



UK Government

Government Response to:

Consultation on the application of zero hours contracts measures to agency workers

Making Work Pay

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Introduction

1. The Government is committed to boosting the growth of the UK economy, a strong package of workers' rights and protections for people goes hand in hand with a strong economy. The Government recognises the important role that a strong and vibrant recruitment sector plays in this, with temporary agency work estimated to be worth £34 billion a year to the UK economy¹. The recruitment sector supports essential services in both the public and private sector and is already subject to regulation under the Agency Workers Regulations 2010, and state enforcement by the Employment Agency Standards Inspectorate of the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.
2. The *Plan to Make Work Pay* sets out an ambitious agenda to ensure employment rights are fit for a modern economy, empower working people and contribute to economic growth. The *Plan* will end one-sided flexibility, ensuring that workers no longer bear all the financial risks associated with changing demand and that jobs provide a baseline of security and predictability so workers can better plan their lives and finances. The Government wants to see an employment market in which people looking for work on casual terms can find it, while others have the certainty of hours and income that they need without facing the threat of being arbitrarily dismissed or 'zeroed down'. That would represent a shift from the dynamics in today's economy but need not be a threat to reputable businesses.
3. The Government believes that every worker should be able to access a contract which reflects hours they regularly work. This should extend to agency workers to offer them certainty of hours and security of income but to also ensure that agency work does not become a loophole in the plans to end exploitative zero hours contracts. For these reasons the Government is amending the Employment Rights Bill so that it would allow the Government to implement agency workers' right to a guaranteed hours contract. The same applies to the rights to reasonable notice of shifts and to proportionate payment when shifts are cancelled, curtailed or moved at short notice.
4. The Government also understands the need to apply zero hours contracts measures to agency workers differently, because of both the generally temporary nature of agency work and the tripartite relationship between the agency worker, the temporary work agency, and the end hirer. The Government's priority is to design solutions that work, addressing one-sided flexibility and providing agency workers with greater security, while also retaining necessary flexibility for employers in how they manage their workforces.
5. The extensive engagement the Government has had with agencies, hirers and trade unions has confirmed the wide range of written responses to the consultation, where there was no consensus in response to some of the questions. (The questions asked in the consultation can be found at Annex A.) Whilst responses to several questions were split, one thing which was clear was the need for as much clarity as possible for hirers, agencies and agency workers now. The Government will continue to work closely with

¹ <https://www.rec.uk.com/our-view/research/recruitment-and-industry-status-report/uk-recruitment-industry-status-report-202324?modal=>

hirers, agencies and agency workers on the detail of secondary legislation as it is developed.

6. The Government has brought forward amendments to narrow the very broad power currently in the Employment Rights Bill, and expand on the provisions so that hirers, agencies and agency workers are clear where responsibilities will rest in relation to the new rights. The amendments to the Bill that have been tabled provide that clarity, in line with the results of the consultation. (A summary of the questions and next steps can be seen in Table one below.)
7. Under the Government's amendments to the Employment Rights Bill, many of the key parameters underpinning the new rights will be set in regulations. The Government will consult on the regulations and will take the necessary time to develop these detailed provisions. By continuing to engage with employer organisations, the recruitment sector and trade unions the Government intends to identify the best way to achieve the policy objective of extending rights for agency workers without causing unintended consequences to employment agencies and hirers. This includes how best to implement the powers in the Bill to apply the measures to agency workers, alongside other policy levers.
8. The Government remains committed to ending one-sided flexibility for all workers, including agency workers, as part of our Plan to Make Work Pay. We will continue to engage broadly to ensure the right approach is taken when applying this policy to agency workers.

Table one – summary of questions and next steps

Proposal	Next steps
Which party has the obligation to offer guaranteed hours?	The Government has tabled amendments to the Employment Rights Bill, clarifying that where a qualifying agency worker is entitled to a guaranteed hours offer, it will be the responsibility of the end hirer to make that offer. The amendments also include a provision that regulations could place obligations on agencies/other entities instead, in certain scenarios.
Following a guaranteed hours offer, should end hirers be required to pay a transfer fee or use an extended hire period?	The Government is not proposing any changes to the current system of transfer fees or extended hirer periods.
Should both the agency and end hirer have responsibility for providing agency workers with reasonable notice of shifts?	The Government has tabled amendments to the Employment Rights Bill placing the responsibility for providing a qualifying agency worker with reasonable notice of shifts on both the employment agency and the end hirer .
Should legislation prescribe how the agency should be notified of an available shift (and any changes to these) by the end hirer?	The Government will not be prescribing in legislation how agencies should be notified of available shifts (and of any changes to these) by end hirers.
Should the agency be responsible for paying any short notice cancellation or curtailment payments to an agency worker?	The Government has tabled amendments to the Employment Rights Bill, placing the responsibility to pay any short notice cancellation or curtailment payments to agency workers on employment agencies .
Should the agency be able to recoup the cost of short notice cancellation or curtailment payments and should this be in legislation?	The Government has tabled amendments to the Employment Rights Bill, which would give a right to agencies to recoup the cost of any short notice cancellation, movement or curtailment payments where they have pre-existing arrangements with hirers.
Should contractual agreements be able to override the legislative provisions allowing agencies to recoup any cancellation or curtailment costs?	The Government has tabled an amendment to the Employment Rights Bill which is designed so as to allow later arrangements to determine whether short notice cancellation, movement or curtailment payments can be recouped from the hirer or not.

