

# include YOUTH

**Response to the Public Consultation by  
the Department for Employment and Learning  
on Zero Hours Contracts**

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## **SUMMARY OF ISSUES AND RECOMMENDATIONS IN THIS RESPONSE**

Include Youth views the growth of zero hour contracts as a symptomatic of a much bigger issue around young people and the labour market. The growing normalisation of the phenomenon of casual, insecure working practices threatens to have serious long term implications for the financial security, health and wellbeing of young people within our society.

We welcome DEL's decision to consult on this issue but we believe it is a missed opportunity to address the much wider problems of exploitation of young people within employment.

There is little evidence within this consultation that DEL has considered the specific impact on young people of the growth of zero hour contracts or how any issues arising should be addressed. We welcome the commitment by DEL to undertake further qualitative and quantitative research to complement the findings of the consultation. We urge DEL to undertake specific research around the specific impact on young people of the growing use of zero hour contracts. This research should seek the views of young people directly.

We recognise that there are some limited circumstances where the use of casual labour may be necessary to meet fluctuating demands of business. However, too often the relationship between employer and worker is hugely imbalanced, with the employer benefitting from maximum flexibility and few costs while the worker has the minimum of security, is denied access to employment rights and may be earning less than the minimum wage. Given this there is clearly a need to strike a balance between legitimate and appropriate casual working arrangements, which allow the necessary flexibility for employers and the need to protect the rights of vulnerable workers including young people.

Include Youth recommends that DEL moves to strengthen legal protections for employees on zero hour contracts, that their use is limited to situations where they are genuinely needed, with the onus on the employer to objectively justify the need to utilise them, accompanied by greater information and transparency around the rights of workers on such contracts and how they operate in practice. An important caveat to note is that by

proposing these protections for zero hour workers Include Youth is not indicating support for zero hour employment practices.

Include Youth recommends that the continued use of zero hour contracts, in both the public and the private sector, and in particular their use with young people, is assessed for compliance with international human rights standards. Given their specific remit in relation to international human rights mechanisms there is a role for OFMDFM in this regard.

We do not think that it is sufficient to rely on existing employment law as the primary means to assist workers on casual/zero hour contracts.

Include Youth supports a ban on the use of exclusivity clauses in zero hour contracts. We believe that such contracts are entirely unacceptable.

We do not believe that a Code of Practice in and of itself could effectively tackle the undermining of workers' rights through the abuse of zero hour contracts.

Workers on zero hour contracts should have an automatic right to guaranteed hours if they have worked a regular pattern and number of hours on a zero hour contract for a given period. We recommend that the qualifying period is 12 weeks. We suggest that the Agency Worker Regulations could act as a useful model. It provides detailed guidance on how the 12 week period should be calculated, as well as detailed rules on 'anti-avoidance' measures that could be incorporated into similar regulations for zero hour contracts.

A compensatory arrangement should be introduced whereby some payment is provided to a worker who has set aside time for that employer but where that work does not then transpire. We believe that the compensatory scheme adopted in the Republic of Ireland provides a useful model in this regard. It is essential that workers are additionally reimbursed for any transport or childcare expenses incurred as a result of shifts being cancelled or reduced at very late notice.

There is a massive knowledge gap around zero hour contracts – employers know what they are while workers, especially young workers, don't. This lack of information and knowledge

not only relates to zero hour contracts but to employment rights generally – the longer term implications of this are extremely worrying for society as a whole. DEL and other relevant government departments and agencies need to undertake an information and awareness raising campaign among young people around their employment rights and entitlements. Trade unions can play a useful role in this regard.

In a context where zero hour contracts are strictly regulated and where their use must be objectively justified then model clauses may be helpful in clarifying employers' legal obligations.

There is an onus on government to ensure that its procurement policies guarantee minimum standards for its workers and reduce the use of zero hour contracts. An additional responsibility lies with the Health and Social Care Boards and individual Trusts in respect of young care leavers. As their 'corporate parent' Trusts must ensure that employment opportunities that are proactively identified and offered to these young people do not undermine their employment rights in any way, but rather encourage, support and enable them to progress in their career development. The Health and Social Care Trusts therefore should ensure young people are provided with clear information as to their rights and entitlements within any employment offer and that if young people move onto a zero hour contract that it is properly regulated in line with the recommendations above.

Securing childcare is a particular problem for workers on zero hour contracts. This is an issue that needs to be set within the wider context of the NI Executive's Strategic Framework, Bright Start, and the issues around affordability and accessibility identified through that Strategy. While this particular issue was not identified or addressed in the Strategy it is clearly one that needs urgent consideration by DEL, OFMDFM and other relevant Departments.

