

Payment of Wages (Amendment) (Tips and Gratuities) Bill 2022

Bill No. 5 of 2022

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Abstract

The purpose of the Payment of Wages (Amendment) (Tips and Gratuities) Bill 2022 is to provide clarity on the meaning of tips, gratuities and mandatory service charges, place tips and gratuities outside the scope of a person's contractual wages, oblige employers to display their policy on the distribution of tips, oblige employers to distribute tips received electronically and otherwise leave the status quo in relation to mandatory service charges forming part of the revenue of a business.



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Summary

- The [Payment of Wages \(Amendment\) \(Tips and Gratuities\) Bill 2022](#) was published on 24 January 2022 and comprises nine sections. It is scheduled for Second Stage debate in Seanad Éireann on Tuesday, 1 February 2022.
- The [Regulatory Impact Assessment](#) (RIA) for the Bill notes that: “the Payment of Wages (Amendment) (Tips and Gratuities) Bill was previously brought forward by Regina Doherty, former Minister for Social Protection, in December 2019, and it underwent pre-legislative scrutiny before the Joint Committee on Employment Affairs and Social Protection. The ‘Report on Pre-Legislative Scrutiny of the General Scheme of the Payment of Wages (Amendment) Bill 2019’, was published on 11th November 2019. The legislation fell when the General Election was called in early 2020. As the scrutiny process was fully completed in 2019 and a final Report issued, no further pre-legislative scrutiny is required”.
- The purpose of the Bill, as outlined in the accompanying [explanatory and financial memorandum](#), is to:
 - Provide clarity on the meaning of tips, gratuities and mandatory service charges;
 - Place tips and gratuities, but not mandatory service charges, outside the scope of a person’s contractual wages;
 - Oblige employers to display prominently their policy on the distribution of tips;
 - Oblige employers to distribute fairly and in a transparent manner, tips that are received in electronic form (i.e. through debit or credit cards);
 - Otherwise leave the status quo in relation to mandatory service charges forming part of the revenue of a business.
- Pre-legislative scrutiny (PLS) of the General Scheme of the Payment of Wages (Amendment) Bill 2019 was undertaken by the Joint Committee on Employment Affairs and Social Protection with a [final report](#) produced by the Joint Committee in November 2019. This report contained seven recommendations.
- The recommendations of the Joint Committee as set out in the PLS report are identified in Table 4 of this Bill Digest. The Table provides the Department of Enterprise, Trade and Employment’s response and analysis of whether the recommendations made by the PLS report are addressed (either in whole or in part) in the Bill and elsewhere.
- A [Regulatory Impact Assessment](#) of the Bill by the Department of Enterprise, Trade and Employment was published in January 2022. The preferred option identified by the Department is to legislate.

Introduction

The [Payment of Wages \(Amendment\) \(Tips and Gratuities\) Bill 2022](#) was published by the Tánaiste and Minister for Enterprise, Trade and Employment on 24 January 2022. A [General Scheme](#) of the Bill was published on 12 November 2021. The [Regulatory Impact Assessment](#) (RIA) for the Bill states that “the Payment of Wages (Amendment) (Tips and Gratuities) Bill was previously brought forward by Regina Doherty, former Minister for Social Protection, in December 2019, and it underwent pre-legislative scrutiny before the Joint Committee on Employment Affairs and Social Protection. The ‘Report on Pre-Legislative Scrutiny of the General Scheme of the Payment of Wages (Amendment) Bill 2019’, was published on 11th November 2019. The

legislation fell when the General Election was called in early 2020. As the scrutiny process was fully completed in 2019 and a final Report issued, no further pre-legislative scrutiny is required.”

The [Government press release](#)¹ accompanying the publication of the Bill stated:

“The Payment of Wages (Amendment) Bill will require employers to clearly display their policy on how tips, gratuities and service charges are distributed. All electronic tips received by the employer must be distributed fairly and in a transparent way and this will be inspected through the Workplace Relations Commission (WRC). The distribution obligations will not affect businesses where tips are managed by employees themselves, for example under a ‘tronc’ system.

An employer may take into account certain factors when deciding how to distribute tips, including the seniority or experience of an employee, the value of sales generated by them and the number of hours worked. All employees must be consulted on the policy that is introduced.”

In this respect, the Bill seeks to introduce three changes: firstly, it aims to place tips and gratuities outside the scope of a person’s contractual wages; secondly, it obliges employers to prominently display their policy on the distribution of tips (both cash and card) and service charges and; thirdly, it obliges employers to distribute all tips received in electronic form, through cards or smart phones, in a fair and transparent manner.

Research by the [Low Pay Commission \(2018\)](#) found that tipping in Ireland is primarily associated with the hospitality sector². An [ESRI \(2020\)](#) report notes that approximately 8% of employees in Ireland are on the minimum wage. They note that those earning the minimum wage are more likely to be women, work part time and be aged 15-24. They also note that more than 50% of minimum wage employees in Ireland work in the retail, accommodation and food sector³. Consequently, those most likely to be affected by the introduction of this legislation are those working in the hospitality sector, and therefore by extension, most likely to be earning the minimum wage.

Table of provisions

A summary of the Bill’s provisions is included in Table 1 below.

Table 1: Table of provisions of the Payment of Wages (Amendment) (Tips and Gratuities) Bill 2022

Section	Title	Effect
1	Definitions	“Act of 2005” means the Workplace Relations Act 2015

¹ Department of Enterprise, Trade and Employment, [Tánaiste publishes law to give customers clear information on where their tips go](#). Published 24 January 2022.

² Others mentioned by the Low Pay Commission (2018) were taxi drivers, hairdressers, delivery drivers, tour guides and croupiers. The report is available [here](#).

³ ESRI (2020), Minimum Wage Policy in Ireland. Budget Perspective 2021, Paper 2, May 2020. Available [here](#).

Section	Title	Effect
		and “Principal Act” means the Payment of Wages Act 1991
2	Amendment of section 1 of Principal Act	Seeks to amend section 1 of the <i>Payment of Wages Act 1991</i> in subsection (1) by inserting definitions for “contract worker”, “mandatory service charge”, “tip or gratuity” and amendments in the definition of “wages”.
3	Insertion of sections 4A to 4E in Principal Act	<p>Seeks to amend the <i>Payment of Wages Act 1991</i> by inserting the following sections after section 4.</p> <p>Section 4A relates to the Minister specifying which employers or class of employers will be covered by sections 4B to 4D of the Act. It also allows the Minister to prescribe by regulation an employer or class of employers to whom sections 4B to 4D do not apply.</p> <p>Section 4B provides that</p> <ul style="list-style-type: none"> - Employers are required to distribute tips that are received in electronic form (e.g. through debit/credit cards) in a fair and transparent manner. - Employers may not keep any portion of tips or gratuities received electronically unless this Act requires or permits it, or only if they frequently perform to a large degree the same work as some or all of the employees. <p>With respect to complaints regarding the distribution of tips and gratuities to an employee under Part 4 of the Workplace Relations Act 2015, an adjudication officer of the WRC shall have regard to the following factors:</p> <ol style="list-style-type: none"> (a) Employee experience/seniority (b) Value of sales, income or revenue generated by the employee to the business (c) Proportion/number of hours worked by the employee (d) Whether the employee is full time or part time (e) The role and influence of the employee in providing a service to customers (f) Whether the employee was consulted on the manner of distribution (g) Whether there is an agreement, either formal or informal, providing for the manner in which tips and gratuities are to be distributed. <p>To aid transparency, an employer must give an employee a written statement specifying the total amount of tips and</p>

