British Printing Industries Federation (BPIF)

British Office Supplies & Services Federation (BOSS)

Consultation on the application of zero hours contracts measures to agency workers (Department for Business & Trade)

December 2024

General comments on the impact of employment reforms on businesses

The British Printing Industries Federation and the British Office Supplies & Services Federation welcome the opportunity to respond to the consultation on the application of zero hours contracts measures to agency workers.

While we recognise the Government's ambition to provide improved protections for the UK workforce, our members are predominantly SMEs and are concerned about the likely consequences of reform. In a survey of our members conducted in autumn 2024, the Federation found that 77% were either 'moderately', 'very' or 'extremely' concerned that the employment reforms would have a negative impact on their businesses.

Reasons for this concern will include increased costs and administrative burden, which companies are worried will make it more challenging to do business, and certainly to grow. When taken alongside the increase in Employer National Insurance contributions and rising minimum wage (which places pressure on employers to match increases further up their pay structures), these concerns have become all the more acute.

Members have expressed disappointment that some of the more significant reforms have not been subject to formal consultation. However, we also recognise

that the Government is keen to implement the package as a priority. Sufficient time before commencement, to allow businesses to prepare for their new obligations, is vital.

The removal of zero hours contracts for all employees

Ahead of consultation and regulations on some of the detail around zero hours contracts provisions for all employees, we make the following comments before answering the specific questions on agency workers.

12% of our survey respondents were concerned about the changes to zero hours contracts, perhaps a reflection that the majority in our industries are not using them. Further, we understand that the Government wishes to tackle exploitative approaches, but we do not believe that our members are using zero hours contracts in such a way.

Anecdotally, many of our members tell us that the use of zero hours contracts for employees and agency workers is suitable for both workers and for employers, with some stating that many workers prefer the flexibility of zero hours contracts and have not opted for guaranteed hours options despite those being available. For these workers, zero hours contracts allow them to work as needed around commitments such as studying, childcare (especially during school holidays) and care for older relatives, which may be unpredictable from week to week. We are also told that they may be preferred by older workers, who may already be taking a pension but who wish to 'stay in touch' with the workplace, and those with intermittent health conditions. For these groups, the ability to turn down all work for certain periods is crucial. In a spring 2021 report by the Chartered Institute of Personnel & Development (CIPD), 46% of employers cited 'to provide flexibility for the individual' as being a reason that their organisation uses zero hours contracts[1].

For businesses, zero-hours contracts can help them provide products and services without the fixed costs of permanent contracts or overtime. They can also help businesses create jobs quickly when demand increases, which is essential for business growth. The CBI/Pertemps Employment Trends Survey 2024 identified that 88% of respondents would be less willing to offer overtime if staff had a right to those extra hours permanently.[2] Businesses should not be in a situation in which they cannot take up growth opportunities because they are concerned about the liabilities created by hiring workers whose hours they cannot guaranteed permanently.

[1] Zero Hours Contracts: Evolution and Current Status, Chartered Institute of Personnel and Development, August 2022
[2] CBI/Pertemps Employment Trends Survey, September 2024

We appreciate that the option to refuse a guaranteed hours contract and to remain on a zero hours contract will be in place. However, making it an obligation to offer, rather than a right to request, may result in some employees feeling obliged to accept. Further, employers should not be subject to an unnecessary administrative burden in calculating, preparing, and repeatedly offering guaranteed hours contracts to individual workers who have no interest in them. Regulations should define that the automatic entitlement to a guaranteed hours contract, initiated by the employer, should not be required on a repeated basis and the method by which informing is done should be discretionary. Employers would still be required to communicate the entitlement to employees but should be able to choose the communication format. This could include communicating the entitlement via email in the first instance, rather than requiring a written contract to be systematically calculated, prepared and offered. Should an employee express an interest, the contract would be drawn up. Another option that would place less burden on businesses would be to allow for employees to opt out of offers of guaranteed hours, electing instead to agree to request a guaranteed hours contract if they want one.

