



# **Chief Minister's Zero hours Contracts Committee**

## **Report**

**Cabinet Office  
May 2019**

## Foreword by Chair



I was delighted when the Chief Minister asked me to Chair a Committee to examine the potential issues surrounding the use of zero hours contracts. I am very fortunate to be joined on this Committee by Members with such commitment, empathy and analytical thoroughness.

The Committee were very clear from the start that it had no preconceived position about zero hours contracts; its role was to gather evidence before making any judgment.

The Committee is very grateful for everyone who assisted in its considerations - those who sent in submissions, met with the Committee or completed the survey; our work is all the more robust and rounded for this engagement.

The Isle of Man has historically had a buoyant labour market with consistently high levels of employment and correspondingly low levels of unemployment in recent times. The Committee recognises the tension that employers often face in recruiting appropriately skilled staff. Earnings, when adjusted for the affects of inflation remain steady for the last three years. This is measured by median earnings, which is a better indicator of actual earnings as it is unaffected by extreme outliers. This administration is also committed to supporting those in work at the lower level of earnings. We have introduced, calculated and committed the Public Service to paying the Living Wage

The Council of Ministers, through it's Programme for Government remains steadfastly committed to delivering an Inclusive and Caring Society. This can only be done by ensuring we have an Island of Enterprise and Opportunity which delivers economic growth but also ensures that those in work are treated fairly.

**Hon D Ashford MHK**  
**Chair**  
**Minister for Health and Social Care**

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## 1. Introduction

1.1 The Chief Minister commissioned the Committee to look carefully at the issues faced by those on zero hours contracts. This was announced by the Chief Minister in his 'State of the Nation' statement at the October 2018 sitting of Tynwald.<sup>1</sup>

1.2 The remit of the Committee was to:

- explore the prevalence and use of zero hours contracts in the Isle of Man;
- explore any possible abuse in relation to zero hours contracts including any abuse in relation to National Insurance payments by employers or workers;
- if there is evidence of abuse, make recommendations for dealing with it;
- produce a report for submission to the Chief Minister.

1.3 The Chief Minister appointed Hon D J Ashford MHK, Minister for Health and Social Care as Chair. Membership of the Committee comprised:

Hon D J Ashford MHK, Minister for Health and Social Care (Chair)

Mr L L Hooper MHK, Member for Enterprise

Mr R W Henderson MLC, Member for Treasury

Dr A J Allinson MHK, Member for Cabinet Office

1.4 The Committee was supported in its work by officers from the Cabinet Office, Treasury and Department for Enterprise.

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<sup>1</sup> Tynwald, 16 October 2018

## 2. Zero Hours Contracts

### What is a zero hours contract?

- 2.1 A zero hours contract is at its simplest, a contract where the employer does not guarantee a minimum number of hours.<sup>2</sup>
- 2.2 There are a number of different types of zero hours contracts:
- contracts under which a person is obliged to work whenever the employer demands (subject to agreed exceptions);
  - contracts under which a person is obliged to work subject to a minimum notice period being given, (but is otherwise not obliged to work); or
  - arrangements under which a person is free within reason to accept or reject any offer of work.

### Employment status of persons on zero hours contracts

- 2.3 Individuals working on zero hours contracts can be employees, workers or self-employed for employment status purposes but will generally be workers or employees. A person's employment status determines their employment rights. Employees have the most rights while the genuinely self-employed have the least rights. Between these two extremes there is an intermediate status, usually termed 'worker'; such people enjoy certain core employment rights including entitlement to be paid at least the minimum wage, paid annual leave and the rights conferred by the Equality Act 2017. For further information on employment status see [Appendix 1](#).
- 2.4 In the case of an employee on a zero hours contract, the contract may be viewed either as continuing in force for the duration of individual engagements or else throughout the year even when there is no work available; thus an overriding or umbrella contract may exist during periods when the individual is not working. Sometimes too a regular pattern of work may develop so that a contract of employment may be implied, irrespective of the original intentions of the parties.

### Legislation on zero hours contracts in the Island

- 2.5 Since 1 January 2018, section 166A of the Isle of Man [Employment Act 2006](#) has prohibited the use of exclusivity clauses or terms in any zero hours contract in the Isle of Man. This means it is unlawful for an employer to seek to prevent an individual from looking for work or accepting work from another employer. If an employer includes an exclusivity clause in a zero hours contract, the clause cannot be enforced. That section also contains wide enabling powers which permit the Department for Enterprise to make regulations on zero hours contracts.

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<sup>2</sup> For further information on the conceptual framework see chapter 5 of the Income Data Services Handbook "Atypical and Flexible Working" and chapter 7 of Tolley's "Managing Fixed-Term & Part-Time Workers."

## **Legislation on zero hours contracts in the UK**

- 2.6 In the UK, the [Exclusivity Terms in Zero hours Contracts \(Redress\) Regulations 2015](#) made under the [Employment Rights Act 1996](#) make provision in relation to the right for individuals on a zero hours contract not to be unfairly dismissed or subjected to a detriment for a reason relating to a breach of a provision relating to an exclusivity clause. To date, no comparable Regulations have been made in the Island.
- 2.7 It is to be noted that whereas the provisions in the Isle of Man Employment Act 2006 are partially based upon the provisions in UK Employment Rights Act 1996, the enabling powers in the Isle of Man Act do not only relate to an exclusivity requirement.

## **Zero Hours Contracts in the Isle of Man Public Sector**

- 2.8 The Isle of Man Government utilises zero hours contracts because there are operational advantages for having workers available on zero hours contracts and many Departments would struggle to ensure continuity of service to the public without them. Examples of the types of work on zero hours are:
- Health bank staff – Doctors/Nurses/Midwives/Physiotherapists/Radiographers
  - Relief social workers
  - Relief cleaning/caretaking staff
  - Bank Catering Assistants
  - Education teaching supply staff
  - Exam Invigilators
  - Sports Coaches
  - Relief Ancillary Helpers
  - Casual Bus Drivers
  - Bank Railway Staff
  - Casual Bar/Leisure Staff
  - External Investigating Officers
- 2.9 Because the contract is not based on a mutual obligation to work, the flexibility enables Departments to call on workers if they can assist with unexpected demand as well as occasional tasks with inconsistent hours, e.g. covering absence, seasonal or unpredictable demand, or intermittent work arising from temporary projects, one-off events or annual commitments.
- 2.10 The contractual arrangements for zero hours contracts vary between employment groups dependent upon the terms and conditions of the group concerned, in the same way that there are variations in terms and conditions and contractual arrangements between permanent employee groups.
- 2.11 It is recognised, however, that improvements could be made in the overall management of zero hours contracts therefore the Office of Human Resources within the Cabinet Office is currently progressing a review, in conjunction with Government employers', to ensure the necessary changes are made.

### 3. Position in other countries

#### United Kingdom

3.1 As mentioned at paragraph 2.6 the UK regulates one aspect of zero hours contracts by prohibiting exclusivity clauses; any clause that seeks to tie a zero hours worker to an employer by preventing or limiting the worker from working for another employer is unenforceable. Section 27A of the Employment Rights Act 1996 makes any exclusivity clause unenforceable while section 27B of the Act gives the Secretary of State powers to make further provision by way of regulations in respect of exclusivity clauses. To date the powers have been used to make the Exclusivity Terms in Zero hours Contracts (Redress) Regulations 2015 which, inter alia:

- make provision in relation to the right for individuals on a zero hours contract not to be unfairly dismissed or subjected to a detriment for a reason relating to an exclusivity clause; and
- provide remedies for individuals, including remuneration, by way of proceedings in employment tribunals.

#### Taylor Review of Modern Working Practices

3.2 Matthew Taylor, Chief Executive of the Royal Society of Arts, was commissioned by UK Prime Minister Theresa May in October 2016 to conduct a review into modern employment practices in the UK. A report was published in July 2017, with 53 recommendations.

3.3 In February 2018, the UK Government published [its response to the Taylor Report](#). The Report stated that the Government accepted some recommendations whilst others required further consultation. To this end the Government simultaneously published 4 consultations on aspects of the Review: '[Employment Status Consultation](#)', '[Consultation on agency workers recommendations](#)', '[Consultation: Increasing transparency in the labour market](#)' and [Enforcement of employment rights](#).

3.4 In December 2018, the Government published the outcome of all of the consultations other than the consultation on employment status in the document [Good work plan](#). This document included an updated response to the 53 recommendations in the Taylor Review that are relevant. These are set out below.

3.5 Only a small number of recommendations in the Taylor Review are directly relevant to zero hours contracts workers but there are other more general recommendations.

Recommendations in the Taylor Review of Modern Working Practice	Latest UK Government response in the <a href="#">Good work plan</a>	Commentary and considerations as regards Isle of Man employment law
<p><b>6.</b> The government should build on and improve clarity, certainty and understanding of all working people by extending the right to a written statement to 'dependent contractors' as well as employees</p>	<p>Agree to extend to 'workers' and consult on what information to include</p>	<p>There are enabling powers at section 162 (Power to confer rights on individuals) in the Isle of Man Employment Act 2006.</p> <p><b>But</b> zero hours contract workers are only a sub-group of workers.</p> <p>It would be necessary to decide which particulars be given to workers.</p>
<p><b>8.</b> The government should ask the LPC [Low pay Commission] to consider the design and impacts of the introduction of a higher NMW [National Minimum Wage] rate for hours that are not guaranteed as part of the contract</p>	<p>Agree to ask LPC to consider the impacts of this option and of alternatives</p>	<p>This would be possible. It would involve</p> <ul style="list-style-type: none"> <li>- amending the (principal) Minimum Wage Regulations 2001 and amending the Minimum Wage Regulations 2018 (which set minimum wage rates)</li> <li>- Careful thought would need to be given as to what the higher rate should be.</li> <li>- A drawback to the measure is that it would only impact the lowest paid workers rather than all workers.</li> </ul> <p>There could be a more general rule that non guaranteed hours would attract some kind of premium but this would need a new Bill and could have unintended effects, about which a public consultation would be required.</p>



Recommendations in the Taylor Review of Modern Working Practice	Latest UK Government response in the <a href="#">Good work plan</a>	Commentary and considerations as regards Isle of Man employment law
<p><b>9.</b> The Government should extend, from one week to one month, the consideration of the relevant break in service for the calculation of the qualifying period for continuous service and clarify the situations where cessations of work could be justified.</p>	<p>Accept – we will extend the consideration of the relevant break in service from one week to four weeks.</p>	<p>This would be likely to assist some zero hours contract employees build up continuous employment (which provides access to employment rights).</p> <p>There are powers to modify the continuous employment rules by secondary legislation paragraph 16 of Schedule 5 to the Isle of Man Employment Act 2006.</p> <p>But the continuous employment rules affect all employees not just zero hours contract employees</p>
<p><b>13.</b> The government should act to create a right to request a contract that guarantees hours for those on zero hour contracts who have been in post for 12 months which better reflects the hours worked</p>	<p>Accept and consult to apply this to a wider group of workers</p>	<p>This is the UK Government's main proposal which specifically deals with zero hours contract.</p> <p>There are enabling powers at Isle of Man Employment Act 2006 section 166A (Regulation of zero hours contracts).</p> <p>A drawback to this measure is that it puts the onus on the worker to seek change.</p> <p>Presumably some employers will find ways of turning down requests.</p> <p>The requirement to have been in post for 12 months will be considered by some to be too long.</p> <p>The right to <i>request</i> a guaranteed hours contract is obviously a more limited right than the right to a guaranteed hours contract.</p>

Recommendations in the Taylor Review of Modern Working Practice	Latest UK Government response in the <a href="#">Good work plan</a>	Commentary and considerations as regards Isle of Man employment law
<p><b>16</b> (extract). The government should introduce new duties on employers to report (and to bring to the attention of the workforce) certain information on the workforce structure. The government should require companies beyond a certain size to: ` Report on how many requests they have received (and number agreed to) from zero hours contracts workers for fixed hours after a certain period</p>	<p>Monitor the impact of corporate governance reforms, supported by a refreshed Corporate Governance Code and take further action if these reforms do not change behaviour. This could include a 'People Statement' and we welcome views on how effective this might be</p>	<p>This Recommendation and response would be unlikely to have much effect and the majority of employers in the Island are small organisations or businesses in comparison with UK demographics.</p>

## Wales

### Treatment of zero hours contracts in the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

- 3.6 Regulation 42 of the [Regulated Services \(Service Providers and Responsible Individuals\) \(Wales\) Regulations 2017<sup>3</sup>](#), made under powers in the Regulation and Inspection of Social Care (Wales) Act 2016<sup>4</sup>, imposes a requirement for providers of regulated care services to offer their employed staff a choice of non-guaranteed or fixed hours contracts, based on their average hours worked over the preceding 3 months (or less than the average, if the employee would prefer this). Where the employee chooses to remain on a non-guaranteed hours contract the employer must offer further reviews of contractual arrangements 3 months from the date of the employee's decision and thereafter on the same basis.
- 3.7 The relevant extract from the Regulations is set out at [Appendix 2](#).
- 3.8 The Regulations constitute a radical intervention in the relationship between employer and employees as regards zero hours contracts. The [Welsh Government Consultation](#) shows that many employers did not welcome the imposition of this requirement because in their view zero hours contracts offer greater flexibility to meet the demands on business when there is not sufficient work or there is a need for emergency cover.
- 3.9 The consultation also asked whether the qualifying period should be 6 months instead of 3 months. Many employers thought the 3 month qualifying period to be too short. Further, many employers were opposed to the continued obligation imposed upon the employer to offer a further reviews of contractual arrangements

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<sup>3</sup> (made under the Regulation and Inspection of Social Care (Wales) Act 2016)

3 months from the date of any employee's decision to remain on a non-guaranteed hours contract.

