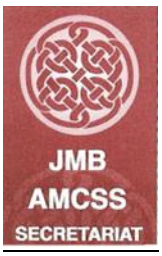

Joint Managerial Body Responding submission / UNIVERSITY OF LIMERICK STUDY ON THE PREVALENCE OF ZERO HOUR CONTRACTS AND LOW HOUR CONTRACTS IN THE IRISH ECONOMY

Submission by: Joint Managerial Body

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A. THE FINDINGS

1. Findings (1) – (5) concern "If and When contracts". It is noted that the Terms of Reference for the study clearly details the assessment of "zero hours contracts" as the priority focus and, when that is complete to repeat a similar assessment in relation to **low hours contracts** (defined as contracts of 8 hours or less per week). The findings acknowledge that "If and When contracts" are not restricted to contracts of 8 hours or less per week. It is submitted that the findings 1-5 which concern "If and When contracts" are outside the scope of the study.

2. It is not clear whether the finding at (10) accepts that a 22 hour week contract is a full-time teaching contract in post-primary schools.

3. The finding at (12) is not accepted insofar as it relates to voluntary secondary schools. "If and When contracts" and low working hours, as defined, are not prevalent in caretaking, secretarial and/or cleaning posts in voluntary secondary schools. It is accepted that substitution work for teachers could be deemed to be pursuant to "If and When contracts" but this is generally part of a hybrid arrangement whereby teachers have guaranteed hours of work with substitution work being either compulsory under the Haddington Road Agreement or additional hours offered on and If and When basis. There is no evidence and /or basis for the finding that "If and When" contracts are used in the caretaking, secretarial and cleaning functions in voluntary secondary schools. Indeed none of the factors identified in (13) as driving the use of "If and When contracts" exist in the aforementioned functions and in particular it should be noted that the resourcing model in education referred to at (13) does not apply to non-teaching posts in voluntary secondary schools which are resourced at the discretion of the individual school with a nominal grant from the Department of Education and Skills ("the DES").

4. The finding at (14) factor the advantages and disadvantages of "If and When contracts" for employer organisations however the finding at (15) wholly fails to take account the advantages of "If and When contracts" for individuals working such contracts. This, it is submitted, is evidence of an unbalanced approach to the subject matter and a complete failure to take into account the question of choice / preference on the part of the individual to working on an "If and When" contract basis.

5. The finding at (17) is not accepted. Case law does not support the statement / finding that "*there is a strong likelihood that individuals in this situation are not defined as employees with a contract of service"* rather the Courts have held that a contract of service exists at the time the work is being performed i.e. mutuality of obligation exists.

B. THE RECOMMENDATIONS

1. The recommendation at (1) is not supported. There is no rationale given for why it is necessary to amend the Terms of Employment Information Acts 1994 to 2012 ("the Acts 1994 – 2012") in the context of "zero hours contracts", low hours contracts or indeed "If and When contracts". This legislation applies to all employees regardless of the nature or type of employment and there has been a failure to identify how such an amendment would benefit the zero hours or low hours worker.

   Furthermore a disproportionate and onerous administrative burden would be placed on employers operating in demand led services and school management in voluntary secondary schools operating without the benefit of management support services such as HR and Payroll. It could not be considered an appropriate recommendation in circumstances where the reality is that such employers may not anticipate the requirement for the worker until the actual day of first employment.

   It cannot be the recommendation's objective to bring persons working non-guaranteed hours within the scope of the Acts 1994 to 2012 as any employees working variable hours already fall within the scope of the legislation.

2. The Acts 1994 to 2012 already require employers to include in a written statement of terms of employment terms and conditions relating to hours of work, including overtime. Any implication that such provision would not be "a true reflection of the hours required of an employee" is without basis.

3. If new legislation or a new section in the Organisation of Working Time Act 1997 is being recommended for introduction as per recommendation 4, it could address any necessary terms as to working hours intended by recommendation 3.

4. The recommendation at (4) does not address payment for the minimum number of hours established by subparagraphs (i) and (ii) and therefore its effect cannot be assessed.

5. The recommendation at (5) is not accepted. This cannot practically be applied in cases of substitute cover, sick leave, force majeure leave and other unforeseeable types of absence from the workplace. To recommend the employer pay 150% where the minimum notice is not given is disproportionate in circumstances where such a liability would be punitive in nature notwithstanding the employer's inability to comply with the recommended minimum notice through no fault on its part.

6. Recommendation 6 is not appropriate, is disproportionate and punitive in nature in that it does not allow for circumstances which are beyond the employer's control.

7. Recommendation 7 fails to take account of the manner in which substitute teaching occurs and the operation of a teaching timetable. A teacher may not be called upon to deliver 3 continuous working hours in a given day.