Make Work Pay: Ending one-sided flexibility: reforms of zero hours and similar contracts

Submission to the Department for Business, Science, Innovation and Trade

Chartered Institute of Personnel and Development (CIPD)
August 2026

About CIPD

The CIPD is the professional body for HR and people development. The not-for-profit organisation champions better work and working lives and has been setting the benchmark for excellence in people and organisation development for more than 100 years.

It has 160,000 members across all sectors and sizes of organisation and provides thought leadership through independent research on the world of work, and offers professional training and accreditation for those working in HR and learning and development.

Public policy at the CIPD draws on our extensive research and thought leadership, practical advice and guidance, along with the experience and expertise of our diverse membership, to inform and shape debate, government policy and legislation for the benefit of employees and employers. It also seeks to promote and improve best practice in people management and development and to represent the interests of our member

Executive Summary

This is a complex and challenging area, and we are gravely concerned about the impact of these proposals on both business and individuals. We have provided in depth answers to as many of the questions as we were able, representing the input we have received from the breadth of our membership, and our response is lengthy out of necessity.

Our specific responses can be summarised as follows:

Guaranteed hours

- Both the initial and subsequent reference periods should be 52 weeks.
- There should be a gap between initial and subsequent reference periods
- The threshold of hours should be low (and the threshold for guaranteed hours and Notice of Shifts should also be the same)
- Regularity requirements should be based on work being scheduled or otherwise accounted for in each week of the reference period.
- Employers should be allowed significant flexibility to set allocation periods and adjustments to suit their business needs, within reason

Advance notice of shifts

- Employers should need to give 1 week's advance notice of shifts
- Where there is no obligation on a worker to accept shifts, there should be no obligation to pay compensation for failing to provide advance notice in circumstances in which the employer is seeking to cover shifts as a result of circumstances arising out of his control (such as the sickness of other staff)
- Where a shift is to be cancelled or curtailed or changed at short notice, the employer should not have to pay compensation if the reason is for circumstances beyond their control.

Exemptions

- CIPD believes agency workers should be exempted from these regulations. Giving agency workers a right to guaranteed hours would damage the capacity of the agency workforce market to respond to flexible staffing needs from across the economy. Applying these rights to agency workers would create very complex compliance challenges across a whole range of sectors including the NHS.
- Students should be exempted from the regulations because they disproportionately rely on the flexibility of zero hours contracts to be able to balance work with their studies and their lifestyle.
- Agricultural workers should be exempt from these regulations due to the highly fluctuating and often casual nature of their work.

In addition, there are key points we wish to highlight:

- The breadth and variety of organisations affected by these proposals cannot be underestimated – from those providing critical services to the UK population to those which cater for our leisure and relaxation. Creating a regime which fairly balances the needs of all those businesses – and in doing so how they deliver services to their service users/customers (including the public) - with those of the minority (in our findings) of employees who want guaranteed hours is, in our view, impossible. We have aimed in our response to call for the widest flexibility for employers for this reason
- The vast majority of employers try to do their best by their employees and workers. Most non-compliance among SMEs is due to a lack of awareness of employment law and a lack of HR/people management capability rather than malicious intent to avoid minimum standards. There are 'bad' employers – but we do not believe that these provisions will have any impact on them, while creating a significant administrative and costs burden on the majority of employers who will seek to comply. These provisions are a prime example of using a 'sledgehammer to crack a nut'.
- The Government should focus on encouraging good practice through statutory guidance, providing more resources for Acas and improving the quality and availability of business support services on HR and people management, working with devolved authorities.
- The provisions risk significant, negative consequences for employers but also employees and workers, particularly young workers, those with caring responsibilities and fluctuating health needs.
- There are consequences of these provisions which impact on the broader question of employment status which we do not feel have been properly considered.
- As the CIPD, we have aimed to take account of the breadth of our members in responding to this consultation. We understand that there will be significant responses from large employers with tens of thousands of employees, bodies advocating for the UK's key industries and those representing the small business sector, and we urge you strongly to give these responses serious consideration before taking the next steps.

Method

- Four online focus group discussions were held with CIPD HR Profession members in July and August 2026. These included different geographic regions (London and the Southeast, Wales and Scotland) and respondents from a variety of sectors and sized organisations.
- We also conducted five 1-2-1 interviews with HR professionals from organisations employing between 150 – over 150,000 employees, and include six cross-sector case studies in the Appendix and referenced in our submission.
- Data from the CIPD Labour Market Outlook Summer 2026, which surveyed 2,017 employers.
- Analysis of CIPD's Good Work Index for 2024, 2025 and 2026 (three surveys are combined to ensure there are sufficient Zero-Hour Contract (ZHC) employees. Sample = 217).
- ONS Labour Force Survey data published data, and CIPD analysis of the same data.
- CIPD analysis of OECD and Eurostat data.

What is the context and purpose of the proposed measures in the consultation?

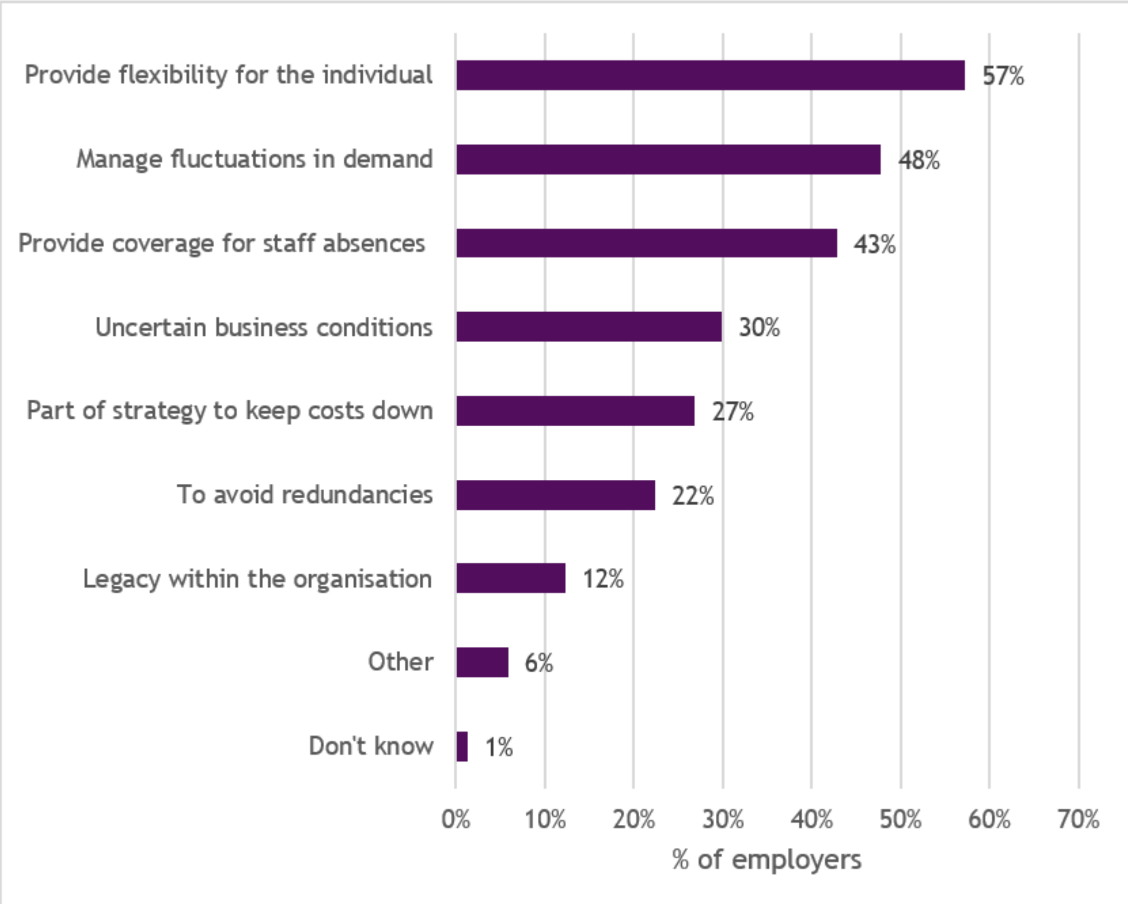
An important starting point for any analysis of the proposed new rights for zero hours and short hours contract workers being consulted is to consider the extent they are proportionate and will meet the Government's three objectives for the legislation. We look at these in turn below.

1) Establish a baseline of security and stability for workers facing unpredictable hours so they can plan their lives more effectively.

The weight of evidence suggests that most zero hours contract workers are not seeking to work the same baseline of hours every week and that the majority choose to work in this way because it suits their lives.

