Zero-hours contracts

This note discusses zero-hours contracts: a type of contract used by employers whereby workers have no guaranteed hours and agree to be potentially available for work. They are used increasingly by companies seeking labour flexibility and by workers seeking flexibility around their other commitments.

Opinion on zero-hours contracts has been mixed. Employee organisations tend to argue that the contracts result in financial insecurity for workers who lack key employment rights; employer organisations stress their utility when seeking to meet fluctuating demand and argue that they play a vital role in keeping people in employment.

Both the Government and the Opposition have proposed measures to address concerns about the use of zero-hours contracts. Notably, the Government’s Small Business, Enterprise and Employment Bill, currently being considered by Parliament, proposes to prohibit the use of “exclusivity clauses” in zero-hours contracts (a contractual requirement for the worker to work exclusively for one employer irrespective of the hours offered).
1 Introduction

The expression "zero-hours contract" is a colloquial term for a contract of service under which the worker is not guaranteed work and is paid only for work carried out. It generally leads to “a form of working where the worker is not guaranteed any work but has to be available as and when the employer needs them”. The Advisory, Conciliation and Arbitration Service has discussed zero-hours contracts in the following terms:

Increasingly, many companies in the retail and hospitality industries are taking on staff on ‘zero-hours’ contracts - that is, where people agree to be available for work as and when required, but have no guaranteed hours or times of work. Zero-hours contracts effectively provide employers with a pool of people who are ‘on-call’ and can be used when the need arises.

Generally, as an employer, you are not obliged to offer work to workers on zero-hours contracts - but nor are they obliged to accept any work you offer. It's important to be aware of the provisions of the National Minimum Wage Regulations, which state that workers on 'stand-by time', 'on-call time' and 'downtime' must still be paid the National Minimum Wage if they are at their place of work and required to be there. Similarly, such time is likely to count as 'working time' under the Working Time Regulations if the worker is required to be on-call at the place of work. This means that it's against the law to ask employees to 'clock off' during quiet periods but still remain on the premises.

Zero-hours contracts may suit some people who want occasional earnings and are able to be entirely flexible about when they work. However, the unpredictable nature of working times means that they won't be for everyone.

The perceived increase in zero-hours contracts has prompted expressions of concern both inside and outside of Parliament, although many support their use. The following summarises recent data about the prevalence of zero-hours contracts, the legal issues that surround them, the Department for Business, Innovation and Skills’ review of their use and debate on the subject.

2 The prevalence of zero-hours contracts

2.1 Number of people employed

The Office for National Statistics (ONS) estimates there were around 1.8 million zero-hours contracts that provided work in August 2014, based on a survey of businesses. ONS uses the more precise definition of “employee contracts that do not guarantee a minimum number of hours”.

This estimate excludes contracts with no guaranteed hours which did not provide work in the fortnight covered by the survey. These contracts (of which ONS estimates there were around a 1.4 million) are harder to analyse, as they may include people who have several contracts with different employers, people who remain on an employer’s records despite having changed job, people who are sick or on leave or who do not want to work, as well as employees who would have liked to work but were not offered any hours.

Following the January 2014 survey, the ONS carried out some follow-up work with some of these businesses to find out more information on these contracts. The work proved

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1 “Close to the core: zero hours working surveyed”, Flexible Working, January 1997
2 The rise of the ‘zero-hours’ contract, Acas website (accessed 16 January 2013)
3 ONS, Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours, 25 February 2015
inconclusive, but it indicated that “for most of these contracts the reason that work was not offered was due to employees not accepting work or employers not having suitable work available”.  

Estimates from the Labour Force Survey

ONS also collects statistics on zero-hours contracts as part of the Labour Force Survey (LFS), which asks workers (rather than employers) about their employment arrangements. Estimates for the fourth quarter of 2014 suggested 697,000 people were on zero-hours contracts.

The LFS estimate is based on information collected from individual survey respondents. However, some individuals may be unaware of their contractual arrangements or may not recognise the term ‘zero-hours contract’, in which case they will be excluded from the figures - this explains part of the difference with the official estimate based on the survey of businesses (see above). Unlike the business survey, the LFS also counts people rather than contracts (one person may have contracts with several different employers). ONS provides further explanation as to why the two estimates differ:

i. employers and employees will have differing perceptions and awareness about the types of employment contracts used;
ii. the employer survey will count employee contracts, not people, and will provide higher estimates (as one person can have more than one contract);
iii. employers in the business survey may report multiple contracts for each job;
iv. the questions asked of respondents differed slightly, with the business survey asking about contracts not guaranteeing any hours, while the LFS question uses the term “zero-hours contracts”;
v. the LFS includes all people in employment (including the self-employed) while the business survey only includes employees.

The LFS series showed a big increase in the number of people on zero-hours contracts in 2014, up from 250,000 in Q4 2012. This is likely to be due at least in part to increased awareness of zero-hours contracts arising from media coverage during 2013 and 2014 (meaning more survey respondents are likely to have correctly identified themselves as on this type of contract).

Estimates from other sources

A survey of employers by the Chartered Institute of Personnel and Development (CIPD) suggested that just over one million people in the UK were on zero-hours contracts in 2013.

A government survey of businesses, the Workplace Employment Relations Survey, estimated that the proportion of workplaces with some employees on zero-hours contracts increased from 4% in 2004 to 8% in 2011.

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4 Ibid, p7
5 ONS, Zero Hours Analysis, ad hoc analysis, 19 February 2014
6 ONS revised previously published estimates of numbers of people on zero-hours contracts in July 2013, following technical adjustments to the data. The statistics now show a higher number of people on zero-hours contracts. Further details of the revisions are published in an ONS briefing note, Estimating zero hour contracts from the Labour Force Survey.
7 ONS, Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours, 30 April 2014
8 There was also a change to the LFS questionnaire between 2012 and 2013 but ONS reports “this has not had a significant impact on the 583,000 estimate. The impact is likely to be less than 30,000.”
9 CIPD, Zero-hours contracts - Myth and reality, November 2013
2.2 Prevalence by business size and sector

Around 11% of employers had at least some employees on zero-hours contracts at August, as estimated from the ONS business survey, but they were more common among larger employers. 50% of employers with at least 250 employees made some use of zero-hours contracts compared with 10% of employers with fewer than 20 employees.\(^{11}\)

Zero-hours contracts were most commonly used among employers in the accommodation and food services sector, where 53% of employers made at least some use of them. Over a quarter of employees on zero-hours contracts worked in education (27%); whilst 19% worked in health and social work; 16% in admin and support services; and 12% in the public administration sector.\(^{12}\)

Results from the Workplace Employment Relations Survey also showed zero-hours contracts to be more prevalent in larger workplaces and that they were most likely to be used in workplaces in the hotels and restaurants sector (i.e. accommodation and food services), followed by the health and education sectors.\(^{13}\)

CIPD research found the proportion of employers using zero-hours contracts to be particularly high in the education (38%) and healthcare (29%) sectors.\(^{14}\) The difference between the CIPD findings and the ONS business survey may partly be explained by differences in the organisations surveyed; ONS explains that large employers were over-represented in the CIPD’s survey sample:

Nearly two thirds of the organisations in the CIPD sample had employment of 250 or more compared with a third of the ONS sample. Information from the ONS survey indicates that larger companies (250 or more employees) are more likely to use NGHCs, with nearly half using them compared with one in eight of smaller businesses.

