

Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill

Economy Committee Evidence

About the CIPD

The CIPD is the professional body for HR and people development. As a registered charity, **we champion better work and working lives** and have been setting the benchmark for excellence in people and organisation development for more than 100 years.

We have more than 160,000 members across the world, provide thought leadership through independent research on the world of work and other professional training and accreditation for those working in HR and learning and development. **The CIPD has around 4,000 members across Northern Ireland.** We sit at the heart of a proud, growing community of practitioners, members, partners, policy-makers and thought leaders in the world of work. We work with the NI Executive, its agencies and several academic, business and voluntary partners on a broad range of public policy issues.

We are key partners on multiple working groups and serve as a conduit to our network of members, who both inform changes in policy and deliver them. **Our membership is spread across businesses from the public, private and third sectors and across businesses of all sizes.** This puts the CIPD in a strong position in the public policy sphere.

Introduction

The CIPD is pleased to have been asked to contribute our views to the proposed Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill. The tight consultation timeframe has unfortunately prevented us from directly seeking the views of our members in Northern Ireland on some of the detailed proposals in the Bill.

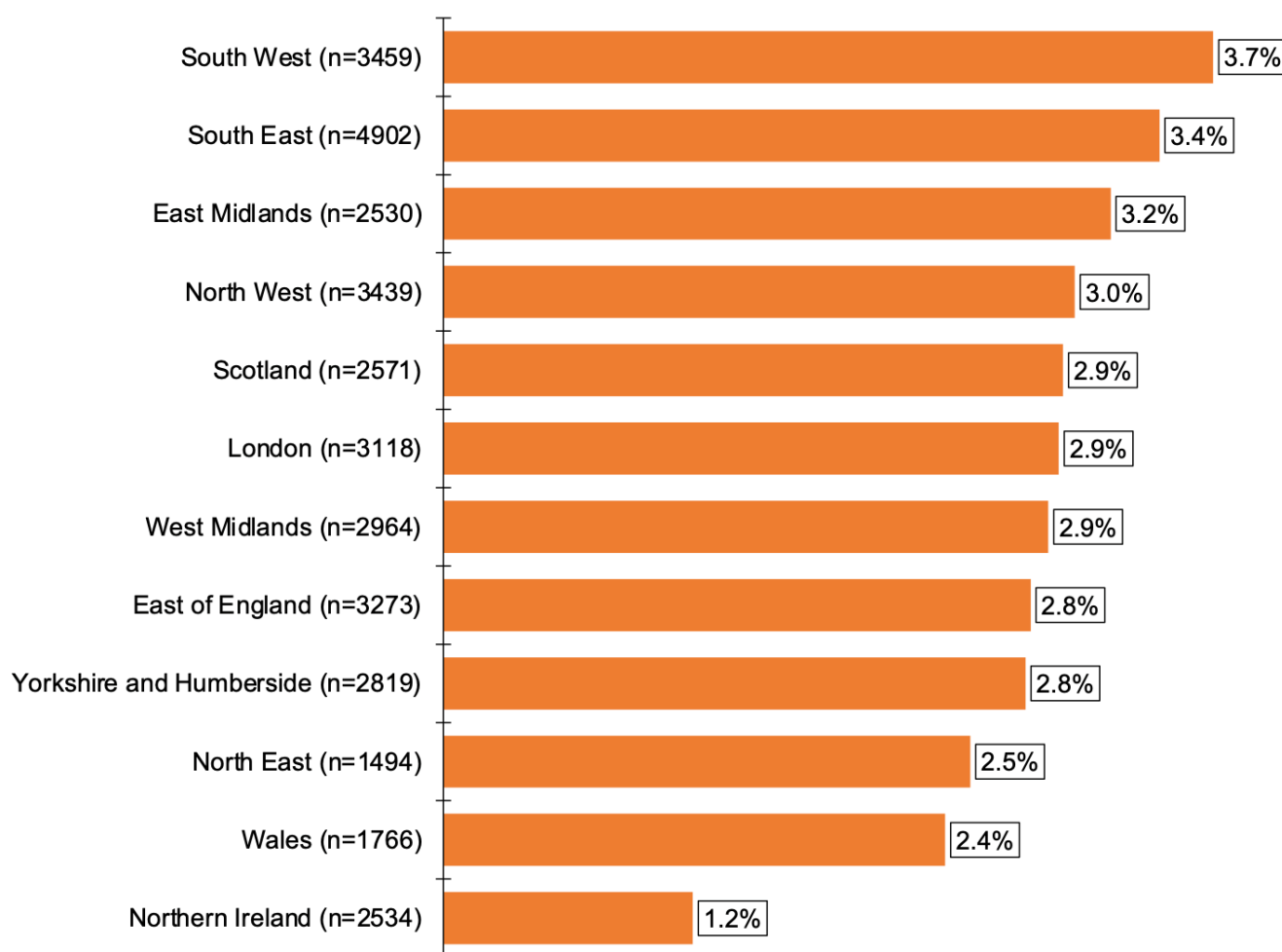
Nonetheless, we have a considerable amount of evidence in relation to non-standard contracts and hold regular discussions with members on matters that are of relevance to the topic. Consequently, we will restrict our response to broader points in relation to zero-hours contracts, their prevalence, relationship to job quality and the key issues as we see them.

