Response of the Birmingham Law Society Employment Committee to the Make Work Pay: ending one-sided flexibility – reforms of zero hours and similar contracts

August 2026

About this response

This response is submitted on behalf of the Employment Committee of Birmingham Law Society. Birmingham Law Society is one of the largest regional law societies in England and Wales, representing the interests of lawyers and law firms across Birmingham and the West Midlands. The Employment Committee comprises practising employment lawyers drawn from across the region, with expertise spanning both contentious and non-contentious employment law, including advising employers, employees and trade unions on TUPE transfers and the associated consultation and due diligence processes.

The questions to which the Committee has chosen to respond are reproduced below, with the Committee's answers shown in underline.

About you

Please provide the following information to help us understand the context of your response:

Question 1: Please indicate whether you are responding as:
[ ] An individual
[ ] An academic, or on behalf of an academic or research organisation
[ ] An employer
[ ] A legal representative
[ ] A business representative organisation (please specify)
[ ] A trade union or staff association (please specify)
[ ] A charity or interest group
[x] Other – please specify **<u>Birmingham Law Society Employment Law Committee</u>**

Question 2: You selected that you are responding as an individual, are you (select all that apply):
[ ] an individual working directly for an employer
[ ] an agency worker, paid by an agency
[ ] an agency worker, paid through an umbrella company – meaning a payroll provider which is different to the agency
[ ] a self-employed or freelance individual
[ ] Other – please specify

Question 3: You selected that you are responding as an employer, are you (select all that apply):
[ ] a direct employer
[ ] a hirer of agency workers
[ ] an agency

[ ] an umbrella company
[ ] other – please specify

Question 4: If responding as an employer, business or business owner, approximately what is the size of your business? If responding as an individual or worker, what size workplace are you employed in?
[ ] Micro (1 to 9 employees)
[ ] Small (10 to 49 employees)
[ ] Medium (50 to 249 employees)
[ ] Large (250+ employees)
[ ] Don't know
[ ] Not Applicable

Question 5: If responding as business representative or trade union, how many members does your organisation have?

Question 6: Where are you located? Please tick boxes for your main locations.
[ ] North-East
[ ] North-West
[ ] Yorkshire and The Humber
[ ] East Midlands
[x] West Midlands
[ ] East of England
[ ] London
[ ] South-East
[ ] South-West
[ ] Wales
[ ] Scotland
[ ] Northern Ireland
[ ] Other (please specify)

Question 7: What sector are you based in?
[ ] Accommodation and food service activities
[ ] Activities of households as employers; undifferentiated goods and services producing activities of households for own use
[ ] Administrative and support service activities
[ ] Arts, entertainment and recreation
[ ] Agriculture, forestry and fishing
[ ] Construction
[ ] Education
[ ] Electricity, gas, steam and air conditioning supply
[ ] Financial and insurance activities
[ ] Health

[ ] Information and communication
[ ] Manufacturing
[ ] Mining and quarrying
[ ] Production
[x] Professional, scientific and technical activities
[ ] Public administration and defence; compulsory social security
[ ] Real estate activities
[ ] Repair of motor vehicles and motorcycles
[ ] Social Care
[ ] Services Sector
[ ] Transportation and storage
[ ] Water supply; sewerage, waste management and remediation activities
[ ] Wholesale and retail trade
[ ] Other service activities
[ ] Other (please specify)

Question 8: If you are an employer or individual, what type of organisation (do you work for)? (Please select from the following)
[ ] Private sector organisation
[ ] Public sector
[ ] Charity or voluntary sector
[ ] Don't know
[ ] Other (please specify)

Q1.a: For directly engaged workers, which of the following options should the hours threshold be:
[ ] 8 hours per week
[x] 12 hours per week
[ ] 16 hours per week
[ ] 20 hours per week
[ ] 24 hours per week
[ ] 28 hours per week
[ ] 32 hours per week
[ ] 36 hours per week
[ ] 40 hours per week
[ ] 44 hours per week
[ ] 48 hours per week
[ ] Other (please specify)

Q1.b: Please explain your answer

Setting the threshold higher than 12 hours a week potentially risks an unintended consequence of bringing into scope a very high number of part-time workers who already have stable work arrangements and predictable income, resulting in a less favourable balance of costs and benefits. Setting the threshold at 8 hours a week would defeat the purpose of the legislation based on the evidence from the Living Wage Foundation that a significant number of workers on contracts guaranteeing 9 to 5 hours should be brought into scope.