Section	Title	Effect
		<p>gratuities distributed by the employer for a specific period and the amount of tips and gratuities distributed to the employee. This must be received no later than 10 days from the date on which the distribution of tips and gratuities is made.</p> <p>The employer must consult with employees before making changes to its policy on the manner in which tips and gratuities are distributed.</p> <p>Section 4C provides that an employer cannot deduct tips and gratuities from an employee's wages or tips & other gratuities other than as required by this Act, by any statute or instrument made under statute, or to the extent required to meet costs arising directly from providing electronic modes of payments for tips.</p> <p>Section 4D provides that the employer must display a 'Tips and Gratuities Notice' stating:</p> <ul style="list-style-type: none">- Whether or not tips and gratuities are distributed to employees- The manner of distribution and the amounts- Whether service charges are distributed to employees, and if so, the manner and amounts distributed <p>The Minister may prescribe by regulation what information should be contained in this notice, any further or additional information regarding tips, gratuities or mandatory service charges and the location at which the notice is displayed.</p> <p>Section 4E relates to contract workers. A "contract worker" is defined as a natural person who carried out work other than as an employee, including on a contract for service, for a person to whom this section applies.</p> <p>It provides for prescribed persons (e.g. businesses that contract platform workers who are not direct employees but whose work usually attracts tips and gratuities) to display a 'Contract Workers Tips and Gratuities Notice'. This notice should state whether or not tips and gratuities are distributed to contract workers, the manner in which they are distributed, the amounts distributed, whether service charges, or any portion of them, are distributed to contract workers, and if they are, the manner and amount distributed.</p> <p>The Minister may prescribe by regulation what information should be contained in this notice, any further or additional information regarding tips, gratuities or mandatory service charges and the location at which the notice is displayed.</p>

Section	Title	Effect
4	Amendment of section 6 of Principal Act	<p>Seeks to amend section 6 of the <i>Payment of Wages Act 1991</i> in subsection (1) in the following three ways:</p> <ul style="list-style-type: none"> (a) By the substitution of “section 4C or 5” for “section 5” (b) By the substitution of “from the wages or tips or gratuities” for “from the wages”, and (c) By the substitution, in paragraph (a), of “the net amount of the wages, or tip or gratuity as the case may be” for “the net amount of the wages”. <p>This will provide for an adjudication officer of the Workplace Relations Commission (WRC) to order an employer to reimburse any unlawful tip or gratuity deductions resulting from a complaint being made to the WRC.</p>
5	Amendment of Terms of Employment (Information) Act 1994	<p>Seeks to amend section 3 of the <i>Terms of Employment (Information) Act 1994</i> in subsection 1A to add a new subsection (g). This means that a statement on the employer’s policy on how tips, gratuities, and mandatory service charges are handled will be included in the core terms that a new employee must receive within 5 days of starting work.</p>
6	Amendment of section 36 of Act of 2015	<p>Seeks to amend section 36 of the Workplace Relations Act 2015 in subsection (5) by the substitution of the following paragraph for paragraph (b):</p> <p>“(b) sections 4(4) and 4D(3) of the <i>Payment of Wages Act 1991</i>,”</p> <p>Section 36 of the Act relates to fixed payment notices for relevant offences.</p>
7	Amendment of Schedule 4 of Act of 2015	<p>Seeks to amend the Workplace Relations Act 2015 in Schedule 4 by the substitution of “Sections 4B and 5” for “Section 5”. Schedule 4 of the <i>Workplace Relations Act 2015</i> sets out the employment legislation under which compliance notices can be issued.</p>
8	Amendment of Schedule 5 of Act of 2015	<p>Seeks to amend the <i>Workplace Relations Act 2015</i> in Part 1 of Schedule 5 by the substitution of the following paragraph for paragraph 3:</p> <p>“3. Sections 4B, 4C and 5 of the <i>Payment of Wages Act 1991</i>”</p> <p>Schedule 5 of the <i>Workplace Relations Act 2015</i> lists some of employment legislation by which a complaint may be submitted to the Adjudication of the WRC.</p>
9	Short title and commencement	<p>Section 9 relates to the short title, commencement and collective citation of the Act.</p>

Source: Derived from the [Payment of Wages \(Amendment\) \(Tips and Gratuities\) Bill 2022](#) and the associated [Explanatory and Financial Memorandum](#).

Background

This section provides an overview of the policy and legislative context relating to this Bill, a summary of the key findings from the Low Pay Commission (2018) report, and a short discussion on international perspectives on tips, gratuities and service charges.

Policy and legislative context

In 2017, a Private Member's Bill called the [National Minimum Wage \(Protection of Employee Tips\) Bill 2017](#) was initiated in the Seanad by Senators Paul Gavan, Trevor Ó Clochartaigh and Fintan Warfield. The stated purpose of the Bill was

“to amend the *National Minimum Wage Act 2000* to provide for additional protections for employees in the service sector to ensure they received tips or gratuities paid by customers and to provide for related matters.”

It moved to second stage in Seanad Éireann in January 2018⁴. Subsequent to second stage debate on the Bill, the then Minister for Employment Affairs and Social Protection requested that the Low Pay Commission examine current practices regarding tips and gratuities in Ireland, including whether legislation might impact negatively in tax or financial terms, upon employees or employers. A summary of the findings from the Low Pay Commission report are provided in the following section.

The [National Minimum Wage \(Protection of Employee Tips\) Bill 2017](#) passed all stages in the Seanad and is currently before Dáil Éireann, Third Stage⁵.

In the meantime, on 2 July 2019, the Government approved the General Scheme of the Payment of Wages (Amendment) Bill 2019. On 26 September 2019, the Joint Committee on Employment Affairs and Social Protection decided to undertake pre-legislative scrutiny of the General Scheme. The final report of the Joint Committee was published in November 2019. An overview of the [final report](#) is provided in the PLS section of this Bill Digest. It should be noted that the legislation fell when the General Election was called in early 2020. As the scrutiny process was fully completed in 2019 and a final report issued, no further pre-legislative scrutiny was required⁶.

