

STATES OF JERSEY



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 12) (JERSEY) LAW 202-

**Lodged au Greffe on 14th February 2022
by the Minister for Social Security
Earliest date for debate: 29th March 2022**

STATES GREFFE



Jersey

DRAFT EMPLOYMENT (AMENDMENT No. 12) (JERSEY) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Social Security has made the following statement –

In the view of the Minister for Social Security, the provisions of the Draft Employment (Amendment No. 12) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy J.A. Martin of St. Helier**
Minister for Social Security

Dated: 10th February 2022

REPORT

Summary

This draft Amendment to the [Employment \(Jersey\) Law 2003](#) is proposed in response to the approval of the States Assembly last year to [P.32/2021 as amended](#).

Part (c) of that proposition requested the Minister for Social Security to bring forward legislation to ban exclusivity clauses in zero-hours contracts.

The remainder of P.32/2021 as amended set out a major review of the use of zero-hours contracts and the rights of workers under such contracts. The [Government Plan 2022-2025](#) includes a specific action to undertake this review.

In advance of the outcomes of the main review, this proposition addresses the specific issue of exclusivity clauses, an area which was also previously debated by the States Assembly in 2016.

Following the outcome of the full review, further changes may be proposed in respect of the definition of a zero-hours contract and/or the use of exclusivity clauses in zero-hours contracts.

Background

The report accompanying the amendment to P.32/2021 describes the background as follows:

“8. Legal definition of zero-hours contract and exclusivity clauses.

Part (c) of the amendment states:

(c) to request the Minister for Social Security to bring forward for debate legislation to implement a ban on exclusivity clauses by March 2022 and to request the Council of Ministers to allocate additional financial and law drafting resources during 2021 to the Minister for Social Security to enable this work to be completed;

This amendment has been drafted to allow States Members to make a separate decision on bringing forward legislation on exclusivity clauses more quickly than the main review.

In 2016 the Assembly agreed a stand-alone decision that ‘exclusivity clauses’ in zero-hours contracts should be prohibited;”. However, no action or timetable was agreed to accompany the statement.

Subject to additional resources being made available, a separate project to address this specific issue could be implemented by March 2022. Any protection provided in this area may require amendment following the outcome of the full review and this would be taken into account in the initial and any subsequent drafting requirements.

A [2018 House of Commons Briefing paper](#) provides a useful description of the actions taken by the UK government in this area.

“7. Small Business, Enterprise and Employment Act 2015

The Small Business, Enterprise and Employment Act 2015 came into force on 26 March 2015. Section 153 came into force on 26 May 2015 and seeks to render unenforceable exclusivity clauses in zero-hours contracts. The

section amended the Employment Rights Act 1996, inserting a new Part 2A.

Section 27(1) defines “zero-hours contract” as a contract of employment or other worker’s 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.

Commentators criticised this definition, pointing out that it might easily be sidestepped by providing a nominal amount of work (e.g. one hour per month).

Section 27A(2) of the 1996 Act as amended contains the ban on exclusivity clauses:

(3) Any provision of a zero-hours contract which –

(a) prohibits the worker from doing work or performing services under another contract or under any other arrangement, or

(b) prohibits the worker from doing so without the employer’s consent, is unenforceable against the worker.”

A similar approach to the UK has been taken by the Isle of Man. Section 166A of the [Manx Employment Act 2006](#) provides:

“(1) A term of a zero-hours contract prohibiting a worker from doing work or performing services under another contract or any other arrangement or from doing so without the employer’s consent, is unenforceable against the worker.”

The definition of a zero-hours contract in Jersey

The Employment Law does not currently include a definition of a zero-hours contract.

However, a local definition of a zero-hours contract is provided in the [Control of Housing and Work \(Exemptions\)\(Jersey\) Order 2013](#):

“.....a contract or other arrangement between an individual and an undertaking such that the individual may work for the undertaking from time to time but there is no minimum requirement for the individual to do any work for the undertaking.”

Exclusivity clauses in zero-hours contracts

There is no evidence to suggest that exclusivity clauses in zero-hours contracts are causing an issue in Jersey. Out of a total of 8431 queries to the Jersey Advisory and Conciliation Service in 2021, 313 concerned zero-hours contracts. None related to exclusivity clauses.

However, such clauses have been used in the UK in recent years and the proposed amendment will ensure that any attempt to use such a restriction within a local zero-hours contract would be unenforceable by the employer.

Employment Law Amendment

The proposed draft Amendment to the Employment Law proposes a new Article 6 should be added to the Employment Law. This provides that a provision of a zero-hours contract is not enforceable if it prohibits the employee from being employed by another employer or requires the employee to have the employer's consent to be employed by another employer. The amendment draws on the current definition of a zero-hours contract as included in the Control of Housing and Work (Exemptions)(Jersey) Order 2013.

Full review of employee rights under zero-hours contracts

The Government Plan 2022-2025 includes the following commitments:

“For those in work, we will review the rights of workers under different types of contract to make sure that our employment law protects workers in light of modern working practices, including the use of zero-hour contracts”.

and:

“Review of Workers’ Employment Rights

We will provide funding to support a review of workers’ rights and to provide a publicity campaign to employers and employees. The review will make sure that our employment law protects workers in light of modern working practices, including the use of zero-hour contracts.

The States Assembly (P.32/2021) agreed an allocation of funding in 2022.

This project will benefit Islanders:

- *By making sure that workers are well protected in respect of modern employment practices.*
- *By providing an inclusive and fair labour market.*
- *By improving knowledge amongst businesses and workers of workers’ rights under different types of contract.”*

This review will continue during 2022. The outcome of the review may recommend a refinement of the definition of a zero-hours contract and/or may propose additional or alternative measures in respect of exclusivity clauses. Any such recommendations will be included in further amendments to the Employment Law, which will be brought forward by the incoming Minister for Social Security.

Financial and manpower implications

There are no financial or manpower implications arising from this Proposition.

Human Rights

No human rights notes are included in this Proposition. The Law Officers have confirmed that the Draft Employment (Amendment No. 12) (Jersey) Law 202- raises no issues of compliance with the European Convention on Human Rights.

EXPLANATORY NOTE

This Law, if passed, would amend the Employment (Jersey) Law 2003 to make exclusivity clauses in zero hours contracts unenforceable by the employer against the employee.

Article 1 inserts a new Article 6 into the Employment (Jersey) Law 2003. This provides that a provision of a zero hours contract is not enforceable if it prohibits the employee from being employed by another employer or requires the employee to have the employer's consent in order to be employed by another employer. It defines a "zero hours contract" as a contract of employment where the employee works for the employer from time to time but there is no minimum requirement for the employee to do any work for the employer.

Article 2 gives the name by which the Law may be known and provides that it comes into force 7 days after it is registered.



Jersey

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A LAW to amend further the [Employment \(Jersey\) Law 2003](#).

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 [Employment \(Jersey\) Law 2003](#) amended

After Article 5 of the [Employment \(Jersey\) Law 2003](#) there is inserted –

“6 Exclusivity clauses in zero hours contracts not enforceable

- (1) A provision of a zero hours contract is not enforceable by an employer against an employee if it –
 - (a) prohibits the employee from being employed by another employer; or
 - (b) requires the employee to have the employer’s consent to be employed by another employer.
- (2) In this Article “zero hours contract” means a contract of employment where the employee may work for the employer from time to time but there is no minimum requirement for the employee to do any work for the employer.”.

2 **Citation and commencement**

This Law may be cited as the Employment (Amendment No. 12) (Jersey) Law 202- and comes into force 7 days after it is registered.