



Irish Hotels Federation

Submission to

Department of Jobs, Enterprise and Innovation

On

The Prevalence of Zero Hour

**Contracts and Low Hour Contracts in the Irish
Economy**

23rd December 2015

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1.0 Background

The Irish Hotels Federation (IHF), founded in 1937, is the national representative organisation of the hotel and guesthouse sector in Ireland. We are a key stakeholder in the Irish tourism and hospitality industries. We have consulted our members directly and through our National Council and our Employment Committee.

The IHF welcomes the opportunity to respond to

- (i) The key findings of the University of Limerick Report “A Study on the Prevalence of Zero Hours Contracts among Irish Employers and their Impact on Employees, 2015.

and

- (ii) The recommendations made by the University of Limerick in the report.

At the outset we believe that it is important to ensure that any initiative that is being considered by The Department of Jobs, Enterprise and Innovation (DJEI) is located within the existing strategic framework set out by the Department.

The stated mission of The Department of Jobs, Enterprise and Innovation’s is “*To encourage the creation of high quality and sustainable full employment by championing enterprise across government, supporting a competitive enterprise base, promoting a low tax environment to incentivise work and enterprise, and promoting fair and competitive markets.*”

The Department’s Statement of Strategy for 2015-2017 contains a number of commitments that are relevant in the context of the current Consultation;

Goal 2. Promoting and Supporting High Performance in Enterprise

Developing the Domestically-Trading Sector states as follows:

“Start-ups, micro and small businesses play a crucial role in the economy and their ability to succeed and grow underpins Ireland’s future potential for job creation, growth and prosperity. With SMEs constituting over 99% of businesses in the enterprise economy in Ireland and almost 70% of private sector employees in the enterprise economy, it is essential to continue to focus on delivering practical actions that can achieve improvements in the operating environment for SMEs in the domestic economy. In addition to ensuring the business environment is competitive for all businesses to operate in terms of regulation and standards, DJEI will continue to promote SMEs’ interests throughout all Government Departments and bodies and ensure that the interests of Irish SMEs are taken into account by Government in the development and execution of policy initiatives at both national and international level.”

Optimising the Regulatory Balance for Business states as follows:

“The regulatory framework can have a critical effect on the business environment and the capacity of business to grow and create jobs. This is all the more so in the case of business start-ups. Against the background of the better regulation agenda at both national and EU level, we will design regulation that does not burden such businesses with unnecessary administration. Consistent with this approach, we support calls on the EU institutions to reduce the overall regulatory burden, without undermining the policy goals of regulation.”

Goal 4. Better Markets and Quality Employment through Better Regulation set out a commitment to

“Complete a study on the prevalence of zero hour contracts among Irish employers and their impact on employees to enable the Minister to make any evidence based policy recommendations to Government which are considered necessary on foot of the study.”

This Research also has its origins in the Statement of Government Priorities, July 2014:

“To conduct a study on the prevalence of zero hour contracts among Irish employers and their impact on employees and make policy recommendations to Government on foot of this.”

An RFT was issued by the Department on the 17/11/2014 as follows:

“Study on the Prevalence of Zero Hours Contracts in Ireland

The purpose of the study is to fill the gap that currently exists in terms of the hard data and information that is available, to analyse their impact on employees and to enable the Minister to make recommendations on foot of the study.”

Following a tender process a research team from University of Limerick was awarded the contract. We note that the total budget allocated to the project was to be in the region of €65,000-€75,000 (plus VAT).

In relation to expected outcomes the Department advised at the time that “The study will fill the information gap that currently exists around the use of “zero hours contracts” in Ireland. It will provide the Minister with hard evidence of the prevalence or otherwise of such contracts in the Irish economy, the practices associated with such contracts and their impact on employees. The study may identify how the information/data collection gap might be addressed in the future. *Ultimately, the study will provide the Minister with a basis on which to consider what, if any, policy recommendations should be brought to Government to address issues relating to the use of zero hours contracts and their impact on employees.*”

Having fulfilled the above objectives as a first priority, proceed to repeat a similar assessment in relation to low hours contracts, which for the purpose of this study are defined as contracts of 8 hours or less per week.

The key finding in the study was that “Zero hours contracts within the meaning of the Organisation of Working Time Act 1997 (OWTA) are not extensive in Ireland according to our research.”

Clearly this conclusion should have represented the end point of the main UL research and while they had a mandate to examine low hours contracts, for some inexplicable reason they shifted their focus to the identification and examination of an entirely new phenomenon in Irish employment practice which they have termed “if and when contracts”

Therefore, the scope of the Study was expanded beyond its original mandate without explanation which led to the identification of a new form of contract and a new terminology of what UL termed “if and when contracts” and we are now being requested to respond to this element of the research.

