

# STATES OF JERSEY



## ZERO-HOURS CONTRACTS

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Lodged au Greffe on 1st September 2016  
by Deputy S.Y. Mézec of St. Helier

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STATES GREFFE

## **PROPOSITION**

**THE STATES are asked to decide whether they are of opinion –**

- (a) that ‘exclusivity clauses’ in zero-hours contracts should be prohibited;  
and
- (b) to request the Minister for Social Security, in consultation with the Employment Forum, to bring forward within 6 months for approval by the States the necessary draft legislation to give effect to the proposals.

DEPUTY S.Y. MÉZEC OF ST. HELIER

## REPORT

**This Proposition is supported by, and lodged on behalf of, Reform Jersey.**

Health and Social Security Scrutiny Panel: Zero-hour contracts – Report ([S.R.3/2016](#)): **Recommendation 11** – *“The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to abolish exclusivity clauses”*.

Exclusivity clauses are clauses in an employment contract which prohibit the employee from taking up work with another employer, regardless of whether that employee has guaranteed hours as part of their employment contract.

From 26th May 2015, exclusivity clauses in zero-hours contracts have been unenforceable in the UK.

There is agreement on all sides of the political spectrum in Jersey that exclusivity clauses should be banned, with the Minister for Social Security, the President of the Chamber of Commerce and representatives from many local Trade Unions having all publicly endorsed this view.

On 22nd August 2016, the Minister for Social Security published her response to the recommendations made by the Health and Social Security Scrutiny Panel, in which she rejects the vast majority of their findings.

The reason for rejecting many of these recommendations was based on an assertion that the Department could not take on this undertaking given its commitment to seeing through several other projects it considered to be a high priority.

At the last general election, the topic of zero-hours contracts was something which came up time and time again and is clearly something which a large proportion of the electorate consider to be an important topic. It is therefore right that the States Assembly takes a decision on whether or not it should feature in the work programme of the Social Security Department.

Given the predominance of zero-hours contracts in Jersey compared to other jurisdictions, I believe that the government should treat this issue with more seriousness and accept that there are some changes to the Employment Law which could be made fairly easily which would create a fairer environment for workers who are currently struggling to get by on contracts which offer them no security.

Where injustice exists within our employment legislation, the Minister for Social Security and the Social Security Department should always be working to eradicate it, rather than take a complacent approach.

Whilst it may be the case that none of the employer responses received by the Panel indicated that they used exclusivity clauses, the responses from employees was different, with just under 20% of respondents claiming they were not permitted to work for another employer.

There is no justification for banning workers from taking up alternative options of employment when their zero-hours contract does not provide them certainty for their working hours.

**Key Finding 13** – *“The Panel cannot see a benefit in the existence of exclusivity clauses. Abolishing such clauses would provide employees with the freedom to choose whether they would like to take on additional hours, thus potentially improving their financial situation, which at the moment for some is restricted.”*

Ultimately, banning exclusivity clauses is not enough and the Scrutiny Panel makes a series of commendable recommendations which we, as a party, intend to follow up.

**Financial and manpower implications**

There are no financial or manpower implications other than allocating law drafting time to producing the amended legislation.

**Health and Social Security Scrutiny Panel: Zero-hour contracts (S.R.3/2016)  
Pages 33 – 35 – Exclusivity Clauses**

**Exclusivity Clauses**

Exclusivity clauses are used to prevent an employee from working for another employer regardless of whether hours have been provided or not.

