STATES OF JERSEY



ZERO HOURS CONTRACTS: RESPONSE TO P.100/2013 AS AMENDED

Presented to the States on 6th May 2015 by the Minister for Social Security

STATES GREFFE

REPORT TO STATES – ZERO-HOURS CONTRACTS

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1 Executive summary

- 1.1.1 This report is in response to parts (a) and (b) of P.100/2013 as amended.
- 1.1.2 The States is not asked to make any decisions on the basis of this report.
- 1.1.3 The Social Security Department does not intend to bring forward for approval any draft legislation relating to zero-hours contracts at this time.
- 1.1.4 A new 'zero-hours contracts guide' has been prepared in conjunction with the Jersey Advisory and Conciliation Service (JACS) to provide clarity about the appropriate use of zero-hours contracts and the rights of individuals who are employed under such contracts.

2 Introduction

- 2.1.1 In September 2013, the States adopted the Proposition 'Zero-hours contracts: Regulation', as amended¹. The effect of the Proposition is "to request the Minister for Social Security to
 - (a) investigate the extent to which zero-hours contracts are used across the various sectors of the economy;
 - (b) examine the impact of these contracts on employers and employees;
 - (c) subject to the findings and conclusions of the investigations conducted in accordance with paragraphs (a) and (b), and subject to the outcome of consultation with stakeholders, to bring forward for approval such draft legislation as is deemed necessary to restrict any proven misuse of zero-hours contracts."
- 2.1.2 The report that accompanied the Minister's amendment to the Proposition commented that "The States of Jersey Statistics Unit intends to investigate issues relating to zero-hours contracts through its suite of business and household surveys. Such work will involve surveying businesses to estimate the overall scale and sectoral distribution of the use of zero-hours contracts in Jersey, and will also aim to measure the proportion of workers engaged on such contracts who were actually employed within a given time period as well

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¹ P.100/2013 and P.100/2013 Amd.

- as the average numbers of hours worked. It is anticipated that a complementary perspective will be gained by also surveying households. Such an approach will aim to examine subjective and practical issues for individuals who are engaged on zero-hours contracts."
- 2.1.3 The report explained that the data was expected to be available by the end of 2014 and that the results would form the basis for further consideration as to what, if any, action might be necessary to restrict any proven misuse of zero-hours contracts. Data from businesses (from the manpower survey) and data about zero-hours contract workers (from the Jersey Annual Social Survey) is available and the Minister is pleased to present the findings in sections 6 and 7.

3 What is a zero-hours contract?

- 3.1.1 Zero-hours contracts can be described as arrangements where a person agrees to be available for work, but no particular number of hours or times of work are guaranteed by the employer and the employee is paid only for work carried out. There is usually no obligation on the part of the employer to offer work and no obligation on the employee to accept.
- 3.1.2 'Zero-hours contract' is not a legal term and a wide range of different types of working arrangements fall under the term. The types of typical working relationship are many and varied and may include office-holders, fixed-term contractors, part-timers, bank staff, employment agency staff, interns and casual labour.
- 3.1.3 Problems sometimes arise where an employer inappropriately uses a zero-hours contract for work that is regular, perhaps because the employer believes it protects them from claims under the Employment (Jersey) Law 2003, or the working arrangements may have changed over time to become more regular. However, where an employer-employee relationship has been created, which is likely where there is a mutual expectation that work will be offered by the employer and accepted by the employee, all of the employment rights will potentially apply. While it is for the Employment Tribunal to determine the facts in any complaint, it is clear that employers must be careful that they use zero-hours contracts appropriately.

4 Appropriate and inappropriate use of zero-hours contracts

4.1.1 The commitment of the States to review the extent of the use of zero-hours contracts in Jersey is based on the premise that employers in Jersey are misusing these contracts to their own advantage – "with no holiday or sick pay often, and any waiting time spent at home rather than at work, firms need only pay for the time workers actually spend on the job". There is the suggestion that 'regulation' would address the poor practice amongst some employers and lack of awareness of employment rights amongst employees.

