

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT EXCLUSIVITY TERMS IN ZERO HOURS CONTRACTS (REDRESS) REGULATIONS 2015

Wednesday 18 November 2015

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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chair: MR NIGEL EVANS

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| † Adams, Nigel (<i>Selby and Ainsty</i>) (Con) | † Huddleston, Nigel (<i>Mid Worcestershire</i>) (Con) |
| † Barclay, Stephen (<i>North East Cambridgeshire</i>) (Con) | † Knight, Julian (<i>Solihull</i>) (Con) |
| † Bebb, Guto (<i>Aberconwy</i>) (Con) | † Matheson, Christian (<i>City of Chester</i>) (Lab) |
| † Beckett, Margaret (<i>Derby South</i>) (Lab) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| Boles, Nick (<i>Minister for Skills</i>) | † Pawsey, Mark (<i>Rugby</i>) (Con) |
| † Brennan, Kevin (<i>Cardiff West</i>) (Lab) | † Soames, Sir Nicholas (<i>Mid Sussex</i>) (Con) |
| † Danczuk, Simon (<i>Rochdale</i>) (Lab) | † Tugendhat, Tom (<i>Tonbridge and Malling</i>) (Con) |
| † Gray, Neil (<i>Airdrie and Shotts</i>) (SNP) | |
| † Harris, Carolyn (<i>Swansea East</i>) (Lab) | Clementine Brown, Kevin Maddison, <i>Committee Clerks</i> |
| † Hart, Simon (<i>Carmarthen West and South Pembrokeshire</i>) (Con) | † attended the Committee |

The following also attended (Standing Order No. 118(2)):

Soubry, Anna (*Minister for Small Business, Industry and Enterprise*)

Second Delegated Legislation Committee

Wednesday 18 November 2015

[MR NIGEL EVANS *in the Chair*]

Draft Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015

2.30 pm

Motion made, and Question proposed,

That the Committee has considered the draft Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015.—(*Stephen Barclay.*)

The Minister for Small Business, Industry and Enterprise (Anna Soubry): It is a great pleasure to serve under your chairmanship, Mr Evans. It is particularly pleasant to say that because I have not said it before, and it is a great honour and a pleasure. I am sorry I am not my hon. Friend the Minister for Skills, who is unfortunately delayed on other business in the House.

Government and independent evidence have shown that zero-hours contracts have a place in today's labour market. However, there is also evidence that the use of exclusivity clauses in zero-hours contracts is wrong. That is why the Government have banned them in such contracts. Provisions introduced by the Small Business, Enterprise and Employment Act 2015 ensure that employers of people on zero-hours contracts cannot demand that their staff are exclusive only to them. It is right that no one should be prevented from boosting their income if they want to. The ban is simple. It means individuals can simply ignore exclusivity terms in their zero-hours contracts if their employer includes them. They do not even have to say anything to their employer. I am delighted that the inclusivity ban came into force on 26 May this year, and we are here today to discuss the next stage.

The purpose of the redress regulations is to allow individuals on a zero-hours contract whose employer still attempts to enforce an exclusivity clause to take action. They achieve that by creating a route of redress, allowing individuals to take their employer to an employment tribunal if they are dismissed or treated unfairly as a result of ignoring a ban and seeking work elsewhere. The redress regulations have been drafted as a result of a Government consultation last summer, in which 71% of respondents supported redress via an employment tribunal. The consensus view of those who responded to the consultation was that the regulations will provide an appropriate level of reassurance to affected individuals and will provide them with the confidence to take action against an employer if they are treated unfairly.

Kevin Brennan (Cardiff West) (Lab): How practical is it for most people on zero-hours contracts, given their likely level of pay and personal circumstances, to be able to afford to use the redress that the Minister proposes?

Anna Soubry: The reality is that complainants at a tribunal who are in receipt of universal credit, have less than £3,000 in savings and have gross annual earnings of less than £6,000 will automatically qualify for the full remission of fees. As with any other complaints admitted to an employment tribunal, anyone who feels that they cannot afford to pay the costs associated with making the complaint can apply for a fee remission and have the fees waived or reduced. An individual can apply for remission at the fee-paying stage so that they are not out of pocket. That seems very fair and I hope that it allays some of those fears.