We welcome the intention by DEL to carry out an EQIA on its proposals around zero hour contracts. However, an EQIA on this policy proposal should have already taken place in line with DEL's obligations under Section 75 of the Northern Ireland Act 1998 and its own Equality Scheme. We urge DEL to carry out a full and comprehensive EQIA immediately

including widespread direct consultation with young people as they will be directly impacted upon by these policy proposals.

Concerns exist around the impact of zero hour contracts and people's ability to claim their benefit entitlements. DEL should work closely with DSD to establish the impact that zero hour contracts have on young people's ability to access their benefit entitlements, and work to ensure that any difficulties are fully addressed.

### **Include Youth**

Include Youth is an independent non-governmental organisation with over 30 years' experience in actively promoting the rights, best interests of and best practice with disadvantaged and vulnerable children and young people.

The majority of young people we work with and for are in or leaving care or are on the edges of the care system. Care experienced children and young people's outcomes in relation to education, training and employment compare very unfavourably with their peers in the general school population. Latest DHSSPS<sup>1</sup> statistics show that:

- Just over one fifth ( 22%) of care leavers had been subject to a Statement of Special Educational Need (SEN) compared with 4% of the general school population
- Only 18% of young people from a care background obtained 5 GCSEs ( grades A\* -C) or higher, compared with 77% of general school leavers
- 32% of young people left care with no qualifications, compared with 2% of general school leavers
- Over half (62%) were in education or training, 7% were working and 30% were either unemployed or economically inactive.

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<sup>1</sup> [http://www.dhsspsni.gov.uk/ni\\_care\\_leavers\\_aged\\_16-18\\_2012\\_13\\_.pdf](http://www.dhsspsni.gov.uk/ni_care_leavers_aged_16-18_2012_13_.pdf) and [http://www.dhsspsni.gov.uk/northern\\_ireland\\_care\\_leavers\\_aged\\_19\\_2012\\_13.pdf](http://www.dhsspsni.gov.uk/northern_ireland_care_leavers_aged_19_2012_13.pdf)

- Of the 157 care leavers who reached their 19<sup>th</sup> birthday during 2012/13 66% were in education, training and employment.<sup>2</sup>

Include Youth delivers a range of employability programmes which help address these inequalities for this group of young people. These include the Give and Take Scheme aims to improve the employability and increase the self-esteem of young people in need or at risk from across Northern Ireland. The Scheme supports around 145 young people annually, the majority of whom are from a care background, to overcome particular barriers that prevent them from moving into mainstream training or employment and towards independent living. Over 70 % have a positive move on from our scheme into education, training or employment.

Include Youth also delivers an Employability Service on behalf of two of the Health Trusts for young people annually aged 16 plus who have had experience of the care system. This service is designed to offer tangible and concrete opportunities to assist young people leaving care to prepare for, and engage in work.

The organisation leads on the collaborative initiative, START, which operates across several sites in Northern Ireland, working with community based organisations to improve education, employment and training outcomes for the most disadvantaged young people. Over 70% of participants achieve a positive move on, into a range of education, training, volunteering or employment options. In addition we have a Big Lottery NI funded partnership with Business in the Community (BiTCNI), Aiming Higher, which matches young people in care with business mentors in two Health and Social Care Trusts areas.

Reflecting the profile of the young people we work with and for, Include Youth's two main policy advocacy priorities are employability and youth justice. This work is informed by relevant international human rights and children's rights standards, is evidence based,

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<sup>2</sup> As a rough comparison, 86.8% of all 16-24 year olds in Northern Ireland were in education (part time or full time) training or employment between October to December 2013.

including evidence provided by young people and practitioners, and is based on high quality, critical analysis.

### **The impact of the casualisation of the labour market on marginalised young people**

Not surprisingly, given the profile outlined above, young people in or leaving care represent a core group within the population of young people who are NEET and as such are a priority for the Pathways to Success Strategy. Include Youth has identified a number of policy developments that we believe would impact very positively on the education, training and employment situation of young people in and leaving care.

These include the provision of a tailored and effective Careers Service, the development of clear progression pathways through education, training and into employment, the provision of transitional support for young people moving into mainstream placements, the tracking of outcomes achieved within education, training and employment, adequate financial support and remuneration for young people engaged in education, training or employment and the use of positive action measures, including social clauses in public procurement to help create and support opportunities. Threaded throughout all of these developments is a set of quality standards that are benchmarked against relevant international human rights standards (see pages 12-14 of this response).