- Data from CIPD's Good Work Index shows that, for the years 2024-2026, nearly nine out of ten (89%) of zero hours contract workers said their working arrangements suited them very well or fairly well. The minority whose contracts didn't suit them typically wanted more hours, which the measures in this consultation won't deliver.
- Data from CIPD's Labour Market Outlook survey shows that the number one reason employers provide zero hours contracts is to provide flexibility for the individual, followed by flexibility for the business. See Figure 1 below.
- Recent evidence from Government-commissioned research shows that 68% of zero hours contract workers agree their working arrangements suit them well or very well.
- Only 18% of zero hours contract workers want more hours in their current job, while just 7% want a different job with longer hours, according to the latest LFS data from the ONS, suggesting a significant majority are satisfied with the flexibility they provide.

Figure 1: Reasons employers use zero hours contracts



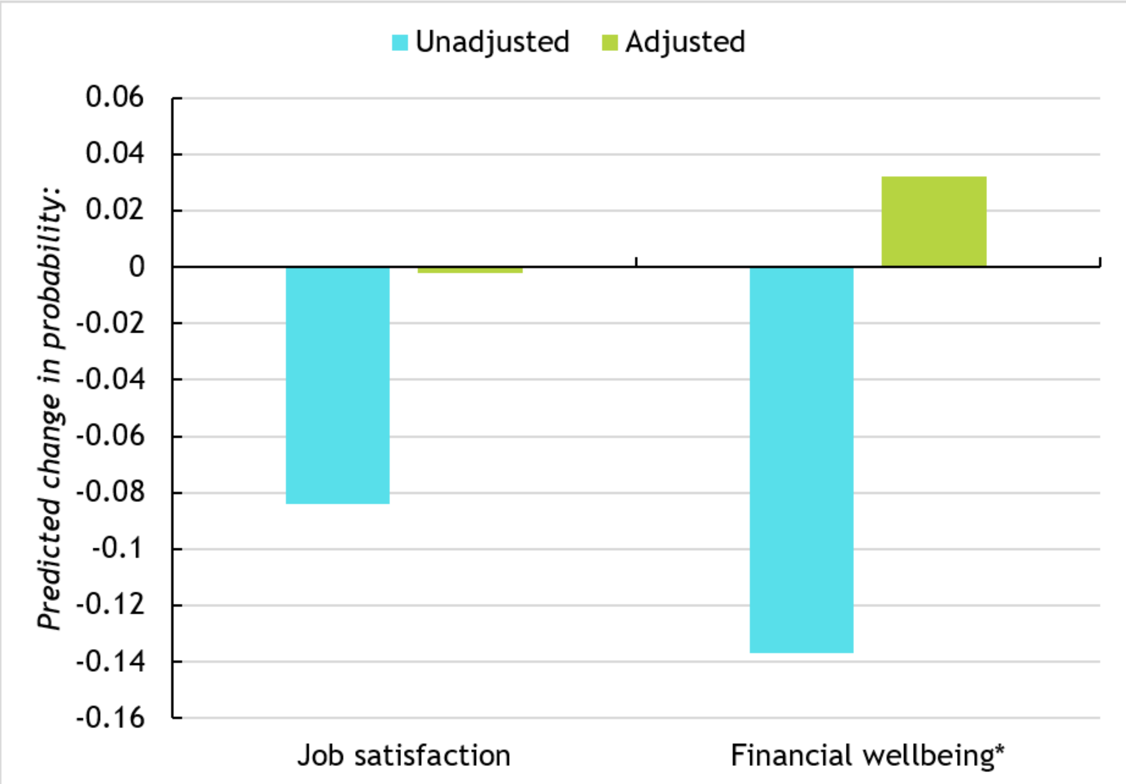
Source: CIPD Labour Market Outlook, Winter 2024/25 (Base: employers who use workers on zero hours contracts (n=590)).

2) Rebalance labour market flexibility so it works for both workers and employers

Evidence suggests that the UK's flexible labour market already finds a good balance in providing flexibility that works for both employers and workers, based on international comparisons. Our response to the consultation set out below suggests that the measures in this consultation won't improve the balance in favour of workers and could have the opposite effect.

- The UK has a high proportion of people in permanent employment by international standards and a relatively low proportion in non-permanent/atypical jobs.
- The UK has a lower level of temporary workers who would rather a permanent job at 24% compared to the EU average of 27% and to countries like Italy (55%) and Spain (58%). It is also comparable to France (24%).
- The UK has a relatively low proportion of part-time workers who would rather a full-time job (11%), compared to the OECD average (13%) and in comparison to countries like France (19%), Spain (45%) and Italy (50%).
- The proportion of people working on zero hours contracts in the UK has remained relatively stable at just over 3% for the last five years, with little evidence they are becoming more entrenched. Previous significant increases, for example, from 2012-2015 are likely to be due to greater awareness among workers/employees of these types of contract, previous CIPD research has suggested.
- CIPD analysis drawing on three year pooled (2024-2026) Good Work Index data shows that if you compare zero hours contract workers with those in similar quality jobs, they have comparable job satisfaction and self-reported financial wellbeing. See Figure 2, below. On the face of it, ZHC employees have significantly lower wellbeing than other employees (the "unadjusted" difference in the chart below). However, when allowance was made for job quality (the "adjusted" difference in the chart below), the differences were statistically insignificant.

Figure 2: Comparing job satisfaction and financial wellbeing, between ZHC and all other employees



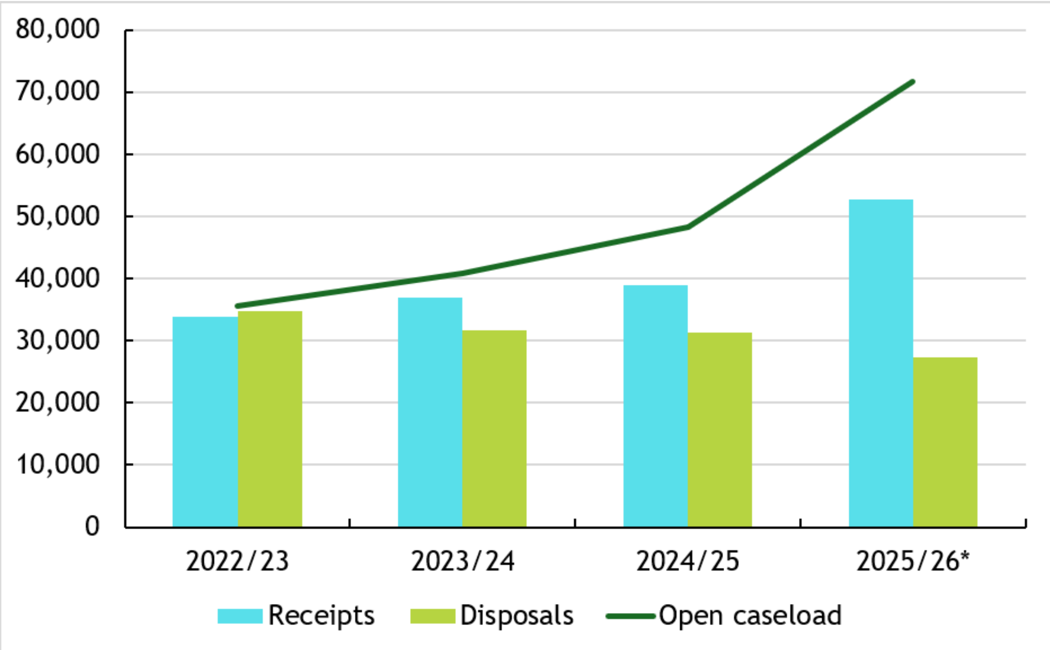
*Source: CIPD analysis of pooled Good Work Index 2024-26 * Financial wellbeing is defined as those who agree they are keeping up with all bills and commitments without any difficulties*

3) Support sustained economic growth across the diverse range of industries that make up the UK economy

The Government hopes the reforms will have the effect of improving workforce planning, staff retention and lead to the development of a happier, more secure and more productive workforce. However, the evidence from employers that use zero hours contract workers suggests that the measures are likely to have a negative impact on employment, particularly for young people, damage workforce flexibility and increase workplace disputes, all of which will undermine efforts to boost growth.

- Data from CIPD's summer Labour Market Outlook 2026, shows almost two thirds of employers that use zero hours contracts expect the new measures will increase the amount of administrative and compliance work. A similar proportion of respondents expect the amount of HR and management time and cost to increase at their organisation. Almost a third of employers that use zero hours contracts believe the new measures will mean they will have to increase the level of redundancies in their business. See table 1 below.
- The LMO data and our discussions with members suggest the proposed measures are likely to mean many organisations cease to use zero hours contracts and switch to the use of temporary staff on fixed term contracts and freelancers. This would increase rather than decrease insecure employment given research finds most zero hours contract workers are treated as 'employees' and will be eligible to full employment rights subject to length of service criteria.
- The consultation paper states that it's hoped the regulations will incentivise employers to improve workforce planning but this will depend on SMEs improving their HR and people development capability which will require a focus on improving business advice and support. Complex changes to the law won't achieve this.
- The complexity of the changes is likely to lead to further employment disputes, undermining workplace productivity and further adding to the growing burden on the employment tribunal service. See Figure 3.

