

Measures to Address One-Sided Flexibility: Consultation

The Government is consulting on proposals made by the Low Pay Commission to address issues associated with 'one-sided flexibility' identified in the Taylor Review of Modern Working Practices. The proposals include rights to regularise or guarantee the amount of working hours, reasonable notice of work schedules and compensation where shifts are cancelled or curtailed without reasonable notice.

Details of the consultation and questions along with our comments are set out below. The LGA is intending to respond to the consultation and we should be obliged if authorities would send us their views on the points and questions set out below. Please send your comments to eru@local.gov.uk by 13 September 2019. Should authorities wish to respond directly to the consultation, details are on the consultation website and the closing date is 11 October 2019. We should be obliged if you would also send us a copy of any such response, again to eru@local.gov.uk .

Background

One of the features of the Taylor Review of Modern Working Practices was an overarching ambition that all work should be fair and decent and for employers to offer opportunities that give individuals realistic scope to develop and progress.

The review looked at a labour market which has evolved including new forms of work, the rise of digital platforms and the impact of new working arrangements on workers' rights, responsibilities, freedoms and obligations.

On the one hand flexibility in the labour market has enabled employers to respond to changes in business conditions, cost pressures and new ways of working. From another angle more familiarity with individual flexible working and the new right to request flexible working have enabled individual employees to balance work and family life.

However, one of the issues raised through the Taylor review was that a minority of employers abuse the concept of flexibility to transfer excessive amounts of risk to workers, and there is no corresponding benefit to the worker from the flexible arrangement. This has been termed as 'one-sided flexibility', with examples of employers cancelling shifts at short notice or sending workers home when customer demand is low.

Following the recommendations from the review, Government commissioned the independent Low Pay Commission (LPC) to provide advice on the prevalence of one-sided flexibility, the impact of introducing a higher minimum wage for nonguaranteed hours and alternative policy ideas to address the issue.

Low Pay Commission conclusions and proposals

The LPC's research demonstrated that one-sided flexibility is a problem in some parts of the modern economy, where some employers misuse flexible working arrangements to create unpredictability, insecurity of income and a reluctance among some workers to assert basic employment rights.

The LPC did not endorse the proposal to introduce a premium to the National Living Wage (NLW) for non guaranteed hours worked, as it judged that this would more likely have negative effects, but instead recommended alternative action. This included:

- A right to switch to a contract which reflects the normal hours worked
- A right to reasonable notice of work schedule
- Compensation for shift cancellation or curtailment without reasonable notice
- Information for workers

The right to switch to a contract which reflects the normal hours worked

In the Good Work Plan the Government committed to introduce a right to request a more predictable and stable contract that reflects a worker's normal working hours. However, the LPC proposal goes further and is a 'right to switch to a contract which reflects the normal hours worked'. This would require an employer to justify any refusal to switch according to conditions clearly defined in legislation. The Government has committed to taking this forward separately and it does not form part of this consultation. We will report on this issue at a later date when the Government presents its specific proposals or conducts a separate consultation.

Information for workers

The Government accepts the LPC recommendation that more information should be provided to workers. In this respect it has already laid legislation to amend the duty to provide a written statement to make it a 'day one' right and following the outcome of this consultation will consider how the duty should be expanded to incorporate further relevant information.

Right to reasonable notice of work schedules

The LPC recommended that every individual should have a right to reasonable and recordable notice of their work schedules. This would discourage poor scheduling practice by employers, reduce unpredictability for workers and aid income security. Most jobs in local authorities have well-established, pre-determined hours of work whether they be fixed at the same times every week or rotate around an established pattern. However, there are some that will differ and be rostered in advance with varying notice periods. This part of the

consultation will be of most interest to authorities, departments and organisations which operate with workers deployed on this type of flexible basis. We would appreciate responses from authorities where this is the case to inform our response.

The consultation questions for this section are set out below, with our initial comments following those.

Question 1 What notice (if any), do your workers receive of their work? Does this vary by different types of work or worker?

Question 2 How are work schedules currently organised or planned, and how are they currently recorded? Are you aware of best practice examples where work schedules are organised or recorded particularly well?

Question 3 What would you define as 'reasonable notice' of work schedules? Does this vary between different types of work or contexts? And what working hours should be in scope?

Question 4 What impact (if any) would the introduction of the right to a reasonable notice of work schedules have on you? How would existing practices change?

Question 5 In your view, should the right to a reasonable notice of work schedules be something that is guaranteed from the start of someone's employment, or should an individual need to work for a certain amount of time before becoming eligible?

- Guaranteed from the start of someone's employment
- An individual needs to work for a certain amount of time before becoming eligible. If so, how long?

Please explain your answer.

Question 6 In your view, should Government set a single notice period for work schedules which applies across all employers, or should certain employers / sectors be allowed some degree of flexibility from the "baseline" notice period set by Government? Which employers / sectors (if any) should be allowed some degree of flexibility?

- Government should set a single notice period that applies across all employers
- Certain employers / sectors should be allowed some degree of flexibility

Please explain your answer.

Question 7 What would be an appropriate "baseline" notice period and degree of flexibility to you? How would this impact on you?