\(^{10}\) BIS, *The 2011 Workplace Employment Relations Study (WERS)*, Jan 2013. The survey was previously conducted in 2004.

\(^{11}\) ONS, *Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours*, 25 Feb 2015, p5

\(^{12}\) Ibid, p6

\(^{13}\) BIS, *The 2011 Workplace Employment Relations Study (WERS)*, Jan 2013

\(^{14}\) CIPD, *Zero-hours contracts - Myth and reality*, November 2013, p11
However, when they do use them, smaller businesses have a larger proportion of their workforce on NGHCs compared to larger businesses.\textsuperscript{15}

Articles in the Guardian newspaper have highlighted use of zero-hours contracts by various companies.\textsuperscript{16}

\textbf{Health and social care sector}

Skills for Care (the partner in the sector skills council for social care) estimates that 250,000 adult social workers in England were employed on zero-hours contracts.\textsuperscript{17} Zero-hours contracts were particularly common for staff in domiciliary care services. 61\% of domiciliary care workers in England were employed on zero-hours contracts in September 2011, compared to 30\% of all adult social care workers.\textsuperscript{18}

The Financial Times reported in April 2013 that there are almost 100,000 zero-hours contracts in use across NHS hospitals, the number having risen by 24\% over two years.\textsuperscript{19}

Increased use of zero-hours contracts in the NHS had previously been noted by the British Medical Association, as reported in the \textit{British Medical Journal}:

Mark Porter, chairman of the BMA council, said, “An expansion of zero hours contracts in the NHS is of great concern. While they have a minor role in allowing recently retired doctors to continue to work, they are not conducive to planning coherent cohesive services which focus on the care of patients.”\textsuperscript{20}

\textbf{Further and higher education sector}

The University and College Union (UCU) has collated information on use of zero-hours contracts in UK universities and in further education colleges in England, Wales and Northern Ireland, obtained via Freedom of Information (FOI) requests submitted in July 2013. UCU reports that zero-hours contracts are used by 53\% of the universities and 61\% of the FE colleges that responded to its FOI request.\textsuperscript{21}

\section{The legal implications of zero-hours contracts}

\subsection{Zero-hours contracts and employment status}

The use of zero-hours contracts raises a number of legal issues which affect both their utility to the employer as a contract for flexible labour and the worker in respect of their employment rights. Chief among these is the question of employment status; i.e. whether or not those working under the contracts are “employees” or “workers”.\textsuperscript{22} The distinction between these concepts is complex and the subject of much debate, although the principle point to grasp is that “worker” is a broad status affording core employment rights; “employee” is a narrower, overlapping status (all employees are also workers) affording additional rights, such as the right not to be unfairly dismissed, maternity rights, redundancy rights and rights

\begin{itemize}
\item[\textsuperscript{15}] ONS, \textit{Analysis of Employee Contracts that do not Guarantee a Minimum Number of Hours}, 30 April 2014, p13
\item[\textsuperscript{16}] For example, see: \textit{Zero-hours contract figures were wrong, ONS admits}, The Guardian, 1 August 2013
\item[\textsuperscript{17}] PQ 217260 [on carers: conditions of employment], 4 December 2014
\item[\textsuperscript{18}] Skills for Care, \textit{The State of the Adult Social Care Sector and Workforce in England, 2012}, October 2012
\item[\textsuperscript{19}] \textit{Employers increase zero hour contracts}, Financial Times, 7 April 2013
\item[\textsuperscript{20}] BMA warns against any extension of “zero hours” contracts in NHS, \textit{BMJ} 2012; 345: e59695, September 2012. See also: \textit{Zero hours contracts for NHS staff explained}, BBC website, 19 September 2012 (accessed 16 January 2013); \textit{Health warning over army of NHS ‘temps’}, the \textit{Independent} [online], 3 September 2012 (accessed 16 January 2013)
\item[\textsuperscript{21}] Over half of universities and colleges use lecturers on zero-hour contracts, UCU website, 5 September 2013 (accessed 11 October 2013)
\item[\textsuperscript{22}] For a basic overview of the distinction, see the GOV.UK page on employment status, \textit{here}.  
\end{itemize}
under the *Transfer of Undertakings (Protection of Employment) Regulations 2006*. The case law indicates that if the day-to-day reality of the work suggests a relationship of employment, the contract will be one of employment, and the person working under it will be classed as an employee.

A number of factors determine whether or not a contract is one of employment. The essential elements which form the “irreducible core” of the contract of employment are:

- the contract must impose an obligation on a person to provide work personally;
- there must be a mutuality of obligation between employer and employee; and
- the worker must expressly or impliedly agree to be subject to the control of the person for whom he works to a ‘sufficient’ degree.\(^{23}\)

The case law on the use of zero-hours contracts has focused on the second issue: mutuality of obligation. In the case of contracts of employment, the employee normally is obliged to work and the employer is obliged to provide work and pay for it. Such obligations are not readily apparent features of zero-hours contracts; they therefore do not outwardly provide for the mutuality required for contracts of employment. However, mutuality of obligation may in certain cases be inferred. The circumstances in which it will be were considered by the Employment Appeals Tribunal (EAT) in *Pulse Healthcare v Carewatch Care Services Ltd & Ors [2012]*.\(^{24}\) The focus in that case was the reality of the agreement between the company and the worker, rather than an exclusive concern with the written terms of the contract.

**The reality of the agreement**

In *Pulse Healthcare* the EAT was required to decide whether the claimants were employees, within the meaning of section 230 of the *Employment Rights Act 1996*, despite being employed under a contract entitled “Zero-hours Contract Agreement”. The EAT concluded that the claimants were employees, and that there was a mutuality of obligation, notwithstanding the fact that the written terms of the contract suggested otherwise. As noted by the EAT, the proper approach to interpreting labour contracts is that set out by Mr Justice Elias in *Consistent Group Ltd v Kalwak [2007]* IRLR 560:

> The concern to which tribunals must be alive is that armies of lawyer’s will simply place substitution clauses, or clauses denying any obligation to accept or provide work in employment contracts, as a matter of form, even where such terms do not begin to reflect the real relationship. Peter Gibson LJ was alive to the problem. He said this (p 697):

> ‘Of course, it is important that the industrial tribunal should be alert in this area of the law to look at the reality of any obligations. If the obligation is a sham, it will want to say so.’