Equally there are a number of wider labour market developments and trends, not confined to the UK by any means, that we believe have the potential to impact very negatively on the ability of young care leavers in particular, to have the opportunity to become engaged in meaningful, fulfilling work that enables them to be financially independent and that contributes to their overall sense of well being and purpose in life. These include the rise of the phenomenon known as precarious work<sup>3</sup>, increasing rates of underemployment<sup>4</sup>, what

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<sup>3</sup> Precarious work is generally understood to be non standard employment that is poorly paid, insecure, unprotected and cannot support a household ( Fudge, J et al (2006) Precarious work, women and the new economy: the challenge to legal norms Onati International Series in Law and Society Oxford Hart pp 3-28

<sup>4</sup> There has been a significant increase in the numbers of people considered underemployed in Europe, particularly among young people. In Spain over 80% of young people are on temporary contracts. In Greece 58% of part time workers have declared that they are available to work longer hours. ( EYF)

has been described as 'bogus' self employment<sup>5</sup>, with some employers pressurising full time staff to register as self employed, low pay<sup>6</sup>, issues around minimum wage including non compliance<sup>7</sup>, differential rates for different age bands of young people<sup>8</sup> and the increasing adoption of zero hour working practices among employers. The impact of welfare reform on young people in Northern Ireland has yet to be felt but it threatens to further undermine social protections for vulnerable young people as they attempt to move into and remain in the labour market.

Overall, the normalisation of the phenomenon of casual, insecure working threatens to have serious longer term implications for the financial security, health and well being of young people within our society. **We view the growth in zero hour contracts as in some ways symptomatic of the much bigger, EU wide problems that exist in relation to young people and the labour market.** While lacking the hard data in relation to Northern Ireland as yet, there would be serious cause for concern if economic recovery, and efforts to reduce the scale of youth unemployment in Northern Ireland,<sup>9</sup> were to come at the expense of job security and living standards, a trend that has been noted elsewhere in Europe. The growth in the use of zero hour contracts can serve mask the actual levels of youth unemployment, with many young people on these contracts appearing to be employed but in reality doing very little paid work.

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<sup>5</sup> Although some people have embarked on entrepreneurial careers due to a lack of traditional employment opportunities, there is also evidence ( European Youth Forum) to suggest that some employers are pressurising full time staff to register as self employed in order to cut costs related to paid holidays, sick pay and pension contributions

<sup>6</sup> One in five UK workers, more than 5 million people, are categorised as being on low pay, defined as wages of less than £7.71 an hour, or two thirds of the hourly median wage of £11.56

<http://www.theguardian.com/society/2014/sep/20/miliband-pledges-rise-poorest-workers-labour-uk>

<sup>7</sup> <https://www.gov.uk/government/news/government-gets-tough-with-employers-failing-to-pay-minimum-wage>

<sup>8</sup> The UN Committee on Economic, Social and Cultural Rights in 2009 recommended that the UK government consider giving workers from 18 to 20 years of age the same minimum wage which is given to those beyond the age of 21. E/C.12/GBR/CO/5 2009 paragraph 41. The UN Committee on the Rights of the Child has also recommended that government reconsider its policies regarding the national minimum wage for young workers in light of the principle of non-discrimination para 55 CRC/C/15/Add.188

<sup>9</sup> During October – December 2013 29,000 young people aged 16-24 were classified as NEET ( DfP Labour Market Statistical Bulletin, published 28/2/2014). During May – July 2014 20% of 18-24 year olds unemployed, compared to 6.6% of the working population (DETI Labour Market Statistical Bulletin Monthly Labour Market Report September 2014).

It is in this context that we approach our response to DEL's consultation on zero hour contracts. **While we very much welcome DEL's decision to consult on this issue, we believe that it is a missed opportunity to address the much wider problems of exploitation of young people within employment. DEL's consultation only examines the use of exclusivity clauses and the lack of transparency in respect of zero hour contracts while the problems facing young workers on these contracts, and within the labour market generally, are far more wide ranging, as alluded to above.**

### **Zero hour contracts and young people**

Research evidence demonstrates that the prevalence of zero hour contracts is higher among young people than other age groups, with 37% of those employed on such contracts aged between 16-24<sup>10</sup>. This is acknowledged in the consultation document, as is the significant increase in part time employment for young workers during the recent economic crisis. It cites research which shows that the nature of jobs available to young people has changed substantially over the past twenty years -1992 most of the jobs young people had were full time permanent and paying a 'decent' wage, but that by 2012 youth unemployment was characterised by a variety of temporary jobs, some zero hours, some casual and some fixed term. The implications of this shift are noted "*it highlights that the current state of the youth employment labour market is a cause for real concern..*"<sup>11</sup> **Despite this recognition of the seriousness of the problem, there is little evidence in the rest of the document as to how government plans to address the specificities of zero hour contracts as they apply to young workers, beyond the narrow agenda of exclusivity clauses and greater transparency.**