For any clarification or further information, please contact CIPD's Public Affairs Officer, Olivia Carson on olivia.carson@cipd.co.uk.

Prevalence of zero-hours contracts

Before looking at the proposals included in the Bill, we feel it would be useful to look at official statistics to provide some context to the discussion. The Bill's Explanatory and Financial Memorandum suggests that roughly 1.3% of the Northern Irish workforce are on zero-hours contracts. This is in line with the latest Labour Force Survey, which puts the percentage at 1.2%. It is worth emphasising, that this is considerably lower than anywhere else in the UK. Using the Oct-Dec 2021 LFS data, *Figure 1* shows how the prevalence of ZHCs differs across the nations and regions of the UK.

Figure 1: Labour Force Survey (Oct-Dec 2021) – Zero-Hours Contracts by UK Nation & Region



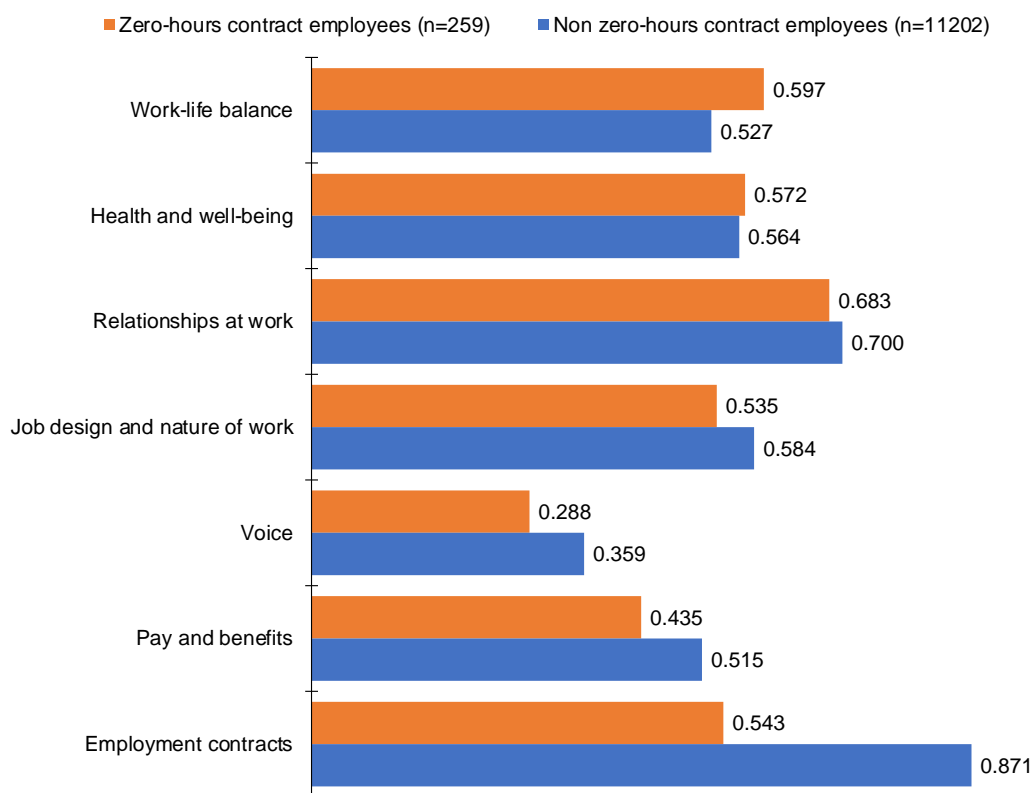
Some of the difference between Northern Ireland and other parts of the UK may be attributable to lower awareness of what zero-hours contracts are, especially in the context of a very different policy environment in the Republic of Ireland, some of which this Bill is seeking to emulate. Even taking any under-reporting into account, however, it does not seem that zero-hours contracts are significantly more prevalent in Northern Ireland compared with the rest of the UK.

