

SUNDAY WORKING (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

- 1 These explanatory notes relate to the Sunday Working (Scotland) Bill as introduced in the House of Commons on 11th December 2002. They have been provided by the Scotland Office with the consent of David Cairns, the Member of Parliament in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- 2 The notes need to be read in conjunction with the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

- 3 The purpose of the Bill is to make provision as to the rights of shop workers and betting workers under the law of Scotland in relation to Sunday working; and for connected purposes.
- 4 No modern Scottish statutory provisions specifically relating to Sunday working exist. Sunday opening had been so long permitted in Scotland, that a view seems to have been taken that workers in Scotland had no reasonable expectation of avoiding working on Sundays. Therefore, there was no need to legislate to protect them from contractual obligations to that effect. To consider where the law on Sunday working currently is, it is necessary to consider the history of Sunday trading in Scotland and in England and Wales.
- 5 There has always been some limit in England and Wales on the businesses that are allowed to open on Sundays. When the types of businesses allowed to trade were widened by the Sunday Trading Act 1994, provisions protecting employees not wishing to work on Sundays were introduced. The objective was to allow greater Sunday trading, but to protect those employees who may not want to work on Sundays.
- 6 The Shops Act 1950 was the starting point for legislation on Sunday trading and, by implication, working. It emerged from the tradition of shops not opening on Sundays in England and Wales. As indicated, the Sunday Trading Act 1994 widened Sunday trading in England and Wales. It repealed the provisions of the 1950 Act and substituted its own prohibition on the opening of large shops (defined as one having a floor area of over 280 square metres) except where exemptions apply.

- 7 In practice the effect of the 1994 Act was to permit the Sunday opening of shops with a floor area of 280 square metres or less without limitation. Corresponding to the relaxations on Sunday trading, workers were given the right not to work on Sundays. The Act therefore set up a framework for the protection of shop workers not wishing to work on Sundays in schedule 4.
- 8 The 1996 Employment Rights Act sets out general provisions making it unfair to dismiss shop and betting workers for opting out of working on a Sunday. The Act makes provision both for those first employed after the 1994 Act came into force and for those already employed when that Act came into force.
- 9 The history of rights given to betting workers not to work on Sundays is similar. Betting was legalised on Sundays by section 20 of the Deregulation and Contracting Out Act 1994 which amended section 5(1) of the Betting, Gaming and Lotteries Act 1963 and, in schedule 8, gave statutory protections substantially identical to those contained in the 1994 Act for shop workers. While the 1963 Act extends to Scotland, the terms of schedule 5A of the 1963 Act means that the rights in question applied only in relation to track work in England and Wales and work in a licensed betting office in England and Wales. The 1996 Act repeats this provision (section 233(2)), but also provides separately that the provisions of the Act which refer to shop workers and betting workers extend to England and Wales only (section 244(2)).
- 10 The Employment Rights Act 1996 applies to Scotland other than the provisions relating to shop workers and betting workers (section 244(2)) which do not. Shop workers and betting workers in Scotland are not covered by the specific arrangements regarding Sunday working. The general right not to be dismissed unfairly nevertheless applies. However, the qualifying period necessary to claim unfair dismissal is one year and a Scottish worker dismissed for refusing to work on a Sunday must go through the procedure set out in the Act to show his/her dismissal was unfair. The result is that a shop or betting worker in Scotland dismissed for refusing to work on a Sunday may or may not succeed with an unfair dismissal claim.

COMMENTARY ON CLAUSES

Clause 1: Sunday working: shop and betting workers in Scotland

- 11 This clause sets out the amendments required to the Employment Rights Act 1996 to extend to Scotland the relevant statutory provisions governing Sunday working by shop and betting workers. These consist of applying the relevant definitions of "shop worker" and "betting worker" as set out in Part IV of the 1996 Act. It also includes a definition for shop as comprising any premises where retail trade or business is carried on. The exclusions to the definition cover catering businesses and the sale at theatres and places of amusement of programmes, catalogues or similar items.
- 12 Subsection (2) amends section 36 of the 1996 Act, in relation to provisions of the Act extended by virtue of subsection (5), to modify the definition of 'the relevant commencement date' so that, in Scotland, it means the date on which section 1(5) comes into force.

- 13 Subsection (3) amends the definition of 'shop worker' in section 232 of the 1996 Act so as to include such workers in Scotland and also provides for amendments to ensure that any references to "intoxicating liquor" are defined by reference to "alcoholic liquor" which is the terminology used in the relevant licensing Act applying to Scotland.
- 14 Subsection (4) amends the definition of 'betting worker' in section 233 so as to include such workers in Scotland.
- 15 Subsection (5) amends section 244(2) of the 1996 Act to remove the limitation on extent to England and Wales of provisions of the Act referring to shop workers and betting workers, except in relation to certain specified provisions in Part IV, that is, section 36(2) and (4), and (4), and 37(1) and (5), 38 and 39. Those provisions remain limited to England and Wales.
- 16 The effect of these provisions, in so far as they extend to Scotland, mean that a shop and betting worker has the right to opt out of Sunday working by giving written notice to an employer to the effect that he objects to Sunday working. It provides also that an employer must give a shop or betting worker a written statement of his rights under the Act if the worker is employed after the relevant commencement date.

Clause 2: Transitory, transitional and saving provisions

- 17 This clause confers a power on the Secretary of State to make, by Order, transitory, transitional or saving provisions that may be required to give full effect to any provision of the Act.

Clause 3: Commencement

- 18 The provisions of the Bill will be brought into force on a day or days appointed by commencement order made by the Secretary of State save for Clauses 3 and 4 which will come into force upon Royal Assent.

FINANCIAL EFFECTS OF THE BILL

- 19 The Bill is not expected to give rise to expenditure out of public funds.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

- 20 None is expected.

REGULATORY APPRAISAL

- 21 A Regulatory Impact Assessment of extending the relevant parts of the 1996 Act, as envisaged by the Bill, will be published shortly as part of the Government's consultation on Sunday Working in Scotland.

COMMENCEMENT

- 22 The Bill will come into force two months after it receives Royal Assent.

Scotland Office