



Briefing Paper 1 | January 2023

Zero-Hour Contracts

Overview

This Briefing Paper explores Zero-Hour Contracts within the context of their operation in Jersey and elsewhere. It highlights legislation currently enacted by the Island, previous debate within the States Assembly and outlines relevant approaches to the topic adopted in other jurisdictions.



Background

Although there is some difficulty in defining zero-hour contracts, Article 6 of the [Employment \(Jersey\) Law 2003](#) identifies them to mean:

“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.”

This description was based upon definition established in the [Control of Housing and Work \(Exemptions\) \(Jersey\) Order 2013](#).

The Jersey Advisory & Conciliation Service (JACS) outlines within its [zero-hour guide](#) that they are contracts that are arrangements where people agree to be available for work ‘as and when’ required but no particular number of hours or regular times of work are specified. In a true zero-hour contract there should be no obligation on the part of the business to offer work and no obligation on the individual to accept, nor any penalty for turning down hours of work offered by the employer. JACS highlight that the types of typical working relationships involving zero-hour contracts are many and varied and may include officeholders, fixed-term contractors, part-timers, bank staff, employment agency staff, interns and casual labour.

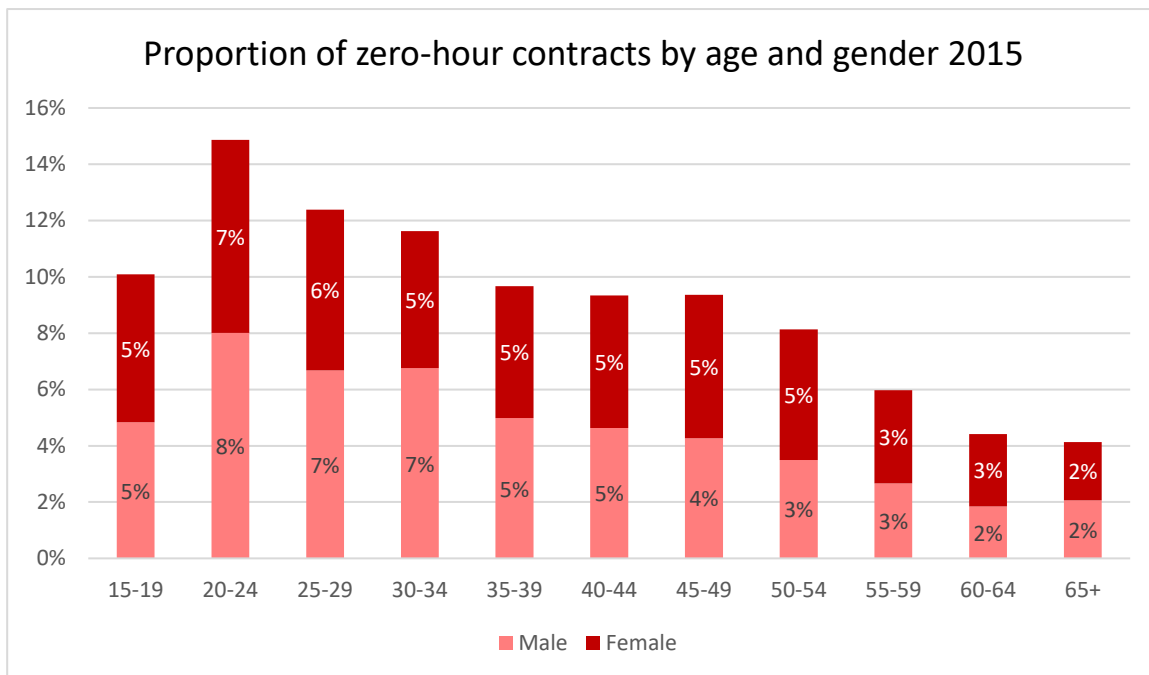
The [Jersey Opinions and Lifestyle Survey 2019](#) identified that one in one in twenty five (4%) employees reported being on a zero-hours contract in their main job. It can be noted that in that survey, 75% of those reporting to be employed on a zero-hours contract in their main job were female. Although the [Jersey Opinions and Lifestyle Survey 2022](#) did not question the respondents on their employment contract type, one in ten (11%) of all workers reported that [they would prefer to work longer hours if given the opportunity](#).



Latest figures reported in [Statistics Jersey June 2022 Labour Market Report](#) indicate that there were **7,040** jobs filled on zero-hours contracts which again represented 11% of total employment. It can be seen that this has remained relatively constant:

| Year | Number of zero-hour jobs | Total Jobs in Jersey | Proportion of zero-hour jobs |
|------|--------------------------|----------------------|------------------------------|
| 2014 | 6,050 | 58,330 | 10.4% |
| 2015 | 6,450 | 59,080 | 10.9% |
| 2016 | 7,040 | 60,320 | 11.7% |
| 2017 | 6,780 | 61,660 | 11.0% |
| 2018 | 6,550 | 61,930 | 10.6% |
| 2019 | 6,830 | 62,440 | 10.9% |
| 2020 | 5,740 | 59,880 | 9.6% |
| 2021 | 6,540 | 62,430 | 10.5% |
| 2022 | 7,040 | 63,720 | 11.0% |