Conducting the Consultation

9. The consultation ran from the 21st October 2024 to 2nd December 2024 (6 weeks) and received 629 written responses. Not everyone responded to all questions, with some respondents focusing on certain elements of the zero hours contracts measures.
10. Responses were received from a wide range of stakeholders including employers, business representative organisations, trade unions, think tanks, academics, legal representatives and individuals (detail in Table two, below). Further detailed breakdowns can be found at Annex B.

Table two – Breakdown of responses

Stakeholder	Number of responses
Employer	297
Individual	106
Business representative organisation or trade body	98
Trade union or staff association	38
Think tank or academic	16
Legal representative	15
Other	59
Total	629

11. Further engagement took place in roundtables during the consultation process with a range of organisations, including businesses, business representatives and trade unions. The outputs of these roundtables have been considered in the policy development, but this summary focuses on written submissions (via the online form and email).

Summary of Responses

The offer of guaranteed hours

Q.5 Do you think the guaranteed hours should be offered by the employment agency (option 1) or the end hirer (option 2)?

12. We received 427 responses to this question, with responses evenly split between the employment agency (30%), the end hirer (31%) and “Don’t know” (32%). (A further 7% wrote in to suggest neither option would be their preference.)
13. Views from different groups were similarly split. For most groups, including business representative organisations or trade bodies; trade unions or staff associations; employers; individuals; think tanks or academics; and respondents who did not provide enough information to identify them (who will be referred to as “other” throughout), a similar proportion answered each of agency, end hirer, and don’t know. However, for legal representatives, there was a clear majority for “Don’t know” (78%). When responses from employers and individuals are broken down further, 57% of end hirers felt it should be with the agency, with 44% of agencies believing the offer should come from end hirers.
14. Business representative organisations and trade bodies and end hirers of agency workers highlighted that many agency workers work for several end hirers, so agencies would be able to use several end hirers to make up the guaranteed hours offer. However, a number of end hirers of agency workers did recognise that if this model was adopted, it would likely increase the costs of running an employment agency because agencies might have to guarantee and pay hours for which they could not secure work from end hirers.
15. A similar proportion of respondents felt that end hirers should be responsible for providing agency workers with a guaranteed hours offer. Employment agencies pointed out that end hirers have a better understanding of work demand and agencies have little to no control of the hours available.
16. Many did not feel either option was satisfactory, with a number of employers and business representative organisations arguing that agency workers should be exempt from the measures. A significant number of trade unions and staff associations proposed that the burden should be shared between the agency and the end hirer. Many agreed that the end hirer would best placed to guarantee the hours, but since agency workers often worked for several end hirers, they proposed a joint arrangement of agencies working with end hirers to provide a guaranteed hours contract.

Government response

17. The Government believes that every qualifying worker should be entitled to a contract which reflects hours they regularly work, and that this should extend to agency workers too. Agency workers can be at the receiving end of one-sided flexibility, and it is also

important not to create an incentive for employers to move to an agency model to evade the new rights.

18. So the Government has tabled amendments to the Employment Rights Bill which would allow the implementation of an obligation on end hirers to offer guaranteed hours to qualifying workers.
19. On balance, the Government believes that placing the obligation on the end hirer is appropriate as end hirers are best placed to forecast and manage the flow of future work. In line with the zero hours contracts measures already included in the Employment Rights Bill, where work is genuinely temporary, employers / hirers will be able to offer temporary contracts.
20. Several stakeholders put forward proposals seeking to have joint liability for a guaranteed hours offer by both the employment agency and end hirer. The Government appreciates this suggestion but believes it would add further complexity for all parties.
21. The Government also appreciates the feedback from stakeholders highlighting the practicality of agency work in different sectors for workers, employment agencies and end hirers. The legislation will maintain flexibility to cater for different circumstances by exception by placing the obligation on the end hirer as a default, whilst allowing flexibility to place the obligation on agencies or other entities instead, in certain scenarios. Regardless of where the obligation to offer guaranteed hours to eligible workers is placed, any agency or end hirer will retain the ability to offer guaranteed hours to an agency worker if they wish to. The Government acknowledges that there may be scenarios where agencies or other entities could provide an offer of guaranteed hours above the hours threshold to be set in regulations before the end of the reference period. In these situations, agency workers will have the security of hours and income that this measure seeks to provide, and as a result, will not be in scope of this new right.
22. The Employment Rights Bill, as is common with employment legislation, provides a policy framework, with further detail of how the measures will work in practice implemented via secondary legislation. The Government is committed to working in partnership with businesses, trade unions and other stakeholders to deliver the plan to Make Work Pay and we will consult on the more technical aspects of these measures which will be set out in secondary legislation. Through this engagement the Government will identify how best to achieve the objective of extending rights for agency workers without causing unintended consequences to employment agencies and hirers. In addition to consulting, the Government will develop guidance to assist workers, agencies and hirers with understanding these new rights before they come into force.