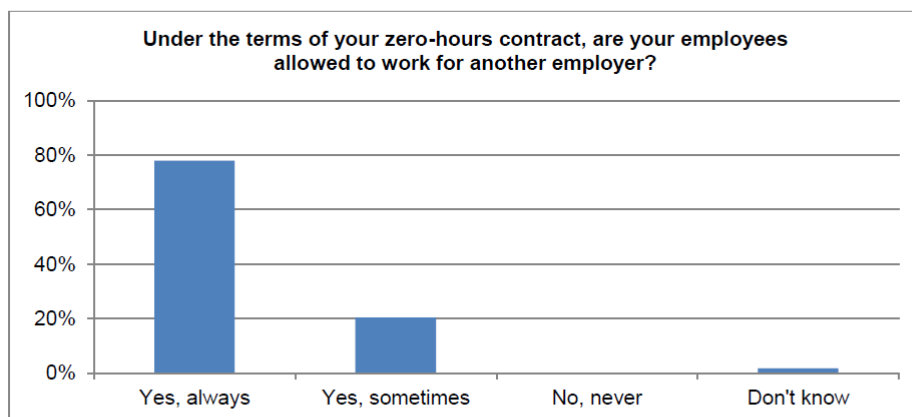
The issue over the use of exclusivity clauses within zero-hour contracts has been under recent scrutiny in the UK. Following consultation by the UK Government, as from 26th May 2015, exclusivity clauses in zero-hour contracts were made unenforceable. This applies to all contracts under which there is no guarantee of work.

The Panel notes that this was a step the UK had to take in order to prevent misuse of zero-hour contracts. Currently, in Jersey, zero-hour contracts are not referred to in legislation and the Panel was keen to consider whether there was a place for this kind of legislation in Jersey.

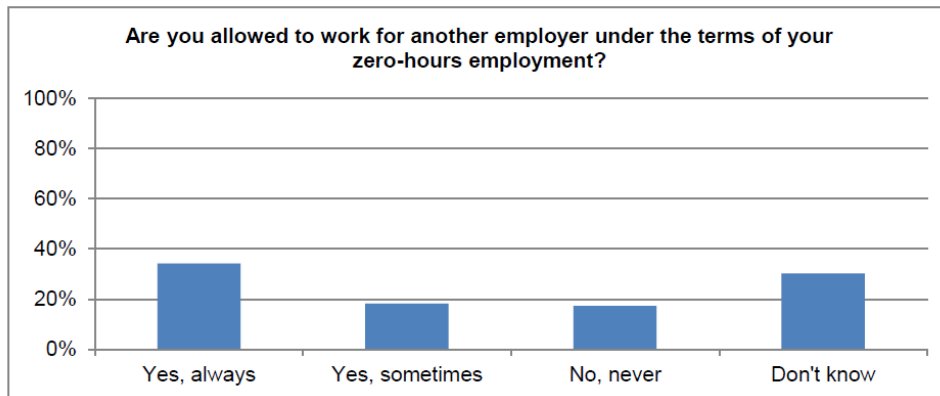
The Panel sought to establish to what extent these clauses were being implemented by businesses in Jersey. The Panel feels that it is important to encourage good practice and that the use of these clauses puts employees in a vulnerable position and undermines the choice and flexibility that these contracts, should in theory, offer. Given that hours are not guaranteed on zero-hour contracts, employees may sometimes need additional hours to top up their income.

The Panel's survey found some marked differences between the perceptions of employers and employees over exclusivity. While none of the employer respondents prohibit their zero-hour employees from seeking work from another employer, one third of employees thought they were always or sometimes prevented. A further third of the respondents did not know whether or not this was the case. Of the 90 employees that responded "yes" to wanting more hours, more than a quarter were unsure as to whether they were allowed to work for another employer under their zero-hour contract.

**Employer Survey:**



**Employee Survey:**



The report by the Resolution Foundation argues that preventing employees from working for another employer contradicts the prevailing argument that zero-hour contracts offer flexibility for both employers and employees. It asserts that *“complete or partial restrictions on taking up other jobs, whether through a prohibition on working elsewhere or a requirement to always be available for work, are not acceptable”*<sup>39</sup>.

The Panel found that the Social Security Minister and representatives of both employers and employees are in total agreement on the use of exclusivity clauses:

**Minister for Social Security:**

*“I would not agree that there should be exclusivity.”*<sup>40</sup>

**Chief Executive, Jersey Chamber of Commerce:**

*“I think in answer to your question, Deputy, we find it very difficult to justify or even support an exclusive zero-hours contract. I cannot think of a reason why one would think that would be acceptable. So in answer to your question: should we replicate U.K. legislation? I cannot think of a reason why we would not at the moment. They seem to be the ones that cause most public and moral outrage and I understand why.”*<sup>41</sup>

