



## Employment (Allocation of Tips) Bill

### HL Bill 91 of 2022–23

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On 3 March 2023, the second reading of the [Employment \(Allocation of Tips\) Bill](#) is scheduled to take place in the House of Lords. It is a private member's bill sponsored by Lord Robathan (Conservative). The purpose of the bill is to mandate that employers must distribute the total amount of tips and service charges to workers without deductions.

The bill was originally introduced in the House of Commons on 15 June 2022, sponsored by Dean Russell (Conservative MP for Watford). Following the appointment of Mr Russell to a ministerial position in September 2022, Virginia Crosbie (Conservative MP for Ynys Môn) replaced Mr Russell as the Commons bill sponsor. The bill has government support and it received cross-party support during its House of Commons stages. It passed House of Commons third reading on 20 January 2023 without amendment.

Since 2015, there have been media reports of employers in UK restaurant chains and the wider hospitality industry taking a proportion of employees' tips, a practice many viewed as unfair. Trade unions and other campaigners have called for legislation to ban "unfair" tipping practices. Since that date, various Conservative governments have committed to introducing legislation to prevent employers making deductions from tips, but no government legislation has been brought forward. However, the government has supported the current private member's bill.

The bill would amend the Employment Rights Act 1996 to mandate that employers pass on all tips, gratuities and service charges to workers without deductions, and to distribute tips among workers fairly. The bill makes similar provision for the distribution of troncs, which are collections of tips that are controlled by a member of staff or a third party (called a troncmaster) who is independent of the employer.

The bill would also allow the secretary of state to introduce a new code of practice on the fair distribution of tips and gratuities. The bill allows for the enforcement of the new rights through the employment tribunal system.

The bill would extend to England and Wales, and Scotland, but not Northern Ireland.

#### **I. Background**

The bill has been introduced in response to reports of unfair tipping practices in the catering and hospitality industries over recent years.

In 2015, the union Unite launched a campaign for fair tipping, following reports that Pizza Express had

a policy of deducting 8% of tips as an administration fee.<sup>1</sup> Pizza Express subsequently reversed the policy. Other restaurant chains have also been reported to have similar policies.<sup>2</sup> Some restaurants have voluntarily changed their policies in response to the publicity.

In response to the reports, David Cameron's Conservative government launched a call for evidence on tips, gratuities and services charges in August 2015.<sup>3</sup> The government concluded from the responses that there was "broad agreement that intervention is required to improve the treatment and transparency of these payments".

In 2016, the Cameron government launched the consultation 'Tips, gratuities, cover and service charges: Proposals for further action'.<sup>4</sup> A government response to the consultation was published in 2021 (see below).

In October 2018, Theresa May's government announced that it intended to legislate to prevent employers making deductions from tips, as part of a set of measures to "back businesses and entrepreneurs, [and] support workers".<sup>5</sup> The government said new legislation would "be introduced at the earliest opportunity". The measure was included in Theresa May's 'Good work plan' (December 2018).<sup>6</sup>

In the December 2019 Queen's Speech, Boris Johnson's government committed to introducing an employment bill, which would include measures for "ensuring that tips left for workers go to them in full".<sup>7</sup> Johnson's government did not subsequently introduce legislation to implement the commitment in that session, and there was no reference to an employment bill in the 2021 or 2022 Queen's Speeches.

In September 2021, the Johnson government published its response to the 2016 consultation.<sup>8</sup> It stated that a majority of respondents had been in favour of "preventing any employer deductions from discretionary payments".<sup>9</sup> The government stated that it remained committed to legislating for the changes and that the "employment bill will be brought forward when parliamentary time allows".

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<sup>1</sup> Hajera Blagg, '[Fair tips victory](#)', Unite Live, 1 April 2022.

<sup>2</sup> See: Jess Staufenberg and Simon Neville, '[Top restaurant chain Cote pockets entire service charge rather than giving it to staff as tips](#)', Independent, 21 August 2015; Lisa O'Carroll, '[Mexican-style Wahaca is latest food chain to be accused of unfair tipping policy](#)', Guardian, 3 October 2015; Sarah Butler, '[Restaurant chains still force waiting staff to give up some tips](#)', Guardian, 31 March 2018; Unite, '[Wahaca restaurant incident prompts renewed call for new legislation on tips](#)', 17 June 2019; Sabah Meddings, '[Waiters at Carluccio's cry foul over tipping shake-up](#)', Times (£), 22 September 2019.

<sup>3</sup> Department for Business, Innovation and Skills, '[Tips, gratuities, cover and service charges: Call for evidence](#)', 30 August 2015.

<sup>4</sup> Department for Business, Energy and Industrial Strategy, '[Tips, gratuities, cover and service charges: Proposals for further action](#)', 2 May 2016.

<sup>5</sup> Department for Business, Energy and Industrial Strategy, '[New measures to support workers, businesses, and entrepreneurs](#)', 1 October 2018.

