EQUITY

Ending one-sided flexibility: reforms of zero hours and similar contracts

August 2026

About

Equity is the largest creative industries trade union with 50,000 members united in the fight for fair terms and conditions across the performing arts and entertainment. Our members are actors, singers, dancers, designers, directors, models, stage managers, stunt performers, circus performers, puppeteers, comedians, voice artists, supporting artists and variety performers. They work on stage, on TV and film sets, on the catwalk, in film studios, in recording studios, in night clubs and in circus tents.

Contact

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Summary:

1. Performers in the creative industry face significant challenges finding secure and sufficient work that provides an adequate income. Zero and variable hour work is present in sectors without significant coverage of collective agreements, such as immersive theatre, tourist attractions, role-play work, and dance and singing.

2. In such contexts, Equity has encountered deeply exploitative arrangements. In immersive theatre, where zero-hour and variable hour work is common, performers may be engaged as self-employed independent contractors on fixed-term zero-hour arrangements that proclaim no mutuality of obligation, whilst requiring attendance at rehearsal sessions scheduled by the employers. This underlines the fact that while zero-hours work should, in principle, entitle workers to basic rights such as the minimum wage and holiday pay, relevant contracts and arrangements often used within the context of broader employer malpractice to circumvent the provision of statutory rights.[1]

3. Performers engaged in zero and variable hour work may receive as little as four days' notice of their schedule, making it impossible to plan their lives with any basic regularity. They may also be assigned to "floating shifts" – where they are required to stay available for work that may or may not be provided – or engaged on contracts which guarantee an average amount of hours per week with the allocation varying significantly, according to the needs of the employer. In addition, where scheduled shows are cancelled at late notice, companies may reserve the right to pay workers out of their holiday pay entitlement.

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[1] Martin, A., Williams, G., Atay, A., & Florisson, R. (2024). "Zero Choices: Swapping Zero-Hours Contracts for Secure, Flexible Working." Zero Choices: Swapping zero-hour contracts for secure, flexible working

4. In this context, Equity welcomes the Government's objective to end "one-sided flexibility".[2] As a general principle, Equity believes that objective should be extended equitably to agency workers, in the same way that it is to those that are directly engaged. This is important to ensure that agency work does not become an additional loophole through which new duties on employers can be evaded.

6. Equity shares the concerns of the wider trade union movement that there are already significant loopholes that risk yet further watering down of this legislation. Equity supports the tightening of legislation to avoid the creation of incentives for employers who wish to game the system and deny workers the right to more security.

5. Equity welcomes the provision that a worker can accept or reject a guaranteed hours offer, and that rejection will not disqualify them from future offers. Given the prevalence of poor pay and the absence of sufficient quantities of secure work in the creative industry, performers may engage in zero hours work that is both adjacent to and separate from the industry to support their primary careers. The provision of choice with regards to the guaranteed hours offer is important in this context. However, the need for performers to undertake zero-hour work that can be dropped if advantageous opportunities for their primary careers is a stark demonstration of the fact that the new provisions are not enough to address the root causes of insecure work – of which zero-hour work is a manifestation.

6. Relating to the provision of choice, Equity is concerned that the legislation does not provide for meaningful worker consultation with regards to a guaranteed offer, or a right for workers to be accompanied at a meeting during which a guaranteed hours offer is discussed. This is concerning given the complexity of the legislation and the stark power imbalance between workers and their employers.

7. In addition, the new rights risk becoming incredibly weak without a strong enforcement regime. Individualised enforcement via employment tribunals must be acknowledged as a significant barrier especially given the significant delays that claimants are currently facing. As such, Equity is in favour of the involvement of the Fair Work Agency. However, this too will only be meaningful if there is a credible risk of inspection and meaningful penalties for non-compliance. Examples from abroad demonstrate that state enforcement is most effective where there is concerted engagement with trade unions. This is an important lesson which should be acknowledged and acted upon.

8. Furthermore, while the new rights are a positive step, Equity believes that they must be accompanied by a broader transfer of power towards workers. In view of the denial of basic

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[2] Department for Business and Trade (10 October 2024). *Next Steps to Make Work Pay* https://www.gov.uk/government/publications/next-steps-to-make-work-pay.

rights to those on zero or variable hour contracts and arrangement, as described above, this includes tighter regulation around genuine self-employment which should be brought forward through the awaited legislation around worker status.