The Bill, however, seeks to introduce the right to request banded hours contracts to those who consistently work more hours than they are contracted to. This would extend well beyond those on zero-hours contracts. Our analysis of the latest data suggests that over 7 million employees across the UK say their hours tend to vary, of which only a fraction (less than a tenth of these) do not have guaranteed minimum hours. The Bill would therefore apply to a significant proportion of the workforce and constitute a considerable change to employment law in Northern Ireland.

Job quality and zero-hours contracts

The CIPD has a large body of evidence in relation to job quality. Our annual Good Work Index offers the most comprehensive analysis of job quality across the UK workforce, written around seven different dimensions of good work. In November 2021, we published [Working Lives Northern Ireland](#) - our first dedicated analysis of job quality in Northern Ireland. It does highlight concerns over job security, underemployment and labour market confidence, with significant differences between occupational classes. Sample sizes don't allow us to analyse workers on zero-hours contracts in Northern Ireland, but Figure 2 summarises UK-wide findings, which are likely to be broadly the same.

Figure 2: Good Work Index for zero-hours contract workers 2019-2021¹



¹ Average (mean) scores. Excluding self-employed, owner-managers and people in a business partnership.

Figure 2 includes scores for each of the seven dimensions of the CIPD Good Work Index, with each dimension scored from zero to one and higher values representing better work. We see that the biggest differences are across the 'employment contracts' and 'pay and benefits' dimensions. This is unsurprising, as job security concerns are likely to be higher for those on zero-hours contracts and they also tend to offer less than other jobs in terms of pay and other benefits as well as in career development opportunities.

On the other hand, we see comparable scores across the other dimensions and, in fact, higher scores on work-life balance and marginally so on health and wellbeing. This is because most zero-hours jobs tend to involve part-time hours and because zero-hours jobs "spill over" less into the rest of employees' lives, the result being less workload pressure and less stress. This points to some of the trade-offs that we see in our research around job quality and highlights that for some, zero-hours contracts can work well.

Furthermore, our employer research suggests that three-quarters (76%) of employers who use zero-hour contracts say they treat those on them as employees. This is corroborated by official ONS data which show that almost two-thirds (64%) of people on zero-hours contracts have a permanent role and so are likely to have full employment rights, subject to length of service. This is one of the key reasons for why the CIPD would oppose an outright ban on zero-hours contracts as there is a danger that employers would instead make increased use of casual work with significantly fewer employment rights.

Key issues

Two-sided flexibility

The primary reason for the additional focus on zero-hours contracts in recent years is the minority of employers who misuse these contracts, in what the [Taylor review](#) called "one-sided flexibility". They can be misused by employers to manage fluctuating demand, without deeper legal and pay obligations, leaving some employees without a stable and predictable income. These issues need to be addressed, but this can be done without an outright ban on zero-hours contracts.

The CIPD's view remains that there is demand for these types of arrangements from employees as well as employers and, if used well, they can be suitable to both. It is in employers' interest to use these contracts responsibly and ensure there is genuine two-way flexibility. CIPD [guidance on employing atypical workers](#) provides some pointers, such as regular reviews of both employment status and the suitability of specific contracts.

