

# **REVIEW OF CONSULTATION RESPONSES**

## **ZERO HOURS CONTRACTS**

**JANUARY 2023**

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# Introduction

Over summer 2022 the Department for Enterprise undertook a consultation on proposals relating to zero hours contracts and the “gig” economy.

The consultation ran for eight weeks and 87 responses were received. 14 of the responses (including a response from the IOM Chamber of Commerce) were sent on behalf of businesses. 70 were received from individuals. Two responses were from public sector organisations and another was from a professional organisation.



# Proposal 1 Responses

**Question 1: Do you agree with the proposal to extend the right to receive written statements of particulars to workers?**

Total responding to question	84	Percentage
Yes	73	87%
No	5	6%
Neither	6	7%

The rights of a person in employment depend on what is known as their employment "status". This covers a number of possibilities ranging from "employees" who have the most rights to the genuinely self-employed who have the least rights. Between these two extremes there is an intermediate status, usually termed "worker". "Workers" are covered by certain core employment rights.

One of the rights currently enjoyed only by employees is the right to receive a written statement of particulars. The primary purpose of the written statement is to provide information (e.g. rates of pay, hours of work, holiday entitlement) thereby avoiding misunderstandings and mismatched expectations and reducing the scope for disputes between employer and employee. However, there is nothing to stop the document also being called a 'contract of employment' or its including words to the effect that its contents are contractually binding (equally, a document that is intended, and headed as a 'contract of employment' may satisfy the statutory requirement for a written statement of particulars - and will say that it does so).

The proposal was that the current right to receive written statements should be extended to all workers.

The proposal was generally uncontroversial. However a number of businesses disagreed with the proposal on the basis that this simply added an extra burden. One respondent said: *"I would not be able to continue to run my business if these measures were brought in."*

Another said: *"You are adding yet more bureaucratic burden to small businesses that already struggle with cashflow issues where a significant amount of revenue is diverted to HR, bookkeeping, and accounting, much of which is of no real benefit other than compliance with red tape."*

It should be noted however that the proposal was supported by the Isle of Man Chamber of Commerce.



# Proposal 2 Responses



## Question 2: Do you agree that a written statement should become a 'day one' right?

Currently there is only a right for employees to receive a written statement of particulars after the employee has been employed for four weeks. The proposal was that receiving the statement should be a right from the first day of employment, as is the case in the UK.

Total responding to question	80	Percentage
Yes	63	79%
No	12	15%
Neither	5	6%

Though there was strong support for this proposal a number of businesses and other organisations such as the Chamber of Commerce and Manx Industrial Relations Service (MIRS) warned against making this a day one right. For example MIRS commented:

*"It would be overly burdensome on employers to make this a day one right... Employers frequently do not comply with the current four week timescale and there is less chance of them complying with a more restrictive rule - it will simply lead to more complaints about non-compliance. Particularly for contracts of very short duration - taking somebody on during TT for example - it would seem disproportionate to require employers to issue a written statement."*

Whilst the UK has introduced the obligation to provide a written statement of employment particulars, or terms and conditions of employment, from day one, the Department recognises the feedback from MIRS in particular and will therefore consider this proposal further prior to bringing forward any legislative change.



# Proposal 3 Responses

**Question 3: Do you agree that the right to an itemised pay statement should also be extended to all workers?**

Total responding to question	80	Percentage
Yes	75	94%
No	4	5%
Neither	1	1%

In general this proposal enjoyed wide support, though a number of respondents raised concerns that again this would add to paperwork and bureaucracy for businesses.

Nevertheless the Chamber of Commerce supported the proposal, saying:

*"Yes, we fully support this. Many organisations already provide this to casual/zero hour workers as it includes not only a breakdown of the basic pay being made for the hours worked during the pay period for clarity and transparency purposes, but also a separate line on the payslip showing any rolled-up holiday pay where this is being used."*



# Proposal 4 Responses

## Question 5: Do you support the proposals to provide rights to workers not in regular employment to request a stable contract?

Total responding to question	84	Percentage
Yes	65	77.4%
No	18	21.4%
Neither	1	1.2%

## Question 6: Do you have any views as to how such a right should work in practice?

Under section 166A of the Employment Act 2006 the Department for Enterprise may make regulations about zero hours contracts, including conferring rights on zero hours contract workers.

The Chief Minister's Zero Hours Contracts Committee recommended that legislation should be brought forward to provide a right to workers who are not in regular employment to request a stable contract from the employer after six months if their hours, pattern of work and/or work activities indicate there is an ongoing relationship between the workers and the employer.