- 3.10 It is of note that the proposal in the Taylor Review to give employees a right to *request* a guaranteed hours contract after 12 months is much more limited.
- 3.11 The arrangements are limited to employees and do not include persons working under a contract for services i.e. persons other than employees.
- 3.12 The GMB Trade Union commented "*Our concern however is that undue pressure may be brought to bear upon individuals to accept the contracts that the employer would prefer rather than the contract which would suit the individual carer...*"
- 3.13 Welsh Ministers have statutory powers to impose compliance with the Regulations on service providers in the field of social care. Were a similar system to be introduced into the Isle of Man careful thought would need to be given as to an appropriate enforcement mechanism for requiring the Island's employers to provide staff with a choice of non-guaranteed or fixed hours contracts after a defined period.
- 3.14 The approach offers the following advantages:
- it is relatively simple;
  - it is likely that it could be implemented by secondary legislation within the vires contained at section 166A of the Isle of Man Employment Act 2006;
  - it could be adapted to cover both employees and workers on zero hours contracts; and
  - while not discriminating between an employer's legitimate or illegitimate business need for using zero hours contracts it does, however, only apply where the worker has worked regular hours during the three months preceding the end of the qualifying period so that it would exclude employees and workers working small numbers of irregular hours.

## **New Zealand**

- 3.15 The [Employment Standards Legislation Act 2016](#) amended the [Employment Relations Act 2000](#) to deal with some aspects of zero hours contracts.
- 3.16 The following extract from [Hours of work law changes 2016](#) published by Employment New Zealand, the leading source of information on employment in New Zealand, summarises how these laws deal with certain types of zero hours contracts.

*"New employment law came into effect from 1 April 2016 aimed at ensuring New Zealand workplaces are fair and productive.*

*The changes aim to retain flexibility where it is desired by both employers and employees, but also increase certainty by ensuring that both parties are clear about the mutual commitments that they have made. This will mean that where the employer and employee agree to a set number of hours they be required to state those hours in the employment agreement.*

***Employers are now prohibited from the following practices:***

- *not committing to any hours of work, and expecting employees to be available when required*
- *expecting employees to be available, without reasonable compensation*
- *requiring employees to be available, without a genuine reason based on reasonable grounds*
- *cancelling a shift without reasonable notice or reasonable compensation to the employee*

***Every employee must have a written employment agreement***

*This can be either an individual agreement or a collective agreement. All employers **are required** to retain a signed copy of the employment agreement or the current signed terms and conditions of employment.*

*Hours need to be stated in the employment agreement.*

*Where the employer and employee agree to a set amount of hours, they will be required to state those hours in the employment agreement. This includes agreement on any or all of the following:*

- *the number of hours;*
- *the start and finish times; or*
- *the days of the week the employee will work*

*This will ensure employers and employees are clear in their commitments to each other. The employer and the employee do not have to agree on hours, times, or days, but when they do, anything that is agreed must be recorded in the agreement.*

***Employers may not require employees to be available without a genuine reason based on reasonable grounds and reasonable compensation***

- *Employers are prohibited from requiring employees to be available above their agreed hours stated in their employment agreement, unless employees are compensated for that availability as agreed in the employment agreement. Employers are not obliged to offer, and employees are free to decline, work that is above the agreed number of hours.*

***Cancelling a shift only with reasonable notice or compensation***

- *An employer will not be able to cancel an employee's shift without providing reasonable compensation. Employers will be required to either give employees the agreed reasonable notice before cancelling a shift, or provide them with reasonable compensation for late notice, before the shift commences. Notice periods and reasonable compensation rates will need to be agreed and stated in the employment agreement. If an employee has commenced their shift already, or the reasonable notice period and reasonable compensation are not recorded in the employment agreement, the employee is entitled to what they would have otherwise earned for that shift.*

***Prohibiting unreasonable restrictions on secondary employment***

- *Employers will be prevented from restricting secondary employment for employees in their employment agreements, unless they have a genuine reason based on reasonable grounds to do so, the reasons must be stated in the employment agreement. Those grounds won't be prescribed but will be*

*related to the risk of loss to the employer of knowledge, property (including intellectual property), commercial reputation, or preventing a real and unmanageable conflict of interest."*

- 3.17 Some of the key provisions in the New Zealand Employment Relations Act 2000 are set out at [Appendix 3](#).
- 3.18 The following is [an extract from an article by a New Zealand employment law commentator](#), Darren Newman:

*"The New Zealand 'Availability Provision'*

*The Bill (or at least the part we are interested in) inserts new provisions into the Employment Relations Act 2000. In its provisions on hours of work it requires employment contracts or collective agreements to specify the number of guaranteed hours of work that the employee is entitled to (S.67C). But it does not set a minimum. Employers are perfectly free to specify that there are no guaranteed hours of work.*

*But here is the good bit.*

*S.67E Availability Provision*

*(1) In this section and section 67EA, an availability provision means a provision in an employment agreement under which—*

*(a) the employee's performance of work is conditional on the employer making work available to the employee; and*

*(c) (sic) the employee is required to be available to accept any work that the employer makes available.*

*So here the Bill is seeking to regulate the extent to which an employer can require an employee to be available for work while not being guaranteed it.*

*(2) An availability provision may only—*

*(a) be included in an employment agreement that specifies agreed hours of work and that includes guaranteed hours of work among those agreed hours; and*

*(b) relate to a period for which an employee is required to be available that is in addition to those guaranteed hours of work.*

*That means that if you have no guaranteed hours, you cannot require an employee to be available for work. If you offer work without guaranteeing any, then the employee must be free to refuse any work that is offered. That particular kind of zero hours contract is indeed being banned.*

*But can an employer get around this ban by simply offering a token amount of work – say one hour a week? Well, they have thought of that. The Bill goes on...*

*(3) An availability provision must not be included in an employment agreement unless—*

*(a) the employer has genuine reasons based on reasonable grounds for including the availability provision and the number of hours of work specified in that provision; and*

*(b) the availability provision provides for the payment of reasonable compensation to the employee for making himself or herself available to perform work under the provision.*

*(3A) An availability provision that is not included in an employment agreement in accordance with subsection (3) is not enforceable against the employee*

*In other words, a contract with minimum guaranteed hours – whether that is one hour a week or forty hours a week – cannot require the performance of additional hours unless there are reasonable grounds for doing so and the contract provides adequate compensation for the employee being available. This is about much more than zero hours contracts; it is about employment relationships where the obligation on the employee to be available for work exceed the employer's obligation to offer it. That seems rather neat.*

*To tie this altogether, the Bill specifies that employees may refuse to do work in excess of the minimum guarantee if the employer does not have a properly justified 'admissibility provision' providing adequate compensation. There are also the expected rights not to be subjected to a detriment for refusing additional work.*

*Finally, the Bill also provides for employees to be compensated if their employer cancels a shift at short notice.*

*Without knowing much about the employment law system of New Zealand, I would say that this is a radical measure that will indeed go some way to addressing the imbalance in some employment contracts. But it only bans zero hours contracts if what you mean by that term is a contract where the employer is not obliged to offer any work, but the employee is obliged to accept work offered by the employer. It does not address contracts in which the employer accepts that just as it is not obliged to offer work, the employee is free to refuse it. If that is what you mean by a zero hours contract, then New Zealand has not banned them at all.*

*What about the UK?*

*The New Zealand reform could easily be adopted in the UK. Indeed the structure of the law is already in place. The Small Business Enterprise and Employment Act 2015 sought to [ban exclusivity clauses](#) in zero hours contracts. But were they ever really a problem in the first place? I doubt many employers really cared whether their zero hours employee was doing work for another employer. But I suspect many are concerned if he or she is not available for work. Extending the law along New Zealand lines would be quite straightforward and would mean that an employer would be incentivised to guarantee as many hours as possible, knowing that if more hours are needed the employee would be free to refuse them.*

*But of course the effectiveness of that depends on the state of the labour market – and the bargaining power that the two sides to the employment relationship can exert. An employer may be very happy to give an*

*employee complete freedom to refuse work if it is clear that the employee needs to take whatever work is offered. The freedom to turn work down may be a rather hollow one for an employee trying to scrape together enough hours of work to make ends meet. This is not to denigrate the New Zealand law – it seems perfectly sensible. For what it's worth I think the Government in the UK should look to do something similar (place your bets). But has New Zealand banned zero hours contracts? Well, not exactly."*

### **Commentary on the New Zealand provisions**

- 3.19 The proposal is an alternative way of dealing with zero hours contracts.
- 3.20 As Darren Newman points out the provisions seek to deal with a particular form of zero hours contract characterised by a marked imbalance between the employer and the worker where the employer is not obliged to offer any work, but the employee is obliged to accept work offered by the employer. This is a subset of zero hours contracts.
- 3.21 The provisions do not affect contracts in which the employer accepts that just as it is not obliged to offer work, the employee is free to refuse it. Such contracts would continue and the worker has no right to seek to convert a non-guaranteed hours contract into a guaranteed hours contract.
- 3.22 The provisions are relatively complex and would be likely to require new primary legislation

### **Ireland**

#### **Recent legislation in Ireland - the Employment (Miscellaneous Provisions) Act 2018 Ireland**

- 3.23 Significant measures designed to improve the security and predictability of working hours for employees on insecure contracts, or who work variable hours were introduced when the [Employment \(Miscellaneous Provisions\) Act 2018](https://www.lawsociety.ie/News/News/Stories/employment-miscellaneous-provisions-act-2018--what-you-need-to-know/) came into force on 4 March 2019<sup>4</sup>.
- 3.24 These changes apply to all employers but are expected to have the greatest impact on those operating in sectors which utilise variable working arrangements, such as tourism, hospitality and retail. Some of the key provisions are set out below.

### **Terms of Employment**

- 3.25 An employer will now be required to notify its employees in writing of five core terms within five calendar days of commencing employment:

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<sup>4</sup> <https://www.lawsociety.ie/News/News/Stories/employment-miscellaneous-provisions-act-2018--what-you-need-to-know/>

- full names of the employee and employer;
  - address of employer;
  - expected duration of the contract;
  - rate/method of calculating pay and pay reference period; and
  - normal daily and weekly hours that the employer reasonably expects the employee to work.
- 3.26 Failure to do so may expose an employer to an award of up to four weeks' remuneration. A further failure to provide such terms within one month is a criminal offence punishable by up to one year's imprisonment and/or a fine not exceeding €5,000. Personal liability also arises for such a breach.
- 3.27 This new obligation is in addition to an employer's current obligation under the Terms of Employment (Information) Act 1994 to provide a written statement of particulars to an employee within two months of commencing employment.

### **Prohibition of zero hours contracts**

- 3.28 The 2018 Act of Ireland inserts a new section 18 to the Organisation of Working Time Act 1997 Act (the "1997 Act") which prohibits such contracts. The only exceptions are as follows –
- work of a casual nature;
  - work done in emergency situations; and
  - short-term relief to cover routine absences.

### **Banded hours**

- 3.29 The 2018 Act of Ireland inserts section 18A to the 1997 Act which enables employees, whose contracts do not reflect the reality of the hours actually worked, to be placed into an appropriate specified band of weekly working hours. The employer must determine the appropriate band on the basis of the average number of weekly hours worked over a 12 month reference period. This essentially guarantees the employee with a minimum number of weekly hours.
- 3.30 Where an employer fails to place an employee on the appropriate band, the Workplace Relations Commission can require the employer to reallocate the band specification.
- 3.31 Employees who are penalised for invoking their rights under the 1997 Act of Ireland can be awarded compensation of up to two years' remuneration.

### **Introduction of a "minimum payment"**

- 3.32 Employees who are expected to be available for work during a particular period and are not called to work, or where they are called to work but do not complete work for the expected period will be entitled to a minimum payment, amounting to 25% of their contract hours or 15 hours, whichever is less, and calculated at three times the national minimum hourly rate.

### **Commentary on the Irish provisions**

- 3.33 The Irish legislation seeks to severely curtail the use of zero hours contracts in a number of ways as described above.



- 3.34 In particular, prohibition of zero hours contracts in all but a very small number of circumstances is a radical measure and it could be argued that the exceptions where these contracts may be used are too narrow (although the exact meaning of the exception 'work of a casual nature' may give rise to some legal argument).
- 3.35 If banning zero hours contracts were the only measure taken then it would be likely that this would simply lead to employers offering contracts with a very small number of guaranteed hour contracts instead. However, taken together, the other measures in the package (banded hours, minimum payments, written statements) are intended to prevent employers from seeking to evade the prohibition.

## 4. Survey Results

- 4.1 The Committee launched two surveys to gain further evidence on the operation of zero hours contracts on the Isle of Man. One survey was for the public and one was specifically for employers.
- 4.2 211 responses were received to the public survey and 64 responses were received to the employer survey.

