

WBG submission – Zero Hours Contracts for Agency Workers Consultation

About Us

The UK Women's Budget Group (WBG) is a feminist think tank that provides evidence and capacity building on women's economic position and that proposes policy alternatives for a gender-equal economy. We welcome the opportunity to contribute to this submission and provide evidence for the

Background Questions

Q1: Are you... (please select from the following)

Think tank or academic

Consultation Questions

Part 1

Q5: Do you think the guaranteed hours should be offered by the employment agency (option 1) or the end hirer (option 2)?

We welcome the Government's commitment to extend the rights to guaranteed hours, reasonable notice of shifts, and compensation for cancelled shifts to agency workers, as outlined in the Employment Rights Bill. Without this, many vulnerable workers would remain unprotected from exploitation and one-sided flexibility. Agency workers face lower pay, poorer conditions, and greater insecurity, with a £400 annual pay penalty as identified by the Resolution Foundation. This pay penalty is likely to be worse for agency workers on zero hours contracts, as median hourly pay for ZHC workers is so low.¹

53% of those on zero-hour contracts are women, compared to 48% of people in employment. As of Jan-Mar 2024, ONS data shows that of all people in employment, 3.4% of women are on a zero-hours contract compared to 2.9% of men. This is likely due to their

¹ The government's impact assessment for the right to guaranteed hours includes the following analysis: January – March 2024 LFS data suggests that median hourly pay on zero-hour contracts was £10.75, for variable hour workers (excluding zero-hour contracts) was £11.70 for agency workers £15.38 compared to £16.18 across other forms of work.
https://assets.publishing.service.gov.uk/media/67124fc99cd657734653d7d9/Impact_assessment_zhcs_right_to_guaranteed_hours.pdf

overrepresentation in sectors where zero-hours contracts are often used like adult social care, hospitality and retail².

Lack of certainty regarding hours can have additional consequences for primary carers and parents, and especially for lone parents, 85% of whom are women. Given the significant costs of childcare, cancelling or arranging shifts last minute can leave women losing money by the hour or with no childcare, so the protections outlined in the Employment Rights Bill are vital for providing security and certainty to some of the most vulnerable workers in the UK.

In practice, agency workers are frequently used like zero-hours employees, enabling employers to adapt staffing at short notice. If agency workers are not appropriately included and covered by the new rights and protections, the intended impacts of the Employment Rights Bill will be undermined.

We support the TUCs position that **both agencies and end hirers must share responsibility** for guaranteed hours contracts after 12 weeks, reflecting their joint roles in employment relationships. Agencies must collect and retain relevant information, such as job duration and terms, while end hirers should provide details on pay and conditions. Shared responsibility aligns with existing rights to equal treatment, ensuring compliance and minimising disputes.

It would not be practical to place the legal responsibility to offer the guaranteed hours contract on either the agency or the end hirer only, as these types of contracts require both the agency and the end hirer to work together to ensure that the worker could be offered a guaranteed hours contract at the 12-week mark. Were responsibility to sit with the end hirer *only*, the worker would only have a right to recourse if they were able to identify the liable party, which means that they are reliant on the written statement being accurate, and that is not always the case. Were responsibility to sit with the agency *only*, the worker may be disadvantaged if the agency goes bankrupt and they cannot make a claim on the end hirer, and it would also protect workers in circumstances with create further complexity, such as when a joint employment model is used.

Holding both parties accountable protects workers from delays in compensation or the complexities of identifying who is at fault, especially when umbrella companies or joint employment models are involved. Umbrella companies often obscure employer accountability and deny worker's rights. Clear regulations are needed to ensure transparency and fairness, and the government should act to eliminate the use of umbrella companies by employment agencies.

Q6: 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?