10. Ultimately, Equity maintains that trade union access and collective bargaining remain the most effective ways of improving security, predictability and financial wellbeing for workers. It is therefore welcome that the Act acknowledges the value of collective bargaining by allowing tailored conditions to be determined through agreements between unions and employers. However, the potential value remains constrained through regressive trade union laws. To support its ultimate policy objective – "ensuring that jobs provide a baseline of security and predictability"– the government should therefore bring forward measures to meaningfully restore the power of trade unions and facilitate sectoral collective bargaining.[3]

Question responses

1a	***For directly engaged workers, which of the following options should the hours threshold be:***

[ ] 8 hours per week
[ ] 12 hours per week
[ ] 16 hours per week
[ ] 20 hours per week
[ ] 24 hours per week
[ ] 28 hours per week
[ ] 32 hours per week
[ ] 36 hours per week
[ ] 40 hours per week
[ ] 44 hours per week
[ ] 48 hours per week
[ ] Other (please specify)

1b	***Please explain your answer***

The House of Commons Business and Trade Committee noted in its February 2025 report that "defining what counts as a low-hours threshold creates a loophole that can be exploited by companies to avoid their obligations set out in the Bill".[4] It therefore recommended removing the provision permitting the introduction of a minimum hours threshold. Equity agrees with this analysis. However, given that the Act provides for such a threshold to be set, Equity

[3] Department for Business and Trade (10 October 2024). *Next Steps to Make Work Pay* https://www.gov.uk/government/publications/next-steps-to-make-work-pay.
[4] Business and Trade Committee (3 March 2025). *Make Work Pay: Employment Rights Bill*. https://committees.parliament.uk/publications/46693/documents/241361/default/

supports a threshold of 48 hours per week, and the equivalent for contracts that guarantee hours over longer periods of time.

Where workers work hours that attract a contractual overtime premium, a guaranteed hours offer should not be used to remove or reduce those financial entitlements. Where a guaranteed hours offer takes the form of a variation to an existing contract, the removal of a higher rate of pay for overtime would amount to a variation of terms and conditions other than working hours. Where a guaranteed hours offer takes the form of a new contract, employers should not be permitted to incorporate hours that were regularly remunerated at an overtime rate into guaranteed hours and subsequently pay those hours at the basic rate. This would reduce the worker's overall pay and result in terms and conditions that are less favourable overall than those that applied during the reference period.

This approach aligns with the primary legislation. Where a guaranteed hours offer varies an existing contract, it must not vary terms and conditions other than working hours. Where a guaranteed hours offer takes the form of a new contract, the terms and conditions offered must not be less favourable overall than those that applied during the reference period. Furthermore, employers should not be permitted to use guaranteed hours offers to convert established overtime hours into guaranteed contractual hours while simultaneously removing the higher pay associated with those hours.

1c	***Which option(s) (including any not outlined above) do you think could have an impact on the number of contracted hours in job offers?***

An hours threshold could incentivise employers to set guaranteed contractual hours just above the threshold to avoid the duty to make a guaranteed hours offer. This may slightly increase contracted hours where existing or proposed hours are close to the threshold. However, one or two additional contractual hours within a variable working pattern would not necessarily improve security or predictability. Workers who regularly work above the threshold on zero-hours contracts could see their contractual hours raised only marginally above it, allowing employers to avoid making an offer that reflects the higher number of hours they actually work.

4a	***How long should the initial reference period be for directly engaged workers?***

[ ] 12 weeks (Government-preferred option)
[ ] 26 weeks
[ ] 52 weeks
[ ] Other

4b	***Please explain your answer***

The government's justification for a 12-week reference period is that this balances "the need for qualifying workers to be offered guaranteed hours reasonably soon after they start a role, and

the need for a reference period long enough to establish the hours they regularly work". Equity agrees with the government's justification.

6a	How long do you think subsequent reference periods should be for directly engaged workers?

