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

2 December 2024

Summary

- Logistics UK supports Option 1: employment agencies should offer guaranteed hours.
- Requiring both guaranteed hours and an additional transfer fee or extended hire periods could create a double burden for end hirers. Flexibility of fees is recommended.
- Logistics UK agrees that responsibility for reasonable notice of shifts should rest with both the agency and the end hirer to promote clear communication and accountability.
- "Reasonable notice" must account for the sector's need for agility and flexibility to address fluctuating demand, skills shortages, and operational disruptions.
- Overly rigid definitions of "reasonable notice" could risk operational efficiency in logistics.
- Logistics UK recommends legislation that sets minimum standards and best practice, but that specific processes should be defined contractually between agencies and end hirers for flexibility.
- Agencies should pay workers promptly, as their formal employers, but should be able to recoup the cost from end hirers, where responsible, to incentivise planning and protect agencies from undue financial risk.
- Any ability to override legislative provisions should be strictly limited to avoid undermining worker protections.

About Logistics UK

Logistics UK is one of the country's largest business groups, representing the entire logistics industry and supporting, shaping and standing up for safe and efficient logistics. Our membership of more than 20,000 includes global, national and regional businesses and SMEs spanning road, rail, inland waterways, sea and air as well as the buyers of freight services, such as retailers and manufacturers. As an organisation, we deliver services, representation and thought leadership, helping members and policy makers to seize new opportunities for the sector and the economy as a whole, right across the country.

Response to consultation

Part 1: Right to guaranteed hours

Question 5

Do you think the guaranteed hours should be offered by the employment agency (option 1) or the end hirer (option 2)? Please explain your answer.

Agencies are the party that formally engages and has the contractual relationship with agency workers. As such, offering guaranteed hours aligns with their remit and makes the process more efficient if hours must be guaranteed across multiple end hirers. Furthermore, if assignments with specific end hirers are not consistent, guaranteed hours from agencies could lead to more predictable income from workers by pooling demand and reducing the risk of underutilisation. Requiring end hirers to offer guaranteed hours directly to agency workers increases the risk that the end hirer could be considered the employer, blurring the employment status line.

Logistics UK acknowledges that end hirers have greater visibility and control over operational needs, but the administrative and financial burden of providing guaranteed hours for agency workers in a fluctuating demand environment is unworkable. Where an end hirer has a consistent, predictable need for specific workers and is willing and able to take on greater responsibilities, option 2 may be practicable, but Logistics UK members report that agency workers are predominantly used to respond to changes in demand, which is inherently unpredictable.

Strong contractual arrangements that define the conditions and extent of guaranteed hours, as well as mechanisms for adjustments, will be paramount in implementation, but Logistics UK's preferred option is that guaranteed hours should be offered by the employment agency (option 1).

When considering either option 1 or 2, the cost and complexity of this proposal should not be underestimated. Costs of software systems for agencies and end hirers may be costly and would require a significant lead time. In addition, applicable to option 1 or 2, a 12-week reference period is considered too short. It does not consider the seasonal peaks and troughs that many businesses face in the logistics sector, and undoubtedly more broadly. A longer reference period would result in a more accurate average and would be applicable to both agency and directly employed workers. Logistics UK would welcome further consultation on this point.

Question 6
Should end hirers be required to pay a transfer fee or use an extended hire period if they are required to offer guaranteed hours to an agency worker? Please explain your answer.

There is a potential for a double burden, with end hirers providing a significant commitment to the worker in the form of guaranteed hours, then additional financial obligations to the agency. Flexible transfer fees that are fair and proportional to the agency's investment in the worker and the length of time the worker is with the agency may be a more balanced approach. Similarly, rather than mandating extended hire periods, agencies and end hirers could negotiate terms, allowing flexibility based on the nature of the work and the sector.

Part 2: Reasonable notice of shifts

Question 8
Do you agree that the responsibility for providing an agency worker with reasonable notice of shifts should rest with both the employment agency and the hirer, so that where a tribunal finds that unreasonable notice was given, it will apportion liability according to the extent that the agency and the hirer are each responsible for unreasonable notice? Please explain your answer.

Agility and flexibility are essential for logistics employers and the agencies that serve them due to the dynamic nature of the sector. Logistics operations are heavily influenced by fluctuating demand, seasonal peaks and supply chain disruptions that require working hours to adapt rapidly.