### Public Survey

- 4.3 Members of the public responding were asked whether they currently work on one or more zero hours contracts. Just over half responded that they are currently on a zero hours contract.

Yes	52.6%
No, I have a full time, part time or other contract	26.1%
No, but I have in the past	19.9%
No, I do not currently work	1.4%

- 4.4 4.5% of respondents said that they were in full time education and 23.4% of respondents said that they were in receipt of a pension. The demographic split of the public respondents is given below (along with 2016 census data) to allow comparison of the profile of respondents:

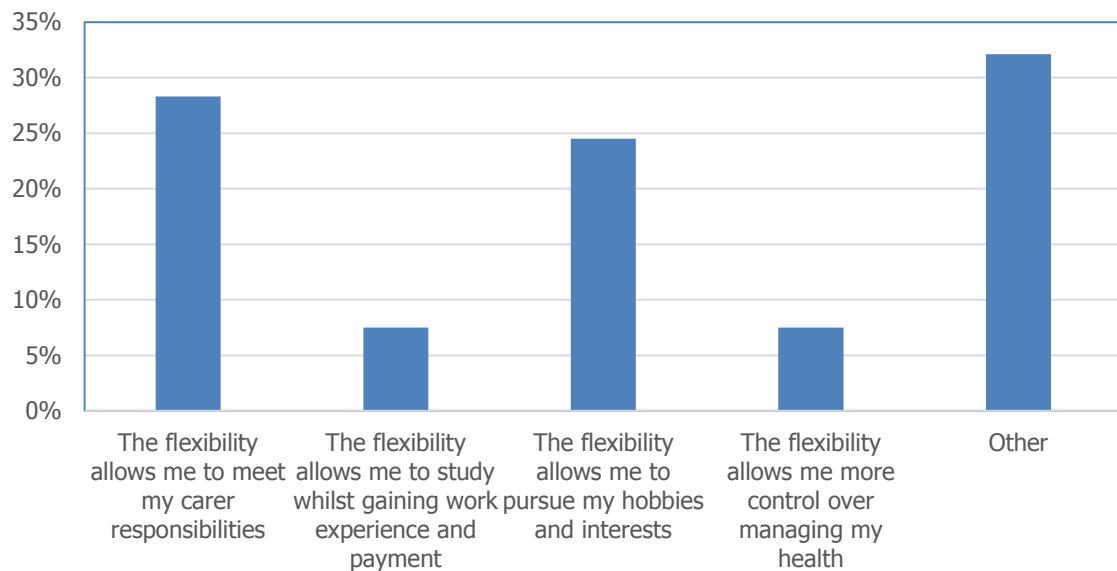
Age	% of survey respondent	% of 2016 census resident population
16-24	10.8	10.0
25-34	11.7	10.6
35-49	24.3	20.4
50-64	48.6	21.3
65+	4.5	20.7

- 4.5 39% of respondents were male, 60% were female and one respondent (0.9%) indicated that they would prefer not to say.

- 4.6 When asked which best describes their situation:

- 50.5 % of respondents said that their preference is to work on a zero hours contract;
- 49.5% of respondents said that a zero hours contract is the only work available to them at the moment

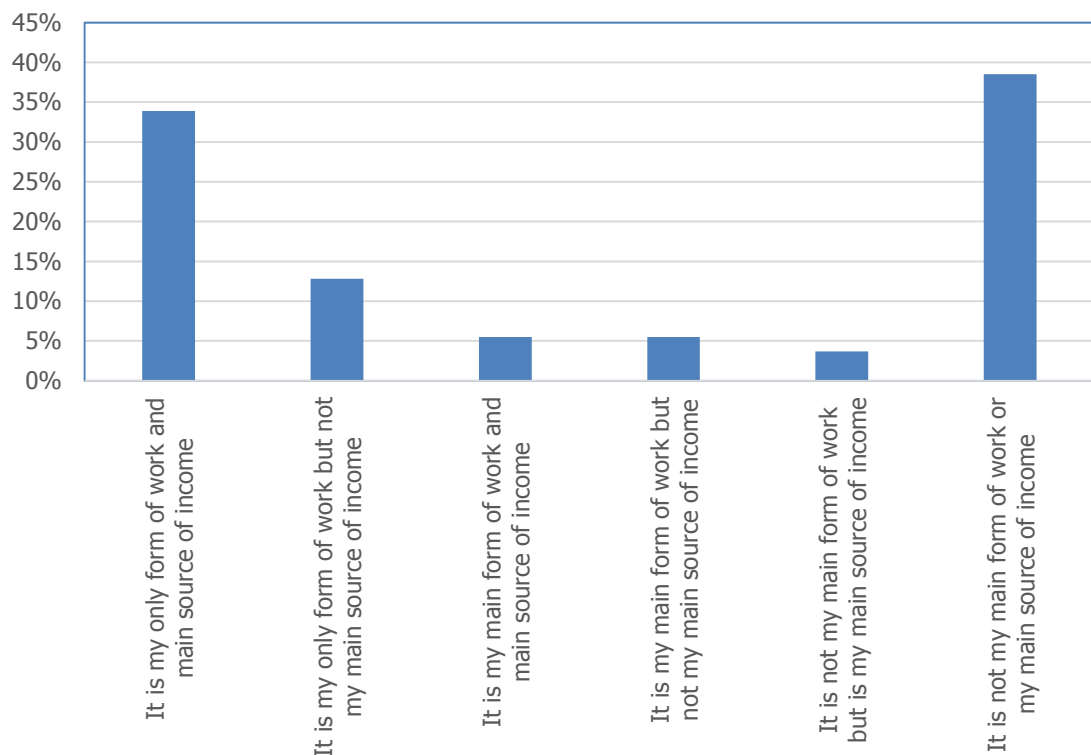
4.7 When asked the main reason for using this type of contract the respondents replied as follows:



4.8 Respondents were asked to provide further comment if they selected 'Other'. The responses received are as follows:

- It's a second job.
- I have main employment and zero hours contract allows me [SIC traffic] work in the same organisation as and when required. I am very happy with this arrangement.
- Secondary employment.
- I have a permanent full time position within the same organisation, the zero hours contract is extra to this.
- This is extra work for me as I work part time with a fixed hourly contract.
- I do this casual work out of hours because I enjoy it. I can also refuse work when it suits me.
- Allows me to work in addition to my full-time employment.
- I am already in full time employment with the department. Bank hours are optional but necessary to cover the needs of the unit.
- I have a zero hours contract so I can work additional hours to cover gaps in the service, in exchange for which I am paid at a higher rate than my normal full-time contract.
- It's a part time position and helps me maintain a work life balance
- Forced due to TOIL [SIC 'Time Off In Lieu'] being stopped.
- This is a 'relief' position and I have another permanent job.
- I claim pension and also work 3 days contracted, these zero hours jobs top up money earned.
- Only working this contract to assist the department.
- To boost my income and I also enjoy the work.

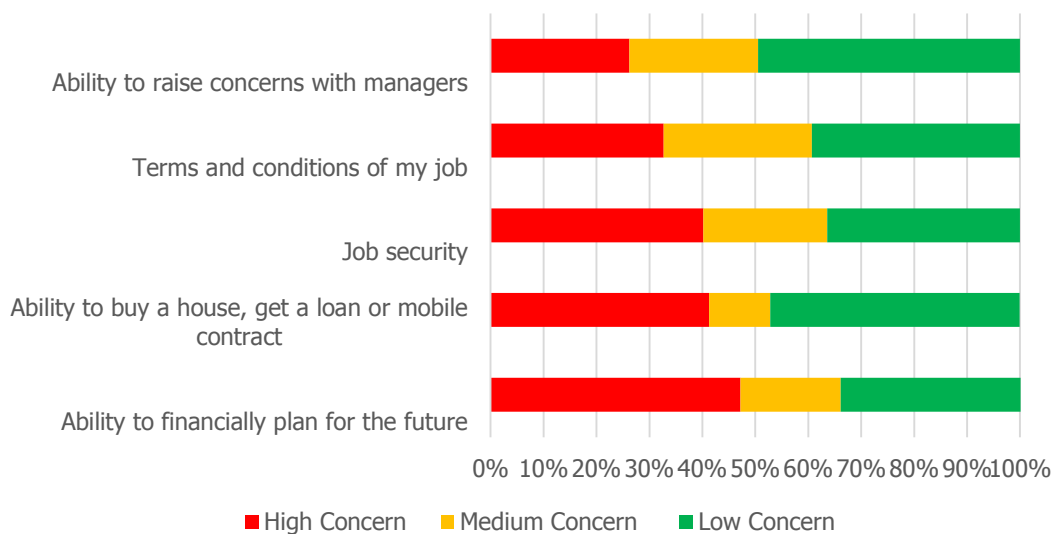
#### 4.9 Respondents were asked how best to describe their zero hours contract(s):



#### 4.10 When asked what type of employment respondents hold in addition to their zero hours contract, the responses were:

- 88% of respondents said I only hold zero hours contract(s)
- 6% of respondents had one additional part time contract
- 2% of respondents had more than one additional part time contract
- 2% of respondents had an additional full time contract

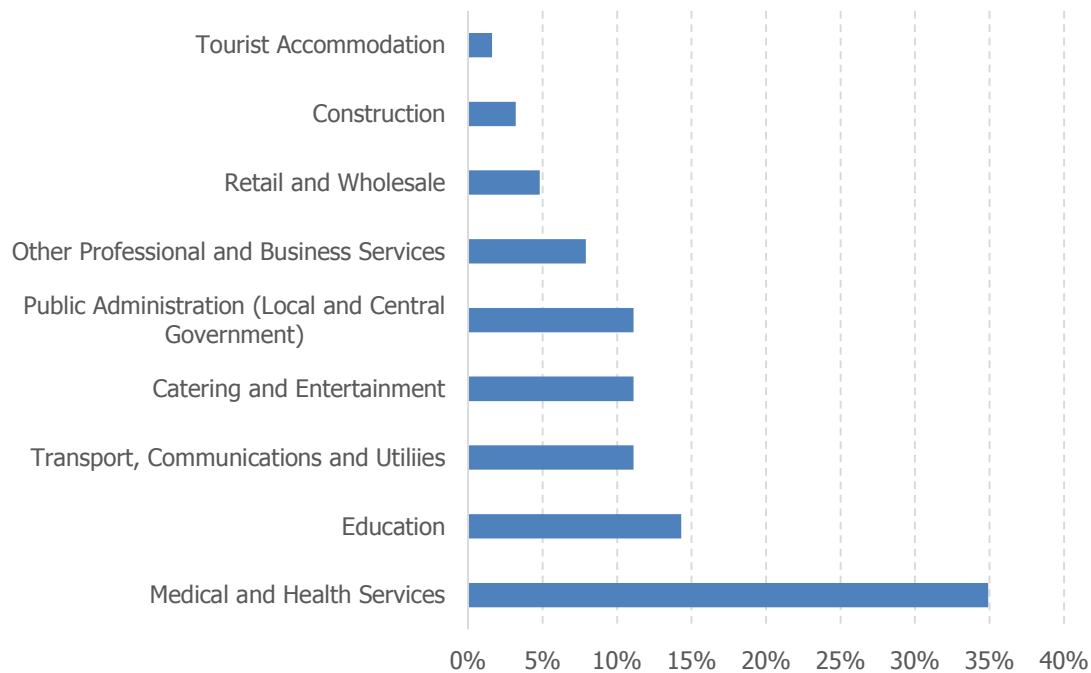
#### 4.11 Respondents were asked to rate for their job as to how they feel in terms of concern about the following?



- 4.12 Finally members of the public were given the opportunity to provide any comments. Comments from those who are currently on zero hours contracts, have previously been on a zero hours contract or those who have never been on a zero hours contract are provided in [Appendix 4](#).
- 4.13 Some of the main points which emerged from the public survey are as follows:
- Over 50% of the respondents were aged 50 or over which is counter-intuitive to the popular perception that zero hours contracts predominantly affect young people.
  - Some respondents believed zero hours contracts were the only means of providing them with the flexibility they need for a better work life balance, where they retain control of when and where they work.
  - The view was expressed that the ability to have a zero hours contract in addition to substantive employment was very helpful and should not be changed.
  - It was also pointed out that some roles could exist only on the basis of zero hours contracts due to the unpredictable nature of the work involved.
  - Concerns were expressed, however, regarding the impact of zero hours contracts on the ability to apply for loans, mortgages or private rented accommodation, and the absence in many cases to access to a pension or sick pay.
  - Concerns were also expressed about the length of time people had been working regular patterns and full time hours without the ability to be offered a stable permanent contract with more employment rights and opportunities for training and development.
  - A number of respondents expressed concern about the lack of notice given when asked to work and the risk of not being offered further work if shifts were turned down.

### **Employers Survey**

- 4.14 The responses received from the employer survey were predominately from the public sector (78%) rather than the private sector (22%). The survey responses were predominately from employers in Medical and Health Services, Education, Transport, Communications and Utilities, Catering and Entertainment and Public Administration (Local and Central Government) sectors of the economy:



4.15 Respondents were primarily line managers (53%) and senior managers (21%) with lower proportions of Chief Executives (14%) and Owners completing the survey (12%).

