying tips, gratuities and service charges is allocated fairly between workers at that same place of business.

New Clause 27E would make a distinction between non-public places of business and public places of business. The explanatory notes give the example of a typical company headquarters for a non-public place of business.⁴⁴ This clause would allow an employer with both types of business to fairly allocate amounts paid at, or otherwise attributable to, a non-public place of business between its workers at that business and its workers at one or more public places of business.

To determine whether or not such arrangements are fair, regard would have to be had to any Code of Practice issued under new Part 2B (see **Clause 9** of the Bill).

4.3

Clause 3: Independent troncs

Clause 3 would insert new clause 27F into the Employment Rights Act 1996. This new clause would address how the obligations would apply when qualifying tips, gratuities and services charges are allocated through a tronc system which operates independently of the employer.

A tronc or tronc system is explained by the Explanatory Notes as a special pay arrangement used to distribute tips, gratuities and service charges⁴⁵ (see also above under section 2.1 of this paper: Tip allocation via troncs). New subsection 27F(6) provides a detailed definition of “an independent tronc operator” for the purposes of clause 27F. This definition would be amendable by the Secretary of State by regulations as a consequence of making any new regulations related to social security contributions of employers or workers

⁴⁴ [Employment \(Allocation of Tips\) Bill, Explanatory Notes](#), para 28

⁴⁵ [Employment \(Allocation of Tips\) Bill, Explanatory Notes](#), para 20

(subsection 27F(8)). Any such regulations would be subject to the affirmative procedure.⁴⁶ This is a Henry VIII power.

New clause 27F would provide that an employer can make tronc arrangements for an independent tronc operator to distribute all or part of the total amount of tips, gratuities and service charges paid at a place of business and thus discharge the employer's obligations under new clause 27D (see **Clause 2** of the Bill). The requirements for this would be that it is fair to make those arrangements and they are for a reference period of at least one day.

To determine whether or not such arrangements are fair, regard would have to be had to any Code of Practice issued under new Part 2B (see **Clause 9** of the Bill).

The explanatory notes explain the intended overall effect of these provisions as being:

That the employer is responsible for the fairness of the allocation of an aggregate amount to a tronc, but not for the subsequent allocation of that aggregate amount between individual workers, which is a matter for the independent tronc operator. However, if it later became apparent to the employer that the independent tronc operator was acting unfairly in allocating the aggregate amount, that might require the employer to reconsider, for the future, the fairness of the allocation of such aggregate amounts to that operator.⁴⁷

4.4

Clause 4: When tips etc must be dealt with

Clause 4 would insert new clause 27G into the Employment Rights Act 1996 and specifies when tips must be dealt with in accordance with new clause 27D. It would require that an employer allocates qualifying tips, gratuities and services charges to workers and paid no later than the end of the month following the month in which the payment was made by the customer.

The explanatory notes provide an example:

- If a qualifying tip was paid on 8 April, the employer would need to deal with the tip by 31 May.⁴⁸

⁴⁶ Pursuant to section 236(3) of the Employment Rights Act 1996, [Employment \(Allocation of Tips\) Bill, Explanatory Notes](#), para 33

⁴⁷ [Employment \(Allocation of Tips\) Bill, Explanatory Notes](#), Para 30

⁴⁸ [Employment \(Allocation of Tips\) Bill, Explanatory Notes](#), Para 34

4.5

Clause 5: Agency workers

Clause 5 would insert new clause 27H into the Employment Rights Act 1996. This clause would provide for agency workers who may not fall within the definition of workers of the relevant employer to benefit from the provisions on tips, gratuities and service charges. Where the provisions apply, the Bill would apply to an agency worker as if they were a worker of the relevant employer. The employer would be permitted to make payments via the agent rather than directly to the agency worker.

The clause would define an “eligible agency worker” as someone who is supplied by a person (e.g. an employment agency) to do work for another person (e.g. a restaurant employer) under a contract or other arrangement. It does not include a worker of the (e.g.) restaurant employer and it does not include a person carrying on their own business for a client or customer.

4.6

Clause 6: Information and records

Clause 6 would insert new clauses 27I and 27J into the Employment Rights Act 1996. New clause 27I sets out the circumstances in which employers would be required to have a written policy on dealing with tips and when they would be required to make the policy available to workers. New clause 27J sets out the circumstances in which employers would be required to keep records relating to tips and the rights of workers to request those records.

4.7

Clauses 7 and 8: Complaints and enforcement

Clause 7 would insert new clauses 27K, 27L and 27M into the Employment Rights Act 1996. These provisions would provide for the enforcement of the new legal obligations on dealing with tips set out in the Bill by setting out the process for making a complaint and creating Employment Tribunal remedies for workers and eligible agency workers.

Clause 8 would insert new clauses 27N and 27O into the Employment Rights Act 1996. These provisions would allow employers to make a complaint that their employer did not comply with the information obligations created by Clause 6.