<sup>6</sup> HM Government, '[Good work plan](#)', December 2018, p 8.

<sup>7</sup> Prime Minister's Office, '[The Queen's Speech 2019](#)', 19 December 2019, p 44.

<sup>8</sup> Department for Business, Energy and Industrial Strategy, '[Government response to the consultation on tipping, gratuities, cover and service charges](#)', September 2021.

<sup>9</sup> As above, p 9.

Paul Scully, the then parliamentary under secretary of state at the Department for Business, Energy and Industrial Strategy, reaffirmed the government's commitment to continuing work on ensuring all tips went to workers during the debate on the Queen's Speech in May 2022.<sup>10</sup>

For further information on the background to the bill, including a summary of the political commentary, see the House of Commons Library briefing '[Employment \(Allocation of Tips\) Bill 2022–23: Progress of the bill](#)' (9 January 2023).

## 2. What would the bill do?

The bill contains 15 clauses and no schedules. [Explanatory notes](#) for the bill as introduced in the House of Lords have been published by the then Department for Business, Energy and Industrial Strategy.

**Clause 1** would amend the Employment Rights Act 1996 (the 1996 act) to insert new part 2B into the act on qualifying tips, gratuities and service charges. Part 2B would include new section 27C which would provide a range of related definitions including “employer-received tips”, “worker-received tips” and “qualifying tips, gratuities and services charges”. Part 2B would also provide for the secretary of state to produce a code of practice “to promote fairness and transparency” in relation to the distribution of tips and gratuities (see clause 9 below).

**Clause 2** would insert new section 27D into the 1996 act to define how tips and gratuities are to be dealt with. The section would mandate that an employer “must ensure that the total amount of qualifying tips” paid at a place of business is “allocated fairly between workers of the employer” at that place of business. Clause 2 would also insert new section 27E which would define how tips are to be dealt with at a “non-public place of business” or if the employer has more than one public place of business.

**Clause 3** relates to independent troncs, which the explanatory notes define as “a special pay arrangement used to distribute tips” that is independent of the employer.<sup>11</sup> The clause would insert new section 27F which would make provision for the employer's obligations where the qualifying tips were allocated through a tronc system. The explanatory notes state that the “overall effect” of these provisions would be 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.<sup>12</sup>

**Clause 4** would insert new section 27G, which specifies when tips must be paid to workers. The new section would provide that tips must be paid no later than the end of the month following the month in which they were paid by the customer.

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<sup>10</sup> [HC Hansard, 12 May 2022, col 295.](#)

<sup>11</sup> [Explanatory notes](#), p 6.

<sup>12</sup> As above, p 9.

**Clause 5** relates to agency workers. It would insert new section 27H into the 1996 act, which would provide that an eligible agency worker for the employer is to be treated for the purposes of the allocation of tips as though they were a directly-employed worker of the employer.

**Clause 6** would insert new section 27I, which would require employers to have a written policy on dealing with tips. It would define the circumstances in which they must make the policy available to workers. Clause 6 would also insert new section 27J, which would require employers to keep records relating to tips.

**Clause 7** relates to enforcement. It would insert new section 27K, which defines the circumstances in which a worker may bring a complaint relating to the distribution of tips to an employment tribunal. Clause 7 would also insert new sections 27L and 27M, which would provide for the employment tribunal to apply remedies and award compensation to workers who bring successful claims.

**Clause 8** would insert new section 27N, which relates to the enforcement of an employer's obligations in clause 6 to produce a written policy and keep records. Clause 8 would also insert new section 27O, which would provide powers to an employment tribunal to apply remedies where it finds that a worker's complaint under section 27N is well founded.

**Clause 9** would insert new sections 27P to 27T. These would grant powers to the secretary of state to introduce a statutory code of practice on the fair distribution of tips and gratuities, and consequential powers to revise and revoke the code of practice. The powers would also provide for the circumstances in which an employment tribunal must take account of the code of practice, and the circumstance in which an employer is liable for failure to comply with the code.

**Clause 10** would insert new sections 27U to 27Y. These would make provisions relating to the circumstances in which an employer can bring a restitution claim for overpayment of tips, the relationship between the bill's provisions and the worker's contractual rights, and preventing workers from opting out of their rights under the bill.

**Clause 11** would amend section 13 (right not to suffer unauthorised deductions) of the 1996 act so that workers cannot contract out of their right to receive tips allocated to them by the employer.

**Clause 12** would make consequential amendments to other employment legislation, including the Trade Union and Labour Relations (Consolidation) Act 1992, the Employment Tribunals Act 1996 and the Employment Relations Act 1999, to bring them within or render them outside the scope of the bill.

**Clauses 13 to 15** would extend the bill's provisions to England and Wales, and Scotland, and make provision for its commencement and short title.

### **3. House of Commons stages**

The bill was introduced in the House of Commons on 15 June 2022. The bill received broad cross-party support and it completed its third reading on 20 January 2023 without amendment. The following sections summarise the bill's House of Commons stages.

