

# Consultation of zero-hours contract measures to agency workers

## General points

The Government's ambition to ensure that wherever possible flexibility works for both workers and business is one that the CIPD supports. Where workers are satisfied with their working hours and patterns, they are more likely to be satisfied with their jobs and to be more engaged in their work and more committed to their organisation. However, it is also crucial that employers are able to engage atypical workers, including temporary and agency workers, to provide flexibility in responding to variations in demand for goods and services. It is in employers' interest to get this balance right.

## Zero-hours contracts

The CIPD published a number of research reports since 2013 exploring how employers use zero-hours contracts as well as on the experience and job quality of workers using these arrangements. Our most recent research highlights<sup>1</sup> that overall, zero-hours contract workers are as satisfied with their jobs as other workers. Used in the right way zero-hours contracts can provide valuable flexibility for businesses and provide jobs that help people to effectively balance work and other responsibilities and challenges they may be facing, for example studying or unpredictable caring responsibilities. Zero-hour contracts can enable people to work if they have fluctuating health conditions which vary from week to week or even day to day, supporting efforts to boost labour market participation.

Our research also shows the downsides for some workers of zero-hours contracts arrangement. About half of organisations provide no compensation to zero-hours workers if they cancel shifts at very short notice. In addition, a significant minority of employers of zero-hours workers appear to be putting pressure on them to accept work when it is offered.

## Agency workers

Many agency workers will be on zero-hours contract arrangements because of the nature of the work they do as part of the UK's temporary workforce. It should be noted that the UK has a low proportion of people in temporary employment and a low proportion of people in temporary employment that say they want a permanent role by international standards<sup>2</sup>, suggesting most people working in this way are doing so out of choice.

Overall, people in temporary employment and on zero-hours contracts have comparable job satisfaction to those in similar jobs who are working in more standard permanent forms of employment, according to analysis of the CIPD's annual Good Work Index. See Figure below.

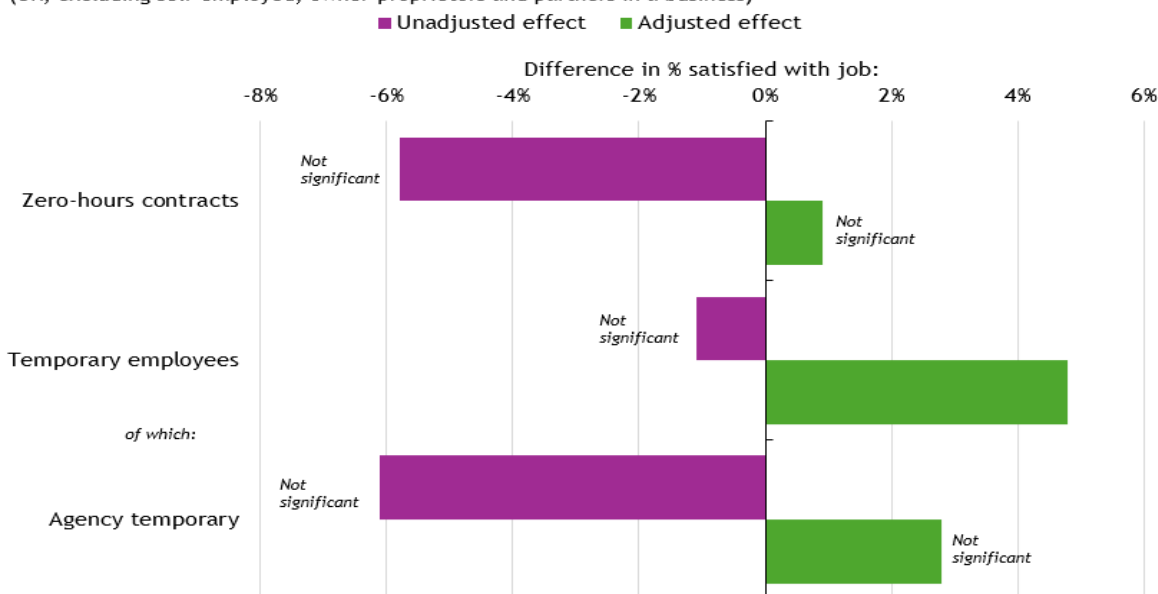
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<sup>1</sup> <https://www.cipd.org/uk/knowledge/reports/zero-hours-contracts-report/>

<sup>2</sup> <https://www.cipd.org/globalassets/media/knowledge/knowledge-hub/reports/2024-pdfs/regulation-and-the-labour-market-2024-new.pdf>

## Job satisfaction of employees with non-standard contracts was similar to that of other employees

(UK, excluding self-employed, owner-proprietors and partners in a business)



Adjusted effect corrects for job quality, age group of respondent, full-time/part-time status and over/under employment.

Source: CIPD Good Work Index surveys 2022-2024.

The CIPD has highlighted the importance for flexibility in non-standard working arrangements, including zero-hours contracts and agency work, to work for both workers and employers, in its guide for employers on how to adopt responsible atypical working practices<sup>3</sup>.

When considering the rights of agency workers it should be recognised that they have specific protections and rights under the Agency Workers Regulations 2010. Recruitment and employment agencies are also subject to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 and oversight by the Employment Agency Standards Inspectorate.

### Right to guaranteed hours

The consultation seeks views on how to apply the proposed new right, for zero hours and low hours workers to guaranteed hours that reflect the hours they normally work over a reference period, to agency workers when there is still little detail on how this new right will operate.

The Employment Rights Bill does not set out the reference period which will underpin the new right for these workers to have a contract that reflects the hours they normally work. It seems the Government is considering a 12-week reference period as this was referenced in the next steps to the Bill document. The consultation paper on the application of zero-hours contract measures to agency workers also states that the reference 'is anticipated to be 12-weeks'.