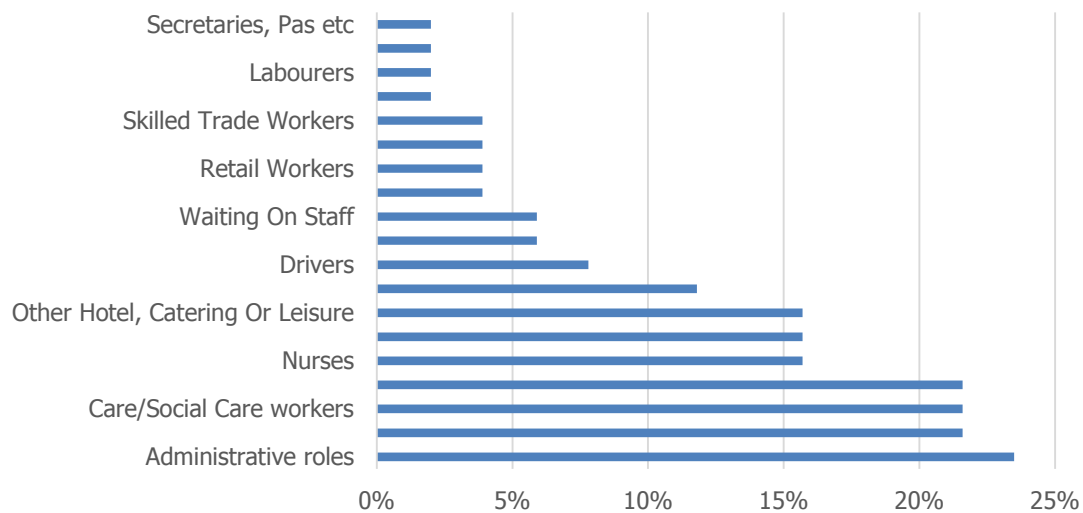
4.16 Employers responding to the survey were predominately medium or very large scale employers:

Small (1-9 employees)	14%
Medium (10-100 employees)	49%
Large (101 to 200 employees)	3%
Very Large (over 200 employees)	33%

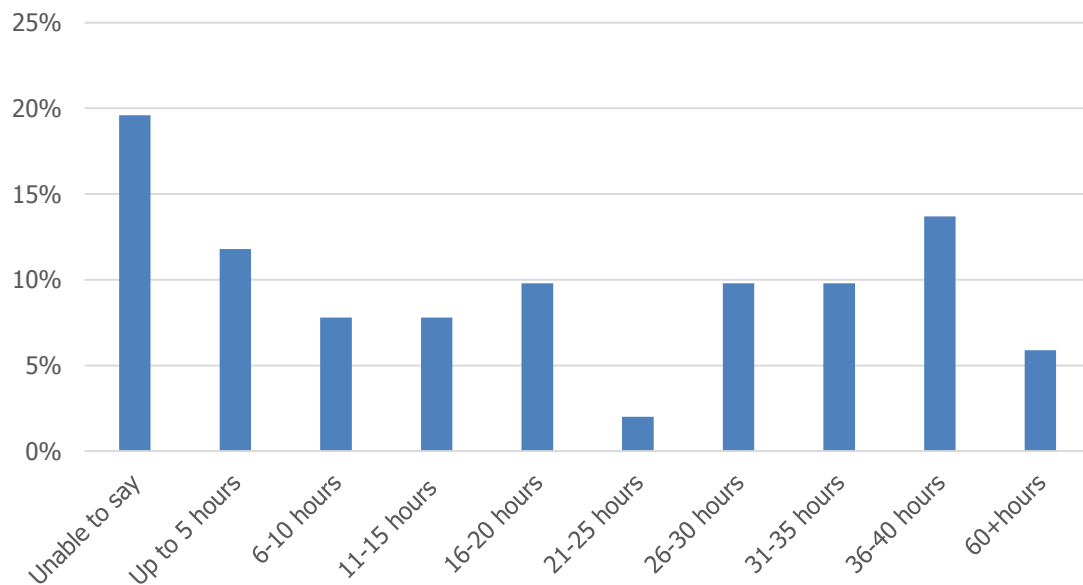
4.17 Use of zero hours contracts was widespread amongst respondent employers:

No, and we have no plans to introduce them	13%
No, but we plan to introduce them shortly	0%
No, but we have in the past	3%
No, but we are considering their introduction	3%
Yes	81%

4.18 The survey found that administrative, care and nursing roles were those most likely to use zero hours contracts:



4.19 The survey asked employers how many hours per week, on average, does someone on a zero hours contract work at your organisation (or team in the case of line managers)?



4.20 Employers were also asked about which description best describes the typical working hours pattern of someone working on a zero hours contract at their organisation. They were able to choose more than one option. The responses were as follows:

Working hours are driven largely by the employer	52%
Hours are broadly the same each week	36%
Working days vary greatly each week	24%
Hours vary greatly each week	22%
Working hours are driven by the individual	20%
Working days are broadly the same each week	16%
It is impossible to tell	10%

- 4.21 Employers were asked about the reasons for using zero hours contracts and were able to select more than one reason. The responses received are as follows

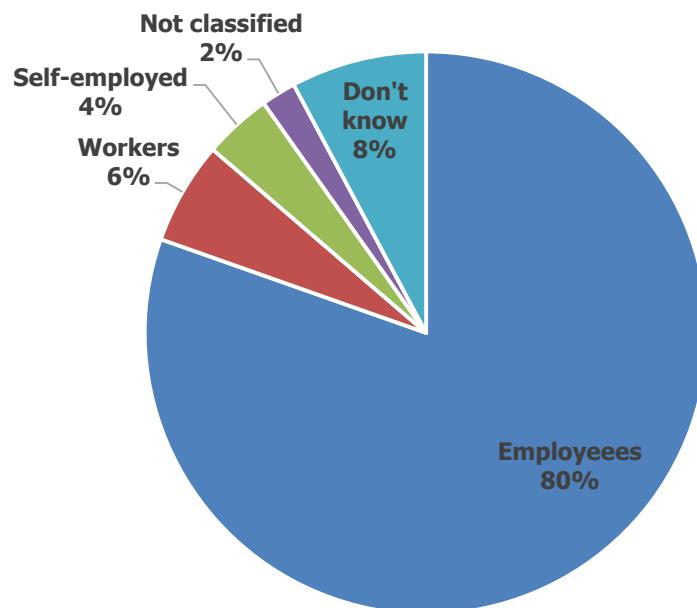
Provide coverage for staff absence	52.9%
Provide flexibility for individual	45.1%
Seasonal work	29.4%
Manage fluctuations in demand	27.5%
Uncertain business conditions	21.6%
Other	19.6%
Avoid overtime pay	13.7%
Part of a broader strategy to keep costs down	13.7%
To retain workers rather than make them	11.8%
To avoid agency fees	5.9%
Legacy within the organisation	3.9%
Don't know	3.9%
No particular reason	2%

- 4.22 Those responding with "Other" were asked to give further information on this:

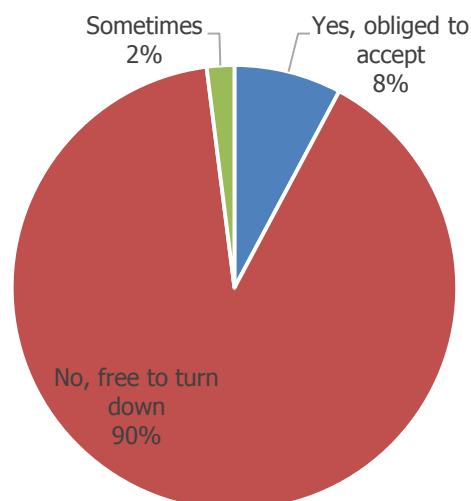
- lack of skilled persons in a particular field and for urgent succession planning requirements.
- We have been told to use bank rather than offer overtime.
- On call rota - out of hours work.
- To achieve statutory requirement to inspect each service at least once per year.
- not allowed to employ permanent staff.
- We have been unable to employ permanent staff even though we have had vacancies since 2016.
- Right sizing of service - may contract in future in one area.
- we are told that we are not allowed to use overtime , therefore all staff were forced to sign.
- Retain staff who retire as they no longer wish to work full time but are not eligible for state pension.
- inability to recruit to posts or create new posts as we are not allowed - business cases not progressed.



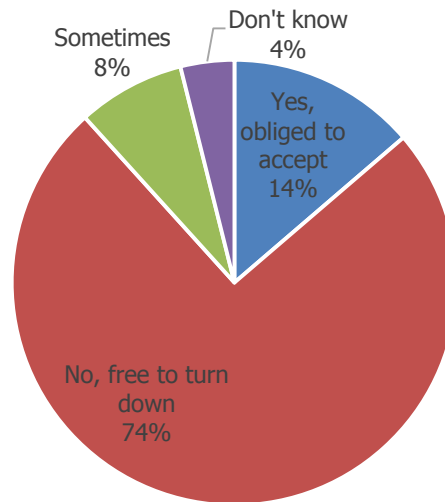
- 4.23 The survey sought to gain an understanding as to how employers classified the employment status of individuals which it has on zero hours contracts:



- 4.24 75% of employers said that they supplied zero hours contract works with a written statement of particulars, whilst 8% said that they did not, 2% said it varied and 16% said that they did not know. Of those employers that did supply written statements of particulars, 90% said that it identifies the employment status.
- 4.25 Employers were asked whether people on a zero hours contract were under a contractual obligation to accept all work offered?



- 4.26 Employers were then asked, "Regardless of what the written statement of particulars says, are people on a zero hours contract expected to accept all work in practice?"



4.27 If someone turns down work, 16% of employers said they were less likely to be offered more work, 63% said that they were not less likely, 20% thought perhaps.

4.28 The survey then asked about contractual provision, practice or policy on the amount of notice given to people on a zero hours contract when a shift is cancelled or for the termination of the employment relationship, with employers responding as follows:

Yes, notice for shift cancellation and termination	30%
Yes, notice for shift cancellation but not termination	4%
Yes, notice for termination but not shift cancellation	20%
No notice for either	34%
Don't know	12%

4.29 The survey asked for some more information on notice periods and cancellation practices for people on zero hours contracts for shifts. The responses were:

- Same terms and conditions as those staff with contracted hours.
- All shifts are set 1 week in advance we do not cancel shifts.
- Same rights as other employees.
- We can ask staff for help mostly short notice, very rarely cancel.
- Due to the uncertain nature of our work around one week's notice is usually given.
- Covering a period of maternity leave so knows the end date.
- If shift cancelled less than 24 hours before employee will still get paid for the shift.
- Rare to cancel a shift, the staff member would be informed a couple days beforehand if needed.
- 7 days of assignment, 24hrs cancellation notice.
- 48 hours required to cancel a shift.
- Best practice 2 days.
- No.
- Week by week.
- Less than 24 hours' notice the employee is still paid for the hours.
- Minimum 24 hours.

- 4.30 Employers were also asked to provide information on notice periods and practices for people on zero hours contracts for the termination of the employment relationship:

- Same terms and conditions as those staff with contracted hours.
- Weeks' notice although discussions take place 3 months prior to end date.
- In line with statutory notice periods.
- Generally we try and operate equality with contracted staff.
- As employment law 1 week per year served.
- Exactly the same as our full-time employees.
- Employee is given notice of the end date of an assignment when it is offered.
- They are quite rare and we only have one current contract - in all respects it is a PSC Ts &Cs. [SIC Public Services Commission Terms and Conditions].
- Zero hours contracts follow normal OHR [SIC Office of Human Resources] procedure.
- Depends on Banding – 4-12 weeks' notice for termination of contract as per MPTC.
- As much prior notice as possible but usually a week.
- Termination would only be given if employee was not up to the job after 3 months of training & retrain.
- 1 Weeks Notice Is Required.
- Most will give two weeks' notice, so cover may be found.
- Unsure.
- Week by week - on bank government contracts.
- We give 1 weeks' notice and expect 1 weeks' notice but are flexible.
- Minimum 30 days' notice.

- 4.31 Employers were asked how the hourly rate of pay for someone employed on a zero hours contract compares to those employed on a permanent contract doing the same role?

Zero hours paid about the same rate	47%
Zero hours paid a higher rate	22%
Zero hours paid a lower rate	10%
Don't know the relative pay rates	6%
Not applicable. No staff on permanent contracts doing the same role as people on a zero hours contract	16

- 4.32 When asked about training and development for zero hours workers, 78% of employers said that they were eligible for the same as full time workers, 22% responded that they were not.
- 4.33 The next question asked what statutory employment rights employers believe are available to people on zero hours contracts. More than one response was possible.

