

Response to Department for the Economy Consultation on Good Jobs and Employment Legislation

NI Tourism Alliance HATS

The Northern Ireland Tourism Alliance (NITA) is working in partnership with the Hospitality and Tourism Skills Network (HATS) to tackle the skills challenges facing the industry.

NITA is the independent voice representing the diversity of the tourism economy in Northern Ireland. NITA aims to challenge and hold to account government agencies and politicians whilst lobbying to influence and shape policy based on industry insights and knowledge.

The HATS Network is an employer led network focused on addressing talent attraction and retention in hospitality and tourism through collaboration. HATS has a proven record of facilitating sectoral input to inform skills policy, funding and interventions to support the sector's skills needs and is supported by Invest NI, under its collaborative growth programme, Tourism NI and the NI Hotels Federation.

The collective membership of the HATS Network and NITA offer an established clustering of employers across the breadth of the hospitality and tourism sector with a shared passion for skills development and a proven track record of facilitating sectoral input to skills policy.

NITA and HATS welcomes the consultation on Good Jobs and Employment Legislation. We have consulted with members across the sub-sectors of the tourism and hospitality economy and welcome the opportunity to contribute and inform the consultation.

There is a lot to be welcomed in the proposals and the review is well overdue. This is an opportunity to revamp key elements of employment legislation in Northern Ireland to enhance talent retention and foster a competitive business environment.

However, we are deeply concerned about the scale and impact of these changes. Northern Ireland's tourism and hospitality industry has endured immense challenges over the past five years with the fallout from the pandemic and the absence of a functioning Executive, which has further strained their resilience. In particular, the impact of proposed legislation on small businesses and their financial viability cannot be overlooked and it is critical that the legislation is designed to minimise impact on businesses of all sizes and that legislation is co-designed with industry and clear and unambiguous guidance is provided to ensure that there are no unintended consequences that will negatively impact.

We strongly believe that not everything needs to be legislated for, and we welcome the inclusion of Code of Conducts within the proposals. The North has a very low unemployment rate and a competitive labour market and as such employers have got to find ways to attract people into the industry and therefore a code of conduct is a necessity for responsible employers. Initiatives such as this can be further developed with industry to strengthen in line with some of the areas laid out in the consultation, without the need to legislate and add further administrative bureaucracy.

The Tourism industry in particular, has done a lot of work to improve working conditions, benefits and employee engagement, work that was started with the launch of the Hospitality and Tourism Commitment¹ – a voluntary code of conduct developed by leading employers, colleges and industry partners, facilitated by the Hospitality and Tourism Skills network [HATS]. The 'commitment' covers critical areas, such as working hours and learning and development as well as a pledge to work collectively to promote the industry as a rewarding career choice¹.

Other initiatives, which will help to embed the objectives of the Good Jobs consultation, include the Fáilte Ireland Employer Excellence Programme which has been developed to support businesses driving greater employee engagement, and continuously building the appeal of their workplace. This initiative, which is due to be rolled out in the North, will help businesses to foster a culture of excellence in the workplace.

We welcome the opportunity to work with the Department of the Economy to co-design a legislative framework which protects our workforce and sustains our businesses whilst supporting our industry.

We hope that the information we have provided is useful and if you have any queries or need any further information please do not hesitate to contact me.

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¹ The Hospitality and Tourism Commitment was replaced by the UK Hospitality Well Being Promise. We believe was a backward step in terms of what it delivered for employers and employees and would like to see the code of conduct developed by HATS reinstated.

Below is our response to each of the main themes, highlighting the concerns of the businesses within the tourism economy.

Theme A Terms of Employment

Replacing Zero Hours Contracts

Within in the consultation document, it states that - 'There is limited research into the use of zero hours contracts in the north of Ireland' - this is very concerning given the direction of travel laid out in the proposals and we would urge the department to ensure that they have a clear understanding of the use of zero hours contracts and the benefits to workers, employers and businesses alike before making decisions on changes to legislation which could have a detrimental impact on both individuals and businesses. We do not support the banning of zero hours contracts and believe that a code of conduct could be utilised to ensure that zero hours contracts are used in a responsible way.

Zero hours contracts are used throughout the tourism and hospitality industry and in the most part employers are using them in a responsible manner.

From a worker perspective, these provide flexibility to suit their circumstances, particularly students, those with caring responsibilities, those whose rota and availability is centred around their partners rota and those who work across a number of organisations.

From an employer perspective, given the seasonal aspect, the need of the business is met with individuals who are able to work / work more during these time periods. Banning zero-hour contracts would significantly affect the business's ability to flex up and down when required to meet demand.

It should be noted that individuals on zero hours contracts offered contracted hours contracts, very rarely make the change. In those situations where an individual wants to move to a banded hours contract, the qualifying period should be 52 weeks which will provide a realistic picture of both the individual and business requirements. This should be a 'right to request' and not the 'right to have'.

What we have found in our discussion with members, is that employers treat all employees - full time, part time or on zero-hour contracts - the same, with all having access to the same benefits. There are many examples of best practice within the industry which ensure that those on zero hours contracts are treated fairly and on an equal basis and seen as part of the workforce. These include:

- no exclusivity clause and mutual agreement of hours to be worked.
- In most cases, workers are asked to submit their availability and shifts are allocated based on that availability.
- Where shifts are cancelled or changed less than 48 hours out, employers pay in full.
- Pension contributions made; holiday pay provided.
- minimum shift lengths
- access to staff benefits/social activities

Understanding Employment Status and Addressing Bogus Self Employment

We would like to see a clearer definition of status in relation to employee / worker /self-employed, which could be via a code of practice or included in legislation. Guidance for employers and individuals would be welcome.