Q.6 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?

23. We received 394 responses to this question; respondents were evenly split between “No” (38%) and “Yes” (35%). 27% answered “Don’t know” and 1% of respondents selected neither option.
24. Views from different groups were similarly split. Business representative organisations or trade bodies’ most common responses were “Don’t know” (47%) and “No” (35%); employers were marginally more in favour of “Yes” (40%) closely followed by “No” (38%); think tanks or academics were evenly split on “No” and “Don’t know” (38%); and slightly more individuals selected “No” (41%) compared with “Yes” (37%). For the remaining groups, views were more consistent, with trade unions or staff associations’ most common responses being “No” (63%); legal representatives’ most commonly responded “Don’t know” (78%); and for “other”, the most common response was “Yes” (50%). When broken down further, a sizeable majority (64%) of end hirers felt they should not be required to pay a transfer fee or use an extended hire period, with a significant majority (72%) of agencies believing that hirers should be required to pay a transfer fee or use an extended hirer period.
25. Both end hirers of agency workers and business representative organisations that answered “No” believed that introducing a requirement to offer guaranteed hours and maintaining a transfer fee on top of this would be a double burden on end hirers. Trade unions or staff associations raised concerns that if fees were kept, some end hirers would seek to avoid their obligations and engage agency workers under very short-term arrangements (less than 12 weeks).
26. Many who answered “Yes”, including employment agencies, highlighted that removing fees would damage the viability of employment agencies going forward due to the costs incurred when recruiting a worker into the agency.

Government response

27. Provisions for transfer fees and extended hire periods are set out in The Conduct of Employment Agencies and Employment Businesses Regulations 2003. The Government recognises these provisions are well-established and can be an important source of income for employment agencies.
28. In view of the responses to consultation, the Government is not proposing any changes to the current system of transfer fees or extended hire periods. The Government believes that agencies should continue to be allowed to include transfer fees or extended hire periods in contractual agreements with end hirers, as they now are, including in future situations where an agency worker accepts a guaranteed hours offer from an end hirer.

Q.7 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 here.

29. Many respondents across the different groups, including agency workers, used this question to highlight the positive nature of agency work and the fact that in many scenarios it is a choice that workers make, as they value the flexibility it provides, and any legislation will need to ensure this flexibility is maintained.
30. Others also referenced the complexity of the agency worker relationship, with many agency workers working across multiple agencies, as well as those who work for multiple end hirers through a single agency.
31. Employers raised sector-specific concerns about the application of these measures, most commonly highlighting how seasonal work would be affected by the obligation to provide agency workers with a guaranteed hours offer.

Government response

32. The Government is grateful for the additional information that respondents provided. As with the zero hours contracts measures already set out in the Employment Rights Bill, the Government is not seeking to ban all zero hours contracts or, by extension, outlaw agency work. The Government recognises that these kinds of working arrangements work well for some individuals, including some students and people with caring responsibilities. Any workers who are offered guaranteed hours will be able to turn the offer down and remain on their pre-existing working arrangement if they wish.
33. In response to concerns about seasonal or temporary work, the Government understands that some work is genuinely temporary, so it would not be appropriate to require businesses to provide qualifying workers with a permanent contract. As with the measures for directly engaged workers, businesses will be able to offer temporary contracts where there is a genuine temporary work need. The Government will consult before setting out further detail about what constitutes a temporary need in regulations. The Government is also keen to discuss other ways in which it believes the legislation can cater for seasonal work.

Reasonable notice of shifts

Q.8 Do you agree that 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?

34. We received 372 responses to this question. Respondents were relatively evenly split between “Yes” (40%) and “No” (35%). 23% answered “Don’t know”, while 1% selected none of these options.
35. “Yes” was the most common response from business representative organisations or trade bodies (36%); trade unions or staff associations (43%); think tanks or academics (67%); and individuals (55%). For employers, the most common response was “No”

(44%) and for legal representatives (71%) and the “other” group (44%), the most common response was “Don’t know”. When broken down further, end hirers were split between “Yes” and “No” with 42% and 40% respectively, with most agencies (57%) responding “No”.