A number of recommendations are then made which are presumably based on the findings which themselves are seriously flawed for reasons outlined above. In summary the process has no credibility, the final UL Report has no credibility and therefore any proposed policy actions on foot of these recommendations will have no credibility.

2.0 Executive Summary Commentary

To illustrate the points we are making about the Report we have extracted text from the Report in the left hand column and captured our response in the right hand column.

Executive Summary	IHF Comment
<p>“<u>There is evidence</u>, however, of so-called If and When contracts.”</p>	<p>Is that a bit of evidence, a good bit of evidence, tangible evidence, anecdotal evidence, evidence from a specific sector or what exactly is being asserted?</p> <p>Can DJEI clarify exactly what evidence base the UL Team has relied on to make this assertion?</p>
<p>“In <u>some</u> contracts, all hours offered to an individual are on an If and When basis. In <u>other</u> contracts, there is a hybrid arrangement whereby employees have some guaranteed hours and any additional hours of work are offered on an If and When basis.”</p>	<p>Is that ‘some’ from a sample they analysed or they have viewed or some of the contracts that were provided to them by way of example or some other number?</p> <p>Is the other contracts a separate list from the some or is it an all-inclusive list?</p>
<p>The variety of contractual arrangements which include If and When hours present significant challenges in collecting accurate data on the number of people on them.</p>	<p>So now it is getting a bit clearer. In fact we don’t know how many people may have such arrangements.</p>

<p>4. Employer organisations argue that If and When hours and low hours suit employees. Such arrangements, <u>it is claimed</u>, especially suit students, older workers and women with caring responsibilities.</p>	<p>There is no difficulty with stating “<u>it is claimed</u>” when this conditionality is replicated when recording the views of other interested parties.</p>
<p>12. In the four sectors studied in this report (retail, hospitality, education and health), If and When hours and low working hours <u>are prevalent</u> in the accommodation/food and retail sectors and in certain occupations in education and health: community care work, so- called ‘bank’ nursing, general practice nursing, university/institute of technology lecturing, adult education tutoring, school substitution, caretaking, and secretarial and cleaning work.</p>	<p>The UL Study team are claiming that If and When hours are “widespread; of wide extent or occurrence; in general use or acceptance” in the accommodation/food sector in addition to a number of other areas?</p> <p>While flexibility is a cornerstone customer focused employment, this assertion does not accord with the experience on the ground in our Sector, nor is there any evidence base upon which to make this assertion.</p>

<p>13. The key factors driving the use of If and When contracts are:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Increasing levels of work during non-standard hours <input type="checkbox"/> A requirement for flexibility in demanded services <input type="checkbox"/> The absence of an accessible, affordable childcare system <input type="checkbox"/> Current employment legislation <input type="checkbox"/> The particular resourcing models of education and health services. 	<p>Are these drivers working in equal measure across each sector of the economy?</p> <p>What exactly are non-standard hours?</p> <p>What may have historically been viewed as non-standard hours are now normal hours?</p> <p>There is no acknowledgement that these arrangements may suit some employees. The lens through which this area is viewed is that it is a top down, employer imposed arrangement where the employee has little choice but to accept.</p> <p>Also it would appear that the researchers are working off specific sector experience (e.g. Education) that is being applied to other sectors without proper scrutiny.</p>
<p>15. Trade unions and non-governmental organisations (NGOs) argue that there are significant negative implications for individuals working If and When hours. <u>Negative implications include:</u></p>	<p>There is no reference to “<u>Negative implications it is claimed include</u>” when it comes to an examination of the trade union and NGO assertions which is concerning from the outset.</p>

17. **We find** that there is a lack of clarity over the employment status of individuals who work only If and When hours. As there is no mutuality of obligation between an employer and individual with If and When hours (i.e., there is no obligation to provide work or perform work), **there is a strong likelihood that individuals in this situation are not defined as employees with a contract of service.** Consequently, **questions arise** on the extent to which they are covered by employment legislation.

Is this saying that The UL Study Team Finds or that a Finding of the Study is ...

They state that **there is a strong likelihood that individuals in this situation are not defined as employees with a contract of service.** This statement lacks any appreciation of the range of tests that arise in determining the status of workers v's self-employed.

They are either covered or they are not—it is not a question of the extent to which they are covered.

Was there evidence of employers claiming that such people were not employees but were self-employed/ sub-contractors?

The IHF view is that there is no question of their employment status and they are certainly not sub-contractors or providing a contract for services.

