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Timewise consultation response

Make Work Pay: ending one-sided flexibility

Ending one-sided flexibility – are the government's plans enough?

Timewise consultation response

The consultation on the Government's landmark legislation to 'end one-sided flexibility' is a vital opportunity to influence the details of new rights to a guaranteed hours contract, fair notice periods for shifts, and compensation for short term cancellations from 2027.

These new rights are hugely consequential for millions of UK workers, particularly for those on variable hours contracts where work hours are not fixed and change based on business needs, fluctuating between an agreed minimum and maximum range (such as 0 to 35 hours per week).

The government estimates that over 18 million workers in the UK are on variable hours contracts.[i] Polling suggests that more than half (55%) of these workers have been called into work with less than a week's notice for shifts, and a quarter have had shifts cancelled by their employer unexpectedly.[ii]

Wider analysis suggests that nearly seven million people are in 'severely' insecure work - a problem concentrated among young people, women, racially minoritised workers, disabled workers and those in frontline, lower paid roles.[iii]

The consequences reach well beyond the workplace, with knock on consequences for health and welfare spending. Job insecurity, poor work-life compatibility and a lack of voice and control at work are key drivers of work-related ill-health, alongside excessive hours and burnout.[iv] Economic precarity is also a factor behind rising mental health conditions[v] and economic inactivity[vi] among young people. The impact of poor quality, insecure work can last a lifetime. Research from the US suggests that volatile and variable work schedules in workers' 20s and 30s results in a higher likelihood of poor health and depressive symptoms at age 50, compared to those with stable work schedules.[vii]

The Government's ambition to end one-sided flexibility is therefore welcome and hugely overdue. But ambition in principle is only as good as the legislation that delivers it.

Two possible laws

Choices about how this legislation is designed will determine which of two very different laws comes into being. The first would set a new standard that shifts how the risks of economic uncertainty are shared between workers and employers, covering the majority of variable hours workers, and creating incentives for employers to improve how they plan, deploy and treat their workforce. The second would be a narrowly-drawn entitlement: technically on the statute book, but accessible to a small number of workers, and so easy for employers to work around that it leaves the labour market virtually unchanged. The difference between these two outcomes depends on the details now under consultation.

In this piece we set out the four design choices that matter most, and what is at stake in each.

1. Who qualifies: the coverage question

The government proposes that the new rights should only apply to those on zero and low-hours contracts, with the qualifying threshold set somewhere between 8 and 20 hours a week. The stated aim is to provide security for those who lack it, while avoiding unnecessary interference with overtime arrangements for workers that already have a substantial guaranteed hours base.

Where the threshold is set significantly impacts the number of workers covered by the rights. For example, Resolution Foundation analysis shows that setting the threshold at 8 hours would exclude around three-quarters of workers on variable hour contracts from the new rights. Even at 25 hours, around 40% would remain out of the law's reach.[viii]

Resolution Foundation analysis also shows that anxiety about short notice changes to shifts persists across all workers on variable contracts. More than 30% of workers on 11 and 35 hours a week experience anxiety, compared to just over a quarter of workers on 10 hours or fewer and those working over 40 hours a week. Workers on around 25 hours per week are just as likely as those on lower hours to feel 'very anxious' about unexpected changes to their shifts.[ix]

Evidence from our own work underlines this. Timewise is currently working with Aberdeen Laundry Services, a highly seasonal business serving sectors across Scotland including oil and gas, hospitality and tourism, and healthcare, to pilot a move from one week's notice of shifts towards four. Staff are already guaranteed a minimum of 30 hours per week at the real Living Wage all year round – so could fall outside the Government's proposed protections. But the pilot shows that advance notice still matters to them, even where hours are already secure.. The move to four weeks' notice is not without complexity. One early finding is a reduced willingness among staff to pick up ad-hoc additional work – but the organisation is working through these tensions with

staff directly. Early feedback from the pilot points to improved morale and a stronger sense of fairness among staff, alongside the operational adjustments involved in giving longer notice.