A breakdown of ages and genders of people with zero-hour contracts as of June 2014 has previously been provided in a report to the States [R.52/2015](#):



Existing Legislation

There are elements of Jersey Legislation that directly influence operation of zero-hour contracts, predominately within the [Employment \(Jersey\) Law 2003](#). The [Employment \(Amendment of Law\) \(Jersey\) Regulations 2015](#) ensure that:

- rights conferred by [Part 2 of the Employment \(Jersey\) Law 2003](#) are extended to individuals who are employed for less than 8 hours a week
- a week during which an employee is employed for less than 8 hours counts towards the employee's period of continuous employment
- Article 61 of the Employment (Jersey) Law 2003 (the right not to be unfairly dismissed) is extended to employees whose basic contractual hours of employment are less than 8 hours a week



This means that, unlike in the UK where the government distinguishes between “employees” and “workers” with each group enjoying different levels of employment protection, all those who work in Jersey are classed as “employees” and are entitled to the same level of employment rights and protections, regardless of the type of contract they are employed on.

In 2021 the Assembly adopted the proposition Regulation of Zero-Hours Contracts ([P.32/2021](#)) as amended, which requested:

- a review of existing legislation be undertaken to ensure that sufficient measures are available to protect employees from any challenges caused by the use of “zero hour” contracts and, as needed, to strengthen the regulation of employment;
- the Minister for Social Security to bring forward for debate any necessary legislation and any such enforcement regulations as may be required;
- the Minister for Social Security to bring forward for debate legislation to implement a ban on exclusivity clauses, this led to the debate and adoption of the Draft Employment (Amendment No. 12) (Jersey) Law 202- ([P.21/2022](#));
- the Council of Ministers to allocate additional funding in respect of the cost of expert advice to support the actions specified. £50,000 funding for 2022 was subsequently allocated in the 2022 – 2026 Government Plan.

Whilst considering existing legislation it should be noted that Part 3A of the [Employment \(Jersey\) Law 2003](#) establishes that an employee, including those under a zero-hour contract, may apply to his or her employer for a change in his or her terms and conditions of employment.

Review of zero-hour contracts

The Jersey Employment Forum (JEF) was asked by the former Social Security Minister, Deputy Martin to investigate the operation of zero-hour contracts in Jersey in 2022. The JEF will look to make recommendations for possible changes to the Employment (Jersey) Law 2003 and other measures that they may consider necessary to enhance the protections available to employees. They will also look to clarify the rights and responsibilities that employees and employers currently have under that Law. This followed the Assembly’s adoption of Regulation of Zero-Hours Contracts ([P.32/2021](#)) - the JEF are currently undertaking a green paper consultation entitled “[The operation of zero hours contracts in Jersey](#)”. They have also published a [Background Paper](#) which holds further information on the topic.

Previous reviews have been carried out, most notably resulting in:

- [R.52/2015: Zero-Hour Contracts: Response to P.100/2013 as amended](#)
- [S.R.3/2016 Zero-Hour Contracts - Report - 11th July 2016](#)

These have identified a number of positive points regarding zero-hour contracts, for example there are situations recognised 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)

However, negative points have also been raised:

- those who rely on a zero-hour contract as their only or main source of income, can face real challenges in meeting their living costs from fluctuating and uncertain wages
- a zero-hour contract employee may be denied full benefits of an organisation such as sick-pay or pension schemes
- employees may be penalised for turning down hours
- time taken to travel to multiple locations as part of the employment may not be taken into consideration on calculation of hours e.g. cleaning or care services
- zero-hour contracts may bar an employee from gaining mortgages or loans

Within the Assembly

There have been several mentions of zero-hour contracts in the Assembly, both within debates and questions. A selection of these from recent years are detailed below -

| Type | Title/topic | Code | Link to Hansard |
|----------------------------------|--|-----------------------------|-----------------------------------|
| Draft Legislation (adopted) | Draft Employment (Amendment No. 12) (Jersey) Law 202- | P.21/2022 | 30 March 2022 |
| | Draft Employment (Amendment No. 11) (Jersey) Law 201- | P.100/2019 | 23 October 2019 |
| Propositions (adopted) | Regulation of Zero-Hours Contracts | P.32/2021 | 12 May 2021 |
| | Zero-hours contracts: regulation | P.100/2013 | 25 September 2013 |
| Propositions (partially adopted) | Zero-hours Contracts | P.92/2016 | 16 November 2016 |
| Written Questions | Action against poor practice | WQ.242/2021 | |
| | To Attorney General regards employment contract | WQ.89/2021 | |
| | Security of zero-hour contracts | WQ.443/2020 | |
| | Impact of zero-hours on pensions | WQ.355/2019 | |
| | Zero-hour contracts in Jersey's economy | WQ.27/2018 | |
| Oral Questions | Students on zero-hour contracts | Without Notice | 02 April 2020 |
| | Inappropriate use of zero-hours contracts | OQ.151/2019 | 04 June 2019 |
| | Prohibition of exclusivity clauses in zero-hours contracts | OQ.75/2018 | 26 June 2018 |
| | Various questions | Without Notice | 02 May 2017 |



