



Northern Ireland
Assembly

Committee for Employment and Learning

OFFICIAL REPORT (Hansard)

Zero-hours Contracts:
Department for Employment and Learning

19 November 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Robin Swann (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr David Hilditch
Mr William Irwin
Ms Anna Lo
Mr Fra McCann
Mr Pat Ramsey
Mr Alastair Ross

Witnesses:

Mr Tom Evans	Department for Employment and Learning
Mr John McKeown	Department for Employment and Learning
Ms Deirdre Walsh	Department for Employment and Learning

The Chairperson (Mr Swann): I welcome Tom Evans, deputy director of strategy in the European employment relations division; Mr John McKeown, head of employment relations policy and legislation branch; and Ms Deirdre Walsh, who is also from the employment relations policy and legislation branch. Tom, you have 10 minutes if you need it.

Mr Tom Evans (Department for Employment and Learning): OK, Chairman, we will be as brief as possible. I will kick off with an overview of the consultation and some of the research, and Deirdre and John will give a summary of the responses. The Department published its consultation on 23 June. It ran for 14 weeks, due to the summer period, and ended on 29 September. We received 35 substantive responses to the consultation, with an additional 325 from a lobby group called 38 degrees, all of which strongly oppose the use of zero-hours contracts.

The consultation sought to establish the potential policy proposals that the Department and the Minister might want to consider regarding whether there is a need for legislation or for some change that did not require legislation. Zero-hours contracts have generated significant commentary, so we are trying to get a better understanding of their use in Northern Ireland. We carried out some research, we met a number of HR experts and we did a telephone survey of employers in Northern Ireland to provide a more accurate baseline quantification of the number of people on zero-hours or no-guaranteed-hours contracts. We held a seminar, which was organised by Legal-Island, to allow businesses and employee representatives to discuss some of the options. That was quite a positive experience.

In general, I will outline the issues that have come out of the consultation so far. We have come to you quite often, Chair, and people are divided on the issue in employment law. There are particular

positions that are taken, but it is interesting that, on this, there was some consensus from a business and employee interest that, with zero-hours contracts, principles of good faith, reasonableness and integrity should underpin any employment relationship. That was something that all stakeholders were very strong in promoting.

The consultation highlighted a number of wider societal issues such as equality and access to benefits. Some ambiguity and confusion on the part of employers and employees in relation to employment status was also stated clearly as an issue. That has probably been an issue in trying to quantify how many zero-hours contracts are in existence. Also, the link between zero hours and low pay, including access to benefits such as working tax credit and child tax credit, was referenced throughout the consultation. Concerns were also expressed as to the equality impacts, particularly in relation to women, young people, ethnic minorities, those from a lower socio-economic background, people who were trying to access the benefit system and people with physical and mental health issues.

The most commonly held view was that there was a need for a clear definition of zero-hours contracts. That was illustrated in the workshops that were held by Legal-Island; we looked to agree a definition. Again, there was a range of views. Some employers at that event referenced their use of casual relief staff and as-and-when contracts, but they did not identify them as zero-hours contracts. So, they did not even see it as that.

I will move to the quantitative research. That has not been a simple matter because, again, many employers and employees have different understandings of what a zero-hours contract means. Earlier this year, the Office for National Statistics (ONS) conducted a survey of employers about the status of contracts that they have with employees. ONS used the term "non-guaranteed-hours contracts" rather than "zero-hours contracts" to assist people in understanding what that meant. The survey estimated that 4% to 5% of employee jobs did not guarantee hours. If you took a simple pro rata estimate for Northern Ireland in the 4% to 5% range, it would give a figure of between 28,000 and 35,000.