4.8

Clause 9: Code of practice about tips

Clause 9 would insert new clauses 27P, 27Q, 27R, 27S and 27T into the Employment Rights Act 1996. These relate to issuing, revising, revoking and

complying with a statutory code of practice about the fair and transparent distribution of qualifying tips, gratuities and service charges.

New clause 27P would grant the powers to the Secretary of State to issue a code of practice and to revise the whole or any part of that code of practice.

New clause 27Q sets out the procedure that would need to be followed by the Secretary of State to issue the code of practice, including consulting with Acas and publishing a draft to allow for stakeholder representations. The Secretary of State would be required to lay any draft code of practice before both Houses of Parliament and it would need to be approved by both Houses before it is issued.

New clause 27R would make provisions for consequential revisions of the code. New clause 27S would make provision to allow the Secretary of State to revoke any such code by regulations made via the affirmative procedure.

New Clause 27T would mean that the code of practice would be admissible in evidence in proceedings before an employment tribunal.

5 Commentary

5.1 Political commentary

Dean Russell MP, after introducing the Employment (Allocation of Tips) Bill, wrote an article in his local newspaper the Watford Observer in which he explained his reasons for the Bill, saying:

In the past, customers could feel reassured when leaving cash tips because they knew the staff member would see and keep it. I fear that as we move to an increasingly cashless society (which I have more general concerns about for more elderly residents), then staff may not even know they have been tipped.

That is why I have laid down a “Tips Bill” in Parliament to seek a change in law which will formalise an employment law to ban employers from retaining tips which are intended for staff. This would be in the form of an agreement for staff to keep the tips meant directly for them, or to have agreements in place to ensure tips are divided fairly. For example, staff at restaurants may agree tips should also be allocated across all staff including hard-working kitchen team members.⁴⁹

Although the Government has not yet commented publicly on the Employment (Allocation of Tips) Bill since its introduction, the Government has previously committed to legislate in this area and has been supportive of previous efforts by Dean Russell MP to secure legislation on tips, including through a different Private Member’s Bill in the 2021-22 session (see sections 2.3-2.4 above).

5.2 Other commentary

Kate Nicholls, chief executive of UKHospitality, was quoted in the Mail urging caution over plans to prevent firms from making any deductions from tips, saying:

We want to see as much of the tips and service charge reach hardworking hospitality staff as possible, as this can make up a valuable proportion of their income.

⁴⁹ Dean Russell, “[Watford MP Dean Russell explains his 'Tips Bill'](#)”, 11 July 2021

There are, however, costs involved for businesses in processing, administering and distributing the money involved, not to mention bank charges. Key to achieving an equitable system therefore, lies in balancing the two.⁵⁰

Dave Turnbull, Unite national officer for hospitality, disputed this line of reasoning and offered reluctant support to the Tips Bill, saying:

Legislation is urgently needed on this issue. We would prefer the government to deliver on its promise to legislate but it has been left to a private member's bill which lacks the detail necessary.

We do not agree there is any need to for employers to deduct anything to administer tips. Admin fees have largely been abolished in the casual dining sector and casinos. Employers have a very generous National Insurance concession on this matter which more than accounts for any minimal cost of processing tips into a pay.⁵¹

⁵⁰ David Wilcock, "[MPs urged to unite to back new tipping law that would help millions of workers keep ALL gratuities from customers by closing a debit and credit card loophole that lets COMPANIES keep them](#)", MailOnline, 30 June 2022

⁵¹ As above

Annex

Composition of Public Bill Committee, Wednesday 12 October 2022

Chair: Siobhain McDonagh

† Antoniazzi, Tonia (*Gower*) (Lab)

Buchan, Felicity (Exchequer Secretary to the Treasury)

Buck, Ms Karen (*Westminster North*) (Lab)

Carter, Andy (*Warrington South*) (Con)

† Crosbie, Virginia (*Ynys Môn*) (Con)

† Cummins, Judith (*Bradford South*) (Lab)

† Eastwood, Mark (*Dewsbury*) (Con)

Hendrick, Sir Mark (*Preston*) (Lab/Co-op)

Henry, Darren (*Broxtowe*) (Con)

Hunt, Tom (*Ipswich*) (Con)

† Jones, Fay (Brecon and Radnorshire) (Con)

† Levy, Ian (*Blyth Valley*) (Con)

† Linden, David (*Glasgow East*) (SNP)

Rees, Christina (*Neath*) (Lab/Co-op)

† Robinson, Mary (*Cheadle*) (Con)

† Russell, Dean (Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)

† Stephens, Chris (*Glasgow South West*) (SNP)

Anne-Marie Griffiths, *Committee Clerk*

† attended the Committee⁵²


⁵² [Employment \(Allocation of Tips\) Bill Deb, 12 October 2022, c1](#)

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