Christian Matheson (City of Chester) (Lab): Does the Minister share my concern that employers might be more cavalier in enforcing the exclusivity clauses if they know that it is not guaranteed that claimants will be able to achieve the discounts that she describes? As costs are still associated with the tribunal, and if the decision has to be taken at the time of the cost hearings, employers might still be keen to push forward with exclusivity.

Anna Soubry: The legislation stipulates that exclusivity clauses cannot be enforced. It applies when an employer goes over or above the existing powers available. If it is known there is a problem with fees, there is an automatic full remission of fees, so I am satisfied that this is the right and fair thing to do. People on such contracts should feel that they have the security that we would expect, so the measures are good.

Importantly—this may relate to the two questions that have been asked—the ability to go to a tribunal will create a deterrent for employers, making them think twice about ignoring the exclusivity ban. In the consultation, it was a strongly held view that employers should face consequences if they treat their zero-hours contract workers unfairly as a result of the ban. We will be laying an order that will ensure that those on zero-hours contracts will be subject to the early conciliation regime, which is important. If early conciliation does not resolve the issue, these regulations will allow the individual to bring their case to an employment tribunal in the same way as with any other issue. If successful, the tribunal will be able to set a level of compensation that reflects the detriment caused. With all those things borne in mind, there will be a real deterrent to employers abusing the system and thwarting the will of Parliament.

In conclusion, both Government and independent evidence have shown that zero-hours contracts have a place in today's labour market. They support workplace flexibility, make it easier to hire new staff and provide pathways to employment for young people. Many young people like zero-hours contracts, particularly students, and I think we sometimes forget that. Zero-hours contracts allow businesses to adapt to changes in their circumstances. They can support business flexibility and make it easier to hire new staff, as well as provide pathways to employment for young people, retired people or those with caring responsibilities, who often welcome that flexibility. In fact, many people choose to work in this way. These contracts and other flexible arrangements give individuals more choice and the ability to combine work and other commitments.

Evidence has highlighted that the use of exclusivity clauses in zero-hours contracts is wrong, and that is why Government have banned them, and properly so.

The regulations strengthen the ban on exclusivity clauses in the 2015 Act, adding another layer of protection for individuals and ensuring that employers cannot simply ignore the law. By creating a route of redress, individuals will have the right to make a complaint to an employment tribunal if they are dismissed or treated unfairly as a result of their employer attempting to demand exclusivity. The Government believe that the regulations are essential in strengthening the ban on exclusivity clauses, so I recommend the regulations to the Committee.

2.38 pm

Kevin Brennan: I, too, am delighted to serve under your chairmanship this afternoon, Mr Evans. I thank the Minister for stepping in for her ministerial colleague in such an able way. We are here to discuss regulations on exclusivity in zero-hours contracts, as she rightly pointed out. I am sure that hon. Members will have had cases, as I have, of constituents on zero-hours contracts expressing concern about exclusivity clauses in their contracts, so action on the matter is welcome.

The Minister is right to point out that those on zero-hours contracts are often young people. The figures show that overwhelmingly younger workers tend to be affected. Parents have come to see me, concerned about the sorts of terms that young people are being expected to put up with in the workplace—often they are on zero-hours contracts—and about how they are being treated by employers. It is right that we should debate the Government's proposals to provide some means of redress for workers who find themselves boxed in with zero-hours contracts with exclusivity clauses. Workers should have access to redress in such circumstances.

The debate highlights that what is going on in the so-called rebalancing of the UK economy is not what we all hoped for—that is, a rebalancing away from an over-dependence on financial services towards manufacturing and making things again. We are rather seeing a rebalancing of power between employers and employees and an increasing casualisation of the workforce in the UK. That is why we have this ever more insecure position for many workers who are required to work under a zero-hours contract. Obviously, there are many examples and plenty of evidence of people who welcome the opportunity to work flexibly under zero-hours contracts. However, there are other circumstances where it is the only kind of contract available for people who would prefer to have more secure hours, possibly part-time or full-time, in their chosen field of work.

Statistics published by the Office for National Statistics in September 2015 relate directly to our discussion today and show a 19% annual increase in individuals employed on zero-hours contracts. In April to June 2015, three quarters of a million people were employed on zero-hours contracts, so the regulations affect a great number of our constituents.

