

23 February 2022

Peter Hall
Room 347, Parliament Buildings,
Ballymiscaw, Stormont,
Belfast
BT4 3XX
Via email to: peter.hall@niassembly.gov.uk

Dear Mr Hall,

Re Private Member's Bill - Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill

- 1.1 Thank you for your correspondence of 2nd February 2022, in which the Committee for the Economy have sought the Commission's views on the Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill as introduced to the Assembly on 15th November 2021. Your letter has been passed to me for reply.
- 1.2 We welcome the opportunity to respond to the Economy Committee's call for views on the Bill. We have previously corresponded with Ms Dolan on the Bill.
- 1.3 The Commission has not to date specifically considered nor formed a view on the question of introducing banded hour contracts, nor ending exclusivity clauses.
- 1.4 We do note the intention of the proposal to provide increased certainty for workers regarding hours to be worked and income thereby increasing the potential for workers to 'more effectively manage their income and outgoings, help to support long-term financial planning, reduce workplace poverty, improve economic inactivity and alleviate financial anxiety'.

- 1.5 With regards to the potential for equality impacts, you will wish to note that in our *Statement on Key Inequalities in Employment*¹ (2018), we highlighted particular issues relating to the link between part-time working and low pay and precarious employment, such as zero hours contracts, in the context of the employment of women, lone parents with dependents, and carers. We also highlighted issues relating to migrant workers who are vulnerable to exploitation, and that many are agency workers and are confined to temporary and irregular work, including zero hour contracts.
- 1.6 Specifically, we identified as a key inequality that women were more likely to be in part-time employment than men². We indicated that, whilst one of a number of means by which women balance employment with childcare is through part-time employment, women working part-time were at risk of low pay³ and precarious employment, as part-time employment is typically associated with low pay, atypical contracts, the low wage economy, fragmented and unsocial hours and a higher risk of poverty.
- 1.7 We also highlighted that precarious employment, such as zero hour contracts, tends to be found in the hospitality and health and social care sectors⁴, where a high proportion of women work. We also indicated that it has been reported that zero hours contracts are associated with lower gross-weekly pay, fewer hours of work on average and may contribute to rates of under-employment⁵.
- 1.8 Further, we identified inequalities in the sustainability of a lone parent's employment, associated with part-time working. Specifically, we found that lone parents with dependents are more likely to be in employment on a part-time basis than those with no dependents or couples with dependents. We stated that, whilst this is another means by which lone parents can

¹ ECNI (2018) [Statement on Key Inequalities in Employment](#)

² The Commission's analysis found that women were in excess of three to four times more likely to work in part-time employment than men between 2012 and 2016.

³ Women hold the majority of minimum wage jobs (some 59%), and female part-timers hold 41% of minimum wage jobs, almost twice as high as their share of all jobs. See HC Women and Equalities Committee (2016) [Gender Pay Gap](#) 2nd report of session 2015-2016.

⁴ DEL (2014) [Zero Hours Contracts: Public Consultation](#). DoE: Belfast.

⁵ Pennycook M, Cory Gand Alakeson V (2013). A Matter of Time: The rise of zero hours contracts. Resolution Foundation: UK. Cited in DEL (2014) [Zero Hours Contracts: Public Consultation](#). DoE: Belfast.

balance employment with childcare, however, as identified with women, it can negatively impact on progression in employment, and that working part-time may place a lone parent at risk of low pay and precarious employment, as many part-time jobs are typically associated with the minimum wage and atypical contracts.

- 1.9 Our *Statement* also highlighted that carers who provide less than 49 hours of unpaid care were also more likely to work part-time, and this could negatively impact on career progression, with many carers taking a less qualified, lower paid job or turning down promotion to care.
- 1.10 In addition, our *Statement* further identified as a key inequality that migrant workers were vulnerable to exploitation, which could impact on their ability to sustain employment and progress in employment. We highlighted that many migrant workers who are agency workers are confined to temporary and irregular work, including zero hour contracts.
- 1.11 As mentioned in the *Statement*, the Commission’s investigation into the role of the recruitment sector in the employment of migrant workers (2010) found that, often agency workers are: confined to temporary and irregular work; non-guaranteed weekly hours; and being employed under poorer terms and conditions than expected⁶.
- 1.12 The *Statement* also cited that, in a consultation document, the Department for Business Innovation and Skills (2013) cited concerns around the use of exclusivity clauses in ‘zero hour contracts’; as well as a lack of awareness amongst workers about being offered no work or zero hours, and people feeling penalised by their employer if they are not available for work when required⁷.
- 1.13 Further, the *Statement* indicated that: ‘Black Minority Ethnic (BME) parents have also highlighted the ‘short notice period given to work as a particularly frustrating aspect of zero-hours contracts’ and identified that the ‘lack of ability to make suitable