[ ] 12 weeks
[ ] 26 weeks
[ ] 52 weeks
[ ] Other

6a	Please explain your answer

Aligning the length of the initial reference period with the subsequent reference period will ensure greater predictability for workers who may not wish to accept a guaranteed hours offer at the first opportunity. Furthermore, it ensures that workers have relatively frequent opportunities to move onto guaranteed hours offers, such that the stakes of acceptance of rejection are lower.

7a	Should each reference period begin as soon as the previous one finishes?

[ ] Yes
[ ] No
[ ] Other

7b	Please explain your answer

A gap between reference periods creates a risk that workers will be offered a significantly different number of hours during the gap to meet employer need. This may incentivise erratic scheduling, which will not enhance workers' security or stability.

10a	Based on the two options highlighted above for directly engaged workers, select below which option is preferred.

[ ] Option A: A weekly distribution requirement.
[ ] Option B: A weekly distribution requirement AND a total hours requirement.
[ ] Other: Equity does not believe that there should be a regularity requirement.

10b	Please explain your answer

Regularity requirements risk excluding significant proportions of precarious workers from a guaranteed hours offer. As the TUC has emphasised in its consultation response, the risk is that workers fall through the cracks because their working patterns didn't quite match the test. This is likely to apply in certain areas of the creative industry where exploitative zero or variable hour contracts are used by employers.

11a	***What should the minimum number of weeks be in which a directly engaged worker is required to work during the reference period to meet the weekly distribution requirement?***

The below options are framed around the government's preference for a 12-week initial reference period. The options would scale proportionally for a longer initial reference period.

[ ] 6 calendar weeks across a 12-week initial reference period.

[ ] 8 calendar weeks across a 12-week initial reference period.

[ ] 10 calendar weeks across a 12-week initial reference period.

[ ] 12 calendar weeks across a 12-week initial reference period.

[ ] Other: There should not be a weekly distribution requirement. If this is required, it should be 2 calendar weeks across a 12-week initial reference period.

11b	***Please explain your answer***

As emphasised above, a weekly distribution requirement risks excluding workers who work atypical working patterns.

12a	***If there were to be a weekly distribution requirement AND a total hours requirement (as in Option B), what should the total hours requirement be for a directly engaged worker?***

[ ] Fewer than 48 hours (in excess of contracted hours) across a 12-week initial reference period.

[ ] 48 hours (in excess of contracted hours) across a 12-week initial reference period.

[ ] 72 hours (in excess of contracted hours) across a 12-week initial reference period.

[ ] 96 hours (in excess of contracted hours) across a 12-week initial reference period.

[ ] Other

12b	***Please explain your answer***

The objective of the legislation is to offer workers the option of a guaranteed hours offer that reflects the hours they regularly work. As with the hour's threshold, the regularity requirement risks a loophole that can be exploited to deny workers an offer. As emphasised, Equity does not support a regularity requirement. If the government opts for a total hours requirement, this should be far fewer than 48 hours. The lower the requirement, the less risk there is of exclusion.

13a	***The government proposes that the regularity requirements should scale in the event of longer subsequent reference periods. Do you agree?***

[ ] Yes, the regularity requirements should scale in the event of longer subsequent reference periods

[ ] No, the regularity requirements should not scale in the event of longer subsequent reference periods

13b	Please explain your answer

As emphasised in the answer to question 11, a regularity requirement risks the exclusion of workers, especially those who do not work atypical working patterns, such as performers in the creative industries. If a regularity requirement is introduced, scaling it will exacerbate the exclusionary effect.

18a	Do you think there are examples of temporary need which are not related to a specific task or event – and would need to be addressed through regulations?

[ ] Yes, there are examples of temporary need that are not related to a specific task or event - and would need to be addressed through regulations.

[ ] No, there are not examples of temporary need that are not related to a specific task or event that would need to be addressed through regulations.

Equity has encountered examples in immersive theatre wherein people are engaged as self-employed independent contracts on zero-hour arrangements for six-months at a time, with a repeat contract for the same role commencing the day after the first ends. This is a pertinent example of an unreasonable use of a fixed term contract which would be outlawed through the legislation. Equity supports tight limits where it is reasonable to offer a guaranteed hours offer on a fixed term basis and considers the current parameters related to a specific task or event as sufficient. Equity does not believe that the temporary work exemption should be activated. Doing so will create a sizeable loophole that could be used by employers to unjustifiably exclude significant proportions of workers. The scope of this risk is incredibly broad. It will ultimately have the effect of providing employers with yet more flexibility in the context of an already stark power imbalance.