In seeking to test the robustness of those estimates, we initiated an employer-based questionnaire survey on non-guaranteed hours through the InterTradeIreland business survey over the summer, with a sample of 500 private sector businesses. The survey, which provides a broad estimate of the proportion of private sector non-guaranteed-hours contracts, seems to be and is likely to be — according to our economist colleagues — influenced by seasonal factors, which suggests that only 1% to 2% of businesses use zero-hours contracts, and that would suggest between 5,000 and 10,000 jobs. We think that is probably an underestimate. It was a snapshot of the position at a point in time and may not be representative of a full year economic cycle. Also, it would appear that this is a lower estimate than the pro rata comparison of the UK figures. We are, therefore, undertaking further work to assess the number of zero-hours contracts, particularly in the public sector. We have not had consistent feedback, but the initial findings suggest that, while zero-hours contracts do not feature much in the Northern Ireland Civil Service Departments, they are used in the wider public sector in arm's-length bodies and health trusts. That is where we are trying to generate further data. I know that the Committee raised the issue about whether those are third-party suppliers before.

We also conducted qualitative research through a range of teleconferences with a number of expert organisations, such as the Work Foundation, the Resolution Foundation and the Chartered Institute of Personnel and Development (CIPD). We found that to be very helpful, because the organisations have conducted their own analysis and research on zero-hours contracts. There was consensus for low-paid workers and those with unpredictable incomes. It is difficult to justify exclusivity clauses in any circumstances.

The Department is planning further analysis with stakeholders using case studies and scenarios to explore the impacts on workers and businesses. We are going to work with the employment service, and we are meeting this week to see whether we can start bottoming out and consider how people may access the benefit system, and we may develop some case studies.

I will now hand over to Deirdre and John to take a quick canter through the responses to some of the questions.

Ms Deirdre Walsh (Department for Employment and Learning): The first policy issue that was considered was the use of exclusivity clauses. The majority of respondents thought that those could never be justified in a contract that did not guarantee hours. Of those who thought that they could, in certain circumstances, be justified, the main reason was that the worker may have access to

commercially sensitive information, although others felt that that vulnerability could be tackled in other ways.

The vast majority of the 31 respondents favoured a ban on exclusivity clauses as they were concerned for the most vulnerable workers and employees who may have few choices as to job offers and may feel unable to object to an exclusivity clause for fear of not being given a job or not being offered further work. Opinion was fairly evenly divided on whether banning zero-hours contracts and/or the use of exclusivity clauses could create negative impacts for SMEs. Eleven of 17 respondents support a restriction on the use of exclusivity clauses in a zero-hours contract, for example, banning its use in employment contracts guaranteeing fewer than a specified minimum number of hours or minimum gross pay. One respondent suggested that the minimum hours should be 35 and the minimum pay should be the living wage. All but one of 18 respondents did not believe that the ban on the use of exclusivity clauses would discourage employers from creating jobs. Indeed, some of the responses suggested that such legislative action may assist in the creation of jobs.

On the issue of guidance and a code of practice, which we consulted on, a majority of the 24 respondents were in favour of focused guidance on the use of exclusivity clauses, but some of them favoured it only if legislation was not going to be taken forward. Similarly, in regard to a code of practice setting out a fair and reasonable use of exclusivity clauses in zero-hours contracts, respondents were only in favour of one in the absence of legislation being introduced.

As you know, we consulted on automatic rights and a right to request, and the consultation explored options for acquiring rights if a worker has worked on a zero-hours contract regularly over a period of time — for example, 12 months — and an automatic right to guaranteed hours or at least a right to request a fixed term after a given period. A majority of the 30 respondents to that question thought that a worker on a zero-hours contract should have an automatic right to guaranteed hours if they have worked on such a contract for a given period. A number made reference to the agency workers regulations, where additional rights, as you know, accrue after a qualifying period of 12 weeks. Ten respondents, however, did not agree that there should be an automatic right to guaranteed hours in those circumstances.

There were 28 responses to the question on the right to request a fixed-term contract, with 14 in favour and 14 against. Some were against the proposal for opposite reasons. For example, some felt it was not a sufficiently powerful instrument to ensure employment rights, and others felt it was a step too far to address issues arising from zero-hours contracts.

We also, as you know, consulted on compensation provisions and annualised hours, and 15 of the 28 respondents were in favour of introducing a compensatory arrangement similar to that adopted in the Republic, with 13 opposed to that proposal. There were 22 responses to the question of whether zero-hours contract workers should be able to move to an annualised contract, with 10 in favour and 10 against.

