



Department for
Business & Trade

Baroness Jones of Whitchurch
Parliamentary Under-Secretary of State
Department for Business and Trade
Old Admiralty Building
Admiralty Place
Whitehall
London
SW1A 2DY

The Baroness Noakes DBE
House of Lords
London
SW1A 0PW

T: +44 (0) 020 4551 0011

E: baronessjones.correspondence@businessandtrade.gov.uk

W: www.gov.uk/dbt

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Dear Baroness Noakes,

Employment Right Bill - Harassment by third parties and Sexual harassment

Thank you for your contributions to the Lords Committee Stage of the Employment Rights Bill on 19 May regarding clause 20 (harassment by third parties) and clause 21 (sexual harassment: power to make provision about “reasonable steps”). I committed to writing to you on two matters during the debate: the jurisdiction of clause 20 and the policy rationale for the breadth of the power in clause 21.

Clause 20 (harassment by third parties): Jurisdiction

Firstly, you asked, whether the drafting of clause 20 would mean that an internationally based employee of, in your example a UK-based card provider, would be liable if they were harassed by a customer. You also sought clarification as to what the jurisdictions are for all Employment Tribunal cases under the Equality Act 2010.

As I noted in the Chamber, the Employment Rights Bill will not change the extent of the Equality Act 2010 or the territorial jurisdiction of Employment Tribunals. However, I would like to use this opportunity to explain the current position further.

The Equality Act 2010 extends to England, Wales, and Scotland. Clause 20 will have the same territorial extent as the rest of the Equality Act 2010. As a general rule, harassment claims can only be brought under the Equality Act 2010 by employees who work in Great Britain. However, there may be cases where an overseas worker may have a sufficiently strong connection to bring a claim here, for example, if they work for a British company and live or work some of their time in Great Britain, or are an expatriate posted abroad by a British employer.

Third-party harassment claims will work in the same way. In relation to the example given, it would depend on the facts of the specific case and would be a matter for the Employment Tribunal itself to determine whether it has jurisdiction over an employment relationship. However, it is unlikely that a worker based overseas in the circumstances you outlined would have a sufficiently strong connection to Great Britain to bring a claim here.

Clause 21 (sexual harassment: power to make provision about “reasonable steps”): Policy rationale for breadth of power

Secondly, you asked why clause 21 gives power to the Secretary of State to make provisions in relation to reasonable steps for sexual harassment but not other forms of harassment.

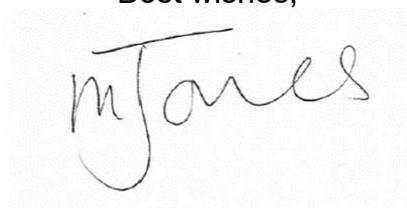
It is important to remember that, where employers need to demonstrate that they have taken steps to prevent or ensure action, employment legislation does not set out rigid, uniform requirements for precise steps that all employers must take in all circumstances and contexts. In line with this, the regulations made under clause 21 are intended to complement rather than replace the Act’s broader, context-dependent requirements. These regulations relate to sexual harassment because they will support our manifesto commitment to strengthen existing sexual harassment provisions, properly tackle sexual harassment at work and halve violence against women and girls in a decade.

Our manifesto commitment to introduce third-party harassment differs in that it seeks to provide protection in an area where, currently, in terms of non-sexual harassment, employees have no existing means of holding their employers to account. This is the case even if their employers have taken no preventative action whatsoever where it would have been reasonable for them to do so. The steps that employers can take to prevent harassment in respect of third parties are clearly less than they would take in respect of their own employees, and uniform requirements across all seven of the Equality Act’s protected characteristics in scope would be unhelpful. However, rest assured that, ahead of commencing the relevant provisions, the Government is committed to producing new guidance to support employers and others with the changes brought about by the Employment Rights Bill. This includes engaging with the EHRC as to their own work to support employers. I would like to assure you that we will engage with businesses and other stakeholders when preparing this guidance to ensure that it is fit for purpose.

We are determined to tackle harassment and will keep all these measures under continuous review following implementation.

I hope my responses provide you with sufficient clarifications. I am copying this letter to all Noble Lords who spoke in the debate. I am also depositing a copy of this letter in the Library of the House.

Best wishes,

A handwritten signature in black ink, appearing to read 'm Jones', is centered on a light grey rectangular background.

BARONESS JONES OF WHITCHURCH
Parliamentary Under-Secretary of State (Minister for Legislation)
Department for Business and Trade