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*Dean Andrew*

Thank you for your contributions to the Committee session for the Employment Rights Bill on Tuesday 29<sup>th</sup> April.

During the session, I committed to writing to you explaining Government Amendment 14 in more detail.

This amendment relates to 'longer contracts' including annualised hours contracts. Specifically, it relates to those contracts where hours can contractually be allocated both during a reference period and a period which is longer than the reference period for the right to guaranteed hours, but where there is no information as to the allocation of the hours. These hours are defined in the amendment as 'the unassigned hours'.

The first step for employers in identifying which workers should be given a guaranteed hours offer, is to establish whether they are in scope or not.

Employers establish this by a) establishing whether the worker works regularly (conditions regarding the regularity to be defined in regulations), in the reference period and then b) establishing whether the worker has a zero hours contract/arrangement or a contract which guarantees them some hours during the reference period (fewer than the threshold set in regulations).

For this third group of workers, if they work more than the hours set out in their contract, they will qualify for a guaranteed hours offer.

Workers that are 'excluded' as specified in regulations will obviously be out of scope.

However, if someone has a 'longer contract', their hours may not fall entirely in the reference period. For example, someone could be guaranteed 200 hours a year, but when they are to be worked is unclear. Unless the Bill is amended, these workers will fall out of scope and not be protected, and unscrupulous employers could offer one hour a year contracts to avoid their obligations to offer guaranteed hours contracts. This is because it is not clear whether the worker has exceeded the hours they are guaranteed during the reference period, given it is unclear how many hours the worker is actually guaranteed during the reference period.

The amendment addresses this by adding new subsections which allow for the calculation of the number of hours to apply as if the employer would be required to make available during the reference period, where a worker is on a e.g. an annualised contract or other longer contract, with no information as to the allocation of the hours.

The formula allows an 'apportioned number' of the unassigned hours to be calculated. This effectively means that a number of reference period hours can be worked out, to determine whether the worker is in scope of the measures. The apportioned number is calculated by dividing the number of days in the reference period that fall within the 'longer period' (D1) by the total number of days in the 'longer period' (D2). This is then multiplied by the number of hours which are not assigned to be worked at a particular time (the 'unassigned hours').

For example:

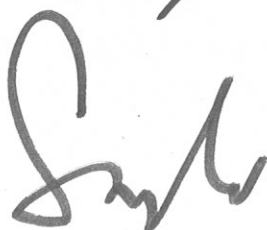
- A contract guarantees a worker 300h of work per year, with no indication as to when these should be worked and these could be worked at any time during the year
- 300h is therefore "H" the number of unassigned hours
- D2 is 365 days, which is the longer period during which H may be allocated at anytime
- Say our reference period is over January- February –March and the beginning of April and comprises 100 days, it is our "D1", i.e. the number of days in the reference period that fall within the longer period.
- To find the "apportioned number" of the unassigned hours for the reference period, we therefore run the calculation of  $H \times (D1 / D2)$ , which gives  $100h \times (100d/365d) =$   
**27.39 hours**

In this example, the 'apportioned number' is 27.39 hours over a 100 days reference period. It would be possible to use that number as if it were the number of 'guaranteed hours' over the reference period in circumstances where the contract does not provide any such detail. It would therefore mean it could be determined whether the worker falls within the scope of the right to guaranteed hours. The worker will be in scope if: the number of hours that the employer must make available during the reference period (here 27.39 hours) falls below the 'hours threshold' (to be set out in regulations), and if the worker works in excess of that number of hours (here they need to have worked more than 27.39 hours over the 100 days period).

As a result, providing that they also meet the additional qualifying criteria as to the regularity of the hours worked or their number, a worker on the type of contract as described above may now be eligible for a guaranteed hours offer.

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.

Yours Sincerely,

A handwritten signature in dark ink, appearing to be 'Leong', written in a cursive style.

**Lord Leong CBE**  
**Lord in Waiting (Government Whip)**