

# REGULATION OF ZERO HOURS CONTRACTS: A CONSULTATION JUNE 2022



**Isle of Man**  
Government

*Reiltys Ellan Vannin*



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## Introduction

The Island Plan has set out the vision of a secure, vibrant and sustainable Island. Part of that vision includes looking at developments in employment rights that we can adopt in the Isle of Man to ensure that employees have secure jobs and that the Island is an attractive place to work.

Though in 2017 the Equality Act made a number of significant changes to employment law in the Island in relation to discrimination, over a number of years the Isle of Man has been falling behind international standards in relation to employment rights. The Department intends to make a number of changes to employment law in the current administration.

This consultation seeks views on regulation of zero hours contracts. It is being issued alongside two other consultations, one on family leave rights, and one on whistleblowing. The other consultations are available on the Consultation Hub on the IOM Government website here: <https://www.gov.im/about-the-government/government/government-consultations/>

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## About the consultation

Consultees are asked a number of questions. If you would like to respond to any or all of these questions please send a submission by email or post or to:

Steven Tallach

Legislation Officer

Email: [steven.tallach@gov.im](mailto:steven.tallach@gov.im)

Please note that the Department will assume, unless you tell us otherwise, that you **do not** object to your response or the name of your organisation (or your own name if you are responding as an individual) being made public. If you want all or any part of your reply to be treated as confidential, then please indicate this clearly in your reply.

The consultation period ends on **26 August 2022**.

Following consultation, the Department will:

- review and evaluate comments received from consultees; and
- publish a review of the comments received; and
- set out the next steps for any legislative changes.

## Section 1: Background

In 2019 the [Chief Minister's Zero Hours Contracts Committee](#) report was published. The report found that there is no evidence of widespread systematic abuse of zero hours contracts. Nevertheless the Committee made a number of recommendations.

Some of those recommendations specifically concerned employment legislation, to regulate zero hours contracts. These were "to:

- a) extend the present right of employees to receive a written statement of particulars to all workers (including individuals on zero hours contracts) and review the particulars which are presently specified in the Isle of Man Employment Act 2006;
- b) require the employer of workers who are not in regular employment to refer workers to information issued by the Department for Enterprise setting out their main employment rights;
- c) provide a right to workers who are not in regular employment to request a stable contract from the employer after 6 months if their hours, pattern of work and / or work activities indicate there is an ongoing relationship between the workers and the employer;
- d) provide a right to workers who are not in regular employment to a stable contract after 1 year if their hours, pattern of work and / or work activities indicate there is an ongoing relationship between the workers and the employer, unless the employer can justify withholding a stable contract on objective grounds;
- e) regulate contracts which impose one sided obligations through:
  - requiring employers of workers who are not in regular employment to state any guaranteed hours in the written statement;
  - removing 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;
- f) provide protection against dismissal and detriment to workers who are not in regular employment (as appropriate) who assert their statutory rights in respect of any of the above matters or the existing prohibition on exclusivity clauses at section 166(1) of the Employment Act 2006; and
- g) review whether it is desirable to modify any provisions in Schedule 5 (Computation of period of employment) of the Isle of Man Employment Act 2006 which may prevent workers who are not in regular employment from building up continuous employment for employment rights purposes and, in particular, to consider extending, from one week to one month, the relevant break in service for the calculation of the qualifying period for continuous service and clarify the situations where cessations of work could be justified (as recommended in the Taylor Review)."

At this time the Department for Enterprise is specifically seeking views on the following:

- the extension of the right to receive written statement of particulars to workers;
- the right of workers not in regular employment to request a stable contract after 6 months;
- the regulation of contracts which provide one-sided obligations; and
- to provide protection against dismissal and detriment for workers not in regular employment.

More details on the proposals are set out in the following section.

## Section 2: Proposals

### *The extension of the right to receive written statements of particulars to workers*

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).

In the interests of clarity, certainty and understanding it is considered that it would be beneficial to extend the right to a written statement of particulars to workers. In addition it is proposed that the similar right to receive an itemised pay statement should also be extended to workers.

Section 8 of the Manx Employment Act 2006 states the information that should be included in a statement of written particulars. The list of information that must be included can be found in the Annex to this consultation.