² Accompanying report to P.100/2013

- 4.1.2 There are many situations in which a zero-hours contract may be appropriate;
 - an employer needs a bank of casual workers who are available to be called upon to meet workload peaks (e.g. seasonal work) or to cover for permanent staff who are sick or on holiday (e.g. health services, teaching)
 - an employer needs a flexible workforce that can respond to fluctuating demand quickly and cost-effectively (e.g. catering)
 - an employment agency supplies temporary staff to other organisations but there is no guarantee that work will be available
 - People with professional skills are willing to be available on an ad hoc basis, depending on their own schedule (e.g. retired people)
 - Individuals require more scope than other employees to dictate their own schedule and balance their work commitments around their personal lives (e.g. students, people with caring responsibilities).
- 4.1.3 It is important to ensure that employers are aware of the alternatives to zero-hours contracts, such as variable hours contracts, flexible hours contracts and minimum hours contracts, for example, where the amount of work available is regular but the hours vary from week to week, and where the employer wants to exercise a degree of control in the hours that employees must be available for work.
- 4.1.4 The Minister, in conjunction with JACS, has ensured that information is available to Jersey employers to help them use appropriate contracts and reverse any poor practice. Clarity about the appropriate use of zero-hours contracts and the rights of those employed under such contracts is provided in a new JACS guide which sets out³
 - an explanation of the term 'zero-hours contract' and the principles around how such contracts work
 - a flowchart to assist a business in deciding whether a zero-hours contract is the right type of contract for the work they have available
 - a template for written terms and conditions that would apply when zerohours contract work is appropriate.

5 What statutory rights apply to zero-hours contracts?

- 5.1.1 A person who meets the definition of 'employee' is entitled to protection under the Employment Law including rest days and paid annual leave, the minimum wage, pay slips, redundancy pay and all of the family friendly rights that will come into force on 1 September 2015.
- 5.1.2 In the UK, the extent of a person's employment rights depends on whether they are defined as an 'employee' or a 'worker'. Workers have fewer employment rights than employees; they have some basic statutory protection which recognises that they are in a subordinate position to the person for whom they work, but are not entitled to the full range of employment rights.

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³ <u>www.jacs.org.je/media/93379/zero-hour-guide-Apr-15.pdf</u>

For example, in the UK, both employees and workers are entitled to receive the minimum wage, paid annual leave and weekly rest breaks, however, employees are entitled to written terms of employment, pay slips and protection against unfair dismissal, but workers are not.

- 5.1.3 Zero-hours contract staff in the UK are often treated as workers, rather than employees and so engaging staff on zero-hours contracts may be attractive to employers in the UK, for example, to reduce staff costs. This distinction does not exist in Jersey because the Employment Law definition of 'employee' encompasses both the UK definitions of worker and employee and all of the employment rights potentially apply. Some employers in Jersey may not be clear on the implications of this difference relating to employment status, however a JACS guide explains the difference between employees and independent contractors under the Employment Law and clarifies when an individual is likely to be regarded as an employee⁴.
- 5.1.4 Jersey's definition of 'employee' is as wide as the UK definition of worker; 'a person is employed by another person "if the first person works for the second person under a contract of service or apprenticeship with the second person" or "if the first person enters into any other contract with the second person under which (a) the first person undertakes to do, or to perform personally, work or services for the second person; and (b) the status of the second person is not that of a client or customer of any profession or trade or business undertaking that is carried on by the first person."

6 UK position

- 6.1.1 At the time of the States commitment to investigate the extent of the use of zero-hours contracts in Jersey, the UK Government was undertaking an information-gathering exercise about zero-hours contracts, including consultation with stakeholders.
- 6.1.2 In September 2013, the UK Government announced that it would consult on zero-hours contracts to tackle any abuses in the system, particularly around exclusivity clauses, which means the employer does not guarantee work but requires that the zero-hours employee does not work elsewhere. That consultation identified exclusivity clauses as being of concern and the Government decided to consult further about banning exclusivity clauses in contracts that provide no guaranteed working hours.
- 6.1.3 By comparison, according to the Jersey Annual Social Survey (see page 11) only 2 percent of zero-hours contract staff in Jersey said that 'not being allowed to work for another employer whilst on zero-hours contract" was a significant problem for them.
- 6.1.4 The Small Business, Enterprise and Employment Bill (which received Royal Assent on 26 March 2015) amends the Employment Rights Act 1996 to

⁴ www.jacs.org.je/legislation/employment-(jersey)-law-2003/employee-or-contractor/

⁵ Article 1A, Employment (Jersey) Law 2003

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⁻ report to states 01 may 2015 v.5.docx

render exclusivity clauses unenforceable and includes regulation-making powers to introduce a mechanism to penalise employers for including such clauses and to tackle avoidance of the ban.