<p>15. Trade unions and non-governmental organisations (NGOs) argue that there are significant negative implications for individuals working If and When hours. Negative implications include:</p> <ul style="list-style-type: none"> ❖ Unpredictable working hours (the number and scheduling of hours) ❖ Unstable income and difficulties in accessing financial credit ❖ A lack of employee input into scheduling of work hours ❖ Difficulties in managing work and family life ❖ Employment contracts which do not reflect the reality of the number of hours worked ❖ Insufficient notice when called to work ❖ Being sent home during a shift ❖ A belief amongst individuals that they will be penalised by their employer for not accepting work ❖ Difficulties in accessing a range of social welfare benefits ❖ Poorer terms and conditions in some cases. 	<p>A long list of negative implications is identified whereas the employer arguments in favour of flexibility, affordability, mutuality of interests, cost, and cover for colleagues are given scant treatment. There is no statement in the Report that such contracts may also suit individuals nor is there any attempt to establish this as an objective fact or otherwise. The arrangements are viewed entirely through a negative lens.</p>

<p>Table 1.1 sets out 5 contract examples</p>	<p>It is unclear whether these are based on actual contracts that have been gathered by UL or whether they have been constructed for illustrative purposes — perhaps DJEI might clarify that point?</p>
<p>Section 3 Page 10: given the absence of evidence of the widespread use of zero hour contracts, the focus is on the prevalence and use of If and When and hybrid contracts.</p>	<p>There was no authority within the tender process or terms of reference to move to this position.</p>
<p>p 16 “A standard working week is usually taken to mean working an eight hour day and a regular Monday to Friday week.”</p> <p>“Apparently for a large section of employees in the labour force, regular working patterns are spread over seven days and evenings and, to a lesser extent, nights.”</p>	<p>This is an outdated notion and further illustrates the gap between the theoretical world and the reality of the modern workplace.</p> <p>This appears to come as a revelation. A standard working week is increasingly measured in total working hours that a full time person will work with the precise hours based on the needs of the industry or organisation (e.g. retail v hospitality v healthcare v education)</p>
<p>Interviewees in the four sectors indicated that some occupations/services are more likely to have If and When contracts, hybrid contracts and low working hours (Tables 3.2-3.4).</p>	<p>This is not the type of evidence base required upon which to base policy recommendations.</p>

<p>If and When contracts and low hours of work were also <u>reported to be prevalent</u> in aviation, the arts sector, contract cleaning, security and transport and distribution but these were are not examined in detail in this report.</p>	<p>Reported by whom?</p> <p>As previously stated the use of the word prevalent suggests that they are “widespread; of wide extent or occurrence; in general use or acceptance”</p>
<p>p 28 Age</p>	<p>The conclusions in this section require further examination</p>
<p>Table 3.5 Sample of Working Hours Provisions in If and When Contracts</p> <p>Contract Example 1 “You will be required to submit timesheets for hours worked”</p> <p>Contract Example 2 “Your hours of work will vary as per the roster and will be notified to you in advance”</p>	<p>These are not examples of if and when type contracts.</p>
<p>SECTION 4: THE IMPACT OF IF AND WHEN CONTRACTS AND LOW WORKING HOURS ON EMPLOYEES</p>	<p>This section lacks any balance and is weighted heavily in favour of the perceived disadvantages to employees</p>

<p>Table 5.4 Sample of Working Hours Provisions in If and When Contracts in Hospitality</p>	
<p>Contract Example 1 “Due to the nature of the business your hours of work will vary from week to week. As such, your exact working hours will be advised to you on a weekly basis by your manager in advance of the weekly roster”.</p>	<p>This is not an If and When Contract</p>
<p>Contract Example 2 “Your hours of work will vary according to the level of business but in any case will not be more than 78 hours in any two week period. You will be rostered over a 7 day period which may include a Saturday and Sunday.</p>	<p>This is not an If and When Contract</p>
<p>Contract Example 3 “Your work is of a casual nature and as such your hours of work and payment are not guaranteed. You will only be offered work as and when the employer requires it and you are entitled to accept or refuse the hours of work, when offered.</p>	<p>This would appear to be an example of an If and When Contract. However it is not wording we would be familiar with.</p>
<p>Contract Example 4 “Hours of work are flexible 10 over 14 days. Full-time or part-time hours may apply as agreed locally with management”.</p>	<p>This is not an If and When Contract</p>
<p>Contract Example 5 “Your working hours will be in accordance with the rota by your direct supervisor. In the event of you not being able to meet the required working hours, notification must be given to your supervisory as soon as the rota is issued. All hours worked will be in accordance with the Organisation of Working Time Act 1997. A flexible attitude towards hours worked and rotas are expected due to the nature of the business”.</p>	<p>This is not an If and When Contract</p>

Contract Example 6

“Your working hours will normally be between the hours of 7am and 12am Monday to Sunday. These may vary subject to the needs of the business. These hours shall be given in accordance with the Organisation of Working Time Act 1997. The work is expected to be regular but you are not guaranteed hours... You have the right to refuse or accept hours of work offered to you”.

This would appear to be an example of an If and When Contract. However it is not wording we would be familiar with.