Figure 3: *Employment tribunal volume trends*



*Source: Ministry of Justice Tribunal statistics 2022/23 to 2024/25. All figures are single claims plus the lead claim for multiple claims. Open claim figures are for 31st March. *2025/26 figures are provisional.*

Table 1: To what extent, if at all, do you think the following will increase or decrease at your organisation as a result of the Government's proposals on zero- and low-hours contracts? (% of employers)

	Increase	Decrease	Stay the same	Don't know
Administrative and compliance work	65	6	27	3
HR and management time	67	6	24	3

HR and management costs	65	5	27	3
Use of zero- and low-hours contracts	26	28	39	7
Use of self-employed contractors/other temporary, casual or atypical working	33	15	40	12
Redundancies	31	9	48	12

Source: CIPD Labour Market Outlook, Summer 2026 (Base: employers who have employed workers on zero- and/or low-hours contracts in the last 12 months (n=505)).

General remarks

In summary, we do not believe the proposed new rights for zero- and/or low-hours contract workers are proportionate, nor will they meet the government's three key objectives, outlined above, for the legislation.

The provisions relating to zero hours and short hours contract workers in the ERA 2025 and accompanying regulations represent one of the most complicated areas of new employment law for employers to implement. Of the 505 employers we surveyed in the CIPD Labour Market Outlook Summer 2026, who had employed workers on zero- or low-hours contracts over the past 12 months, 45% said they would find the proposals difficult to implement while 31% thought they would be easy. The percentage of employers predicting implementation difficulties rises to 53% for SMEs (with 2 to 249 employees) compared with 40% of large employers.

It should also be noted that the survey results are likely to significantly underweight the implementation challenge. In the focus groups we have held with members, awareness and understanding of the measures was overall quite low. Many members/employers are focused on more immediate compliance matters and have had little time to digest the detail of the consultation. A greater level of knowledge among members involved in discussions was associated with much higher levels of concerns about the challenges of complying with the proposed measures.

Unintended consequences

Our other survey findings and case studies (see appendix) also indicate the significant impact the new zero and low-hours provisions will have in organisations, including a range of negative unintended consequences that are likely to be the result.

- Increase in administration time and cost of employing people
- Increase rather than decrease in employment security as employers switch to using temporary workers and freelancers.
- Fewer flexible job opportunities particularly for young people
- Fewer flexible hours for those remaining on zero hours arrangement if some staff move to guaranteed hours
- High level of accidental non-compliance generating more workplace disputes and employment tribunal claims
- Increased challenges and risks for employers over determining employment status
- Increase in redundancies

Aside from the considerable additional administrative burden expected by many employers, it's concerning that a third of employers (33%) anticipate an increase in their use of self-employed contractors and/or other temporary, casual or atypical working arrangements, while almost the same proportion (31%) predict their organisation having to make redundancies as a result of these proposals.

Case study vignette: A large national retailer is concerned that existing proposals on guaranteed hours will undermine the feasibility of planned Employee Value Proposition investments that encourage genuine two-sided flexibility for worker and employer needs. This includes a voluntary system for workers to book extra shifts at any store where these are available, which has been well received by allowing workers to reduce their commute, work while away from their hometown, or pick up extra work when broader personal commitments flux. This also includes efforts to develop a job-sharing platform and roll out Part-Year Contracts following feedback that these would be useful for unpaid carers, students and semi-retired workers. For more information read the case study in the appendix.

Case study vignette: One of the UK's fastest growing cinema operators, Omniplex Cinemas, is concerned that if the Government opts for its preferred 12-week reference period it will increase its staffing costs to the point the company will not be able to operate at low trade periods, threatening job losses across the estate.

Omniplex is concerned that measures intended to provide greater security could ultimately reduce employment opportunities specifically for young people and students seeking entry-level employment. Currently, 69% of its workforce is aged between 18 and 25 years old.

If its cinemas cannot flex staffing in response to demand, it will be forced to employ fewer people, and rely more heavily on fixed-term contracts. Omniplex strongly believes that the Government must reconsider the application of these proposals to cinema and other highly volatile hospitality and leisure businesses. Restricting the ability to reduce staffing during quieter periods will fundamentally undermine the economics of the business. For more information read the case study in the appendix.

Case study vignette: A University **is** concerned about the impact of the consultation proposals on the University's internal worker pool which supplies temporary staff across the University's departments. Unlike agencies, these workers can only be assigned within the University. A key benefit is that it provides access to workers who are already familiar with the University's systems, processes and culture.

The worker pool is carefully managed to ensure that work is only offered where it is genuinely temporary, with ongoing requirements transferred to substantive recruitment processes. While assignments remain flexible, this flexibility is more frequently exercised by workers than by the University. In most cases, the hours offered at the start of an assignment remain consistent throughout its duration.

A requirement to offer contracts after 12 weeks, even where work remains genuinely temporary, would undermine the University's ability to maintain a flexible workforce to address short-term staffing needs. It would lead to reduced flexibility in responding to temporary staffing requirements, increased reliance on external agencies, and significantly higher costs. For more information read the case study in the appendix.

The ERA 2025 includes a provision for an employer and a trade union to opt out of these new rights through a collective agreement. We understand the need for flexibility to allow terms and conditions to be regulated through collective bargaining. However, a strong theme emerging from our community of HR professionals is that this does not create a level playing field, given the very low level of unionisation among SMEs. To create a fairer labour market for employers and workers, the opt out arrangements should also apply to a **workforce agreement** negotiated between the employer and elected worker or employee representatives, and which otherwise meets the necessary requirements.

The feedback we have received also suggests that there will be many workers/employees who will routinely decline the guaranteed hours offer, and will also know that they will do so from the outset of their work for an employer. Allowing workers to opt out – perhaps in a similar way that they can opt out of the Working Time Regulations – would reduce the administrative burden on employers carrying out the administration to offer the guaranteed hours contract only for it to be declined. How the government responds to the results of this consultation on the detail of its proposals will have a significant impact on the level of administrative complexity employers will need to deal with when the regulations come into force. It will also be very important for the government, working with Acas and other employment stakeholders, to develop and promote clear information, advice and guidance to ensure that all employers are aware of the new regulatory requirements and understand how to implement them and avoid non-compliance.

Please note that we have only responded to key consultation questions and those that relate to directly engaged workers. It remains CIPD's view that these measures should not apply to agency workers as we have set out previously in our response to the earlier consultation on this.

As already stated, employer awareness and understanding of the proposed measures is limited, due to the complexity of the proposals, the limited consultation period and the level of change employers are already responding to through the Employment Rights Act (2025).

Other issues not covered by this consultation:

Employment Status
A fundamental issue raised in our discussions with members which does not appear to have been considered by officials designing the regulations is employment status. The consultation document states on page 15 that the guaranteed hours offer 'will be an offer to a worker to enter into a new or varied worker's contract.'

This definition of worker's contract for these purposes is clarified in the glossary: "Worker's Contract – A legally binding agreement between an employer and an individual under which the individual undertakes to work for the employer. An employer will usually make work available, that is, guarantee hours, in the contract (but this is not done in Zero Hours Contracts). Where a worker's contract is in place between an employer and an individual, the individual is a worker employed by the employer."

However, this ignores the legal position which is that whether an individual is a worker or an employee is a matter of looking at all the circumstances of the relationship, not just the title that the individual is given under a contract or agreement. If an individual who is, in all the circumstances of the case actually a 'worker' in law, is moved from a zero or low hours contract onto something where hours are guaranteed along with the period of time when the hours must be worked, there is a risk that this could tip the balance in favour of the individual being an 'employee' and accruing additional employment rights as a result of the change in status, and a serious risk of inadvertent non-compliance by employers who frequently do not have the understanding of this complex area of law. Those employers who are aware of the risks have indicated that this offer of guaranteed hours will require an interrogation of each individual 'worker's circumstances to assess the impact of the guaranteed hours offer on their true employment status: entailing specialist advice – a burden which is more than the administrative burden we have also highlighted in this response.

We do not consider the assumption/explanation in the consultation document is appropriate and urge the Government to consider the impact of these proposals on employment status more carefully before proceeding.

This also seems to assume that people on zero hours or low variable hours contracts are always categorised as ‘workers’ rather than ‘employees’. However, our survey evidence and discussions with members shows that a large majority of those working on zero hours contracts are categorised by their employer as ‘employees’ and will have full employment rights subject to length of service. In those cases, the burden of these additional requirements in relation to guaranteed hours and notice of shifts, may prompt employers to move to treating their zero hours and low hours employees as ‘workers’ in which case they will lose the rights that their employers currently offer them as good practice.

Need for tripartite discussions

The Government is likely to receive a wide range of views on the proposed regulations, with significant areas where the Government, employers and the organisations representing them and the trade unions don’t agree.

It is crucial that the regulations are workable for organisations operating in sectors across the economy to ensure they don’t further increase employment costs, inhibit job creation and opportunities for workers and undermine economic growth.