Dismissal and Re-engagement

From the discussions we have had with members and the wider business community, we do not believe that this is a practice that is used negatively in Northern Ireland. There have been some cases cited in the media, however, these are not in Northern Ireland and are the exception rather than the norm.

We do not believe that changes to legislation is required.

Redundancy

There could be unintended consequences to the introduction of personal liability offence, especially on the governance of the organisation. Organisations rely on individuals joining boards, in most cases on a voluntary capacity, and this type of offence may discourage individuals from joining boards. Providing training/guidance for board members would help to ensure that the organisation follows the correct procedures. It would be beneficial to understand the number of organisations that fail to notify within the required time frames.

Agency Workers

The proposals outlined in the document would affect recruitment agencies rather than employers of agency workers. Regarding pay transparency, it is normally the case that employers would be paying more for these workers, but as this is paid to the recruitment agency it is not clear whether this higher rate is passed on the agency worker. We would welcome changes that would ensure that recruitment agencies are working in a responsible manner.

Theme B – Pay and Benefits

Tips, Gratuities and Service Charge

As the consultation document sets out, hospitality (restaurants, bars) and hotels are where the majority of tips are prevalent within the tourism industry and it was reassuring to for the consultation document to state 'Anecdotal evidence suggests that most employers in the hospitality sector are likely to be treating their workers fairly'.

We believe that the current voluntary arrangements are working well within this industry, and we would like to see a set of guidelines for employers rather than a change in legislation.

Payslips

In our discussions with members, there were no concerns raised in regard to proposals regarding information provided on payslips.

Working Time Regulations

Holiday Pay - Members raised no issue with the holiday reference period being extended to 52 weeks, although noted it may disadvantage an employee who is increasing their hours if they are carrying the lower hours average for 52 weeks. We would ask for more clear examples of how holidays are calculated for irregular hour workers and access to guidance/support for particularly complex situations.

Record keeping – we agree that record keeping is important, however the proposal to record not only working hours – start and end times but also breaks would be challenging. Many systems are not built to record breaks, this could result in a massive financial investment into systems that can record breaks, investment that could be placed elsewhere and be more beneficial in other parts of the business. For those smaller business that do not have time and attendance type systems this would increase the administration burden significantly. Guidance would be very much welcomed in this area. The guidance in Great Britain, is that businesses do not have to keep detailed records of daily working hours if an employer is able to demonstrate adequate compliance in other ways. In practical terms what does this mean for the employer?

Right to disconnect – As responsible employers, ensuring work life balance, employees taking annual leave and not having to work outside of work hours is of utmost importance. However, a one size fit all may not work as we have businesses that are global, dealing with time differences etc. It also needs to be considered how this would work for staff on call or in emergency situations? We do believe that this can be incorporated into guidance rather than legislation.

Voice and Representation

As we stated at the beginning of our document, employers have worked, and continue to work, very hard to improve working conditions with employer and employee relationships significantly improved with open communication, focus, clarity on the business expectations, strategic decisions with employees, better work life balance etc. The concern is that the proposals are a shift to historical times.

We believe that there should be a focus on improving or strengthening the Employer and Employee relationship instead of strengthening the role of the trade union, a third party.

Some of the comments we have received:

- Clarity required for the Trade Union on their role and their role with employers.
- Involvement of Trade unions can slow processes, more time needed to make decisions.
- Many HR professionals will need to be trained to deal effectively with trade unions, if they will be more prevalent in the workplace and in decision making situations. What would be the impact on smaller organisations with no HR? If smaller organisations do not have an HR professional in the business and outsource HR, they will likely need to pay more for this consultant to deal with unions.
- Reducing the threshold for TU recognition may see smaller business not wanting to grow, keep staffing levels below the threshold so not to be eligible for TU recognition.
- Right for trade unions to turn up to company premises to recruit will be very disruptive, create downtime and even if there is a good employer and employee relationship this will cause disharmony and discontent.
- Sectoral bargaining – No. Northern Ireland is a very small place, and this could remove competitive advantage. If everyone is paying the NMW/ NLW then the pay rates are legally compliant. If companies can offer higher pay rates and additional benefit this is a tool to attract and retain employees. This may work for large public sector organisations.

Theme D – Work-Life Balance

Flexible Working

Our feedback from members is that the current statutory flexi working request procedure does work – and we do not see any reason to change it. A person can make a request after 6 months – 6 months is an appropriate time for an individual to be in the role, get trained and then decide on changes to working schedules.

We believe that the current requirement for employees to state how the change will impact the team/department is important and ensures that the employee is thinking of the big picture and the needs of their co-workers, promotes teamwork.

We do not believe a Day 1 right to ask for flexible working arrangements should be implemented. The candidate has applied for and accepted the job on the stated terms. A day one application would not give either side the opportunity to see how the new working relationship could support the change requested.

Carers leave.

We agree with the proposal in general, however there are some questions around:

- whether this is paid/unpaid
- how do we define a carer?
- does the employee need to provide evidence?
- how do employers administer?

Neonatal Leave

We agree with this proposal. Clear guidance will be required for employers.

Protection from Redundancy

We understand and support the principle of providing additional protection for those returning from maternity leave, we would propose that the right be extended to a timeframe from when the individual returns to work. Clear guidance on this right would be essential, as if an employer does find themselves in a potential redundancy scenario it will allow them to ensure that they provide fair treatment for all employees involved.