36. Of those who responded “Yes”, many felt that joint liability was necessary as ultimately either party could provide unreasonable notice. A large proportion who answered “Yes” also felt that having joint liability between the employment agency and the end hirer would support a more effective working relationship between the parties and help to encourage better workforce planning.
37. There was a significant difference of opinion from those who responded “No”. Many felt that as end hirers are most commonly responsible for making any changes to shifts, the primary responsibility should sit with them. A smaller number of respondents, including some trade unions and end hirers of agency workers proposed that agencies should have a greater responsibility, as agency workers are contracted to the agency and it is the agency that has an ongoing relationship with the worker. Many who answered “No” felt that this should be a matter for contractual terms between the end hirer and agency.
38. A number of respondents highlighted that short notice is inherent to agency work and questioned how these measures could be implemented.

Government response

39. As some respondents highlighted, the concept of joint liability in relation to a breach of agency workers’ rights is already set out in the Agency Workers Regulations 2010, so it is a concept that employment agencies and end hirers of agency workers will be familiar with.
40. The Government is committed to addressing one-sided flexibility, and believes that it is important for this to extend to agency workers as well. An additional factor is the need to avoid incentives for employers to move to an agency model to evade the new rights.
41. So the Government has tabled amendments to the Employment Rights Bill which would allow Government to place responsibility on both the employment agency and the end hirer for providing an agency worker with reasonable notice of shifts. As respondents highlighted, either party might be responsible in practice for providing unreasonable notice of shifts to an agency worker, so we want to ensure a tribunal can appropriately apportion liability in these circumstances based on responsibility of each party.
42. The Government acknowledges that in some scenarios, short notice can be reasonable. Significant aspects of this right will be determined in secondary legislation. The Government is committed to consulting on these regulations, and will continue to work in partnership with businesses, trade unions and other stakeholders to identify how best to achieve the objective of ensuring that agency workers receive reasonable

notice of shifts without causing unintended consequences to employment agencies and hirers.

43. The Government also intends to provide more detailed guidance about the application of zero hours measures to agency workers before the measures come into force.

Q.9 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 notifications should be deemed to be received?

44. We received 359 responses to this question. The most common response was “No” (47%), with a sizeable minority (28%) answering “Yes” and a further 25% of respondents selecting “Don’t know”.

45. Again, views were split between groups. Most business representative organisations or trade bodies (49%) and employers (57%) did not believe legislation should prescribe how an end hirer should notify an agency of shifts and of any changes to these. The most common response was “Yes” among trade unions or staff associations (54%), individuals (42%) and “other” (39%), with a view that legislation was necessary. “Don’t know” was the most common response among think tanks or academics (80%) and legal representatives (57%). A majority of end hirers (57%) and employment agencies (56%) did not think legislation should prescribe how the end hirer should notify an agency of shifts and of any changes to these.

46. Among end hirers of agency workers and employment agencies, many did not believe it was necessary to prescribe in legislation how notifications are given and received. Both highlighted that notification of shifts and any changes to these will often be sector specific and would best be dealt with through contractual agreements between agencies and end hirers. Some respondents believed that setting narrow parameters could constrain current ways of working that work well for many agencies and end hirers.

47. Many who felt that legislation should prescribe how end hirers should notify agencies of available shifts and of any changes to these did not provide additional comments. However, a number of responses from employment agencies and end hirers highlighted that legislating on this would ensure clear rules and consistency to avoid bad practices and provide clarity and accountability. Several trade unions or staff associations also highlighted that having clear guidelines on when notification had been given would make it easier to identify which party was liable for having provided unreasonable notice.

Government response

48. The Government recognises the need for flexibility and does not want to create unnecessary burdens for end hirers and employment agencies, especially where existing ways of working work well for all parties.

49. Given the clear preference from respondents, the Government will not seek to prescribe in legislation how end hirers should notify employment agencies of available shifts or changes to these shifts. Further guidance on the zero hours contracts measures will be provided before they come into force.
50. However, the Government believes that similarly to directly engaged workers, it is appropriate to specify how an agency worker themselves should receive notice of shifts, and of any changes to these. To ensure clarity and a baseline for agency workers, the Government has tabled an amendment to the Employment Rights Bill, giving the Secretary of State the power to prescribe in regulations the form and manner in which an agency worker should receive notice of shifts and any cancellations, curtailments or movements to these. This will not apply to notifications between the hirer and the agency, however.

Q.10 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.

51. The majority of respondents did not provide additional comments. Of those who did respond to this question, the most common theme which was highlighted by agency workers, end hirers of agency workers and employment agencies was that agency work is inherently unpredictable and requires flexibility to cover short notice shifts (such as last-minute illness).

Government response

52. The Government understands that what is considered “reasonable notice” will depend on the circumstances and is case-specific. The Government acknowledges a wide range of factors can impact whether notice was in fact reasonable. To this end, the Government will set the parameters in secondary legislation to guide tribunals. The Government will continue to engage with agencies, end hirers and trade unions to identify the best way to achieve the policy objective of extending rights for agency workers without causing unintended consequences to employment agencies and hirers.
53. As referenced in the response to Q.8, the Government intends to publish guidance before the zero hours measures come into force.