⁶ ECNI (2010) [The Role of the Recruitment Sector in the Employment of Migrant Workers](#).

⁷ ECNI (2018) [Statement on Key Inequalities in Employment](#), p. 96.

childcare arrangements at short notice was a barrier to accepting employment or gaining additional hours”⁸.

- 1.14 The Commission raised the issue that women are more often employed with atypical contracts, particularly part time working where they are at risk of low pay and precarious employment, such as zero-hours contracts, in our submission to the UN Committee on the Convention on the Elimination of Discrimination Against Women (CEDAW) in 2019⁹.
- 1.15 It is of note that the CEDAW Committee in its Concluding Observations on the UK (2019)¹⁰ called for steps to increase women’s access to formal and secure employment; and to adopt measures to increase access of marginalised groups, such as minority ethnic women and disabled women to the labour market and alleviate their concentration in low paid jobs.
- 1.16 We note that the PMB proposes to remove Section 18 of the Employment Act 2016 which deals with Zero Hour Workers. Although tangential to your specific enquiry, please note that we have called for the bringing into force of Section 19 of the Employment Act 2016 which provides for the introduction of Gender Pay Reporting Regulations and of a gender pay strategy. We consider that an effective Gender Pay Strategy would provide a valuable opportunity for the Executive to address the issue of the concentration of women in part-time employment where they are at risk of low pay and precarious employment.
- 1.17 We note that paragraph 31 (Equality Impact Assessment) of the Explanatory and Financial Memorandum indicates that “communications between the Member and the Equality Commission for Northern Ireland and legal advice the Member has received, did not identify any equality implications of the Bill”.
- 1.18 There is the potential for any Bill to have positive equality or good relations impacts, as well as to mitigate any potential negative impacts that might arise in the drafting and

⁸ ECNI (2018) [Statement on Key Inequalities in Employment](#) , page 96.

⁹ ECNI (2018), [Women in Northern Ireland: CEDAW Shadow Report](#)

¹⁰ UN CEDAW Committee (March 2019), [Concluding Observations on UK](#)

implementation of the Bill and its associated policies and services.

- 1.19 Should the Private Members Bill become legislation and require implementation, the Section 75 duty to screen/carry out an Equality Impact Assessment (EQIA) would fall to the relevant Public Authority/Department¹¹. The Section 75 duties also require public authorities to monitor the impacts of their policies for each of the Section 75 equality groups and to consider adopting mitigation measures to address or limit any adverse impacts.
- 1.20 In advance of that, early engagement with Officials from the relevant Department(s) may be of assistance in the consideration of potential equality impacts of the Bill, as they may have expertise or information which would point to potential opportunities to have positive equality or good relations impacts, as well as to mitigate any potential negative impacts that might arise in the drafting and implementation of the Bill. The Northern Ireland Assembly's Research and Information Service (RaISe) may also be able to provide some assistance, aligned to their remit to meet the information needs of the Assembly Members and provide research and information support.

Article 2 of the Ireland/Northern Ireland Protocol

- 1.21 Following the UK's exit from the EU, the UK Government has committed under Article 2 of the Ireland/Northern Ireland Protocol ('the Protocol') to ensuring that certain equality and human rights in Northern Ireland will continue to be upheld after Brexit. Since 1 January 2021, the Equality Commission, together with the Northern Ireland Human Rights Commission, has been given additional powers and responsibilities, as the 'dedicated mechanism', to ensure that the UK Government's commitment under Article 2 of the Protocol is met¹².