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<sup>10</sup> Resolution Foundation (2013) A Matter of Time: The rise in Zero hour contracts

<sup>11</sup> DEL (2014) Zero hour contracts Public Consultation June 2014 paragraph 3.21

## **Include Youth's position on the use of zero hour contracts**

Include Youth's general position on the use of zero hour contracts is underpinned by existing research, human rights standards, published policy analysis and consultation with staff and young people within Include Youth<sup>12</sup>, and is as follows:

The use of casual labour, or zero hour contracts as this form of labour is now termed, is not a new phenomenon. It harks back to a time when workers stood at the corner of the street in the morning hoping to be picked up for work that day. Today the mobile phone has replaced the street corner.

We recognise that there are some limited circumstances where the use of casual labour may be necessary, to meet fluctuating demands of business. We also recognise that in some narrow circumstances it may be the preferred option, for example for some students. However, too often the relationship between employer and worker is hugely imbalanced, with the employer benefiting from maximum flexibility and few costs while the worker has the minimum of security, is denied access to employment rights and may be earning less than the minimum wage. We concur with the Resolution Foundation's assessment that *"it is clear that the benefits these contracts provide for employers come at too high a price for the majority of those employed on them. For many, the ostensible freedom and choice these contracts offer is more apparent than real"*<sup>13</sup>

We believe that this imbalance in terms of bargaining power is exacerbated in the case of vulnerable young people, who are often desperate to get into their first job, any job, who lack awareness of employment rights and entitlements and who are vulnerable to age discrimination. We cannot see how the working practices that tend to go hand in hand with zero hour contracts could possibly be compliant with relevant international human

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<sup>12</sup> House of Commons Scottish Affairs Committee Zero hour contracts in Scotland: Interim Report 14 April 2014 HC 654; UNISON Briefing Paper on zero hour contracts ( March 2014 ) ; Resolution Foundation ( 2013) A Matter of Time: the rise of zero-hours contracts

<sup>13</sup> Op cited at note 10, page 4

rights standards as they apply to young people. Given what we know about zero hour contracts we do not view them as a positive employment option for the vast majority of young people we work with, young people who have even greater need for security, support and guidance within the workplace than the average young person taking up a job.

We also recognise however that, given the legitimacy of casual work per se as a form of employment, coupled with the fact that a minority of people value the flexibility and choice they provide, a move to ban the use of zero hour contracts would not be either sensible or workable. There is clearly a need to strike a balance between legitimate and appropriate casual working arrangements, which allow the necessary flexibility for employers to cope with fluctuating demand, and the need to protect the rights of vulnerable workers including young people. **We therefore recommend that DEL moves to strengthen legal protections for employees on zero hour contracts, that their use is limited to situations where they are genuinely needed, with the onus on the employer to objectively justify the need to utilise them, accompanied by greater information and transparency around the rights of workers on such contracts and how they operate in practice. An important caveat to note is that by proposing these protections for zero hour workers Include Youth is not indicating support for zero hour employment practices.**

We believe that the best model to consider would be one where any casual/zero-hour worker's contract would be automatically deemed to become a contract of employment after a period of twelve weeks, unless objective justification for a continued casual arrangement could be demonstrated by the employer. (See answer to Q 8).

Using this model would mean that those employers who could demonstrate an objective need for continued casual work could utilise such labour, while those who were simply in the business of replacing employees with zero hour workers would no longer be legally able to do so. Such a regulatory framework should also ensure that employers couldn't identify and exploit any legal loopholes such as moving their workers onto one hour contracts.

**International human rights standards and the right to decent work**

An essential lens through which the use of zero hour contracts with young people must be viewed is that of **the right to decent work**. Based on the international human rights standards outlined below, ‘decent work’ ensures the safety and health of young workers, it ensures they are not discriminated against, that they earn a living wage, that they have decent income, that they have their voice heard in work, they have opportunities for learning and development within work and for career progression.

As with all human rights, the right to work imposes three types or levels of obligations on government: the obligations to respect protect and fulfil. The obligation to protect requires states to prevent violations by taking appropriate legislative, administrative, budgetary and judicial measures. Failure to prevent violations by third parties i.e. employers can amount to a violation.

**The UN Declaration of Human Rights**<sup>14</sup> guarantees ‘just and favourable conditions of work’ and ‘the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented if necessary by other means of social protection’.

Human rights protections in respect of the right to work and conditions of work are set out in the **UN Covenant on Economic, Social and Cultural Rights**<sup>15</sup>, an international human rights treaty which was ratified by the UK government over half a century ago. The Covenant recognises the centrality of this right in realising other human rights and its inherence in achieving human dignity.