Workers who prefer to remain on a zero-hours or variable-hours arrangement will be entitled to reject a guaranteed-hours offer. In addition, the Act provides an opportunity for employers and trade unions to agree guaranteed working arrangements through collective bargaining. A statutory entitlement to guaranteed hours that applies across the economy would provide a minimum floor of rights upon which sector-specific collective bargaining arrangements can build.

19a	Which calculation method do you think should be used for determining the guaranteed hours offer for directly engaged workers?

[ ] Mean average

[ ] Median average

19b	Please explain your answer

The mean average would better capture a-typical working patterns which are sporadic with fluctuating periods of intensity.

20a	Do you think employers should have flexibility to determine the period over which the hours will be allocated (weekly, monthly, or other)?

[ ] Yes, they should have the flexibility to determine the time period – however this should be subject to robust safeguards, outlined below.

[ ] No, they should not have the flexibility to determine the time period

20b	Please explain your answer

Employers' flexibility to determine the time over which guaranteed hours are allocated must be accompanied by robust safeguards. Where workers are already guaranteed hours, the new or varied contract should reflect their existing working pattern. Where they are not, the default should be a weekly allocation, with adjustment only if requested by the worker following genuine consultation. As elaborated on in the answer to question 33, Equity is concerned that the consultation document does not address whether the Secretary of State will issue regulations regarding the need for an offer to include appropriate details of the working pattern, and reflect the working pattern worked during the reference period.

Additionally, the Act currently fails to ensure that workers are consulted about a guaranteed hours off. This is a key oversight that requires rectification. Furthermore, in any meeting about a guaranteed hours offer, workers should also have the right to be accompanied by a trade union representative. This would entail extending the right to be accompanied at disciplinary and grievance hearings as provided by s10 of the Employment Relations Act 1999.

20c	(if yes) Which of the following time periods should employers be able to choose? (select as many as you see fit)

[ ] A week

[ ] A month

[ ] Other

20d	Please explain your answer

See answer to 20b.

22a	Do you think employers should have the flexibility to use an adjustment margin?

[ ] Yes, the margin should be a fixed figure

[ ] Yes, the margin should be a percentage of the hours generated by the calculation

[ ] No, employers should not have the flexibility to use an adjustment margin

[ ] Other: Employers should have the flexibility to round up to half or full hours.

22b	Please explain your answer

Equity recognises that it may be administratively complex to offer guaranteed hours offers that do not exactly align with established patterns of work. However, allowing employers to round down guaranteed hours offers would undermine the objective of this legislation: to end one-sided flexibility. Given the power imbalance, employers should be permitted to exercise flexibility only where it benefits the worker. This could be achieved by allowing employers to round offers up to the closest half or full hour. Preventing flexibility beyond this will encourage effective workforce management during the reference period rather than relying on a post hoc adjustment margin, as the employer will have to arrange work with the guaranteed hours offer in mind.

The consultation document notes that an adjustment margin could reduce the risk of "theoretical legal liability arising from minor calculation errors". This does not provide a sufficient justification for a broad adjustment margin. If the employer genuinely miscalculated hours when generating the offer, this could be rectified when the offer is discussed with the worker, providing the miscalculation is highlighted. This further highlights the importance of providing workers with a right to be consulted on any guaranteed hours offer and accompanied by a trade union representative during discussions about the offer. Consultation and representation are more effective risk mitigation measures than a broad adjustment margin that may be used to justify unnecessary reductions rooted in employer convenience.

26a	Should there be any types of workers that are excluded from the right to guaranteed hours?

[ ] Yes, there should be certain types of workers excluded

[ ] No, there should not be certain types of workers excluded

26c	If no, please explain your answer

See answer to 18.

27a	Should there be any specific circumstances in which you think employers should be exempt from the right to guaranteed hours?

[ ] Yes, there are certain specific circumstances in which employers should be exempt

[ ] No, there are no circumstances in which employers should be exempt

27c	If no, please explain your answer

See answer to 18.

