

CONSULTATION RESPONSE

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

Part 1: Right to Guaranteed Hours
Questions 28 to 31 and Question 33

Respondent

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I am responding in my individual professional capacity. The roles identified above are provided to explain my experience and perspective. This response should not be treated as representing the collective views of either group unless expressly stated.

1. Summary

I support the objective of preventing one-sided flexibility and ensuring that agency work does not become a means of avoiding the right to Guaranteed Hours.

However, employment status is a fundamental gateway to these rights. An individual may first have to establish that they are a worker or agency worker before they can rely on the Guaranteed Hours provisions.

This is particularly difficult in labour supply chains involving an end hirer, an agency, an umbrella company and, in some cases, additional intermediaries. The entity that pays the individual may be different from the entity that finds the work, controls the hours, directs the work and decides whether the assignment continues.

The Guaranteed Hours regime is being introduced before the promised consultation on the wider employment status framework has taken place. The new rights are therefore being placed on top of a status framework that remains complex, fact-sensitive and difficult for individuals to enforce.

Unless the regulations address this, there is a risk that:

- workers will have to litigate their status before the substance of their Guaranteed Hours claim can be considered;
- umbrella company workers will be PAYE-paid but remain uncertain about their employment rights;
- agencies, umbrellas and hirers will each argue that another party is responsible;
- contractual structures will be changed to prevent individuals qualifying;
- workers will be moved off payroll or into purported self-employment or personal service company arrangements; and
- insecurity will be transferred into different contractual models rather than resolved.

The regulations should contain clear status, responsibility, information-sharing, aggregation and anti-avoidance provisions. The Government should also consider a rebuttable presumption of worker or agency-worker status.

2. Question 28

Q28.a: Should there be any types of agency workers excluded from the right to Guaranteed Hours?

Response: No.

No category of agency worker should be excluded solely because of the contractual, payment or intermediary model used.

In particular, individuals should not be excluded because they:

- are employed or paid by an umbrella company;
- are engaged through a personal service company or other intermediary;
- are described contractually as self-employed;
- work through more than one agency;
- are supplied through a chain containing more than one intermediary; or
- do not have an overarching contract between assignments.

Coverage should be determined from the practical reality of the relationship. Relevant factors should include personal service, control, direction and supervision, economic dependency and whether the individual is genuinely carrying on an independent business.

It has been reported that a significant number of agency workers value the flexibility of agency work and do not necessarily want Guaranteed Hours. That is relevant to the design of the policy, although it is not principally an employment status issue.

The Act already allows an agency worker to decline a Guaranteed Hours offer and remain under their existing arrangement. A preference for flexibility does not therefore justify excluding a category of agency workers before an offer is made.

The regulations should preserve genuine two-sided flexibility while distinguishing it from arrangements in which the worker bears commercial risk without having meaningful control over their hours.

3. Question 29

Q29.a: Should there be any circumstances in which the duty to make a Guaranteed Hours offer to qualifying agency workers should not apply?

Response: There should be no exemption based solely on status labels, payroll arrangements or the use of an intermediary.

Genuine temporary requirements may justify particular treatment under the provisions dealing with temporary need or limited-term offers. However, the use of an agency, umbrella company, personal service company or other intermediary should not itself provide an exemption.

An exemption should not apply merely because:

- the individual is paid through PAYE by an umbrella company;
- the contractual employer has no control over the work;
- the parties describe the individual as self-employed;
- there is no overarching contract between assignments;
- the agency or umbrella changes during the reference period; or
- responsibility is divided between several organisations.

Otherwise, the parties could create an exemption through the structure of the supply chain rather than through the nature of the work.

4. Question 30

Q30.a: Should there be cases in which the duty is placed on the agency or another intermediary instead of the hirer?

Response: Yes, but only in clearly defined and limited circumstances.