The example shows why predictability and advance notice still matter to workers with relatively high numbers of guaranteed hours, and that improvements are achievable even in sectors where flexibility is genuinely important. More widely, our work with employers in sectors such as health, construction and logistics suggests that a lack of predictability in work schedules can drive and exacerbate mental and physical health issues, even in better paying sectors where full time work and long hours are common.[x]

The threshold question is compounded by a second coverage risk: the potential to modify or limit the application of the new rights for agency workers. This seeks to enable ongoing short-term flexibility for employers that need it, and acknowledges the greater complexity of compliance given the triangular relationship between the worker, the agency and the hirer where no party has full visibility or control. Yet analysis by the TUC shows that agency workers face the same scheduling pressures as those on zero and low hours contracts, with many undertaking regular, predictable work for the same employer over several years, while being kept on insecure contractual terms.[xi]

The Taylor Review of Modern Working Practices – conducted for the government almost a decade ago – found that too many employers and businesses were relying on zero hours, short-hours or agency contracts "when they could be more forward thinking in their scheduling", calling for stronger incentives to encourage them to change their behaviour.[xii] Not long after this, the government decided to close an earlier loophole in EU law relating to pay for agency workers, having concluded that differential rights had led to the creation of a two-tier workforce.[xiii] The new legislation risks repeating these mistakes and potentially creates a structural incentive for employers to use agency arrangements to avoid the obligations that come with direct employment, accelerating rather than reversing the casualisation of work.

Our recommendations:

- Set the eligibility threshold for the right to a guaranteed hours contract at a minimum of **28 hours a week to ensure that the** legislation covers a high proportion of workers on variable contracts in line with its stated aim of ending one-sided flexibility.
- Extend rights to fair notice and compensation for short-notice shift cancellations to all workers on variable hours contracts.
- Minimise differences in application of the rights to directly-employed workers and agency workers.

2. Whether the rights can be triggered – or designed around

Even for workers who fall within the law's scope, poorly designed trigger mechanisms can allow the rights to be systematically avoided without any explicit breach of the legislation.

A key example of the workaround risk is the reference period and regularity test used to calculate when a right to a guaranteed hours contract is triggered. The government proposes a 12-week reference period during which a workers' pattern of hours is monitored to determine whether they qualify for a guaranteed hours offer that reflects average (either mean or median) hours worked. If the condition requires a worker to have worked additional hours in every week of the 12-week period, the right becomes easily avoidable: a worker only needs to have one week without additional work assigned to them, and the trigger is never met. A regularity threshold of six or eight weeks out of 12 is significantly more robust, and a rolling 12-week reference period reduces the scope for employers to time work patterns strategically around the initial assessment window. On top of this, there are proposals for additional requirements to work a minimum total of hours before triggering the right, making it harder for many workers on zero or low hours contracts workers to qualify.

The consultation also poses whether employers should be exempt from having to pay for short notice cancellations in specific circumstances outside of their control, such as adverse weather. Yet the critical question is not who caused the uncertainty, but who is better placed to absorb its consequences. Organisations are better placed to manage unpredictable operational disruption - including through flexible redeployment to other tasks – than a worker managing a household budget week-to-week. Proposed exemptions undermine the logic of the legislation, which is to rebalance these risks. An evaluation of a similar law in one US state also found that opt-out mechanisms severely undermine awareness and compliance on rules relating to cancellations.[xiv]

Our recommendations:

- Set the regularity threshold at ideally six and a maximum of eight weeks in a rolling 12-week reference period, with no minimum total hours requirement.
- Avoid exemptions or waivers that allow employers to avoid short notice cancellation payments in specific circumstances.

3. How much security the rights actually deliver

Even where the rights apply and are successfully triggered, the level of protection will depend on the minimum standards the government sets. Here, the consultation presents a wide range of options with very different real-world effects.

On employers offering workers advance notice for shifts, proposals range from one week to four weeks. The Living Hours standard, developed by the Living Wage Foundation and adopted by a growing number of employers, sets four weeks as best practice, based on the minimum that workers ideally need in order to be able to plan ahead. Resolution Foundation analysis suggests that a **two-week minimum** would improve the position of **three in four** workers on variable hours – making this a reasonable floor, with four weeks as the ambition for employers that are able to go further.[xv] Similar 'Fair Work Week' laws introduced in several US cities and states have used **two weeks** as a statutory benchmark, providing a useful international reference point.