- 6.1.5 The Bill defines 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
 - (b) there is no certainty that any such work or services will be made available to the worker."
- 6.1.6 As well as banning exclusivity clauses, the UK Government announced two other plans as result of the extensive consultation with stakeholders; developing an industry lead code of practice on the fair use of zero-hours contracts and reviewing existing guidance to improve the information available to employers and employees.
- 6.1.7 The UK's Office for National Statistics (ONS) has estimated from a survey of businesses that the number of people who worked under a zero-hours contract in August 2014 was 1.8 million⁶ which represents around 6% of people in employment. ONS data from the Labour Force Survey (which collects information from workers rather than employers) suggests that 697,000 people were on zero-hours contracts as their main employment in the fourth quarter of 2014 which represents 2.3% of people in employment.
- 6.1.8 The ONS business survey also shows that zero-hours contracts were most commonly used among employers in the accommodation and food services sector (53% of employers in this sector), in education (27% of employers in this sector) and health and social work (19% of employers in this sector).
- 6.1.9 Data on zero-hours contracts in the UK varies depending on the exact parameters of the question being asked.

7 Zero-Hours Analysis – Manpower & Contributions returns

- 7.1.1 In order to investigate the extent to which zero-hours contracts are used across the various sectors of the Jersey economy, data from the manpower and contribution returns has been analysed.
- 7.1.2 These figures are based on the first published report on manpower and contributions returns. The figures were not seasonally adjusted.
- 7.1.3 This report has required extensive time and resources to produce.

⁶ This excludes contracts with no guaranteed hours which did not provide work during the fortnight of the survey. I:\strategy & policy\policy\new policy\employment\employment law\policy areas\zero hours\communications\zero hour contracts

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- 7.1.4 As of June 2014, there were 5,861 zero-hours jobs in total based on the manpower return compared to the recently published labour market numbers (5,990⁷ in December 2014) and the manpower return.⁸
- 7.2 The number of people with zero-hours jobs (5,522)
- 7.2.1 Of the 5,861 zero-hours jobs, 5,522 people had at least one zero-hours contract. This represents 10% of the economically active population (55,039) as per the Census 2011.
- 7.2.2 Of the 5,522 people with at least one zero-hours contract, 313 people had two or more zero hours jobs (6%) and 5,209 (94%) had either no other job or another job that was not a zero-hours contract.

Number of Zero-Hours Contract	People	%
Only 1 zero hour job	3,794	68
1 zero hour job and another full/part time job	1,415	26
2 or more zero hour jobs only	204	4
2 or more zero hour jobs and another full/part time job	109	2
Total	5.522	

Table 1: people with at least one zero-hours contract

7.2.3 The following table breaks down the 5,522 people with at least one zero-hours contract by age and gender:

Age (years)	Male	Female	Total	%	
15-19	267	290	557	10%	250/
20-24	442	379	821	14%	25%
25-29	369	315	684	12%	
30-34	373	269	642	11%	
35-39	275	259	534	9%	•
40-44	256	260	516	9%	71%
45-49	236	281	517	9%	1 1 /0
50-54	193	256	449	8%	•
55-59	147	183	330	6%	•
60-64	102	142	244	4%	•
65+	114	114	228	4%	4%
Total	2,774	2,748	5,522		
%	50%	50%		_	

Table 2: people with zero-hours contract by age and gender

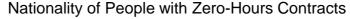
⁷http://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/R%20Jersey%20Labour%20Market%20D ecember%202014%2020150415%20SU.pdf

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The difference is attributable to the timing of the data.

⁻ report to states 01 may 2015 v.5.docx

- 7.2.4 29% of people with a zero-hours contract are under 25 years of age or over 65 years of age.
- 7.2.5 The following table breaks down the 5,522 people with at least one zero-hours contract by nationality:



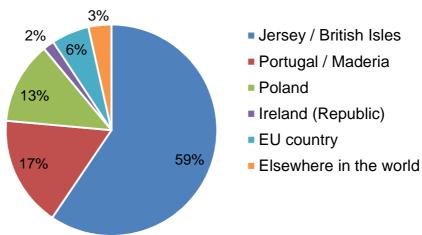


Figure 1: nationality of people with at least one zero-hours contract

- 7.2.6 Of the 5,522 people with at least one zero-hours contract, 59% are Jersey / British Isles individuals.
- 7.2.7 The following is an excerpt from the 2011 Census regarding working age adults by place of birth:

Working Age Population by place of birth

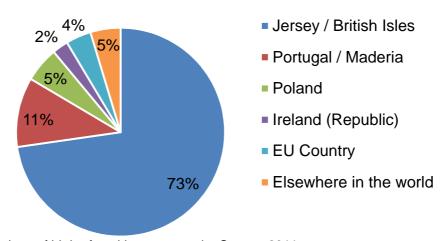


Figure 2: place of birth of working age people, Census 2011

7.2.8 In comparison to the Census 2011, EU workers with zero-hours contracts are over-represented in the analysis and those with British nationality are under-represented in the analysis.