Though there was much support for this proposal, mainly from individuals, there was markedly less support from businesses and representative bodies. For example, the Chamber of Commerce commented:

*"No, we do not support this. The lack of support is particularly because no proposals appear to have been made regarding the grounds on which an organisation may refuse such a request."*

*Casual/zero hour contracts are used to provide both flexibility to the organisation and the worker. For an organisation, it can allow them to increase their workforce to meet peaks and troughs such as seasonal demands, to support business requirements at particular times, or for specific needs such as supporting projects.*

*For seasonal businesses, zero hour contracts are essential."*

To a certain extent it may have been the case that some respondents interpreted a right to *request* a stable contract with a right to *have* a stable contract. The proposal is intended to work in the same way as the right to request flexible working – it would simply be a right for consideration to be given by the employer to making the worker's contract a stable one.

In recognition of the feedback received on this proposal, the Department has subsequently engaged with the Chamber of Commerce and clarified that any legislative change will merely provide for the right to request a stable contract, and employers will be able to consider and refuse where there is reasonable reason to do so. The Department recognises that there are legitimate uses for zero hour contracts for both employers and employees in certain circumstances and that some employers may be concerned about the impact of this proposal on such legitimate uses. Therefore, should this change be approved by Tynwald, the Department will commit to providing further guidance to assist.



# Proposal 5 Responses

## Question 7: Do you agree with the proposals to regulate contracts which impose one-sided obligations?

Another of the Chief Minister's Zero Hours Contracts Committee recommendations was that legislation be brought forward to regulate contracts which impose one sided obligations through:

- Removing an employer's powers to oblige workers who are not in regular employment to work any non-guaranteed hours; and
- Prohibiting employers from cancelling shifts of workers who are not in regular employment at short notice without providing for them to be paid as if the hours had been worked.

Total responding to question	79	Percentage
Yes	69	87.3%
No	8	10.1%
Neither	2	2.5%



One respondent commented on this proposal as follows:

*"Yes. Zero hours should work both ways. Many employers use the argument that they provide flexibility for their staff, yet do not hold to that, and punish staff who do need to take time out by withholding hours from that staff member the following week.*

*This leads to poor financial security, and poor mental health outcomes for the staff so afflicted."*

The Chamber of Commerce commented:

*"Yes, we support removing an employer's powers to oblige workers who are not in regular employment to work any non-guaranteed hours.*

*We also support prohibiting employers from cancelling shifts of workers who are not in regular employment at short notice without providing for them to be paid as if the hours had been worked. However, we think it would be appropriate to define what 'short notice' is e.g. less than 5 calendar days' prior notice where work has been offered and accepted."*



# Proposal 6 Responses

**Question 8: Do you agree with the proposal to protection against dismissal and detriment for workers not in regular employment?**

Total responding to question	78	Percentage
Yes	62	79%
No	14	18%
Neither	2	3%

The Committee also recommended providing protection against dismissal and detriment to workers who are not in regular employment who assert their statutory rights as zero hour contract workers. This would include any new rights such as those proposed above, e.g. the right to request a stable contract. This mirrors the existing provision in the Employment Act 2006 by which a worker must not be subject to detriment for exercising statutory rights.

Again, some that commented did not agree with the proposal.



For instance one business commented: *"Do not agree with the proposal. As previously stated, the company operates a fluctuating flow of work and needs the flexibility of such workers to allow for peaks and troughs of unpredictable volumes of work."*

The Chamber of Commerce commented: *"No, we do not support changing the current situation and providing protection against detriment and dismissal for workers not in regular employment."*

*UK protection appears to be limited to detriment resulting from an exclusivity clause – Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015. We do not believe that there is a need for the IOM to provider a higher level of protection than the UK"*

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# Next Steps

There was significant support for most of the proposals, however, the Department recognises a number of specific concerns relating to the proposed day one obligation to provide written statements of employment particulars and to a lesser extent the right to request a stable contract.

The Department for Enterprise will bring forward legislation to implement the following proposals:

- Extension of the right to a written statement and itemised pay statements to workers;
- Regulation of contracts which provide one-sided obligations;
- Right to request a stable contract.
- Day one obligation to provide written statements of employment particulars

Most of the above proposals can be introduced by regulations made under the Employment Act 2006, though some minor amendments to the Act may be required. It should be noted that the regulations will require Tynwald approval.

In respect of the right to request a stable contract, it will be made clear that this measure merely creates the right to request such (much like similar provisions for requesting flexible working) and does not confer a right to have a stable contract. Additionally, should this change be approved by Tynwald, the Department will work with the Chamber of Commerce, and other employer representatives, to provide further guidance to employers on which grounds should be considered in determining such a request.

Similarly, given the concerns raised during the consultation in respect of the day one obligation to provide written statements of employment particulars, the Department will consider further the specific points raised ahead of bringing forward the relevant legislation.

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