Q1.c: Which option(s) (including any not outlined above) do you think could have an impact on the number of contracted hours in job offers?

For the reasons set out above, we believe that the options below or above 12 hours a week would have an adverse impact on the number of contracted hours job offers.

Q1.d: Which option(s) (including any not outlined above) do you think could have an impact on the availability of additional hours for workers?

We believe that the higher the threshold, the higher the likely impact on the availability of additional hours for workers.

Q1.e: Which option(s) (including any not outlined above) do you think could have an impact on the availability of additional hours for particular groups of workers sharing a protected characteristic under the Equality Act 2010?

We believe that the higher the threshold, the higher the likely impact on availability of additional hours for particular groups of workers sharing a protected characteristic. We have in mind in particular workers with a disability and older workers.

Q2.a: Agency workers should not be entitled to guaranteed hours offers when (choose one of the two options below):
[x] they already have a contract guaranteeing hours above the threshold (for example, by their agency) regardless of which hirer these hours are to be worked for
[ ] they already have a contract guaranteeing hours above the threshold specifically in respect of work to be done for one hirer (for example, by their agency)

Q2.b: Please explain your answer

We have chosen this option because it is fairer to hirers overall.

Q3.a: For agency workers, which of the following options should the hours threshold be:
[ ] 8 hours per week
[x] 12 hours per week

[ ] 16 hours per week
[ ] 20 hours per week
[ ] 24 hours per week
[ ] 28 hours per week
[ ] 32 hours per week
[ ] 36 hours per week
[ ] 40 hours per week
[ ] 44 hours per week
[ ] 48 hours per week
[ ] Other (please specify)

Q3.b: Please explain your answer

Setting the threshold higher than 12 hours a week potentially risks an unintended consequence of bringing into scope a very high number of part-time workers who already have stable work arrangements and predictable income, resulting in a less favourable balance of costs and benefits. Setting the threshold lower than 12 hours a week would defeat the purpose of the legislation based on the evidence from the Living Wage Foundation that a significant number of workers on contracts guaranteeing 9 to 5 hours should be brought into scope.

Q4.a: How long should the initial reference period be for directly engaged workers?
[ ] 12 weeks (Government-preferred option)
[x] 26 weeks
[ ] 52 weeks
[ ] Other

Q4.b: Please explain your answer

Many businesses who rely on casual workers face fluctuating demand for their services due seasonal trade (for example in the hospitality and leisure sectors) and short-term funding (for example in adult social and private care). Setting the reference period at 12 weeks will not take into account these fluctuations, preventing flexibility for short term businesses and resulting in overstaffing during quieter periods and higher labour costs. 26 weeks strikes the right balance.

Q5.a: How long should the initial reference period be for agency workers?
[ ] 12 weeks
[x] 26 weeks
[ ] 52 weeks
[ ] Other

Q5.b: Please explain your answer

Many businesses who rely on agency workers face fluctuating demand for their services due seasonal trade (for example in the hospitality and leisure sectors) and short-term funding (for example in adult social and private care). Setting the reference period at 12 weeks will not take into account these fluctuations, preventing short term business flexibility and resulting in overstaffing during quieter periods and higher labour costs. 26 weeks strikes the right balance.

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

[ ] 12 weeks
[x] 26 weeks
[ ] 52 weeks
[ ] Other

Q6.b: Please explain your answer

For the reasons we have set out above.

The following scenarios illustrate some of the implications of a subsequent reference beginning or not beginning as soon as the previous reference period finishes.

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

[ ] Yes
[x] No
[ ] Other

Q7.b: Please explain your answer

A gap would reduce the administrative burden on businesses who rely on casual workers (many of whom are small businesses with limited administrative resources) and also address the concerns around fluctuating demand and the need for flexibility.