- Question 8** In your view, are there any instances where reasonable notice of a work schedule would not need to be given? If so, for which workers / types of work?
- Question 9** How do you think a reasonable notice of a work schedule would be recorded?
- Question 10** What impact, if any, would the requirement of recording work schedules have on you and how you organise work?
- Question 11** If Government were to introduce the right to a reasonable notice of work schedule, what would be most useful for employers within statutory guidance?
- Question 12** What would an appropriate penalty be in the event of non-compliance (when workers are not given reasonable notice of their work schedule, and / or if it is not recorded correctly)?

Comments Legislating across the whole labour market on what appears to be a simple and perfectly reasonable proposal will be more complex than it appears and we envisage that Government will need detailed intelligence from employers to get this right. We can see that clarity will be required as to the coverage of this proposal, e.g. whether certain occupations or services should be exempted. We can also see that there will need to be a sensible and workable distinction between those whose normal working hours vary and can expect to have a reasonable period of notice and those who provide a genuine emergency on call service as their primary role, such as retained firefighters, or as an occasional addition, e.g. a school caretaker taking on additional work for security purposes. Also nothing in the final legislation should prevent an employer offering genuine voluntary overtime or additional shifts.

- We would appreciate answers to any and all of the consultation questions but in particular would very much value views from authorities on:
- The reality of the situation now in terms of what types of staff and how many this proposal might affect you.
- The potential impact of a new right to reasonable notice (although this will obviously depend on how long that notice is to be).
- What would be a reasonable period of notice?
- Should there be different periods for different jobs?
- What form should compensation take where there is a failure to provide reasonable notice?
- Should this be a day one right or require workers to serve a period of qualifying notice?
- Which jobs or circumstances would require special treatment or exceptions?

Compensation for shift cancellation or curtailment without reasonable notice

The LPC found evidence that the practice of employers cancelling scheduled shifts at the last minute was thought to be unfair by both employers and workers. The question is how to deter this and so the Government is seeking views on appropriate compensation arrangements. The questions on this section are set out below, with our comments following on.

Question 13 Are shifts or hours of work cancelled by the employer at short notice in your workplace? Why? Are reasons provided to workers? Are these hours then replaced?

- Yes – shifts or hours of work are cancelled at short notice
- No – shifts or hours of work are NOT cancelled at short notice

Please explain your answer.

Question 14 How often are shifts or hours of work cancelled by the employer at short notice?

Question 15 What notice, if any, is provided by the employer before the shift or hours of work are cancelled? Does this vary at all?

Question 16 Do workers receive compensation if shifts or hours of work are cancelled? If so, what compensation is provided?

- Yes – workers receive compensation if shifts or hours of work are cancelled
- No – workers DO NOT receive compensation if shifts or hours of work are cancelled

Please explain your answer.

Question 17 Does this compensation vary by different types of work/worker? If so, how does this vary?

- Yes – compensation varies
- No – compensation DOES NOT vary

Please explain your answer.

Question 18 Are you aware of any best practice examples from other areas of industry where workers receive compensation for shifts or hours of work which are cancelled?

Question 19 What impacts, both positive and negative, would this proposed policy have on you (if any)?

Question 20 Noting the three proposed options put forward by the LPC, if compensation were introduced for shifts or hours which are cancelled at short notice, what would you consider to be a 'fair' amount of compensation?

- The value of the shift in question
- The worker's appropriate NMW rate multiplied by their scheduled number of hours that have been cancelled
- A multiple of the worker's appropriate NMW rate. If so, what multiple?
- Other. If so, please specify

Question 21 If compensation were introduced, what should be the cut-off point at which employers have to give their workers notice of a cancelled shift or hours (after which workers would become eligible for compensation)?

Question 22 If Government were to implement a policy where the notice period for cancelling shifts or hours of work was longer than the amount of time you suggest above, what impact (if any) would this have on you ?

Question 23 Should all types of employer, across all sectors, be expected to pay compensation?

- Yes – all employers should be expected to pay compensation
- No – NOT all employers should be expected to pay compensation

Please explain your answer

Question 24 Which workers, if any, should be exempt from receiving compensation?

Question 25 In your view, should workers become eligible for compensation from the start of their employment, or should they become eligible after a certain amount of time?

- Guaranteed from the start of someone's employment
- An individual needs to work for a certain amount of time before becoming eligible

Please explain your answer.

Question 26 How should a policy to provide compensation for short notice shift cancellations be designed to best target workers who experience one-sided flexibility?

Comments We would envisage that for local authorities this aspect of the proposal is less of an issue than the first element in relation to reasonable notice of work schedules. Whereas the scheduling of work in some areas will always require rostering and notice, short notice cancellations and failure to pay or reallocate duties are primarily seen as the actions of unscrupulous employers.

However, in order to inform our response we would appreciate answers to the questions so that we could be secure in our assumptions, but also to ensure that penalties where they are due are appropriate.

Guidelines for Employers

The Government also remains interested in the value that could be brought by the provision of guidelines for employers and also how employers could share best practice or drive change across their workforce and wider industry

Question 27 What could employers/employer representatives do to share best practice and drive change through their workforce and industry?

Next steps

Details of any reforms arising from this consultation will be reported in future bulletins.