Ending one-sided flexibility: reforms of zero hours and similar contracts
Submission from the Association of Convenience Stores

Consultation page - https://www.gov.uk/government/consultations/make-work-pay-ending-one-sided-flexibility-reforms-of-zero-hours-and-similar-contracts

Submitted via online form:
https://ditresearch.eu.qualtrics.com/jfe/form/SV_aVtNI2h3zEpVjpQ

PART 1: Right to guaranteed hours

The hours threshold

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: This would target those genuinely lacking security without capturing the more-secure part-time workforce.

The government's own Living Wage Foundation evidence shows the contracted-to-actual hours mismatch is concentrated at the bottom (68% of those on 1–8 hours work beyond contract, versus 19% on 16–24 hours). A higher threshold would pull in workers who already have predictable, secure hours.

Furthermore, this recommendation is in line with the current evidence that policy benefits are strongest at lower thresholds, with costs increasing substantially as thresholds rise. As this is the biggest driver of impact, as set out in the supporting consultation analysis, a low threshold is important to balance supporting workers lacking security and businesses.

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?

Options at 16 hours and above carry the greatest risk of distorting where employers pitch contracted hours. At 8 hours the risk is minimal, as it sits below the range where most convenience contracts already fall (74% at 9-30 hours).

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?

Higher thresholds, most acutely 16 hours and above. Where more of the workforce is in scope and every additional hour must be tracked and can trigger a duty, employers become more cautious about offering extra shifts.

ACS' Colleague Survey finds that employees on zero/short-hours contracts typically work only 1–3 additional hours a week (67%), often for holiday cover. A higher threshold may discourage that flexibility of staff wanting to pick up additional shifts.

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?

Don't know.

Q2.a: Agency workers should not be entitled to guaranteed hours offers when (choose one of the two options below):

N/A

Q2.b: Please explain your answer N/A

Q3.a: For agency workers, which of the following options should the hours threshold be: N/A

Q3.b: Please explain your answer N/A

Length of initial reference period

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

12 weeks

Q4.b: Please explain your answer

The 12-week initial reference period strikes the right balance and is workable for small retailers. It is long enough to establish a genuine pattern of regular hours while giving qualifying workers an offer reasonably soon. Longer periods (26 or 52 weeks) would leave workers waiting longer and, for the sector's seasonal patterns, risk a single reference period spanning very different trading conditions.

Q5.a: How long should the initial reference period be for agency workers?

N/A

Q5.b: Please explain your answer N/A

Subsequent reference periods

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

52 weeks

Q6.b: Please explain your answer

Once an initial pattern is established, subsequent reference periods should be as long as possible to avoid the duty recurring too frequently. A rolling 12-week cycle would impose a continuous tracking-and-offer burden that bears no relation to the scale of the problem, particularly for small retailers without HR functions. A 52-week period also better accommodates seasonal trading, so that predictable annual peaks (e.g. Christmas cover) are not repeatedly captured as if they were regular hours.

Q7.a: Should each reference period begin as soon as the previous one finishes? No

Q7.b: Please explain your answer

There should be a gap between reference periods. Requiring employers to record every hour continuously, with no break, creates a disproportionate ongoing administrative burden. Permitting a gap – during which hours need not be tracked – materially reduces that burden while still giving workers regular opportunities to qualify. This is especially important for the

seasonal peaks common in convenience, where continuous tracking would repeatedly sweep in short-term demand.

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

N/A

Q8.b: Please explain your answer N/A

Q9.a: Should each reference period begin as soon as the previous one finishes?

N/A

Q9.b: Please explain your answer N/A

Regularity requirements

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

Q10.b: Please explain your answer Having both is the more robust test and better targets workers who genuinely work regular additional hours. A distribution requirement alone would capture workers picking up occasional or voluntary shifts who neither expect nor want a guaranteed-hours contract. Requiring a minimum volume of hours in excess of contracted hours filters these out.

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

Q11.b: Please explain your answer: A higher distribution requirement ensures the right captures only genuinely regular working. Requiring work in 10 of 12 weeks demonstrates a consistent pattern, rather than sporadic or seasonal shifts, and avoids offers being generated off the back of short bursts of cover.

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? 96 hours (in excess of contracted hours) across a 12-week initial reference period.