> In other words, if the reality of the situation is that no-one seriously expects that a worker will seek to provide a substitute, or refuse the work offered, the fact that the contract expressly provides for these unrealistic possibilities will not alter the true nature of the relationship.\(^{25}\)

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\(^{24}\) UKEAT 0123_12_0608

\(^{25}\) Para 57-58; see also: *Autoclenz v Belcher [2011]* UKSC 41, para 25; *Pulse Healthcare v Carewatch Care Services Ltd & Ors [2012]*, para 35
Thus, when deciding whether a zero-hours contract constitutes a contract of employment, conferring employee status, the wording of the contract will not be determinative of whether there is, in practice, a mutuality of obligation. The tribunal will look closely at the reality of the agreement. If the reality is that there is a pattern of regular work which is regularly accepted, the tribunal may deem the contract to be one of employment. This is illustrated by the decision at first instance (i.e. pre-appeal) of the Employment Tribunal in *Pulse Healthcare*:

Most of the factors point to the claimants in this case being employees under section 230(1). The only issue pursued on behalf of the second respondent is that of a lack of mutuality of obligation. I am satisfied there was sufficient mutuality of obligation for the claimants to be employees. Once the rota was prepared they were required to work and the employer was required to provide that work. They were subject to control and discipline; they had to provide personal services; they were provided with uniforms and equipment; they were paid on a PAYE basis; they had all worked regularly over a number of years and had only taken time off for holidays, sickness and when suspended for which they received payment; it was not established that there were gaps in the continuity of employment. The claimants required regular work and this was provided by the first respondent.

I am satisfied that the documents did not reflect the true agreement between the parties and that four essential contractual terms were agreed: (1) that the claimants would perform the services for the first respondent (2) that the claimants would be paid for that work; (3) that the claimants were obliged to carry out the work offered to them and the first respondent undertook to offer work and (4) that the claimants must personally do the work and could not provide a substitute to do so. Those were the true terms of the contract.

The decision of the EAT has important implications for employers and employees. It indicates that where a worker is employed on a zero-hours contract and provided with regular work which is regularly accepted, there exists a significant possibility that the contract will be one of employment. One effect of this is that many employers, who proceed on the basis that staff working under zero-hours contracts have limited employment rights, may discover the existence of additional rights only when these are asserted against them.

Another important issue employers and employees may need to consider when using zero-hours contracts is whether the employer is required to pay the worker while on-call. This is addressed below.

### 3.2 Zero-hours contracts and the National Minimum Wage

The National Minimum Wage must be paid to workers for all hours they are required to be at or near work and available for work even if they are not actually given any work during this time. Under the *National Minimum Wage Regulations 1999* those on zero-hours contracts are defined as “time workers” (see regulation 3). A time worker must be paid at least the National Minimum Wage for the times when:

- they are at work and required to be at work (excluding rest breaks). Workers who turn up to work as required and who are available for work must be paid the National Minimum Wage during that time. It makes no difference whether or not work is

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26 See also: *St Ives Plymouth Ltd. v Haggerly* [2008] All ER (D) 317; *Wilson v Circular Distributors Ltd* [2005] EATS/0043/05

27 *Pulse Healthcare v Carewatch Care Services Ltd & Ors* [2012], para 22
actually provided. But time when a worker is absent from work (for example, rest breaks, tea breaks, lunch breaks) does not count as hours of time work;\textsuperscript{28}

- they are on standby or on-call at or near the place of work for the purpose of doing time work and are required to be available for work. If the worker is waiting to be given work, the National Minimum Wage is payable for that time. However, a worker who is on standby or on-call at home, or is entitled to be at home, does not have to be paid the National Minimum Wage for that time, regardless of where the person works;\textsuperscript{29}

- they are kept at their place of work but are unable to work because plant or machinery has broken down.

The current rates for the National Minimum Wage can be found on the GOV.UK website.\textsuperscript{30}

4 Zero-hours contracts and jobseeker benefits

Concerns have been expressed by some about the effect on entitlement to Jobseeker’s Allowance (JSA) of refusing an offer of zero-hours work. Refusal of zero-hours work does not have any effect on JSA entitlement. In response to questions about this during an Opposition Day debate, the Secretary of State for Business, Innovation and Skills, Vince Cable, said:

Many people feel that if they decline a zero-hours contract there will be a sanction, and they will lose their benefits. I can make it absolutely clear that that is not the case…\textsuperscript{31}

However, under the new system of Universal Credit, which replaces a number of previous benefits, including income-based JSA, refusal of zero-hours work could lead to a sanction and a loss of benefits. In her reply to a letter from Sheila Gilmore MP, Esther McVey, the Minister for Employment, stated sanctions could be imposed for failing to accept zero-hours work:

We believe that jobseekers on any benefit should do all they reasonable can to get into paid employment. This includes applying for suitable jobs and accepting any reasonable offer of employment. As part of this Jobcentre Plus coaches can require claimants to apply for particular vacancies that they consider to suitable. If someone fails to meet such a requirement – without good reason – then a sanction can be imposed.

We do not consider zero hours contracts to be – by default – unsuitable jobs. Indeed, the flexibility they offer can be valuable for some individuals. Within jobseekers Allowance, however, our coaches do not currently require claimants to apply for jobs with zero hours contracts. The structure of Jobseeker’s Allowance (JSA) and supporting processes could make the interaction of zero hour contracts and the benefit system difficult to manage – short periods of work could end a JSA claim, requiring new claims to be made in periods where earning fall.

Universal Credit, of course, is payable when people are in work as well as out of work so the need to reclaim when earning fluctuate is removed. In addition Universal Credit is designed to be response to variations in earnings so each monthly payment will

\textsuperscript{28} Regulation 15(1) and 15(7)
\textsuperscript{29} Regulation 15(1)
\textsuperscript{31} HC Deb 16 October 2013 c761
reflect the amount actually earned, even if this includes some weeks when no work was done. So in Universal Credit our coaches can mandate zero hours contracts.\textsuperscript{32}

According to the \textit{Guardian} a spokesperson for the Department for Work and Pensions told the newspaper “jobseekers would not be required to take a zero-hours contract that tied them in exclusively to work for a single employer”.\textsuperscript{33}

\section{Government review of zero-hours contracts}

On 30 May 2013 the Chartered Institute of Personnel Development reported that Vince Cable had said the Government was reviewing the use of zero-hours contracts.\textsuperscript{34} On 1 July 2013 Jo Swinson, Minister for Employment Relations, responded to questions from Chuka Umunna, the Shadow Business Secretary, about the review:

\textbf{Mr Umunna}: To ask the Secretary of State for Business, Innovation and Skills by what date he expects his Department’s investigation of zero-hours contracts to be complete; and if he will publish any subsequent report.

\textbf{Jo Swinson}: Officials are currently speaking informally to a variety of stakeholders, including trade unions and industry bodies representing sectors where zero-hours contracts to gather information. They will report their findings to me after summer recess.

We will consider next steps when we better understand the issues for both businesses and people engaged on these contracts.