### 3.1 Second reading

The bill received its second reading on 15 July 2022.<sup>13</sup> It received cross-party support and was passed without division. Introducing the bill, its original sponsor, Dean Russell (Conservative MP for Watford), stated:

I was shocked when I found out [...] that hospitality workers could not necessarily guarantee that they could keep [their tips]. I think most people would be shocked to know that if they gave a tip through the business—via a credit card, say, as is increasingly more prominent and popular—there is no guarantee that the person or team they gave it to would receive it.

[...]

The bill will create a legal obligation for employers that receive tips directly from customers, or that have control or significant influence over the distribution of tips that workers receive directly, to distribute tips to workers fairly and transparently.

[...]

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.<sup>14</sup>

Kerry McCarthy, the Labour shadow minister for climate change, said that Labour members supported the principle of the bill. She said:

There are some things still to be thrashed out, but I hope that Labour members of [the bill] committee will be able to be part of a constructive working relationship and that we will get this bill into law as soon as possible, so that the people on the receiving end of the tips can start to see the benefit.<sup>15</sup>

Speaking for the government, the then minister for small business, consumers and labour markets, Jane Hunt, stated:

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.

[...]

<sup>13</sup> [HC Hansard, 15 July 2022, cols 621–40.](#)

<sup>14</sup> [HC Hansard, 15 July 2022, cols 621–3.](#)

<sup>15</sup> [HC Hansard, 15 July 2022, col 635.](#)

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.<sup>16</sup>

### 3.2 Committee stage

On 12 October 2022, the bill was considered by a House of Commons public bill committee.<sup>17</sup> No amendments were tabled.

Following the appointment of Dean Russell to a ministerial position in September 2022, Virginia Crosbie (Conservative MP for Ynys Môn) replaced Mr Russell as the Commons bill sponsor. Introducing the bill, Ms Crosbie reiterated its purpose:

The bill is all about fairness. [...] The bill will potentially benefit more than two million people—7% of workers in the UK—who receive tips as part of their work.

[...]

The bill will also provide greater transparency for employers and workers on how tips should be treated, and will create a level playing field for businesses that already pass on tips to workers in a fair and transparent way. Finally, consumers will have the confidence that the full value of their tips will go to workers.<sup>18</sup>

Speaking for the Scottish National Party, David Linden (SNP MP for Glasgow East) indicated his party's support for the bill. He stated, "I want to offer my support and that of my party for the whole bill, from clauses 1 to 15".<sup>19</sup> Members of other opposition parties also made brief interventions in support of the bill.

Responding for the government, Mr Russell, the original sponsor, reiterated the government's support for the bill. He said:

I am honoured to be the responsible minister and to see it through the whole way. I thank my hon. friend the member for Ynys Môn for stepping in to sponsor the bill, and I thank the other committee members for their time and energy.

[...]

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

<sup>16</sup> [HC Hansard, 15 July 2022, cols 636–9.](#)

<sup>17</sup> House of Commons Public Bill Committee, '[Employment \(Allocation of Tips\) Bill](#)', 12 October 2022, session 2022–23.

<sup>18</sup> As above, cols 1–4.

<sup>19</sup> As above, col 8.

today and on second reading, to help to take the bill forward.<sup>20</sup>

The committee agreed the bill without amendment. As no amendments were made, there were no formal proceedings at report stage.

### 3.3 Third reading

Third reading took place on 20 January 2023.<sup>21</sup> Again, there was cross-party support for the bill. Some members raised the issue of publicising the bill were it to enter into force, so that workers in the hospitality industry would be aware of their new rights.<sup>22</sup> This point was reiterated by the bill's sponsor, Virginia Crosbie.<sup>23</sup>

Richard Fuller (Conservative MP for North East Bedfordshire) raised a concern about the impact on the capacity of the employment tribunal system to deal with the potential increase in claims which may result from the bill.<sup>24</sup> The responding minister, Kevin Hollinrake, said that “work is under way across government to expand capacity within employment tribunals”.<sup>25</sup>

The bill passed third reading without division.

## 4. Read more

- Unite, '[Unite 'not confident' fair tips bill will see workers keep their missing tips](#)', 15 July 2022
- UK Hospitality, '[UK Hospitality comments on the second reading of the private members' bill on tipping](#)', 15 July 2022

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<sup>20</sup> House of Commons Public Bill Committee, '[Employment \(Allocation of Tips\) Bill](#)', 12 October 2022, session 2022–23, col 9.

<sup>21</sup> [HC Hansard, 20 January 2023, cols 666–91.](#)

<sup>22</sup> See: [HC Hansard, 20 January 2023, cols 673 and 679.](#)

<sup>23</sup> [HC Hansard, 20 January 2023, col 690.](#)

<sup>24</sup> [HC Hansard, 20 January 2023, col 684.](#)

<sup>25</sup> [HC Hansard, 20 January 2023, col 689.](#)

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