

Question and Answer Booklet: Public Consultation on Zero Hours Contracts

Your details

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If you are responding on behalf of an organisation

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There follows a summary of each of the questions asked in the consultation document along with fields for you to provide responses. You should make yourself aware of the content of Chapter 5 of the consultation document prior to making your submission.

General Questions

Question 1 Are there circumstances when it is justifiable to include an exclusivity clause in a zero hours contract? If so, please state what these are.

Answer 1 No. Exclusivity clauses are not justifiable under any circumstances and can have no apparent benefit to the worker who is restricted to working exclusively to one 'employer'.

Question 2 Do you think that exclusivity contracts should be banned from zero hours contracts? Please state your reasons.

Answer 2 Yes. Following the Department of Business, Information and Skills' ZHC consultation in England it has decided to ban exclusivity clauses: Earlier this year BIS announced: "We are banning the use of exclusivity in zero hours contracts and committing to increase the availability of information for employees on these contracts. We will also work with unions and business to develop a best practice code of conduct aimed at employers who wish to use zero hours contracts as part of their workforce". Clearly BIS concluded from its consultation that exclusivity clauses are not acceptable practice for England. They should also be banned in NI. Exclusivity clauses are the worst example of bad employment practice.

Question 3 Would banning zero hours contracts or exclusivity clauses create any negative impacts for SMEs?

Answer 3 No, in fact such a move would be beneficial for SMEs who would be required under law to sharpen up and fine tune their employment practices. If SMEs view the changes to ZHCs – in particular the banning of exclusivity clauses - as a positive, it would potentially improve operational procedures and practices. The employer would still be able to get the work done in the hours required

Question 4 Would you support a restriction on the use of exclusivity clauses in a zero hours contract? For example, banning the use of exclusivity clauses in employment contracts guaranteeing less than a minimum number of hours or a minimum gross pay? If so, could you please suggest what you consider the minimum hours, or minimum gross pay might be set at?

Answer 4 No. This could potentially result in confusion, blurred boundaries and possible 'loop holes' Exclusivity clauses should be banned in Northern Ireland to provide equity with workers in England, and to provide consistency for employers.

Question 5 Do you think a ban or restriction on the use of exclusivity clauses in employment contracts would discourage employers from creating jobs? Are there any other unintended consequences of such action that should also be considered?

Answer 5

No. There can be no obvious reason why banning or even restricting the use of exclusivity clauses in employment contracts would discourage employers to create jobs. Expecting workers on ZHCs to not be permitted to undertake any additional paid work elsewhere, without being able to guarantee set weekly hours, is grossly unfair. In fact, the ACAS view is that exclusivity clauses are damaging for both employers and workers.

Question 6

Do you think the Department should provide more focused guidance on the use of exclusivity clauses, for example setting out commonly accepted circumstances when they are justified and how to ensure both parties are clear on what the clause means? If you answer yes, what information should be included?

Answer 6

No. If the Westminster government views Exclusivity Clauses as extremely bad employment practice and is banning their use, we fail to see how the NI Assembly could endorse exceptions and justifications for Exclusivity Clauses.

Question 7

Would a Code of Practice setting out fair and reasonable use of exclusivity clauses in zero hours contracts (a) help guide employers in their use, and (b) help individuals understand and challenge unfair practices? Please explain your response.

Answer 7

No. Exclusivity Clauses – whatever way they are ‘dressed up’ or excused, should be banned in Northern Ireland as elsewhere as bad business practice and unfair employment practice. They are extremely bad for employment relations. They are draconian and should have no place in this economy.

Question 8

Do you think that a worker on a zero hours contract should have an automatic right to guaranteed hours if they have worked a regular pattern and number of hours on a zero hours or non-guaranteed hours contract for a given period (e.g. 12 months)? If so, could you suggest how many hours and how long an employee should have worked in order to trigger the automatic right?

Answer 8

Yes. UCU is opposed to casualised contracts in general as they do not provide any security. Individuals on ZHCs are ‘workers’ and not ‘employees’ and so are not covered by employment law. By introducing an automatic right to guaranteed hours after a given period – e.g. 12 months – would give the worker some semblance of security in terms of a guaranteed income.

Question 9

Do you think that a worker on a zero hours contract should have an automatic right to request a fixed term contract if they have worked a regular pattern and number of hours on a zero hours or non-guaranteed hours contract for a given period (e.g. 12 months)? If so, could you suggest how many hours and how long an employee should have worked in order to trigger the right to request?

