

# **Written Evidence Submitted by Dr Michael Koch (Brunel University of London) and Professor Sarah Park (University of Leicester) to the Employment Rights Public Bill Committee (ERB36).**

## **Short biographies**

Dr Michael Koch is Reader in Human Resource Management and Organisational Behaviour at Brunel Business School, Brunel University London. His research focuses on entrepreneurial careers and wellbeing and has been published in leading journals in human resource management and entrepreneurship. He regularly provides expert comments to media outlets such as The New York Times, BBC International, Forbes, Newsweek and The Conversation.

Professor Sarah Park is Professor in International Business at University of Leicester School of Business, University of Leicester. Her research focuses on international entrepreneurship, entrepreneurial performance, as well as wellbeing and careers of entrepreneurs. Her work has been published in world leading journals including Entrepreneurship Theory & Practice, Journal of Business Venturing, Journal of World Business and Social Science and Medicine.

## **Submission objective and scope**

This submission addresses the Call for Evidence on “Make Work Pay: Employment Rights Bill” of the Business and Trade Committee.

It provides evidence and recommendations regarding Part 1 (Employment Rights) of the Employment Rights Bill, in particular the following clauses:

- Clause 1: Right to guaranteed hours
- Clause 2: Shifts: rights to reasonable notice
- Clause 3: Right to payment for cancelled, moved and curtailed shifts

It addresses the following questions of the Call for Evidence:

### *Impact on businesses*

- What impact will the areas covered by the Employment Rights Bill have on small, medium and large businesses?
- What impact will these measures have on staff retention, hiring practices, probationary periods and wages?
- What impact will strengthened protections, such as day one rights, have on the hiring practices of businesses, UK employment rates and UK investment rates?

## **Overall assessment of Part 1 (Employment Rights) of the Employment Rights Bill**

The objective of the Employment Rights Bill is to create legal framework that provides a “baseline of security and predictability” for workers, but at the same time, is “reasonable and

proportionate for both workers and employers”. This implies that the use of zero-hours contracts should afford a degree of flexibility to both employers and workers/employees.

From an employer perspective, the proposed measures would reduce flexibility in managing labour, and increase the administrative burden associated with workforce planning. The increased cost of using zero-hours contracts would deter companies from the use of such contracts, and might compel them to reduce the size of their workforce.

Indeed, recent research from the Resolution Foundation found that almost two-thirds of surveyed companies would reduce their use of flexible contracts if legislation gave workers a right to a fixed-hours contract. Therefore, although the proposed legislation improves income security of those who benefit from guaranteed hours, it might also result in fewer hires for many companies. The proposed legislation needs to strike a careful balance between securing important employee rights and maintaining employer flexibility.

## **Clause 1: Right to guaranteed hours- Right to Guaranteed Hours**

### **27BA Right for qualifying workers to be offered guaranteed hours**

#### *Subsection (1)*

Subsection (1) provides that an employer must make an offer of guaranteed hours to a qualifying worker after the end of every reference period.

The assumption underlying this provision is that workers on zero-hours contracts (ZHC) wish to work hours more than they would potentially be offered, and that they would prefer a regularisation of their working hours.

However, recent research on zero-hours workers shows that zero-hours contract roles attract significantly more applications than equivalent fixed-hour positions, and that very few ZHC workers apply for equivalent fixed-hour positions within the same company when such vacancies arise. This shows that workers on ZHC value the flexibility of such contracts, and do not necessarily wish for guaranteed hours.

Accordingly, recent Labour Force Survey data shows that more than 60 percent of zero-hours workers do not want to work more hours, and only about 10% wish to increase their working hours, indicating that the majority of workers on zero-hours are satisfied with the number of hours they work.

Workers on ZHC mostly work part-time, are often young and/or in full-time education, or are past retirement age. This suggests that ZHC are often transitory employment arrangements for individuals which do not require regularisation.

Moreover, the proposed legislation would disproportionately affect SMEs, as 72% of zero-hours workers are employed by SMEs according to the Quarterly Labour Force Survey. SMEs are often resource-constrained and this would present an additional burden on them.

Workers on ZHC who wish to receive an offer of guaranteed hours should have the right to request such an offer. In order to minimise the costs for employers from guaranteed hours offers, they should only be made on the request of workers:

**Recommendation: An employer must make a guaranteed hours offer only when a corresponding request is made by a worker.**

The length of the reference period is to be specified in regulations, but is expected to be 12 weeks. We consider that the expected reference period of 12 weeks is too short for the following reasons:

First, a 12-week reference period will not accurately reflect seasonally fluctuating demands in key industries that use zero-hours contracts. Nearly one third of the labour force in the hospitality industry are on zero-hours contracts, and the hospitality industry has a significantly higher usage rate of zero-hours contracts than other industries in the UK.

Revenues and demand for labour in hospitality are subject to strong seasonal fluctuations and/or are difficult to predict altogether. Using a 12-week reference period for setting guaranteed hours might result in an offer of guaranteed hours that is based on hours worked during peak season, but is applied to off-season work, resulting in a mismatch between hours offered to workers and actual demand for labour. This would increase the cost of zero-hours contracts for employers.

