

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

[AS INTRODUCED]

LEGISLATIVE COMPETENCE

At Introduction the Member in charge of the Bill, Ms Jemma Dolan, has made the following statement under Standing Order 30:

“In my view the Employment (Zero Hours Workers and Banded Weekly Working Hours) Bill would be within the legislative competence of the Northern Ireland Assembly.”

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BILL

TO

Make provision in respect of zero hours workers and banded weekly working hours.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1

ZERO HOURS WORKERS

Zero hours workers

1.—(1) For Part IVA of the 1996 Order substitute—

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“PART IVA

ZERO HOURS WORKERS

Zero hours workers: interpretation

59A.—(1) In this Part—

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“zero hours worker” means a worker who has entered into or works under a zero hours contract,

“zero hours contract” means a contract of employment or other worker’s contract under which—

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- (a) the undertaking to do or perform work is an undertaking to do so conditionally on the employer making work available to the worker; and
- (b) there is no certainty that any such work will be made available to the worker.

(2) For the purposes of this Part an employer makes work available to a zero hours worker if the employer requests or requires the zero hours worker to do the work.”.

5 (2) Section 18 of the Employment Act (Northern Ireland) 2016 (zero hours workers) is repealed.

Zero hours worker called in but not given work

2.—(1) After Article 59A of the 1996 Order (as substituted by section 1) insert—

“Zero hours worker called in but not given work

10 59B.—(1) This Article applies where a zero hours worker is called in to work but—

- (a) is not given any work, or
- (b) is given less than one hour’s work.

15 (2) On each occasion when this Article applies, the zero hours worker is entitled to be paid as if they had worked for three hours.

(3) This Article does not apply where—

- 20 (a) the reason why the zero hours worker was not given any work, or given less than one hour’s work, is that there were exceptional circumstances or an emergency (for example, an accident), the consequences of which could not have been avoided despite the exercise of due care by the employer, or
- (b) the worker would have been unable to work (for example due to illness) when called in.”.

25 (2) In Article 45 of the 1996 Order, after paragraph (3) (failure to pay wages treated as a deduction from wages), insert—

“(3A) A reference in paragraph (3) to the wages properly payable to a worker includes a reference to the payments to which a zero hours worker is entitled under Article 59B.”.

Exclusivity terms unenforceable

30 3. After Article 59B of the 1996 Order (as inserted by section 2) insert—

“Exclusivity terms unenforceable

59C.—(1) Any provision of a zero hours contract which—

- 35 (a) prohibits the zero hours worker from doing work or performing services under another contract or under any other arrangement, or
 - (b) prohibits the zero hours worker from doing so without the employer’s consent,
- is unenforceable against the zero hours worker.

(2) Paragraph (1) is to be disregarded for the purposes of determining any question whether a contract is a contract of employment or other worker’s contract.”.

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Power to make further provision in respect of zero hours workers

4.—(1) After Article 59C of the 1996 Order (as inserted by section 3) insert—

“Power to make further provision in respect of zero hours workers

59D.—(1) The Department may by regulations make such further provision as is reasonable for the purpose of preventing abuses arising out of or in connection with the use of—

- (a) zero hours contracts;
- (b) non-contractual zero hours arrangements; or
- (c) worker’s contracts of a kind specified by the regulations.

(2) In this Article “non-contractual zero hours arrangement” means an arrangement other than a worker’s contract under which—

- (a) an employer and an individual agree terms on which the individual will do any work where the employer makes it available to the individual and the individual agrees to do it, but
- (b) the employer is not required to make any work available to the individual, nor the individual required to accept it;

and in this Article “employer” in relation to a non-contractual zero hours arrangement is to be read accordingly.

(3) For the purposes of this Article—

- (a) an employer makes work available to an individual if the employer requests or requires the individual to do the work; and
- (b) references to work and doing work include references to services and performing them.

(4) The worker’s contracts which may be specified under paragraph (1) (c) are those in relation to which the Department considers it appropriate for provision made by the regulations to apply, having regard, in particular, to provision made by the worker’s contracts as to income, rate of pay or working hours.

(5) Regulations made under this Article may amend or repeal any statutory provision (including a provision of this Order) passed or made before this Article comes into operation.