Q8.a: How long do you think subsequent reference periods should be for agency workers?

[ ] 12 weeks
[x] 26 weeks
[ ] 52 weeks
[ ] Other

Q8.b: Please explain your answer

For the reasons set out above

Q9.a: Should each reference period begin as soon as the previous one finishes?
[ ] Yes
[x] No
[ ] Other

Q9.b: Please explain your answer

A gap would reduce the administrative burden on businesses who rely on casual workers (many of whom are small businesses with limited administrative resources) and also address the concerns around fluctuating demand and the need for flexibility.

Q10.a: Based on the two options highlighted above for directly engaged workers, select below which option is preferred.
[x] Option A: A weekly distribution requirement.
[ ] Option B: A weekly distribution requirement AND a total hours requirement.
[ ] Other

Q10.b: Please explain your answer

Simplicity is best. Option B would create considerable complexity and place an excessive administrative burden on employers.

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.
[ ] 6 calendar weeks across a 12-week initial reference period.
[x] 8 calendar weeks across a 12-week initial reference period.
[ ] 10 calendar weeks across a 12-week initial reference period.
[ ] 12 calendar weeks across a 12-week initial reference period.
[ ] Other

Q11.b: Please explain your answer

Regularity should involve working more than 50% of weeks in the 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.)
[ ] Fewer than 48 hours (in excess of contracted hours) across a 12-week initial reference period.
[ ] 48 hours (in excess of contracted hours) across a 12-week initial reference period.
[x] 72 hours (in excess of contracted hours) across a 12-week initial reference period.
[ ] 96 hours (in excess of contracted hours) across a 12-week initial reference period. [ ] Other

Q12.b: Please explain your answer

Setting the total hours above or below 72 hours will have a disproportionate impact on the number of workers who are within scope. 72 hours in a 12-week reference period strikes the right balance.

Q13.a: The government proposes that the regularity requirements should scale in the event of longer subsequent reference periods. Do you agree?

[x] Yes, the regularity requirements should scale in the event of longer subsequent reference periods
[ ] No, the regularity requirements should not scale in the event of longer subsequent reference periods

Q13.b: Please explain your answer

Scaling over a longer subsequent reference period is logical and proportionate.

Q14.a: Based on the two options set out above for agency workers, select below which option is preferred:
[ ] Option A: A weekly distribution requirement.
[ ] Option B: A weekly distribution requirement AND a total hours requirement.
[ ] Other

Q14.b: Please explain your answer

Q15.a: What should the minimum number of weeks be in which an agency worker is required to work during the reference period for a certain hirer to qualify (the weekly distribution requirement)?

(The below options are framed around a 12-week initial reference period. The options would scale proportionally for a longer initial reference period.) [ ] 6 calendar weeks across a 12-week initial reference period.
[ ] 8 calendar weeks across a 12-week initial reference period.
[ ] 10 calendar weeks across a 12-week initial reference period.
[ ] 12 calendar weeks across a 12-week initial reference period.
[ ] Other

Q15.b: Please explain your answer

Q16.a: If there were to be a weekly distribution requirement AND a total hours requirement (as in Option B), what do you think the total hours requirement should be for an agency worker?
(The below options are framed around a 12-week initial reference period. The options would scale proportionally for a longer initial reference period.) [ ] Fewer than 48 hours (in excess of contracted hours) across a 12-week initial reference period.
[ ] 48 hours (in excess of contracted hours) across a 12-week initial reference period.
[ ] 72 hours (in excess of contracted hours) across a 12-week initial reference period.
[ ] 96 hours (in excess of contracted hours) across a 12-week initial reference period. [ ] Other

Q16.b: Please explain your answer

Q17.a: The government proposes that the regularity requirements should scale in the event of longer subsequent reference periods. Do you agree in relation to agency workers?
[ ] Yes, the regularity requirements should scale in the event of longer subsequent reference periods
[ ] No, the regularity requirements should not scale in the event of longer subsequent reference periods

Q17.b: Please explain your answer

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?
[x] 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 not 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.