Second, calculating and adjusting contract offers every 12 weeks represents a significant burden for employers. This is especially concerning for SMEs, which generally have very limited resources. As many SMEs do not have a dedicated HR function, workforce planning and administration is often incumbent on owner-managers, who often lack relevant expertise. Overall, the demands placed on companies by the proposed legislation would disproportionately affect SMEs, where, according to the Quarterly Labour Force Survey, 72% of zero-hours workers are employed.

Large employers typically can absorb the costs associated with guaranteed hours more easily than smaller employers. The proposed guaranteed hours based on a short reference period are likely to disadvantage smaller employers disproportionately, which is contrary to the stated objective of the Bill to create a level playing field between different employers.

To account for seasonal fluctuations in demand for labour, and to decrease administrative cost of offering guaranteed hours, we propose a longer reference period:

**Recommendation: The length of the reference period for determining guaranteed hours should be at least 6 months.**

## **27BB Requirements relating to a guaranteed hours offer**

### *Subsection (1)*

Employers are required to make work available to the qualifying worker for a certain number of hours which reflects those hours worked during the reference period.

The conditions that have to be met for an offer to “reflect” the hours worked are yet to be specified.

To balance flexibility between employer and employee, we suggest that an offer that reflects hours worked includes a range above and below the average hours worked during the

reference period. For instance, in Germany, legislation on on-call work specifies that after employers and employees agree on a set number of minimum hours to be worked in a given time, employers can request that an employee works 25 percent more or 20 percent less than the agreed hours.

**Recommendation: An offer of guaranteed hours that reflects the number of hours worked during a reference period should be based on average hours worked, adjustable upwards or downwards by a fixed percentage of average hours worked.**

### *Subsection (3)*

This subsection states conditions for guaranteed hours offers, specifying that an offer needs to set out either the days of the week, and the times on those days when the employer is required to make work available to the worker or a working pattern of days – and times of day – which the employer would be required to make available to the worker to work.

A CIPD report on ZHC shows that for a significant number of companies, working days and hours vary greatly each week and for approximately one out of ten companies, are even impossible to predict. Therefore, constraining employers to offer the same days and times of work or same pattern seems to be unduly restrictive and removes employer flexibility almost entirely. This is especially problematic for seasonal industries in which ZHC are most often used. To enable income security for workers, but also preserve an element of flexibility for employers, we recommend the following:

**Recommendation: The guaranteed hours offer specifies a set number of hours to be worked per week, but does not determine date, time or working pattern.**

## **Clause 2: Shifts: rights to reasonable notice**

### **27BI Right to reasonable notice of a shift**

### **27BJ Right to reasonable notice of cancellation of or change to a shift**

Section 27BI creates rights for workers to be given reasonable notice of their shifts. Section 27BJ creates rights for workers to be given reasonable notice of cancellation or change of a shift. The amount of time required for a reasonable notice in each case remains to be specified.

According to the CIPD, 60 percent of businesses provide at least one week of advance notice of schedules for workers on ZHC. 9 percent of companies provide between 1 to 3 days of notice, 12 percent between 4 and 6 days, and for the remaining companies notice periods vary strongly. A notice of shift of one week should provide employees with sufficient certainty regarding their schedule, and many businesses already comply with this minimum notice.

The independent report “Zeroed Out” by Pickavance recommended a notice period of at least 48 hours for the cancellation of shifts. Our view is that a notice period shorter than 48 hours for cancelling, moving or curtailing shifts does not sufficiently protect workers from insecurity. Longer periods for notices of cancellation or change may impede employer flexibility unduly.

**Recommendation: A reasonable notice of a shift should be at least one week. A reasonable notice of cancellation of or change to a shift should be at least 48 hours.**

**Clause 3: Right to payment for cancelled, moved and curtailed shifts**

**27BO Right to payment for a cancelled, moved or curtailed shift**

This section specifies that an employer must make a payment of a specified amount to a worker each time that the employer cancels, moves or curtails at short notice a qualifying shift.

Compensation for cancellation, movement or curtailment is mandated in New Zealand since 2016. In the UK, the CIPD has recommended employers should pay for the full value of any shift and any other costs if shifts are cancelled with less than 24 hours' notice. According to the CIPD survey on ZHC, only 33 percent of businesses surveyed give workers compensation for shifts cancelled with fewer than 24 hours' notice, and 48 percent of businesses do not provide any compensation in case of cancellation. In our view, this highlights the need for introducing legislation that provides workers with compensation in case their shift gets cancelled.

The Bill specifies that "Regulations under section 27BO(1) may, in particular, include provision specifying different amounts depending on the amount of notice that was given of the cancellation, movement or curtailment." We recommend the following compensation:

**Recommendation: For shifts that are cancelled, curtailed or moved with less than 48 hours' (but more than 24 hours') notice, half of the remuneration that the worker would have received from working the shift should be paid.**

**For shifts cancelled, curtailed or moved with 24 hours' notice or less, the full remuneration that the worker would have received from working the shift should be paid.**

**Acknowledgement of data source for Quarterly Labour Force Survey:**

Office for National Statistics. (2024). Quarterly Labour Force Survey, Household Dataset, April - June, 2024. [data collection]. UK Data Service. SN: 9303, DOI: <http://doi.org/10.5255/UKDA-SN-9303-1>

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