The Low Pay Commission Report (2018)

The Low Pay Commission was established under the [National Minimum Wage \(Low Pay Commission\) Act 2015](#). Their primary role is to make annual recommendations on the appropriate rate of the national minimum wage. The [Low Pay Commission Report \(2018\)](#) was requested by the then Minister for Employment Affairs and Social Protection on foot of second stage debate of a PMB entitled the [National Minimum Wage \(Protection of Employee Tips\) Bill 2017](#). The purpose of this report was to examine current practices relating to tips and gratuities in Ireland, including

⁴ Seanad Éireann and Dáil Éireann debates relating to this Bill can be found [here](#).

⁵ This Bill is listed under the Restoration of Private Members' Bills which was published in September 2020. This list is available [here](#).

⁶ [Regulatory Impact Assessment](#) on the Payment of Wages (Amendment) (Tips and Gratuities) Bill 2022.

whether legislation might negatively impact upon either employers or employees in tax or financial terms. The Low Pay Commission (LPC) report sought submissions from relevant stakeholders⁷ and engaged with the Workplace Relations Commission and the Revenue Commissioners. Box 1 below provides the five conclusions of the Low Pay Commission Report (2018).

Box 1: Conclusions from the Low Pay Commission report (2018)

1. The Commission does not believe that sufficient reliable data exists to prove that the issue of employers withholding employee tips is a significant problem in Ireland. The Commission notes that this issue had received little attention prior to the introduction of the Private Members National Minimum Wage (Protection of Employee Tips) Bill 2017 and that the Government had not received previous representations relating to legislating for tipping practices.
2. The Commission does not believe that legislation or regulation should be introduced in this area as the administrative and compliance costs involved would not be justified. The Commission is also concerned that there could be unintended negative consequences such as the reclassification of service charges, leading to a potential reduction in the take home pay of low paid employees
3. Legislation in this area may not be enforceable. The Workplace Relations Commission was clear that from both an adjudication and enforcement point of view, legislation in this area could be unworkable. While the intention of the Bill is undoubtedly honourable, the Commission does not feel that introducing legislation which cannot be applied and enforced effectively is a worthwhile endeavour.
4. The majority of submissions which advocated for legislation focussed on the hospitality sector. However, the consultation process has shown that tipping practices are prevalent in a number of other sectors. The Commission is of the opinion that legislation which is geared towards the hospitality sector may not be appropriate for other occupations, and that a one size fits all approach when it comes to legislation is not to be recommended.
5. The Commission noted that there was no real consensus amongst the submissions it received as to how or if tips and gratuities should be legislated for. While there was broad agreement that the withholding of tips by employers is wrong, there wasn't agreement as to how this should be addressed. Submissions put forward a range of options, including various forms of legislation or a code of practice, but having considered each of these in turn, the Commission does not believe that any offer a clear solution to the issue that will be both enforceable and will not lead to unintended consequences.

Source: The Low Pay Commission (2018), [A Review of Current Practices in relation to Tips & Gratuities](#)

⁷ The Low Pay Commission reported that they received 15 submissions from the following groups: Irish Taxi Foundation; Competition and Consumer Protection Commission; The Gaming and Leisure Associated of Ireland; Restaurants Association of Ireland; Richard Grogan Solicitors; Fianna Fáil; ICTU; Licensed Vintners Association; Social Justice Ireland; Sinn Féin; TASC; Union of Students in Ireland; Green Party; Irish Hotels Federation; Irish Hair Federation.

Defining tips and gratuities and service charges

The [Low Pay Commission \(2018\) report](#) found that while tipping in Ireland is primarily associated with the hospitality sector, it may extend to a wide range of other professions including taxi drivers, hairdressers, tour guides, croupiers (gambling/gaming employees) and delivery drivers. In addition, the report notes that regardless of the frequency of tipping in Ireland, there is nothing in Irish law that states an employee is automatically entitled to keep them. The report provides the following example to illustrate this:

“As an example of how tips are currently viewed in Ireland from a legal/industrial relations standpoint, a complaint was brought before the Workplace Relations Commission (WRC) in November 2017 by a hotel porter who claimed that their employer was not passing on tips and gratuities to staff. The WRC was of the view that the key question to consider was whether tips are considered wages under the Payment of Wages Act. They also pointed to the fact that there was no reference to tips in the complainant’s employee contract and that his remuneration was clearly outlined at an hourly rate. The Adjudicator ultimately ruled that tips are not wages payable within the meaning of Section 1 of the Payment of Wages Act and therefore the complaint failed.”

In addition to this, the report provides that:

“Under the *National Minimum Wage Act 2000*, ‘any amount distributed to the employee of tips or gratuities paid into a central fund managed by the employer and paid through the payroll’ is defined as a non-reckonable component when it comes to the calculation of the National Minimum Wage.

While tips cannot be used as a reckonable component for calculating the National Minimum Wage and are not considered wages under the Payment of Wages Act, the ownership of tips is not addressed anywhere in Irish legislation and therefore there is nothing to stop an employer from taking ownership of employee tips.”

Service charges

The [Low Pay Commission \(2018\) report](#) noted that service charges, unlike tips and gratuities, are dealt with under the [National Minimum Wage Act 2000](#) where they report it is considered “a reckonable component of pay when calculating the National Minimum Wage”. Additionally, they report that the Revenue Commissioners treat service charges differently to cash tips when it comes to Value Added Tax (VAT):

“Where included on the bill, regarded as part of the consideration for the meal (w.e.f. 1/9/08 - previously concession may have applied) and liable at the second Reduced rate (9%VAT). However, voluntary payments (tips) made by customers and not appearing on the bill remain outside the scope of VAT⁸.”

As a result, the Low Pay Commission found that:

⁸ Revenue Commissioners, [VAT rates](#). Published 01 November 2020.

“No distinction is drawn in the proposed legislation [for which the report was commissioned] between service charges and cash tips despite there being significant differences in terms of how they are considered for both VAT and minimum wage purposes.”

Current reported practice regarding the distribution of tips and gratuities and service charges

The [Low Pay Commission \(2018\) report](#) notes that there was “broad agreement” between employer and employee representations regarding the distribution of tips and gratuities and service charges. Specifically, they report that they are currently distributed via three methods:

1. Employee receives the tips directly from customer and keeps the entire tip.
2. Tips are pooled into a central fund for re-distribution which may include support staff and management (employee managed troncs may be utilised).
3. Tips/service charges are held by management and used to pay for staff parties or events, to make up employee wages (service charges), or to increase profits.

Regarding service charges, the Low Pay Commission (2018) report detailed responses from three stakeholders. It notes that the Restaurant Association of Ireland (RAI) and the Irish Hotel Federation (IHF) were “strongly of the view that given the differences in how service charges and cash tips are treated in legal and tax terms, a distinction must be drawn between them.” The IHF stated that, in their view, service charges “should not be the subject of any legislation pertaining to tips and gratuities as this would be interfering in a contract between a customer and a business”. Similarly, it is reported that the RAI “felt that a distinction should be drawn between discretionary and non-discretionary payments and that it is impractical to treat service charges and tips as one and the same.”