When the Government consults on what constitutes regular hours for employees, and how employers should calculate the guaranteed hours to offer, the specific needs of businesses with highly seasonal demands should be considered. The CIPD report found that the most significant reason cited by employers (64%) for using zero hours contracts was to manage fluctuations in demand[3]. For example, in many print businesses, the months in the run-up to Christmas are especially busy due to customer orders. A 12-week reference period for such businesses is likely to not be appropriate, as it will not be an accurate reflection of the working pattern the employer can reasonably offer during the rest of the year. For these businesses, if there must be a reference period, a six-month reference period would be preferable. However, a reference period of any length could result in an incentive for employers to offer contract lengths that fall short of triggering the right to secure a permanent contract, and this would be a negative unintended consequence in relation to the Bill's aims to boost job security. Within a workplace, it may also lead to workforces on a wide range of different contracts depending on when their reference period has been calculated. Removing the requirement for guaranteed hours contracts to be reflective of working patterns over a specific time period should be considered.

If a12-week reference period is defined in regulation, the clause within the Employment Rights Bill which enables a business to offer a fixed-term contract for the remainder of a high demand period, rather than a permanent contract, will be

[3] Zero Hours Contracts: Evolution and Current Status, Chartered Institute of Personnel and Development, August 2022

vital. Subsequent regulations must be carefully designed to limit concerns from businesses about their ability to use overtime in response to variable demand.

The application of zero hours contracts measures to agency workers

Are you (please select from the following):

- business representative organisation, trade body
- ~~trade union or staff association~~
- ~~think tank or academic~~
- ~~employer~~
- ~~individual~~
- ~~legal representative~~
- ~~other (please specify)~~

The British Printing Industries Federation is the principal business support organisation representing the UK print, printed packaging and graphic communication industry. It is one of the country's leading trade associations.

Its members are approximately 1300 companies operating in the £13.9bn UK printing industry. The industry had a Gross Value Added to the UK economy of £6.5bn in 2022 and productivity gains well above average. It employs almost 100,000 people, receiving £3.8bn in wages annually.

The British Office Services & Supplies Federation is the voice and representative body of the UK's business supplies industry and supports the whole supply chain in a dynamic and expanding sector. BOSS is a long-standing not-for-profit organisation with a leading and strategic role in the promotion and development of the business supplies industry.

Do you think the guaranteed hours should be offered by the employment agency (option 1) or the end hirer (option 2)?

- **option 1, guaranteed hours should be offered by the employment agency**
- **option 2, guaranteed hours should be offered by the end hirer**
- **don't know**

Please explain your answer.

Option 1.

The use of employment agencies can be essential for some businesses, allowing them to remain flexible and agile in the face of changing demand. When using an agency, while the end hirer will dictate the number of hours needed by their business, the work contract exists between the agency and the worker. This reflects the fact that the agency may be able to offer the worker roles generated by more than one end hirer. Therefore, under Option 1, agency workers are likely to be entitled to more guaranteed hours if the agency is required to offer them guaranteed hours which reflect the hours that they have worked for multiple end hirers.

Should Option 2 be taken forward, the issues outlined above in relation to employees and the proposed 12-week reference period would also apply to agency workers. An agency worker who is working for more than one end hirer could become entitled to guaranteed hours from any hirer for which they've worked regularly over a 12-week period. If guaranteed hours must be offered by the end hirer, the benefit of using an agency worker (flexibility in relation to the needs of the business) would be significantly reduced. In some circumstances, employers will be incentivised to offer direct employment (which may be the Government's aim) but they may not always be in a position to do so. In these situations, without being able to use agency workers with no requirement to provide guaranteed hours, businesses may not be able to take opportunities which require a temporary increase in workload.

Should end hirers be required to pay a transfer fee or use an extended hire period if they are required to offer guaranteed hours to an agency worker?

- **yes**
- **no**
- **don't know**

Please explain your answer.

If the end hirer is required to offer the guaranteed hours, they should no longer be required to pay a transfer fee or use an extended hire period. In the current system, transfer fees and extended hire periods exist to provide some financial protection for the agency should an end hirer directly employ an agency worker. However, under Option 2, increased obligations would be placed on the end hirer, fundamentally changing the responsibilities of the two businesses involved and placing a double obligation on the end hirer.

If the responsibility to provide guaranteed hours falls on the end hirer, and this is intended to incentivise direct employment, maintaining the need to pay a transfer fee or use an extended hire period goes against that intention.

Either the agency provides the guaranteed hours – and receives a transfer fee or an extended hire period if a worker is employed – or the end-hirer guarantees the hours and is exempt from transfer fees and extended hire periods.