\textbf{Mr Umunna}: To ask the Secretary of State for Business, Innovation and Skills whether he will issue a call for evidence and initiate a consultation process as part of his Department’s investigation into zero-hours contracts; and by what other means organisations and interested parties can submit evidence as part of his Department’s investigation.

\textbf{Jo Swinson}: There are no plans to issue a call for evidence or consultation at this stage. Officials within the Department for Business, Innovation and Skills (BIS) are currently researching how zero-hours contracts are being used by businesses.

They are currently speaking informally to a variety of stakeholders, including industry bodies representing sectors where they are in use and also trade unions to gather information. If organisations have information they feel is relevant to the work that is currently under way, they should contact the Labour Market Directorate in BIS.\textsuperscript{35}

On 9 July 2013 Ms Swinson said:

We will work with other Departments. There is no call for evidence at this stage, but we do not rule it out for the future. Research shows that doing our homework before issuing a call for evidence is useful. I welcome the interest the debate has sparked, and I am sure that we will return to the topic when we have the further information from the BIS fact-finding review.\textsuperscript{36}

\textsuperscript{32} Letter from Esther McVey MP to Sheila Gilmore MP, dated 1 March 2014.
\textsuperscript{33} ‘Jobseekers being forced into zero-hours roles’, the \textit{Guardian}, 5 May 2014
\textsuperscript{34} Government ‘reviewing zero hours contracts,’ says Business Secretary, CIPD website, 30 May 2013 (accessed 3 June 2013)
\textsuperscript{35} HC Deb 1 July 2013 c512W-513W
\textsuperscript{36} HC Deb 9 July 2013 c56WH
In an interview with *The Guardian* Vince Cable said that the Government may seek to legislate on zero-hours contracts, although he ruled out a ban. He highlighted as a specific problem situations

... where there is an exclusive relationship with a particular employer who actually cannot provide stable employment, or indeed any employment, that stops the worker going to another company.37

An August 2013 paper by a research organisation, The Work Foundation, stated that the review was welcome although it argued for “a more systematic approach – perhaps along the lines of the Coalition’s Fair Pay Review”.38

A Department for Business, Innovation and Skills press statement issued on 16 September 2013 described the outcome of the review:

The review conducted over the summer highlighted 4 key areas of concern:

1. Exclusivity: This is where someone agrees to a contract that does not guarantee them a minimum number of hours and is stopped from working for another company. This is described as an ‘exclusivity clause’. In certain cases this can mean that people were stopped from looking for work elsewhere particularly when they needed more hours to bump up their earnings. Feedback from employers themselves suggests awareness that there can be abuses that limit flexibility.

2. Transparency: There is no clear or legal definition of a ZHC and it can cover a number of working arrangements. This can lead to confusion and a lack of understanding on contract details and what it means for the individual. In some cases people were not aware of the fact that there was a possibility that they might not be offered work on a regular basis.

3. Uncertainty of earnings: The amount of money a person on a ZHC can expect to earn is dependent on the number of hours worked. This means that people on a ZHC find it hard to calculate earnings and it can lead to concerns about how benefits might be affected.

4. Balance of power in the employment relationship: Our review found that people perceived they would be penalised if they did not take hours offered even if the hours were offered at very short notice and did not suit. This meant it could lead to a climate of fear that a person is less likely to be offered regular work in future if they failed to accept the hours on offer.39

6 Government consultations

On 16 September 2013 Vince Cable announced that he would launch a consultation on zero-hours contracts. He said:

I have been examining closely the issue of zero-hour contracts over the last few months. We’ve been speaking to businesses, trade unions and other groups both about their downsides and their benefits.

37 Zero-hours contracts could be subject to new legislation, says Vince Cable, *The Guardian* [online], 5 August 2013 (accessed 3 September 2013)
38 Ian Brinkley, *Flexibility or insecurity? Exploring the rise in zero hours contracts*, August 2013, p.27; see also Government zero hours review ‘inadequate’, *The Telegraph* [online], 28 August 2013
39 Cable announces plans to boost fairness for workers, BIS press statement, 16 September 2013 (accessed 18 September 2013)
It is clear that they are much more widely used than we had previously thought. It is also clear that there are abuses in the system, especially around the issue of exclusivity which some employers are demanding from workers on these contracts.

Today I am announcing that we will proceed to issue a consultation, which will explore how to tackle any abuses, particularly around exclusivity. I am determined to make sure people are paid and treated fairly, in a way that also helps keep people employed in these delicate economic times.\(^{40}\)

The consultation was launched on 19 December 2013 and ran until 13 March 2014. The consultation document identified exclusivity clauses as being particularly concerning and sought views on whether it was appropriate to ban these in contracts that provide no guarantee of work.\(^{41}\)

During November 2013, prior to the publication of the consultation document, the Chartered Institute of Personnel Development published a report entitled *Zero-hours contracts: myth and reality.*\(^{42}\) The report noted:

Six in ten zero-hours workers report they are allowed to work for another employer when their primary employer has no work available. A further 15% say they are able to sometimes. Just 9% say they are never able to work for another employer and a sizeable 17% don't know.\(^{43}\)

The Government estimates that 125,000 workers work under zero-hours contracts containing exclusivity clauses; the above are the data on which that estimate is based (9% of 1.4 million – the ONS estimate of the number of zero-hours workers equals 126,000).

### 6.1 Consultation outcome: banning exclusivity clauses

On 25 June 2014 the Government published a press release detailing the outcome of the consultation, and announcing the Government’s intention to ban the use of exclusivity clauses:

Employees on zero hours contracts will have the freedom to find work with more than 1 employer after Business Secretary Vince Cable announced plans to ban exclusivity clauses.

Exclusivity clauses prevent an individual from working for another employer, even when no work is guaranteed. The use of exclusivity clauses in zero hours contracts undermines choice and flexibility for the individuals concerned.

The ban, set to benefit the 125,000 zero hours contract workers estimated to be tied to an exclusivity clause, is part of a bid to clamp down on abuses in the workplace by less scrupulous employers. It will allow workers to look for additional work to boost their income.

Business Secretary Vince Cable said:

Zero hours contracts have a place in today’s labour market. They offer valuable flexible working opportunities for students, older people and other people looking to top up their income and find work that suits their personal circumstances.

\(^{40}\) Ibid

\(^{41}\) BIS, *Consultation: Zero hours employment contracts*, December 2013

\(^{42}\) CIPD, *Zero-hours contracts: myth and reality*, November 2013

\(^{43}\) Ibid., p4
But it has become clear that some unscrupulous employers abuse the flexibility that these contracts offer to the detriment of their workers. Today (25 June 2014), we are legislating to clamp down on abuses to ensure people get a fair deal.

Last December (2013), I launched a consultation into this issue. Following overwhelming evidence we are now 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.

This action follows a government consultation into zero hours contracts which received over 36,000 responses. 83% were in favour of banning exclusivity clauses in zero hours contacts.