Short notice cancellation and curtailment of shifts

Q.11 Do you agree that the agency should be responsible for paying any short notice cancellation or curtailment payments to an agency worker?

54. We received 351 responses to this question, with the most common response being “Yes” (45%) and a sizeable proportion (34%) answering “No”. 22% of respondents answered “Don’t know”.

55. Views were more consistent across groups, with a majority of most groups agreeing that the agency should be responsible for paying any short notice cancellation or curtailment payments to agency workers. The exceptions were that among employers, 43% answered “No” and 41% “Yes”, and among legal representatives 57% answered “Don’t know”. A majority (51%) of end hirers agreed the agency should be responsible for the payment, whereas 55% of employment agencies disagreed and did not believe the agency should be responsible for the payment.
56. Of those who answered “Yes” and provided further comments, a number of business representative organisations or trade bodies and end hirers of agency workers noted that as agency workers are directly engaged by the agency, the most logical option is for the agency to administer any short notice cancellation or curtailment payments.
57. Respondents who answered “No” felt the end hirer should be responsible for any short notice cancellation or curtailment payments to agency workers, as end hirers are usually responsible in practice for any curtailment or cancellation.
58. The vast majority of respondents who provided additional comments including those who answered “Yes” and “No”, agreed that the agency would be in the best position to manage/administer payment to the worker, mainly due to the fact the worker would already be on the agency’s payroll, so this would avoid confusion for the worker. Many used this question to provide views on whether agencies should be able to recoup the costs for any short notice cancellation or curtailment payment: these views will be covered in more detail in the summary of Q.12.

Government response

59. The Government is committed to addressing one-sided flexibility, one aspect of which is to avoid all of the financial risk of short notice shift cancellations falling on workers. The Government believes that it is important to address this issue for agency workers as well, and would not want to create incentives for employers to move to an agency model to evade the new rights.
60. So the Government has tabled amendments to the Employment Rights Bill, which would allow responsibility to be placed on employment agencies to pay short notice cancellation or curtailment payments to eligible agency workers.
61. The Government believes that requiring the agency to make the payment would be the most efficient option. As many respondents highlighted, even those answering “no”, the worker will already be on the agency’s payroll – so this approach will help to avoid delays in the worker receiving payment, or unnecessary administration for end hirers to enable them to make payments to agency workers directly.
62. Significant aspects of the right to payments for short notice cancellation, curtailment and movement of shifts will be determined in secondary legislation. The Government is committed to consulting on these regulations, and will continue to work in partnership with businesses, trade unions and other stakeholders to identify how best to extend this

right to agency workers without causing unintended consequences to employment agencies and hirers.

Q.12 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?

63. We received 351 responses to this question. A majority (61%) answered “Yes” with “Don’t know” (24%) the second most common response, and a further 14% answering “No”.
64. The most common response for all groups, with the exception of think tanks or academics (60% “Don’t know”) and legal representatives (57% “Don’t know”), was that agencies should be able to recoup short notice cancellation and curtailment payments if the end hirer was responsible. A majority of end hirers (52%) and employment agencies (82%) believed that agencies should be able to recoup these costs.
65. Of the group who answered “Yes”, many, including end hirers of agency workers, felt that if agencies were responsible for administering the payment then they should be able to recoup payments from the end hirer in scenarios where short notice was the end hirer’s responsibility. Several respondents, including employment agencies and trade union or staff associations, provided further context, highlighting that cancellations and curtailments are most commonly instigated by the end hirer and if agencies were not able to recoup these costs, there would be no incentive for the end hirer to provide reasonable notice.
66. Very few of the respondents answering “No” or “Don’t know” provided additional comments. Of those who did, a number highlighted the nuance of scenarios where shifts are cancelled, curtailed or moved by an end hirer which can often be out of the end hirer’s control.

Q.13 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?

67. We received 351 responses to this question. In contrast to Q.12, respondents were more split on whether legislation was necessary. 45% answered “Yes” and 29% answered “No”. A further 26% responded “Don’t Know”.
68. Views varied between groups. The most common response for business representative organisations or trade bodies (42%); trade unions or staff associations (58%) and think tanks or academics (60%) was “Don’t know”. 43% of legal representatives responded “Don’t know” and another 43% responded “No”. The most common response among employers (54%) and individuals (45%) was that legislation was necessary. Looking at further breakdowns, a majority of end hirers (51%) felt legislation was not necessary, while a majority of employment agencies (74%) believed legislation was necessary.

69. Many who provided additional comments argued that legislation was necessary to protect agencies and that it would provide more transparency and certainty to all parties.