In relation to the ban on exclusivity in zero-hours contracts, as the Minister has pointed out, the 2015 Act introduced restrictions on the use of exclusivity clauses in zero-hours contracts. That means that individuals on such contracts would normally be prevented from working for another employer. The Act did not ban the use of such clauses, as the Minister suggested, but it did provide that they would no longer be enforceable by an employer. However, they still exist. Before today, individuals have

had no particular right to compensation if they have been victimised by their employer for accepting work with another employer in contrast to the exclusivity clause in the contract.

The regulations provide individuals with the right to go to an employment tribunal, as the Minister correctly pointed out, if they suffer some sort of detriment in their employment, including dismissal. That is a welcome step in the right direction. It is good that some form of redress should be available. However, we have a number of reservations about whether the Government have gone far enough and whether they should be doing more.

In effect, the regulations will not provide workers with the level of protection that the Minister hopes and says they will. As we said earlier, despite what the Minister said about the ability to have fees remitted, the reality for many who might be considering taking a case to an employment tribunal is that excessive fees and the very limited compensation they would be likely to receive if they were successful mean that the regulations are unlikely to lead to a large number of cases. The exclusivity terms will impact on many people and their ability to exercise their right for redress.

There are other abuses around zero-hours contracts that are not met by the regulations. One of the reasons is that, since the election in May, the Government have chosen to take a narrower approach than the coalition Government, which took some time to get to grips with the issue but proposed some action towards the end of their term. They are using a narrower definition for zero-hours contracts than that used in the 2015 Act.

There was an indication in a Department for Business, Innovation and Skills consultation in March that the coalition Government were minded to extend the ban on exclusivity clauses to all workers earning under £20 an hour. The aim was to ensure that workers employed in vulnerable, insecure and lower-paid work could not be restricted to working for one employer, but could seek employment from a range of employers. Regrettably, since their election as an exclusively Conservative Government in May, the Government have not taken that approach. It would be helpful if the Minister could tell the Committee why the Government have taken a narrower approach than that proposed in the consultation in March 2015. That may well also impact on individuals on the false self-employment contracts that we see particularly in the construction industry, as has been effectively highlighted by many trade unions including the Union of Construction, Allied Trades and Technicians.

Our other concern, which I highlighted in my intervention on the Minister and which I mentioned earlier, is that most zero-hours workers will be deterred from making a claim under the regulations by excessive employment tribunal fees. Since the fees were introduced, the number of people taking cases to employment tribunals has fallen by between 60% and 70%. That may well have been the Government's intention, because they felt that too many people were going to employment tribunals. However, I find it difficult to believe that that fall is due to the fact that all those 60% to 70% of cases were bogus or vexatious.

There is clear evidence that cost is becoming a real factor for people who seek fairness in employment tribunals following a case of unfair dismissal or unfair

[Kevin Brennan]

treatment by their employer. Many of our constituency cases involve young workers who come in with their parents, who just cannot believe that it is legal to treat workers in such a way, perhaps because they grew up with more stable forms of employment in an age in which such contracts were rare. Most of the people who come to see me with such cases do not have £1,200 in their pocket that they could use to stake their claim for unfair dismissal at an employment tribunal. I do not check their bank statements, but my judgment as a constituency MP is that they are not the kind of people who would have 1,200 quid spare to make a claim for unfair dismissal on a zero-hours contract. The very fact that they had been working on a zero-hours contract meant that, in many cases, they were pretty desperate for work to get any kind of money they could to keep their household finances together. Even the £390 that a detriment claim in an employment tribunal would cost them would be too much.

In effect, the Government are pricing those people—vulnerable people not on big money and in insecure employment on zero-hours contracts—out of justice. Why are the Government taking that approach, rather than seeking to provide more assistance to those who might benefit from the welcome small step in the right direction that the regulations represent?

In reality, workers' compensation in such circumstances is not likely to be great. Someone employed on a zero-hours contract could not claim that they would have an ongoing or continuing employment relationship with their employer as a result of which they could be compensated at a higher level for the potential loss caused by the detriment they suffered from the zero-hours contract exclusivity clause. In other words, it will not be worth their while to seek redress, because the compensation that they might receive would probably not even cover the fee for going to the tribunal in the first place.