Achieving this will require further discussions between these key stakeholders to find common ground and agreement on where changes should be made. To facilitate this, CIPD is calling on the Government to initiate new tripartite discussions involving ministers, key employer-side organisations and the trade unions.

Our response

PART 1: Right to guaranteed hours

Q1.a: For directly engaged workers, which of the following options should the hours threshold be?

8 hours per week.

Q1.b: Please explain your answer

We explored this issue in depth in our focus groups of people professionals, which showed a consensus for setting an hours threshold ‘as low as possible’. Setting the hours threshold at too high a level could open up a guaranteed-hours offer to a large proportion of people on part-time contracts, which would create a large amount of additional admin for many employers, when in the case of many workers (who genuinely prefer the two-way flexibility of zero hours contracts) the work would be to no purpose because the guaranteed hours contract would not be taken up.

From the several different hours threshold options provided in the consultation paper, 8 hours was the preferred option for the majority of focus group participants. We struggle to understand why such a wide range of high hours thresholds are offered as options in the consultation paper – for example, 48 hours represents the statutory maximum average working week and could hardly be considered ‘low hours’ - but even the 36, 40, 44 hour options exceed the average full-time working week for most people.

Other important points were made in our focus groups, including:

- Lots of people don't want to necessarily work more than 16 hours per week or it could impact their eligibility for benefits.
- Interestingly, one very large retailer and a national fast-food franchise both reported voluntarily introducing a guaranteed hours offer for workers on low-hours contracts, but very few had requested guaranteed hours. In the case of the fast-food franchise, take up sits at around 10% of the workforce.
- If there was a longer reference period, a higher threshold of hours could be more appropriate as it would indicate roles/teams where the need did warrant hours on a 'more permanent' basis

Q4.a: How long should the initial reference period be for directly engaged workers?

52 weeks.

Q4.b: Please explain your answer

Among the 505 employers we surveyed who had employed workers on zero- or low-hours contracts over the past 12 months, the findings were very mixed as to what length of time would be most appropriate for a reference period:

- 12 weeks – 29% of employers
- 26 weeks – 35%
- 52 weeks – 21%
- Other – 1%
- Don't know – 13%.

However, we were able to explore the issue in more depth in our focus groups of people professionals, which showed a strong consensus for setting 52 weeks as the initial reference period – in line with calculating holiday pay, thereby keeping consistency with how other protections are referenced. As several HR professionals commented:

> *'The reference period should be as long as possible - 52 weeks – these evens out the peaks and troughs, and the subsequent reference period should also be 52 weeks – less admin and would reduce the burden on business.'*
>
> *'Agree with 52 weeks – it won't reflect the truth if the reference period is shorter.'*
>
> *'In terms of the reference period I agree with 52 weeks to reflect seasonable business needs.'*

Our focus group participants made a range of important points in relation to setting the length of the reference period, including:

- This is essentially a strategic workforce planning issue and there are other solutions available – for example using annualised hours; as one HR consultant commented: *'Often SME's use zero hours because they don't know of another way but there are other solutions available – for example using annualised hours.'*
- Concern expressed by many about the unintended consequences and the risk of increasing redundancies when guaranteed hours can't be sustained by a business – 'what option have you got other than to make them redundant?' asked more than one focus group participant.
- Businesses which routinely closed for periods of the year (for example those in tourist areas) which often took on students on zero hours contracts who would not accept an offer of guaranteed hours due to returning to school/university expressed concern that a shorter reference period would have a disproportionate impact in terms of the administration required both in making the guaranteed hours offers, which would not be accepted, or if those contracts were accepted, the subsequent redundancy arrangements when the business closed for the season. This could also impact on the businesses reputationally,

despite best efforts by the employers we spoke to, to be ‘good’ employers and treat those on ZHC as fairly as possible.
- Where the availability of work is dependent on external funding – for example in the charity or academic sector, the retrospective nature of the reference period is problematic, regardless of length – however a longer reference period allows a more balanced view on which to base any future guaranteed hours offer.
- Some felt that it would be more balanced to introduce a robust right to request process – more robust than flexible working law but with parameters in place.

Q6.a: How long do you think subsequent reference periods should be for directly engaged workers?

52 weeks.

Q6.b: Please explain your answer

Implementing and complying with these new rights for workers on zero- and low-hours contracts will be a highly complex undertaking for many employers, particularly smaller employers. Some sectors such as hospitality and retail will also be disproportionately impacted by these new requirements. Any additional layers of complexity are likely to result in additional risks of non-compliance, albeit non-deliberate in most cases. Specifying a very short timescale for subsequent reference period would only serve to add another layer of administrative complexity. To aid compliance and ensure a better balance of flexibility for both employer and worker, subsequent reference periods for directly engaged workers should be set at the upper limit of 52 weeks.

Setting a longer time period for subsequent reference periods would also allow for the seasonality of labour demands in some sectors, such as those mentioned above, which do not easily fall into the categories of a specific ‘task’ or ‘event’, as proposed in the consultation paper in terms of representing a ‘temporary need’ for labour.

Q7.a: Should each reference period begin as soon as the previous one finishes?

No.

Q7.b: Please explain your answer

In line with the reasoning set out in the consultation paper, it was felt by the majority of HR professionals that rolling reference periods would require significantly more administration compared with subsequent reference periods with a gap in between them. Implementing a system of rolling 12-week periods would require extensive administration in terms of continually monitoring and recalculating the hours worked across the workforce. Many employers simply don’t have the systems or resources in place to fulfil such a requirement.

Q10.a: Based on the two options highlighted above for directly engaged workers, select below which option is preferred.

Option A: A weekly distribution requirement only.

Q10.b: Please explain your answer

Implementing and complying with the new rights in relation to zero- and low-hours contracts will be a highly complex undertaking for most employers, particularly for small businesses. Implementing both a weekly distribution requirement AND a total hours requirement would add a considerable and unnecessary additional layer of complexity. We strongly suspect this would further increase the risk of accidental non-compliance among many businesses.

Q11.a: What should the minimum number of weeks be in which a directly engaged worker is required to work during the reference period to meet the weekly distribution requirement? (The below options are framed around the government's preference for a 12-week initial reference period. The options would scale proportionally for a longer initial reference period.)

- 12 calendar weeks across a 12-week initial reference period.

Q11.b: Please explain your answer
Assuming that the regulations adopt the option of including periods of time where a worker has not worked for specified reason, such as sickness or holiday, we consider that the worker should work in all the weeks during the initial reference period
.
Q12.a: If there were to be a weekly distribution requirement AND a total hours requirement (as in Option B), what should the total hours requirement be for a directly engaged worker? (The below options are framed around the government's preference for a 12-week initial reference period. The options would scale proportionally for a longer initial reference period.)

Not applicable – we strongly believe there shouldn't be a weekly distribution requirement AND a total hour's requirement. It is too complex and significantly increases the burden on employers in the administration of this scheme and the likelihood of accidental non-compliance amongst employers who, broadly, aim to the best for their workers.

Q13.a: The government proposes that the regularity requirements should scale in the event of longer subsequent reference periods. Do you agree? *For example, if the weekly distribution requirement were set at 6 weeks for a 12 week initial reference period, and if subsequent reference periods were 26 weeks long, it would be set at 13 weeks for subsequent reference periods.*

- Yes, the regularity requirements should scale in the event of longer subsequent reference periods

Q13.b: Please explain your answer
In view of the fact that Regulations can account for periods such as sickness and holiday to be included when assessing if a worker has met regularity requirements, we consider that 'regularity' should be demonstrated through 'work' (or a 'specified absence') in every week of the reference period.

Q18.a: Do you think there are examples of temporary need which are not related to a specific task or event – and would need to be addressed through regulations?

- Yes, there are examples of temporary need that are not related to a specific task or event - and would need to be addressed through regulations.
- No, there are no examples of temporary need that are not related to a specific task or event that would need to be addressed through regulations.

Q18.b: Please list examples of temporary need which are not related to a specific task or event – and would need to be addressed through regulations. Please explain each example

During our discussions in 1-2-1 interviews and focus groups, a number of participants have been unclear about whether their situation would fall within the 'specific task or event', (currently envisaged in draft s.27BB(9)) - indeed it is not clear to us, and we are concerned that this will give rise to unnecessary litigation without careful and more precise drafting. Specific scenarios that have been raised include:

- Operations which align and increase staffing for particular specified periods - 'term time only'; 'the school holidays' 'June - September'. Does providing a beach cafe during the summer holidays count as 'a task' which ends at the end of the summer holidays?