On compensation for short-notice cancellations, the consultation proposes a window of between one and seven days as constituting 'short notice', with compensation ranging from 10% to 80% of pay foregone and/or the National Minimum Wage. The US experience is instructive here. We have spoken to city-level regulators from one US state with Fair Work Week laws targeting the food services sector. They told us that their current compensation structure, requiring a sliding scale of up to $75 for each change within a two-week notice period, was associated with significant non-compliance because a) the level at which the compensation is set is not providing a sufficient deterrent for company practices, and b) frontline managers making scheduling decisions cannot reliably navigate the rules. The regulators are in the process of developing a simpler model, centred on a much higher, flat payment of $300 per short-notice change that seeks to ensure employers simply instruct operational managers not to cancel or curtail shifts at short notice.

There are trade-offs for employers in how to respond to changes in demand. However, a review of the evidence relating to the US experience shows no impact on overall employment or hours as a result of the legislation in the industries affected.[xvi] Similarly, both international and UK studies suggest that worker-protective labour laws in general can be associated with higher employment and productivity.[xvii] When it comes to fairer scheduling specifically, a randomised control trial of more predictable shift patterns across a large retailer found improvements in productivity and absence rates, alongside improvements in worker wellbeing, when compared to control stores.[xviii]

Our recommendations:

- Legislate for a minimum of two-week advance notice periods, to ensure the legislation supports most workers on variable contracts and encourages better advance planning among employers.
- Introduce a strong set of penalties for non-compliance. We advocate a flat fee per change rather than a percentage of income since this is simpler to enforce. But of the options under consultation, we propose both a penalty payment to workers of 200% arrears owed, and a wider civil penalty of up to £100k in cases of systemic non-compliance.

4. Whether the rights are enforced in practice

The consultation includes a welcome proposal to give the new Fair Work Agency a role in enforcing the right to payment for shifts cancelled, moved or curtailed at short notice. The consultation notes that "the other measures will require more complex assessments" and so "are better considered through the employment tribunal system". This distinction is in line with most labour market enforcement in the UK, but it carries significant risks.

In practice very few workers on variable hours contracts have the personal or financial resources to bring a tribunal claim. Legal aid is not available for employment cases, and the tribunal system currently faces a significant backlog.[xix] For a worker seeking a fairer schedule, the prospect of a long and stressful legal process is not a realistic remedy. Rights that can only be enforced through a system most workers cannot access are, in effect, unenforceable.

The US experience offers another practical model that the UK can learn from. Federal enforcement of labour laws is, as in the UK, restricted largely to violations of national minimum wage laws. But empowerment of state- and city-level regulators allows for a more proactive enforcement landscape. Many of these officials hold the power to proactively investigate non-compliance, and lawyers can also bring civil cases on behalf of groups of workers. The devolved approach also allows for a more iterative process, allowing state- and city-level regulators to assess what is working and adapt legislation to strengthen compliance or address unforeseen consequences.

New York City regulators, for example, introduced a mandatory record-keeping requirement, enabling them to analyse employer data systematically, rather than (as previously) trawling through paper-based scheduling records and pay slips. Enforcement teams are now made up of data analysts, enabling faster identification of patterns of non-compliance across firms, rather than pursuing individual cases in isolation. The regulators have also developed a range of implementation support to strengthen compliance – including information, training and calculation tools for employers, campaigns to support worker awareness, and technical guidance for

scheduling software developers on how they can support in-scope employers to comply.

The Fair Work Agency will have the powers to proactively investigate non-compliance. The government should consider pairing those powers with exploring opportunities for additional sectoral, regional or local monitoring and enforcement. This should be matched by complementary record-keeping requirements, so that systematic audit is practically possible.