The Business Secretary also announced that the government will:

- consult further on how to prevent rogue employers evading the exclusivity ban, for example through offering 1 hour fixed contracts
- work with business representatives and unions to develop a code of practice on the fair use of zero hours contracts by the end of the year (2014)
- work with stakeholders to review existing guidance and improve information available to employees and employers on using these contracts.44

6.2 Consultation on banning exclusivity clauses

The Government has proposed measures in the Small Business, Enterprise and Employment Bill that would render exclusivity clauses unenforceable; see below. In addition, the Bill would create a regulation-making power that could be used, for example, to enact measures to penalise employers that use exclusivity clauses or to tackle avoidance of the ‘ban’ of the clauses. The Government consulted on how best to go about using this power; the consultation ran between 25 August 2014 and 3 November 2014.45

7 Small Business, Enterprise and Employment Bill

The Small Business, Enterprise and Employment Bill was introduced in the House of Commons on 25 June 2014 and received its Second Reading on 16 July 2014. It underwent its Committee stage between 14 October and 6 November 2014; at the time of writing the Bill is in the House of Lords, where it was considered in Committee between 7-28 January 2015. Its Report stage is scheduled for 3 March 2015.

Clause 139 of the Bill (as introduced) proposes the ban on exclusivity clauses. It would insert a new Part 2A, comprising sections 27A and 27B, into the Employment Rights Act 1996. Section 27A(1) would define a zero-hours contract as a:

contract under which—

(a) the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and

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44 Government crackdown on zero hours contract abusers, GOV.UK, 25 June 2014 (accessed 29 June 2014)
45 Zero hours employment contracts: exclusivity clause ban avoidance, GOV.UK (accessed 18 November 2014)
There is no certainty that any such work or services will be made available to the worker.

Section 27A(3) would contain the prohibition of exclusivity clauses:

- Any provision of a zero hours contract which—
  - prohibits the worker from doing work or performing services under another contract or under any other arrangement, or
  - prohibits the worker from doing so without the employer's consent, is unenforceable against the worker.

Section 27B would empower the Secretary of State to by regulations “make further provision in relation to zero hours workers”. The regulations are limited to the making of provisions for the purpose of securing that zero hours workers, or any description of zero hours workers, are not restricted by any provision on purported provision of their contracts or arrangements with their employer from doing any work otherwise than under those contracts or arrangements.

Thus, section 27B would create a mechanism whereby the ban of exclusivity clauses set out in the Bill could be supplemented and strengthened by secondary legislation. For example, the Delegated Powers Memorandum published alongside the Bill notes that employers could take work contracts outside the definition of a zero-hours contract by providing one hour of guaranteed work, thereby providing some “certainty” of work (see above, section 27A(1)(b)). The Memorandum notes that the content of any secondary legislation would depend on further evidence and that “the Government is committed to consulting on the use of these delegated powers during the passage of the Bill”.

Comment on the proposed prohibition of exclusivity clauses has been mixed. On the one hand, most commentators welcome the ban in principle and many have praised the Government for taking a measured approach, preserving the flexibility of zero-hours contracts while tackling a particularly controversial aspect of their use. On the other, some commentators argue that the legislation does not go far enough in addressing the problems associated with the contracts; that the ban could easily be sidestepped; and that this should be addressed now, in the Bill, rather than via a regulation-making power.

The Director-general of the Institute of Directors, Simon Walker, said “the government should be congratulated for protecting the valuable elements of such arrangements whilst closing down the loopholes that have generated understandable controversy”, while the Deputy Director-General of the CBI has said the ban on exclusivity clauses in zero hours contracts is “a proportionate response to some of the issues … it focuses on poor practice rather than demonising flexible work in general”. Conversely, The Guardian reported that a spokeswoman for the campaign group 38 Degrees said that the ban does not go far enough, and asked:

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46 DELEGATED POWERS AND REGULATORY REFORM COMMITTEE SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT BILL, Memorandum by the Government for Business, Innovation and Skills, p67, paras 437-441
47 ‘Small business bill tackles misuse of zero-hour contracts’, Financial Times [online], 24 June 2014 (accessed 1 July 2014)
48 ‘CBI responds to Queen’s Speech’, CBI website, 4 June 2014 (accessed 1 July 2014)
Why, when over 35,000 members of 38 Degrees wrote to Vince Cable asking that employees get better notice of when they are working, that employers make sure contracts are not used as a discipline tool and that businesses are encouraged to make zero-hours contracts the exception, not the norm, haven't these areas been addressed too?49

Employment law writer Darren Newman has argued that the ban could easily be avoided and is “effectively meaningless”, as:

The [exclusivity] clause might be legally unenforceable, but that will hardly matter if a worker can be denied any further work as a result of breaching it and there is nothing in the Bill, so far, which creates a right for a worker not to suffer a detriment for breaching an exclusivity clause.50

### 7.1 House of Commons Committee stage

Clause 139 attracted substantial debate during its Committee stage in light of ongoing concerns about the use of zero-hours contracts. The Opposition tabled amendments that broadly reflected their established commitments should a Labour government be elected in 2015. These included:

- Amendment 237 would have required the Secretary of State to make regulations setting out, among other things, remedies available to workers on zero-hours contracts with exclusivity clauses.

- Amendment 242 would have obliged employers to offer fixed-hours contracts to workers that have worked regular hours over a six-month period.

- Amendment 244 proposed a requirement for employers to compensate workers in the event of short-notice shift cancellation.

- Amendment 229 would have empowered the Secretary of State to make regulations requiring employers to provide basic information about terms and conditions to zero-hours workers.51

Ian Murray said that amendment 237 would address the absence of legal remedy in relation to the prohibition of exclusivity clauses (the Bill would render such clauses legally unenforceable, although does not propose a legal remedy for workers subjected to detriment as a result of breaching exclusivity clauses). Mr Murray set out the Opposition’s reasoning behind the amendment:

We are asking the Secretary of State to come back with regulations to allow us to see how things will be enforced. They might state the length of the qualifying period, which is two years at the moment, so someone would have to be on an illegal exclusive zero-hours contract for more than two years. Will the early conciliation process at ACAS be included, which is a legal requirement now? Will any fee be payable to enter an employment tribunal to enforce those rights? Will an imposition of penalties on the employer be among the remedies available? At the moment, the legislation does not include any of those matters. Sarah Veale of the TUC said:

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49 ‘Vince Cable moves to ban zero-hours contract exclusivity clauses’, The Guardian [online], 25 June 2014 (accessed 1 July 2014)

50 ‘Exclusivity in zero-hours contracts’, A Range of Reasonable Responses, 25 June 2014 (accessed 1 July 2014)

51 PBC 6 November 2014 cc534-535
“It is actually quite extraordinary to have a breach of employment rights proposed in a Bill without any kind of penalty”.—[Official Report, Small Business, Enterprise and Employment Public Bill Committee, 14 October 2014; c. 71, Q162.]

