

**University of Limerick Opening Statement to Oireachtas Committee on Jobs,
Enterprise and Innovation**

23rd May 2017

We thank the Oireachtas Committee for the invitation to discuss the Banded Hours Contract Bill 2016. We briefly touch on the specific matters which are under consideration by the Committee.

- (1) On the matter of problems caused by casualisation of work, the University of Limerick (UL) report found the existence of zero hours work operationalised through 'If and When' contracts. These contracts provide no guaranteed hours of work and workers have a contractual right to accept or refuse work offered. The key difficulties of 'If and When' contracts for workers are an unpredictable number of working hours, unpredictable scheduling of hours, variable income, difficulties making care arrangements and a need for state income supports. International academic research identifies similar outcomes for workers in casualised work. We welcome efforts to provide more certainty to workers about their hours.

There is a critical legal issue concerning 'If and When' contracts which requires policy action largely centred around 'if and when' clauses in these contracts. There is no mutuality of obligation between employers and workers on 'If and When' contracts, thus these workers are not legally defined as employees. This means that they do not have rights under most employment legislation including the Organisation of Working Time Act 1997. Employment status is a key difference between people on 'If and When' contracts and people on zero hours contracts as defined by the Act. The UL report found evidence of people working under 'If and When' contracts on a zero hours basis, who have no protection under working time legislation, but little evidence of people working on a zero hours basis under contracts of employment (i.e. as employees) who do have rights under the Act. We note that ILO Recommendation 198 states that national policy should provide guidance on effectively establishing the existence of an employment relationship. The Bill proposes to cover 'workers' and this requires discussion.

A second critical legal issue arises in relation to continuity of employment. Some employment laws such as unfair dismissals and redundancy stipulate employee service requirements. Similarly, the Bill proposes rights for a worker with no less than 6 months continuous employment. However, there can be difficulties in identifying when someone in a zero hours job has started their employment as their work can be intermittent. Therefore the issue of calculating continuous employment for someone doing zero hours work should be addressed.

- (2) On the matter of whether zero hours contracts should be banned, we emphasise here that the term zero hours work should be used rather than zero hours contracts. Zero hours contracts of employment are legislated for already but they have been narrowly defined and working time legislation does not cover the wider practice of zero hours work i.e. 'If and When' contracts. A simple 'ban' on zero hours work alone would not solve the problems experienced by workers. For example, hypothetically, an employer who gives a worker just 1 guaranteed hour a week would satisfy a 'ban' on zero hours

work. Additional regulations on working hours would be required to actualise a real ban on zero hours work.

(3) On the matter of administrative implications of the Bill, any legislation which has regulations on working hours may result in some administrative responsibilities but employers are already required to have pay and hours records. We suggest consideration be given to the Bill making exception for working hours arrangements made in Employment Regulation Orders, Sectoral Employment Orders and Registered Employment Agreements.

(4) Should workers on low and zero hours contracts be allowed a minimum set of hours and the right to request more hours? We should distinguish here between contracts. A low hours contract has no universal meaning and could refer to a regular part-time contract where people have guaranteed hours. For 'If and When' contracts, the absence of guaranteed hours places workers in a legally precarious situation.

There are two questions concerning a request for more hours: should people be allowed the right to request more hours than is in their contract and should people be allowed the right to request more hours than they actually work? This distinction is necessary because people on 'If and When' contracts may work regular hours but this may not be reflected in their contracts and there are examples of this in Labour Court cases. The UL report recommended people doing zero hours work should have guaranteed contractual hours based on the reality of hours worked. A right to request more hours than actually worked may be seen as beneficial to people who are underemployed and the EC Directive on Part-time Work noted that employers should give consideration to requests by workers to transfer from part-time to full-time work or to increase their working time should the opportunity arise.

(5) In regard to whether the Low Pay Commission should review proposals on banded hours contracts for those on low pay, we are not clear on what is being suggested here exactly. There is an argument that setting minimum wages should go hand in hand with examining hours but the LPC would require sufficient data on working hours and banded hours if it had some remit in this regard.

We note other points on the Bill are that:

- (6) The Bill does not contain anti-victimisation or compensatory measures.
- (7) The Bill does not seem to provide for the option of mediation in the WRC following a complaint, as per the Workplace Relations Act 2015.

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