- 7.3 The number of people with a zero-hours jobs as their main job (3,998)
- 7.3.1 Of the 5,522 people with at least one zero-hours contract, 3,998 people had a zero-hours contract as their main job. This represents 7.3% of the economically active population (55,039) as per Census 2011.
- 7.3.2 The latest estimate of the number of people who are employed on zero-hours contracts in their main employment, from the Labour Force Survey (LFS) in the United Kingdom, which is a survey of individuals in households, is 697,000 for October to December 2014, representing 2.3% of people in employment.⁹
- 7.3.3 The following table breaks down the 3,998 people with a zero-hours contract job as their main job by age and gender:

Age (years)	Male	Female	Total	%	
15-19	237	241	478	12%	28%
20-24	372	282	654	16%	20%
25-29	282	211	493	12%	
30-34	267	171	438	11%	
35-39	202	157	359	9%	
40-44	174	163	337	8%	66%
45-49	152	179	331	8%	00 /6
50-54	132	151	283	7%	_
55-59	100	118	218	5%	_
60-64	83	110	193	5%	
65+	108	106	214	5%	5%
Total	2,109	1,889	3,998		
%	53%	47%		_	

Table 3: people with zero-hours contract as main job by age and gender

- 7.3.4 There are slightly more people with a zero-hours contract who are under 25 years of age or over 65 years of age than in the population generally as per the Census 2011 (32%).
- 7.3.5 More than half (53%) of people with a zero-hours contract as their main job are male.
- 7.3.6 In comparison there are more men with a zero-hours contract as their main job than in the population generally as per the Census 2011 (50%).

⁹ <u>http://www.ons.gov.uk/ons/dcp171776_396885.pdf</u>

7.3.7 The following table breaks down the 3,998 people with a zero-hours contract as their main job by nationality:

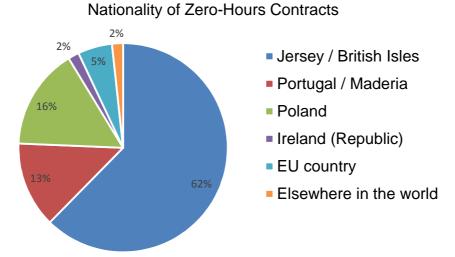


Figure 3: Nationality of people with zero-hours contract as main job

- 7.3.8 Of the 3,998 people with a zero-hours contract as their main job, 62% are Jersey / British Isles individuals.
- 7.3.9 The 3,998 people with a zero-hours contract as their main job work in the following industries:

Industry	Total number of people with zero-hours as main job	Total number of zero- hour jobs	% of zero hours contracts as main job	
Agriculture and fishing	562	585	96%	
Computer and related activities	22	31	73%	
Construction and quarrying	485	603	80%	
Education, health and other services	594	1000	59%	
Electricity gas and water supply	15	17	87%	
Financial and legal activities	56	76	74%	
Hotels, restaurants & bars	522	913	57%	
Manufacturing	76 106		72%	
Public	336	525	64%	
Real estate and other business activities	856	1365	63%	
Transport, storage and communication	137	188	73%	
Wholesale and retail trades	337	452	75%	
Total / average	3,998	5,861	68%	

Table 4: industry worked in by those with a zero-hours contract as their main job

- 7.3.10 There are four industries in which over 500 people have zero-hours contracts as their main job.
- 7.3.11 The average proportion of people on zero hours contracts as their main job is 68%. This statistic varies considerably between sectors, e.g., those working on a zero-hours contract in agriculture and fishing almost always have the zero-hour contract as their main job, whereas for over 40% of employees in hotels, restaurants and bars, the zero-hours contract is not their main job.
- 7.3.12 The analysis was able to fully match 3,107 (78%) of the 3,998 people with a zero-hours contract as their main job to data held by the Social Security Department.¹⁰ The following shows the four industries where over 500 people have zero-hours contracts as their main job (table 4) against matched data.

Industry	Matched	Annual Average Earnings £'000	Matched and on Income Support	Annual Average Earnings £'000	Matched and less than 5 years residency	Annual Average Earnings £'000
Agriculture and fishing	549	£19,000	~	£13,000	263	£18,000
Education, health and other services	414	£13,000	50	£11,000	52	£13,000
Hotels, restaurants & bars	375	£12,000	31	£9,000	190	£13,000
Real estate and other business activities	669	£19,000	62	£12,000	106	£16,000
Total / Average (all industries)	3,107	£17,000	263	£12,000	731	£16,000

Table 5: people with a zero-hours contract as their main job by income support and contribution data. (~ represents less than 10 people).

