

# STATES OF JERSEY



## ZERO-HOURS CONTRACTS (P.92/2016): COMMENTS

---

**Presented to the States on 3rd November 2016  
by the Health and Social Security Scrutiny Panel**

---

**STATES GREFFE**

## COMMENTS

In the course of its review into zero-hour contracts, the Panel considered exclusivity clauses and commented in its report as follows<sup>1</sup>:

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

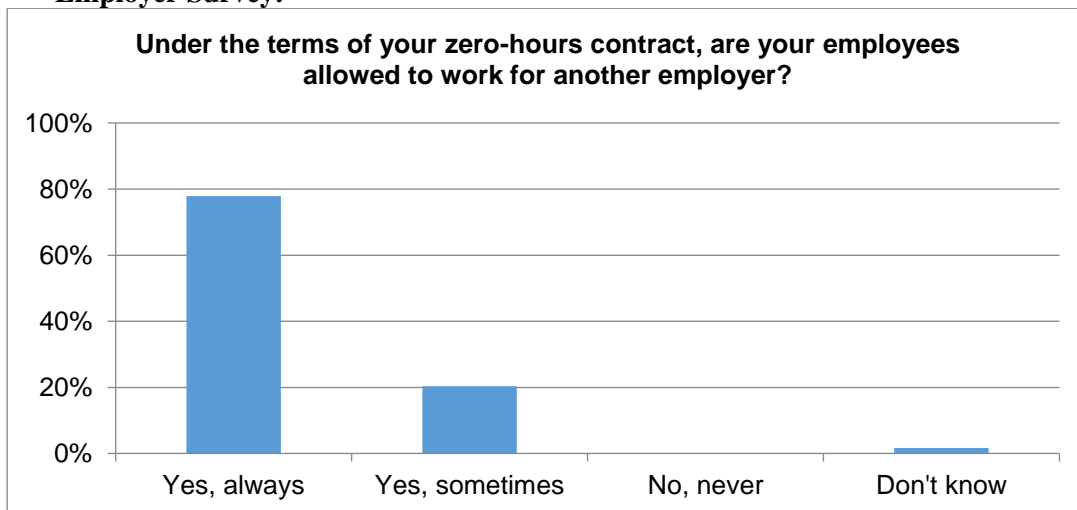
The issue over the use of exclusivity clauses within zero-hour contracts has been under recent scrutiny in the U.K. Following consultation by the U.K. Government, as from 26th May 2015, exclusivity clauses in zero-hour contracts were made unenforceable. This applies to all contracts under which there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

The Panel notes that this was a step the U.K. 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.

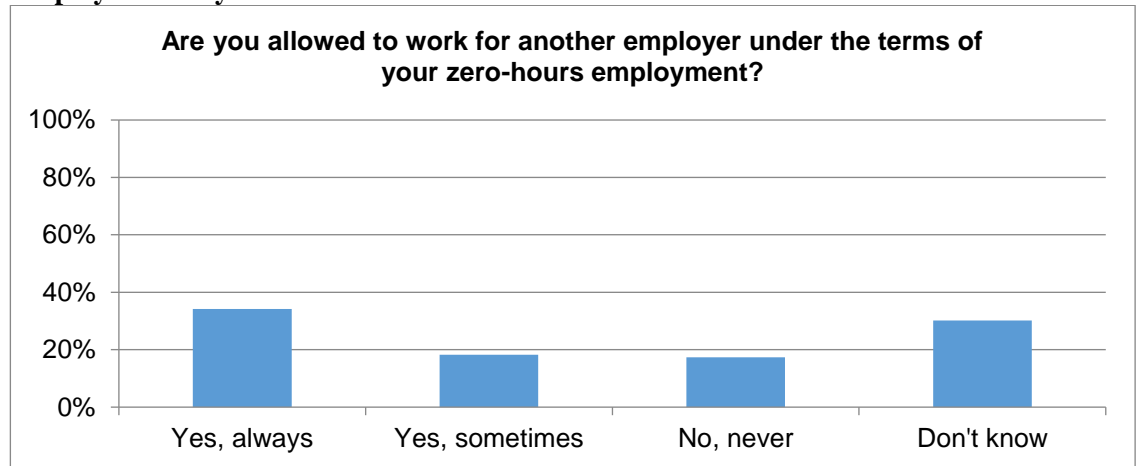
### Employer Survey:



---

<sup>1</sup> Extracts from Scrutiny Report: [Zero-Hour Contracts \(S.R.3/2016\)](#), pages 33–35

**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>2</sup>.

The Panel found that the Minister for Social Security 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>3</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>4</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>5</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 ability to secure mortgages and loans. We believe use should be*

<sup>2</sup> Resolution Foundation: Zeroing In, March 2014, p.14

<sup>3</sup> Public Hearing with the Minister for Social Security, November 2015, p.25

<sup>4</sup> Public Hearing with the Jersey Chamber of Commerce, October 2015, p.5

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

*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>6</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 for employees.

The Panel made the following key finding and recommendation:

**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.

In response, the Minister for Social Security commented –

*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.*

*The development of legislation in this area in the U.K. 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?).*

*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.*<sup>7</sup>

The Minister’s grounds for rejecting the Panel’s recommendation appear to be –

- Insufficient evidence of misuse
- Unlikely to make a practical difference to employees
- Complexity and time involved in legislative process.