Amendment 242 was a probing amendment about regular work on zero-hours contracts. Mr Murray cited evidence from the Chartered Institute of Personnel Development indicating 83% of zero-hours workers have been engaged for more than six months, while 65% have been for two or more years. He argued that zero-hours arrangements are inappropriate for extended use, as their “whole point … was to deal with short-term need and fluctuations in seasonal employment or because of emergencies”.

On the issue of short-notice shift cancellation, Mr Murray said workers should be compensated for this, as shift offers may lead to travel and childcare costs. He cited support for the proposal from both the Chartered Institute of Personnel Development and CBI.

In response to the Opposition amendment regarding legal remedy, the Minister said this was already contemplated in the Bill, which would create a regulation-making power that could provide for the imposition of financial penalties. The Government recently consulted on potential avoidance of the prohibition of exclusivity clauses and routes of redress; the consultation closed on 3 November 2014 (see above). The Minister said “If those responses suggest it is necessary, we will consider redress as part of our response”.

On regular zero-hours work, the Minister said a mechanism already exists whereby zero-hours workers classified as employees, with sufficient continuous employment, may make a flexible working request to change his hours, times or location of work. The employer would then have to consider the request and could only refuse it on certain statutorily defined grounds.

As to the Opposition amendment about compensation for short-notice shift cancellation, the Minister said the Government intends to address the issue by way of codes of practice:

We should also recognise that there could be unintended consequences. We do not want employers to avoid planning shifts too far in advance in case they have to cancel them, and instead to invite people into work at short notice. That would also be pretty disruptive for individuals, who may have to arrange child care or make other changes in their life. That could mean that they were less able to take advantage of the work that was offered. We must ensure that we do not have such unintended consequences, but I recognise that there is a genuine issue, which is why the legislation we are bringing through is only part of the Government’s response to the issues raised by zero-hours contracts.

As the hon. Member for Edinburgh South said, business organisations such as the CBI and the CIPD have also recognised that there are issues with how these contracts are sometimes used. That is why we want to introduce sector-specific codes of practice on what the responsible use of zero-hours contracts looks like. I am sure that we will work closely with a range of representative bodies, including employee representatives, to

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52 Ibid., c542
53 Ibid., cc542-544
54 PBC 6 November 2014 c548
55 BIS, Zero hours employment contracts: exclusivity clause ban avoidance, August 2014
56 PBC 6 November 2014 c551
57 Ibid., c552; see Flexible Working, Commons Library Standard Note, SN1086, 3 June 2014
provide guidance that can be more bespoke, specific and tailored to individual sectors.58

In response to amendment 229 regarding terms and conditions, the Minister said this would be considered as part of the previously announced Department of Business, Innovation and Skills review of employment status.59

The Committee divided on amendments 237 (enforcement) and 244 (compensation) both of which were defeated by six votes to nine.

Government amendment 30, agreed to without division, was a technical amendment with important legal consequences. The Minister said that, if an employment tribunal is called to assess whether a contract is a contract for services or an employment contract conferring employee status, an exclusivity clause could indicate it was the latter.60 The amendment provides that the prohibition of exclusivity is disregarded “for the purposes of determining any question whether a contract is a contract of employment or other worker’s contract”. This means that if a contract includes an exclusivity clause, the clause may be relied on in court to indicate that the contract is one of employment, notwithstanding the fact the clause is unenforceable.

7.2 House of Lords Committee stage

The Bill was considered in Committee by the House of Lords between 7-28 January 2015, with its zero-hours proposals debated during the Committee’s sixth sitting.61 There were a number of probing amendments, which were either withdrawn or not moved; the clause was agreed without amendment.62

8 Opposition proposals

In a speech to the Trades Union Congress on 10 September 2013 the Leader of the Opposition, Ed Miliband, stated that a Labour government would make a number of changes to the regulation of zero-hours contracts:

We’ll ban zero hours contracts which require workers to work exclusively for one business. We’ll stop zero hours contracts which require workers to be on call all day without any guarantee of work. And we’ll end zero hours contracts where workers are working regular hours but are denied a regular contract.63

On 16 October 2013 there was an Opposition Day debate on a motion calling on the Government to initiate a full consultation and formal call for evidence on the use of zero-hour contracts.64 Alongside these statements, Mr Miliband asked Norman Pickavance, the former director of human resources at supermarket chain Morrisons, to investigate the possible regulation of zero-hours contracts,65 and a consultation into the issue was launched.66

58 PBC 6 November 2014 c553
59 Ibid.; ‘Employment review launched to improve clarity and status of British workforce’, Gov.uk [accessed 11 November 2014]
60 PBC 6 November 2014 c554
61 HL Deb 26 January 2015 ccGC33-52
62 HL Deb 26 January 2015 ccGC52
63 Speech by Ed Miliband to the TUC, 10 September 2013, TUC website (accessed 14 October 2013)
64 HC Deb 16 October 2013 cc744-797
65 Ed Miliband to pledge crackdown on zero-hour contracts, BBC News website, 9 September 2013 (14 October 2013)
66 The Pickavance consultation on the abuse of zero-hours contracts, 2013
8.1 The Pickavance Report

On 25 April 2014, Labour published the Pickavance Report: *Zeroed Out: The place of zero-hours contracts in a fair and productive economy.* The report made a number of policy recommendations intended to “prevent certain exploitative practices used by a minority”. The recommendations are:

- Employers should be prevented from requiring zero-hours workers to be available for work:

  clauses that require workers on zero-hours contracts to be available for work should be declared by legislation to be unenforceable. The employer would not be able to demand (either contractually or verbally) that they make themselves available without any guarantee of work.  

- A ban of exclusivity clauses:

  Workers on zero-hours contracts should be free to work for other employers.... Clauses that require workers on zero-hours contracts to be available for work and prohibit the worker from working for another employer at the time should be declared by legislation to be unenforceable when there is no guarantee of work or pay.  

- Zero-hours workers who in practice work regular hours should, after a specified period, have a right to a contract with fixed minimum hours:

  after 6 months, workers should have a right to request a contract that is other than zero-hours and which provides a minimum amount of work. Employers would only be able to refuse this request if they are able to demonstrate that their business needs cannot be met by any other form of flexible contract.... after a period of 12 months continuous employment, workers on zero-hours contracts who are working regular hours (e.g. a minimum of 8 hours a week over the reference period) should have the right to be offered a contract that is other than zero-hours and which provides a minimum amount of work. It is proposed that this would happen automatically and should reflect the actual hours that people are working on a regular basis. People working regular hours would only be able to be legally kept on a zero hour contract for more than a year if they formally opted-out of these arrangements. To do so the employer must demonstrate that the employee has received independent advice from a trade union or independent legal adviser....  

- Zero-hours workers should have a right to compensation when shifts are cancelled at short notice.

In addition to the above, the report recommends that a zero-hours code of practice should be drawn up – developed by employer and employee representatives and Acas - to provide guidance to employers and employees.  