- Operations which do not align strictly to a defined period such as those above, but operate for periods of time that might be roughly aligned to a period and then completely close down for other periods of time
- Contracts requiring someone with specific skills to care for a specific person whose care needs might change or lose funding (or gain different funding for different support which requires a different set of skills)
- Operations which rely on grant funding to continue
- A series of markets which are held over a limited period of months – each individual market might be 'an event' but would a series fall within the definition

We are very concerned that by restricting 'temporary need' to specific tasks or events without wider, pro-active interrogation of different sectors and industries, many employers who would have a genuine 'temporary need' will end up in accidental non-compliance and a significant increase in cases ending up in an already overstretched Employment tribunal system.

Q19.a: Which calculation method do you think should be used for determining the guaranteed hours offer for directly engaged workers?

We believe the median average should be used.

Q19.b: Please explain your answer

The median average is statistically more representative, because it is not impacted by very high or low numbers, which the mean is.

Q20.a: Do you think employers should have flexibility to determine the period over which the hours will be allocated (weekly, monthly, or other)?

Yes, they should have the flexibility to determine the time period.

Q20.b: Please explain your answer
Our discussions have highlighted the significant differences between employers across sectors and industries, their needs and challenges. They are best placed to determine the time period and should have the flexibility to do so. In order to mitigate the impact of this on workers, the employer could be required to specify the time period they will use.

Q20.c: (if yes) Which of the following time periods should employers be able to choose? (select as many as you see fit)
A week [X]
A month [X]
Other [X]

All of the above

Q20.d: Please explain your answer
Employers are best placed to understand how their business works and to apply an appropriate time period

Q21.a: If the government were to mandate a time period over which employers would need to allocate hours in guaranteed hours offers, what do you think this should be?

We do not consider that the government should mandate a time period.

Q21.b: Please explain your answer
See answer to Q20.a, above.

Q22.a: Do you think employers should have the flexibility to use an adjustment margin?

- Other

Yes, employers should have the flexibility to use an adjustment margin, and should be allowed to make a judgment based on the reasonable needs of their business

Q22.b: Please explain your answer

Q26.a: Should there be any types of workers that are excluded from the right to guaranteed hours?

Yes, there should be certain types of workers excluded

Q26.b: If yes, please list any types of workers that you think should be excluded from the right to guaranteed hours.

Agricultural workers
There is precedent for excluding agricultural workers from other employment legislation. We have received clear feedback from HR professionals working in the agriculture sector highlighting the difficulty in applying these rules in the agricultural sector. Please see case study included in the Appendix regarding agricultural workers below.

Students
Students are an example of a group of people within the workforce who use zero hours or guaranteed hours to support themselves through study but have fluctuating requirements over the year based on a factor which is outside of the employer's control - their study. During term time, they use zero hours to support alongside study; during holidays they may want more hours, to top up their student loans and term time learning for the following period of study, or no hours, because they have gone home for the holiday/travelling/engaging on work experience.

Agency workers
For reasons set out above.

Q27.a: Should there be any specific circumstances in which you think employers should be exempt from the right to guaranteed hours?

Yes, there are certain specific circumstances in which employers should be exempt from the right to guaranteed hours, however, in many cases, the employer will have offered guaranteed hours contracts before and without knowing of the circumstance which might impeded the employer's ability to continue to provide work – unforeseen weather events, a fire in premises, a reduction in funding etc – which still leaves the issue of how to manage those who have been offered guaranteed hours.

Q27.b: If yes, please list any specific circumstances in which you think employers should be exempt from the duty to make guaranteed hours offers to qualifying workers.

Seasonal businesses
Employers who operate truly seasonal businesses where the operation closes for part of the year. This includes tourist-related seasonal operations like beach cafes, water sport equipment hire, which only open during holiday periods

Livestock Marts
These operate at very specific times of the year and require additional staff specifically for the marts themselves. Feedback we have received is that it is often farmers themselves who work additional hours above the work they carry out in their own business to staff the marts and would

have no interest in being offered guaranteed hours. Feedback we received would be that those involved would not understand why they were being offered guaranteed hours and might experience anxiety and upset as to why they were being asked to consider this. Please see the case study included in the Appendix below.

Employers where work is dependent on external funding
Employers operating in a sector where work is dependent on external funding and they are in a period where they are coming to the end of a period of funding and have not had future funding confirmed.

Employers who have had to exercise short term/lay off clauses in their contracts.

Employers impacted by damage to premises (e.g fire, flood) which means they have no work available.

Q32.a: Do you think that our proposals in Part 1 of this consultation, on the right to guaranteed hours, will have a particular impact on groups sharing a protected characteristic under the Equality Act 2010?

Yes

Q32.b: Please explain your answer.

Women (protected characteristic of sex) Many of our discussions in focus groups and 1-2-1 interviews raised the point that there are many people working on zero hours or low hours contracts because the employers in the sector they work in are unable to provide properly flexible working to allow the individuals to meet caring needs of others they support (children or older parents/relations). The NHS was cited as a particular example. While acknowledging that zero hours/low hours contracts can present disadvantages, overall, these contractual arrangements gave many people the flexibility they needed. The low take up of guaranteed hours offers reported to use by some large employers backs this up, Statistically, therefore, we consider that the proposals will disadvantage women, who remain the group which is statistically more likely to carry out caring responsibilities (both for children and older parents).

Those with fluctuating health needs (protected characteristic of disability) - employers we have engaged with who employ or facilitate the employment of, people with fluctuating health needs and disabilities report the positive experience those people have being able to work when they feel able, but with no pressure to work when they feel unable to do so.

Young people (protected characteristic of age) - employers have reported that young people are likely to be harder hit by these changes. **G**uaranteed hours offers will limit work that might be available to those aiming to earn money and gain valuable experience alongside studies, and needing the flexibility of zero hours to pick up shifts which suit them.
While those who on balance welcome the flexibility and lack of obligation a zero or low hours contract provides, we have received feedback from a number of employers as to a couple of significant consequences as follows:

1. **Fewer people in employment of any sort**
   Where hours tend to fluctuate, as guaranteed hours contracts are taken up, there will be fewer hours and less work available for those who genuinely appreciate the flexibility, such as those with caring, health or study needs, or those seeking to gain experience starting on shorter hours, perhaps as part of a probationary period – which will no longer be available to employers.
2. **Increase in capability/conduct procedures**

As workers see the reduction in availability of genuinely flexible hours through zero hours/low hours contracts, they may well feel compelled to accept guaranteed hours offers. When the worker can then not meet the hours offered, because of health, caring or other needs, they may be subject to stressful absence management/conduct/capability procedures. (As an aside, and while recognising that this question is about those with protected characteristics, this will also be a double impact on employers who will be potentially left at short notice with no one to fill a shift and have to risk the penalty of offering work without the requisite period of notice to someone who can offer that flexibility).

Q33: Is there anything else you want to tell us in relation to Part 1 of this consultation, on the right to guaranteed hours?

The right to guaranteed hours is the right for a worker to receive a 'new or varied worker contract' which "…*must set out the number of hours of work the worker would need to work and the employer would need to provide*…". We are concerned that this will move individuals closer to 'employee' status' and lead to greater burdens on employers and reduced flexibility in the workforce where the nature of their businesses genuinely requires it. We are concerned that this will muddy the waters further in an area, which is desperate for clarity – reflecting on the findings of the Taylor report, which was underpinned by a finding that different types of status – employees and workers – needed to be really clearly defined.

We are aware of examples where zero hours/low hours worker contracts are used by some organisations where permanent employee contracts would be more appropriate – for example organisations which have fewer 'peaks and troughs' and are able to access significant data to allow them to understand demand and know the work they can offer – annualised hours or other options would be more appropriate while still allowing some flexibility in these cases. However, people professionals across many, many sectors have raised concerns that this is an excessively complex and restrictive means of achieving what many employers already do their best to offer while maintaining necessary flexibility. Rather than penalising employers, reducing the flexibility many businesses require in the economic climate and imposing increased administrative burden on employers with complex legislation, the Government should focus more on encouraging good practice through statutory guidance and improving the quality and availability of business support. This would support organisations in improving their people management capability and improving the adoption of good practice,

PART 2: Reasonable notice of shifts and payment for shifts cancelled, moved or curtailed at short notice

Q34.a: What do you think the hours threshold for the rights to reasonable notice and short notice payment should be for directly engaged workers?

8 hours per week.

Q34.b: Please explain your answer

We agree that the threshold should be the same for both the right to reasonable notice and the right to payment for shifts cancelled, curtailed, or moved at short notice. This will help to ensure consistency and avoid additional complexity for employers when implementing this new requirement.

Many of our members pointed out across several of the consultation questions that not all workers are guaranteed hours on a weekly basis; for example, some workers are guaranteed hours over a month or year. The consultation paper recognises this, and we want to emphasise that it's important that the regulations account for the wide variation in how working hours are arranged across diverse businesses.

PART 2.A: Reasonable notice of shifts

Q37.a: How much notice should be presumed reasonable for directly engaged workers?

1 week.

Q37.b: Please explain your answer

The consultation paper cites the CIPD's 2022 research suggesting that 45% of employers of low-paid variable workers offer notice of 1 week or less. We have revisited this issue in our Summer Labour Market Outlook which shows that a lower proportion (33%) currently provide less than one week's notice.