70. A number of employment agencies and end hirers of agency workers who felt the Government did not need to legislate argued that agreements on recouping cancellation or curtailment payments should be dealt with by contractual agreements between the agency and end hirer.

71. Generally, respondents were keen for any regulations to be as prescriptive as possible.

Q.14 Do you think 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)?

72. We received 351 responses to this question. The most common response was “No” (39%), closely followed by “Don’t know” (37%), and a further 24% of respondents answered “Yes”.

73. Views were split between the different groups for this question. The most common response for business representative organisations or trade bodies (47%); think tanks or academics (80%); and legal representatives (71%) was “Don’t know”. The most common response for trade unions or staff associations (54%); employers (40%); and individuals (43%) was “No”. End hirers were more united in their responses with “No” as the most common response (46%). Employment agencies were more split: 39% answered “No”, 30% answered “Yes” and the remaining 31% answered “Don’t know”.

74. Those who answered “No” feared that an ability to override legislation could be exploited, especially by larger businesses when working with small employment agencies. A significant proportion, including end hirers of agency workers, highlighted that an ability to override legislative provisions could undermine the legislation and create further confusion for all parties.

75. Very few respondents who answered “Don’t know” provided additional comments. Of those who did, a high proportion stated they did not understand the question.

76. Most respondents who answered “Yes” did not provide additional comments. Of those who did provide further comments, many felt there should be an ability to override legislative provisions, arguing that it was necessary to ensure operational flexibility.

Government response

77. The Government notes the concerns raised in response to questions 12 and 13 that employment agencies should not be required to bear the costs for any cancellation, curtailment or movement of shifts made at short notice by end hirers.

78. At the same time, having reviewed the range of responses to question 14, the Government recognises the importance of businesses retaining the flexibility they need to make contractual decisions about how they manage the cost of payments for short notice cancellation, curtailment or movement of shifts.
79. The Government considers that employment agencies and hirers will be able to negotiate between them whether to allow for the recovery of short notice payments.
80. Nonetheless, the Government appreciates that some arrangements between employment agencies and hirers may still exist when the requirement for employment agencies to cover the cost of short notice payments comes into force. Such arrangements may not include any mechanism for the employment agency to be able to recover short notice payments from hirers, and employment agencies may not have agreed to enter into such arrangements had they known that they would be required to make those payments.
81. So the Government has tabled amendments to the Employment Rights Bill to enable employment agencies to recover from the hirer the proportion of payments made to agency workers for short notice cancellations, movements or curtailments that reflects the hirer's responsibility for cancelling, moving or curtailing the shift at short notice.
82. However, this provision will only apply where the arrangement between the employment agency and the hirer was entered into before a date two months after the Employment Rights Bill is passed ('Royal Assent') and where it has not been modified by them since.
83. The Government considers this the right approach to ensure flexibility for businesses to contract as they consider appropriate, whilst protecting employment agencies in existing arrangements from being liable to make payments that they were not responsible for incurring and having no way to recover the costs of these. By two months after Royal Assent, employment agencies should be aware that they can expect to be required to make payments for short notice cancellations, movements and curtailments (although the duty to pay will not come into force at that point). So from that point they will be able to enter into and modify their arrangements with hirers to enable recovery of these costs if they consider appropriate.

Q.15 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.

84. Many respondents provided additional comments in response to this question. A number of respondents highlighted concerns about the measures as a whole, sector-specific concerns and the knock-on impacts on agencies, including increased costs.
85. A significant number of respondents highlighted the need for the zero hours contracts measures to be applicable to agency workers, to ensure fairer treatment of these workers.

Government response

86. The Government recognises the concerns raised by many of the respondents. The Government is keen to continue the positive working relationship that it has had with stakeholders to date, in shaping the regulations that will underpin the zero hours contracts measures in the Employment Rights Bill.

Next Steps

87. The Government would like to thank all of the respondents who took the time to share their views and advice on the issues raised in this consultation.
88. The Government has tabled a number of amendments to the Employment Rights Bill for House of Commons Report stage, which set out the framework for the application of zero hours contract measures to agency workers. The Government will continue to work closely with stakeholders to identify the best way to extend rights to agency workers without causing unintended consequences to employment agencies and hirers. This includes how best to implement the framework in the amendments, through regulations, alongside other policy levers. The Government intends to consult further in due course.

Annex A – Questions asked in the consultation

Q.1 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)

Q.2 If you are an employer or individual, what is your role or the role of the organisation that you work for (please select from the following)?

- End hirer of Agency Workers
- Employment Agency
- Umbrella Company
- Agency Worker
- Other (please specify)

Q.3 If you are an employer or individual, what type of organisation (do you work for) (please select from the following)?

- Private sector organisation
- Public sector
- Charity/voluntary sector
- Other (please specify)

Q.4 If you are an agency, an umbrella company or an end hirer of agency workers, how would you describe the size of your entire organisation?