The Revenue Commissioners

As part of their analysis, the Low Pay Commission liaised with the Revenue Commissioners to discuss the potential impact of legislation on taxation. The Revenue Commissioners reports that as it currently stands:

- Tips and gratuities are fully taxable and should be included by employees in their tax returns
- If an employer is involved in the distribution of tip/service charges through a PAYE scheme, these tips are fully liable for tax purposes.
- If a “troncmaster” is involved in the distribution of tips, they are required to register as an employer and make tax deductions accordingly.

However, Revenue stated there was no data available on the total value of tips being declared for taxation purposes:

“Where tips are included as part of pay, an employer is not required to provide a separate breakdown detailing the tip amounts. Tips declared by employees directly are recorded on the Revenue system under a ‘catch-all’ code (untaxed income arising in the State) which includes any type of untaxed income from any source e.g. government stocks, exchequer bills, credit union dividends or other investments. Similarly, there is no available data as to the how many troncs are registered for PAYE as this type of information is not captured.”

The Workplace Relations Commission

The Workplace Relations Commission (WRC) was established on 1 October 2015 under the [Workplace Relations Act 2015](#). It is an independent, statutory body whose core services include

the inspection of employment rights compliance, the provision of information, and the provision of mediation, conciliation, facilitation and advisory services, amongst others⁹. As part of their review, the Low Pay Commission met with representatives of the adjudication and inspection divisions of the WRC.

Regarding adjudication, it was reported that:

“if a claim under the proposed legislation came before an Adjudication Officer, the officer would require evidence from the claimant and the respondent. In employment rights cases, evidence is usually in the form of a contract, official record or correspondence between the parties. In this case, there would be no official paper record, unless a formal system of recording and distributing tips was introduced. In the absence of paper records, an Adjudication Officer would have to consider the credibility of those giving evidence and judge who they considered to be telling the truth.”

Regarding inspection, it was reported that:

“since there is no employment statute governing the ownership or the distribution of tips and gratuities, WRC inspectors do not:

- Have any interaction with employers concerning the management and distribution of cash tips, or
- Have powers to, and do not, examine employers’ records relating to non-cash (credit or debit card) tips and gratuities.”

Regarding the equitable distribution of tips and gratuities, the WRC stated that:

“for enforcement to be viable and a conviction to be secured, the Bill (or regulations) must establish and clearly quantify the proportion of tips each employee is entitled to. In the absence of same, enforcement as proposed is not possible.”

Finally, the WRC recommended that:

“in its view, a better approach than the proposed legislation would be to introduce a Code of Practice on tipping. It could set out the principles underpinning the legislation and also enshrine the proposal that an establishment display to its customers how tips are distributed.”

International approaches to tips, gratuities and service charges

This section provides a brief overview of how other countries legislate for tips, gratuities and service charges.

⁹ Further information on the role and responsibility of the Workplace Relations Commission can be found [here](#).

United Kingdom

In September 2021, the UK's Department for Business, Energy & Industrial Strategy announced plans to overhaul tipping practices in the UK¹⁰. This legislation is expected to include:

- a requirement for all employers to pass tips on to workers without any deductions
- a Statutory Code of Practice setting out how tips should be distributed to ensure fairness and transparency
- new rights for workers to make a request for information relating to an employer's tipping record, enabling them to bring forward a credible claim to an employment tribunal.

Under the proposed changes, an employer can be taken to an Employment Tribunal if they break the rules, and can be forced to compensate workers, often in addition to fines.

In 2009, the UK introduced legislation¹¹ to ensure that tips, gratuities, service charges and cover charges could no longer be used to make up the national minimum wage pay. As a result of this legislation, all eligible workers must receive at least the national minimum wage in base pay with any tips they receive being paid on top.

In addition, a voluntary [Code of Practice](#)¹² was published alongside this legislation to improve the information available to consumers and workers about service charges, tips, gratuities and cover charges. This Code applied to all tipping sectors¹³ and it provided four key principles to ensure transparency:

- Businesses will clearly display on their premises prior to the point of purchase or choice their policy relating to mandatory and discretionary service charges, tips, gratuities and cover charges, and make this accessible.
- Businesses will have a process in place to deal with requests from customers about how and to whom all service charges, tips, gratuities and cover charges are distributed, and the level and purpose of deductions.
- Businesses should ensure that workers understand and are able to confidently explain the business' policy on service charges, tips, gratuities and cover charges to customers, or know where to direct customers for further information, and without risk of detriment.
- All workers should be fully informed on the distribution and breakdown of service charges, tips, gratuities and cover charges and the level and purpose of any deductions. Businesses should seek to reach agreement with workers on any change of policy.

However, a consultation process¹⁴ found that the guidance and rules set out in the Code of Practice was not sufficient and as a result, the UK government announced in 2018 that they intended to legislate to ensure workers received tips in full.

¹⁰ Department for Business, Energy & Industrial Strategy Press Release, All tips to go to staff under government plans to enhance rights of 2 million workers. Published 24 September 2021. Available [here](#).

¹¹ [The National Minimum Wage Regulations 1999 \(Amendment\) Regulations 2009](#). Regulation 31 (1) (e).

¹² Department for Business Innovation & Skills. The National Minimum Wage. A Code of Best Practice on Service Charges, Tips, Gratuities and Cover Charges. Published October 2009. Available [here](#).

¹³ The stated tipping sectors mentioned in the Code of Practice are hotels and restaurants, gambling and betting outlets, hairdressing and other beauty therapy businesses and taxi operations.

¹⁴ Department for Business, Energy & Industrial Strategy, Consultation outcome. Published 2 May 2016. Available [here](#).

Ontario, Canada

In 2016, the Canadian province of Ontario enacted the [Protecting Employee Tips Act 2015](#). This Act sets out the rules regarding the handling of tips and other gratuities in any workplace where tips are received. Since June 2016, it [states](#):

“an employer generally cannot withhold, make deductions from, or make an employee return their tips and other gratuities excepted as permitted by the ESA [*Employment Standards Act 2000*].”

Regarding violations, it states:

“If an employer is found to have violated the prohibition against taking an employee’s tips and other gratuities, the amount wrongfully kept will be considered a debt owing by the employer to the employee and is enforceable under the ESA as if it were wages owing to an employee.”

Certain deductions may be made from an employee’s tips and other gratuities. These include:

- statutory deductions (e.g. income taxes, employment insurance premiums and Canada Pension Plan contributions)
- court orders (if the employee owes money to the employer or someone else)
- pooling of tips and other gratuities (tip pooling).

A tip pool is considered ‘a collection of employees’ tips that is redistributed among some or all employees’. [Guidance on best practice](#) regarding tips and tip pools in the workplace states that employers should establish a clear policy for handling tips and tip pooling, post the tip pooling policy in a place employees can see it, track the amounts collected and/or redistributed in the tip pool and paid electronically and clearly indicate who or what that money is intended for when you include a service charge on an invoice¹⁵.