Other Jurisdictions

European Union

The European Union [Directive on transparent and predictable working conditions](#) directive specifies:

- (12) *Workers who have no guaranteed working time, including those on zero-hour and some on-demand contracts, are in a particularly vulnerable situation. Therefore, the provisions of this Directive should apply to them regardless of the number of hours they actually work.*

The directive identifies principles for fair employment with a number specifically related to zero-hour contracts, highlighting that all workers should:

- have a minimum notice period of work assignment (to allow predictable work)
- have the right to be informed about their rights and obligations resulting from the employment relationship in writing at the start of employment
- have the possibility to refuse work if it falls outside hours notified
- not be penalised for taking up other employment outside the work schedule established with the employer
- have protection against loss of income if work is cancelled
- have the right to request more predictable work
- have the right to equal training opportunities
- not be penalised for exercising their rights

The directive identifies:

- (35) *On-demand or similar employment contracts, including zero-hour contracts, under which the employer has the flexibility of calling the worker to work as and when needed, are particularly unpredictable for the worker. Member States that allow such contracts should ensure that effective measures to prevent their abuse are in place. Such measures could take the form of limitations to the use and duration of such contracts, of a rebuttable presumption of the existence of an employment contract or employment relationship with a guaranteed amount of paid hours based on hours worked in a preceding reference period, or of other equivalent measures that ensure the effective prevention of abusive practices.*

However, the directive also outlines that in implementing the measures there should be avoidance imposing administrative, financial and legal constraints in a way which would hold back the creation and development of micro, small and medium-sized enterprises.

United Kingdom

The United Kingdom has also been reviewing zero-hour contracts. The House of Commons Library has produced a number of papers outlining the history and main points of the topic, links to these are included in the further reading section below, however the main points for consideration include:

- working under a zero-hour contract does not determine the [employment status](#) as an employee or worker, which have differing rights. Most will, however, be classed as workers



- being classed as a “worker” means they have access to a limited set of employment rights, including the National Minimum Wage, paid annual leave and protection from discrimination
- Part 2A of the [Employment Rights Act 1996](#) bans the use of ‘exclusivity clauses’ in zero-hour contracts
- following reviews additional rights have been given to workers including right to receive written particulars of their employment and itemised payslips

New Zealand

Zero-hour contracts have also debated in jurisdictions further afield, for example in New Zealand through the introduction of the [Employment Relations Amendment Act 2016](#). This aimed to retain flexibility where it is desired by both employers and employees. It also aimed to increase certainty by ensuring that both the employer and the employee are clear about the mutual commitments they have made. This ensures that, amongst other things -

- employers cannot be forced to be available to work unless they have agreed hours of work (e.g. a part-time contract) or be penalised for refusing work that they are not guaranteed.
- cancelling of a shift is banned unless an employment contract agrees a notice period and requires compensation to be paid if a shift is cancelled outside of the notice period
- employees are able to undertake secondary employment unless there are genuine reasons based on reasonable grounds (such as protection of commercially sensitive information or conflict of interest)

Comparison

A comparison of the rights of those on zero-hour contracts in the jurisdictions discussed is listed in the table below. To note* the individuals members of the European Union may include further relevant legislation such as minimum wage.

| | European Union Directive* | United Kingdom | Jersey | New Zealand |
|--|---------------------------|-----------------------------------|-----------------------------------|----------------------|
| Minimum wage | | Yes | Yes | Yes |
| Paid leave | | Yes | Yes | Yes |
| Notice period of work assignment | Yes | | | Yes |
| Right to be informed on rights and obligations of employment | At start of employment | Yes – including itemised payslips | Yes – within four weeks | Yes – within 30 days |
| Possibility to refuse work | If outside notified hours | | | Yes |
| Can take on other work | If outside notified hours | Yes | Yes (exclusivity not enforceable) | Yes |
| Protection against loss of income | If work is cancelled | | | If work is cancelled |
| Right to request other work contract | Yes | | Yes | |
| Equal training opportunities | Yes | | | |
| Not be penalised for exercising rights/discrimination | Yes | Yes | | Yes |



Further reading:

- [Employment \(Jersey\) Law 2003](#)
- [Jersey Employment Forum Background Paper](#)
- [R.52/2015: Zero-Hour Contracts: Response to P.100/2013 as amended](#)
- [S.R.3/2016 Zero-Hour Contracts - Report - 11th July 2016](#)
- [S.R.3/2016 Zero-Hour Contracts - Ministerial Response](#)
- [Jersey Advisory & Conciliation Service zero-hour guide](#)
- [House of Commons Library, Briefing Paper, Employment Status](#)
- [House of Commons Library, Briefing Paper, zero-hour contracts](#)
- [House of Commons Library, Research Briefing, zero-hour contracts](#)
- [House of Commons Library, Insight, Zero-hours contracts: Rights, reviews and policy responses](#)
- [Taylor Review of Modern Working Practices](#)
- [Addressing zero-hour contracts and other practices in employment, New Zealand](#)