Article 6 guarantees the right to work which includes the right to gain a living through work and a right to full and productive employment. Article 7 of the UN Covenant on Economic, Social and Cultural Rights guarantees the right to just and favourable conditions of work, which includes fair wages, equal remuneration for work of equal value, decent living, safe

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<sup>14</sup> <http://www.un.org/en/documents/udhr/index.shtml#a23>

<sup>15</sup> <http://www.hrweb.org/legal/escr.html>

and healthy working conditions, equal opportunities for promotion, rest, leisure and reasonable limitation of working hours.<sup>16</sup>

The **European Social Charter (1961)** which the UK government has ratified guarantees the ‘right to just and favourable conditions of work’ which includes reasonable daily and weekly working hours, public holidays with pay and annual holidays with pay, and a ‘right to fair remuneration sufficient for a standard of living for themselves and their families’.<sup>17</sup>

The **EU Charter of Fundamental Rights**, the application of which within the UK has recently been clarified by a Parliamentary committee as applying fully<sup>18</sup> specifically guarantees ‘fair and just working conditions’<sup>19</sup>

Finally the **International Labour Organisation (ILO)** in its Constitution acknowledges the strong relationship between conditions of work and social justice and draws attention to the undesirability of States ( and employers) attempting to secure competitive advantage on the basis of labour conditions that do not respect human dignity. The preamble to the ILO Constitution commits member states to ‘improve conditions of work’. Among the conditions of work mentioned in the Constitution are ‘the regulation of the hours of work’ and ‘the provision of an adequate living wage.’<sup>20</sup>

### **Specific application of these standards to young people**

All of the international human rights treaties and standards outlined above recognise the particular vulnerability of young people and underline the need for states to pay particular attention to ensuring that their rights are protected within employment.

In its detailed interpretation of the content of the right to work the **UN Economic, Social and Cultural Committee’s General Comment No 18** draws attention to the particular significance of access to their first job for young people, including for young women “Access

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<sup>16</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> Article 7 (a)-(d)

<sup>17</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/035.htm> Articles 2 and 4

<sup>18</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/european-scrutiny-committee/news/eu-charter/>

<sup>19</sup> [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf) Article 31

<sup>20</sup> [http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO)

*to a first job constitutes an opportunity for economic self-reliance and in many cases a means to escape poverty. Young persons, particularly young women, generally have great difficulties in finding initial employment.*<sup>21</sup>

**Article 7 of the Council of Europe’s Social Charter** recognises the need for special protections to be put in place for young workers, including recognition of ‘the right of young workers and apprentices to a fair wage and other allowances’ as well as holiday entitlements.<sup>22</sup>

**The EU’s Charter of Fundamental Rights** similarly recognises the special circumstances of young workers – Article 32 states that “young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or interfere with their education”.<sup>23</sup>

**The ILO Constitution** specifically references the requirement on states to ensure the protection of children and young people within work.

Common to all of the international human rights standards highlighted above are principles of dignity, fairness, decent conditions and compliance with basic standards, all relevant considerations when assessing the compatibility of zero hour contracts with these standards. It is also worth noting that, having ratified all of these treaties or mechanisms the UK government has an obligation to comply with all of the standards set out within them.

It is difficult to see how the widespread use of zero hour contracts, often in the place of employee contracts could be compliant with all of the relevant international human rights standards outlined above.

**Include Youth recommends that the continued use of zero hour contracts, in both the public and the private sector, and in particular their use with young people, is assessed for**

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<sup>21</sup> UN Committee on Economic, Social and Cultural Rights General Comment No 18 Right to Work E/C.12/GC/18 paragraph 14

<sup>22</sup> Op cited at note 17

<sup>23</sup> Op cited at note 19, article 32

**compliance with international human rights standards. Given their specific remit in relation to international human rights mechanisms there is a role for OFMDFM in this regard.**

### **Response to specific consultation questions**

Include Youth's response to specific consultation questions has benefited from the Law Centre NI's expertise in relation to employment law and social welfare rights. We have drawn directly on their analysis and recommendations in response to some of the specific consultation questions below. While not responding to all of the consultation questions in our own response, we wish to endorse the Law Centre's consultation response.

#### ***Exclusivity Clauses (Q1-7)***

**Include Youth supports a ban on the use of exclusivity clauses in zero hour contracts. We** believe that such clauses are entirely unacceptable. An argument has been made that in some very particular circumstances an employer needs to be able to ensure that an employee with access to sensitive or confidential information does not work for 'the competition' as it were. However these circumstances do not apply to the majority of zero hour workers in Northern Ireland who tend to be engaged in low skilled or low paid work.