Do you agree that the responsibility for providing an agency worker with reasonable notice of shifts should rest with both the employment agency and the hirer, so that where a tribunal finds that unreasonable notice was given, it will apportion liability according to the extent that the agency and the hirer are each responsible for the unreasonable notice?

- **yes**
- **no**
- **don't know**

Please explain your answer.

Yes, we agree a Tribunal should apportion liability depending on which party it finds to be responsible. There are two distinct responsibilities to provide notice – a) between the end hirer and the agency and b) between the agency and the worker. How 'reasonable' is defined is a matter for contracts between a) the agency and end hirer and b) the agency and worker.

If a worker is given unreasonable notice, this will be a breach of the contract between agency and worker. However, a Tribunal may of course find that the end hirer was in breach of its contract with the agency, leaving the agency unable to provide adequate notice to the worker through no fault of its own. In this case, it is expected that liability would be apportioned largely, if not wholly, with the end hirer.

In cases in which the end-hirer meets its obligations under the contract it has with an agency to provide what is agreed to be reasonable notice, but there is a delay or error and the worker is not given reasonable notice as defined in their own contract with the agency, that is the responsibility of the agency.

Do you think that legislation should prescribe how the end hirer should notify the agency that they have a shift available and of changes to these and when notification should be deemed to be received?

- **yes**
- **no**
- **don't know**

Please explain your answer.

How notification is made does not need to be specified in legislation, and should remain as it is currently, i.e. laid out in the contract between employment agency and end hirer.

Do you agree that the agency should be responsible for paying any short notice cancellation or curtailment payments to an agency worker?

- **yes**
- **no**
- **don't know**

Please explain your answer.

Yes. If the end hirer has met their obligations to give reasonable notice in the contract previously agreed with the employment agency, then there cannot be any expectation on the end hirer to make payments. Therefore, the agency should be responsible for paying any short notice cancellation or curtailment payment to the agency worker. Again, contracts exist between agencies and workers, and therefore arrangements concerning payments in the above circumstances should be included in the terms of those contracts. As the Employment Rights Bill places an obligation on employers to make a payment to employees when they cancel or curtail shifts at short notice, this protection should be extended to individuals hired by an agency.

If the end hirer has not met its obligations under the contract agreed with the agency, – i.e. has given short notice or cancellation or curtailment that is less than the timeframe agreed in its contract with the agency – it is of course right that a contract dictates that the end hirer will be required to make compensation to the agency. The agency should pass this payment on to the agency workers according to their terms with the worker.

Do you think that the agency should be able to recoup this cost from the end hirer if/to the extent that the end hirer was responsible for the short notice cancellation or curtailment?

- **yes**
- **no**
- **don’t know**

Please explain your answer.

There is no need for legislation to ensure that agencies can recoup costs from end hirers to the extent that the hirer is responsible for the short notice. We agree with the Government that this is **‘**better dealt with by contractual arrangements between businesses.’ If the end hirer is responsible for not providing adequate notice as set out in their contract with the agency, then the end hirer is liable and will need to pay any costs as already determined by the parties’ contract. Again, what is deemed to be considered ‘short notice’ will be defined in the contract and therefore it should not be difficult to determine whether the end-hirer is liable.

Q13: If you think that the agency should be able to recoup this cost from the end hirer, do you think the government should legislate to ensure that the agency can recoup the costs?

- **yes**
- **no**

Please explain your answer.

No. It is unlikely that employment agencies will currently be agreeing contracts with end hirers that leave them financially exposed in such situations. Therefore, it’s unlikely that legislation is required.

Do you think that it should be possible to override legislative provisions allowing agencies to recoup cancellation or curtailment costs through contracts signed after implementation (or that are clearly entered into in contemplation of the commencement of the legislative provisions)?

- **yes**
- **no**

Please explain your answer.

As set out above, we do not believe that legislative provision is needed to allow agencies to recoup cancellation or curtailment costs as we believe this is already handled in the terms and conditions of contracts. If legislative provision is made in

this area, employment agencies which wish to override the legislative provision should be able to do so. While employment agencies will respond to the consultation with their own views, we think it likely that they consider their existing contracts with end hirers to provide sufficient protection.

Contact

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