Penalty levels should be set high enough to function as a genuine deterrent, not simply a transaction cost - through higher, flat payments to workers, as proposed above, and the threat of significant penalties for persistent non-compliance.

In the sectors where these rights will bite hardest - including social care, hospitality and retail - additional guidance and support is required to ensure effective implementation, delivered in partnership with industry bodies and trade unions.

Finally, the government should establish a clear monitoring framework before implementation begins, so that the impact of the legislation can be assessed against evidence. Our experience working with employers on scheduling reform shows that unintended consequences emerge in implementation that are invisible at the design stage. The legislation should build in a structured review mechanism: new powers and a commitment to assess and, if necessary, tighten the framework within a defined period, rather than treating the 2027 regulations as the end of the process.

Our recommendations

- Give the Fair Work Agency adaptive statutory powers, able to develop and improve enforcement over time and, in due course, extend beyond the right to payment for shifts cancelled, moved or curtailed at short notice, with legislation enabling it to adjust penalty amounts and sector scope as evidence of compliance, or unintended consequences, emerges.
- Pilot time-limited devolved powers for a small number of combined authorities to monitor and enforce the short-notice shift compensation right alongside the FWA, backed by matching record-keeping requirements and genuinely deterrent penalties.
- Apply the same proactive logic to the measures currently left to the employment tribunal system, where legal aid isn't available and backlogs are severe, making it a route most affected workers cannot realistically access.
- Invest in sector-specific guidance and practical support in the sectors where these rights will bite hardest - social care, hospitality and retail - and monitor compliance and impact over time to inform further adjustment.

Conclusion

We believe the government should be ambitious with this legislation: not simply providing a safety net for those in the most extreme forms of insecurity, but setting a new standard of fair practice that shifts norms across the labour market.

That means setting the qualifying threshold broadly enough to reach the majority of variable hours workers; designing trigger mechanisms that are robust and avoid invitations for creative compliance; and backing the rights with enforcement powers and implementation support that make the law bite in the places where it matters most. The clearer and the more universal the framework, the more likely it is to change behaviour rather than simply to generate workarounds.

There is of course a need to recognise the challenging operational constraints facing many employers, particularly given the broad, sector-wide nature of the proposed regulation. For this reason, we believe regulators should have the powers to adapt and respond to strengthen compliance or address unforeseen consequences. But many responsible employers in frontline sectors will welcome legislation that creates a level playing field and prevents them from being undercut by those who are competing on lower pay and terms and conditions for workers.

Our work with employers in frontline sectors – from health, social care, and education, to retail, construction, logistics and our current project working with employers in leisure and other lower paid frontline sectors[xx] – shows that improvements in 'Shift-Life Balance' that meet staff as well as operational needs can lead to improvements in absence, recruitment and retention.

This reinforces Timewise's longstanding call for good jobs to be placed at the heart of the government's industrial strategy, with a focus on the high employment sectors providing essential goods and services, alongside the high growth, high productivity industries that form the current focus. Getting this legislation right would demonstrate that good jobs and economic growth are not in tension - and that government has both the tools and the resolve to build them together.

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Timewise is a national non-profit organisation that exists to ensure work is designed around real lives, not the other way around.

Work hasn't kept up with the realities of modern life in Britain today. As the pressures on the workforce have increased, job design has stayed stuck, leaving millions unable to fully participate in the economy. This is bad for workers, bad for business, and bad for public finances - driving up social security and health costs while employers face problems of burnout and poor retention.

Over the last decade Timewise has worked with many of the UK's leading employers to design work that better fits modern lives, so that flexibility, predictability and control aren't privileges for the few, but the norm for everyone.

We do this through:

- Research and campaigns to build the evidence base and make the case for change.
- Workplace solutions designed and tested with employers across all sectors.
- Partnerships and influencing to scale what works and drive systems change across sectors, places and policy.

We specialise in finding solutions where they're hardest to find, including frontline sectors such as transport, construction, education, health, social care, childcare and retail. Our track record shows it is possible to deliver healthy, well-designed jobs for workers and meet complex operational needs - resulting in lower staff turnover, reduced sickness absence and higher performance.

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