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# STATES OF JERSEY



## **THE OPERATION AND REGULATION OF ZERO HOUR CONTRACTS IN JERSEY – A REPORT FROM THE JERSEY EMPLOYMENT FORUM (R.70/2023) – RESPONSE OF THE MINISTER FOR SOCIAL SECURITY**

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**Presented to the States on 21st June 2023  
by the Minister for Social Security**

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**STATES GREFFE**

## REPORT

### Introduction

On 2 May 2023, the Jersey Employment Forum presented its Report and Recommendations to the Minister for Social Security, following a wide-ranging consultation exercise on the operation and regulation of zero hour contracts in Jersey. The Forum's report also dealt with a number of other issues which emerged during the consultation exercise. The Forum used the criteria set out by the States Assembly in P.32/2021 to frame the structure of its Report. A link to the Report is [here](#).

The Minister for Social Security is grateful to the Forum for its work, has considered the findings and recommendations of the Forum and has decided to accept each of them. This Ministerial Report outlines the Minister's conclusions regarding each of the recommendations.

### Criteria set out in P.32/2021

The Employment Forum Report set out its conclusions and recommendations, following these criteria agreed by the States Assembly:

- A definition of zero hour contracts
- The prevention of employers requiring zero hour employees to be always available for work
- A ban on exclusivity clauses
- A right for zero hour employees, who in practice work regular hours, to switch to a contract which reflects the normal hours worked
- A right to reasonable notice of a work schedule
- A right to compensation for shift cancellation or curtailment without reasonable notice
- Other measures to be identified as part of the review

### Forum recommendations and Ministerial response

#### 1) The definition of a zero hour contract

The Forum recommended that no further action be taken on this point. The Minister agrees with the Forum conclusion that there is little to be gained by attempting an overarching definition of a zero hour contract within the Employment Law, which would, in itself, not provide any additional employment protections beyond those already available.

The Minister bears in mind that ALL employees in Jersey, regardless of the type of contract they are on, have the same "Day 1" rights. In those circumstances, separating out a definition of a zero hour contract from any other type of employment contract would mean, as the Forum has pointed out, a "significant change in the operation of the law" and would necessarily extend across the provisions of the Employment Law as a whole. The Minister considers this an unnecessary additional step.

**2) The prevention of employers requiring zero hour employees to always be available for work**

The Forum concluded that there is no need to pursue this issue by way of additional legislation, and the Minister agrees with its conclusions. The Minister notes, as the Forum pointed out, in terms of the understanding of zero hour contracts in Jersey, that an employee is not obliged to do any work for an employer.

The Minister agrees with the Forum that there is no evidence of abuse by employers regarding this criterion, but that the Government will review this issue, should it become relevant in the future. The Minister considers that current arrangements between employer and employee appear to be working well overall and that the balance between the interests of both should be maintained under current practice, which, as the Forum points out, is fit for purpose in a small economy such as Jersey's.

**3) A ban on exclusivity clauses**

The previous Minister for Social Security introduced an amendment to the Employment Law (by way of new Article 6) in May 2022, making exclusivity clauses – which restrict the ability of the employee employed on a zero hour contract to work for more than one employer without that employer's permission – unenforceable.

The Minister notes the Forum's conclusion that this practice is non-existent in Jersey, and that the use of such clauses is not supported – and indeed actively discouraged – by employers' organisations in the Island. The Minister agrees with the Forum that no further action is necessary at this time.

**4) The right for zero hour employees, who in practice work regular hours, to switch to a contract which reflects the normal hours worked**

The Minister shares the concern of the Forum that there is evidence that some employees in Jersey are working under a zero hour contract but are employed on a working hours regime that is akin to regular part-time or full-time work.

The Forum noted the current protections afforded by the Employment Law in terms of the statutory right of an employee to request a variation of their written terms and conditions of employment. The Forum concludes that there is a strong case for an additional right to be provided in terms of an ability to request a specific variation to switch to terms which more accurately reflect the reality of the hours being worked.

The Minister agrees that this is a suitable case for additional legislation in the terms set out by the Forum in its recommendation and will ask for law drafting to be undertaken. Instructions to the Legislative Drafting Office are currently in preparation and the Minister will aim to ensure that this legislative change can be approved during 2023.

