



CONSULTATION: zero hours employmentscontract : Response form

A copy of the [Consultation: zero hours employment contracts](#) can be found at:

<https://www.gov.uk/government/consultations/>

You can complete your response online through [Survey Monkey](#)

Alternatively, you can email, post or fax this completed response form to:

Email: zerohourscontracts@bis.gsi.gov.uk

Postal Address:

Paula Lovitt MBE
Employment Status and Employment Contracts Team
3rd floor
Department for Business, Innovation and Skills
1Victoria Street
London SW1H 0ET

Tel: 0207-215 0123

Fax: 0207-215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: [13 March 2014](#)

Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

- Yes, I would like you to publish or release my response
- No, I don't want you to publish or release my response

If no you must give a reason

Your details

Name: Michael MacNeil, National Head of Bargaining and Negotiations

Organisation (if applicable): University and College Union (UCU)

Address: Carlow Street, London NW1 7LH

Telephone: 020 7756 2500

Fax:

Please tick the boxes below that best describe you as a respondent to this consultation

- Business representative organisation/trade body
- Central government
- Charity or social enterprise
- Individual
- Large business (over 250 staff)
- Legal representative
- Local government
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)
- Trade union or staff association**
- Other (please describe)

Confidentiality and disclosure of response

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses. If you wish your response to remain confidential you must provide a reason. Do you agree for your response to be published or disclosed if requested?

Yes No

Addressing exclusivity

Question 1

Are there circumstances in which it is justifiable to include an exclusivity clause in a zero hours contract? If you answer yes, please describe the circumstances that justify such a clause.

Yes

Please explain your response:

X No

Not sure

Question 2

Do you think the Government should seek to ban the use of exclusivity clauses in employment contracts with no guarantee of work?

X Yes

Please explain your response:

The use of exclusivity clauses in contracts that offer no guarantee of work or pay are wholly inequitable with no compensatory elements for the employee / worker. They restrict the employee/ worker's ability to seek additional work to ensure an adequate income and / or will affect their ability to prove that they are available to work in order to claim certain benefits which they would otherwise be entitled to. If a post is deemed important enough to require an exclusivity clause then it should be regarded as core business and contracts offered on an hours guaranteed basis. In such cases the employee / worker is better able to determine whether or not the hours being offered are an adequate income without additional employment.

No

Not sure

Question 3

Do you think an outright ban on exclusivity clauses in employment contracts with no guarantee of work would discourage employers from creating jobs? Are there any other unintended consequences of Government action that should also be considered?

Yes

Please explain your response:

No **But it may force employers to use more appropriate contracts for staff it clearly regards as a core part of the business.**

Not sure

Question 4

Do you think Government 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?

Yes

Please explain your response:

No

UCU does not believe that there are any circumstances in which an exclusivity clause is justified in a contract that guarantees no work or income. However, if the Government is minded to allow exclusivity clauses we believe any guidance on their use should be provided by the Government itself rather than relying on employers to develop such advice.

Not sure

Question 5

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.

(a) Yes Yes, only with Government endorsement No Not sure

(b) Yes Yes, only with Government endorsement No Not sure

Please explain your response:

As stated above, UCU does not believe that there can ever be a fair and reasonable use of exclusivity clauses in contracts that guarantee no work or income. Individuals on such contracts are unlikely to be in a position to challenge “unfair practices” due to their vulnerable employment and reliance on maintaining a compliant relationship with the employer to ensure work continues to be offered. An employer developed Code of Practice will fail to secure support from employees / workers and their representatives.

Question 6

Do you think existing guidance and common law provision are sufficient to allow individuals to challenge exclusivity clauses and therefore no specific action from Government is required?

Yes

Please explain your response:

X No

As stated above, individuals on zero hours contracts are in no position to challenge their use due to their highly vulnerable employment position. It is also unreasonable to expect a level of knowledge of common law provision and legal processes amongst individual members of staff, especially those who are on insecure contracts and are (according to our own research), likely to be younger and have less work experience than other staff groups.

Not sure

Improving the transparency of zero hours contracts

Question 7 - Improving the transparency of zero hours contracts

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?

Very helpful Helpful No change X Not very helpful

Please explain your response:

The lack of an agreed definition of a zero hours contract is unhelpful and we are aware that within the Higher and Further Education sectors there are a variety of definitions in use. It has therefore been difficult to secure adequate legal advice for our members who have been employed on a myriad of casualised contracts which may, or may not be, zero hours contracts but all of which are characterised by high levels of job and income insecurity.