(6) In making regulations under this Article, the Department must take into account, in particular—

- (a) best international practice on employment law, and
- (b) the views of trade unions and other bodies with an interest in protecting the rights of zero hours workers.”.

(2) In Article 251 of the 1996 Order (orders and regulations)—

- (a) in paragraph (1), as it has effect until the substitution mentioned in paragraph (b) comes into operation, for “paragraph (1A)” substitute “paragraphs (1A) and (1AA)”,
- (b) in paragraph (1), as substituted by section 24(2) of the Employment Act (Northern Ireland) 2016, after “(1A)” insert “(1AA)”,

(c) after paragraph (1A) insert—

“(1AA) Regulations under Article 59D must not be made unless a draft has been laid before, and approved by a resolution of, the Assembly.”,

(d) in paragraph (1B), as inserted by section 24(3) of the Employment Act (Northern Ireland) 2016, omit “59A or”.

Right not to be subjected to detriment

5 **5.**—(1) In Part VI of the 1996 Order (protection from suffering detriment etc. in employment), after Article 68A insert—

“Zero hours contract: breach of unenforceable exclusivity term

10 68B.—(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the worker’s employer done on the ground that the worker breached a provision or purported provision of a zero hours contract to which Article 59C(1) applies.

15 (2) This Article does not apply where the detriment in question amounts to a dismissal (within the meaning of Part XI).”.

(2) In Article 71 of the 1996 Order (complaints to industrial tribunals)—

(a) after paragraph (1ZA) insert—

20 “(1ZB) A worker may present a complaint to an industrial tribunal that the worker has been subjected to a detriment in contravention of Article 68B.”,

(b) in paragraph (2), after “(1ZA),” insert “(1ZB),”.

(3) In Article 72(1) of the 1996 Order (remedies), after “(1ZA),” insert “(1ZB),”.

Unfair dismissal

25 **6.**—(1) In Part XI of the 1996 Order (unfair dismissal), after Article 132A insert—

“Zero hours contract: breach of unenforceable exclusivity term

30 132B.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee breached a provision or purported provision of a zero hours contract to which Article 59C(1) applies.

(2) See Article 169B for the application of this provision to workers.”.

35 (2) In Article 140 of the 1996 Order (qualifying period of employment), after paragraph (3)(cc) insert—

“(cd) Article 132B applies.”.

(3) After Article 169A of the 1996 Order insert—

“Application to zero hours workers: breach of unenforceable exclusivity term

5 169B. For the purposes of Article 132B, and of the other provisions of this Part so far as relating to the right not to be unfairly dismissed in a case where the dismissal is unfair by virtue of Article 132B, a zero hours worker (within the meaning of Part IVA) is to be treated as an employee.”.

Role of Labour Relations Agency in relation to conciliation

7. In Article 20(1)(c) of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation: relevant proceedings), after head (iii) insert—
10 “(iiia) Part IVA (zero hours workers);”.

PART 2

BANDED WEEKLY WORKING HOURS

Entitlement to banded weekly working hours

8. After Article 112I of the 1996 Order insert—

15 “PART IXB

BANDED WEEKLY WORKING HOURS

Entitlement to banded weekly working hours

20 112J.—(1) A worker is entitled to be placed in a band of weekly working hours set out in the table if the condition set out in paragraph (2) is met.

Band	From	Up to (but not including)
A	3 hours	6 hours
B	6 hours	11 hours
C	11 hours	16 hours
25 D	16 hours	21 hours
E	21 hours	26 hours
F	26 hours	31 hours
G	31 hours	36 hours
H	36 hours and over	

30 (2) That condition is that the worker’s weekly hours, as set out in their contract, does not reflect the number of hours worked per week during the reference period.

(3) Where a worker is placed in a band, then each week the worker must be given a number of hours of work that fall within that band.

35 (4) Nothing in this Part requires an employer to offer hours of work in a week where—

- (a) the worker was not expected to work,
- (b) the employer’s regular business is not being carried out.

(5) In this Part “reference period” means the period of three months after the commencement of the worker’s contract with the employer and immediately before the worker makes a request in accordance with Article 112K.

5 (6) For the purposes of paragraph (5), a continuous period of employment with that employer occurring immediately before commencement of this Article is reckonable as part of the reference period.”.