33	***Is there anything else you want to tell us in relation to Part 1 of this consultation, on the right to guaranteed hours?***

Equity is concerned that the Act does not provide a right for a worker to be accompanied in a meeting where a guaranteed hours offer is discussed. Given the complexity of the provision, and the power imbalance inherent to the relationship between the worker and the employer relationship, it is possible that workers are either pressured or misguided by the employer. As explained in our answer to question 20, this can be mitigated against by extending the right to be accompanied at disciplinary and grievance hearings as provided by s10 of the Employment Relations Act 1999.

Additionally, the Act includes a provision that allows periods of time during which a worker has not worked for a specified reason to be considered when determining whether there is duty to make a guaranteed hour. An oversight of this consultation is the failure to address the detail of this provision. It is imperative that workers are not unfairly denied the right to guaranteed hours in relation to absences attributable sickness or family leave.

Equity is also concerned that the consultation document does not address whether the Secretary of State will issue regulations regarding the need for a guaranteed hours offer to include appropriate details of the working pattern, and reflect the working pattern worked during the reference period. If this power is not exercised, it will be sufficient for the employer to offer a guaranteed total number of hours without any allocation as to when they will be worked. The problematic result of this is highlighted by variable hour contracts that can found within immersive theatre. For example, Equity has encountered contracts which stipulate that workers will work an average of 28 hours per week across a fixed term engagement but that the actual hours will vary in accordance with the needs of the employer. Where such a contract is paid on hourly basis, as is common, this has significant detriment for the worker. Given considerable variation in shift allocation, workers will receive significantly fluctuating pay. In such a contractual arrangement, it is very difficult for workers to pick up additional work, making it nearly impossible to make ends meet, or maintain basic work life balance. Furthermore, average hour arrangements are not conducive to stability or security. Utilising these powers will also help to guard against any prospect of a cynical offer that will leave workers unable to properly assess whether they want to accept an offer. Equity therefore urges the government to utilise the power to issue such regulations.

Finally, it is welcome that workers will be protected from detriment in relation to accepting or rejecting the guaranteed hours offer or exercising the new right (via Schedule 2, paragraph 10 of the Employment Rights Act 2025). This is important for workers that invoke their right as well as those that opt to remain in a zero-hour contract or arrangement. However, unfair dismissal rights remain wedded to employment status. This is despite the commitment to extend a day

one right to unfair dismissal to all workers in *Labour's Plan to Make Work Pay.*[5] The extension of this right to those with worker status is incredibly important. Without this, those classified as limb (b) workers could effectively be dismissed for exercising their right to accept or reject an offer.

34a	***What do you think the hours threshold for the rights to reasonable notice and short notice payment should be for directly engaged workers?***

[ ] 8 hours per week
[ ] 12 hours per week
[ ] 16 hours per week
[ ] 20 hours per week
[ ] 24 hours per week
[ ] 28 hours per week
[ ] 32 hours per week
[ ] 36 hours per week
[ ] 40 hours per week
[ ] 44 hours per week
[ ] 48 hours per week
[ ] Other (please specify): There should not be an hours threshold.

34b	***Please explain your answer***

The policy objective behind this part of the legislation, as set out in *Make Work Pay*, was to ensure that "all workers get reasonable notice of any change in shifts or working time, with compensation that is proportionate to the notice given for any shifts cancelled or curtailed".[6] An hours threshold would undermine that objective by limiting who is entitled to these rights. However, Equity agrees with the TUC that, if an hours threshold is introduced for guaranteed hours offers, the threshold for the right to notice and compensation should be higher, as these workers remain exposed to greater volatility and insecurity. However, a guaranteed number of hours does not equate to stability or predictability, as without a guaranteed schedule – which remains lacking in the legislation – workers remain subject to the whims of business needs, albeit to a lesser extent.

37a	***How much notice should be presumed reasonable for directly engaged workers?***

[ ] 1 week
[ ] 2 weeks
[ ] 3 weeks

[5] Labour (2024) "Labour's Plan to Make Work Pay". LABOUR'S PLAN TO MAKE WORK PAY - Delivering A New Deal for Working People
[6] Labour (2024) "Labour's Plan to Make Work Pay".

