EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT (ALLOCATION OF TIPS) ACT 2023 (CODE OF PRACTICE ON FAIR AND TRANSPARENT DISTRIBUTION OF TIPS) REGULATIONS 2024

2024 No. 831

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Justin Madders, Parliamentary Under-Secretary of State at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.

2.2 Anthony Morris, Deputy Director for Analysis and Wages at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Tony Gordon at the Department for Business and Trade, telephone: 07920 210 842 or email: nationalminimumwage@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Statutory Instrument is made under the Employment Rights Act 1996 of ("the 1996 Act") as inserted by section 9 of the Employment (Allocation of Tips) Act 2023 ("the 2023 Act"). The purpose is to commence the statutory Code of Practice on Fair and Transparent Distribution of Tips ("the Code") on 1 October 2024.

4.2 The 2023 Act, once it fully comes into force, will make it a legal obligation for employers to pass on all tips, gratuities and service charges to workers, without deductions, and in a fair and transparent manner.

4.3 The Secretary of State for Business and Trade is empowered to issue a statutory Code of Practice to promote the fair and transparent allocation and distribution of qualifying tips, gratuities and service charges. Regard must be had to the Code in determining what would be a fair allocation of these qualifying tips, gratuities and service charges. This will ensure that businesses and workers are informed and educated about proper processes and ensure the provisions of the Act can be implemented and enforced.

4.4 The Code was laid in draft before both Houses of Parliament on 22 April 2024 and approved by a resolution in the House of Commons on 14 May 2024 and approved by a resolution in the House of Lords on 24 May 2024.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales and Scotland.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland.

4.7 Employment policy is devolved to Northern Ireland.

5. Policy Context

What is being done and why?

5.1 This legislation will bring the statutory Code of Practice on fair and transparent distribution of tips into effect on 1 October 2024. The Code provides overarching principles on what fairness is for the purposes of the Employment Rights Act 1996, as amended by the Employment (Allocation of Tips) Act 2023, the areas in which employers need to make decisions to comply with their duties, and how they should apply these principles in their specific places of business. This Code is intended to provide further guidance, beyond the 1996 Act, to employers, workers and the wider public, to encourage the smooth implementation of the requirements of the legislation.

What was the previous policy, how is this different?

5.2 At present, the Code of Practice, which was issued on 22 April 2024, is not in force. These regulations will bring it into force.

6. Legislative and Legal Context

How has the law changed?

6.1 The Employment (Allocation of Tips) Act was granted Royal Assent on 2 May 2023. It made a number of changes to the Employment Rights Act 1996, to include in law provision for how employers must deal with qualifying tips, gratuities and service charges, and for the Secretary of State to issue a Code of Practice, with legal effect, to promote fairness and transparency in the distribution tips, gratuities and service charges that fall within the scope of the Act. The law includes further provisions about the requirements on maintaining a written policy, tipping record keeping, and enforcement of all the provisions, which can ultimately result in a claim to an employment tribunal. The purpose of these regulations is to bring the Code of Practice into force.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes. The majority of feedback to a previous public consultation supported this objective and this legislative approach.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Government published an initial draft Code in December 2023, and held a public consultation between December 2023 and February 2024. Following responses from employers, workers and other stakeholders, a limited number of changes have been made to the Code, and the Government's response to the public consultation was

published, along with an updated version of the Code (the version which will be commenced by this instrument).

7.2 Prior to the public consultation, the Department formally engaged with Acas in accordance with section 27Q(1)(a) of the Act.

8. Applicable Guidance

8.1 There is no guidance in respect of the commencement regulations. The Code itself is guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because a full Impact Assessment was published alongside the Employment (Allocation of Tips) Act 2023 - https://bills.parliament.uk/bills/3197/publications.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is available in the impact assessment produced in relation to the Employment (Allocation of Tips) Act 2023.

9.3 The impact on small and micro businesses is available in the impact assessment produced in relation to the Employment (Allocation of Tips) Act 2023.

9.4 The impact on the public sector is available in the impact assessment produced in relation to the Employment (Allocation of Tips) Act 2023.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to consider how effectively it encourages fair and transparent tipping practices from employers, through behavioural changes from those businesses who currently do not comply with the new requirements, and, where necessary, dispute resolution processes, and ultimately escalation to the employment tribunal.

10.2 The Code does not include a statutory review clause. A review clause is not appropriate or necessary, as there is already a provision for review of the Code in section 27P(2) of the 1996 Act.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State for Employment Rights, Competition and Markets has made the following statement regarding Human Rights:

"In my view the provisions of The Employment (Allocation of Tips) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").