¹¹ Section 75 equality duties apply to designated Public Authorities, requiring them to pay an appropriate level of regard to the need to promote equality of opportunity and to the desirability of promoting good relations when developing new and reviewing existing policies. The Section 75 duties also require public authorities to monitor the ongoing impacts of their policies for each of the Section 75 equality groups and to consider adopting mitigation measures to address or limit any adverse impacts.

¹² Schedule 3 of the European Union (Withdrawal Agreement) Act 2020 amended the Northern Ireland Act 1998 to confer these additional powers on the Commissions – to monitor, advise, report on and enforce the UK Government's adherence to its commitment in Article 2 Protocol. More information on

- 1.22 Under Article 2 (1) of the Protocol the UK Government has committed to ensuring there is no diminution of the rights, safeguards and equality of opportunity provisions as set out in the chapter of the same name in the Belfast (Good Friday) Agreement as a result of Brexit. There is also a commitment to ensuring that Northern Ireland’s equality laws will keep pace with any changes by the EU to the Annex 1 EU equality Directives in the Protocol that enhance protections in these Directives¹³¹⁴.
- 1.23 In addition, UK courts when considering the interpretation of any of the equality directives listed in Annex 1, must do so in conformity with any relevant case law of the Court of Justice of the EU (CJEU)¹⁵.
- 1.24 It should be noted that neither the Northern Ireland Assembly, nor the Northern Ireland Executive, can act in a way that is incompatible with the UK Government’s commitment under Article 2 of the Protocol. If they do, those actions can be challenged in courts, by way of judicial review proceedings.
- 1.25 Section 6 (2)(ca) of the Northern Ireland Act 1998¹⁶ as amended by Schedule 3 to the European Union (Withdrawal Agreement) Act 2020¹⁷, makes clear that legislation created by the Northern Ireland Assembly in contradiction to the Article 2 obligations would be outside its legislative competence.
- 1.26 While no potential breach of Article 2 has been identified by the Commission in relation to this Bill at this stage, the Commission recommends that at all stages of development of this PMB

our role can be found in our publication ‘[A Short Guide](#): Equality and Human Rights after Brexit: The UK Government’s commitment under the Ireland/Northern Ireland Protocol Article 2(1) of the Protocol’.

¹³ Ireland/Northern Ireland Protocol Annex 1 Directives: [Gender Goods and Services Directive \(Gender\)](#): Directive 2004/113/EC of 13 December 2004, [Recast Directive \(Gender\)](#): Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006, [Race Equality Directive \(Race\)](#): Directive 2000/43/EC of 29 June 2000, [Framework Directive \(religion and belief; age; sexual orientation; and disability\)](#): Directive 2000/78/EC of 27 November 2000, [Equal Treatment Directive: Self-employment \(Gender\)](#): Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010, [Equal Treatment Directive: Social security \(Gender\)](#): Directive 79/7/EEC of 19 December 1978.

¹⁴ UK Government, [Explainer Document](#): UK Government commitment to “no diminution of rights, safeguards and equality of opportunity” in Northern Ireland, 7 August 2020

¹⁵ The Northern Ireland Office has, in its 2020 Explainer Document, stated that when a UK Court is considering the interpretation of any of the directives listed in Annex 1, this will be done in conformity with any relevant case law of the CJEU

¹⁶ [Northern Ireland Act 1998](#)

¹⁷ [European Union \(Withdrawal Agreement\) Act 2020](#)

there is consideration of, and compliance with, Article 2 obligations. The Commission recommends that an assessment of the Bill's compliance with Article 2 obligations should be detailed in the Bill's Explanatory and Financial Memorandum.

1.27 In closing, I take this opportunity to point Committee members to further information on the Commission's [employment policy positions](#). You may be interested in the Commission's policy priorities and recommendations relating to [gender pay](#), as well as Commission's policy recommendations relating to [childcare](#). Further information on the Commission's [Article 2 role and responsibilities](#) is also available on our website.

Yours sincerely,

Kathryn

Kathryn McNickle | Senior Policy and Engagement Officer
Equality Commission for Northern Ireland

e: kmcnickle@equalityni.org | w: www.equalityni.org