Written statement of terms and condition	78%
Minimum wage	67%
Annual paid leave (either paid time off or rolled up holiday pay)	67%
Right not to be unfairly dismissed	65%
Minimum notice	51%
Right to request flexible working	31%
Maternity, paternity and adoption leave	18%
Redundancy pay (after 2 years' service)	18%
Don't know	14%
None – No rights are available	6%

- 4.34 When asked what contractual benefits are offered to people on zero hours contracts, 60% of employers said no benefits were available, 20% offered pension, 16% offered overtime and 2% employer sick pay.
- 4.35 Employers were asked if they impose any restrictions on people on a zero hours contract working for another organisation: 10 % said Yes, 77% said No and 13% didn't know.
- 4.36 General comments from employers about zero hours contracts are reproduced in **Appendix 4.**

## 5. Submissions

- 5.1 The Committee sought to engage a wide range of groups on this issue. Tynwald Members, unions and private and public sector employers were invited to contribute their views on the use of zero hours contracts.
- 5.2 The Committee received a number of submissions from the Chamber of Commerce, employers, unions and other bodies, a list of which is available at [Appendix 5](#). As part of the engagement and evidence gathering the Committee also invited attendance at Committee meetings from representatives of Unite the Union and Sleepwell Hotels Ltd.
- 5.3 There was some concern expressed about potential cases of exploitation of people working on zero hours contracts. The view of the Managing Director from Sleepwell Hotels Ltd was that contracts geared only towards benefiting the employer which allow for the employer to simply drop staff from the payroll would be very unfair and distressing to the employee. The Chamber of Commerce suggested that though provisions have been made, like the prohibition of exclusivity clauses, more progress was required and suggested adopting a code of practice, a campaign to raise understanding and awareness among both employers and zero hours workers and all workers should be issued a written copy of their terms and conditions in line with the view of the Chartered Institute of Personnel and Development (CIPD).
- 5.4 However, written submissions from the unions, Unite the Union and the University and College Union (UCU), stated that they felt that the concerns about workers on zero hours contracts were so significant that they both recommended banning zero hours contracts outright. Whilst UCU acknowledged there was no issue with zero hours workers for their members on the Island they felt there was a case for legislating against the practice of zero hours contracts due to the problems they have with their UK members on zero hours contracts. Their view was that there are many workers now working as an integral part of the employer's workforce, on long hours and on less favourable terms and conditions. They also had concerns about employees not being able to speak up due to the threat of hours being taken away.
- 5.5 In contrast, employers felt that zero hours contracts (where used appropriately) offered benefits to individuals and highlighted many ways in which their contracts supported people who wished to work flexibly and meet their other commitments, to supplement a primary income, to down-shift into retirement or to earn more whilst engaged in an educational programme. In many cases, employers offered staff on zero hours contracts the same terms as substantive employees in terms of salary, and were provided with payment for statutory annual leave.
- 5.6 Employers also wanted to strongly express their view that zero hours contracts were essential or useful for business operation, providing flexibility for the employer to manage fluctuations in demand during staff holidays, sickness, seasonal and peak periods of operation such as the TT, bank holidays and school holidays. Both direct employers and the Isle of Man Chamber of Commerce acting on behalf of its members stated that without the ability to use zero hours contracts as defined in the terms of reference there would be significant detriment to their business/services provided or would require the organisation to stop providing the service at all.

## **6. Prevalence of zero hours contracts in the Island and evidence of any abuse**

- 6.1 Through its work and the submissions of the public and employers, the Committee has been able to form a view of the questions posed to it by the Chief Minister.
- 6.2 The evidence indicated that zero hours contracts are widely used throughout the Isle of Man, both by the private and public sector for a number of reasons. Views on the use of zero hours contracts vary significantly.
- 6.3 There appears to be a lack of awareness in general about the employment rights of workers and employees which could be bolstered by improved training and information in this area. This was shown by both employers and employees in the surveys.
- 6.4 In particular, the Committee was concerned from the results of the Employers' Survey that only two thirds of respondents were aware of the requirement to pay the minimum wage or provide for paid statutory leave.
- 6.5 Overall, the Committee found no evidence of widespread systematic abuse of zero hours contracts, but many concerns were raised about the operation of zero hours contracts in practice. Best Practice Guidance is available on the use of zero hours contracts on the Gov.UK and a version, adapted to reflect Manx law, is attached at [Appendix 6](#). Some of the key points of this guidance are as follows:
- Zero hours contracts might not be appropriate if the job offered will mean the individual will work regular hours over a continuous period of time.
  - Zero hours contracts are rarely appropriate to run the core business.
  - Contracts should be clear and transparent.
  - Cancelling work at short notice, or when the individual turns up at the place of work, is unacceptable unless truly unavoidable.
- 6.6 It is evident from the response to the public survey that in both the public and private sector on the Isle of Man, elements of the best practice advice appears not to be adhered to in some cases.
- 6.7 However, there is also evidence of the value of zero hours contracts to the Island's diverse economy. The Committee would not look to ban these types of contracts as the use of them contributes to the socio-economic wellbeing of the Island.
- 6.8 However, the Committee is of the view that consideration should be given by employers, where it can be demonstrated that an individual has been working regular hours over an aggregated period of time, for moving the worker onto a permanent or limited term contract.
- 6.9 Concern was raised, along with a public perception, indicating that zero hours contracts could be used by some employers to either avoid or reduce the amount of National Insurance they pay. As a consequence, this has an adverse effect on individuals' National Insurance records in that they do not build up entitlement to certain National Insurance funded benefits. For example their entitlement to the Manx State Pension could be significantly reduced if they have long periods where

they do not earn enough to at least be treated as paying National Insurance Contributions.

- 6.10 The Committee found no evidence to support this assumption but it is recognised that due to the lack of certainty over the number of hours that an individual might work in a week that this can make the administration of the current 'in work' income top-up benefits difficult to administer.
- 6.11 The Committee noted that the current welfare benefit system represented a challenge to providing the most appropriate support to those claimants who worked zero hours contracts, however the challenge was not significant.
- 6.12 The Treasury will therefore investigate how 'in work' income top-up benefits can be adapted so that individuals with zero hours contracts are appropriately supported.

## 7. Recommendations

Whilst there was no evidence of widespread systematic abuse of zero hours contracts, numerous concerns were raised by respondents to our surveys about the operation of zero hours contracts in practice. That being so, the following recommendations are proposed:

- 1.** That the Manx Industrial Relations Service should conduct a campaign to raise awareness and education about the employment rights for all, covering employees and other workers.
- 2.** The Department for Enterprise should bring forward legislation to:
  - a)** extend the present right of employees to receive a written statement of particulars to all workers (including individuals on zero hours contracts) and review the particulars which are presently specified in the Isle of Man Employment Act 2006;
  - b)** require the employer of workers who are not in regular employment<sup>5</sup> to refer workers to information issued by the Department for Enterprise setting out their main employment rights;
  - c)** provide a right to workers who are not in regular employment to request a stable contract from the employer after 6 months if their hours, pattern of work and / or work activities indicate there is an ongoing relationship between the workers and the employer;
  - d)** provide a right to workers who are not in regular employment to a stable contract after 1 year if their hours, pattern of work and / or work activities indicate there is an ongoing relationship between the workers and the employer, unless the employer can justify withholding a stable contract on objective grounds;
  - e)** regulate contracts which impose one sided obligations through:
    - requiring employers of workers who are not in regular employment to state any guaranteed hours in the written statement;
    - removing employer's powers to oblige workers who are not in regular employment to work any non-guaranteed hours; and
    - prohibiting employers from cancelling shifts of workers who are not in regular employment at short notice without providing for them to be paid as if the hours had been worked;
  - f)** provide protection against dismissal and detriment to workers who are not in regular employment (as appropriate<sup>6</sup>) who assert their statutory rights in

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<sup>5</sup> (in this and subsequent paragraphs) other than (1) agency workers and (2) workers performing any work or services for another party to a contract whose status is by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

<sup>6</sup> Only employees can claim unfair dismissal. A worker can make a complaint of detriment, which can include termination of his or her contract.



respect of any of the above matters or the existing prohibition on exclusivity clauses at section 166(1) of the Employment Act 2006; and

- g)** review whether it is desirable to modify any provisions in Schedule 5 (Computation of period of employment) of the Isle of Man Employment Act 2006 which may prevent workers who are not in regular employment from building up continuous employment for employment rights purposes and, in particular, to consider extending, from one week to one month, the relevant break in service for the calculation of the qualifying period for continuous service and clarify the situations where cessations of work could be justified (as recommended in the Taylor Review).
- 3.** The Treasury should investigate how 'in work' income top-up benefits can be adapted so that individuals who are not in regular employment are appropriately supported, and seek to raise awareness where individuals do not have a qualifying year for contributory benefit purposes.
- 4.** Further work should be undertaken by the Isle of Man Government to consider some of the wider issues identified as part of this review including employment rights, benefits, the 'gig economy' and other issues considered by the Taylor Review.

## **Appendix 1 – Employment Status**

### **Employees**

Many employment rights under Isle of Man legislation, such as the right not to be unfairly dismissed and the right to maternity and paternity leave are enjoyed only by 'employees' (and, in certain cases, only if they fulfil certain conditions, e.g. as to length of service). An 'employee' is a person who works for an employer under a contract between them, called a 'contract of employment' (which may, but need not, be in writing: it may be agreed orally or simply implied by the nature of the relationship). A contract of employment is defined as 'a contract of service or apprenticeship'.

A number of essential elements must be fulfilled in order for a contract of employment to be shown to exist:

- there must be a contract between the working person and the employer;
- there is an obligation on the working person to undertake work personally (and not to delegate it to someone else);
- the employer has an ongoing commitment to provide work, and there is a corresponding expectation by the working person of receiving work (sometimes called 'mutuality of obligation'); and
- the employer controls both what the working person does and the way it is done.

### **Distinguishing between Employees and Workers**

In most cases, it will be clear whether a person is or is not an employee, but in borderline cases the High Court or the Employment and Equality Tribunal will look to see if these elements are present and will, in addition, look at a number of factors, for example:

- to what extent is the person integrated into the structure of the employer's organisation?
- if the person needs clothing, equipment or materials to carry out the work, does the employer provide them?
- is the person allowed to work for others?
- how are payments to the person processed, and how are they treated for tax and national insurance purposes?
- does the person have access to benefits and sick pay?

### **Workers**

'Workers' are people who are engaged on a contract for services, which implies the appointment of an independent contractor or person working on a freelance basis.

Workers provide their services personally to organisations with whom they contract even though they are not regarded as employees. The term 'worker' can be used to cover a wide range of working relationships e.g. casual workers, freelance workers, employment agency staff and some independent contractors, provided that the other party to the contract is not their client or customer.

While having more limited employment rights than employees, workers nevertheless have various rights including the following:

- entitlement to the minimum wage;
- paid annual leave; and
- no discrimination, harassment or victimisation on the ground of a “protected characteristic” in the Equality Act 2017 and rights in respect of equal pay.

### **Self-Employed Persons**

The final main category of employed persons, other than 'employee' or 'worker', is that of self-employed persons, that is, persons who are in business on their own account and whose relationship with the organisation for whom they provide their services is that of client or customer.

Examples of self-employed individuals, whose contracts are with clients or customers as opposed to employers, include electricians performing skilled work for their customers and advocates advising or representing their clients.

Although some self-employed people can be classed as 'workers' for the purposes of some employment legislation, the general rule is that genuinely self-employed entrepreneurs are not covered by employment protection legislation, save for a small number of exceptions.

### **Distinguishing between Workers and Self-Employed Persons**

Just as there are cases where it can be difficult to determine whether a person is an employee or a worker there are also cases where it can be difficult to determine whether a person is a worker or self-employed. In borderline cases the High Court or the Employment and Equality Tribunal will look at the features of the particular contract and factors such as:

- whether the dominant feature of contractual arrangement was the obligation to personally perform work or whether it was a business outcome or objective;
- whether the individual has a single customer or a range of customers;
- the extent to which he or she was engaged in skilled activities;
- the extent of investment in his or her business;
- the extent to which he or she carried the risk of non-performance or faulty performance of the work in question; and
- the extent to which he or she was free to negotiate the terms and conditions of the services which were provided.