Question 8

Would the additional information, advice and guidance suggested in the first option (first bullet point, para 41), help individuals and business understand their rights and obligations? If not, what other information should Government provide?

Yes Please explain your response:

No

X Not sure

UCU believes that the very nature of zero hours contracts, when used other than in exceptional unforeseen circumstances, is inequitable and unfair on employees / workers who, in reality, have no choice in the type of contract they are forced to accept.

However, if such contracts are to be allowed to continue, the provision of clear advice on the rights of workers / employees on zero hours contracts would be helpful.

Notwithstanding the proposals set out in the consultation document to simplify the legal complexities of zero hours contracts. UCU does not believe it is possible to offer clear, simple advice to people employed on zero hours contracts in the way that is envisaged (for example rights will depend on employee status, at what point, if ever, is a member of

staff on a zero hours contract made redundant?) and as such we would rather see a control on the use of zero hours contracts.

Question 9

Further to your answer to Question 5, would a broader employer-led Code of Practice covering all best practice on zero hours contracts encourage more transparency?

- (a) Yes Yes, only with Government sponsorship No Not sure
- (b) Yes Yes, only with Government sponsorship No Not sure

Please explain your response:

Notwithstanding our comments to question 8, we believe that any guidance should be provided by the Government to ensure that there is a level of confidence in any such advice by both employers and employees/ workers.

Question 10

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 be the key considerations be in producing model clauses?

Yes

Please explain your response:

UCU’s position on zero hours contracts is clear – we do not believe that they are compatible with developing a professional workforce delivering quality services. We are concerned that the initial approach to tackling the issue of zero hours contracts was to consider all options including legal controls on the use of zero hours contracts but that the consultation now appears to be narrowly focused on the need to tackle exclusivity clauses and the need for guidance / a code of practice.

In light of that, UCU would like to see Government guidance on the use of zero hours contracts that makes the following points:

- **Zero hours contracts are not appropriate where work is on-going and regular over an extended period (for example in excess of 1 month)**
- **Zero hours contracts should not be used unless their use can be objectively justified - a test which should balance the need for flexibility against the desirability of more secure forms of employment.**

No

Not sure

Question 11

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?

Yes Please explain your response:

X No

This question assumes a level of equity in the power relationship between potential employer and employee. In reality no such power equity exists for the thousands of people forced to accept zero hours contracts because, in reality, there is little alternative available to them. In further and higher education for example, anyone wanting to secure a post in academia in an institution that makes use of such contracts (about 1/2 of all HEIs and 2/3 of all FEIs) they have little choice but to accept the terms being offered. They are not in a position, individually, to challenge those terms or to improve upon them.

Whilst it is of course important that employees / workers understand the nature of any contract into which they enter, greater transparency, on its own, does nothing to improve the working conditions and insecurity of the vast numbers of staff working under such contracts.

Not sure

Question 12

Further to your answer to Question 11, do you think there is more employers can do to inform individuals on zero hours contracts what their rights and terms are?

X Yes
Please explain your response:

Employers should be under a duty to explain to potential workers / employees:

- **That the contract allows them to reduce hours to zero with x notice even if regular patterns of work have been established**
- **That worker / employees will not be entitled to redundancy payments if their hours are reduced to zero**
- **That the employee / worker is under no obligation to accept work offered at any time but to what extent declining work will affect future offers of work**

Whilst this will clearly do nothing to improve the conditions of those forced to work under zero hours contracts it would, at least, show up the contracts for what they are.

No

Not sure

Question 13

Are there unintended consequences of introducing any of these options? Please explain your response.

Yes

Please explain your response:

As stated earlier, it is clear from the consultation that the Government has no intention to control the use of zero hours contracts and we find it hugely disappointing that the Government has ruled out this option even before issuing this consultation.

UCU has provided extensive evidence to the Government on what we believe is the misuse of zero hours contracts in the Further and Higher Education sectors. The level of use of zero hours contracts in our sectors is out of all proportion with the level of flexibility that is required to run further and higher education services; the employers have infinite flexibility even though the majority of work is planned over long periods.