United States

In 2020 and 2021, the US Department of Labor published a series of rulemakings to update its regulations to protect tipped workers. These rulemakings addressed legislative amendments to section 3(m) and other sections of the [Fair Labor Standards Act](#) to prohibit employers keeping employees’ tips. From April 2021, the following rules became effective¹⁶:

- an employer cannot keep employees’ tips under any circumstances; managers and supervisors also may not keep tips received by employees, including through tip pools;
- an employer that pays the full minimum wage and takes no tip credit may allow employees who are not tipped employees (for example, cooks and dishwashers) to participate in the tip pool;

¹⁵ Ontario, Ministry of Labour, Employment Standards, Tips and Other Gratuities Guideline. Available [here](#).

¹⁶ US Department of Labor, Tip Regulations under the Fair Labor Standards Act. Available [here](#).

- an employer that collects tips to facilitate a mandatory tip pool generally must fully redistribute the tips within the pay period; and,
- employers that do not take a tip credit, but collect employees' tips to operate a mandatory tip pool, must maintain and preserve payroll or other records containing information on each employee who receive tips and the weekly or monthly amount reported by the employee, to the employer, of tips received.

Financial Implications

The [Explanatory and Financial Memorandum](#) accompanying this Bill reports that there will be no cost to the Exchequer and states:

“[t]he Bill contains some implications for inspection and compliance work of the Workplace Relations Commission (WRC). However, these will be accommodated within the annual budget provisions for the WRC. There are no direct costs that will be imposed on businesses but there may be some minor administrative costs to industry with employers having to display their policy towards tips and gratuities and provide a statement to workers when a payment is being made.”

The published Regulatory Impact Assessment, available in the following section, provides additional information on the associated costs, benefits and impacts of legislating for how tips and gratuities in the workplace.

Regulatory Impact Assessment (RIA)

The [Regulatory Impact Assessment \(RIA\)](#)¹⁷ relating to the Payment of Wages (Amendment) (Tips and Gratuities) Bill 2022 was published by the Department of Enterprise, Trade and Employment in January 2022. The RIA considers two policy options:

1. **Do nothing:** The Department note that the “do nothing” principle “would fail to address the commitment by Government to deal with the more contentious issues relating to the treatment by employers of tips and gratuities in the workplace.”
2. **Legislate for how tips and gratuities are treated in the workplace (preferred option):** This option would “implement the Government Decisions and achieve the policy objectives set out”.

Table 2 (overleaf) sets out the associated costs, benefits, and impacts identified by the Department relating to their preferred option to legislate.

¹⁷ Department of Enterprise, Trade and Employment, Payment of Wages (Amendment) (Tips and Gratuities) Bill 2022, Regulatory Impact Assessment. Published January 2022. Available [here](#).

Table 2: Summary of the costs, benefits and impacts on the preferred option identified by the Department (legislate)

Option	Costs	Benefits	Impacts
<p>Legislate for how tips and gratuities are treated in the workplace.</p>	<p>Direct costs:</p> <ul style="list-style-type: none"> • No direct costs imposed on businesses. • For the public sector, the Bill contains some implications for inspection and compliance work for the WRC. The Department note that these can be accommodated within the annual budget provisions for the WRC. <p>Indirect costs:</p> <ul style="list-style-type: none"> • Some minor administrative costs to the industry as employers will have to display their policy on tips and gratuities and provide workers with a statement when payment is being made. 	<p>The RIA identified the following four benefits of legislating:</p> <ul style="list-style-type: none"> • Improve worker’s rights and entitlements. • Better protection for employees as the Bill will prohibit the use of tips and gratuities to make up contractual wages. • Employers will be required to distribute electronic tips and gratuities to employees in a fair manner. • Greater transparency for customers and workers as employers will be required to display their policy on the distribution of tips, gratuities and mandatory service charges. 	<p>The RIA identified the following four impacts of legislating:</p> <ul style="list-style-type: none"> • There will be beneficial impacts for low-paid and vulnerable groups especially those working in hospitality and other service delivery jobs. • It will bring clarity and transparency to the tourism and hospitality sectors which should be seen as a valued and sustainable career choice. • It will provide clarity and transparency on the meaning of tips, gratuities and service charges. • It will have a positive impact on the rights of citizens.

Source: Derived from the [RIA of the Payment of Wages \(Amendment\) \(Tips and Gratuities\) Bill 2022](#)

Pre-legislative scrutiny of the General Scheme of the *Payment of Wages (Amendment) Bill 2019*




Pre-legislative scrutiny (PLS) was undertaken by the Joint Committee on Employment Affairs and Social Protection on the General Scheme of the *Payment of Wages (Amendment) Bill 2019*. The General Scheme was referred to the Joint Committee on 26 September 2019 with various stakeholders invited to attend a meeting on 10 October 2019. The [Joint Committee's PLS report](#)¹⁸ was published in November 2019.

As part of its PLS consideration of the General Scheme, the Joint Committee received written submission from a number of bodies including:

- Irish Hotels Federation
- Restaurants Association of Ireland
- The Low Pay Commission
- Unite the Union
- ONE Galway (SIPTU)



The seven recommendations of the Joint Committee as set out in the PLS report on the General Scheme are identified in Table 4. The Table also provides the Department of Enterprise, Trade and Employment's response and analysis of whether the recommendations made by the PLS report are addressed (either in whole or in part) in the Bill and elsewhere.


Table 1: Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.


L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used in Table 2 to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	

¹⁸ Houses of the Oireachtas, Joint Committee on Employment Affairs and Social Protection, Report on Pre-Legislative Scrutiny of the General Scheme of the Payment of Wages (Amendment) Bill 2019. Published November 2019. Available [here](#).


Table 2: Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.


Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill
Recommendation 1: Protect the right of employees to receive their tips and gratuities in full		
<p>1. There is unanimous support from the Committee for legislating to ensure that employees receive the full amount of tips and gratuities awarded by customers. Members also support the prohibition of employers using tips and gratuities to ‘make up’ contractual rates of pay.</p>		<p>Section 3 of the Bill will insert a new Section 4C in the Payment of Wages Act 1991 which provides that an employer cannot make a deduction from an employee’s contractual wages in respect of tips or gratuities made to, or left for, an employee, or make a deduction from an employee’s tips or other gratuities other than as required under statute, or to the extent required in order to meet costs directly arising from providing electronic modes of payment for tips.</p> <p>The Committees intent insofar as it applies to cash tips and gratuities is understandable, but flawed, as it presumes a clarity with respect to ownership of such tips and gratuities that cannot be found or implemented in practice. In cases where tips and gratuities are left in cash, they are generally not in the control of the employer and imposing an obligation on the employer in such situations is not workable. The WRC has indicated that it would be operationally impossible to implement legislation that purported to give employees the right to receive tips and gratuities in full, including in cash form, as they are not always under the control of the employer.</p>
Recommendation 2: Display business policy on tips, gratuities and service charges		
<p>2. The Committee agrees that businesses should be compelled to display their policy on tips, gratuities and service charges to their customers. The Committee feels this would avoid any</p>		<p>Section 3 of the Bill will insert a new Section 4D in the Payment of Wages Act 1991 which provides that an employer must display a ‘Tips and Gratuities Notice’ stating whether or not tips or gratuities are</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
<p>ambiguity surrounding the issue and assure the public that the business they are dealing with/purchasing from is transparent on how it treats its employees.</p>	<p>distributed to and amongst employees, the manner in which they are distributed and the amounts so distributed, and also whether services charges, or any portion of them, are distributed to and amongst employees, and if so, the manner in which they are distributed and the amounts so distributed.</p> <p>This will ensure that customers are fully aware of the treatment of tips and service charges.</p> <p>Section 3 of the Bill will also insert a new Section 4E in the Payment of Wages Act 1991 which provides that prescribed persons (e.g., businesses that contract with platform workers who are not direct employees but whose work typically attracts tips and gratuities) must display a similar notice called a 'Contract Workers Tips and Gratuities Notice'.</p>
<p>Recommendation 3: Legislate for the definition of 'service charge'</p>	
<p>3. The Committee is satisfied that the common consensus among members of the public is that a service charge is an added charge to their total receipt, ringfenced as a supplementary payment to staff separate from their standard wage. In this way it is viewed as a form of involuntary tip or gratuity towards the 'service' the employee has provided to the customer and is very likely to result in customers leaving reduced tips or no tips.</p> <p>3.1 In practice, however, there is no legal requirement that employers share income from service charges with their employees, and it is not uncommon that such service charges are simply included as part of overall business income or used to contribute to employees' base wages. The stakeholders representing employers referred to competition law as a</p>	<p style="text-align: center;"></p> <p>Section 2 of the Bill creates new definitions for tips and gratuities and mandatory service charges. The section provides as follows:</p> <p>a 'tip or gratuity' means a payment that is—</p> <p>(a) voluntarily made to, or left for, an employee or group of employees by a customer, in circumstances in which a reasonable person would be likely to infer that the customer intended or assumed that the payment would be kept by the employee or shared with other employees, or</p> <p>(b) voluntarily made to an employer, or to a person engaging contract workers, by a customer, in circumstances in which a reasonable person would be likely to infer that the customer intended or assumed that the payment would be distributed to</p>


Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
<p>barrier precluding them from discussing how businesses set prices or bill their customers, and they therefore declined to respond to Members’ questions on whether service charges should go solely to employees under legislation. Dr Donal de Buitléir, Chairman of the Low Pay Commission, agreed that members of the public generally believe that service charges go to employees, and he supported the concept that employees should benefit from service charges.</p> <p>3.2 The Committee believes that there needs to be specific reference to service charges in legislation, defining them as added involuntary tips or gratuities that employees receive for the service they have provided, separate from their base wage, and separate from any voluntary tip the customer decides to give. Members feel it should be required by businesses to display notice of any service charge that may be added to bills, and to ensure that it is received by employees on top of their base wage. By ensuring this becomes a part of the legislation, it removes any ambiguity that currently exists about whether or not the employee receives the service charge being paid by the customer.</p>		<p>an employee, a group of employees or to a contract worker;</p> <p>‘mandatory service charge’ means a contractually-imposed and receipted payment that—</p> <p>(a) a customer is required to pay in order to receive certain goods or services provided to the customer by or on behalf of an employer, and</p> <p>(b) is payable by the customer in addition to an amount payable for the cost of such goods or services;”, and</p> <p>Discretionary service charges will fall within the Bill’s definition of ‘tips and gratuities’, and the Bill will apply to these types of voluntary customer payments.</p> <p>The Bill will maintain the position that mandatory service charges levied by a business (as distinct from voluntary and discretionary tips and gratuities) are part of business revenues and as such can be applied to meet all business costs, including salaries. A portion of mandatory service charges will often go towards tips. For example, a hotel may have an arrangement that has been agreed with staff that out of all 12% mandatory service charges, 3% goes to the staff as tips. That is a private arrangement, and the Bill will not interfere in these matters.</p> <p>However, requiring businesses to display their tips and service charge policies will ensure that customers have an understanding of the differences and this will also ensure better transparency.</p>
<p>Recommendation 4: Prohibit employers from withholding employees’ tips</p>		
<p>4. The focus of the 2019 Bill is on ensuring that tips are not being used to contribute to an employee’s base wage, which the Committee supports. However,</p>		<p>This is related to Recommendation 1.</p> <p>The operation of tronc schemes is unaffected by this Bill.</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
<p>the Committee and some of the stakeholders believe that the outstanding problem that requires resolution is employers withholding tips from their employees. Workers in the hospitality sector are generally low pay or minimum wage employees, dependent on the extra income from tips.</p> <p>4.1 The Committee agrees that employees need legislation to protect their rights to unreserved ownership over the tips and gratuities they receive from customers. Employers should not have power to deduct tips for work-related issues, such as breakages or disciplinary matters, and a tip must be considered a gift from customer to employee, as a reward for service provided. It needs to be clear in legislation that the employee is due the full amount of tips and gratuities from customers.</p> <p>4.2 The Committee was told that no complaints had been made to the Workplace Relations Commission regarding non-receipt of tips over the last five years, as an indication that it is not a significant problem. However, the Committee notes that tips are not currently covered by employment law, and therefore such cases could not have been taken.</p>	<p>All employees must be consulted on the tips policy that is introduced.</p> <p>Section 4b provides that employers will not be allowed retain any share of tips or gratuities received by the employer electronically unless such retention is required or permitted by this Act eg to pay tax. Only where the employer regularly performs to a substantial degree the same work that is performed by some or all of the employees will they be allowed to retain an amount which is fair and reasonable in the circumstances.</p> <p>The Joint Committee believes that “it needs to be clear in legislation that the employee is due the full amount of tips and gratuities from customers”.</p> <p>However, the points made in respect of recommendation 1 are also valid here. Section 4C in the Bill provides for the full distribution of tips and gratuities that are in the control of the employer. In cases where tips and gratuities are left in cash, they are generally not in the control of the employer and imposing an obligation on the employer in such situations is not workable. The WRC has indicated that it would be operationally impossible to implement legislation that purported to give employees the right to receive tips and gratuities in full, including in cash form, as they are not under the control of the employer.</p> <p>For example, in some establishments / work situations where there may be several workers involved in providing a service to a customer, staff may agree to the pooling of tips and gratuities and have an informal arrangement in place towards this end. In other cases, the arrangement may be that the staff member who served</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
		<p>the customer collects the tip or gratuity and retains it for themselves.</p> <p>The Bill treats electronic payments differently to cash payments as it is only electronic payments that are fully traceable and, therefore, controllable.</p>
<p>Recommendation 5: Do not proceed with the Payment of Wages (Amendment) Bill 2019 until the Low Pay Commission studies Dr Curran’s research</p>		
<p>5. In 2018, the Low Pay Commission carried out a report entitled ‘A Review of Current Practices in relation to Tips & Gratuities’, which was an input to the 2019 Bill. The Committee believes that report did not utilise adequate consultation or in-depth research into the sector. Dr de Buitléir told the Committee that the data used for the purpose of the Commission’s report was sourced from discussions with unions and employers, without quantitative data being used to help form the outcome. The Committee noted that the hospitality sector is largely non-unionised, with only 7% of employees being members of a union. The Committee does not feel that dialogue with unions would capture the full scale of employees’ issues around wages and tips.</p> <p>5.1 Dr Deirdre Curran of NUIG, who accompanied the SIPTU representative to the Committee meeting, outlined research she is currently undertaking on the experiences of hospitality workers in Ireland, and it was suggested that the Low Pay Commission could study her research with a view to incorporating the data into a new report. As the Low Pay Commission report on tips and gratuities has been used as a basis to support legislating for the 2019 Bill, the Committee feels it would be</p>		<p>The Joint Committee Report referred to a research study related to the hospitality sector that was undertaken by Dr Deirdre Curran of the National University of Galway. The findings relate to her survey in 2019 of 257 hospitality workers and a series of follow-up submissions and interviews. While the survey had a wider remit than just tips, the research indicates that in many cases the systems/criteria used by employers for sharing tips were not always seen as fair with a portion or all of employee tips being used to pay wages and taxes, make up the Christmas bonus or cover costs associated with the Christmas Party.</p> <p>Dr Curran’s research was published in June 2021 and is titled Inside-Out Hospitality. However, given the relatively small scale and wider remit of this study, the Tánaiste does not accept that this Bill should be delayed pending any potential review of the study by the Low Pay Commission.</p> <p>Department officials recently met with Dr. Curran and have considered the findings in the context of the drafting of the legislation.</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
<p>prudent for the Low Pay Commission to review the research before progressing with the legislative process.</p>		
<p>Recommendation 6: Progress must be made with the National Minimum Wage (Protection of Employee Tips) Bill 2017</p>		
<p>6. The Committee and the stakeholders representing the trade unions believe that Senator Gavan's 2017 Bill does more to protect employees' legal rights to their tips, and the 2019 Bill does not provide the same protections</p> <p>6.1 A criminal sanction for employers who withhold tips from employees is supported by the Committee, and Members feel such withholding should be thought of in the same way as stealing from the employee. The Committee notes that Senator Gavan's Bill has completed all stages in the Seanad and has completed second stage in the Dáil, and Members believe that it should not be put on hold in favour of the Minister's Bill, which does not extend the same protection to low paid hospitality sector employees.</p>		<p>In December 2019, the then Minister for Employment Affairs and Social Protection secured Cabinet approval to oppose the Sinn Féin 2017 Private Member's Bill (PMB) and believed the Committee was mistaken in its belief that it "does more to protect employees' legal rights to their tips". The Tánaiste is also of this view. That Bill has been described by the WRC as being unworkable, and as such it would have done nothing to protect workers if passed. In contrast, the Tánaiste's Bill has been carefully crafted to ensure it is a step in the right direction for low-paid workers.</p> <p>The new Section 4b provides that employers will not be allowed retain any share of tips or gratuities received by the employer electronically unless such retention is required or permitted by this Act eg to pay tax. Only where the employer regularly performs to a substantial degree the same work that is performed by some or all of the employees will they be allowed to retain an amount which is fair and reasonable in the circumstances.</p> <p>Section 4B also requires an employer to provide a statement to workers showing the amount of tips including discretionary service charges obtained in a period and the portion paid to the individual employee for that particular period. This will further ensure transparency in the amount of tips shared.</p> <p>An employer, before establishing or making a material change to their policy on the distribution of tips or gratuities or the</p>