Answer 9

UCU is opposed to the use of ZHCs in education. By answering this question in the affirmative we would by default be giving our approval to this employment system. UCU is concerned about the creeping use of “Contracts for Services” in higher education. Effectively, “Contracts for Services” are effectively zero hours contracts by another name. (see Q30)

Question 10

Do you think that there would be benefit in introducing a compensatory arrangement similar to that adopted in the Republic of Ireland which would guarantee a minimum payment for workers on zero hours contracts who had an expectation of work, but who were not called to work in a given week? If so, could you suggest 1) what the minimum payment might be based upon; and 2) in what circumstances such a payment might be triggered?

Answer 10

As above.

Question 11

Should a worker on zero hours contracts have the option to move to an annualised hours contract?

Answer 11

Yes, if and when this is an appropriate option. Irregular and erratic periods of work make it difficult for the individual to understand and to claim benefits and entitlements. In education, teaching staff affected know that they will be without income throughout the holiday periods, without knowing when or if they will be allocated work in the new academic year.

Question 12

We welcome views on whether retaining the current arrangements (or doing nothing) is sufficient and whether taking forward legislation as set out above would undermine business flexibility and individual choice.

Answer 12

No – retaining the current arrangements (or doing nothing) is simply not sufficient. UCU is – and has been for some time now – seriously concerned about the ‘creeping casualisation’ in further and higher education here. Although higher education institutions are saying they do not employ academic staff on zero hours contracts, they do use ZHCs for admin and support staff. The use of “Contracts for Services” – casualised arrangements for teaching assistants, research assistant and other academic related functions in higher education - is not acceptable practice. It undermines the worker status, provides no guarantee of hours, and precarious employment terms and conditions. The UCU Branch at Queen’s has made a Freedom of Information request regarding the use of “Contracts for Services” at the university, and will be raising this further with the Committee for Employment and Learning, and DEL.

Further and higher education institutions are not businesses – and so should not behave as such in terms of employment practice. In education, ZHCs affect the institution’s ability to attract and retain high quality staff. It reduces the continuity and quality of services provided.

Question 13

If you have sought employment information, advice, or guidance on zero hours contracts before, (a) where did you receive it from, (b) how helpful was it to you in terms of explaining your position in regard to zero hours contracts, and (c) how could it have been improved?

Answer 13

n/a

Question 14

Do you think that model clauses for zero hours contracts would assist employers in drawing up zero hours contracts, and support employers and individuals to better understand their employment rights and obligations? If you answer yes, what should the key considerations be in producing model clauses?

Answer 14

UCU is opposed to the use of Zero Hours Contracts, and so by endorsing 'model clauses' we would be endorsing such a system which is exploitative and leaves the worker without any meaningful terms and conditions.

Question 15

Do you think that existing employment law, combined with greater transparency over the terms of zero hours contracts, is the best way of ensuring individuals on zero hours contracts are making informed choices about the right contract for them to be on?

Answer 15

No.

Question 16

Do you think there is more employers can do to inform individuals on zero hours contracts what their rights and terms are?

Answer 16

Yes.

Questions for Employers

Question 17	If you are an employer, do you use zero hours contracts in your business and if so, for what purpose?
Answer 17	n/a
Question 18	Have you offered a job on a zero hours contract basis that includes an exclusivity clause? If so, for what reason?
Answer 18	n/a
Question 19	What is your policy when an individual declines hours of work you offer?
Answer 19	n/a
Question 20	Do you employ any individuals on a zero hours contract who work a pattern of regular hours? If so, how many hours a week and for what period of time?
Answer 20	n/a
Question 21	If you offer additional hours of work, how much notice do you give the individual? If so, how do you make the offer e.g. by telephone?
Answer 21	n/a

Questions for Employees/Workers

Question 22	If you are a worker, have you accepted a job on a zero hours contract basis that has included an exclusivity clause? What was the job and what reason was given for including an exclusivity clause?
Answer 22	n/a
Question 23	If you are employed on a zero hours contract, do you have more than one employer or contract
Answer 23	n/a
Question 24	Has being employed on a zero hours contract helped you to achieve a good balance between your work life and home life? Was this a factor in accepting a job on this basis?
Answer 24	n/a
Question 25	Do you have a choice or say in how many hours or when you will work?
Answer 25	n/a
Question 26	If you work a regular pattern of hours under a zero hours contract, how much notice do you receive if the number of hours decrease or drop off to zero, or increase?
Answer 26	n/a
Question 27	If you have ever declined any hours of work offered to you, did your employer subsequently stop offering you work, or reduce the number of hours offered?
Answer 27	n/a
Question 28	Would you wish to remain on a zero hours contract if a job with guaranteed hours was offered to you?
Answer 28	n/a

Additional Questions to Address the Issues

Question 29

Are there any issues which you consider that the Department has not addressed in this document, and which would merit further discussion? Please provide detail.