Examples of temporary need which are not related to a specific task or event include recurring seasonal fluctuations in trade including the effect of school holidays, Christmas, summer, weather and tourism on logistics and distribution, hospitality, retail, and leisure. Other examples include, harvest periods, and seasonal food production periods.

In the domiciliary care for the elderly demand is constantly fluctuating due to deaths, respite care needs and hospital admissions.

Q19.a: Which calculation method do you think should be used for determining the guaranteed hours offer for directly engaged workers?
[ ] Mean average
[x] Median average

Q19.b: Please explain your answer

This is more representative of the hours a worker regularly works.

In the offer, the hours calculated will need to be allocated over a specified time period – such as a week or a month. The government could either set a standard time period for all guaranteed hours offers or allow employers the flexibility to determine the time period themselves.

This time period would not affect the number of hours that are guaranteed – the number of hours would need to be scaled proportionately. Allowing employers to choose the time period would give them greater flexibility, but it could reduce predictability and security for workers.

Q20.a: Do you think employers should have flexibility to determine the period over which the hours will be allocated (weekly, monthly, or other)?
[x] Yes, they should have the flexibility to determine the time period
[ ] No, they should not have the flexibility to determine the time period

Q20.b: Please explain your answer

This gives employers greater flexibility and it would not affect the number of hours that are guaranteed.

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
[ ] Other

Q20.d: Please explain your answer

A month gives a sufficient period over which hours can be allocated.

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?
[ ] A week
[x] A month
[ ] Other

Q21.b: Please explain your answer

A month gives a sufficient period over which hours can be allocated.

Employers could be given some flexibility to use an 'adjustment margin' when making guaranteed hours offers. An adjustment margin could help protect employers against theoretical legal liability arising from minor calculation errors. In some cases, it could also make it easier to align guaranteed hours offers with an employer's usual shift allocation pattern, for example, where shifts are always 8 hours long and an offer is close to a multiple of 8 it could be revised up or down (as far as the adjustment margin allows).

The adjustment margin could be a fixed figure (for example, 2 hours) or a percentage of the hours generated by the calculation (for example, 10%). Employers would be able to add or subtract the margin from the offer. The margin - whether a percentage or a fixed amount - would need to be small to ensure the offer reflects the number of hours worked during the reference period.

Q22.a: Do you think employers should have the flexibility to use an adjustment margin?
[ ] Yes, the margin should be a fixed figure
[ ] Yes, the margin should be a percentage of the hours generated by the calculation
[ ] No, employers should not have the flexibility to use an adjustment margin
[x] Other

Q22.b: Please explain your answer

Employers should have the flexibility to choose the adjustment margin they use.

Q23.a: Which calculation method do you think should be used for determining the guaranteed hours offer for agency workers?
[ ] Mean average
[ ] Median average

Q23.b: Please explain your answer

In the offer, the hours calculated will need to be allocated over a specified time period – such as a week or a month. The government could either set a standard time period for all guaranteed hours offers or allow hirers the flexibility to determine the time period themselves. This time period would not affect the number of hours that are guaranteed – the number of hours would need to be scaled proportionately. Allowing hirers to choose the time period would give them greater flexibility, but it could reduce predictability and security for workers.

Q24.a: Do you think hirers should have flexibility to determine the time period over which the hours will be allocated for agency workers? (weekly, monthly, other)
[ ] Yes, they should have the flexibility to determine the time period
[ ] No, they should not have the flexibility to determine the time period

Q24.b: Please explain your answer
[Free text]

Q24.c: (if yes) Which of the following time periods should hirers be able to choose? (select as many as you see fit)
[ ] A week
[ ] A month
[ ] Other

Q24.d: Please explain your answer

Q24.e: If the government were to mandate a time period over which hirers would need to allocate hours in guaranteed hours offers for agency workers, what do you think this this should be?
[ ] A week
[ ] A month
[ ] Other

Q24.f: Please explain your answer

Hirers could be given some flexibility to use an adjustment margin when making guaranteed hours offers. An adjustment margin could help protect hirers against theoretical legal liability arising from minor calculation errors. It could also make it easier to align guaranteed hours offers with usual shift allocation patterns, for example, where shifts are always 8 hours long. This margin could be a fixed figure (for example, 2 hours) or a percentage of the hours generated by the calculation (for example, 10%). Hirers would be able to add or subtract the margin from the offer. As for directly engaged workers, the margin, whether a percentage or a fixed amount, would need to be small to ensure the offer reflects the number of hours worked during the reference period.

