

The Baroness Neville-Rolfe
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Dear Lady Neville-Rolfe,

Applying the right to guaranteed hours to agency workers

I am writing to you to address the important issue you raised during the first day of debates of the Lords Committee Stage of the Employment Rights Bill, on 29 April 2025. You expressed concerns about agencies having the duty to offer guaranteed hours in the care sector, where demand for work can be especially unpredictable.

To be clear, as a default, the Bill sets out that the hirer, not the agency, should be responsible for making offers of guaranteed hours because they are best placed to forecast and manage the flow of future work. Not all hirers will have to offer guaranteed hours to their entire agency workforce either. Hirers will only have to offer guaranteed hours to qualifying agency workers. To qualify, agency workers will have to have meet the eligibility criteria, including regularly working for an end hirer over the reference period(s), with the initial reference period expected to be 12 weeks. In line with the zero hours contracts measures already included in the Bill, where work is genuinely temporary, hirers will be able to offer guaranteed hours in the form of limited-term contracts. Qualifying agency workers will be entitled to decline that offer if they wish to remain on their current arrangement

I do want to reaffirm our commitment that, once they qualify, agency workers should be able to access a contract which reflects the hours they regularly work. Agency workers can also be at the receiving end of one-sided flexibility, and it is also important that moving to an agency model does not become a way that employers sidestep the new rights.

As I believe you may have been referring to, the provisions of the Bill do maintain flexibility to cater for different circumstances by exception, by placing the obligation on agencies or other intermediaries instead of the hirer, in certain scenarios, which will be set out in regulations. I reiterate; agencies would only have to offer guaranteed hours to eligible agency workers who have worked for them regularly over the reference period.

We are aware that this power is wide and got criticized by the Delegated Powers and Regulatory Reform Committee. We are considering their recommendation to remove the Henry VIII element of this power and will respond in due course.

This is because there may be specific circumstances in which it would not be appropriate for a hirer to make a guaranteed hours offer to a particular type of agency worker. There may also be circumstances in which an agency - or another person involved in the supply or payment of a particular type of agency worker – may be better suited to providing a guaranteed hours offer.

Taking this power was informed by the range of responses to the Government consultation on applying zero hours contracts measures to agency workers. Consultation responses were split, and made clear that the relationships between workers, agencies, end hirers, and other entities in supply chains can be complex, and legislation must maintain flexibility to cater for different circumstances. We are aware of the importance of this power and the impact these regulations could have on agency workers, hirers, agencies, and others in the supply chain. For this reason, this power will be subject to the affirmative procedure, ensuring both Houses of Parliament get further opportunity to debate its use.

How exactly the detail of those regulations interacts with the temporary work sector is very complex, so we need to design a solution that works in the context of a wide range of different types of agency workers and different sectors. Maintaining this flexibility should ensure the measures can reflect the changes in a dynamic labour market.

Finally, we do envisage a very limited set of circumstances where employers will be exempt from the new zero hours workers measures. We will consult on any such exemptions and they will be set out in regulations. Employers and unions will also have the option to collectively agree to modify or opt out of the measures. For example, an exception could include instances where an employer uses zero hours contracts or arrangements to provide specific emergency cover.

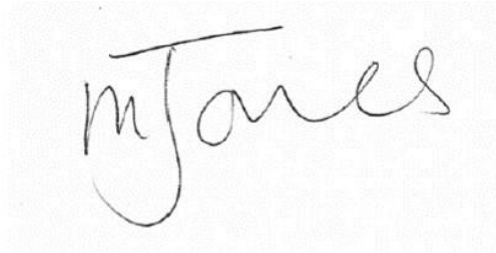
I understand your concerns about leaving implementation details to regulations. However, these are novel rights, and powers will enable details to be adjusted in light of the latest evidence relevant to different sectors, the changing employment market and experience of implementation. The Government is committed to working in a social partnership with trade unions, employers and Government all collaborating to get the details right.

We understand that health and social care sectors rely more than other sectors on the temporary workforce, including zero hours contracts and agency workers. DBT and DHSC officials have been working closely together to understand the specific needs of the care sector itself and gather views from stakeholders directly. We will consult to ensure that regulations take account of the range of working practices. We will publish guidance to assist both employers and workers. We will give time for businesses to prepare, and work with trade bodies and social partners to guide and support business as these changes are introduced.

It is true that zero hours measures mean hirers, or agencies where relevant, may need to plan shifts more carefully and further in advance. However, this planning may have benefits for employers themselves. These measures should increase worker morale and retention, which is likely to improve productivity.

I am copying this letter to all Noble Lords who spoke in the debate. I am also depositing a copy of this letter in the Library of the House.

Best wishes,

A handwritten signature in black ink, appearing to read 'm Jones', on a light-colored background.

BARONESS JONES OF WHITCHURCH

Parliamentary Under-Secretary of State (Minister for Legislation)
Department for Business and Trade