The hirer should remain the default party responsible for making the Guaranteed Hours offer. The hirer will ordinarily:

- determine whether work is available;
- control the number and timing of the hours;
- supervise and direct the work;
- decide whether the assignment continues; and
- be the party with which the worker would enter into the new Guaranteed Hours contract.

Responsibility should not be transferred to an umbrella company merely because it is the individual's contractual employer or operates PAYE. An umbrella company will commonly have no control over whether the hirer offers work and no practical ability to guarantee that work will be available.

There may be cases in which responsibility should be placed on an agency or another intermediary, but only where that party:

- genuinely controls the allocation and provision of work;
- is contractually and practically able to provide the guaranteed work;
- holds the information required to calculate the offer;
- has accepted statutory responsibility; and
- can honour the guarantee if work from a particular hirer ends.

The regulations should focus on practical functions and control, not contractual labels.

Where responsibility is transferred from the hirer, the worker should receive a written notice identifying:

- the entity responsible for making the offer;
- the reason that entity is responsible;
- the hours and assignments taken into account;
- how the Guaranteed Hours have been calculated; and
- the entity against which the right can be enforced.

The worker should not be required to determine which entity within a complex supply chain is legally responsible. Where responsibility is shared or unclear, the worker should be able to bring proceedings against the potentially responsible parties, with the tribunal determining and, where appropriate, apportioning liability.

5. Question 31

Q31: Are there other ways in which the right should apply differently where responsibility falls on an agency or another intermediary?

Response: Yes.

5.1 Definition and status

The consultation defines an agency worker as an individual who has a worker's contract or arrangement with an agency and is supplied to a hirer to work under that hirer's direction and supervision.

That definition itself engages employment status questions:

- Must the individual establish statutory worker status in relation to the agency?
- Is an arrangement sufficient where no overarching contract exists between assignments?
- Is an individual employed by an umbrella company necessarily in an arrangement with the agency?
- What happens where the contractual employer, work-finding agency and end hirer are three separate entities?
- Can the right be avoided by asserting that the individual is genuinely self-employed?
- What happens where the same individual is routed through different intermediaries during the reference period?

These questions should be answered expressly in the regulations and supporting guidance.

5.2 Umbrella company workers

The consultation acknowledges that an umbrella company will commonly employ the agency worker and pay their wages through PAYE.

However, PAYE treatment does not determine employment status for all employment rights purposes. Nor does it identify which party is responsible for a particular employment right.

This creates a risk that a worker may be subject to PAYE, with income tax and National Insurance deducted, but still be denied employment rights or required to litigate to identify the responsible party.

This reflects the issue examined in my paper, [PAYE Paid](#). Individuals can be taxed as employed earners without necessarily receiving the corresponding statutory protections.

The regulations should make clear that:

- an umbrella-employed agency worker is not excluded from Guaranteed Hours;
- PAYE treatment is relevant but is not conclusive of either status or responsibility;
- an umbrella company is not responsible merely because it operates payroll;
- contractual arrangements between the hirer, agency and umbrella cannot remove the worker's statutory rights; and
- the party controlling the work cannot avoid responsibility by inserting an umbrella company or payment intermediary.

5.3 Aggregation and continuity

The regulations should address the aggregation of hours where:

- the individual is supplied to the same hirer through more than one agency;
- the agency changes but the work for the hirer continues;
- the umbrella company or payroll intermediary changes;
- work is divided between associated hirers; or
- a break or change in the supply chain is introduced during the reference period.

Where the work, hirer and practical arrangements remain substantially the same, a change of agency, umbrella company or other intermediary should not interrupt or restart the reference period.

If hours are not aggregated, relatively simple changes to the supply chain could prevent the individual from satisfying the regularity requirements.

Where the agency or another intermediary is genuinely responsible for the offer, the Government should also consider whether regularity should be calculated across work allocated by that agency for more than one hirer. This should apply only where the agency can genuinely guarantee continuing hours across those hirers.

6. Question 33

Q33: Is there anything else you want to tell us about the right to Guaranteed Hours?