Q12.b: Please explain your answer: The total hours requirement should be set at the highest option to ensure only substantial, regular additional working qualifies. At 96 hours (an average of 8 excess hours a week), the test reflects a genuine and sustained mismatch between contracted and actual hours. Lower figures would capture the modest voluntary overtime common in the sector – typically 1–3 extra hours a week – which is not the problem these reforms are intended to address.

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

Q13.b: Please explain your answer Scaling maintains a consistent standard of regularity across periods of different lengths. Without it, a longer reference period would make qualification easier by allowing the same limited working to spread across more weeks, undermining the intent that only genuinely regular workers qualify.

Q14.a: Based on the two options set out above for agency workers, select below which option is preferred:

N/A

Q14.b: Please explain your answer N/A

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.)

N/A

Q15.b: Please explain your answer N/A

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.)

N/A

Q16.b: Please explain your answer N/A

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? For example, if the weekly distribution 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 a subsequent reference period.

N/A

Q17.b: Please explain your answer N/A

Seasonal work and definition of 'temporary need'

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.

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.

The "specific task" and "specific event" limbs do not capture the most common form of temporary need in convenience retail: staffing for a period of elevated demand that then falls back, with no discrete task or event to point to. Regulations should include a broader "temporary need" category covering, in particular:

- Seasonal and peak trading periods, e.g. Christmas and New Year, Easter, and summer, where additional staff are taken on to cover a period of higher demand that subsequently tapers. This is a defined but non-task-based need. 41% of employers already use fixed-term contracts, largely for this purpose.
- Cover for a defined period of absence, e.g. maternity, paternity or long-term sickness, where a temporary worker backfills a role for a period that is time-limited but not tied to a task or event.
- New store openings, refits or refurbishments, where elevated staffing is needed during a launch or works period and settles once trading normalises.

A principle-based definition ("a reasonable, time-limited increase in demand") would be more durable than an exhaustive list, which will inevitably miss cases. Without an adequate temporary-need category, employers would lose the ability to flex for genuine seasonal peaks – reducing exactly the seasonal and entry-level opportunities the sector provides.

Guaranteed hours offer calculation

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

Median average

Q19.b: Please explain your answer

The median better reflects the hours a worker regularly works by reducing the influence of outlier weeks – for example an unusually busy seasonal week or a week of holiday cover. In convenience retail, where demand fluctuates around seasonal peaks, a mean would risk locking in a guaranteed-hours figure inflated by short-term spikes that do not represent the worker's normal pattern. The median produces a fairer, more representative and more sustainable offer for both parties.

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

Employers should be able to allocate hours over the period that fits their operating pattern. Retailers manage staffing on different cycles, and mandating a single period would create unnecessary rigidity without affecting the total number of guaranteed hours (which scale proportionately). Flexibility here reduces administrative friction, consistent with keeping the measures workable for small shops.

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 and A month

Q20.d: Please explain your answer

Both should be available so employers can align guaranteed hours with how they actually roster and pay staff, weekly or monthly, rather than being forced onto a cycle that does not match their systems.

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?

N/A

Q21.b: Please explain your answer N/A

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

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

Q22.b: Please explain your answer

An adjustment margin is sensible to protect employers from legal liability arising from minor calculation errors and to allow offers to align with normal shift lengths. A percentage margin is preferable to a fixed figure as it scales fairly across different levels of guaranteed hours, remaining proportionate whether the offer is small or larger.

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

N/A

Q23.b: Please explain your answer N/A

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)

N/A

Q24.b: Please explain your answer N/A

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

Q24.d: Please explain your answer N/A

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?

N/A

Q24.f: Please explain your answer N/A

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

N/A

Q25.b: Please explain your answer N/A

Exemptions from duty to make guaranteed hours offers and exclusions from the right to guaranteed hours

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. As the Government suggestions in the consultation, workers who hold more than one contract with the same employer, where one of those contracts already guarantees hours above the threshold. Such workers already have baseline security, so should not also generate a guaranteed-hours duty via a second, low-hours contract.

Q26.c: If no, please explain your answer N/A

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

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. Employers should be exempt where a guaranteed-hours offer would arise from genuinely exceptional circumstances outside their control that temporarily disrupt trading – for example flooding, fire, extreme weather or a widespread power outage forcing closure. In these situations, hours worked (or not worked) in the run-up do not reflect a normal pattern, and it would be unreasonable to crystallise a guaranteed-hours obligation off the back of them. The government's flooding example is welcome; the exemption should be drawn broadly enough to cover comparable events.