Among the 505 employers who have employed workers on zero- or low-hours contracts in the past 12 months:

- 10% offer less that 1 week minimum advance notice of shift patterns
- 23% offer 1 week's notice
- 23% offer 2 weeks' notice
- 10% offer 3 weeks' notice
- 15% offer 4 weeks' notice
- 5% offer more than 4 weeks' notice
- 14% don't know.

The mixed views evident in our employer survey were reflected to some extent in the focus groups we ran with CIPD members, reflecting the wide diversity of business operations and shift patterns, including appropriate notice periods, across the economy. This is why it's not necessarily helpful to specify one blanket regulatory notice period requirement for all employers.

The main consensus in the focus groups was that 1 week's notice should be presumed reasonable, given that this would apply to all workers on these types of contracts in all businesses. As some participants comments:

- *'1 week – anything longer brings in so much complication for the business.'*
- *'For bars, restaurants – 1 week ahead – to take into account the weather forecast and know what is needed.'*

The point was made that in many cases, the workers themselves will not commit to shifts more than one week in advance, with many employers reporting this being the case even when they publish rotas/shifts two or three weeks in advance. Examples included students managing work with study loads and those with health needs and also those with caring responsibilities trying to balance work with hospital or other health related appointments for the people they care for, which often come up at short notice.

However, there was some divergence of views, particularly on the part of HR professionals based in some larger organisations who thought a longer notice period could be considered reasonable for some types of operations. This view is reflected to some extent in our survey findings – 15% of SMEs think it would be reasonable to give less than one week's advance notice compared with just 6% of large organisations, for example. A statutory minimum notice period of one week would not prevent employers whose operational needs warrant longer notice periods from providing longer notice of shifts.

An important point made in our focus groups included the need for some flexibility, and the need for the regulations to reflect what organisations have in place already in terms of collective agreements with recognised trade unions.

Q38: In what circumstances do you think longer notice should be required?

We agree that it would be reasonable for a worker to expect more notice when they are contractually obliged to work any shifts that are offered to them compared with when a worker is free to turn down any shift that is offered.

Q39: In what circumstances do you think shorter notice should be required?

As the consultation paper notes, it might be that less notice should be expected if the worker is also free to turn down shifts at short notice, or where an employer is seeking cover for another worker who has unexpectedly called in sick or is unable to work at the last minute for some other reason: *"We plan in advance but if someone is poorly, there are unforeseen circumstances."* A common theme emerging from some of our focus group discussions is that staffing situations requiring last minute changes often arise that are out of the employer's control for a wide variety of reasons. Another example is that given by a colleague who provided the example of livestock marts: while broadly, during the time when marts are operating, the team will plan for 3 marts per week, but other sales may be added in at short notice at the instigation of the farming community. Given the huge variety of different circumstances whereby it may be unavoidable operationally for an employer to give less notice, it's important that the regulations provide for some flexibility and/or as many different scenarios as possible.

<u>Short notice period</u>

Q44.a: What timeframe do you think short notice should be for directly engaged workers?

1 day.

Q44.b: Please explain your answer

In our employer survey, among the 505 employers who have employed workers on zero- or low-hours contracts in the past 12 months, the majority opinion is that 1 day should be the minimum notice period before a shift change would require compensation to be paid (25% of employers). A further 14% thought that no compensation should be paid for directly engaged workers, regardless of the notice period. However, there were some mixed findings in relation to what the timeframe for short notice should be:

- 1 day (24 hours) - 25% of employers
- 2 days – 15%
- 3 days - 12%
- 4 days – 3%
- 5 days – 11%
- More than 5 days – 5%
- Not applicable, there shouldn't be a compensation regardless of notice period – 14%
- Don't know – 8%.

Discussions in focus groups highlighted a theme that for most employers, the practice is to give as much notice as possible of shift changes, but it is sometimes unavoidable that a shift is cancelled or curtailed with as little as 3-4 hours. Circumstances ranged from the impact from unforeseen disruption caused by weather forecasting, or, in the care sector, short notice changes in care needs. Employers we spoke with expressed an approach which aimed to redeploy workers first before cancelling, but in some cases there would simply be no work.

Q45.a: What timeframe do you think very short notice should be for directly engaged workers?

There should not be a 'very short notice' period.

Q45.b: Please explain your answer

Implementing both a 'short notice' and a 'very short notice' period would introduce another layer of administrative complexity for employers and demand additional resource. As HR professionals taking part in our focus groups commented:

- *'I don't agree – introducing a tiered system would be unnecessarily complicated.'*
- *'This has to be as simple as possible for business to understand. You can't legislate for every activity that happens in a commercial organisation: short notice compensation should be enough. Individuals can raise grievances in circumstances of abuse.'*

Short notice payment amount

Q48.a: The short notice payment should be:

There are pro's and con's of both approaches, outlined below.

Q48.b: Please explain your answer

Among the 505 employers who have employed workers on zero- or low-hours contracts in the past 12 months, the findings were fairly evenly split on what the preferred calculation method should be for compensating workers when shifts are cancelled, curtailed or moved at short notice:

- Option 1: a percentage of what the worker would have earned from working the shift or the relevant hours – 39% of employers
- Option 2: a percentage of what the worker would have earned from working the shift or the relevant hours at the relevant National Living/Minimum Wage rate – 42%
- Don't know - 19%.

Our focus group discussions weighed up the pros and cons of both options. On balance, it was felt that option 1 was a fairer approach in that workers should receive a proportion of what they would have earned had they worked: *"It feels like the right thing to do."* Further, option 2 would mean that workers on a higher pay rate would disproportionately lose out more financially if their shift was changed.

From the employer perspective, option 1 would represent a greater financial burden for employers, especially those who employ a large number of workers on highly-paid zero- or low-hours contracts. Therefore, the approach under option 1 could discourage them from rostering workers who are paid on a higher pay rate. This would potentially have an unfair unintended impact on some higher-paid workers and could decrease rather than increase their job/income security. The ERA 2025 has provision for introducing regulations to set an earnings cap (which would preclude high earners from the right to compensation), which could be sensible in these circumstances, and yet the consultation paper doesn't cover this area.

In our focus groups, the point was also made that a flat-rate compensation amount would be more straightforward for employers to administer. For example, reference was made to the current system of statutory lay-off pay where eligible workers can receive a maximum £41 per day for 5 days in any three-month period. Could consideration be given to introducing a similar system with flat-rate compensation for changed or cancelled shifts?

Q53.a: Do you think there should be any exceptions to the requirement to make a short notice payment or very short notice payment? If yes, what should these exceptions be?

Our discussions revealed that in most cases, employers did their best to provide a good period of notice of shifts (despite workers often being reluctant to confirm availability until the last possible moment), and to only cancel, move or curtail shifts when absolutely necessary. Employers raised a range of examples arising from circumstances outside of their control, in which they would end up cancelling or curtailing shifts with less than a day's notice. These ranged from unforeseen extreme weather (both bad weather which could impact on predominantly outdoor based businesses, and unexpected good weather which could reduce footfall and visitors to indoor attractions), farm inspections (please see our case study), a prospective bride or groom deciding not to get married on the day of the wedding, someone a worker cares for (as part of their role) having a change in care needs or a change in funding provision.

Against this background, rather than making the short notice payment the norm, with exceptions, it might be more appropriate to consider setting out in regulations that the payment of a short notice payment only applicable in circumstances in which the employer has arbitrarily cancelled, curtailed or moved the shift away from one worker or group of workers, to their detriment, in favour of another worker or group of workers, and without offering alternative shifts which have been accepted by the worker impacted.

Q57.a: Should the FWA enforce the right to short notice payments?

Yes

Q58: Should the FWA impose a penalty where it finds that an employer has failed to make a short notice payment?

No

Q59.a: What should the penalty amount be?

A different amount

Q59.b: Please explain your answer.

Any penalty imposed by the FWA should be proportionate to the level of non-compliance and the size of the organisation and its level of resources. Consideration should be made to whether the FWA should have the capacity to issue an improvement notice as the first step in enforcement activity in some circumstances, which would give an employer a period of time, for example six months to become compliant.

Q60.a: What should the minimum and maximum penalty amount be?

Different amounts

Q60.b: Please explain your answer

There should be flexibility in the level of penalty imposed to enable contextual factors affecting an employer's ability to comply to be taken account of.

Q62.a: Do you think that the proposals in Part 2 of this consultation, on reasonable notice of shifts and short notice payments, will have a particular impact on groups sharing a protected characteristic under the Equality Act 2010?

- Yes - protected characteristics of sex, disability and age in particular.

Q62.b: Please explain your answer.

If a longer advance notice of shifts is presumed reasonable, perhaps two or even three weeks, those with caring responsibilities, fluctuating health problems or study (or other) responsibilities will not be in a position to know what their other commitments will require of them at those times and will be unable to commit to shifts, putting them at a disadvantage compared with those who do not have those commitments. Broadly, we see this as impacting on those with protected characteristics of sex (women in particular, who still shoulder the burden of caring for children and older relations), disabled people and young people.