Furthermore, we concur entirely with the conclusion reached by the House of Commons Scottish Affairs Committee *"if employers want to prevent workers from taking up employment with somebody else then they should have to pay for that privilege. Employers who do not provide a zero hour worker with sufficient work should not be able to prevent that individual from seeking employment or additional employment elsewhere."*<sup>24</sup>

We do not believe that a Code of Practice ( Question 7) while it may be of some benefit in providing greater clarity regarding rights and entitlements, in and of itself could effectively tackle the undermining of workers' rights through the abuse of zero hour contracts. Again we agree with the conclusion of the House of Commons Scottish Affairs Committee *"it is*

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<sup>24</sup> House of Commons Scottish Affairs Committee (2014) Zero hour contracts in Scotland: Interim report 14 April 2014 paragraph 67

*fanciful to assume that individuals in these circumstances would opt to challenge an exclusivity clause through an expensive and complex legal process”<sup>25</sup>*

This is absolutely the case for vulnerable young people, who have been disempowered and marginalised by the state structures and processes including the education system - the burden of challenging unfair employment practices cannot and must not be placed on their shoulders – it needs regulation and banning exclusivity clauses is but one aspect of that regulation that should put in place following on from this consultation.

### ***Automatic Right to Guaranteed Hours after a given period (Q8)***

Include Youth believes that a worker on a zero hour contract should have an automatic right to guaranteed hours if they have worked a regular pattern and number of hours on a zero hours contract for a given period. We recommend that the qualifying period is 12 weeks. If there are sectors in which there is a genuine need to employ staff on zero hour contracts to cope with fluctuating seasonal demand then a 12 week period is long enough to ensure that after that point is reached such workers become deemed as permanent employees. We suggest that the Agency Worker Regulations can act as a useful model , providing as it does detailed guidance on how the 12 week period should be calculated, as well as detailed rules on ‘anti-avoidance’ measures that could be incorporated into similar regulations for zero hour contracts, designed to prevent employers trying to circumvent such protections.

### ***Introduction of a compensatory arrangement (Q10)***

We believe that a compensatory arrangement should be introduced whereby some payment is provided to a worker who has set aside time for work for the employer but that work does not then transpire; such a model has already been endorsed by the Scottish Affairs Committee’s Inquiry.<sup>26</sup> We believe that the compensatory scheme adopted in the Republic of Ireland provides a useful model in this regard.

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<sup>25</sup> Ibid paragraph 63

<sup>26</sup> Op cited at note 24, paragraph 46

As recommended by the Law Centre NI in its response to this consultation, we suggest that the minimum payment should be in some way proportionate to the hours that were (reasonably expected to have been) scheduled: in the Republic of Ireland, a worker is entitled to payment of 25% of the hours that were to be worked and this would seem like a sensible starting point.

In addition, it is also essential that workers are **additionally** reimbursed for any transport or childcare expenses incurred as a result of shifts being cancelled or reduced at very late notice.

### ***Existing employment law, combined with greater transparency (Q15)***

We do not think it is sufficient to rely on existing employment law as the primary means to assist workers on casual/zero hour contracts. As highlighted earlier a significant imbalance in terms of negotiating power exists between the employer and worker. There is no evidence to show that vulnerable young people would be in any position to use existing legal mechanisms to challenge unfair employment practices; in fact all evidence would suggest otherwise. The limitations of the individual remedy route highlight the need for DEL to introduce regulation around the whole area of zero hour contracts.

### ***Awareness, information and advice (Q 13 and Q22)***

Include Youth's consultation with young people on our various programmes confirmed what is fairly widely recognised – employers know what zero hour contracts are, workers don't. The young people we spoke to did not know that they were on or had been on a zero hour contract in the past, although it was clear to the staff that they had in fact been employed in this way (Question 22). Young people have so little knowledge as to their employment rights that they are not in an informed position to seek employment information, advice or guidance on zero hour contracts. This lack of information and knowledge not only relates to zero hour contracts but to employment rights generally and is extremely worrying in a modern democracy such as the UK – the longer term implications of a whole generation of young people simply accepting zero hour working practices as the norm are extremely serious. **There is an urgent need for DEL and other relevant government agencies to**

undertake an information and awareness raising campaign among young people as to their employment rights and entitlements. Trade unions also have a role to play in this regard. We would emphasise however that the provision of information alone will go nowhere near addressing the current levels of abuse of zero hour contracts, and would reinforce our previous points around the need for statutory regulation.