Employer’s obligation to inform worker of entitlement to banded weekly working hours

10 **9.** After Article 112J of the 1996 Order (as inserted by section 8) insert—

“Employer’s obligation to inform worker of entitlement to banded weekly working hours

15 112K.—(1) Every three months, an employer must consider whether a worker may be entitled to banded weekly working hours in accordance with Article 112J.

(2) If the employer considers that the worker may be so entitled, the employer must inform the worker, in writing, of this.”.

Procedure for placement in banded weekly working hours

20 **10.** After Article 112K of the 1996 Order (as inserted by section 9) insert—

“Procedure for placement in banded weekly working hours

112L.—(1) This Article sets out the procedure for a worker being placed in a band of weekly working hours.

25 (2) The worker may request the employer, in writing, that the worker be placed in a band.

(3) Upon receiving that request, the employer has four weeks to place the worker in a band.

30 (4) The band in which the worker is placed is to be determined by the employer on the basis of the average number of hours worked by that worker per week during the reference period.

(5) If the worker satisfies the condition set out in Article 112J(2), the request may be made at any time, including where—

35 (a) a previous request has been refused in accordance with Article 112M, or

(b) a previous request has been accepted but the worker believes they are now entitled to be placed in a different band.”.

Exceptions

11. After Article 112L of the 1996 Order (as inserted by section 10) insert—

“Exceptions

112M.—(1) An employer may refuse to place a worker in a band—

- (a) where there is insufficient evidence to support the claim in relation to the hours worked in the reference period;
- 5 (b) where there have been significant adverse changes to the business carried on by the employer during or after the reference period;
- (c) where there are exceptional circumstances or an emergency (for example, an accident), the consequences of which cannot be avoided despite the exercise of due care by the employer;
- 10 (d) where the average number of hours worked by that worker per week during the reference period was affected by a temporary situation that no longer exists.

(2) There is no entitlement under Article 112J where banded hour arrangements have been entered into by collective agreement.”.

15 **Complaints to industrial tribunals**

12. After Article 112M of the 1996 Order (as inserted by section 11) insert—

“Complaints to industrial tribunals

112N.—(1) A worker may present a complaint to an industrial tribunal that an employer has failed to place the worker in a band of weekly working hours in accordance with this Part.

(2) An industrial tribunal must not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the expiry of the period referred to in Article 112L(3), or
- 25 (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Article 249B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2) (a).”.

Remedies

13. After Article 112N of the 1996 Order (as inserted by section 12) insert—

“Remedies

112O. Where an industrial tribunal finds a complaint under Article 112N well-founded it must—

- (a) make a declaration to that effect, and
- (b) require the employer to comply with this Part and place the worker in the appropriate band of hours.”.

Application to zero hours workers

14. After Article 112O of the 1996 Order (as inserted by section 13) insert—

“Application of this Part to zero hours workers

5 112P. If a zero hours worker (within the meaning of Part IVA) is placed in a band of weekly working hours in accordance with this Part, that person ceases to be a zero hours worker.”.

Power to require records to be kept

15. After Article 112P of the 1996 Order (as inserted by section 14) insert—

“Power to require records to be kept

10 112Q. The Department may make regulations requiring employers to keep records in respect of workers’ weekly hours and requests for workers to be placed in a band of weekly working hours.”.

Role of Labour Relations Agency in relation to conciliation

15 16. In Article 20(1)(c) of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation: relevant proceedings), after head (viiia) insert—

“(viiiaa) Part IXB (banded weekly working hours);”.

PART 3

GENERAL

Interpretation

20 17. In this Act “the 1996 Order” means the Employment Rights (Northern Ireland) Order 1996.

Commencement

18. This Act comes into operation at the end of the period of 3 months after the date on which it receives Royal Assent.

25 **Short title**

19. This Act may be cited as the Employment (Zero Hours Workers and Banded Weekly Working Hours) Act (Northern Ireland) 2021.

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

[AS INTRODUCED]

A Bill to make provision in respect of zero hours workers and banded weekly working hours

Introduced by: Ms Jemma Dolan

On: 15 November 2021

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ACCOMPANYING DOCUMENTS

An Explanatory and Financial Memorandum is printed separately as NIA Bill 46/17-22 EFM.



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