Appendix – case studies

Case study 1: A cinema operator

Case study – cinema operator

One of the UK's fastest growing cinema operators, Omniplex Cinemas, is concerned that if the Government opts for its preferred 12-week reference period it will increase its staffing costs to the point the company will not be able to operate at low trade periods, threatening job losses across the estate. The proposals restrict the ability to adapt to trade levels, which is fundamental within the sector and will be detrimental to the profitability of cinemas, in turn impacting the creative industry in the UK as a whole.

Reference period
If a 12-week reference period was introduced, it would mean that they would cease to be able to offer flexible hour contract arrangements because the business would end up over-staffed. The proposed approach must recognise the very different operating realities of businesses such as cinema, where demand is inherently volatile, and staffing requirements can change significantly and rapidly. Recent trading demonstrates the scale of the issue. Over a period of just four weeks, Omniplex experienced a record week of approximately 400,000 admissions, compared with only 100,000 admissions four weeks earlier. This represents a 300% increase in weekly admissions within a single four-week period. This level of volatility is not unusual for cinema. A major blockbuster or a particularly strong film slate can generate substantial increases in admissions and therefore staffing requirements. Conversely, when the film slate (film content) is weaker or customer demand falls, the staffing requirement can reduce dramatically.

Applying a short reference period such as the Government's preferred 12-week average will risk capturing a period of high demand and create an obligation to maintain staffing hours after the peak period of demand has disappeared. This approach to carry weekly average-hour staffing through periods in which admissions may be a fraction of the level seen during a peak would fundamentally undermine the economics of the business. The consequence would be that cinemas would become loss-making during quieter periods and, ultimately, could contribute to widespread cinema closures. A 52-week reference period would provide a significantly more accurate reflection of the full operating cycle of cinema. However, Omniplex feels that this does not go far enough to mitigate the fluctuation of the film slate (available firm content).

Advance notice of shifts
Cinema demand can change at very short notice. Omniplex endeavors to provide staff with as much notice as reasonably possible and uses advance booking information when planning rosters. However, actual admissions can differ materially from advance bookings. The nature of the cinema operations relies on weekly agreements with film distributors which may affect how many screenings of each movie its cinemas will run the following week. These requirements will influence overall trade levels and ultimately influence the levels of staffing required. Providing a statutory level of advance notice of shifts of 7 days or more will be damaging. For example, a cinema may have 400 pre-booked admissions but ultimately welcome 2,500 admissions by close of business. Conversely, demand can fall unexpectedly due to lack of film content available to show or good weather, and the business may need to reduce staffing to avoid carrying unnecessary labour costs. A rigid statutory notice period of a week or more will therefore create significant operational costs and in reality changes to staffing levels are needed on a regular basis.

Compensation for cancellation of shifts
In a business such as Omniplex where demand can change materially from one day to the next, mandatory compensation for cancelled shifts will result in the company paying for labour that is no longer economically required. This additional cost must be considered alongside increases in National Insurance, changes to Statutory Sick Pay, and increases in the National Minimum/Living Wage. The cumulative effect of these measures will place significant additional pressure on already challenging operating margins. Meaningful exemptions should be recognised for sectors where demand is volatile.

CIPD

Unintended consequences.
Omniplex is concerned that measures intended to provide greater security could ultimately reduce employment opportunities specifically for young people and students seeking entry-level employment. If businesses cannot flex staffing in response to demand, it will be forced to employ fewer people, and rely more heavily on fixed-term contracts. Omniplex strongly believes that the Government must reconsider the application of these proposals to cinema and other highly volatile hospitality and leisure businesses. Restricting the ability to reduce staffing during quieter periods will fundamentally undermine the economics of the business.

The business simply cannot carry weekly average hour staffing through periods when admissions are low due to lack of popular content. The consequence would be to make cinemas loss-making during quieter periods and, ultimately, could lead to widespread cinema closures. The Government should consider specific exemptions or safeguards for highly demand-sensitive sectors.

Case study 2: A national retailer

A large national retailer is concerned that existing proposals on guaranteed hours will undermine the feasibility of planned Employee Value Proposition investments that encourage genuine two-sided flexibility for worker and employer needs. This includes a voluntary system for workers to book extra shifts at any store where these are available, which has been well received by allowing workers to reduce their commute, work while away from their hometown, or pick up extra work when broader personal commitments flux. This also includes efforts to develop a job-sharing platform and roll out Part-Year Contracts following feedback that these would be useful for unpaid carers, students and semi-retired workers.

This retailer, despite the HR capabilities required for a large and labour-intensive business model, is also concerned about the scale of system build and administrative burdens. The number of policy variables and how these may interact with broader HR policies will mandate significant time to establish and manage compliance. There are also questions regarding the assumptions underlying the government's options assessment in relation to familiarization and implementation costs.

This employer established a right to guaranteed hours in 2022. The core differences to government proposals were establishing this as a worker-initiated right and using a reference period of 20 within 26 weeks. There was some take-up initially, partly driven by confusion amongst workers that the new right may enable them to pick and choose precise shift times. But use of the right declined significantly after year one and is now marginal.

The retailer runs an always-on campaign in its distribution operations to encourage temporary workers to become permanent employees, including digital and on-site communications. This does result in some conversions, but most agency workers reject the offer due to a preference for weekly pay and the variety of working at different sites and for different employers.

Case study 3: A university

Overall, the proposals would be extremely complex and costly to implement. In particular:

- the requirement to offer guaranteed hours that may not reflect future operational need, would reduce workforce flexibility and create a significant administrative burden
- employers would need to establish complex processes to monitor eligibility, calculate appropriate guaranteed hours, manage offers, and maintain compliance
- likely to require substantial investment in new IT systems - procuring, implementing, and maintaining such systems would be both time-consuming and costly.

Annualised Hours Contracts
A significant concern is how these provisions will apply to annualised hours contracts. These contracts are used where individuals work on a very part-time basis, often alongside other

employment, and where work patterns fluctuate throughout the year in line with the academic calendar. If the reference period is less than 52 weeks, it's unclear how the guaranteed hours provisions would operate in practice. The apportionment provisions in sections 27BA(10) and (11) are complex and would require clear worked examples within government guidance.

Hours worked during a 12-week reference period may not be representative of the remainder of the academic year with teaching activity heavily concentrated in the first two academic terms. An employer could therefore be required to offer a significantly higher annual contract based on a temporary peak in activity, resulting in contractual hours that are paid but not required.

A worker contracted for 200 hours annually who works 150 hours during the autumn term reference period could potentially become entitled to an annual contract equivalent to approximately 650 hours (150 × 4.333), despite no ongoing requirement for that level of work.

The proposals also appear to require employers to offer working patterns that mirror those worked during the reference period. This risks removing the flexibility inherent in variable-hours arrangements and could prevent the future use of genuinely variable-hours contracts.
It is also unclear whether the right to be offered guaranteed hours under section 27BA is intended to apply only to casual workers or whether it extends to part-time employees with established working patterns. If the latter, it appears that employees who work overtime during the reference period could become entitled to a revised contract. We would welcome clarification on whether this is an intended outcome.

Internal Worker Pool
A further concern is the impact on the University's internal worker pool which supplies temporary staff across the University's departments. Unlike agencies, these workers can only be assigned within the University. A key benefit is that it provides access to workers who are already familiar with the University's systems, processes and culture.

The worker pool is carefully managed to ensure that work is only offered where it is genuinely temporary, with ongoing requirements transferred to substantive recruitment processes. While assignments remain flexible, this flexibility is more frequently exercised by workers than by the University. In most cases, the hours offered at the start of an assignment remain consistent throughout its duration.

A requirement to offer contracts after 12 weeks, even where work remains genuinely temporary, would undermine the University's ability to maintain a flexible workforce to address short-term staffing needs. It would lead to reduced flexibility in responding to temporary staffing requirements, increased reliance on external agencies, and significantly higher costs.
The practical difficulties are considerable. Any requirement to offer a contract based on the working pattern of a previous assignment may be unworkable where subsequent assignments differ substantially in role, hours or departmental need.

The proposed legislation would therefore introduce significant administrative burden and rigidity into a model that already provides fair treatment for workers. There is a risk that well-managed services are disproportionately affected by measures intended to address poor employment practices elsewhere. If this type of arrangement becomes unworkable, temporary work opportunities would reduce, limiting employment options for individuals seeking flexible work and potentially undermining the policy objectives of the legislation.

Directly Engaged Casual Workers
The University also maintains a substantial pool of casual workers engaged directly by individual departments, comprising approximately 12,000 individuals with approximately 1-2,000 undertaking active assignments each month. These workers may undertake assignments across multiple departments, perform different roles, and work anywhere from a single hour to recurring engagements over several months.