The report also recommends that the *Employment Rights Act 1996* should be amended to require employers to provide information about basic terms and conditions to all “workers”

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68 Ibid, p16

69 Ibid

70 Ibid

71 Ibid, p17

72 Page 18
within two months of commencing work. Section 1 of the Act currently makes provision for this, but only in respect of employees, not workers (see above for a discussion of the distinction). Such an amendment would potentially apply to a wide range of workers, including those on zero-hours contracts.

9 Private Members’ Bill

On 2 July 2014 the Zero Hours Contracts Bill - a Private Members’ Bill sponsored by Ian Mearns MP - was presented to Parliament through the ballot procedure. The Bill’s Second Reading commenced on 21 November 2014; the debate was adjourned and is expected to resume on 23 January 2014. During the debate Mr Mearns set out the broad thrust of the Bill:

The Bill seeks to curtail the use of zero-hours contracts severely.

…

The principle enshrined in the Bill is simple: if someone works regular hours they should have a regular fixed-hours contract, along with all the rights and protections afforded to regular workers. It is unacceptable that a person who works as a full-time employee, sometimes for many months, or even years, remains on a zero-hours contract.

…

My Bill states that if someone has been in a job for 12 weeks, they will become a regular employee entitled to a fixed and regular-hours contract with all the conditions of service that go with it.

…

The Bill states that if someone’s employer requests or requires them to work without giving reasonable notice of three days, they should be paid time and a half for a shift ordered within those three days. It also states that if their employer cancels their shift at the last minute, they should not be plunged into financial instability but paid in full for the period in question.

Clause 1 of the Bill would define zero-hours contracts as follows:

(1) A zero hours contract is a contract or arrangement for the provision of labour, which—

(a) fails to specify guaranteed working hours, or

(b) specifies guaranteed working hours but the worker is required or expected to be available for work for a period that exceeds by 20% the guaranteed working hours in the contract or arrangement.

(2) Subsection (1) shall not apply in relation to any hours which are regarded by both parties to the contract as overtime hours, provided the worker is paid a premium of at least 50% the hourly rate under a contract of employment.
It may be that this definition, insofar as clause 1(b) mentions an expectation to be available for work “for a period that exceeds by 20% the guaranteed working hours in the contract”, could apply to a number of arrangements not generally considered to be zero-hours contracts, by reason of an expected availability to work overtime. If that overtime was not paid at a 50% premium per clause 1(2), the arrangement would be defined as a zero-hours contract and subject to the protections proposed by the Bill.

**Clause 2** would require employers, within seven days of commencement of the contract, to give notice in writing of the minimum number of hours of employment.

**Clause 3** would provide for equal treatment of zero-hours contract workers vis-à-vis comparable regular hours workers.

**Clause 4** would make provision for “reasonable notice” to be given prior to required work or cancellation of a period of work. Clause 4(2) would provide that a period of notice would not be reasonable if given less than 72 before the work or cancellation. If the zero-hours worker accepts the work without such notice the employer must pay the worker 150% of their normal rate of pay. If a shift is cancelled without such notice, the worker would be entitled to pay for the period of work they would have undertaken absent the cancellation.

**Clause 5** would require an employer to consider at any time a request from a zero-hours worker for fixed and regular working hours unless a request had been made in the previous 12 weeks.

**Clause 6** would create a duty to provide fixed and regular hours to zero-hours workers that have worked continuously for a period of 12 weeks, or 12 weeks in the preceding 26 weeks.

**Clause 7** proposes to render void exclusivity clauses in zero-hours contracts, save where there are compelling business reasons for their use (e.g. confidentiality). 77

**Clause 8** proposes to make unlawful subjecting zero-hours workers to detriment on grounds related to other provisions proposed by the Bill.

**Clause 9** proposes a number of grounds on which it would be automatically unfair to dismiss an employee in relation to his status as a zero-hours contract worker.

**Clause 10** would make provision in relation to the definition of continuous employment; **clause 11** is an interpretation clause.

### 10 Scottish Affairs Committee report

On 9 April 2014 the House of Commons Scottish Affairs Committee published a report on the use of zero-hours contracts in Scotland: *Zero hours contracts in Scotland: Interim Report.* 78

The Committee’s recommendations are summarised on the [Parliament website](https://www.parliament.uk): 

- zero hours contracts must only be used where the employer can objectively justify it;
- the Government must do more to protect workers who wish to challenge unfair, unsafe or unlawful conditions of employment;

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77 Although clause 8(3) would in effect render all exclusivity clauses unenforceable
• workers should be told from the outset of their employment what type of contract they are on and a written contract setting out the terms and conditions must follow within two months;

• there should be a minimum notice period of work and workers should not be punished for turning down offers of work made within that period;

• where workers arrive for work but find none available then the employer should compensate them for the inconvenience;

• travel time between appointments should be paid and pay for zero hours workers should accurately reflect the number of hours that are worked to fulfil contracted duties;

• an employer-led Code of Practice is unlikely to help workers who are exploited – in fact it may serve to embed a form of employment that in most circumstances is hard to justify;

• if a Code is produced it should only be as a stepping stone to, or following, legislative change aimed at reducing the use of zero hours contracts and ensuring workers receive the income, rights and protections to which they are entitled.79

11 Comment

Opinion on zero-hours contracts has been mixed. Employee organisations tend to argue that the contracts result in financial insecurity for workers who lack key employment rights, although acknowledge that some staff value the flexibility and opportunity to work a second job; employer organisations stress their utility when seeking to meet fluctuating demand and argue that they play a vital role in keeping people in employment.82 The Trades Union Congress has said:

The TUC believes that the rise of involuntary and casual temporary work, along with increases in involuntary part-time work and zero-hours contracts, show that beneath the headline employment figures lies an increasingly insecure, vulnerable workforce. Too many workers are not working enough hours to get by, or have no guarantee of paid work from one week to the next, says the TUC.83

The trade union Unite has said:

Unite believes that in general zero-hours contracts are unfair, creating insecurity and exploitation for many ordinary people struggling to get by. They are one of many forms of underemployment blighting the British economy. Employers use them to cut wages, avoid holiday pay, pensions, or other benefits enjoyed by employees and agency staff.84

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79 Commons Select Committee - Unscrupulous employers exploiting workers through zero-hours contracts, Parliament website (accessed 1 May 2014)

80 Government must act to halt rise in zero hours, Unite website, 1 August 2013 (accessed 3 September 2013); UNISON fact sheet on zero hours contracts, UNISON website (accessed 3 September 2013)

81 UNISON fact sheet on zero hours contracts, UNISON website (accessed 3 September 2013), p.2

82 Zero-hours work kept down dole queues, says CBI, Financial Times [online], 7 August 2013 (accessed 3 September 2013); JobsOutlook: More employers happy with the state of the economy, Recruitment and Employment Confederation Press Notice, 21 August 2013; Banning zero hours contracts would be “misguided and extremely damaging” - says IoD, Institute of Directors Press Release, 5 August 2013

83 Involuntary temporary jobs driving rising employment, TUC website, 9 August 2013 (accessed 3 September 2013)

84 Government must act to halt rise in zero hours, Unite website, 1 August 2013 (accessed 3 September 2013)
John Cridland, Director-General of the Confederation of British Industry has said “If we hadn’t had this flexible working when the economy contracted, unemployment would have topped 3m – and it didn’t it went to 2.5m.” Mike Cherry, National Policy Chairman of the Federation of Small Businesses, argued that the “use of these contracts is a question of responsible management. There are situations where zero hour contracts are a good fit for employee and employer”. Alexander Ehmann, Head of Regulatory Policy at the Institute of Directors said:

Taking on a full-time member of staff remains a risky and potentially expensive option for any company emerging from the downturn.