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Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
		<p>treatment of mandatory service charges, will be required to consult with those employees.</p> <p>All employees must be consulted on the tips policy that is introduced.</p>
<p>Recommendation 7: Provision should be made that tips and gratuities paid by card are not classified differently from those paid by cash</p>		
<p>7. The Committee agrees that, as Ireland is increasingly becoming a cashless society, tips and gratuities being left for employees are more likely to be paid via card. In such a case, the onus is on the employer to dispense the money, and to determine the actual distribution. The Committee is concerned that these tips are less likely to be fully dispensed compared to cash tips. Further legislative provision needs to be made to specifically provide protection for tips and gratuities paid by card.</p>		<p>Payment of tips and gratuities by electronic means, in contrast to cash tips paid directly to the worker, means that the employer is in control of how these tips and gratuities are distributed. With an ever-increasing number of ways of 'tipping' using 'cash-less' and 'contact-less' apps, such as Strikepay and 'TipJar', the payment of tips by electronic means may well become the predominant way of tipping staff into the future.</p> <p>Section 3 of the Bill will insert a new Section 4B in the Payment of Wages Act 1991 which requires employers to distribute fairly and in a transparent manner, all tips that are received in electronic form i.e. through debit or credit or smart cards.</p> <p>It also provides that employers may not retain any share of tips or gratuities received by the employer electronically, unless such retention is permitted under statute, or where the employer also regularly performs to a substantial degree the same work performed by some or all of the employees, such amount which is fair and reasonable in the circumstances.</p> <p>The employer must provide a statement to workers showing the amount of tips obtained in a period and the portion paid to the individual employee for that particular period. This will ensure transparency. The electronic record generated by this payment method will</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
	<p>facilitate inspections by the Workplace Relations Commission (WRC) in the event of a complaint being made.</p> <p>It is not possible to extend this legal entitlement to cash tips as they are often collected or received directly by the worker(s) and are not controlled by the employer.</p> <p>However, an employer, before establishing or making a material change to their policy on the distribution of tips or gratuities or the treatment of mandatory service charges, will be required to consult with employees.</p>

Source: The L&RS is grateful to the Department of Enterprise, Trade and Employment for providing an analysis of how the Committee's PLS recommendations impact on the Bill. The traffic light assessment represents the analysis of the L&RS.

Principal provisions of the Bill

This section of the Bill Digest examines the main provisions of the Bill. A synopsis of each Section of the Bill is given in Table 1.

Defining contract worker, mandatory service charge, and tip or gratuity

Section 2 of the Bill seeks to amend section 1 of the [Payment of Wages Act 1991](#) in subsection (1) by inserting definitions for contract worker, mandatory service charge, tip or gratuity and amendments in the definition of wages.

Contract worker

It is proposed that a 'contract worker' means "a natural person who carries out work other than as an employee, including on a contract for service, for a person to whom this section applies".