If the Government were more serious about the matter, they would make sure that zero-hours workers who have suffered detriment as a result of an exclusivity clause were entitled to a minimum of two weeks' pay. Why has the Minister not introduced a provision of that kind so that if someone is successful in winning a case, they will be entitled at least to a minimum of two weeks' pay? That might provide an incentive for workers to exercise their right of redress, which the Minister is introducing in a small but welcome way through the regulations. That would have been consistent with the Agency Workers Regulations 2010. I would be grateful if the Minister told us, before we conclude today, why the Government have chosen to reject that kind of approach.

There are wider abuses, beyond exclusivity clauses, that could have been included in relation to the use of zero-hours contracts. For example, there is a great deal of income insecurity. Probably about two out of five people on zero-hours contracts would welcome more hours from the employer. The need to remain available for work has an impact on family life, childcare and the care of elderly relatives. The lack of employment rights around zero-hours contracts means that most workers on them lose out on the basic workplace protections that we would all think workers should normally have if they have a fully-employed status.

Sometimes employers take advantage of the uncertain employment status to evade employment rights obligations for these workers. There are many cases of abuse where workers on zero-hours contracts are more vulnerable to mistreatment and exploitation at work than those on regular contracts. There is growing evidence of breaches of the national minimum wage in places such as the home care sector, where such contracts are extremely common and care workers are not paid for the time they spend travelling between jobs.

The variability in individuals' earnings—we have all seen cases like this—makes it so difficult when dealing with the benefits agencies and various forms of social security because a person's income varies so greatly. We all know how complicated things can become when our circumstances change. It is difficult for people in those circumstances to be able to access the levels of support that they are entitled to. That can lead to problems such as having to visit food banks.

Will the Minister consider introducing additional protections for workers? Those protections could include: the entitlement to a written statement of their terms and conditions on the first day of their employment under a zero-hours contract, including pay rates and expected hours of work; a minimum period of notice of any work and before any shift is cancelled; compensation for those who arrive at work and are then told the shift has been cancelled—a common abuse suffered by workers; and a right to pay for people who are on call for employers. We should ensure that legislation is introduced to provide workers in casual employment with the sort of basic employment rights we would expect, including the right to request flexible hours, and maternity and paternity leave.

There is scope for a wider package than what we are considering today. Although I have said that the regulations are a welcome small step forward, there remain a number of questions and I would be grateful if the Minister helped us with them.

2.53 pm

Christian Matheson: I intend to speak very briefly, Mr Evans, which is a shame because under your chairmanship it would be a pleasure to speak all day. [HON. MEMBERS: "Ah!"] Hon. Members have not heard that tribute to a Chair before; it is a new one in this House. I should say to the Minister that there was absolutely no need for her to announce herself as a substitute because she was a safe pair of hands, as always, and gave a clear introduction to the regulations. I pay tribute to her ability.

The Minister is right that zero-hours contracts work well for some people; we talked about students and parents with children who might want to juggle their hours around. However, it concerns me that there are people on zero-hours contracts who do not wish to be.

For example, I know an airline pilot who was flying for a well-known low-cost airline. He had an exclusivity clause—this was a little before the introduction of the regulations that the Minister spoke about earlier—and was not allowed any further work. After three weeks, he was given a job flying reserve out of Stockholm and had to pay for his own hotel in Stockholm, but he did not fly at all, so he was not paid. Obviously, at the end of the three or four weeks, he would not have had enough money to buy a cup of tea, let alone to pay the tribunal

fees that my hon. Friend the Member for Cardiff West mentioned. He asked the company whether he could have some bar work, and it flatly refused. As the Minister has described, the regulations will, we hope, challenge such insecurity, but it still bothers me.

The Minister was very positive when she answered my genuine question, but again I float my slight concern about people with well-paid jobs who do not have enough work, for whatever reason. If they seek reduced or discounted tribunal fees and fail to get them, they will not be able to afford to pursue their cases and will go back to their employer in a much weaker position. All of a sudden, the employer will be in a much stronger position to enforce a somehow legitimised exclusivity deal, albeit that the deal is unlawful. Contesting that unlawfulness will be difficult or nigh on impossible.