## **Appendix 2 – Extract from the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017**

### ***Offering domiciliary care workers on non-guaranteed hours contracts the choice of alternative contractual arrangements***

**42.**—(1) *If the conditions in paragraph (2) are met, a service provider to whom this regulation applies must offer a domiciliary care worker the choice of continuing to be employed under either of the following types of contractual arrangement—*

*(a) a contract of employment where the number of hours required to be worked per week is at least the average number of hours worked per week during the preceding three months;*

*(b) a contract of employment where the number of hours required to be worked per week is less than the average number of hours worked per week during the preceding three months.*

*But this requirement does not prevent the service provider employing a domiciliary care worker on any other type of contractual arrangement which has been agreed between the provider and the worker, including a further non-guaranteed hours contract.*

*(2) The conditions referred to in paragraph (1) are—*

*(a) the domiciliary care worker has been employed by the service provider under a non-guaranteed hours contract for the qualifying period,*

*(b) the domiciliary care worker has worked regular hours during the three months preceding the end of the qualifying period,*

*(c) the provider has decided that there is a continuing need for the hours to be worked on an ongoing basis, and*

*(d) the domiciliary care worker has performed satisfactorily during the qualifying period.*

*(3) For the purposes of this regulation—*

*"domiciliary care worker" ("gweithiwr gofal cartref") means a person who provides care and support to individuals as part of a domiciliary support service and includes a person employed by the service provider as an employee or a worker but does not include a person engaged by the service provider under a contract for services;*

*"non-guaranteed hours contract" ("contract oriau heb eu gwarantu") means a contract of employment or other worker's contract under which—*

*(a) the undertaking to do work or perform services is an undertaking to do so*

*conditionally on the employer making work or services available to the worker, and*

*(b) there is no certainty that any such work or services will be made available to the worker.*

*For the purpose of this definition, an employer makes work or services available to a worker if the employer requests or requires the worker to do the work or perform the services;*

*"the qualifying period" ("y cyfnod cymhwysol") is—*

*(a) in any case where the worker has commenced employment after the relevant date, the period of three months from the date the employment commenced;*

*(b) in any case where the worker commenced employment before the relevant date, the period of three months ending with the commencement date;*

*(c) in any case where the worker has previously been offered the choice of an alternative contractual arrangement in accordance with the requirements of this regulation and has chosen to remain on a non-guaranteed hours contract, the period of three months from the date any such choice was made.*

*For the purposes of this definition—*

*"the commencement date" ("y dyddiad cychwyn") is the date on which this regulation comes into force;*

*"the relevant date" ("y dyddiad perthnasol") is the date which falls three months before the commencement date.*

*(4) For the purposes of this regulation—*

*(a) the terms "contract of employment" ("contract cyflogaeth"), "employer" ("cyflogwr"), "employee" ("cyflogai"), "employment" ("cyflogaeth") and "employed" ("cael ei gyflogi", "wedi ei gyflogi", "a gyflogir") have the same meanings as in section 230 of the Employment Rights Act 1996;*

*(b) "worker" ("gweithiwr") has the same meaning as in section 230 of the Employment Rights Act 1996, except that a person engaged under a contract for services is not a worker for the purpose of this regulation. Any reference to a worker's contract is to be construed accordingly.*

## **Appendix 3 – Extract from the New Zealand Employment Relations Act 2000**

### **67C Agreed hours of work**

*(1) Hours of work agreed by an employer and employee must be specified as follows:*

*(a) in the case of an employee covered by a collective agreement,—*

*(i) in the collective agreement; and*

*(ii) if [section 61](#) applies, in the employee's additional terms and conditions of employment included under that section; or*

*(b) in the case of an employee covered by an individual employment agreement, in the employee's individual employment agreement.*

*(2) In subsection (1), hours of work includes any or all of the following:*

*(a) the number of guaranteed hours of work;*

*(b) the days of the week on which work is to be performed;*

*(c) the start and finish times of work;*

*(d) any flexibility in the matters referred to in paragraph (b) or (c).*

### **67D Availability provision**

*(1) In this section and [section 67E](#), an availability provision means a provision in an employment agreement under which—*

*(a) the employee's performance of work is conditional on the employer making work available to the employee; and*

*(b) the employee is required to be available to accept any work that the employer makes available.*

*(2) An availability provision may only—*

*(a) be included in an employment agreement that specifies agreed hours of work and that includes guaranteed hours of work among those agreed hours; and*

*(b) relate to a period for which an employee is required to be available that is in addition to those guaranteed hours of work.*

*(3) An availability provision must not be included in an employment agreement unless—*

*(a) the employer has genuine reasons based on reasonable grounds for including the availability provision and the number of hours of work specified in that provision; and*

*(b) the availability provision provides for the payment of reasonable compensation to the employee for making himself or herself available to perform work under the provision.*

*(4) An availability provision that is not included in an employment agreement in accordance with subsection (3) is not enforceable against the employee.*

*(5) In considering whether there are genuine reasons based on reasonable grounds for including an availability provision, an employer must have regard to all relevant matters, including the following:*

*(a) whether it is practicable for the employer to meet business demands for the work to be performed by the employee without including an availability provision;*

*(b) the number of hours for which the employee would be required to be available;*

*(c) the proportion of the hours referred to in paragraph (b) to the agreed hours of work.*

*(6) Compensation payable under an availability provision must be determined having regard to all relevant matters, including the following:*

*(a) the number of hours for which the employee is required to be available;*

*(b) the proportion of the hours referred to in paragraph (a) to the agreed hours of work;*

*(c) the nature of any restrictions resulting from the availability provision;*

*(d) the rate of payment under the employment agreement for the work for which the employee is available;*

*(e) if the employee is remunerated by way of salary, the amount of the salary.*

*(7) For the purposes of subsection (3)(b), an employer and an employee who is remunerated for agreed hours of work by way of salary may agree that the employee's remuneration includes compensation for the employee making himself or herself available for work under an availability provision.*

**67E Employee may refuse to perform certain work**

*An employee is entitled to refuse to perform work in addition to any guaranteed hours specified in the employee's employment agreement if the agreement does not contain an availability provision that provides for the payment of reasonable compensation to the employee for making himself or herself available to perform work under the availability provision.*

**67F Employee not to be treated adversely because of refusal to perform certain work**

*(1) An employer must not treat adversely an employee who refuses to perform work under [section 67E](#).*

*(2) In this section, an employer treats an employee adversely if the employer—*

*(a) refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially the same qualifications, experience, or skills employed in the same or substantially similar circumstances; or*

*(b) dismisses that employee or subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment; or*

*(c) retires that employee, or requires or causes that employee to retire or resign.*

*(3) For the purposes of subsection (2)(b), detriment includes anything that has a detrimental effect on that employee's employment, job performance, or job satisfaction.*

**67G Cancellation of shifts**

*(1) This section applies in relation to an employee who is required under the employee's employment agreement to undertake shift work.*

*(2) The employer must not cancel a shift of the employee unless the employee's employment agreement specifies—*

*(a) a reasonable period of notice that must be given before the cancellation of a shift; and*

*(b) reasonable compensation that must be paid to the employee if the employer cancels a shift of the employee without giving the specified notice.*

*(3) In cancelling a shift of an employee, the employer must—*

*(a) give the employee the notice specified in the employee's employment agreement under subsection (2)(a); or*

*(b) if that notice is not given, pay to the employee the compensation specified in the employee's employment agreement under subsection (2)(b).*

*(4) The period of notice specified under subsection (2)(a) must be determined having regard to all relevant factors, including—*

*(a) the nature of the employer's business, including the employer's ability to control or foresee the circumstances that have given rise to the proposed cancellation; and*

*(b) the nature of the employee's work, including the likely effect of the cancellation on the employee; and*

*(c) the nature of the employee's employment arrangements, including whether there are agreed hours of work in the employee's employment agreement and, if so, the number of guaranteed hours of work (if any) included among those agreed hours.*

*(5) Compensation specified under subsection (2)(b) must be determined having regard to all relevant matters, including the following:*

*(a) the period of notice specified in the employee's employment agreement under subsection (2)(a);*

*(b) the remuneration that the employee would have received for working the shift;*

*(c) whether the nature of the work requires the employee to incur any costs in preparing for the shift.*

*(6) Without limiting subsection (5), an employee is entitled to what he or she would have earned for working a shift if—*

*(a) the shift is cancelled and the employee's employment agreement does not comply with this section; or*

*(b) the shift is cancelled, but the employee has not been notified of the cancellation until the commencement of the shift; or*

*(c) the remainder of a shift is cancelled after the shift has begun.*

*(7) If an employee whose shift is cancelled is entitled, under his or her employment agreement or under subsection (6), to the remuneration that he or she would have earned for working the shift, that remuneration is a part of the employee's ordinary weekly pay and relevant daily pay for the purposes of [sections 8](#) and [9](#) of the Holidays Act 2003.*

*(8) To avoid doubt, nothing in this section enables an employer to cancel an employee's shift if that cancellation would breach the employee's employment agreement.*

*(9) In this section, shift means a period of work performed in a system of work in which periods of work—*

*(a) are continuous or effectively continuous; and*

*(b) may occur at different times on different days of the week.*

### **67H Secondary employment provisions**

*(1) In this section, a secondary employment provision is a provision in an employee's employment agreement that—*

*(a) prohibits or restricts the employee from performing work for another person; or*

*(b) prohibits or restricts the employee from performing work for another person without the employer's consent.*

*(2) A secondary employment provision must not be included in an employee's employment agreement unless—*

*(a) the employer has genuine reasons based on reasonable grounds for including the provision; and*

*(b) the reasons are stated in the employee's employment agreement.*

*(3) For the purposes of subsection (2)(a) and without limiting that provision, a genuine reason may relate to—*

*(a) protecting an employer's commercially sensitive information; or*

*(b) protecting an employer's intellectual property rights; or*

*(c) protecting an employer's commercial reputation; or*

*(d) preventing a real conflict of interest that cannot be managed without including a secondary employment provision.*

*(4) A secondary employment provision in an employee's employment agreement must not—*

*(a) prohibit the employee from performing work for another person unless it is necessary having regard to the reasons for which the provision is included; or*

*(b) restrict the employee from performing work for another person to a greater extent than is necessary having regard to the reasons for which the provision is included.*

*(5) This section does not limit or affect the law relating to restraint of trade provisions.*



## Appendix 4 – Comments from Public and Employer Surveys

Listed below are the comments from the public and employer surveys, including from individuals currently on zero hours contracts; from people who are not but have been on a zero hours contract; from people who are not currently and never have been on a zero hours contract; and some of the general comments made by employers.

In relation to the comments from individuals currently on zero hours contracts, they have been grouped into broad categories of either **positive** and **negative** comments.

### Positive Comments from individuals currently on zero hours contracts

- Zero hours gives me the flexibility to have a better work life balance. I can take time off when I like and do not feel under any pressure at work.
- I have main employment and zero hours contract with the same (Government) organisation. A zero hours contract allows me to carry out other work not related to my main job as and when required. I am very happy with this arrangement. I would not want it to change.
- Sometimes zero hours contracts are needed. There is no possible way you could give contracted hours for the job I hold a zero hours contract for.
- Clearly there are people in some industries who would like more secure employment but I am not aware of anyone doing the job I do who would like a more secure form of contract.
- For those that want the flexibility of zero contract work then it's ideal. The additional hours I work pay for luxury items in my private life.
- Zero hours Contracts are often heavily criticised in the media, I feel unfairly. This type of working pattern suits many, many people including myself, at different stages of their lives, they are not being abused by ruthless employers!
- Please do not take away this option.
- My zero hours contracts are 'relief' positions and in addition to my actual job. It would be hard for these positions not to be zero hours.
- I enjoy working on a zero hours contract. It enables me to have leisure and family time to suit me. I feel a loyalty to the area that I work in and the staff treat me as one of their permanent staff.
- I am a student in full time education and a zero hours contract gives me the flexibility I need to study.
- There are positives to a zero hr contract. It offers me flexibility not to work when I want. Time away from work is very important to me.
- I know that zero hours contracts are often predatory for employees, however as a supply teacher, I really enjoy determining when and where I work, when I want to be able to collect my children from school, etc. The contract works really well for me personally. Although, the Autumn term can be hard as there is very little work about, I generally love determining my schedule based on my family's needs be it financial or on the home-front.
- What I do meets the needs of the Service and is aimed at promoting a good standard of care and a sense of achievement to staff working in the Service. It gives me a sense of worth.
- Zero hours tops up my wages from my permanent job and fits in with my family.

- I really enjoy the flexibility of zero hours. I believe it is beneficial for the employer (or they wouldn't offer it), and for the employee or they wouldn't take the job opportunity.
- Suits me however for someone relying on the income it could be worrying
- I love my zero hours contract. After a serious life-threatening illness, it gives me the flexibility I need to manage my health and work/life balance. If I did not have this flexibility, it is unlikely that I would be able to work at all.
- I have a full time contract. The zero hours contract is a second job doing the same sort of work for the same employer as my full time job. The zero hours contract means I can say yes or no to additional shifts for additional pay, and my employer gets flexible service from me. As a second job I think it works very well for me and for my employer. I wouldn't want it as my only source of income.
- As a nurse/midwife, I have a main job on a substantive contract, (26 hrs) but also maintain my other skills, by choice with a zero hours contract (bank work).
- Although I have 3 zero hours contracts I also have a permanent part time contract within the same department. The zero hours contracts complement my contracted hours and provide flexibility for the service I work for.

### **Negative Comments from individuals currently on zero hours contracts**

- I was told at the interview by owners of the Company that they had an employee who turned down last minute offer of work on phone and I was told that they don't want people like that working for them, who turn down work. I am regularly contacted with work to go in very early next morning (at 8pm at night and pressured into going or I will lose money) as they cut your other hours, so you are in a state of anxiety how much pay you will get. I once was sent to a smoker's house and when I asked not to go back there the manager bullied me. I had 12 hours taken off me (the majority of my wage) at 8pm the night before the shift with no reason (gave my hours to someone else). I work many hours and get a new schedule every Thursday, this gives me no time to plan any leave.
- If I was only on a zero hours contract I cannot apply for loans, mortgages, private housing or even bank accounts, it's not fair.
- Only concern is this committee making employers too worried to continue to use relief staff as normal and to try to use only staff with contracted hours, which appears to already have started. The existing bank staff deserve some loyalty after years of working the most unsociable shifts, covering at the last minute and working long hours when permanent staff often snub anything they consider to be more than they can be forced to do.
- Companies are using zero hours as a cheap labour source... if you do the same hours for more than 6 months every week you should be given a contract for those hours
- I've been on a zero hours contract for 14 years and do more hours than most full time workers ...15 years I could of been paying into a pension ...no job security ...no sick pay ...less job training... zero hours contracts are morally wrong especially if you been stuck on them for years and there is obviously plenty of work there for you to be a full time employee...zero hours contracts can give rise to unfairness at work because full time people are more looked after cause they have more power regarding hours they will or won't work...people on zero hours contracts always get the shifts no-one else wants

either because they are shorter or later in the day ...things should be more equal...no paternity pay which is totally wrong ...zero hours contracts can be used as a tool to bully as in getting less hours if bosses don't like you ...harder to get a mortgage or loan ...Get rid of zero hours please for God's sake.