On the issue of lack of evidence, the 2014 Jersey Annual Social Survey reported that not being allowed to work for another employer was a slight or significant problem for around one in five people on zero-hour contracts (19%)<sup>8</sup>. This is surely evidence that a

---

<sup>6</sup> Written Submission received from Prospect Union, October 2015

<sup>7</sup> See [Zero-Hour Contracts \(S.R.3/2016\): response of the Minister for Social Security \(S.R.3/2016 Res.\)](#), page 25

<sup>8</sup> Jersey Annual Social Survey, Statistics Unit, p.21

considerable number of employees are restricted in taking on additional employment. Questions relating to zero-hour contracts were included in the survey at the request of the Social Security Department.

In the course of its review the Panel commissioned a survey into the use of zero-hour contracts, which was made available online via Survey Monkey. The Panel received 59 employer responses and 264 employee responses. Of the employee responses –

- 61% were employed on a zero-hour contract for their main job
  - 22% said yes they were always allowed to work for another employer
  - 17.9% said yes sometimes they were allowed to work for another employer
  - 16% said no, they were never allowed to work for another employer
  - The remaining people answered “Don’t know” or skipped the question
- 12% were employed on a zero-hour contract for a second job
  - 69% said they were always allowed to work for another employer
  - 3% said yes sometimes they were allowed to work for another employer
  - 3% said no, they were never allowed to work for another employer
  - The remaining people answered “Don’t know” or skipped the question
- 26% had previously been employed on a zero-hour contract
  - 26% said they were always allowed to work for another employer
  - 15.9% said yes sometimes they were allowed to work for another employer
  - 17.3% said no, they were never allowed to work for another employer
  - The remaining people answered “Don’t know” or skipped the question.

In the U.K., the *Small Business, Enterprise and Employment Act 2015* came into force on 26th March 2015. Section 153 came into force on 26th May 2015 and seeks to render unenforceable exclusivity clauses in zero-hour contracts. The change was part of a bid to clamp down on abuses in the workplace –

*“The ban, set to benefit the 125,000 zero-hours contract workers estimated to be tied to an exclusivity clause, is part of a bid to clamp down on abuses in the workplace by less scrupulous employers. It will allow workers to look for additional work to boost their income<sup>9</sup>.”*

It is extremely difficult to get direct evidence of the misuse of exclusivity clauses in Jersey. Employees on zero-hour contracts may feel in a vulnerable position, and perhaps are fearful when addressing contentious issues with their employers. They may also be less likely to raise a complaint with anyone in authority for fear of being identified by their employers as troublemakers.

However, given that there is a higher proportion of zero-hour contracts in Jersey (see below) the Panel cannot share the Minister’s confidence that this does not necessarily demonstrate that employers are misusing these contracts. The Employment (Jersey) Law 2003 should provide adequate protection for employees and, with nearly

---

<sup>9</sup> House of Commons Briefing Paper, 3rd October 2016, Zero-Hour Contracts, pages 17 and 18

4,000<sup>10</sup> employees in Jersey reliant on their zero-hour contracts as their sole or main source of income, how can anyone be certain that none of them are prevented by an exclusivity clause from seeking additional income?

The Panel cannot understand the Minister's conclusion that banning exclusivity clauses is unlikely to make any practical difference to the experience of employees. It could make a huge difference to any employee who is presently bound to observe such a clause if they fear losing their job. The Minister gives no reason for her view, and appears to obfuscate by criticising the Panel for its lack of clarity over what it actually seeks to abolish. The Panel believes its Key Finding 13 (above) is clear. It should also be noted that the Panel has not recommended the abolition of exclusivity clauses (or indeed the introduction of any other legislative measures), but has only recommended that the Minister engage in consultation. The Panel is disappointed that the Minister has declined even to do that.

Uncertainty remains over the extent of the use of zero-hour contracts in the U.K., but best estimates suggest 2–2.5% of workers are employed on zero-hour contracts. In Jersey, 12% of all jobs in the Island are worked as zero-hour contracts<sup>11</sup>. The numbers in the private sector have been growing year on year. The U.K. recognised a problem with exclusivity clauses and has passed legislation to abolish them. If there was sufficient concern over their misuse in the U.K., how much more should we be concerned to prevent misuse where a far greater proportion of jobs is involved?

The Panel is also aware that legislation has been passed in the Republic of Ireland and New Zealand to deal with exclusivity clauses.

The Panel does not accept that the possible complexity of any legislation is a reason for not proceeding to enact necessary protections. Legislation defining zero-hour contracts and dealing with exclusivity clauses is in place in other jurisdictions and, whilst the Panel does not suggest that the Minister should follow precise legislative provisions elsewhere, there is no doubt that much can be learned from the experience of others. The Minister does not state the grounds for her belief that the U.K. legislation "*was far more complex than had been anticipated*", but the Panel is confident that the Island has an excellent law drafting team which is very capable of dealing with complex drafting.

The Minister also responded to the Panel's report by saying that work on zero-hour contracts could not be undertaken within the context of her Department's current priorities – disability legislation and a review of family-friendly employment rights. The Panel would point out, however, that nowhere in its report did it ask the Minister to drop her current priorities. It might have hoped the Minister would have made a commitment to consult when her current priorities allowed, but unfortunately it would appear that the Minister is unwilling to do even that. As a result, the Panel fears that the potential misuse of zero-hour contracts in the Island (including exclusivity clauses) will continue.

Deputy S.Y. Mézec of St. Helier has not discussed P.92/2016 with the Panel, and has not sought its support. However, as he seeks to give effect to an important recommendation of the Panel's report, the Panel is pleased to support the Proposition.

---

<sup>10</sup> [Zero Hours Contracts: response to P.100/2013 as amended](#), (R.52/2015 presented to the States 6th May 2015), page 8

<sup>11</sup> The Jersey Labour Market Report (June 2016) States of Jersey Statistics Unit