### ***Model Clauses (Q 14) and Onus on Employers (Q16)***

As with Codes of Practice, model clauses in and of themselves do not go anywhere near what is required to properly address the widespread abuse of casual labour through zero hour working practices. In a context where zero hour contracts are strictly regulated and where their use must be objectively justified then perhaps model clauses may be helpful to employers in ensuring that they adhere to their legal obligations; as noted by the House of Commons Scottish Affairs Committee, without these other steps in place “*model clauses (and a code of practice) may serve to embed in the workplace a status of employment that is often unfair and unjust*”.<sup>27</sup>

### ***Other issues not addressed (Q 29)***

#### **Public Procurement**

The public sector across the UK is one of the biggest users of zero hour contracts.<sup>28</sup> In Northern Ireland approximately £2.6 billion is spent annually on public procurement across all government departments. This money has a major impact both on the economy but also on society.

**We believe that there is a general onus on government to work to ensure that its procurement policies guarantee minimum standards for its workers and reduce the use of zero hour contract working practices.**

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<sup>27</sup> Ibid paragraph 28

<sup>28</sup> NICVA ( 2013) Social Clauses in Northern Ireland; Centre for Economic Empowerment

We also believe that an additional responsibility lies with the Health and Social Care Board and individual Health and Social Care Trusts. Employability Services designed to improve the education, training and employment outcomes for young people in and leaving care are now well established across all five Health and Social Care Trusts. There is evidence that the use of Positive Action Measures, including the use of social clauses, is delivering positive outcomes for care experienced young people. The use of these models should be enhanced.

As the 'corporate parent' of these young people Trusts must ensure that employment opportunities that are proactively identified and offered to these young people do not undermine their employment rights in any way, but rather encourage, support and enable them to progress in their career development. **The Health and Social Care Trusts therefore should ensure young people are provided with clear information as to their rights and entitlements within any employment offer and that if young people move onto a zero hour contract that it is properly regulated in line with the recommendations above.**

### **Childcare**

Proponents of the right of employers to use zero hour contracts as and when they wish would claim that such contracts help employees achieve a work life balance; a key aspect of this being around child care responsibilities. Yet young people Include Youth consulted with, while having little knowledge of zero hour contracts per se, highlighted the difficulties that such casual, uncertain work created in terms of childcare. They noted that child minding facilities did not operate a similar model to the zero hour contract model thereby making it extremely difficult if not impossible to secure childcare at very short notice.

This point was also made by UNISON in its evidence to the House of Commons Scottish Affairs Committee Inquiry *"the need to respond to calls to attend work, frequently at short notice, disrupts life outside of work and places a particular strain on families and arranging care for dependants."*<sup>29</sup> The Unite union also highlighted the difficulties zero hour contract

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<sup>29</sup> UNISON (Zero hour contracts 0015) evidence to Scottish Affairs Committee Inquiry

working posed for childcare - one in four zero hours workers who responded to Unite's survey reported not being able to find childcare that suited their irregular hours.<sup>30</sup>

These issues need to be set within the wider context of the range of existing barriers in relation to childcare provision which the NI Executive Strategic Framework, Bright Start, is intended to address. These include issues around accessibility and affordability, under provision or lack of appropriate provision for certain groups including children with disabilities, school age children, Traveller children and children from other Black and Minority Ethnic groups. The Bright Start Framework document noted that "*employment with a reasonable wage is the best path out of disadvantage and poverty*".<sup>31</sup> **Despite its lack of recognition within the Bright Start Strategic Framework, there would appear to be very particular challenges with childcare provision being used to enable parents to move out of poverty and into employment in the context of zero hour contracts. This is an issue that also needs to be considered by government.**

### **Negative equality impacts (Q31)**

As highlighted earlier evidence shows that in the UK over one in three zero hour employees are under the age of 25. Across Europe young people are disproportionately affected by the proliferation in use of zero hour contracts<sup>32</sup>. This clearly points up the need to conduct a full Equality Impact Assessment (EQIA) in line with DEL's obligations under Section 75 of the Northern Ireland Act 1998. We note that the consultation document states the following "*the Department also recognises that any policy decisions must be predicated on a detailed integrated equality impact assessment that provides assurance that there are no disproportionate impacts for specific groups*".<sup>33</sup> In response to a query raised at the Employment and Learning Committee on 11 June 2014, Mr. Tom Evans DEL stated that "No

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<sup>30</sup> UNITE ( Zero hour contracts 005) evidence to Scottish Affairs Committee Inquiry

<sup>31</sup> NI Executive (2013) Bright Start: The Northern Ireland Executive Programme for Affordable and Integrated Childcare Strategic Framework and Key First Actions Paragraph 1.13

<sup>32</sup> European Youth Forum (2013) Quality Jobs for Young People

<sup>33</sup> DEL NI ( June 2014) Zero Hours Contracts Public Consultation Paragraph 4.29

*proposals will be introduced without a full integrated impact assessment that looks at regulatory impacts and the equality impacts”<sup>34</sup>*

While it is welcome to note that DEL intend to carry out an EQIA on its proposals for zero hours contracts we wish to highlight the fact that an EQIA on this policy proposal should have already taken place as per the letter and spirit of section 75 of the Northern Ireland Act 1998 which intends for equality concerns to be central to the policy decision-making process. This involves consideration of section 75 at the very beginning stages of a policy’s development and implementation.