[ ] 4 weeks
[ ] Other

37b	Please explain your answer

Equity has encountered instances where performers on zero or variable hours contracts are provided as little as four days' notice for their working hours the following week. Workers may also be called in on very short notice to fill gaps that arise due to illness, where the employer intentionally engages as a lean workforce as possible. Equity supports wider calls from the trade union movement for a four-week notice period. The provision of an exemption where there is a collective agreement offers flexibility to determine a different notice period where appropriate for specific sectors. Improved workforce management is fundamental to the challenge of ending one-sided flexibility.

44a	What timeframe do you think short notice should be for directly engaged workers?

[ ] 1 day
[ ] 2 days
[ ] 3 days
[ ] 5 days
[ ] 7 days
[ ] Other

44b	Please explain your answer

Concerning cancellation or curtailment in relevant sectors of the creative industries, particular challenges arise due to 'float shifts' – an arrangement underpinned by one-sided obligation whereby the worker is expected to work if required, with no guarantee of requirement or compensation. Equity has also encountered instances whereby workers with guaranteed hours are called in to work extra hours but are sent home on arrival at their workplace because the employer decides that they are no longer required. This is a misuse of performers' time and availability, which should not be treated as a free and expendable resource. It also has financial implications when factoring in travel costs and potential childcare costs, as well as other forms of work that may have been turned down. Setting the short notice timeframe to seven days will help to mitigate against these harms and shift the burden of responsibility for adequate workforce management onto employers.

45a	What timeframe do you think very short notice should be for directly engaged workers?

[ ] less than 1 day (please specify)
[ ] 1 day
[ ] 2 days

[ ] 3 days
[ ] 5 days
[ ] There should not be a very short notice period
[ ] Other

45b	Please explain your answer

Equity does not support a separate very short notice period. Creating a lower category of notice risks normalising cancellations, movements or curtailments with even less warning, rather than discouraging poor workforce planning. This will also create two separate thresholds that insecure workers must be aware of. Reducing the complexity of this legislation is important if it is to have any beneficial impact on working lives whatsoever. The introduction of a two-stage notice period for compensation is contrary to that. The government should be encouraging compliance though effective implementation guidance and a strong enforcement regime. It should not create yet another layer to its attempt to reduce a manifestation of insecure and insufficient work.

48a	The short notice payment should be

[ ] A percentage of what the worker would have earned from working the shift or the relevant hours
[ ] A percentage of what the worker would have earned from working the shift or the relevant hours at the relevant National Living/Minimum Wage rate
Other

48b	Please explain your answer

Workers should be entitled to compensation that reflects what they would have been paid if the work that they were no longer required for materialised. This is important for workers paid more than the National Minimum Wage. However, there are examples in the creative industry where workers are denied the National Minimum Wage. A relevant scenario is one in which a performer is engaged on a touring contract with a fixed fee with no recognition of their status in employment law. Where misclassification is successfully challenged through court, workers previously denied National Minimum Wage must be able to claim what they would have earnt if their rights to basic worker protections were upheld.

49a	If the short notice payment were a percentage of what the worker would have earned from working the shift or the relevant hours, what percentage should this be?

[ ] 10%
[ ] 30%

[ ] 50%
[ ] 65%
[ ] 80%
[ ] Other: 100%

49b	Please explain your answer

Equity supports payment at 100% of what the worker would have earned from working. Anything less than full payment would allow employers to transfer the financial consequences of cancellation, movement or curtailment onto workers, despite the worker having made themselves available and potentially declined other work. Full payment is the clearest way to ensure that employers internalise the cost of poor workforce planning and that workers are not penalised. In some, limited circumstances, this could be varied by mutual agreement via a union agreement.

50a	If the short notice payment were a percentage of what the worker or agency worker would have earned from working the shift or the relevant hours at the relevant National Living/Minimum Wage rate, what percentage should this be?

[ ] 10%
[ ] 30%
[ ] 50%
[ ] 65%
[ ] 80%
[ ] Other: See answer to 48b.

50b	Please explain your answer

As set out in question 48b, where the worker is paid more than the National Minimum Wage, the payment should reflect what they would have earned from working. The National Minimum Wage must be a floor rather than a ceiling. Where workers are paid above the minimum wage, the provision of payment based on National Minimum Wage would leave them undercompensated. This would also weaken the deterrent effect of the right.