Q25.a: Do you think hirers should have the flexibility to use an adjustment margin to tailor the offer to their needs?

[ ] Yes, the margin should be a fixed figure

[ ] Yes, the margin should be a percentage of the hours generated by the calculation

[ ] No, hirers should not have the flexibility to use an adjustment margin

[ ] Other

Q25.b: Please explain your answer

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

[x] Yes, there should be certain types of workers excluded

[ ] No, there should not 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.

Domiciliary care workers.

Q26.c: If no, please explain your answer

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

[x] Yes, there are certain specific circumstances in which employers should be exempt

[ ] No, there are no circumstances in which employers should be exempt

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.

Domiciliary adult care for the elderly or disabled.

Q27.c: If no, please explain your answer

Q28.a: Should there be any types of agency workers that are excluded from the right to guaranteed hours?
[ ] Yes, there should be certain types of agency workers excluded
[ ] No, there should not be certain types of agency workers excluded

Q28.b: If yes, please list any types of agency workers that you think should be excluded from the right to guaranteed hours. [Free text]

Q28.c: If no, please explain your answer

Q29.a: Should there be any specific circumstances in which you think the duty to make a guaranteed hours offer to qualifying agency workers should not apply?
[ ] Yes, there are certain circumstances in which the duty should not apply
[ ] No, there are no circumstances in which the duty should not apply

Q29.b: If yes, please list any specific circumstances in which you think the duty to make a guaranteed hours offer to qualifying agency workers should not apply

Q29.c: If no, please explain your answer

Q30.a: Do you think there should be any cases where the duty to make a guaranteed hours offer should be placed on the agency or another intermediary instead of on the hirer?
[ ] Yes, there should be cases where the duty to make a guaranteed hours offer should be placed on the agency or another intermediary
[ ] No, there are no cases where the duty to make a guaranteed hours offer should be placed on the agency or another intermediary

Q30.b: If yes, for which types of agency worker do you think the duty to make a guaranteed hours offer should be placed on the agency or another intermediary instead of on the hirer?

Q30.c: If no, please explain your answer

Q31: Are there any other ways in which the right to guaranteed hours would need to apply differently to these types of agency worker?

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?

[x] Yes
[ ] No

Q32.b: Please explain your answer

Workers with disabilities, women with childcare responsibilities, and low skilled workers from other jurisdictions tend to make up a large proportion of zero or low hours workers in certain sectors.

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

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
[ ] 12 hours per week
[ ] 16 hours per week
[x] 20 hours per week
[ ] 24 hours per week
[ ] 28 hours per week
[ ] 32 hours per week
[ ] 36 hours per week
[ ] 40 hours per week
[ ] 44 hours per week
[ ] 48 hours per week
[ ] Other (please specify)

Q34.b: Please explain your answer

This strikes the right balance.

Q35.a: Agency workers should not be entitled to the right to reasonable notice and the right to short notice payments when:

[ ] they already have a contract guaranteeing hours above the threshold (for example, by their agency) regardless of which hirer those hours are to be worked for

[ ] they already have a contract guaranteeing hours above the threshold specifically in respect of work to be done for one hirer (for example, by their agency).

Q35.b: Please explain your answer

Q36.a: What do you think the hours threshold for the right to reasonable notice and the right to short notice payments should be for agency workers?

[ ] 8 hours per week
[ ] 12 hours per week
[ ] 16 hours per week
[ ] 20 hours per week
[ ] 24 hours per week
[ ] 28 hours per week
[ ] 32 hours per week
[ ] 36 hours per week
[ ] 40 hours per week
[ ] 44 hours per week
[ ] 48 hours per week
[ ] Other (please specify)

Q36.b: Please explain your answer

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

[x] 1 week
[ ] 2 weeks
[ ] 3 weeks
[ ] 4 weeks
[ ] Other

Q37.b: Please explain your answer

This strikes the right balance.