Before agreeing responsibility, it is important to consider the notion of "reasonable notice of shifts". To mitigate against operational disruptions, such as sudden absences or breakdowns, or in the face of demand surges or time-sensitive deliveries, there are specialist logistics agencies that emphasise rapid response, for example, aiming to have qualified temporary staff on site within 90 minutes[1]. Furthermore, in a sector that is experiencing skills shortages, gaps and mismatches, the effect on productivity of not offering shifts at late notice for fear of cost penalty, meaning an overstretched workforce is left to cover the need, should not be underestimated. Logistics UK urges that this definition does not hamper the sector's ability to react dynamically to challenges and does not hamper agency workers ready work but unable to do so as the requisite notice has not been given.

Logistics UK agrees that the responsibility for providing an agency worker with reasonable notice of shifts should rest with both the agency and the end hirer. Agencies, in managing communication with agency workers, have a clear responsibility to notify workers of shifts promptly, whilst end hirers control operational decisions that will inform agency communication not only around shift availability, but any subsequent

[1] For example: https://aferecruitment.co.uk/driving-warehouse-recruitment-agency-london/

changes. Shared liability incentivises agencies and end hirers to establish clear and efficient communication, ensures accountability across the chain of communication and promotes diligence.

Question 9
Do you think that legislation should prescribe how the end hirer should notify the agency that they have a shift available and of changes to these and when notification should be deemed to be received? Please explain your answer.

The consultation states that "the Government is reluctant to interfere in business-to-business relationships between agencies and end hirers". Whilst prescriptive legislation may provide consistency, clarity and accountability, there are factors to consider in implementation. The administrative burden of compliance, particularly for the SMEs that make up 99.7% of the logistics sector[2], in addition to the potential impact on operational flexibility in a dynamic sector, mean that Logistics UK believes the process is best defined in contracts between the agency and end hirer. A balanced approach might involve setting minimum standards while allowing flexibility for industry-specific needs, supplemented by clear contractual agreements.

Question 11
Do you agree that the agency should be responsible for paying any short notice cancellations or curtailment payments to an agency worker? Please explain your answer.

As the worker is employed or engaged by, and has the contractual relationship with, the agency, the agency is in a position of responsibility for ensuring workers are compensated in the event of cancellation or curtailment. If the end hirer were responsible, workers might have to navigate disputes between the agency and the end hirer to secure payment, putting unnecessary pressure on the worker. Whilst disputes may not be widespread or frequent, measures that could frustrate workers, and therefore potentially exacerbate the skills shortage in the sector, should be avoided wherever possible. Furthermore, making agencies responsible encourages the establishment of robust agreements with end hirers as to how cancellations and curtailments are handled, which can reduce the likelihood of disputes and foster better planning.

However, it is noted that placing this responsibility on agencies could increase operating costs, particularly if end hirers frequently cancel or curtail, and it is expected that this may subsequently be reflected in higher service fees unless mutually beneficial contractual arrangements between agencies and end hirers can be reached.

Question 12
Do you think that the agency should be able to recoup this cost from the end hirer if/to the extent that the end hirer was responsible for the short notice cancellation or curtailment?

Yes – to the extent that the end hirer is responsible. As end hirers make operational decisions, including the cancellation or curtailment of shifts, the end hirer should bear the associated costs of doing so at short notice, on the assumption that "short notice" takes into account the operational considerations described in Question 8. By placing financial responsibility on end hirers, end hirers are incentivised to plan shifts responsibly and reduce short-notice changes. Workers are paid promptly through the agency, and the agency is safeguarded from undue financial hardship by recovering costs, although there may be additional operating costs to consider, such as record keeping.

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

As outlined in Question 9, clear contractual agreements between agencies and hirers, supported by defined minimum standards and best practice guidelines, would be essential to ensure fair implementation.

[2] Logistics Report, Logistics UK, 2024

Question 14
Do you think that is should be possible to override legislative provisions allowing agencies to recoup cancellation/curtailment costs through contracts signed after implementations (or that are clearly entered into in contemplation of the commencement of the legislative provisions)? Please explain your answer.

Allowing agencies or end hirers to override provisions via contracts could perpetuate existing vulnerabilities that the reform is looking to eliminate. Logistics UK believes that any such ability should be strictly limited, if deemed necessary, to avoid undermining worker protection whilst balancing the operational realities of agencies and end hirers. Legislating minimum standards, accounting for sector-specific needs, ensures consistency for all parties and aligns with the intent of the reforms to create fairness and predictability in the labour market.

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