We can only conclude that such contracts are used to avoid the legal responsibilities on employers that would be associated with more established forms of contracts such as fixed-term or variable hours contracts with minimum hours guarantees.

In refusing to control the use of such contracts, and in proposing to endorse them through Codes of Practice and / or guidance the Government risks promoting a form of employment that most would only envisage being used in extreme circumstances, for use on a day-to-day basis in businesses, both public and private, across the UK.

Within FE and HE such Government endorsement is likely to increase the use of such contracts across the sectors which we firmly believe is not only a detriment to those working in the sectors but also the students.

Questions for employers

Question 14

Do you use zero hours contracts in your business and if so, for what purpose?

Yes For what purpose:

No

Question 15

Have you offered a job on a zero hours contract basis that includes an exclusivity clause? If so, for what reason?

Yes For what reason:

No

Question 16

Are you aware of staff you employ on a zero hours contract who work for other employers?

Yes

No

Question 17

Do you offer staff on a zero hours contract training or opportunities to develop their skills? Is this usually just at the start of the contract or do you offer training opportunities throughout the employment relationship?

Yes Please explain your response:

No

Question 18

How many hours – on average – do you offer individuals on a zero hours contract in a week or month?

Zero hours contract in a week or month:

Question 19

Do you let individuals have a choice or say in how many hours or when they work?

Yes Please explain your response:

No

Question 20

What is your policy when an individual declines hours of work you offer?

Please explain your response:

Question 21

Do you employ any individuals on a zero hours contract who work a pattern of regular hours? If so: i) how many hours a week and for what period of time? ii) why do you employ that individual on a zero hours contract basis?

Yes Please explain your response:

No

Question 22

How much notice do you give an individual if the number of hours they work will decrease or drop off to zero?

Please explain your response:

Question 23

If you offer additional hours of work – how much notice do you give the individual? And how e.g. phone call?

Please explain your response:

Question 24

Do you understand what employment rights an individual is entitled to when employed on a zero hours contract? If so: i) what do you believe they are? ii) did you explain these to the individual? iii) how did you find out?

Please explain your response:

Question 25

How do you calculate paid annual leave for an individual on a zero hours contract?

Please explain your response:

Question 26

When you advertise or recruit on a zero hours contract basis: i) do you explain the implications of this type of contract: ii) at what stage do you make it clear that there is no guarantee of a minimum hours of work?

Please explain your response:

Questions for individuals

Question 27

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?

Yes

Please explain your response:

No

Question 28

If you are employed on a zero hours contract – do you have more than one employer or contract?

Yes Please explain your response:

No

Question 29

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?

Yes Please explain your response:

No

Question 30

If employed on a zero hours contract, has your employer offered you training or opportunities to develop your skills? Was this at the start of the contract or have you had training opportunities further into your employment?

Yes Please explain your response:

No

Question 31

How many hours – on average – do you work in a week or month?

Please explain your response:

Question 32

Do you have a choice or say in how many hours or when you will work?

Yes Please explain your response:

No

Question 33

Would you like to work more hours than your employer currently offers you? If not – why?

Yes Please explain your response:

No

Question 34

Have you worked a pattern of regular hours whilst on a zero hours contract? If so how many hours a week and for what period of time?

Yes Please explain your response:

No

Question 35

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?

Please explain your response:

Question 36

If your employer offers additional hours of work – how much notice do you receive?

Please explain your response:

Question 37

Are you given a choice to accept, decline, or negotiate the hours your employer offers you?

Yes Please explain your response:

No

Question 38

Do you feel you have a choice to accept, decline, or negotiate the hours your employer offers you?

Yes Please explain your response:

No

Question 39

If you have ever declined any hours of worked offered to you, did your employer subsequently stop offering you work, or reduce the number of hours offered?

Yes

Please explain your response:

No

Question 40

As a zero hours contract member of staff, do you know if your rate of pay is the same or different compared to staff working on guaranteed hours contracts doing a similar job?

Yes

Please explain your response:

No

Question 41

Do you understand what employment rights you are entitled as someone employed on a zero hours contract? If so – i) what do you believe they are? ii) did your employer explain? iii) how did you find out?

Please explain your response:

© Crown copyright 2013

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit www.nationalarchives.gov.uk/doc/open-government-licence, write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This publication is also available on our website at www.gov.uk/bis

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills

1 Victoria Street

London SW1H 0ET

Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

BIS/13/1275RF