Will the Minister look again at mitigation so that low-paid people can get better access to justice? An economy that continues to rely too much on zero-hours contracts is not one built on firm foundations. I hope the Government will take this opportunity to consider ways of eradicating zero-hours contracts that are not entered through choice, which would give real security in pay and work to hundreds of thousands, if not millions, of people who do not necessarily want to remain on zero-hours contracts.

It is with great regret that I now cease speaking under your chairmanship, Mr Evans.

2.57 pm

Anna Soubry: I think the spirit of last night's football game has led to this outbreak of friendliness and camaraderie. A new entente cordiale is breaking out between the Government and the Opposition. This is all good stuff.

I could make a partisan point about how zero-hours contracts have been around for donkey's years and how it took the coalition Government only three years to deal with them. Unfortunately, in 13 years, the last Labour Government did diddly squat to address the problem. We did the right thing, especially on exclusivity, and the regulations are delivering on the ban. There is no better way of dealing with things than when an employer knows that if they do not do the right thing, and if they continue to do the wrong thing, the full power and threat of an employment tribunal, with compensation, could come crashing down on them. That is a good example of deterrence being the final solution to this problem. That has been underestimated.

I will not get into the debate about whether the number of people going to employment tribunals has fallen because of the rise in fees. There is a very good argument—it is not always true, but it is valid—that sometimes the threat of high costs, as in most civil actions, is a good way of concentrating all minds to reach a sensible settlement, rather than charging off into something that might cost not only a lot of money but a lot of emotion, too.

Anything that brings people together to resolve a dispute is a good thing, and I suspect, in the absence of any evidence, that one of the reasons why fewer people are going to employment tribunals is that they are looking first at how to resolve their dispute. It is undoubtedly the case that some people are not taking forward claims that would otherwise have had no substance to them. Let us wait and see what the evidence tells us.

I have a couple of other points. The number of people working part-time because they cannot find full-time work has actually fallen to its lowest level in four years—just over 80,000 according to recent statistics. A number of other points were raised. Can I be subject to the usual rules, please, Mr Evans? If a Member has raised something that I have not responded to, I will, of course, write to them.

I should say that because someone is on a zero-hours contract, that does not mean that their rights as an employee are any less than anybody else's. It is just the term of their contract that is different—they have a zero-hours as opposed to a 20-hour or 40-hour contract or whatever it may be. Their rights as an employee are exactly the same and therefore they are entitled, like all employees on a contract, to see the terms and conditions of the contract. I think there is a bit of a misunderstanding there.

Kevin Brennan: Of course, the rights are not the same because those people are not entitled to any hours of work.

Anna Soubry: That was not the point that was made. The point was that people should be able to get a copy of their contract, and so on. People on zero-hours contracts have all that because their rights as an employee are exactly the same; it is just the terms and conditions of their employment.

There is one point that I should put on the record. The reason why we have not done the two weeks is that that is only available to agency workers in certain circumstances who find their way into an employment tribunal. The employment tribunal has a discretion to go below the minimum of two weeks. Indeed, if anybody uses this route into a tribunal, the tribunal has discretion to apply whatever compensation it sees fit. I would urge against some sort of two-week idea for compensation. I think that is a bad idea—let us let the tribunal have discretion to apply whatever compensation it sees fit in all the circumstances of the case. That is a good idea, I suggest.

I thank hon. Members for their valuable contributions to this debate and their comments during it. The regulations will allow those who are treated unfairly by their employer with regard to the ban on exclusivity clauses to seek redress and be awarded compensation if appropriate. I think that we are agreed on that. If there are points I have not answered, I will do so by way of letter, but I urge everybody to vote for these regulations because they are a real step forward.

3.2 pm

Kevin Brennan: As I hinted earlier, I will not ask my hon. Friends to vote against the regulations because they represent a welcome small step forward. I disagree with what the Minister said about employees—which is a very technical, legal term in this instance—having exactly the same rights as others if they are on a zero-hours contract, but now is not the time to debate that further. I also register a point of disagreement about the two weeks' pay and the agency workers regulations. I think a minimum level of compensation would be a genuinely positive addition to these regulations.

Anna Soubry indicated dissent.

Kevin Brennan: I see that the Minister will not give way on that at this point, but I ask her to give it some further consideration in the future. With that, Mr Evans, I will sit down.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015.

3.4 pm

Committee rose.