

Public Consultation Zero-hours Contracts Northern Ireland Council for Voluntary Action Response

1. NICVA (Northern Ireland Council for Voluntary Action) is the umbrella body for the voluntary and community sector in Northern Ireland. It provides over 1,000 members with information, advice, training and support services on a wide range of issues, together with representation for the sector as a whole.
2. NICVA's response to this consultation has been informed by engagement with Voluntary and Community organisations in Northern Ireland.¹

Current arrangements

3. There are circumstances in which Zero-hours contracts (ZHC) can suit the needs of both employees and employers. **NICVA does not therefore favour an outright ban. However, strong regulation is required where abuse and bad practice does exist with the use of zero-hours contracts.**
4. ZHCs can represent an abuse of the employer's power, and are often not the preferred choice of contract for the employee. Specific problems include:²
 - Workers not being given the option to turn down an offer of work by employers, either through contract or in practice, though legally entitled to.
 - Employers penalising workers who do turn down work by withdrawing future offers of work.
 - Zero-hours contracts being used to designate an employment status of "worker" instead of "employee", with less accruing rights.³
 - Jobs being advertised as full-time but where a zero-hours contract is instead offered to the successful candidate.
 - A lack of clarity around zero-hours workers entitlement to annual leave and pay for work-related travel, which is absent in many cases.
 - A lack of clarity around accessing benefits when hours worked may vary from week to week, in particular jobseekers allowance and tax credits.
 - Difficulties in managing household budgets when work cannot be guaranteed.
5. In this context **reform of the current arrangements is necessary.**

¹ We would like to thank those who participated in NICVA's consultation seminar on 19 September 2014.

² Evidence of these problems is given in: Resolution Foundation (2013) *A Matter of Time: The rise of zero-hours contracts*, Citizens Advice Bureau Scotland (2014) *Working at the edge: zero-hour contracts*, and CIPD (2013) *Zero-hours Contracts: Myth and reality*. CAB NI has also provided local case study examples to NICVA.

³ Acas advises that most zero-hours contract relationships will be that of "worker" rather than "employee". Workers are not entitled to the full suite of employment rights, such as statutory notice. <http://www.acas.org.uk/zerohours>. Work Foundation (2013) *Flexibility or Insecurity? Exploring the rise in zero-hours contracts*, p 7 explores this issue in more detail.

Exclusivity clauses

6. Exclusivity clauses, which prevent ZHC employees from working with other firms, can only be justified in order to prevent commercially sensitive information being shared with competing firms. However, as non-disclosure agreements already cover this matter, exclusivity clauses are unnecessary. They are also harmful in that they restrict the options for ZHC workers to seek work elsewhere to ensure they have access to an income in periods when no offers of work are forthcoming.
7. Aside from genuine cases affecting the disclosure of confidential business information (which can otherwise be addressed by non-disclosure agreements), the only employers that would be discouraged through the restriction of exclusivity clauses would be those that had been abusing the clauses in order to have unhindered access to workers while making no guarantee of any actual work.
8. **Exclusivity clauses should therefore be prohibited in zero-hours contracts.**

Right to guaranteed or annualised hours

9. ZHCs should not be used to undermine the rights of regular workers. If an employee works a regular pattern of hours over a significant period of time, this would suggest that a ZHC is being used inappropriately. **Such employees should have the right to move to a guaranteed or an annualised hours contract.**
10. For example, if an employee has worked an *average* of 16 hours a week or more in *any* 8 month period (35 weeks), the worker could automatically be offered either: a guaranteed hours contract of at least 16 hours a week; or an annualised hours contract of the same equivalent i.e. 832 hours per year.
11. Given that the purpose is to prevent abuse by employers, **these contracts should be automatically offered to employees, rather than operating on a voluntary 'right to request' basis.**
12. Employers may attempt to offer work below the level which would trigger an guaranteed contract. To avoid such a situation, all part-time contracts under 16 hours a week could fall under this requirement. Alternatively, a time-bound requirement (i.e. if a worker has been on a zero-hours contract for more than 12 months) would address this issue.

Compensatory and retainer payments

13. Provided that employees are not prohibited from working with other employers **there is no need to provide a minimum or "retainer" payment to cover zero-hours contract workers for weeks in which no offers of work are made.** This would undermine the role of ZHCs in providing flexibility for employers and employees, and provision of a retainer may result in the creation of fewer jobs.
14. **A compensatory payment should be made however, where the employer notifies an employee in advance to be available for a certain number of hours work and then cancels or withdraws the offer within 24 hours of the start of the shift.** Such a payment could be based upon the employee's usual hourly rate and 50% of the number of hours withdrawn.
15. Compensation is reasonable as employees are likely to have rejected other offers of work, cancelled plans in order to make themselves available, or made arrangements (such as childcare and travel) to be available for the work.

Guidance and transparency

16. Improving guidance and transparency will improve the situation for many zero-hours workers. However, it will give little help to those in employer relationships where the abuse of employment rights is present. For this reason, better guidance and transparency should accompany, not replace, serious reform of zero-hours contracts.
17. Many workers are unaware that they are on a ZHC and what rights they do and not have under such a contract.⁴ Before agreeing a contract, workers should be made fully aware that they may not be given any hours in a particular week and that they are not obliged to accept any work offered.
18. **Social security applicants should not have to enter into a ZHC in order to be eligible for jobseekers allowance**, given that there is no actual guarantee of any hours of work from one week to the next.
19. A firmer legal definition of what constitutes a ZHC would help clarify the rights and responsibilities of employers and employees.

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⁴ For instance, in explaining the sudden rise in the recorded number of self-reporting ZHC workers between the 2012 and 2013 Labour Force Surveys, the ONS surmises that “*some of this increase is likely to be due to the increased awareness of zero-hours contracts following the coverage in the media.*” ONS (2014) *Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours*.