It is proposed that the Isle of Man follows the UK in adding the following information to be listed in a written statement of particulars:

- How long a job is expected to last, or the end date of a fixed-term contract;
- How much notice an employer and worker are required to give to terminate the agreement;
- Details of eligibility for sick leave and pay;
- Details of other types of paid leave, e.g. maternity leave and paternity leave;
- The duration and conditions of any probationary period;
- All remuneration (not just pay) – contributions in cash or kind;
- Which specific days and times workers are required to work;
- Any part of any training entitlement which the employer requires the worker to complete;
- Any other training which the employer requires the worker to complete and which the employer will bear the cost of.

It is also proposed that:

- the right to a written statement becomes a “day one” right, i.e. a worker should be issued with a written statement from the first day of employment, rather than after four week’s employment as is currently the case; and
- the right to an itemised pay statement is also extended to all workers as well.

**Q1:** Do you agree with the proposal to extend the right to receive written statements of particulars to workers? Please explain your view.

**Q2:** Do you have any views on the present list of information that must be included in the written statement of particulars?

**Q3:** Do you agree that a written statement should become a “day one” right? Please explain your view.

**Q4:** Do you agree that the right to an itemised pay statement should also be extended to all worker? Please explain your view.

*Providing a right for workers not in regular employment to request a stable contract*

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 6 months if their hours, pattern of work and / or work activities indicate there is an ongoing relationship between the workers and the employer.

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.

**Q5:** Do you support the proposals above to provide rights to workers not in regular employment to request a stable contract? Please explain your view.

**Q6:** Do you have any views as to how such a right should work in practice?

*Regulation of contracts which provide 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.

**Q7:** Do you agree with the proposals above? Please explain your view.

*Providing protection against dismissal and detriment for workers not in regular employment*

The Committee also recommended providing protection against dismissal and detriment (as appropriate<sup>1</sup>) to workers who are not in regular employment who assert their statutory rights as

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<sup>1</sup> Only employees can claim unfair dismissal. A worker can make a complaint of detriment, which can include termination of his or her contract.

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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 existing provision in the Employment Act 2006 by which a worker must not be subject to detriment for exercising statutory rights.

**Q8:** Do you agree with the proposal above? Please explain your view.

**Q9:** Do you have any other comments on the proposals relating to zero hour contracts?



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### **Section 3: Relevant documents**

The following documents are relevant to this consultation:

Employment Act 2006 (of Tynwald):

[https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2006/2006-0021/EmploymentAct2006\\_14.pdf](https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2006/2006-0021/EmploymentAct2006_14.pdf)

Employment Rights Act 1996 (of Parliament):

<https://www.legislation.gov.uk/ukpga/1996/18/contents>

Chief Minister's Zero Hours Contracts Committee report:

<https://www.gov.im/media/1366407/chief-ministers-zero-hours-contracts-committee-report-2019.pdf>

## Annex

### *Information that must be stated in a written statement of particulars*

- the names of the employer and employee;
- the date employment began;
- the date when 'continuous employment' began (taking into account any relevant employment with a previous employer);
- the scale or rate of remuneration or the method of calculation;
- the intervals at which remuneration is paid (whether weekly, monthly etc.);
- hours of work and any terms and conditions relating to normal working.
- holiday entitlement, including any entitlement to public holidays and holiday pay, such particulars being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment to be precisely calculated
- any sickness and pension entitlements, including the normal retirement age in the employment (other than in the case of a public-sector pension scheme which requires new employees to be notified of its terms);
- entitlement as to notice which the employee is both obliged to give and entitled to receive;
- the job title;
- where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a 'limited-term' , the date when or the event on which it is to end;
- the place of work or, where the employee works at different places, an indication of that and of the employer's address;
- any collective agreements which directly affect the terms and conditions of the employee, including, where the employee is not a party the persons by whom they were made);
- details as to any work required outside the Island which will last longer than 1 month, including the duration of such work, the currency in which the employee is to be paid and any additional
- benefits, and any terms and conditions relating to his or her return;
- any disciplinary rules and procedures and a person to whom an appeal can be made if he or she is dissatisfied with any disciplinary decision and how such an application should be made. Alternatively, the statement may refer the employee to a document which is reasonably accessible and which specifies any such rules and procedures;
- a specified person to whom the employee can apply for the purpose of seeking redress of any grievance, how this should be done and any further steps that may be applicable.