**President, Jersey Chamber of Commerce:**

*“They have been made illegal in the U.K. I would 100 per cent agree with that. That goes right against the fair concept of the zero-hours contract and if you have a zero-hours contract there should be no exclusivity contract in it.”*<sup>42</sup>

A submission received from Prospect the Union stated that contracts must not contain a clause restricting employees from accepting work elsewhere:

**Prospect Union:**

*“Our position is that we have serious concerns about the use of zero hour contracts and the impacts on full time staff. For example, the impact on pension rights and the*

<sup>39</sup> Resolution Foundation: Zeroing In, March 2014, p.14

<sup>40</sup> Public Hearing with the Minister for Social Security, November 2015, p.25

<sup>41</sup> Public Hearing with the Jersey Chamber of Commerce, October 2015, p.5

<sup>42</sup> Public Hearing with the Jersey Chamber of Commerce, October 2015, p.5

*ability to secure mortgages and loans. We believe use should be proportionate, relevant and only used when there was clear justification. In addition contracts must not contain a clause restricting employment (a "whole time and attention" clause) - you should be able to work for other employers."*<sup>43</sup>

The Panel wholeheartedly supports these views and cannot see any benefit in the existence of such clauses which it believes obstruct choice and flexibility.

**KEY FINDING 13:** The Panel cannot see a benefit in the existence of exclusivity clauses. Abolishing such clauses would provide employees with the freedom to choose whether they would like to take on additional hours, thus potentially improving their financial situation, which at the moment for some is restricted.

**RECOMMENDATION 11:** The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to abolish exclusivity clauses.

### **Rates of pay**

One of the central issues around zero-hour contracts is the challenge of meeting everyday costs in the face of fluctuating wages particularly for those on low pay and for those with children and other family commitments<sup>44</sup>.

Zero-hour contracts are often associated with lower pay, higher risk and fewer benefits. The Panel's research reveals that 7 in 10 of the employers who completed the survey do not pay their zero-hour employees differently to permanent employees. 3 in 10 report that rates of pay are actually higher than those they employ on permanent employment.

This was supported by the comments made in a public hearing with both ASL and Rowlands Recruitment agencies who confirmed the pay rate rarely differed in the case of agency workers:

**Managing Director, Rowlands Recruitment:**

*"You may have someone on a zero hour contract who would be sitting next to someone doing similar sort of work. Their pay is usually the same."*<sup>45</sup>

However, whilst 44% of respondents to the employee survey say that the pay rate does not differ from those employed on permanent contracts doing the same job, 39% report that they are paid less than those doing the exact same job. Out of the 39%, the majority of respondents were from the public sector, then the finance sector and closely followed by wholesale and retail and transport and communication.

<sup>43</sup> Written Submission received from Prospect Union, October 2015

<sup>44</sup> Resolution Foundation, Zeroing In, March 2014 p.8

<sup>45</sup> Public Hearing with ASL and Rowlands Recruitment, November 2015, p.5

APPENDIX 2

Zero-Hour Contracts (S.R.3/2016): response of the Minister for Social Security.  
(S.R.3/2016 Res.)

Page 25 – R11 Ministerial response on exclusivity clauses

R11	The Minister should consult with a view to bringing forward proposals to amend the Employment (Jersey) Law 2003 to abolish exclusivity clauses.	SS	Reject	<p>The Panel has not presented sufficient evidence that exclusivity clauses are being used in Jersey or that they present a significant problem that would justify the time required to consult and prepare legislation. It is not clear from the report what practice the Panel actually seeks to abolish (see Finding 13). Banning exclusivity clauses is unlikely to make any practical difference to the experience of employees. It may be more appropriate to provide additional support to employees to help them understand their terms of employment.</p> <p>The development of legislation in this area in the UK was far more complex than had been anticipated. Particularly challenging was the further consultation and legislation required to introduce anti-avoidance measures to prevent employers from circumventing the ban (e.g. what if the employer offers a contract guaranteeing 1 hour per month?).</p> <p>Although some employees (around 17%) told the Panel that they were never allowed to work for another employer, the employer respondents said that they did not restrict their zero-hour staff in this way. Even in the UK, the number of zero-hour contracts with exclusivity provisions is believed to be small and so the law change is not expected to have much impact.</p>
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