It is important that the Government consults on the appropriate length of the reference period before this is finalised. A reference period of 12 weeks does not adequately reflect seasonal fluctuations in demand for many businesses and sectors and would mean that workers may qualify for guaranteed hours which don't accurately reflect the overall level

<sup>3</sup> <https://www.cipd.org/uk/knowledge/guides/atypical-working-guide/#what-is-atypical-work>

of demand for the work they do. This could result in over-staffing and the need for a business to make redundancies.

The consultation document and the *Next steps to make work pay* paper also state that ‘where work is genuinely temporary, there will be no expectation on employers to offer permanent contracts’ however it is not yet clear what evidence would need to be provided to demonstrate that work is genuinely temporary.

There is no detail either yet on the proposed ‘subsequent reference review periods’ to allow workers further opportunities to move to guaranteed hours or on new rights to reasonable notice of changes to shift or working patterns or the proposed new right for compensation for any shifts are cancelled at short notice.

Consequently, it is difficult to meaningfully assess how these new proposed rights should apply to agency workers and to respond effectively to the questions in the consultation.

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

It is very difficult to see how it will be possible to apply new rights for zero hours and low hours worker to guaranteed hours that reflect the hours they normally work to agency workers.

Both option 1 and 2 would be so complex to implement in practice as to be effectively unworkable and would have negative unintended consequences for both business and workers.

Consequently, CIPD’s view is that agency workers should be excluded from these proposed new regulations.

A more effective way of ensuring the fair treatment of agency workers would be steps to meaningfully improve the labour market enforcement system more broadly. CIPD research<sup>4</sup> suggests that the creation of the proposed new Fair Work Agency, in isolation of other changes, is unlikely to address the UK’s failing labour market enforcement system, characterised by under-resourced enforcement bodies and an overburdened employment tribunal system.

To address this, there is the need for the establishment of the Fair Work Agency to be part of a comprehensive strategy to improve the UK’s labour market enforcement system. This would need to cover the Health and Safety Executive and the Equality and Human Rights Commission, as well as proposals to improve the efficiency of the employment tribunal system. There is also the need for significantly more resources to boost the number of labour market inspectors across the different enforcement bodies.

Just as important, there is a need to increase the resources available to Acas to boost its capacity to provide advice and support for employers, particularly for micro and small firms.

### **Option 1, guaranteed hours should be offered by the employment agency**

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<sup>4</sup> <https://www.cipd.org/uk/knowledge/reports/labour-market-enforcement-uk/>

It is likely to be very difficult for an employment agency to provide guaranteed hours to an agency worker on a zero-hours contract to an agency worker as is proposed under option 1, as the hours will be primarily be determined by the end hirer and not the employment agency. In some circumstances, agency workers on zero-hours arrangements will work for a number of end hirers over a 12-week period, (if that is the reference to be used to frame this right) again complicating the employment agency's ability to be in position to guarantee hours.

If the employment agency were required to provide guaranteed hours, it would likely involve discussions between the agency and the end hirer to agree how this would work in practice. This would be more challenging if the agency worker is working for more than one end hirer over the reference period.

It would likely lead to an increased cost of providing agency workers for example if there were a need for an agreement for the agency or the end hirer to cover the costs if there were not sufficient work for agency workers given guaranteed hours.

It would also undermine the advantages of employers using an employment agency to provide contingency workers as it would raise the cost and reduce the flexibility associated with the use of agency workers.

#### **Option 2: the guaranteed hours are offered by the end hirer.**

As the consultation paper recognises, requiring the hiring organisation to offer guaranteed hours would effectively require it to employ the agency worker directly. This would create a situation where an employer is effectively forced to take on an agency worker as a permanent member of staff. This may add significantly to employment costs and could lead to over-staffing particularly if the reference period for this new right does not sufficiently reflect fluctuations in demand in different sectors. If this happens, the employer of the newly employed agency worker may have to make redundancies.

Employers/end hirers could seek to avoid the risk of effectively being forced to recruit an agency worker as a permanent member of staff by ensuring typical assignment periods agreed for agency workers are shorter than the reference period. This could disadvantage agency workers and undermine the temp to perm route as agency workers would have less time to prove themselves.

Alternatively, employers may choose to use more short-fixed-term temporary employment contracts or casual assignments.

Applying the new right for zero-hours workers and low hours workers to agency workers is likely to have the effect of reducing the attractiveness of the temporary recruitment sector to employers, reducing its ability to provide a contingent workforce for businesses.

**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?**

**Don't know**

In principle, if end hirers are effectively forced to directly employ agency workers in order to meet a new right to guarantee hours, it would feel inappropriate that they would also be required to pay a transfer fee.

However, the detrimental impact on the employment agency and the sector as a whole would also need to be taken into account and understood if the end hirer were not required to pay a transfer fee to the agency in these circumstances.

**Reasonable notice of shifts and payment for shifts cancelled or curtailed at short notice**

**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?**

It is difficult to provide a meaningful response to questions on how a new right to reasonable notice of shifts should apply to agency workers as there is no detail available on what would qualify as reasonable notice under the legislation.

In principle, however it would be proportionate for potential liability for failing to provide reasonable notice of a shift to rest jointly with both the employment agency and the end hirer.

**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?**

Consideration should be made as to whether this should be set out in supporting guidance or a statutory code of practice rather than through legislation, to allow for differences in arrangements in different sectors.

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

Yes, if it were responsible for the lack of notice.

**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. It would be fair for the organisation that is responsible for the short notice cancellation or curtailment of a shift to an agency worker to be required to pay the cost of any compensation required.