- Government workers/employees on zero hours contracts are on minimum wage. We are already losing out on pension contributions, job security and paid sick leave. Surely we deserve a Living Wage more than anyone?
- I have numerous qualifications as a swimming teacher but feel that I am not taken seriously as a professional as, with the odd exception, it is only possible to obtain work on a zero hours contract.
- Being a lifeguard on zero hours contracts trying to pay car insurance is almost impossible.
- The lack of rights my employer benefits but I don't like a zero hours contract but that's all they offer if I don't do it they will get someone else to do it. I'm a swimming teacher lessons are only term time so there are 13 weeks I don't get paid but it doesn't allow me to get another job though unless I do another zero hrs which I don't want.
- I believe that there must always be signed terms and conditions for any paid work done under zero hours contracts (including supply teacher positions). I also believe that these should not be superannuable/pensionable, as you only get so many hours per week; it makes no sense to be a part of an occupational pension scheme for Zero Hours contracts.
- I would like some security, particularly as I have been working the same pattern of shifts for over 3 years and provided extra cover when the organisation has been under pressure.
- This sort of question is all well and good, but you need to sit down with people who are on these contracts to actually find out some real answers. This sort of things won't tell you that if your injured and unable to work, you get no sick pay, or that zero hours contracts are great to bring people back into employment but can be abused by the employer to say money. You honestly need to talk to people.
- [redacted] are without a doubt the most exploitative employer on the island, an inquiry should be launched directly at them into how they treat their staff.
- I enjoy the flexibility of my zero hours contract but tend to work full hours anyway - I couldn't afford to take a holiday and not be paid for the duration. I enjoy where I work but worry that there is no stability or security for me - If I take ill, I will have no income to pay bills etc. I am currently unable to plan for the future as I wouldn't be approved for a mortgage within my current role.
- I feel that as a health professional (Registered Nurse) I am being used as a cheap form of staff. (no overheads for A/L [SIC Annual Leave] etc.)
- The term used in this survey "voluntary work" is misleading, I don't volunteer I am a paid worker undertaking charitable health and social care employment. My zero hours contract allows me to give as much time to the charity I work for as I can without adversely impacting on my work life balance. My employer does not abuse the contract however I do feel less valued by my employer than a fully contracted member of staff. My training needs are not always met in a timely or appropriate manner and my concerns are not given any official consideration.
- Hello please as a caring government stop zero hours contracts. We have no Job security and it's impossible to get even a bank loan or even a car on hp. I feel the Gov should lead by example in this and it should be a matter of urgency. Currently the freedom to flourish does not apply to many of your tax payers.

- Offer them to newly retired staff who may be still interested in work, usually less hours.
- Some staff wish to work zero contract hours. I am unsure how it would work for me if I had to have contracts for each of my 4 jobs, which one would be priority, presently I obtain my contracted days then fit zero contract days around them.
- As time goes on I am hopeful of extra permanent hours within the service.
- I don't mind zero hours contracts but zero hours does not allow for contributions towards company pension - this **must** be addressed and zero hours contractors allowed to contribute to a pension.
- I work at Noble's Hospital, my concern is I never know if I have continued work once my bank block contract is coming to an end. I do not receive Bank Holiday pay, when asking for training and development the answer was always no because you are bank even when offering to pay for it myself, until I started in the department I am working now, who have allowed me to undertake the training, however, I am paying for it myself. In some areas within Nobles it takes months to receive your pay after you have worked the hours. If you work bank in the same department your wages doesn't seem to increase through the banding within your grade.
- I have a permanent part time contract (on Wed, Thurs and Fri) and do bank hours (Mon and Tues) to help out the department and earn extra money. I have been doing bank regularly now for almost 5 years, I think that my bank hours should be made permanent as there is obviously a need for it.
- my main concern is that I do not get paid if I do not work, not particularly in terms of the availability of work, (mine is regular hours but open ended i.e. as long as the reason for my project work is relevant, then I have work.) but if I take a day off sick, then I don't get paid. So, following a hospital procedure I returned to work as soon as I could, rather than when I was sufficiently fit to do so. Also, my hourly rate is still the same as set a number of years ago whereas my colleagues have had a number of pay rises, so I am paid well behind the inflation rate. I am also forced to take bank and public holidays without pay whereas my colleagues are financially compensated. Zero hours has its benefits in terms of flexibility but it does not provide any security or rights such as sick pay, bank holiday pay, overtime rates and maternity or paternity rights.
- I think if someone is doing hours continually this must show a need for the hours therefore the person should be offered the hours on a permanent contract.
- It's difficult to plan for the future and you don't know from one week to another what hours you are working, therefore at times unable to plan what you are doing. If they could give you a rota a month in advance this would be helpful. Also with seasonal zero hours contracts you are at the bottom of the pecking line.

## Comments from people who are not but have been on a zero hours contract

- Having a zero hours contract makes it really easy for employers to sack you without going through normal channels. i.e. you're not sacked we just haven't got any hours for you.
- These can be an important part of flexible working arrangements.
- Stop them. They are misused, most on 0 hour contracts work full time but do not get paid holidays or sick leave. Holidays are worked on a pro rata to your contract.
- Zero hours contracts are a scourge on society and should be stamped out.
- Allows me to keep my full time job as the opportunity to earn more money for saving from my zero hours contract.
- Zero hours contracts can provide a great deal of freedom and flexibility to those who need them and u sweat and them. There is a lot of unnecessary negativity around them which I believe is unfair, they have worked well for me a working parent. Some employers could use them unsympathetically however in the main I believe they off the participants the flexibility their lives need.
- Useful to support flexible working.
- Working in healthcare on zero hours was detrimental to me as on the occasions when I caught infections at work such as norovirus I had to stay off work on no pay after I felt well so that I wouldn't infect other patients. Some people may have come to work anyway and passed on infection.
- My 0 hours contract made it extremely difficult to plan my finances, education, and social life. More often than not I would be given shifts on very short notice, and would end up working longer than I was told as well. If staff didn't take shifts they were not given any hours in future. It was a toxic environment, and if I had still been working on that type of contract when applying for a mortgage I wouldn't have been able to secure one.
- Zero hours contract enabled me to fit work in around my family and at times other work that I had. Zero hours contracts are helpful for both the employer and employee and give employees more freedom to work more or less hours depending on their situation. To ban them would mean a lot of people would be unable to work. Stop zero hours workers being treated as self-employed that is more of an issue than a zero hours contract.
- Zero hours contracts are not a good idea, staff retained on these don't know where their next pay check is coming from, this makes it very difficult for anyone looking to buy a house as the hours given can be very erratic. I think that there should be a retainer for staff who are currently on zero hours contracts so they can still afford to live.
- Depends on your personal circumstances. Didn't work for me although it was a job I really loved as an ESO [SIC Education Support Officer]. Needed to secure a mortgage. Zero hours contract does not help. Now in a permanent position on less pay, not ideal but a permanent position!
- Zero hours contracts are often seen as negative however depending on the individuals circumstances, i.e. carer, single parent, it can allow the freedom to choose when you work to suit your needs.
- I cannot see any benefit to the employee in working zero hours contracts, it gives no stability or structure for gaining other useful employment and does not give the employee any feeling of job satisfaction.
- They are a complete scandal. Created during the credit crunch to further exploit workers. Scrap them now.
- They are a wholly bad thing, only thought useful by employers seeking to side step ethical responsibilities to the workforce, and other stakeholders in the business. Any sound business is run on the principle of a fair partnership between stakeholders in

the enterprise and zero hours contracts do not offer this. They lead to lower productivity, higher levels of staff churn, they are more likely to lead to health and safety breaches and to a workforce afraid to stand up for their rights. Employers seeking to implement these contracts are invariably poor business, whose short term desire to exploit their workforce will be mirrored by a similar willingness to exploit their customers, shareholders, and the statutory authorities.

- I think zero hours contracts are good for a small percentage of the general public e.g. bank staff or people who are retired. For a large percentage of the general public I do not feel this is acceptable as from experience you are living day to day with chance you could be told your services are no longer required tomorrow. If you have a family to support there is a chance at the end of the week you could be using the food bank to feed your children.
- Zero hours contracts can and do work very successfully, especially for people who want the flexibility which such arrangements offer.
- I worked for 12 months as a casual bus driver on a zero hours contract. This allowed me the freedom to visit and care for my dying parents in Manchester as and when required. For me at the time, it was a perfect arrangement and I am grateful for the opportunity. My parents have since both passed and I have become a full time employee.
- I think they can be useful to some employees as long as steps are taken to ensure their rights are not compromised such as paid holiday entitlement.
- I hated working a zero hours contract - I felt like I had no financial security, and didn't know how to manage the tax and NI side of things - I left the job as soon as I could after the manager changed my working arrangements.
- Zero hours contracts can provide a useful form of employment for both employees and employers if managed responsibly by employers. Personally I have found working zero hours contract offered me the flexibility I needed whilst also being a valued employee.
- Don't use them as it can be soul destroying to the employee to realise they have little to no worker rights.
- If the Isle of Man follows the UK in widespread usage of zero hours contracts a large proportion of working people will be engaged into a race to the bottom. Quality of life in the island will suffer and the financial security which people enjoy in current working conditions will evaporate. Who will be able to raise a mortgage and earn a sustainable amount to provide for a family? If the Isle of Man pursues a policy of zero hours contracts you will herald in a new era of the Victorian age. Deprivation like has never been seen on the island will be a norm. Quality of life will evaporate and the island will become a very unattractive place to live. Please do not take my word on what I written, speak to the homeless in Manchester, Liverpool, Bristol, Leeds and London like I have done. Zero hours contracts may be very attractive to accountants but to the integrity and sustenance of society it means a new Victorian age. Do you wish that on family, neighbours, friends and the larger aspects of society. [REDACTED] Please feel free to contact me as I'm very interested in this subject.
- It depends on an individual's circumstances which are unique to that individual.
- These contracts are a great idea... The employee can let the employer know when they want to work, or are available... Works at both ends.
- I used to really like the flexibility that a zero hours contract gave me. Quite often the shifts were regular but I had the option of taking more time off at relatively short notice.

## Comments from people who are not currently and never have been on a zero hours contract

- On a temporary full time contract. Keeps getting extended, couple of months at a time. Been on it for over a year now. Awful to be on but I love my job and hoping to gain permanent employment.
- My fiancé has a zero hours contract, and the fact she can't afford to have any days off or if she is ill, means she will lose pay.
- People will only stay on Zero hours Contracts on the short term as some are looking for permanent work. Management is top heavy so why not have more staff on the ground who are permanent than all these Managers.
- They should be outlawed. They offer no certainty of income.
- They're potentially exploitative and grant no job security while tying you to a contract that undermines your ability to find alternative work. Sure, you could say no if they call you up and offer you some hours. And they can respond by not giving you any hours for the next two weeks or so. You'll soon learn that the theoretical ability to turn down hours is the same as the theoretical ability to quit your job. Something you can do, but will suffer for until you can find alternative work.
- I currently work with full time staff and zero hours staff and there are two types of people one where they don't get enough hours to be able to provide enough for their family and the other find it good as they can say what they are able to work so they can receive benefits and do it on purpose. Where I find that not acceptable, as they are entitled to a lot of free things dentist work free school dinner the list goes on. They can also leave the permanent workers short staffed where we have to do the work of 3. There is no need for zero hours you can always get contracted for the amount of hrs that a company knows they need , be that 5 hrs 10 hrs or whatever hrs is needed and it stops people taking advantage of the public purse. Where I can't see the benefit of people are doing that in the long run.
- An employee deserves to have a fixed number of hours and be able to live their lives knowing if they'll have enough hours/money to plan for the future.
- Working on a 37 hour contract the employer still doesn't pay sick pay or when I don't work, the 0 hour contract stops any young person being able to get a mortgage. Any contract where you are temping etc. the employer only pays hours worked this is a better system I feel than 0 hours.
- Gives flexibility when needed for additional part time work.
- Zero hours contracts shouldn't exist, it makes it very difficult for people to get the hours they need, one week you could work 35 hours the next could be 0 hours.
- Would you be able to get a mortgage on your home based on a zero hours contract? Would you be comfortable at night knowing that your family are depending on your income based on zero hours, not knowing how much you'd earn from one week to the next?
- Zero hours must make getting a mortgage very difficult.
- I am aware of people on zero hours contracts that use it to their advantage rather than their employer's as they pick and choose when they work and with whom.
- Zero hours Contracts are good for retired people who want to keep working from time to time but not for working age people especially young people starting out.
- They can have their place when organisations and individuals use them for mutually beneficial flexibility. However, when the relationship is unfairly biased to either party they become frustrating.
- Zero hours contracts give employers an unjust advantage in industrial relations.
- I think they are completely unfair to the worker.
- Zero hours contracts can be beneficial for the departments and for workers who do not need to rely on a regular income. However for many, not knowing how many hours will

be available each month makes things such as covering outgoings to obtaining a mortgage very difficult. Claiming for financial assistance from the Government surely increases as people are unable to support themselves and their family on zero hours. I imagine there is an increase of people claiming EPA [SIC Employed Persons Allowance] although there may be a decrease in individuals on JSA [SIC Job Seeker's Allowance]. Perhaps a minimum of something like 10 hours per week could be offered with the zero hours following once these have been worked. This would guarantee 40 hours of paid work per month per individual.