6.1 Employment status framework

The Guaranteed Hours provisions depend upon the individual being a worker or agency worker. The existing employment status framework is complex, fact-sensitive and heavily dependent on case law.

The Government has not yet undertaken the promised consultation on the wider employment status framework. The Guaranteed Hours regime should not be delayed indefinitely while that wider work takes place. However, the immediate regulations must address the particular status problems created by agency and umbrella company supply chains.

6.2 Rebuttable presumption

As set out in my paper, *Rebuttable Presumption of Employment Status*, the Government should consider an economy-wide rebuttable presumption that shifts the evidential burden to the engager once a basic factual platform has been established.

The model proposed in that paper has two tiers.

First, worker status should be presumed where an individual provides personal service for remuneration and there is at least one indicator of control or dependency.

Second, employee status should be presumed where the relationship displays stronger indicators of managed labour, including significant control, integration into the organisation or sanctions for failing to comply with the engager's requirements.

The relevant business would be able to rebut the presumption by demonstrating that the individual is genuinely carrying on a business on their own account. Relevant evidence might include genuine substitution, multiple clients, pricing autonomy, meaningful financial risk and responsibility for delivering an agreed result.

The proposal does not remove genuine self-employment. It places the evidential burden on the party that designed the contractual arrangements, controls the work and holds the relevant records. It also provides a safe harbour for genuine freelancers and independent businesses based on actual working practices.

6.3 Application to Guaranteed Hours

A specific version of this presumption could be applied to the Guaranteed Hours regime.

Where an individual personally performs work for remuneration under the direction or control of an employer or hirer, they should be presumed to have at least worker status unless the relevant business establishes genuine self-employment.

Where an individual is supplied through an agency, umbrella company or other intermediary and works under the direction and supervision of a hirer, they should be presumed to be an agency worker for these purposes. They should not have to establish the precise contractual relationships within the supply chain before relying on the right.

The hirer should also be presumed responsible for making the Guaranteed Hours offer where it controls the availability, allocation and timing of the work. The presumption should be rebuttable only where another entity genuinely controls the provision of work and is practically capable of guaranteeing it.

The fact that an agency or umbrella company operates payroll should not, by itself, transfer responsibility away from the hirer.

PAYE or employed-earner treatment should provide additional support for a presumption of at least worker-level protection. It should not automatically make every PAYE-paid individual an employee. However, where the state and the supply chain treat an individual as an employed earner for tax purposes, the individual should not bear the full burden of proving entitlement to basic worker rights.

The presumption would not compel an agency worker to accept Guaranteed Hours. Agency workers who value their existing flexibility would remain able to decline an offer. The presumption would determine coverage and the burden of proof. It would not remove genuine worker choice.

6.4 Legislative route

It is unclear whether the regulation-making powers in the Employment Rights Act 2025 are sufficiently wide to introduce a new evidential presumption of employment status.

If the powers are sufficient, a specific presumption should be incorporated into the Guaranteed Hours regulations.

If they are insufficient, the Government should consult on the model proposed in my *Rebuttable Presumption of Employment Status* paper as part of the promised consultation

on the wider employment status framework and legislate through primary legislation if necessary.

6.5 Supply-chain information duties

The presumption must be supported by effective supply-chain information duties.

As set out in my [Employment Status Roadmap](#), individuals should receive a single, binding status-and-rights statement before work begins. It should identify every relevant party in the engagement chain and state clearly which party is responsible for:

- finding and offering the work;
- determining and recording hours;
- making the Guaranteed Hours offer;
- operating payroll;
- paying holiday pay;
- assessing pension entitlement;
- administering statutory payments; and
- handling complaints and enforcement.

For agency and umbrella company workers, the required information should form part of a Worker Engagement Pack. This should include an Engagement Chain ID, a strengthened Key Information Document and a reasoned status determination. The information should be consistent across the hirer, agency, umbrella company and any payroll provider.