Zero Hours Contracts can be a vital tool in our economic recovery, giving flexibility to both employer and worker whilst also guaranteeing basic employment rights.

In an article in The Telegraph Simon Walker, Director General of the Institute of Directors, said that part of the reason for the increase in zero-hours contracts is that current employment law is restrictive and taking on a full-time employee is risky.

A June 2013 report by the Resolution Foundation stated that zero-hours contracts lead to financial uncertainty for workers and their dependants. However, that report also noted that it might be too soon to implement a ban. This was reiterated in an August 2013 report by The Work Foundation which said that “calls to ban zero hour contracts ... are in our view misplaced”.

Research published in August 2013 by the Chartered Institute of Personnel and Development found that, across all zero-hours workers surveyed, 14% reported that their employer “...often or very often fails to provide them with sufficient hours to have a basic standard of living. However 18% say this does not happen very often and 52% say this does not happen at all often.” Peter Cheese, CEO of the CIPD said that its figures suggest the assumption that zero-hours contracts are bad should be questioned.

A report published by the CIPD in November 2013, based on a survey of over 1,000 employers and over 2,500 employees, derived from a sample of individuals that had agreed to take part in YouGov surveys, of which 479 were on zero-hours contracts, made a number of findings, including:

- Zero-hours workers, when compared to the average UK employee, are just as satisfied with their job (60% versus 59%), happier with their work-life balance (65% vs 58%), and less likely to think they are treated unfairly by their organisation (27% vs 29%).

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85 Zero-hours work kept down dole queues, says CBI, Financial Times [online], 7 August 2013 (accessed 3 September 2013)
86 Less than one in 10 FSB members use zero hours contract, Investor Interactive, 21 August 2013 (accessed 4 September 2013)
87 Banning zero hours contracts would be “misguided and extremely damaging” - says IoD, Institute of Directors Press Release, 5 August 2013 (accessed 4 September 2013)
88 Zero hours are bad? Don’t talk such nonsense, The Telegraph [online], 10 August 2013
89 Alakeson, V., Cory, G, Pennycook, M., A Matter of Time: The rise of zero-hours contracts, June 2013
90 Ibid, p.4
91 Ian Brinkley, Flexibility or insecurity? Exploring the rise in zero hours contracts, August 2013
92 Zero hours contracts more widespread than thought - but only minority of zero hours workers want to work more hours, CIPD website, 5 August 2013 (accessed 3 September 2013)
93 Ibid
94 CIPD, Zero-hours contracts - Myth and reality, November 2013, pp43-44
Zero-hours workers are, on average, nearly twice as likely to be satisfied with having no minimum set contracted hours, as they are to be dissatisfied. Almost half (47%) say they are satisfied compared with around a quarter (27%) who report being dissatisfied. The most common explanation for this is that flexible working suits their current circumstances (44% of those saying they are satisfied or very satisfied with having no minimum set contracted hours).

More than half (52%) of zero-hours workers say they would not like to work more hours than they do in a typical week, although just over a third (38%) say they would like more hours.

Eight out of ten (80%) zero-hours staff say they are never penalised for not being available for work.

Employers cite both sides of the flexibility equation in explaining their use of these contracts: two thirds (66%) highlight their need for the flexibility to respond to peaks and troughs in demand, but around a half (47%) of employers who use zero-hours contracts also cite the need to provide flexibility for individuals as one of the reasons informing their approach.

One in five zero-hours workers say they are sometimes (17%) or always (3%) penalised if they are not available for work.

Almost half of zero-hours workers say they receive no notice at all (40%) or find out at the beginning of an expected shift (6%) that work has been cancelled, and only about a third of employers tell us they make a contractual provision or have a formal policy outlining their approach to arranging (32%) and cancelling work (34%) for zero-hours workers.

One in five (21%) zero-hours workers believe their pay is lower than comparable permanent staff doing similar jobs, while one in ten employers (11%) report that this is the case. In fact, almost two-thirds (64%) of employers who use zero-hours workers report that hourly rates for these staff are about the same as an employee doing the same role on a permanent contract. Nearly a fifth (18%) report that hourly rates for zero-hours staff are higher than permanent employees (with the proportion slightly higher in the private sector).

Confusion among some employers and zero-hours staff over employment status and rights. For example, 42% of zero-hours staff don’t know if they have the right to take legal action if unfairly dismissed after two years service.95

In a blog post on the Institute of Economic Affairs' website, Professor Len Shackleton said that zero-hours contracts have a place in the labour market, offering opportunities to those who would otherwise “find it difficult to take regular work at fixed times: think of students and single parents”.96

Brian Groom, UK business and employment editor at the Financial Times, wrote that regulation of the contracts would be fraught with danger, and that a blanket ban “could hit jobs by making many activities uneconomic”.97 An editorial in the Financial Times argued that the UK should not ban the contracts but regulate their use, particularly where exclusivity

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95 'Zero-hours contracts have been unfairly demonised and oversimplified', finds new CIPD research, CIPD website, 26 November 2013 (accessed 29 November 2013)
96 Zero-hours contracts have their place in the labour market, Len Shackleton, IEA blog, 6 August 2013 (accessed 3 September 2013)
97 Zero hours: act with caution, Brian Groom, FT website, 5 August 2013 (accessed 3 September 2013)
is demanded (i.e. the worker is unable to work for another employer), in which case workers should be guaranteed base pay or minimum hours, and statutory employment rights.\textsuperscript{98}

An editorial in \textit{The Telegraph} said that the contracts “make eminent sense in areas where work is seasonal or intermittent, such as retail and hospitality, or where money is tight”,\textsuperscript{99} whereas one in \textit{The Guardian} suggested “the best way to see zero-hours contracts is as the most striking symptom of a sick economy and a malfunctioning labour market – one geared up to providing low-paid, precarious work.”\textsuperscript{100}

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\textsuperscript{98} Zero-hours workers, \textit{FT} website, 1 August 2013 (accessed 3 September 2013)

\textsuperscript{99} A misguided crusade against flexible labour, \textit{The Telegraph} [online], 5 August 2013 (accessed 3 September 2013)

\textsuperscript{100} Zero-hours contracts: nil points, \textit{The Guardian} [online], 9 August 2013 (accessed 3 September 2013)