The proposed 12-week reference period would create significant operational challenges by potentially requiring departments to offer contracts after 12 weeks, even where the work remains genuinely temporary and intermittent. The proposed provisions could therefore significantly restrict the University's ability to maintain a flexible workforce capable of responding to short-term and variable staffing requirements across different departments.

The challenges are particularly acute where individuals undertake multiple assignments in different roles. A requirement to offer a contract based on the working pattern of a previous assignment may bear little relation to the nature, duration or business need of any future assignment. The fact that an individual has worked for 12 weeks in one role does not in itself demonstrate an ongoing requirement for that role or provide a reliable basis for determining the terms of a different engagement.

The proposals therefore risk treating a series of genuinely distinct and temporary assignments as a single continuous engagement, despite differences in roles, departments, working patterns and operational requirements. This would substantially reduce flexibility for both workers and departments and impair the University's ability to meet temporary staffing needs efficiently.

Case study 4: A Fast Food Chain

We engaged with a large fast food chain with a strong high street presence across the UK, maintained through directly operated and franchise outlets. They report high staff turnover due to the nature of the work but are recognised overall as an employer that invests in all its staff, providing high quality training programmes, and offering workers valuable experience, particularly young people in their first experience of work.

Many of the franchises are operated as SMEs – with on average 6 – 7 outlets being owned by each owner – with limited HR resource currently available.

Guaranteed Hours
This employer already provides a guaranteed hours offer, with 4 – 40 hours available, alongside the zero hours contract. It has a 10% opt in across a staff of 160,000.

The key concern with a short (12 week) reference period as the baseline is that it will inevitably capture periods where outlets flex up on workers because they are busier (school holiday periods) inflating the hours that would need to be offered on a guaranteed basis. The seasonal fluctuation in demand means that work is then not available for the hours that must be guaranteed and redundancy situations would arise. In any event, many of those covering the period of increased demand are students who would not accept a guaranteed hours offer, but the offer would still need to be made.

A longer reference period would allow a more balanced view to be taken of the hours that should be offered on a guaranteed basis. A 52 week period would be a more realistic reflection and would mirror the holiday pay reference period.

Notice of Shifts
The benefit of a zero hours contract for many workers is the fact that they **can** change shifts at short notice – students, carers and those with fluctuating health conditions. Organisations have to factor this in. This organisation publishes shifts 2 weeks in advance, but there is always some element of swapping and change. The organisation reported that many of their outlets operated using 'shift swapping' pools where staff who are happy to work at short notice provide their details for this purpose – both to fellow workers and to the employer. – staff in shift swap pools are under no compulsion to accept a short notice shift – what is the difference between being offered a shift swap by a fellow worker, and by an employer which places no pressure on the worker to accept the short notice shift?

It is already administratively challenging to manage short notice changes through sick and staff simply not showing up for shifts - this is out of an employer's control, yet they will be required to pay compensation for asking someone to cover (apparently even if the worker is happy to be asked) as well as sick pay for the worker who is unable to work. Equally, so many of the reasons why a shift might not be available at short notice are outside of the organisation's control – not just weather, but, for example, a factory next door on fire – it is hard to see how this can be legislated for but does need to be covered to avoid penalising employers.

If short notice does not exempt sickness cover, employer will be doubly penalised – paying sick pay from day 1 and then also having to compensate for short notice shift.

Unintended consequences

- Huge administrative burden, compounded by high staff turnover, particularly where many have other reasons (study) not to accept an offer
- More reliance on short fixed-term contracts – fewer workers will gain rights
- Fewer employment opportunities for young people as the cost/admin burden means resource directed towards that and not creating new employment opportunities.
- Monetising 'goodwill' increases cost on employers. For larger employers the amount of compensation is of less consequence, but administration is an issue; changes the dynamic
- Increased costs viewed against a wider backdrop of reform – this employer has seen a 250% uplift in sick pay since the April 2026 ERA 2025 changes

Case study 5: The NHS

The NHS is the largest employer in Europe and operates with a sizeable portion of workforce flexibility, which can be between 10% and 20% depending on the trust concerned, the services they are delivering, and the staffing shortages they are facing.

Key elements of the Government's proposals – in particular the requirement to offer repeatable patterns (guaranteed hours element) and the right to compensation for changing/cancellation of shifts - could have far reaching unintended impacts on the ability of the UK's National Health Service to deliver the patient care needed by the nation and its workforce. This is at a time when another public policy imperative is to 'Keep Britain Working' and retain more people in work and stem the increase in economic inactivity.

Repeatable shift patterns

Introducing the guaranteed hours offer within a short reference period as the proposals stand will make it much harder for the NHS to respond to health emergencies on local, regional and national levels. Demand is often driven by entirely external factors, with the COVID 19 pandemic a case in point. Implementing a reference period that looks backwards rather than forward will lead to a mismatch for workforce planning and does not take account of the fluctuating nature in demand for staff.

For example, forecasting staff resourcing needs to cope with the Winter spike for patient care has to be a forward- and not backward-looking exercise. Conversely, Spring is when trusts try to limit use of the flexible workforce to reduce costs after the winter spike. Looking back does not encourage forward planning. In addition, the reduced need for staff following periods of higher demand will lead to contracts being terminated rather than using the flexibility of offering fewer hours.

Further, recent survey findings show that, while some agency staff on flexible (zero hours) contracts do want consistency/repeatable patterns, the majority don't. It was reported to us that many staff opted out of direct permanent employment because the NHS has been unable to implement flexible working successfully.

We know that NHS-related organisations, including NHS Professionals, and individual trusts will be submitting their own detailed responses to this consultation. However, the potential impact on the NHS's resourcing capability and on CIPD members working in the sector could be so significant that we need to draw attention to it in the CIPD's submission.

Case study 6: The micro and small firm perspective (focus group findings)

Micro and small firms lack awareness of the proposed changes and will struggle to comply unless changes are made to some of the central measures. These were central findings of a focus group of small firms designed to explore the views of owner managers and to inform the consultation.

Participants in the roundtable, facilitated by Jill Bottomley, managing director of the People Curve consultancy and member of the CIPD's public policy forum, understood why the government wants to reduce one-sided flexibility and improve security for individuals. However, they questioned whether the planned measures would achieve this objective and how workable they would be in practice.

A striking finding was the lack of awareness. Nobody in the group had known about the consultation, despite participants saying they had actively tried to keep up to date with employment-law changes. This caused concern and, for some, frustration that SME voices would not be heard before the detailed rules were settled.

There was concern that a 12-week reference period is too short for businesses with fluctuating demand. Longer periods, such as at least six months and, in some cases, 52 weeks, were seen as better able to reflect genuine patterns, yet they still focus on the past and are not representative of future demand.

Many lack sophisticated HR information systems, workforce analytics or rostering technology. In some hospitality businesses, rotas are still managed via WhatsApp or basic spreadsheets, and participants questioned how small employers would accurately track repeated averages and reference-period calculations.

The consensus among participants was that the likely result would be significant additional cost in management time, external advice, payroll intervention and compliance risk. The roundtable also reinforced the concern that the most significant impact may be behavioural. Employers will not passively absorb new legal duties. They will change how they recruit, contract, roster and allocate additional hours.

There were other wider consequences highlighted in the discussion that micro and small employers will struggle to manage. Guaranteed hours cannot simply be added to every casual or worker arrangement without considering whether contractual terms and employment status change. Holiday entitlement may also change: irregular-hours workers can accrue statutory leave at 12.07% of all hours worked, whereas additional ad hoc hours alongside guaranteed hours may not attract the same entitlement.

A robust right to request regular contractual hours was seen as a more proportionate approach than automatic historic-hours conversion, provided it is backed by protection from detriment and meaningful review. Policy appraisal therefore needs to test the likely employer response, not merely the direct cost of compliance.

Case study 7: A Livestock mart

We engaged with an organisation which holds livestock marts across a broad geographical area. The business employs a number of staff on permanent contracts but then require additional workers for very specific periods when the marts are actually operating. Key periods are mid-August – November, and April-May, but in between times, there are no marts taking place.

Guaranteed hours

The vast majority of workers engaged on zero hours contracts to cover the busy periods are from the farming community and will take on a long day at the mart as part of being in the farming community and also because, by virtue of the mart being 'on', there is no work for them to do that day on their own farm. Our contact was anxious to stress that the offer of guaranteed hours would place a significant administrative burden in a situation where the offers would not be accepted; if they were accepted, there would be no work available, leading to redundancy and termination. This would be a source of tension – formalising a way of working that has been in place for years.

Notice periods

This was the key concern for our contact. Even in active periods, there is fluctuation – three marts are scheduled each week, but more may be put in the calendar at short notice depending on the needs of the farming community; equally, if fewer animals are available, marts may be cancelled or curtailed at very short notice. Marts may also be impacted by a range of factors outside of the employer's control - fluctuating weather conditions, animal health restrictions, testing and inspection regimes