Mandatory service charge

It is proposed that 'mandatory service charge' means "a contractually-imposed and receipted payment that –

- (a) a customer is required to pay in order to receive certain goods or services provided to the customer by or on behalf of an employer, and
- (b) is payable by the customer in addition to an amount payable for the cost of such goods or services"

Tip or gratuity

It is proposed that 'tip or gratuity' means "a payment that is –

- (a) voluntarily made to, or left for, an employee of group of employees by a customer, in circumstances in which a reasonable person would be likely to infer that the customer intended or assumed that the payment would be kept by the employee or shared with other employees, or
- (b) voluntarily made to an employer, or to a person engaging contract workers, by a customer, in circumstances in which a reasonable person would be likely to infer that the customer intended or assumed that the payment would be distributed to an employee, a group of employees or to a contract worker”

Amendments in the definition of wages

It is proposed that in the definition of “wages” –

- (i) in paragraph (v), by the substitution of “in kind,” for “in kind.”, and
- (ii) by the addition of the following paragraph after paragraph (v): “(vi) any payment by way of tips or gratuities.”.

During [pre-legislative scrutiny](#) of the General Scheme of the Payment of Wages (Amendment) Bill 2019, the Joint Committee recommended that the definition of ‘service charge’ should be legislated for. Specifically, they stated they should be defined as added involuntary tips or gratuities that employees receive for the service they have provided, separate from their base wage, and separate from any voluntary tip the customer decides to give.

On 28 January 2022¹⁹, Dr Deirdre Curran²⁰ stated that, while “the Bill is to be welcomed in giving workers a legal right to their tips”, in her opinion, there are still issues regarding service charges and states:

The biggest omission, however, relates to service charges. One of the five stated purposes of the bill is to ‘leave the status quo in relation to mandatory service charges forming part of the revenue of a business.’ ... This represents a loss to workers, as customers may reasonably interpret the service charge as a tip intended for them.

In my opinion, the term ‘service charge’ should be replaced with the more accurate term ‘additional employer charge’. That leaves those of us who care with the task of alerting hospitality customers as to the true nature and legal standing of service charges.”

Distribution of tips and gratuities

Section 3 of the Bill seeks to insert sections 4A to 4E in the [Payment of Wages Act 1991](#). **Section 4A** relates to the Minister specifying which employers or class of employers will be covered by

¹⁹ RTE Brainstorm, Will the new tips bill give restaurant workers what they’re due?, 28 January 2022. Available [here](#).

²⁰ Dr. Deirdre Curran is the programme director of the MSc in Human Resources in NUI Galway. Dr Curran accompanied the SIPTU representative to the PLS Joint Committee meeting.

sections 4B to 4D of the Act. It also allows the Minister to prescribe by regulation an employer or class of employers to whom sections 4B to 4D do not apply.

Treatment of certain tips and gratuities: electronic tips

Section 4B provides that:

- Employers are required to distribute tips that are received in electronic form (e.g. through debit/credit cards) in a fair and transparent manner.
- Employers may not keep any portion of tips or gratuities received electronically unless this Act requires or permits it, or only if they frequently perform to a large degree the same work as some or all of the employees

Regarding the prevalence of electronic payments, the most recent Banking & Payments Federation Ireland (BPF) [Payments Monitor](#), published in November 2021, found that contactless payments in Q3 2021 reached almost 234m payments worth nearly €3.8bn²¹. The number and value of payments were 17.2% and 19%, respectively, above the previous highs registered in Q2 2021. Data from the [Central Bank of Ireland's Payment Statistics](#), published in September 2021, showed that card payments accounted for 64% of payment transactions in 2020. This represented a 3% increase on 2019.

Adjudication Officer of the Workplace Relations Commission

With respect to complaints regarding the distribution of tips and gratuities to an employee under [Part 4 of the Workplace Relations Act 2015](#), an adjudication officer of the WRC shall have regard to the following factors:

- (i) Employee experience/seniority
- (ii) Value of sales, income or revenue generated by the employee to the business
- (iii) Proportion/number of hours worked by the employee
- (iv) Whether the employee is full time or part time
- (v) The role and influence of the employee in providing a service to customers
- (vi) Whether the employee was consulted on the manner of distribution
- (vii) Whether there is an agreement, either formal or informal, providing for the manner in which tips and gratuities are to be distributed.

Written statement on the distribution of tips and gratuities

To aid transparency, an employer must give an employee a written statement specifying the total amount of tips and gratuities distributed by the employer for a specific period and the amount of tips and gratuities distributed to the employee. This must be received no later than 10 days from the date on which the distribution of tips and gratuities is made.

The employer shall consult with employees before making changes to its policy on the manner in which tips and gratuities are distributed.

²¹ Banking & Payments Federation Ireland, BPF Payments Monitor, Contactless Payment Cards – Overview. September 2021. Published November 2021. Available [here](#).

Prohibition of certain deductions

Section 4C provides that an employer cannot deduct tips and gratuities from an employee's wages or tips & other gratuities other than as required by this Act, by any statute or instrument made under statute, or to the extent required to meet costs arising directly from providing electronic modes of payments for tips.

Tips and gratuities notice

Section 4D provides that the employer must display a 'Tips and Gratuities Notice' stating:

- Whether or not tips and gratuities are distributed to employees
- The manner of distribution and the amounts
- Whether service charges are distributed to employees, and if so, the manner and amounts distributed

The Minister may prescribe by regulation what information should be contained in this notice, any further or additional information regarding tips, gratuities or mandatory service charges and the location at which the notice is displayed.

Tips and gratuities notice for contract workers

Section 4E relates to contract workers. A "contract worker" is defined as a natural person who carried out work other than as an employee, including on a contract for service, for a person to whom this section applies.

It provides for prescribed persons (e.g. businesses that contract platform workers who are not direct employees but whose work usually attracts tips and gratuities) to display a 'Contract Workers Tips and Gratuities Notice'. This notice should state whether or not tips and gratuities are distributed to contract workers, the manner in which they are distributed, the amounts distributed, whether service charges, or any portion of them, are distributed to contract workers, and if they are, the manner and amount distributed.

The Minister may prescribe by regulation what information should be contained in this notice, any further or additional information regarding tips, gratuities or mandatory service charges and the location at which the notice is displayed.

Role of the Workplace Relations Commission

Sections 4, 6, 7 and 8 of the Bill relate to the role of the [Workplace Relations Commission](#). As detailed in the [explanatory and financial memorandum](#), section 4 seeks to amend [section 6](#) of the [Payment of Wages Act 1991](#) in subsection (1) by the substitution of "section 4C or section 5" for "section 5". This will provide for an adjudication officer of the Workplace Relations Commission (WRC) to direct an employer to repay any unlawful deduction of tips or gratuities, arising from a complaint being made to the WRC.

The [explanatory and financial memorandum](#) states that sections 6, 7, and 8 deal with enforcement and compliance issues and provide for the relevant amendments to be made to the [Workplace Relations Act 2015](#). This enables and authorises the WRC to carry out inspections and to take complaints regarding compliance with the new requirements set out in the Act.

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