Q27.c: If no, please explain your answer N/A

Q28.a: Should there be any types of agency workers that are excluded from the right to guaranteed hours?

N/A

Q28.b: If yes, please list any types of agency workers that you think should be excluded from the right to guaranteed hours. N/A

Q28.c: If no, please explain your answer N/A

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?

N/A

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 N/A

Q29.c: If no, please explain your answer N/A

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?

N/A

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? N/A

Q30.c: If no, please explain your answer N/A

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

Broader impacts

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?

Q32.b: Please explain your answer. N/A

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

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

Eligibility

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: The threshold for the notice and short-notice-payment rights should match the guaranteed-hours threshold at 8 hours, for consistency and simplicity. A single, consistent threshold across all three rights is far easier for small retailers to apply and clearer for colleagues. Setting it here targets those who genuinely lack predictability while keeping the settled part-time workforce out of scope. 97% of colleagues are on permanent contracts, averaging 29 contracted hours a week, and 77% already feel secure in their role.

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

N/A

Q35.b: Please explain your answer N/A

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?

N/A

Q36.b: Please explain your answer N/A

PART 2.A: Reasonable notice of shifts

Notice presumed reasonable

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

Other

Q37.b: Please explain your answer Rather than a fixed presumed period, what is reasonable should depend on the circumstances of each case (see Q38–39). If a presumption is set, it should be no more than one week and treated only as a starting point, not a default standard. Convenience retailers already give good notice – 68% typically provide two weeks or more, and only 5% give less than 24 hours – so a presumption pitched higher than a week would misrepresent normal practice and risk penalising retailers for the unavoidable short-notice changes inherent in the sector.

Factors for determining if notice was reasonable

Q38: In what circumstances do you think longer notice should be required? Please explain your answer Longer notice is reasonable where shifts are regular and predictable and the employer could reasonably have planned ahead, and where a worker is contractually obliged to accept offered shifts rather than free to decline. In these cases, there is little justification for last-minute scheduling.

Q39: In what circumstances do you think shorter notice should be required? Please explain your answer: Shorter notice should be accepted where changes are genuinely unavoidable or outside the employer's control – in particular covering for a colleague who has called in sick, other staff absences or emergencies, supply or delivery disruption, equipment or power failure, and severe weather. The test must also reflect proportionality for smaller employers, who cannot forecast or absorb fluctuations in the way larger businesses can.

In the convenience sector, short-notice change is still rare – 65% of retailers never cancel, move or shorten shifts at under a week's notice.

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

N/A

Q40.b: Please explain your answer N/A

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

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

Exemptions for specified hirers from the duty to provide reasonable notice

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

N/A

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

Q43.c: If no, please explain your answer. N/A

PART 2.B: Payment for shifts cancelled, moved or curtailed at short notice

Short notice period

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

3 days

Q44.b: Please explain your answer Short notice should be defined at the shorter end – no more than 3 days. Cancellations are rare in convenience retail (65% of retailers never cancel, move or shorten shifts at under a week's notice, and 78% of colleagues have never had a shift cancelled), so the definition should be tightly drawn and proportionate, capturing genuinely last-minute changes rather than routine rostering adjustments. A tightly defined window keeps the measure workable for small businesses without HR functions.

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 A separate "very short notice" tier adds complexity to what the government itself acknowledges is an already complicated set of measures. Given how rarely convenience retailers cancel shifts, a single short-notice period is simpler for both employers and workers to understand and apply, consistent with keeping the measures proportionate and workable.

Q46.a: What timeframe do you think short notice should be for agency workers? N/A

Q46.b: Please explain your answer N/A

Q47.a: What timeframe do you think very short notice should be for agency workers? N/A

Q47.b: Please explain your answer N/A

Short notice payment amount

Q48.a: The short notice payment should be:

Other

Q48.b: Please explain your answer: ACS does not take a position on the precise basis of calculation. Whichever basis is chosen, the overriding principle should be proportionality: the payment must remain simple to administer and reflect the fact that short-notice cancellations are rare in convenience retail (65% of retailers never cancel, move or shorten shifts at under a week's notice, and 78% of colleagues have never had a shift cancelled). We would caution against any approach that is complex to calculate, as this would add administrative burden for small retailers without materially benefiting workers.