The Equality Commission’s Guidance for Implementing Section 75 of the Northern Ireland Act 1998 states that,

*“1.4 The new statutory duties make equality central to the whole range of public policy decision-making. This approach is often referred to as “mainstreaming”. The Council of Europe has defined mainstreaming as:*

*“the (re)organisation, improvement, development and evaluation of policy processes, so that a[n] ... equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making”.*” (Gender mainstreaming conceptual framework, methodology and presentation of good practices. Council of Europe, Strasbourg May 1998)

It is clear from this that the intention of section 75 is to mainstream equality, making it central to policy decision making. In order for an equality perspective to be central to policy making, it needs to be incorporated in all policies at all levels and stages. This would unequivocally involve incorporation of the principles of equality of opportunity from the beginning of the process and throughout the development and implementation of the policy, not merely at the end of the process when decisions have been taken in relation to the policy with no regard shown to section 75. This is particularly important given the clear

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<sup>34</sup> NI Assembly (2014) Committee for Employment and Learning Official Report Zero-Hour Contracts – Pre-consultation briefing: DEL 11 June 2014

potential for adverse impacts to be suffered by young people as a result of this policy proposal.

**We would urge the Department to carry out a full and comprehensive EQIA immediately including carrying out widespread direct consultation with young people as they will be directly impacted upon by these policy proposals in line with the Department's obligations under section 75 of the Northern Ireland Act 1998.**

### **Difficulties with accessing benefit entitlements (Q 32)**

Concerns have been articulated that zero hour contract employment can potentially have a negative impact on people's ability to claim their benefit entitlements. It would seem that Job Seekers Allowance (and passported Housing Benefit) as well as Working Tax Credits are the benefits where difficulties are most commonly experienced.<sup>35</sup> Fluctuating numbers of hours worked from week to week can affect the amount of benefits received but also may entail workers moving from one benefit to another, with all the uncertainty and administrative burdens such moves entail.

While it has been claimed that the Universal Credit system will work to address any of these problems it is far from clear that this is in fact the case. The Resolution Foundation has identified what it sees as potential problems with the Universal Credit system for workers on zero hour contracts, noting that the combination of fluctuating earnings and Universal Credit payments could see household income vary considerably from month to month, making household finances even more difficult to manage.<sup>36</sup>

The House of Commons Scottish Affairs Committee expressed concern that Universal Credit '*might not be as beneficial to zero hour workers as the Government suggests*'.<sup>37</sup> Their interim report recommended that government clearly set out the advantages and

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<sup>35</sup> See Law Centre NI's response to this consultation for evidence from their casework

<sup>36</sup> Op cited at note 10, Page 20

<sup>37</sup> Op cited at note 24, paragraph 89

disadvantages of Universal Credit to works with a fluctuating income. Specifically they recommended the following:

*“The Government must make sure that staff who are responsible for administering benefits are aware of the specific problems faced by zero hours workers. Staff in Jobcentre Plus, HMRC and local authorities must be able to respond quickly to reported changes in earnings so that individuals can receive their benefit payments at the time when they need them most”<sup>38</sup>*

Vulnerable young people typically have no financial ‘cushion’ and the likelihood of a zero hour contract being low paid, plus difficulties in accessing benefit entitlements only serves to increase the vulnerability of such young people even further, leaving them at the mercy of loan sharks, pay day loan companies and the like. **In the event that the Universal Credit system were to be fully rolled out here in Northern Ireland, including the use of real time information, these concerns will need to be fully addressed. As it stands, DEL should work closely with DSD to establish the impact that zero hour contracts have on young people’s ability to access their benefit entitlements, and work to ensure any difficulties are fully addressed.**

## **Conclusion**

Include Youth welcomes this consultation by DEL and is pleased to have had the opportunity to respond to it. Along with the Review of Careers, the Review of Youth Training, the development of an Economic Inactivity Strategy and the ongoing development of the United Youth framework it has the potential to have a significantly positive impact on the employment outcomes being achieved by young people in and leaving care. We wish to be kept informed of the outcome of the consultation and the next steps in the process.

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<sup>38</sup> Ibid paragraph 90