<p>Section 6 sets out a number of potential issues regarding the possible status of people working on an 'if and when' type contract.</p>	<p>The Courts will always look at the practical reality of the relationship when assessing whether a worker is an employee or an independent contractor. Mutuality of obligation is only one of a number of tests that will be used.</p>
<p>SECTION 7: COMPARATIVE REVIEW OF THE REGULATION OF ZERO HOURS WORK IN EUROPE</p>	<p>This Section is inserted yet it has no relevance to the changed focus of the Report. It confirms the original basis for the Research.</p>
<p>SECTION 8: RECOMMENDATIONS ON POLICY FOR THE MINISTER FOR BUSINESS AND EMPLOYMENT</p> <p>The overall objectives of the recommendations are to address the key concerns of employer organisations (to retain flexibility) and of trade unions and NGOs (to improve the predictability of hours).</p>	<p>Which recommendation addresses the employers concerns regarding the retention of necessary flexibility? The recommendations remove flexibility of deployment of staff and are simply unworkable.</p>

3.0 Implications

The study showed that zero hour contracts, where workers have to make themselves available for work but have no guaranteed hours, are not extensively used in Ireland. This should have been the end of the matter but the Academic Team from UL went on to identify a new label not previously used in Irish Employment —what they termed an “if and when” contract.

There are >50 statutes to protect employees working in Ireland and it is proposed to add further to the burden of legislation that employers have to take into account when contemplating whether or not to employ a person.

Hotels are staffed by a combination of full time, part time, seasonal and perhaps a small pool of casual people. An event arises at short notice or a person phones in sick at short notice and we look at our available resources —we look at our full time staff, we look at our part time staff and we look at a small pool of staff we have available that we can call upon —if they are available then great they come in - if not then we move through our list. It works well for them and us. There is no issue but the Study is now proposing to legislate in an area of mutual flexibility that in our experience works well for employers and employees.

(Both zero hour contracts and so called “*if and when*” contracts involve non-guaranteed hours of work. The main difference is that workers on zero hour contracts are obliged to make themselves available for work while those on “if and when” are not contractually required to make themselves available. This is a mutually beneficial relationship)

Consider three of the Recommendations

1/ an employer should give at least 72 hours' (3 days) notice of any request to undertake work, unless there are exceptional and unforeseen circumstances.

2/ Employers should give a minimum of 72 hours' (3 days) notice of cancellation of hours.

3/ a worker who is not given 72 hours' notice should be paid at 150% of their premium rate. i.e. Overtime for the hours worked. ... So they will be working alongside colleagues getting paid flat time.

Just imagine the difficulties that this will create for employers and employees.

Scenario 1

Manager “I have a shift for you tomorrow Eamonn can you do it? “

Employee “Yes but I understand I now need to be paid T+50% “

Scenario 2

One of our employees phones in to say that his parent has passed away and he needs time off, which is not a problem. But the after funeral meal is arranged in the same hotel, for 2 days' time. The hotel now has to pay some staff T+50% because they can't get 72 hours' notice of this.

The employee is also paid compassionate leave

Scenario 3

Mary phones in to say she has to bring her child to hospital. Her manager then speaks with a colleague to ask if she can stay on and cover the next 4 hours and Sean will cover the balance of the shift.

Employee "Yes but I understand I now need to be paid T+50% "

Mary is also paid Force Majeure leave

It will create an internal inequity whereby some staff will receive normal time and some will receive T + 50% for the same hours worked.

It will introduce a new argument into Irish employments of what are exceptional and unforeseen circumstances.

For the reasons set out above IHF does not support the findings made by UL in the study.

4.0 Conclusions and Recommendations

The legislative changes recommended by UL (Recommendations 1 to 7) are disproportionate and inappropriate. Apart from the cost consideration which is difficult to quantify precisely, the proposed changes will reduce flexibility, create inequity in the workplace with staff on differential terms and conditions, introduce premium time into normal working time and create a new area for workplace and legal disputes.

In conclusion there is no evidence put forward as to the incidence of if and when contractual arrangements.

The IHF position is that this report is not an objective evidence based piece of research that comes from a credible process and it cannot be used to inform changes in policy.

The recommendations interfere with the important principles of choice and mutual respect that underpin best practice in Human Resource Management.

Summary

- (a) The IHF does not support any of the findings made by UL in the Study except to agree that Zero Hours contracts are not extensive in Ireland.
- (b) The IHF does not support any of the recommendations made by UL in the study:
 - (i) The recommendations are disproportionate and inappropriate;
 - (ii) Government should do nothing in relation to any recommendation in this report;
 - (iii) The recommendations introduce additional unnecessary regulatory burden and will undoubtedly interfere with the ability of businesses to service their customers, earn income and increase levels of employment and wages;
 - (iv) The proposed changes have potential to introduce unintended, negative consequences for employees in terms of mutual flexibility with employers.