Q38: In what circumstances do you think longer notice should be required?
Please explain your answer

Where employers are able to plan ahead with certainty.

Q39: In what circumstances do you think shorter notice should be required? Please explain your answer

Where there is a sudden change in circumstances which is outside the employer's control and which affects the need for staff – examples include changes to funding in care or in relation to projects, short term sickness absence of staff, loss of a customer, and business closures.

Q40.a: How much notice should be presumed reasonable for agency workers?

[ ] Less than 5 days (please specify)
[ ] 5 days
[ ] 1 week
[ ] 2 weeks
[ ] 3 weeks
[ ] 4 weeks
[ ] Other

Q40.b: Please explain your answer

Q41: In what circumstances do you think longer notice should be required for agency workers? Please explain your answer

Q42: In what circumstances do you think shorter notice should be required for agency workers? Please explain your answer

Q43.a: Should there be any types of hirers that should not be liable for failing to provide reasonable notice?

[x] Yes, certain types of hirers should not be liable for failing to provide reasonable notice
[ ] No, all types of hirers should be liable for failing to provide reasonable notice

Q43.b: If yes, please specify any types of hirers that you think should not be liable for failing to provide reasonable notice.

Examples include hirers that are at the mercy of large customers (e.g. small care providers who service local authority or NHS funded care), security businesses that procure agency staff for large events, and hirers for major events of short term duration such as the Commonwealth Games/Euros and so on.

Q43.c: If no, please explain your answer.

Q44.a: What timeframe do you think short notice should be for directly engaged workers?
[ ] 1 day
[ ] 2 days
[x] 3 days
[ ] 5 days
[ ] 7 days
[ ] Other

Q44.b: Please explain your answer

<u>This strikes the right balance.</u>

Q45.a: What timeframe do you think very short notice should be for directly engaged workers?
[ ] less than 1 day (please specify)
[x] 1 day
[ ] 2 days
[ ] 3 days
[ ] 5 days
[ ] There should not be a very short notice period
[ ] Other

Q45.b: Please explain your answer

<u>This strikes the right balance.</u>

Q46.a: What timeframe do you think short notice should be for agency workers?
[ ] Less than 1 day (please specify)
[ ] 1 day
[ ] 2 days
[ ] 3 days
[ ] 5 days
[ ] 7 days
[ ] Other

Q46.b: Please explain your answer

Q47.a: What timeframe do you think very short notice should be for agency workers?
[ ] Less than 1 day (please specify)
[ ] 1 day
[ ] 2 days

[ ] 3 days
[ ] 5 days
[ ] There should not be a very short notice period
[ ] Other

Q47.b: Please explain your answer

Q48.a: The short notice payment should be:
[x] A percentage of what the worker would have earned from working the shift or the relevant hours
[ ] 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
Other

Q48.b: Please explain your answer

A percentage of earnings seems fair rather than capping the amount at what may be much less than their actual loss of earnings.

Q49.a: If the short notice payment were a percentage of what the worker would have earned from working the shift or the relevant hours, what percentage should this be?
[ ] 10%
[ ] 30%
[x] 50%
[ ] 65%
[ ] 80%
[ ] Other

Q49.b: Please explain your answer

This strikes the right balance between loss of earnings and events over which the employer may not have had control.

Q50.a: If the short notice payment were a percentage of what the worker or agency worker would have earned from working the shift or the relevant hours at the relevant National Living/Minimum Wage rate, what percentage should this be?
[ ] 10%
[ ] 30%
[x] 50%

[ ] 65%
[ ] 80%
[ ] Other

Q50.b: Please explain your answer

This strikes the right balance between loss of earnings and events over which the employer may not have had control.

Q51.a: If the very short notice payment were a percentage of what the worker would have earned from working the shift or the relevant hours, what percentage should this be?
[ ] 30%
[x] 50%
[ ] 65%
[ ] 80%
[ ] Other

Q51.b: Please explain your answer

Again, we consider that this strikes the right balance.