² ONS (2024) People in employment on zero-hours contracts

No, end hirers should not be required to pay a transfer fee or use an extended hire period when offering guaranteed hours to agency workers. Doing so would discourage end hirers from providing guaranteed hours contracts, benefiting only employment agencies, which is not the intended or desired outcome of the policy. Additionally, it might incentivise end hirers to create more placements lasting fewer than 12 weeks, increasing short-term agency work while reducing longer-term roles and temp-to-perm opportunities. This would counteract the policy's goal of improving job security for workers and addressing one-sided flexibility.

Q7: If you think there are other factors specific to agency workers that need to be taken into account in applying the new right to guaranteed hours to them, please explain them here.

As identified by the TUC, there are two main additional complexities that arise in the case of agency workers that should be taken into account in the design of the application of this policy.

Anti-avoidance measures: as recognised in the Agency Worker Regulations 2010, a loophole could arise in the calculation of the 12-week qualification period if agencies and end hirers are allowed to structure assignments so that the same worker can undertake multiple successive work placements (each lasting fewer than 12 weeks) with the same hirer. Anti-avoidance measures should be in place for the right to guaranteed hours as already exist for the right to equal treatment, so that there are no loopholes in the calculation of the 12-week reference period.

Additional complexity of the worker/employer relationship: agency workers typically have a more complex relationship with their employer, as it includes the agency, the end hirer and potentially an umbrella company or similar organisation. They have separate employment rights compared to the general workforce, often making it harder to understand what they are entitled to and who is responsible for providing this.

Part 2

Q8: 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, we strongly agree that both the agency and end hirer should share responsibility, with a tribunal determining how to allocate liability. This approach encourages both parties to maintain proper records related to reasonable notice. It also relieves workers from the burden of identifying the responsible party when filing a tribunal complaint, which is often an issue. Additionally, it would also reduce delays in workers receiving compensation, as complaints would involve both the agency and end hirer.

Q9: 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. This would simplify the process and make it easier to identify non-compliance, ensuring the rights of agency workers are better protected.

Q10: If you think there are other factors specific to agency workers that need to be taken into account in applying the new right to reasonable notice of shifts to them, please explain them here.

As expressed throughout our response, the complexity of agency workers' employment circumstances means that rights and processes should be stipulated as clearly and robustly as possible so that as many agency workers as possible can benefit from this reform. Given the additional barriers faced by women who have caring responsibilities and their overrepresentation in zero-hours agency contracts, ensuring complexities are addressed and rights thoroughly protected is an imperative too for gender equality.

Q11: Do you agree that the agency should be responsible for paying any short notice cancellation or curtailment payments to an agency worker?

Yes, and payment should be made in the same way, including the method and timeframe, as for shifts that are not cancelled or curtailed. The purpose of this right is to compensate for income loss due to cancelled or shortened shifts, ensuring workers are not left without expected earnings. This approach supports the policy goal of enabling workers to better plan their lives with greater income stability.

Q12: 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?

This should be decided between agency and end hirer, but should not in any case result in delay in payment to the worker.

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?

This should be decided between agency and end hirer, legislation should set out that this cannot be justification for delaying payment to the employee or worker.

Q14: Do you think that it should be possible to override legislative provisions allowing agencies to recoup cancellation/curtailment costs through contracts signed after

implementation (or that are clearly entered into in contemplation of the commencement of the legislative provisions)?

No, this could lead to less transparent arrangements between agencies and end hirers, complicating tribunal proceedings if a worker files a complaint. It may also make it harder for tribunals to assign fault, increasing the risk that workers would not receive compensation. For these reasons, we oppose any provision allowing agencies or end hirers to override legislative requirements.

Q15: If you think there are other factors specific to agency workers that need to be taken into account in applying the new right to payment for short notice cancellation or curtailment to them, please explain them here.

As expressed throughout our response, the complexity of agency workers' employment circumstances means that rights and processes should be stipulated as clearly and robustly as possible so that as many agency workers as possible can benefit from this reform.

UK Women's Budget Group, November 2024

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