- Micro (1-9 workers)
- Small (10-49 workers)
- Medium (50-99 workers)
- Large (100-249 workers)
- Very large (250+ workers)

Q.5 Do you think guaranteed hours should be offered by the employment agency (option 1) or the end hirer (option 2)?

Q.6 Should the end hirer 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?

Q.7 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.

Q.8 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 unreasonable notice?

Q.9 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?

Q.10 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 here.

Q.11 Do you agree that the agency should be responsible for paying any short notice cancellation or curtailment payments to an agency worker?

Q.12 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?

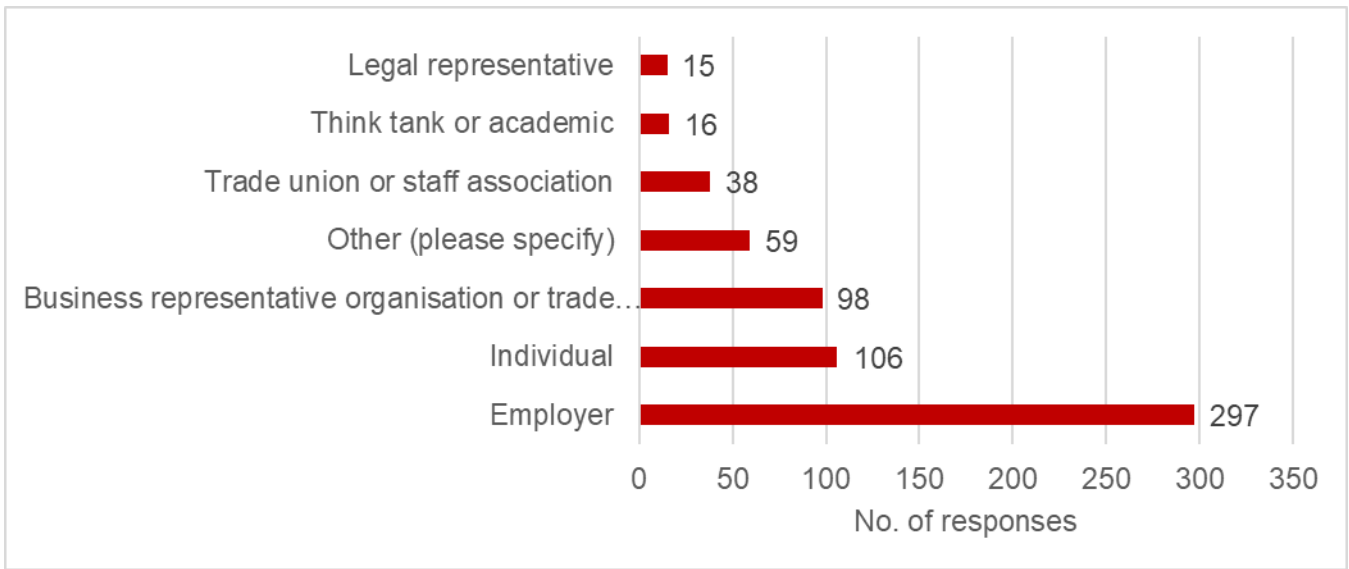
Q.13 If you think that the agency should be able to recoup this cost from the end hirer, do you think the Government should legislate to ensure that the agency can recoup the costs?

Q.14 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)?

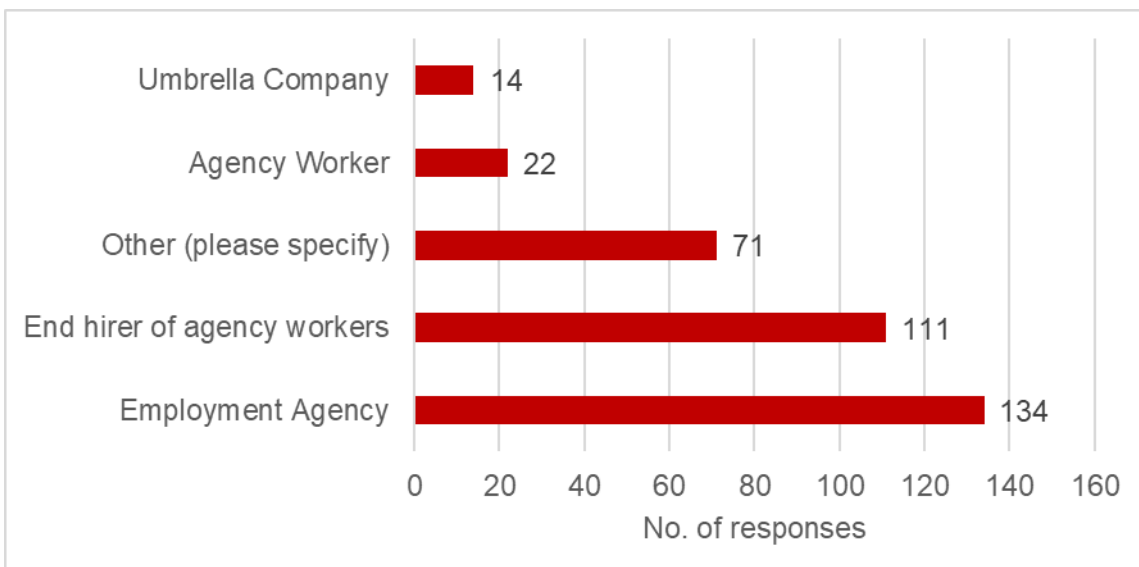
Q.15 If you think there are other factors specific to agency workers that need to be taken into account in applying the new right to payment for short notice cancellation or curtailment to them, please explain them here.