Yes. This document is largely geared at and written with private sector employers as the main focus. UCU would wish to raise issues not address in this document that would merit further discussion. UCU is concerned about creeping casualisation and use of ZHCs in further and higher education with respect to administrative and support staff. In terms of academic and research staff, many are employed on fixed term contracts, with a significant proportion of lecturers in FE and HE are employed on casual contracts. UCU is particularly concerned about the use of so-called "Contracts for Services". A UCU 2013 report looked at the prevalence of ZHCs and other casual contracts in FE and HE. Freedom of Information requests were sent to 162 higher education institutions and 275 further education colleges. Of the institutions that responded to the FoI requests, 61% of FE colleges in England, Wales and Northern Ireland said they had teaching staff on ZHCs along with 53% of UK universities. Among universi researchers, two thirds were on temporary contracts. Despite the large number of colleges and universities using ZHCs, only a handful of institutions have formal policies on them.

Answer 29

Although higher education institutions in Northern Ireland are currently saying that they don't use ZHCs for academic / teaching staff, the UCU 2013 report found that 75 (52.8%) of HE institutions responding stated that they did use ZHCs for teaching, research and/or academic related staff. Given this picture, UCU in Northern Ireland would wish to flag up concerns that the use of ZHCs will spread into HEIs here (in particular, as mentioned above, the use of these "Contracts for Services" which are a serious cause for concern).

Of the universities that reported they use ZHCs, five stated that they had more than 1,000 people on zero hours contracts. Nearly half had more than 200 staff on ZHCs and the rest (46%) had more than 200 staff on ZHCs. Just one in four (24%) said all staff on ZHCs currently had work.

The report showed a dismal outlook for further education in respect of ZHCs. Of the 275 FE colleges that responded, 121 (60%) said they do use ZHCs, and 40% do not.

Question 30

Are there any other possible policy options which should be considered to address issues relating to zero hours contracts? If so, please state what these are.

Answer 30

It is difficult to avoid the view that casual and zero hours contracts are exploitative and the flexibility that employers often hide behind as a one way street. UCU does not believe that they are compatible with developing a professional workforce, able to deliver quality services. UCU does not believe it is appropriate to deliver teaching, academic or related services in the HE or FE sectors. UCU would like to work with all employers to maximise security of employment and to discuss the limited occasions where there is a genuine requirement for flexibility. ZHCs should not be used in further or higher education. Hourly paid and other staff on casualised contracts should be transferred to full time or fractional contracts with the same terms and conditions as permanent, full time and salaried staff. UCU would be deeply concerned about the potential for creeping casualisation and use of ZHCs in further and higher education.

UCU does not accept that it is appropriate for the core business of universities and colleges to be delivered by staff who have no guarantee of income for employment stability. UCU applauds those institutions who have improved job security for staff by deciding not to use ZHCs, and will continue to campaign against the use of ZHCs in education. Casual contracts in education diminish both the student experience and the value of academic teaching. They do not support staff development activity or account for the preparation time required for high quality teaching.

Universities and colleges receive millions of pounds of public money and money from students, yet can adopt working practices which leave some staff unable to get a mortgage or plan a family. UCU wants to see a move away from exploitative contracts – and is firmly opposed to the use of ZHCs in further and higher education. In particular, UCU wants to ensure that the highly exploitative use of “exclusivity clauses” are banned in Northern Ireland as they have been in England.

Finally, it is imperative that UCU brings to your attention the use of “Contracts for Services” in higher education here which are effectively ZHCs in all but name. “Contracts for Services” are used by QUB. Under “Contracts for Services”, highly qualified staff and researchers are afforded “worker status” and have no guarantee of hours. They appear to be routinely used in respect of teaching and research assistants. By using the term “Contracts for Services”, this unsatisfactory practice is taken out of the scope of this review. Those given working hours under the “Contracts for Services” procedure means that these people are not entitled to basic employment rights such as maternity leave, sick leave, holiday entitlement and are prevented from access to the USS (Universities Superannuation Scheme). Queen’s University – by stating that it does not use ZHC for research or teaching staff – can avoid criticism and exposure in respect of this review – however UCU fails to see how the use of these questionable “Contracts for Services” are effectively any different from zero hours contracts? UCU would request that the Department investigates the use of “Contracts for Services” in higher education as part of this review of ZHCs, to ensure the review adequately reflects the reality of the situation in HE institutions.

Question 31

Do zero hours contracts or any of the options explored through this consultation create any negative equality impacts?

Answer 31

Yes.

Question 32

Do zero hours contracts create any difficulties for employees in accessing benefit entitlements?

Answer 32

Yes. An already difficult and cumbersome process is exacerbated for those on ZHCs, trying to circumnavigate a confusing system means many miss out on accessing benefits to which they are entitled. It also prevents people from applying for mortgages, and puts families in precarious and insecure financial positions.