I will pass you over to John, who will go through the remainder of the questions that were posed.

Mr John McKeown (Department for Employment and Learning): I will quickly run through the last few issues in the consultation: the common law redress; what we heard from employers and employees; and the impact on equality and benefits.

In terms of what we headlined in our paper as, "Common Law Redress", there were 21 respondents to the question on whether retaining the current arrangements is sufficient and whether taking forward legislation would undermine flexibility and individual choice. There was an overwhelming desire — 17 out of 21 — for legislative change, with only four suggesting that the current arrangements, in conjunction with improved guidance, were sufficient to address any issues.

The consultation asked a number of questions of employers and employees. Very few respondents on the employer side confirmed that they use zero-hour contracts. Some employer representatives said that their member organisations used them. Of those who did use them, there was a prevalence in the health, social care and education sectors.

Those who used zero-hours contracts commented on their policy when an individual declines work. That featured in our previous discussions. A number mentioned that arrangements would be reviewed if there were repeated refusals of work. Those who use zero-hours contracts said that the workers did not work regular patterns of work and that there were differing notice periods provided to workers in

relation to their next shift, for example. That ranged from two weeks' to one hour's notice, so you get an idea of the extremes.

No employees directly responded to answer the individual questions. However, some case studies were provided by a number of the respondents, particularly by people from the advisory services sector. Those were provided to illustrate the experience of individuals who are on a zero-hours contract. Most of those describe negative experiences of working under zero-hours contracts. They highlight in particular the uncertainty that is implicit in the working arrangements, the impact of fluctuating hours and the implications for caring responsibilities and for claiming benefits, which we have heard about already. One respondent noted a significant increase in the use of zero-hours contracts, particularly over the last 18 months. That was from the Law Centre.

We asked consultees about the equality impacts of zero-hours contracts and the impact of such contracts on claiming benefits. Twelve respondents out of a total of 23 believed that zero-hours contracts impact negatively on a range of groups. I will list those briefly: young people; women; ethnic minorities; those from a lower socio-economic background; benefit claimants; those with physical and mental health issues and disabilities; families; carers; students; and those with low educational attainment. Most of the respondents there focused on a range of those groups in their individual responses.

Sixteen respondents were clear that zero-hours contracts create difficulties for employees in accessing benefits and in things such as accessing mortgages and credit. Examples of the benefits most likely to present difficulties in this regard included jobseeker's allowance, working tax credit, child tax credit and housing benefit.

Mr Evans: Chair, that is it. We are happy take questions.

The Chairperson (Mr Swann): The consultation responses are pretty consistent in their divide. There is almost a 50:50 split on most of the questions and responses, apart from definition, which seems to be the big problem. What steps can you take to get over that hurdle of "casual", "zero hours" or all the definitions that are there, Tom?

Mr Evans: There are a couple of measures. The ONS will continue with its survey on the basis of "no guaranteed hours", which is probably easier to explain to somebody. "Zero hours" sounds as if you are getting no hours, but actually, it means that you are not guaranteed any. That may be a more helpful definition. We are going to work with our researchers and economists, and we will talk with stakeholders and organisations to try to get a consensus. It is something that the Minister will want to do in his response. He will at least want to articulate what he believes to be a reasonable definition. We will talk to our legal people about that to ensure that the definition is robust in legal terms, so that is one issue that we need to address.

The second issue is in and around exclusivity. People were saying that it either should not be used or should only be used in circumstances where absolutely necessary. Again, we need to take legal advice, because some of those issues were around commercial confidence and confidentiality, and they may already be covered by common law provisions. We need to take legal advice on that.

Those are some of the issues that we are going to have to look at, and, as I said, there is a balance, as some big stakeholders in the trade unions said, "You can't just say 17 said this or 16 said that". We have to look at what those stakeholders mean and what the extent of their influence and coverage is. We need to do a bit more analysis of that.

The Chairperson (Mr Swann): The reason why I wanted clarity is that, as I declared before I came in, I worked in and managed a company that used casual contracts, but I would never have considered them as being zero hours until I started to go through this process. I think that work needs to be done to educate employers and employees on that.