Annex B – Consultation responses by stakeholder category

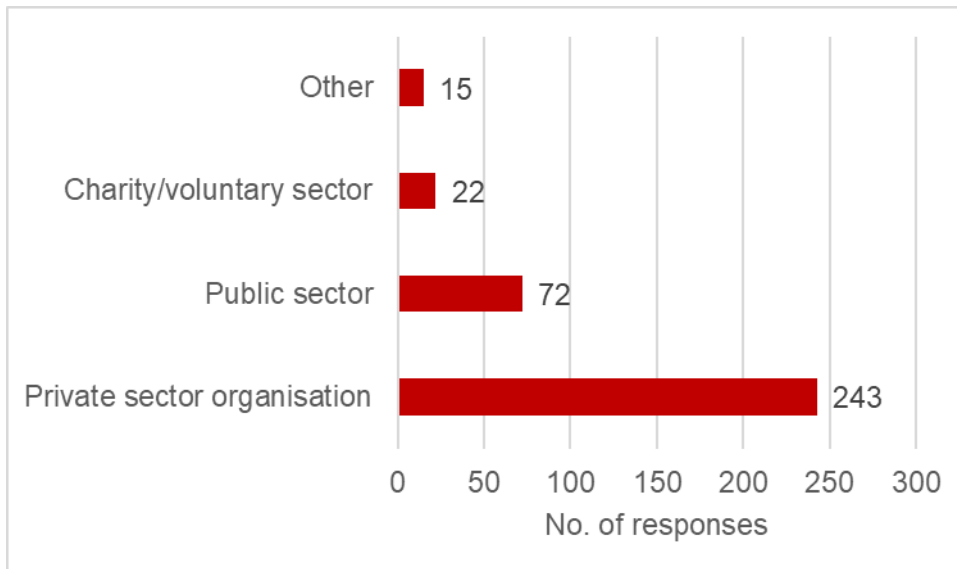
Question 1: Are you responding as (please select from the following):



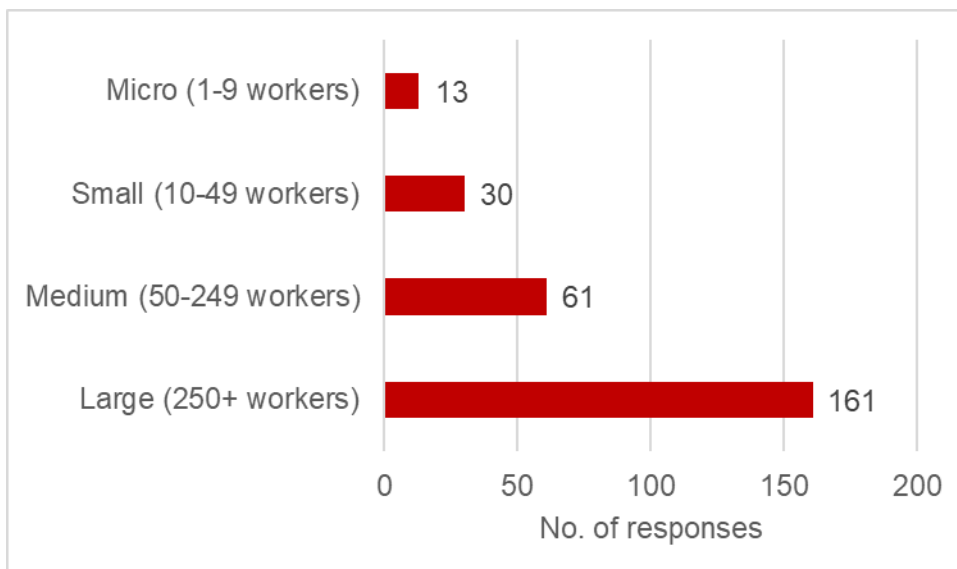
Question 2: If you are an employer or individual, what is your role or the role of the organisation that you work for (please select from the following):



Question 3: If you are an employer or individual, what type of organisation (do you work for) (please select from the following):



Question 4: If you are an agency, an umbrella company or an end hirer of agency workers, how would you describe the size of your entire organisation?



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