51a	If the very short notice payment were a percentage of what the worker would have earned from working the shift or the relevant hours, what percentage should this be?

[ ] 30%
[ ] 50%
[ ] 65%
[ ] 80%
[ ] Other: Equity does not support a very short notice period. See answer to 45b.

51b	Please explain your answer

Equity does not support a very short notice period. See answer to 45b.

53a	Do you think there should be any exceptions to the requirement to make a short notice payment or very short notice payment?

[ ] Yes

[ ] No

53c	If no, please explain your answer

The Act already limits short notice payments to circumstances in which cancellation, movement or curtailment results from the employer's actions. It does not require payment where the worker cancels the work or swaps their allotted work with a colleague. Equity considers these to be justified exceptions.

However, Equity is concerned that the additional exceptions suggested in the consultation, such as extreme weather events or power outages, would risk weakening the protection provided by compensation rights. Such exceptions could allow employers to shift the ordinary risks of running a business onto workers.

The suggestion that employers may avoid the duty to compensate workers during extreme weather events is particularly concerning given the increasing frequency of such events because of climate change. In this context, extreme weather events cannot always be treated as unexpected, and employers should be responsible for putting effective risk mitigation measures in place so that their business can operate safely and workers are protected.

Equity has already seen examples during recent heatwaves where performances were cancelled, and performers were paid in full. Although those performers were not working under zero-hours or variable-hours arrangements, the same principle should apply: where work is cancelled for reasons beyond the worker's control, workers should not be left to bear the financial loss.

57a	Should the FWA enforce the right to short notice payments?

[ ] Yes

[ ] No

57b	Please explain your answer

As emphasised by the latest employment tribunal statistics, the system is under significant duress.[7] Workers taking claims to tribunal are increasingly likely to face significant delays. Furthermore, success at a tribunal does not necessarily result in compensation for workers, with thousands of successful claimants denied the money they are owed by employers failing to comply with court judgements.[8] If workers are unable to enforce the right to a short notice payment, the addition of this new right is rendered effectively toothless.

Expanding the remit of the FWA to support the enforcement of short notice payments will provide a more robust foundation for the legislation. However, the credibility of the FWA will be dependent on it being adequately funded. As highlighted by the Institute for Employment Rights (IER), this is not the case at present. The FWA has been inserted into "a regulatory eco-system in which there are major enforcement gaps" following the "austerity-driven assault on the public funding of regulators" which has led to the "dramatic erosion" of key enforcement activities. To prevent the perpetuation of an inadequate regulatory landscape, additional funding is required. Equity supports the IERs call for a restoration of workplace regulatory funding to pre-2010 levels, with ring-fencing and index linking.[9]

58	***Should the FWA impose a penalty where it finds that an employer has failed to make a short notice payment?***

[ ] Yes

[ ] No

59a	***What should the penalty amount be?***

[ ] 50% of arrears owed to the worker (government preferred option)

[ ] 100% of arrears owed to the worker

[ ] 200% of arrears owed to the worker

[ ] A different amount

59b	***Please explain your answer***

Payments for the cancellation, movement and curtailment of shifts will be incorporated within the definition of "wages" in section 27 of the Employment Rights Act 1996 and will be enforceable through claims for unlawful deduction from wages. Given that these payments constitute a statutory entitlement designed to compensate workers for the financial

[7] Ministry of Justice (2026). "Tribunals statistics quarterly: January to March 2026". Tribunals statistics quarterly: January to March 2026 - GOV.UK

[8] Mellino, E., & McKay, L. (2025). "Employment tribunals: 'scandal' of toothless scheme to punish non-paying bosses". Employment tribunals: 'scandal' of toothless scheme to punish… | TBIJ

[9] Dukes, R., & Whyte, D. (2026). "IER Briefing on the Fair Work Agency". Fair-Work-Agency-060426.pdf

consequences of one-sided flexibility, failure to pay them should be treated with comparable seriousness to failures to pay the National Minimum Wage or statutory holiday pay. The proposed penalty of 200% of arrears already applies within the minimum wage enforcement regime and has been proposed in relation to holiday pay enforcement. Applying the same penalty here would ensure consistency across statutory pay rights and provide a meaningful deterrent against non-compliance. A lower penalty risks undermining the effectiveness of the regime by allowing employers to treat non-payment as a manageable business cost rather than a serious breach of workers' rights.