The number of people who this will affect is the crux of the matter to us, and will inform whether we would go through legislation or anything else. Some of the estimates in your paper say that this will affect possibly 28,000 to 35,000 people in Northern Ireland. I think that Phil indicated that the health service in Northern Ireland employs just under 20,000 people on zero-hours contracts, although that is through its arm's-length bodies and not directly. Have you had any engagement with the Health Department to see whether that is robust or how it would respond to that?

Mr Evans: Deirdre may go into the detail of that, but, just to start, there is a range of populations in the health sector such as bank staff, so we need to get a better understanding of it.

Ms Walsh: When we saw the outcome of the statistics that were collected from that employer survey, we looked at the public sector and surveyed Departments. As Tom said earlier, the Northern Ireland Civil Service does not use zero-hours contracts directly, but they do exist in and around health particularly.

The difficulty that you just highlighted is that you do not identify yourself as using zero-hour contracts if you refer to them as "casual" or "as and when", so we know that we need to go back and do a bit more digging, to be honest, to bottom that out and find out just how many there are around the periphery, if you like, of the public sector.

Mr F McCann: Thanks for the presentation. I know that you have been here time and again specifically on this issue. I believe, especially having gone through the responses, that, regardless of whether they are called casual or zero-hours contracts, there needs to be legislation to protect people from difficult employers.

Even when you were going through the different sections of the consultation, there seemed to be employers there who also recognised that the only way that you can protect workers and that employers can, in turn, protect themselves is through some type of legislation that would put that on a level footing with other employment practices. Even, to a degree, with regard to the equality impact assessment (EQIA), there needs to be full compliance with the Equality Commission. A full EQIA needs to be undertaken to determine equality protections for people.

I know that this is probably the time of year when thousands of people will go on short-term, casual or zero-hours contracts. That will drop off after the holidays. It is OK saying that they are getting them only for six or eight weeks, but they need protections when they are there. I think that you read out a list of people who were, by and large, affected or impacted most. The list that you read out are the most vulnerable people in society. That is the group of people we should be going all out to protect to ensure that they are not abused by employers.

I want to just look at some of the other things. I was not surprised, but concerned, that the biggest employers using zero-hour contracts may actually be in health-related employment. They could be for home helps or whatever. Many or most of them are at the low-pay end. I am surprised, because the health service has always prided itself on employment practices and good relationships with trade unions, yet there is a sizeable section of people who are employed at the other end of the health service who have not got the same protections. Is there any way that, when looking at government-run agencies — I think that we need to clean our own house — and tenders are being put out or people are being brought, reference could be made to this to protect them, and by the extension, the health service, with regard to zero-hour contracts, wages, employment rights and the way that they are dealt with by the employer?

Mr Evans: You raise very important issues. I need to issue a caveat here, which is that here is where people have said that there are equality impacts, and we have to look further than that. There is the question of the health service, which is not actually about people who work for central government but maybe for a third-party supplier or whatever. The Minister is very wary of doing anything quickly that may have unintended consequences, because there is an employment-law framework. We are trying to identify areas where there is some consensus, and we have good intelligence that something may need to be done.

I go back to the issue of exclusivity. It seemed that employers were saying that they should be used only in very carefully handled situations and for very justifiable reasons. That is an area that we picked up on where something may need to be done. There are issues about increasing both employers' and employees' understanding of what these mean. There is supply and demand. People go into something without understanding it. Sometimes, that is because, although an employer explains the basis of it, all that they hear is that they have got a job. When they are surveyed, they do not know the basis on which they are employed. There are questions about whether we need to issue better guidance and codes of practice. Even the UK Government have gone out for a second consultation because they have taken measures to ban exclusivity clauses. Now, they have to go out to consultation to see whether there is a series of avoidance measures that could come into place that could circumvent it. The Minister wants to build up the intelligence, and that is why I wanted to come to the Committee today to give our early understanding of what the issues are. We are working very

hard with our statisticians and economists to look at this. Recently, I went to a conference run by the Northern Ireland Council for Voluntary Action (NICVA), where a gentleman from the Work Foundation gave a very enlightening presentation. He put the no-guaranteed-hours arena into its proper context and said that you need to be careful as a government about advocating how much change to make because you may actually have a detrimental impact on positive labour market activities. Obviously, you need to isolate where there are abuses or where workers' or employees' rights are being impinged. At this stage, it is a bit like trying to catch an eel because it is not defined in law, and the Minister has not come to a decision on whether it should be defined in law or whether the existing framework provides for it.