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? Other

Q49.b: Please explain your answer We do not advocate a specific percentage. The level should be set proportionately, recognising that the payment is a new obligation, that no convenience retailers currently compensate for cancelled shifts, and that cancellations are infrequent. Whatever is set should balance fair compensation for genuinely disrupted workers against not imposing disproportionate cost on employers for rare events.

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?

Other

Q50.b: Please explain your answer: ACS does not advocate a specific percentage; the level should be set proportionately, recognising the rarity of cancellations in the sector and the need to keep the measure simple and low-cost to administer for small retailers.

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?

Other

Q51.b: Please explain your answer ACS's position is that there should not be a separate "very short notice" period (see Q45), so no distinct higher percentage is needed. If one is nonetheless introduced, it should be set proportionately for the reasons given above.

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?

Other

Q52.b: Please explain your answer: As Q51 – ACS does not support a separate very-short-notice tier; if introduced, any percentage should be proportionate and simple to administer.

Exceptions from the right to short notice payments

Q53.a: Do you think there should be any exceptions to the requirement to make a short notice payment or very short notice payment? Yes.

Q53.b: If yes, what should these exceptions be? Employers should not have to make a short-notice payment where a cancellation, movement or curtailment results from genuinely exceptional circumstances outside their control – for example extreme weather, flooding, fire, a widespread power outage, or other events forcing closure or preventing trading. In these situations, the employer is not managing demand poorly but responding to events and circumstances it could not foresee or avoid, so a payment obligation would be neither fair nor a useful incentive. The exception should be drawn broadly enough to cover comparable unforeseeable disruptions rather than a narrow list.

Q53.c: If no, please explain your answer. N/A

Q54.a: Do you think there should be any exceptions to the requirement to make a short notice payment specifically for agency workers? N/A

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

Q54.c: If no, please explain your answer N/A

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?

N/A

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?

N/A

Q55.c: If no, please explain your answer. N/A

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? N/A

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

Q56.c: If no, please explain your answer N/A

<u>Enforcement of short notice payments</u>

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

Yes

Q57.b: Please explain your answer. ACS supports FWA enforcement of the short-notice payment right in principle, provided it operates proportionately. As the government notes, non-payment is a discrete, measurable event, so it is the most suitable of the three measures for FWA enforcement, and a route that helps resolve disputes without recourse to tribunal is welcome for both employers and workers.

Given how rarely convenience retailers cancel shifts (78% of staff have never had a shift cancelled), the compliance burden on responsible employers should be minimal, but enforcement must be applied with regard to proportionality and to the fact that this is a new obligation.

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

Yes

Q59.a: What should the penalty amount be?

50% of arrears owed to the worker (government preferred option)

Q59.b: Please explain your answer. The lowest penalty option is appropriate given this is an entirely new right. A 50% penalty provides a sufficient incentive to comply while allowing employers, particularly smaller businesses without HR functions, time to familiarise themselves with the new obligation. Higher penalties would be disproportionate for a novel requirement, especially in a sector where cancellations are rare and no retailers currently make such payments.

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

Minimum £100 per case, maximum £5,000 per worker (government preferred option)

Q60.b: Please explain your answer The lower maximum is proportionate for a new right and avoids exposing employers to excessive liability while they adjust to the obligation. This is consistent with the phased approach the government took when penalties were first introduced for the minimum wage, and appropriate given the infrequency of short-notice cancellations in the sector.

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?

Convenience retailers already provide good notice and rarely cancel shifts, so the practical issue these measures target is largely absent from the sector: 68% of retailers typically give two weeks' or more notice of shifts, 65% never cancel, move or shorten shifts at under a week's notice, and 78% of colleagues have never had a shift cancelled.

Where flexibility around shifts exists, it is overwhelmingly consensual – 80% of colleagues are content or eager to cover shifts at short notice when available. Our central point across Part 2 is that the notice and payment rights must be proportionate and circumstance-based, must not penalise retailers for the unavoidable short-notice changes inherent in retail (staff illness, emergencies, supply disruption), and must not mandate costly digital scheduling systems. Informal methods such as paper rotas and messaging groups, which the sector relies on, must remain permissible.

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?

N/A

Q62.b: Please explain your answer. N/A

PART 3: Amending the Conduct of Employment Agencies and Employment Businesses Regulations 2003

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?

Don't know.

Q63.b: Please explain your answer N/A

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?

No.