19 August 2026

Via email: zerohours.consultation@businessandtrade.gov.uk

Dear Sir/Madam,

Consultation: Make Work Pay: ending one-sided flexibility – reforms of zero hours and similar contract – response from the Low Incomes Tax Reform Group (LITRG)

I am writing on behalf of LITRG in response to the above consultation.

We welcome the opportunity to respond. As we are responding neither as employers nor as workers, we have not answered the consultation's individual questions. Instead, our response focuses on practical tax matters, which fall within our expertise and may be relevant to question 61.

Our focus is on unrepresented, lower-income taxpayers. We are particularly interested in the proposal that requires employers to make short notice payments. These payments could become an important source of income for many low-paid workers. It is important, for everyone involved, that the nature of the payments for tax, benefits and related systems' purposes, is clear and certain.

Although the consultation does not discuss the tax treatment of these payments, we understand from a separate HMRC policy paper[1] that the intention is that they will be treated as employment income. The publication refers to an amendment to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) with effect from 6 April 2026 to put 'beyond doubt' the treatment of such payments, although we have not identified any corresponding amendment.

We note however, that the Employment Rights Act 1996 has since been amended to include short notice payments within the definition of "wages"[2]. It may therefore be that the government now considers a specific amendment to ITEPA unnecessary because these payments already fall within the definition of "earnings" in ITEPA[3]. However, it would be helpful for HMRC to confirm that this employment law amendment puts the tax treatment 'beyond doubt' and whether any further legislative changes are necessary (for example for National Insurance contributions).

[1] https://www.gov.uk/government/publications/income-tax-cancelled-moved-or-curtailed-shifts/tax-treatment-of-payments-received-for-cancelled-moved-or-curtailed-shifts

[2] See https://www.legislation.gov.uk/ukpga/2025/36/schedule/2/paragraph/7 and https://www.legislation.gov.uk/ukpga/1996/18/part/II/crossheading/supplementary.

[3] Section 62 ITEPA defines earnings as including "any salary, **wages** or fee"

As workers will not have undertaken any work in return for these payments, and as they are effectively compensation for loss of work, their treatment as taxable employment income may seem counterintuitive. Workers will therefore need to understand that short notice payments are taxable and that they may also have implications for any means-tested welfare benefits they receive. Consequently, the payments may not improve a worker's financial position as much as they might expect.

Employers will also need to understand that these payments attract no special tax treatment[4], and should be processed through the Pay As You Earn (PAYE) system, under (presumably) the worker's usual tax code, with any income tax and National Insurance contributions (NIC) deducted before payment is made to the worker.

Provided PAYE is operated correctly, workers should not need to take any further action to notify either HMRC or the Department for Work and Pensions (DWP) about these payments for tax or universal credit purposes. However where an employer does not operate PAYE, or does not operate it correctly, there may be consequences for both the employer and the worker. We therefore encourage the government to publicise these requirements and provide supporting guidance explaining their PAYE obligations. In particular, there is potential for confusion because those engaging "workers" may not naturally regard themselves as "employers", which is the terminology used in the primary employment rights legislation[5].

Beyond tax, employers will also need clarity on issues like whether short notice payments are pensionable, whether they count towards calculations of holiday pay entitlement, whether they constitute national minimum wage pay[6], how they interact with statutory payments[7], and how they should be treated for other employment law purposes. These are areas that can already be quite complex to administer for employers, with regards to variable hours workers.

We consider it possible that entitlement to these payments may give rise to disputes, or that payments may be overlooked until enforcement action is taken, employers will also need guidance on the correct tax, NIC, other treatment of any arrears of short notice payments. We assume, as they are a legal entitlement, that any arrears will be referred back to the original year of entitlement, like minimum wage back pay. If so, employers will need to understand how to process these – potentially large – back payments. Workers need to understand that they could be over or under taxed and that they could have knock on effects for benefits and other areas of the system, as is the case for minimum wage back payments currently.[8]

[4] For example like an ex gratia termination payment (compensation for loss of office): https://www.gov.uk/termination-payments-and-tax-when-you-leave-a-job/what-you-pay-tax-and-national-insurance-on

[5] https://www.legislation.gov.uk/ukpga/2025/36/section/3

[6] If they are, they could mask a minimum wage underpayment in respect of worked hours.

[7] For example, will they count when looking at average weekly earnings?

[8] For a summary of some of the issues around paying minimum wage backpay, see our article in Tax Adviser magazine: https://www.taxadvisermagazine.com/article/more-meets-eye

These issues may appear straightforward, but they are not addressed in either the consultation document or HMRC's accompanying publication. Our experience of assisting people to understand the Coronavirus Job Retention Scheme (CJRS), demonstrated the importance of providing clear guidance on the tax and employment law consequences of new forms of payment.

Finally, we encourage DBT to discuss with HMRC the proposal, set out in HMRC's policy note, to exclude agency workers operating through their own limited companies from entitlement to short notice payments. This appears to be on the basis that their income is business income subject to corporation tax. Some such workers will, however, fall within the scope of the IR35 or off-payroll working rules, under which income from their engagements is treated as deemed employment income and taxed through PAYE. Those workers may therefore see themselves as being in a comparable position to individuals who provide their services personally and may reasonably expect to qualify for short notice payments.

We hope these comments are helpful. We are happy to discuss any aspect of this letter in more detail.

We should be grateful if you would acknowledge receipt of this letter and include LITRG in the list of respondents to the consultation. For further information about our organisation, please see below.

Yours faithfully

Victoria Todd
Head of the Low Incomes Tax Reform Group

About Us

The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those who are least able to pay for professional advice. We also produce free information, primarily via our website www.litrg.org.uk, to help make a difference to people’s understanding of the tax system.

LITRG works extensively with key stakeholders such as HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the tax system. LITRG also considers the welfare benefits system, and other related systems, to the extent that they interact with tax.

The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT’s primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.