One of the aspects that is associated with such two-sided flexibility is whether variable hours suit those on atypical contracts. For some, including those with fluctuating health conditions,

such variability may be acceptable and even welcome. For others, especially for those for whom a zero-hours contract is the only source of income, unpredictable hours and incomes can pose a significant challenge. ONS data suggests that the latter are in the minority. Across the UK, over three-quarters (78%) of employees with zero-hours contracts do not want more hours.

However, as mentioned above, the Bill's provisions would extend beyond those on zero-hours contracts and seek to offer more predictable contracts for those who regularly work more hours than contracted for. This is an issue that the UK Government promised to legislate for in the future. The CIPD would support action in this space, although the approach taken in the proposed Bill is only one option available to policy-makers.

Exclusivity clauses

One of the issues where Northern Ireland lags behind the rest of the UK is around exclusivity clauses in contracts, which have effectively been banned in GB law. The Bill seeks to make exclusivity clauses unenforceable, bringing us in line with the rest of the UK. In addition, it seeks to create a broader power to regulate zero-hours contracts. The CIPD supports these measures, but the aims of the relevant clauses have now been overtaken by events.

At the time of drafting, similar provisions included in the 2016 Employment Act were not yet in force. Clause 4 in the proposed Bill replicates provisions in clause 18 of the 2016 Act. The power to tackle the abuse of zero hours contracts (which is also likely to include a ban on exclusivity clauses) has now been enacted by the Employment Act (Northern Ireland) 2016 (Commencement No.4) Order (Northern Ireland) 2021, with regulations to follow soon.

Notification of shifts and compensation

Our research as well as conversations with members consistently highlight issues around the notification of shifts and compensation for shifts cancelled at short notice. Both of these issues were subject of a UK Government consultation to which the CIPD [responded](#) in 2019. We would welcome a day one right to a reasonable notice of shifts, a 24-hour cut off point for cancelling shifts and compensation for shifts cancelled at short notice.

The proposed Bill seeks to tackle compensation for zero-hours workers called into work, but not given work once they get there. It should be noted that short notice shift or hours cancellations happen to workers with variable hours more generally and not just those on zero-hours contracts. In contrast with the banded hours proposals in the Bill, the compensation proposals are much narrower. They also do not include any provisions around the notification of shifts, which we would argue should be included.

GB employment law

Many of the issues that the Bill seeks to address are currently the subject of ongoing work across the rest of the UK. In addition to the above-mentioned notification of shifts and compensation payments consultation, the 2019 Queen's Speech included a commitment to legislate in a new Employment Bill to provide employees who work variable hours (including both those on zero-hours contracts and agency workers) the right to request a more predictable and stable contract. There is also ongoing work by the Department for the Economy in this area, building on the commitments included in *New Decade, New Approach*.

Over the last few months, our members working for UK-wide organisations told us that the complexity of navigating the growing differences between GB and NI employment legislation is becoming a significant burden. There may be good reasons for some tailored legislation, but the overall preference from our members is for broad consistency across the UK. The case for differentiation is strongest if a problem is particularly pronounced in Northern Ireland. Statistics seem to suggest the opposite is true in the case of zero-hours contracts. Furthermore, the banded hours proposals would apply to a much wider group of employees and more employers would need to be cognisant of differing legal obligations.

Conclusion

The CIPD welcomes the additional focus on zero-hours contracts and variable hours more broadly. Some Northern Irish employees face long-standing issues with one-sided flexibility, exclusivity clauses as well as shift cancellations with minimal notice. We particularly welcome the more nuanced approach the Bill is taking to the issue, seeking to introduce a right to request banded hours contracts as opposed to an outright ban on zero-hours contracts.

We support the aims of the Bill, and although we do not delve into the detail of various clauses, there is much in the Bill that we would support. There are some areas where more work is required and we would need to consult our members to provide more specific feedback.

However, the key issue is whether the Bill is the most appropriate vehicle for change in this area, especially given likely developments in GB law as well as ongoing work by the Department for the Economy. As Covid restrictions ease, we are hoping to see legislative proposals in relation to variable hour contracts from the UK Government soon and these may need to be considered in a Northern Irish context.