60a	***What should the minimum and maximum penalty amount be?***

[ ] Minimum £100 per case, maximum £5,000 per worker (government preferred option)
[ ] Minimum £100 per case, maximum £20,000 per worker
[ ] Different amounts

60a	***Please explain your answer***

The same logic applies as outlined in 59b. The maximum penalty for the underpayment of minimum wage is £20,000. It is appropriate to extend this to payment for shifts cancelled, moved or curtailed at short notice.

61	***Is there anything else you want us to take into account in relation to Part 2 of this consultation, on reasonable notice of shifts and payment for shifts cancelled, moved or curtailed at short notice?***

Equity does not agree with limiting the enforcement powers of the FWA to payment for shifts cancelled, moved or curtailed at short notice. It is noted in the consultation document that the reason for this proposed limitation is that *"other zero hours measures - the right to guaranteed hours and the right to reasonable notice of shifts – are likely to require more complex assessments. For example, assessments will be needed as to whether it is reasonable for a contract to be for a limited term or whether notice was reasonable in the circumstances"* and that *"these rights would therefore be better considered through the employment tribunal system"*.

This suggests that entitlement to guaranteed hours and the question of what reasonable notice is will always be open to interpretation. This is not the case. The primary legislation sets parameters as to what is reasonable for "limited term contracts". Furthermore, the consultation is designed to inform regulation relating to entitlement and the presumption of reasonable notice. In a notable proportion of cases, entitlement to the associated rights should therefore be clear and could, in turn, be effectively enforced by the FWA. Engagement with trade unions and their knowledge of the sectors in which they represent workers can also help to inform FWA enforcement where the regulator lacks insight into the nature of sectoral norms and practices.

63a	***Should the government amend the Conduct of Employment Agencies and Employment Businesses Regulations 2003, to require relevant entities to share information they need to comply with their duties under the zero hours measures?***

[ ] Yes, the government should amend the Conduct Regulations
[ ] No, the government should not amend the Conduct Regulations

63b	***Please explain your answer***

It is worth clarifying the scope of the Conduct Regulations 2003 and those employment arrangements to which they apply. In the introduction to the consultation document, the government refers to "agency workers" as those who operate under different employment model because they "have a contract or an arrangement with an agency but work under the supervision or direction of a hirer". The Conduct Regulations 2003 contain provisions applying to "employment businesses" and "employment agencies" as defined by the Employment Agencies Act 1973. The contractual nexus the government sets out describes an "employment business" who employs the worker and supplies them to work for a third-party hirer. However, it does not describe a worker's position where they engage an "employment agency", as many Equity members do, who does not employ the worker directly but acts as an intermediary for a direct contract with a hirer. To that extent, it is perhaps unhelpful to use the term "agency worker" (which, in legislation, arises primarily in the EU-derived Agency Worker Regulations 2010) to discuss matters relating to the Conduct Regulations 2003, whose definitions arise not from EU origins but from the 1973 Act.

With that clarification, we support measures to ensure employment agencies and businesses support hirers to comply with their duties under the new measures where it would otherwise be difficult for the hirer to have all the relevant information to do so. For most Equity members, the Conduct Regulations 2003 arise primarily in relation to employment agencies, not employment businesses. Their employment contract is direct with the hirer and the agency is simply an intermediary. In most cases, then, the hirer (employer) will have the information relevant to assessing whether the worker is in scope of the new measures, such as whether the contract meets the definition set out in regulations and the number of hours the contract is for, comparably to a traditional employment scenario. Accordingly, new measures in the Conduct Regulations would not be needed here because the hirer is also the employer.

However, in some circumstances performers may be engaged as supporting artists in film, TV and commercials via an employment business – that is, their contract is direct with the employment business and they are supplied to work for production companies. That represents a more typical "agency worker" situation where additional provisions in the Conduct Regulations may be helpful. However, given most supporting artist engagements will be for a matter of days at most, we expect the issue will not often arise.