- Working in the PSPA [SIC Public Sector Pensions Authority], we often see that people get left on bank/relief contracts for years, when they haven't done any such work for years - even after they have left the Island. The administration of these contracts needs to be a lot tighter.
- Zero hours are a travesty to the human race and should never be used unless the majority of people completing this survey say otherwise.
- Zero hours contracts are a disgusting work practice that I am hoping the Isle of Man will **never** consider!
- They are disgraceful - a way to avoid workers' rights.
- Whilst there may be some benefits to zero hours contracts, I cannot see how such a contract can be preferable to a permanent contract for the majority of workers. With no guarantee of any work and therefore an irregular income or possibly no income some weeks, how can a worker budget or guarantee that he/she can pay their bills? There is no sick or holiday pay and no pension or redundancy rights. I don't think zero hours contracts can be fair to the employee.
- A lovely way for employers to avoid their tax and NI liabilities. If you can ban them, you should.
- Zero hours Contracts should not be allowed. Protect the best interests of the people that live on this island.
- Employers wishing to use zero hours contract should pay a higher national insurance contribution - cost to employer and not to employee.
- I think zero hours contracts are a bad idea, they have had much negative press in the U.K. I think it is now generally recognised that they are not good for people especially those struggling to make ends meet. With so much negative press about zero hours contracts it baffles me that the IOM government would consider introducing them. Zero hours contracts are so easily used and abused by employers. They offer no security and are difficult to regulate and often it is the more vulnerable groups in society who end up taking such contracts. Zero hours contracts have been proven to cause high stress levels as they offer no job security as an individual has no guarantee of suitable hours and so may not be able to pay their bills some weeks if few or no hours are offered. Zero hours contracts have been used by many large companies in the UK and their practices in many cases have been exposed as being immoral and further disadvantage vulnerable groups. People need to be paid fairly for the work they do and they need job security and they need to know how many hours they will work per week and how much money they will earn, otherwise they cannot plan to pay bills etc. which often leads to payday loans and debt which begins a cycle that is extremely difficult to escape.
- Unfair for the employee, unable to get credit, holidays, sick, mortgage. Totally wrong system.
- I have no problem with zero hours contracts. I don't think it should be all employers but it suits some smaller employers and get people earning.
- As a government employee I think that a president should be set whereby Zero hours contracts are not possible. The reason behind this is it makes it very difficult for employees who claim benefits to move from Income Support/Jobseekers to Employed Person's Allowance. If these did not exist for Government other employers could be



advised/guided not to issue such a thing as well and would prevent people requiring to gain additional information.

- I do not believe that Government should employ any person on a zero hours contract. Government as an employer has a responsibility to treat all employees fairly.
- I do not believe the IOM Government should be using/promoting zero hours contracts within its work force. It does not provide financial stability for the employee for primary employment. Workers taking out mortgages will find them harder to secure. The GUS [SIC Government Unified Scheme] pension scheme will not be sustainable if not funded by employees and employer.
- I think zero contract hours are appalling. No chance for the person to apply for a mortgage, no job security, stress inducing and those employers who use them are doing so from a vastly unlevel [sic] playing field. They need to be outlawed.
- Where possible It would be better to offer contracted employment to people, which means they contribute to the Government unified pension scheme
- If someone is employed on a Zero Hours contract it should not be used to limit or restrict what they do when they are not working. People should be entitled to take up any other work with any other employer.
- My partner has a zero hours contract and it complicated our mortgage process. For some it could restrict or prevent people from buying their own home as mortgage providers will not take account of zero hours contracts as income.
- Having worked in an organisation which offered zero hours contracts to employees, I have seen first-hand the difficulty this has caused for recruitment. An employee on zero hours has no commitment to the work, cannot wait around for the chance of work and has no incentive to work for the organisation. Where I can see the benefit in terms of cost cutting, introduction of zero hours contracts has caused, in my opinion, another set of problems.
- Pushing support staff in education onto a Zero hours contract, will yet again, put doubt into working in the government. Over the years, education especially, has pushed support staff into a number of different contracts, without much or any involvement from them. This has always just been forced upon us. As I'm sure this will be too! Luckily, I renewed my mortgage after a marriage split, but should I have been on a Zero hours contract this probably wouldn't have been agreed! What would happen there? Yet again, the government aren't thinking about the actual person in this hole [sic] debacle. Disappointing.
- I am deeply concerned that they do not provide stability, security and proper career prospects for the employee, and are unlikely to engender loyalty and commitment for IOM Government as the employer. Something to be avoided.
- Some manual and craft workers who do not work for whatever reason in the financial sector rely on their seasonal earnings to keep their families for the whole year and being on zero hours are unsure of what work they will get and have to expend money on fuel for a minimum number of hours. Also they are not entitled to be in the Civil Service Pension Scheme and will not receive a pension which is unfair if this is the only job they are able to get due to their skill set/age etc.
- These are an employment tool that takes advantage if employees with little security and are used to victimise those that would like to raise concerns. If you want to employ people to work, then give them fixed hours to work around, that offers some security and individuals some hope of planning their future, without the threat of not being able to work and no income. You budget for the future, so should everyone working be able to do the same.
- I think it's wrong to expect public servants to work on zero hours contracts, particularly if the individual is obliged to work on any hours specified by the employer, and/or is unable to work in other ways to supplement their income.
- Staff on zero hrs contracts **must** be given same employee rights as those on other

**The table below identifies some of the general comments made by employers**

- We actively encourage staff to take on contracted hours but will agree to zero hours if requested.
- Zero hours Contracts are often far better than LTAs [SIC Limited Term Contracts] so we should retain the option.
- Useful in many sectors.
- If we couldn't issue zero hours contracts we may not be able to continue to operate (domiciliary care).
- In our Homecare business the use of such contracts is generally accepted by both staff and employers.
- We use zero hours for part time bar staff only, this allows them some freedom & saving us money.
- Most of my Zero Hours Contracted staff are students who attend University and return in holidays.
- My industry traditionally has also used this method and will have to continue.
- Essential for a business like mine where there can be no work for many weeks.
- zero hours contracts should never be used. how is an employee supposed to get a mortgage for example?
- Without zero hours contracts 'bank' provision to cover absences/vacancies could not work.
- Hourly contracts to run alongside the zero hours contracts during the height of the season.
- Good for an on call team -doesn't require the use of substantive staff members -can cover AL/sick.
- Zero hours or bank workers are overused and should be replaced with full time equivalents.
- 0 hours workers are a valuable resource covering fluctuations in workload and staff absences.
- Should be used in limited circumstances for temp cover.
- Without seasonal contracts, services would not automatically improve and costs would increase.
- Zero hours offers no loyalty to the company and is very restrictive for both the worker and employer.
- I personally feel that these should not exist.
- zero hours contracts undermine everything that encompasses a fair system of employment.
- Zero hours is ok for someone on a 2nd job or seasonal but not for long term. Unfair practise...
- Limit what the employee can do, (unable to purchase a property, obtain a loan).
- The pension provision has only been in force the last two years - guessed employer forced into it.
- Would be helpful if we were given enough space to write the comments I have!
- Staff who are on zero hours do not hold the same level of core values/ responsibility for their role.
- Important to ensure that such contracts not used as means to reduced workers' entitlements/rights.
- For the organisation it is a cheap way of providing short term staff but not always able to get them.
- It is an important group of workers who allow us to extend the season.

- Currently large amount of zero hours on our books, but not undertaking regular hours.
- Staff were forced to take a zero hr contract to undertake extra hours otherwise none were offered.
- Inability to get mortgage/ loan if on zero hours.
- Workers on zero hours contracts must have the same employee protection as other workers.
- For them to be ruled out as unlawful.
- Stop using them to avoid recruiting in healthcare.
- Majority of my staff have main jobs and we offer secondary employment around their availability.
- All our zero hours/bank staff are retired employees who are willing to cover absences.

## **Appendix 5 – Preliminary Engagement Submissions**

Twenty-two organisations including Isle of Man Government Departments, Boards and Office, all Tynwald Members and a number of Trade Unions were contacted during the preliminary engagement phase and were provided with a letter of engagement and Terms of Reference.

The Committee is grateful to the following for the valuable insight and information provided:

- Member for the House of Keys Douglas East
- Unite the Union
- University and Collage Union – based in the UK
- Isle of Man Chamber of Commerce
- Graih
- Sleepwell Hotels
- Isle of Man Post Office
- Department of Infrastructure
- Department of Health and Social Care
- Department of Home Affairs
- Department for Enterprise – Visit Isle of Man
- Department of Education, Sport and Culture – Villa-Gaiety/Manx Sport and Recreation
- Office of Fair Trading
- Manx Industrial Relations Service

## Appendix 6 – Best Practice<sup>7</sup>

### Appropriate use

Zero hours contracts are useful where work demands are irregular or where there is not a constant demand for staff. Zero hours contracts can also provide a level of flexibility for the individual, which allows them to work around other commitments such as study or childcare.

Some types of work are driven by external factors that are out of the employer's control and this can happen in a range of sectors including, for example, hospitality, leisure and catering. The following are all examples of when a zero hours contract might be appropriate, but it is not an exhaustive list. There are also other employment choices available to employers in these situations.

- **New businesses**

When a new business starts up it might need to build up a customer base to undertake work so, at first, they may need to employ people on zero hours contracts in addition to any permanent staff to manage fluctuating and unpredictable demands.

- **Seasonal work**

Seasonal work can be affected by peaks in demand, where it is known that for short periods of time additional staff are needed to manage surges in demand such as retail sales at Christmas time or providing a cleaning service for example, following a festival or a New Year celebration.

- **Unexpected sickness**

Employers may need to be ready to cover periods of unexpected staff sickness and be able to call on experienced staff, for example, a pharmacist in a chemist or a lifeguard at a leisure centre.

- **Special events**

A wedding venue, restaurant or a bar may need to be able to call on trained and experienced staff when a wedding or function is booked.

- **Testing a service**

A company may be considering testing a new service they are thinking about providing, but need to hire staff on an ad hoc basis before they can make a decision about rolling out the service.

### Inappropriate use

Zero hours contracts allow flexibility for both employers and individuals. However, they should not be considered as an alternative to proper business planning and should not be used as a permanent arrangement if not justifiable.

Zero hours contracts might not be appropriate if the job offered will mean the individual will work regular hours over a continuous period of time. For example, if an individual is asked to work from 9am to 1pm, Monday to Wednesday for a 12 month period, it may be

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<sup>7</sup> Guidance adapted to comply with IOM legislation from: <https://www.gov.uk/government/publications/zero-hours-contracts-guidance-for-employers/zero-hours-contracts-guidance-for-employers>

more appropriate to offer that worker a permanent part time contract or a limited term contract.

Zero hours contracts do not necessarily allow employers to avoid their responsibilities. Dependent upon their employment status all staff, regardless of their contract, are entitled to employment rights under relevant Isle of Man legislation.

Zero hours contracts are rarely appropriate to run the core business, but might be useful for unexpected or irregular events such as bereavement leave by staff, to deliver sufficient customer service during peaks in demand such as in the hospitality and tourism sectors, or when preparing to open a new store for example. Many businesses provide a regular service or product and have a broadly predictable timetable or output in respect of which permanent or limited term contracts may be more appropriate.

Contracts should be clear and transparent so the individual can understand their rights and what the implications of such a contract means to them. When offering a zero hours contract, employers should consider including information such as:

- whether the individual is an employee or worker and what employment rights they are entitled to;
- if the individual is an employee, how statutory employment entitlements will be accrued where appropriate, for example, entitlement to a redundancy payment;
- the process by which work will be offered and assurance that they are not obliged to accept work on every occasion if they so wish;
- how the individual's contract will be brought to an end, for example, at the end of each work task or with notice given by either party; and
- effects on benefits and entitlement to Manx State Pension.

Employers should plan ahead and give as much notice as possible when offering work and not leave it until the last minute to make a call on staff.

Those who work on a zero hours contract may have caring responsibilities or have studies and may need to plan for childcare or around exams. Employers should be transparent about how they offer work, for example, by the use of a rota.

Those who take up work on a zero hours contract are often students, partially retired, or else have caring commitments. Employers should respect the needs of those individuals to arrange care and be flexible in whether they can accept work at short notice or if they cannot arrange suitable care.

Cancelling work at short notice, or when the individual turns up at the place of work, is unacceptable unless truly unavoidable. Employers should consider putting into place a policy explaining the circumstances when and how work might be cancelled, and how they try to avoid this, and whether the individual can expect any suitable recompense for any costs they may have incurred.

When recruiting for a zero hours contract, the job should be clearly advertised as such and the employer should be clear to the individual that hours are not guaranteed, and that work may cease if there is a fall in demand.

Employers should ensure they familiarise themselves with their responsibilities when employing someone on a zero hours contract. Employers must comply with every aspect of the law, especially employment law.