Mr F McCann: I understand what you are saying, but bad practices are wrong practices. If there is not a good record of employers policing themselves, we need to legislate to ensure that that protection will be upheld. We can debate and argue the point, but I think that the important thing in all of this is what the next step is. It is quite surprising how wide the consultation was: the sort of groups covered; information on people who fall into the category of abuse; whether the sectors that dealt with them had taken this on board; and the number of young people spoken to. I was interested to read a couple of testimonies, because I think that that opens our eyes to some of the abuses out there. What are the next steps?

Mr Evans: First, the Minister was keen that we came to the Committee and gave it an early understanding. Secondly, we need to develop better intelligence. Thirdly, the Minister will want to take a view on whether there are any immediate actions that he can take. He has not done that, and he wanted us to come here before that. On the basis of that, I think that the Minister will come back himself or will ask us to come back. The Minister was here some time ago looking at a plan, and his intention is that, if things that need to happen require primary legislation, those will come in as amendments to an employment Bill that he plans to introduce in the spring of next year. So, I think that one of the issues on which the Minister will take a view is that of whether there is a need to do something on exclusivity.

Mr Ramsey: I have to say that this is good work by the Department. You are painstakingly and very patiently going through all the elements before coming to the ultimate decision on regulation or legislation. Earlier, the Chair made the important point that information, advice and guidance are crucial, not just for the employee but for the employer. I like the language that Deirdre was using earlier, when she said, for example, that "digging deeper is important. We know that almost 40% of young people are on zero-hours contracts, many of them meaningless or with very few paid hours. Would it be useful to do a bit of research with those young people? There are groups across Northern Ireland through which you could get easy access to their opinions and views, and that might leave you in a better place when preparing to regulate. What are your thoughts on that, Tom?

Mr Evans: To be quite honest, it is not unhelpful that the Committee makes suggestions because it gives us quite a lot of leverage to do extra work. As the Department responsible for NEETs and a whole range of other things, we have a network of organisations through which we can access young people and take their views. We are happy to look at that.

Ms Walsh: We received responses representing young people from Include Youth, for example, and the University and College Union (UCU). That gave us an idea of how young people view this type of contract.

Mr Ramsey: Going forward, we want to make sure that it is fair and that there is no abuse. Nobody is complaining about their use, but we all have experience of people coming to us, whose employers abuse the contracts and take advantage. You mentioned a range of people: young people; women; single parents; people on benefits; and those who are disabled. There are quite a lot of vulnerable people who could be easily taken advantage of by being employed on a zero-hours contract. It might be good to talk to Mencap or other organisations, such as Disability Action, who lead and champion for these groups. I declare an interest as chair of the all-party group on disability. It might be an idea to come in to see us. Perhaps we could also arrange a stakeholder event to get people's thoughts.

Mr Ross: I was going to ask, mainly, about what the next steps will be. I imagine that we will not see anything from the Minister. Traditionally, particularly controversial things have not been put forward with recommendations, particularly in employment law. That said, the approach taken is right: we need more evidence. Today, I have picked up on the fact that certain groups are particularly affected. It is also fair to say that those groups find it more difficult to get into the labour market in any

circumstances, so the ability to offer them something to get them into the labour market could be a good thing.

There is an assumption that every person on a zero-hours contract wants regulation or tighter legislation and is opposed to such contracts. However, having spoken to people, I know that they can be beneficial as well. The flexibility can be important to the employer and the employee.