The same Engagement Chain ID should follow the individual throughout the engagement. This would create an auditable record of all relevant parties, even where the contractual or payment arrangements change during the reference period.

Each party should provide and verify the information within its control.

The hirer should confirm the work undertaken and hours worked. The agency should confirm the assignment, contractual chain and work-finding arrangements. The umbrella company or payroll provider should confirm pay, deductions, holiday pay and employment terms.

The worker should not have to reconstruct the supply chain or reconcile inconsistent records to establish entitlement.

These duties would help determine:

- whether the individual is a worker or agency worker;
- which hours count towards the reference period;

- whether work has been routed through different agencies or umbrellas;
- whether an apparent break reflects a genuine interruption in the work;
- which entity is responsible for making the offer; and
- against whom the right can be enforced.

The information should be available to the worker and the Fair Work Agency. Records should be capable of being matched with information held by HMRC so that inconsistencies between PAYE treatment, stated employment status and the rights provided can be identified.

The *Employment Status Roadmap* also proposes supply-chain accountability where responsibilities are fragmented or information is inaccurate. That principle is particularly relevant here.

Where the parties fail to identify the responsible entity, provide inconsistent information or structure the arrangement so that no party accepts responsibility, liability should not fall through the gaps between them. The Government should consider joint and several supply-chain liability where necessary.

6.6 Anti-avoidance and market behaviour

The Guaranteed Hours regime creates a foreseeable risk of market restructuring.

Businesses may seek to avoid the right by:

- moving individuals off payroll;
- using purported self-employment;
- requiring individuals to provide services through personal service companies;
- inserting nominal substitution provisions;
- transferring workers between agencies or associated entities;
- creating artificial breaks between assignments;
- keeping hours immediately below a qualifying threshold; or
- restructuring the supply chain so that no party accepts responsibility.

The result may be to shift insecure work into off-payroll or intermediary arrangements rather than eliminate one-sided flexibility.

The Government should assess this behavioural risk in its final impact assessment. It should monitor changes in the use of self-employment, personal service companies, umbrella companies and multi-intermediary supply chains following implementation. The regulations should disregard artificial breaks, re-labelling or restructuring where the work and practical relationship remain substantially the same.

7. Recommendations

I recommend that the regulations and guidance:

1. Determine status and coverage from the practical reality, not contractual labels or PAYE treatment alone.
2. Confirm that worker status during accepted assignments can be sufficient without requiring an overarching contract throughout the reference period.
3. Deal expressly with workers employed or paid by umbrella companies.
4. Retain the hirer as the default party responsible where it controls the work and hours.
5. Transfer responsibility to an agency or intermediary only where that entity genuinely controls and can guarantee the work.
6. Allow the worker to proceed against all potentially responsible parties where responsibility is unclear.
7. Introduce mandatory information-sharing duties across the supply chain.
8. Require a binding status-and-rights statement, Worker Engagement Pack and Engagement Chain ID.
9. Disregard artificial breaks, re-labelling or restructuring undertaken to avoid qualification.
10. Consider a rebuttable presumption of worker and agency-worker status.
11. Treat PAYE or employed-earner treatment as supporting a presumption of at least worker-level protection.
12. Give the Fair Work Agency appropriate powers to investigate supply chains and avoidance arrangements.
13. Provide for effective supply-chain liability where responsibilities are fragmented.
14. Review the Guaranteed Hours regulations following the wider consultation on employment status.

Extending Guaranteed Hours to agency workers is necessary if agency work is not to become a route for avoiding the new right. However, agency and umbrella arrangements expose existing weaknesses in the employment status framework.

A worker should not lose protection because the party paying them, the party finding the work and the party controlling the work are different entities. Nor should an individual be PAYE-paid while being denied the employment rights that the Guaranteed Hours reforms are intended to provide.

Without clear status, responsibility, aggregation, information and anti-avoidance rules, the reforms risk changing the contractual structure of insecure work rather than ending one-sided flexibility.