7.3.13 The estimated annualised average earnings for sectors varies considerably, e.g., average earnings for workers with zero-hours contracts as their main job in real estate and other business activities is estimated to be well above the average earnings for workers with zero-hours contracts as their main job in the hotels, restaurants and bars sector.

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¹⁰ Results are based on those individuals we were able to match exactly. There are several reasons exact matching was not possible in all cases, due to the way in which the data is collected.

8 Zero-Hours Analysis – Jersey Annual Social Survey (JASS) 2014

- 8.1.1 To examine the impact of these contracts on employers and employees, a set of questions was included in the 2014 JASS.
- 8.1.2 Around three-quarters (76%) of workers on zero-hours contracts reported being either 'very' or 'fairly' satisfied with the type of contract, identifying the flexibility as one of the main benefits. Lack of employment benefits and difficulties arranging a mortgage or loan were a significant problem for around one in six of those on zero-hours contracts.
- 8.1.3 Those currently working for an employer were asked whether they were on a 'zero-hours' contract of employment. This was defined as 'an employment contract under which the employee is not guaranteed work and is paid only for work carried out'.
- 8.1.4 In terms of occupation, almost half (45%) of those on zero-hours contracts worked in routine or manual type roles (routine occupations include jobs such as cleaner, labourer, waiter), another quarter (24%) worked in professional occupations (which generally require a professional qualification, such as accountant, teacher or nurse) and a fifth (19%) worked in technical or craft occupations (which includes mechanics, electricians and plumbers).

8.2 Satisfaction with zero-hours contracts

- 8.2.1 Those working on zero-hours contracts were asked how satisfied they were being on such a contract.
- 8.2.2 Figure 4 shows that three-quarters (76%) reported being either 'very' or 'fairly' satisfied with being on this type of contract. One in ten (11%) reported being 'not at all' satisfied.

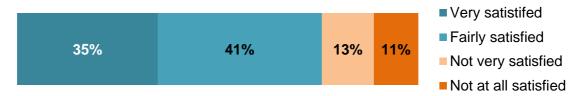


Figure 4: "How satisfied are you with being on a zero-hours contract?"

8.3 Advantages of zero-hours contracts

- 8.3.1 People working on zero-hours contracts were asked about potential advantages of being on this type of contract.
- 8.3.2 Three-quarters of people on zero-hours contracts identified that the flexibility in hours was relevant for them. A quarter of those on such contracts reported that they 'just wanted occasional hours', and one in eight (13%) liked the flexibility to be able to turn down work at short notice (see Table 6).
- 8.3.3 In contrast, one in five (21%) zero-hours contract staff reported not gaining any advantages from being on a zero-hours contract.

I like the flexibility in hours as it suits my circumstances	74
I just want occasional hours	28
I like to be able to turn down work at short notice	13
None of the above – I don't gain any advantage from being on a zero-hours contract	21

Table 6: "Which, if any, of the following advantages do you gain from being on a zero-hours contract?" (Respondents were able to tick more than one option)

8.4 <u>Disadvantages of zero-hours contracts</u>

8.4.1 People working on zero-hours contracts were asked about potential problems arising from these contracts. A number of potential issues with being on a zero-hours contract were listed, and respondents were asked to identify which, if any, were slight or significant problems for them. Table 7 provides the full results. Around half of zero-hours contract staff said that 'arranging childcare', 'obtaining a mortgage or loan', 'not being allowed to work for another employer' and 'receiving a lower rate of pay than non-zero hours colleagues doing the same job' were not applicable for them.

	Not applicable	Not a problem for me	A slight problem for me	A significant problem for me
Arranging childcare	53	27	15	4
Planning time off for holidays	9	78	8	5
Obtaining a mortgage or loan	51	30	2	17
Not being allowed to work for another employer whilst on zero-hours contract	51	30	17	2
Less employment benefits (such as pension, sick pay)	18	36	32	14
Lower rate of pay than colleagues not on zero-hour contracts who do same job	51	39	7	4

Table 7: "Are any of these a problem for you, as a direct result of being on a zero-hours contract?" Percent of respondents on 'zero hours' contracts

8.4.2 The most common issue identified as being a problem was having 'less employment benefits such as pension, sick pay', as nearly half (46%) reported this as being either a slight or significant problem for them. 'Planning time off for holidays' and having 'a lower rate of pay than colleagues not on zero-hours contracts but who do the same job' were identified as a problem by just over one in ten of respondents on zero-hours contracts (13% and 11% respectively). The other listed issues, namely 'arranging childcare' and 'not being allowed to work for another employer', were considered a slight or significant problem for around one in five people on zero-hours contracts (19%).