Q52.a: If the very short notice payment were a percentage of what the worker or agency worker would have earned from working the shift or the relevant hours at the relevant National Living/Minimum Wage rate, what should this percentage be?
[ ] 30%
[ ] 50%
[ ] 65%
[ ] 80%
[ ] Other

Q52.b: Please explain your answer

Q53.a: Do you think there should be any exceptions to the requirement to make a short notice payment or very short notice payment?
[x] Yes
[ ] No

Q53.b: If yes, what should these exceptions be?

Having no exceptions at all would lead to inflexible legislation, for example in the case of a force majeure.

Q53.c: If no, please explain your answer.

Q54.a: Do you think there should be any exceptions to the requirement to make a short notice payment specifically for agency workers?
[ ] Yes
[ ] No

Q54.b: If yes, what should these exceptions be?

Q54.c: If no, please explain your answer

Q55.a: Do you think there are any types of hirers who should not be added to tribunal proceedings and potentially held liable for breaches regarding an exception notice?
[x] Yes, certain types of hirers should not be added to tribunal proceedings and potentially held liable for breaches regarding an exception notice
[ ] No, it should be possible to add all types of hirers to tribunal proceedings and potentially held liable for breaches regarding an exception notice

Q55.b: If yes, which types of hirers do you think should not be added to tribunal proceedings and potentially held liable for breaches regarding an exception notice?

Examples include hirers that are at the mercy of large customers (e.g. small care providers who service local authority or NHS funded care), security businesses that procure agency staff for large events, and hirers for major events of short term duration such as the Commonwealth Games/Euros and so on.

Q55.c: If no, please explain your answer.

Q56.a: Do you think there are any types of hirers from whom it should not be possible to recover short notice payments under the Act?
[x] Yes, there are certain types of hirers from whom it should not be possible to recover short notice payments under the Act
[ ] No, there are no types of hirers from whom it should not be possible to recover short notice payments under the Act

Q56.b: If yes, from which types of hirers should it not be possible to recover short notice payments under the Act?

Examples include hirers that are at the mercy of large customers (e.g. small care providers who service local authority or NHS funded care), security businesses that procure agency staff for large events, and hirers for major events of short term duration such as the Commonwealth Games/Euros and so on.

Q56.c: If no, please explain your answer

Q57.a: Should the FWA enforce the right to short notice payments?
[x] Yes
[ ] No

Q57.b: Please explain your answer.

The FWA is precisely the sort of body that should have the jurisdiction to enforce short notice payments. Without any such power, the regulations will simply have no force.

Q58: Should the FWA impose a penalty where it finds that an employer has failed to make a short notice payment?
[x] Yes
[ ] No

Q59.a: What should the penalty amount be?
[x] 50% of arrears owed to the worker (government preferred option)
[ ] 100% of arrears owed to the worker
[ ] 200% of arrears owed to the worker
[ ] A different amount

Q59.b: Please explain your answer.

A penalty should be possible in serious cases to ensure that employers simply do not have the ability to avoid the consequences of the regulations.

Q60.a: What should the minimum and maximum penalty amount be?
[x] Minimum £100 per case, maximum £5,000 per worker (government preferred option)
[ ] Minimum £100 per case, maximum £20,000 per worker
[ ] Different amounts

Q60.b: Please explain your answer

This strikes the right balance.

Broader impacts

Q61: Is there anything else you want us to take into account in relation to Part 2 of this consultation, on reasonable notice of shifts and payment for shifts cancelled, moved or curtailed at short notice?

No.

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
[x] No

Q62.b: Please explain your answer.

Whilst workers who share protected characteristic may make up more zero or low hours workers, notice of shifts and short notice payments should apply to all individuals in their own right, irrespective of any protected characteristic.

Q63.a: Should the government amend the Conduct of Employment Agencies and Employment Businesses Regulations 2003, to require relevant entities to share information they need to comply with their duties under the zero hours measures?

[ ] Yes, the government should amend the Conduct Regulations
[ ] No, the government should not amend the Conduct Regulations

Q63.b: Please explain your answer

Q64: Is there anything else you want us to take into account in relation to Part 3 of this consultation, on amending the Conduct of Employment Agencies and Employment Businesses Regulations 2003 in respect of the zero hours measures?