It is important that we dig deeper and get more evidence, because I do not think that the evidence is quite there yet. The only evidence that we have is that only a very small percentage of the labour market is involved in zero-hours contracts. In the first instance, we need to know how many of those are opposed to them, because I do not think it is as clear-cut as some suggest. It is also important that we get more information on the importance of a flexible labour market for big and small companies. I read that a lot of the bigger companies use these contracts and that there is concern about that. However, big companies that win a large contract will have to bring people in for a short time. It is good for companies to have these people on the books because they know that they are trained and will turn up to work on time. That is important, as it is for many small companies as well. Previously, I used the example of catering companies that do not know how much work they will have from week to week. It is hugely important to such companies to have people whom they can pull in at short notice. If we were to move to introduce legislation too quickly, we could hurt some of them.

I think that there is more consensus on the exclusivity issue, because it removes flexibility for the individual on the contract. If anything, I would encourage the Minister to move more quickly on that and, at the same time, to look at more evidence in other areas. I think that you might find a bit more consensus on the Committee and in the Chamber on that issue than on anything else. I have no specific questions. I was interested to know what the next steps will be, but you answered that in response to Fra's question.

Ms Lo: I am new to the Committee. Will you explain the exclusivity clause? What examples can you give me?

Ms Walsh: Typically, an exclusivity clause prevents an employee working anywhere else, even though he or she has no guarantee of hours from that employer.

Ms Lo: That is pretty strict.

Ms Walsh: People do not know what hours they will be working but cannot go elsewhere to find a job. Chartered Institute of Personnel and Development (CIPD) research suggests that only about 9% of zero-hours contracts include exclusivity clauses. So, it appears that only a fairly small proportion have them.

Ms Lo: It puts up even more barriers to casual workers, if they cannot work in other restaurants or shops, for instance. I think that the term "zero-hours contract" has a very negative tone. We know that there are always casual workers. As you said, it depends on supply and demand, and there needs to be flexibility. However, I certainly agree that, if there are bad practices, with young people, women, ethnic minorities or people with low qualifications being exploited, they need to be dealt with. I feel that there have always been, as and when needed, casual workers in many industries in many countries.

Mr Evans: Legislation on its own can be quite a crude measure, and the issue of accessing benefits affects some of the groups that consultees said were potentially adversely impacted on an equality basis. John, Deirdre and I are meeting our Employment Service colleagues on Friday, not to change the benefit rules but to see whether we can at least look at the situation. John, do you want to say a wee bit more about that?

Mr McKeown: We are looking at two elements. First, many respondents, particularly the advisory groups that gave us some case studies, clearly demonstrated how difficult it is when you are not sure how many hours you will be working next week or the week after and the impact of that on your ability to claim benefit. One respondent — I cannot remember which — clearly mirrored the flexibility of zero-hours contract holders with the inflexibility of the benefit system, so there is that kind of clash.

Secondly, on exclusivity, if someone is told that they cannot work for other employers and turns down other work, that can make them fall foul of the benefits system: for example, if they refuse work when claiming jobseeker's allowance.

Those two messages came through clearly. As Tom said, we are beginning that discussion with our Employment Service colleagues, and that will lead to discussion with our social security colleagues in the Department for Social Development (DSD).

Mr Evans: The other point that I was going to make is on providing people with information about their rights. The current legal redress system — the tribunal system — is available. If people do not honour a contract, that system should be available. Of course, you do not want people to have to go there, but they should know that they have it as an option should they believe that their contractual rights have been, in some way, adversely impacted. It is important that we start providing better information on people's rights under a variety of contracts.

Mr F McCann: At present, quite a number of people who start a job go through DEL's jobs and benefits offices. Even with the lack of rights that there probably is at present, is there a possibility that a note or a piece of paper could be provided, advising people starting on zero-hours contracts of what they should expect and what questions they should ask so that they are not exploited?

Another question raised in the consultation was that of compensation for people told to come in to work, only to be told when they arrive that they are not required. They may have paid a few pounds for taxis or other transport and do not get the day's wages that they expected.

People may be expected to work for 21 days in a row and for 10, 12 or 13 hours a day. We need to look urgently at the impact on their mental and/or general health.

Mr Evans: OK.

The Chairperson (Mr Swann): Tom, thank you very much.