**5) A right to a reasonable notice of a work schedule**

In its Report, the Forum considers that introducing such a right would be difficult to achieve in practice. The Minister agrees, and notes that the Forum's findings indicate no apparent issue either with employers not giving employees reasonable notice or with employees letting down employers at the last moment. The Minister endorses the Forum's recommendation that this should be the subject of good employment practice between an employee and employer, perhaps by way of specific agreed clauses in a contract of employment (see below under paragraph 6).

## **6) A right to compensation for shift cancellation or curtailment without reasonable notice**

The Minister notes the Forum's conclusions and recommendations in this regard. As with the previous criterion, there appears to be little evidence of a problem in Jersey that would require additional legislation to rectify it.

Again, the Minister agrees with the Forum that, as a matter of good employment practice, employers should be sensitive to the potential for significant financial impact on an employee of late notice cancellations and should consider making recompense for that disadvantage. An employer and employee may choose to incorporate into a contract of employment such a clause, and the Minister would actively encourage such a practice. The clause might outline in what circumstances recompense for late notice or curtailment would be made.

The Minister accepts that this is an area that should be kept under review and is an issue that the Forum may return to in the future.

The Minister understands that the Jersey Advisory and Conciliation Service (JACS) will review the content of its zero hour employment guide in the coming weeks. JACS will include model clauses in relation to paragraphs 5 and 6, to reinforce understanding and as examples of good practice for employers to follow.

### **1) Other issues identified as part of the Forum's review**

(a) The Forum is of the view that **education and awareness-raising** of employment rights for employers and employees is a crucial factor when it comes to the rights and responsibilities of both parties to an employment contract and to facilitating good employment relations, both at an individual and at an organisational level. The Minister strongly endorses that view.

In the view of the Minister, the role of business organisations in ensuring their members understand and adhere to the provisions of the Employment Law, not just for the benefit of their employees but also for themselves and their reputation, is a key aspect of good employment relations.

Employers' organisations and trade unions and employee representative bodies have an equally important part to play, as the Forum clearly sets out.

The Minister recalls that a significant proportion of the claims that are dealt with by the Employment Tribunal relate to breaches of the statutory right of an employee to written terms and conditions and to accurate payslips. Given that these provisions of the Employment Law have been in place for many years, the Minister considers that this is a further impetus for ensuring proper compliance with the Law and the need for effective understanding and application on all sides.

The Forum recommended the active involvement of employer, employee and community organisations to raise awareness and the Minister strongly endorses that recommendation. Actions in this area are already in progress.

Work on an easy to follow guide for employees has nearly concluded. It is aimed primarily at temporary incoming employees and will provide them with basic

information about their employment rights and responsibilities – together with other aspects of life in Jersey - and also sources of help and advice. This guide is being produced by Government in consultation with employer and employee organisations and with other groups – including voluntary organisations - across the employment and discrimination law landscape.

The Government recognises that, in particular, temporary incoming employees may feel vulnerable on issues of protecting or enforcing their employment rights and about sources of help and advice, of which there are a number in Jersey. The guide will also be produced in a range of languages to assist those for whom English is not their first language.

The Government has already set up a voluntary body – known as the Employee Standards Oversight Group – which will meet every two months to discuss and highlight any issues to do with the employment of, in particular, temporary incoming employees. This is a cross-Government initiative which will also focus on the operation of the immigration and work permit regimes.

In addition, the Minister will take action to use the resources of Government to disseminate as widely as possible to employers at an individual level information about their responsibilities under the law.

Regular emails will be sent to individual employers providing information and guidance about their rights and responsibilities under Employment Law. This will build upon the public information already available on the gov.je website, which helps employers navigate the employment law landscape, including links to other websites, such as JACS and Jersey Business.

### **The specific role of the Jersey Advisory and Conciliation Service**

The role of the independent Jersey Advisory and Conciliation Service (JACS) in providing independent advice and information to all parties and advising on the Employment and Discrimination Laws is essential.

JACS has recently commissioned the first in a series of short videos which will outline features of Jersey employment and discrimination legislation. The first in the series is now available on the JACS YouTube and LinkedIn channels and on its website<sup>1</sup>. JACS will post further videos as they become available.

The provision of advice by JACS at an individual level (employer and employee) can help, as the Forum has pointed out, to resolve misunderstanding about the scope of rights that employees enjoy in Jersey and ensure employers have all the knowledge and advice they need to fulfil their responsibilities under the legislation. The Minister is clear that the role played by JACS, in its offer of, and requirement under the law to undertake, advice, assistance and expertise, is of the utmost importance.

Policy officers will work with JACS to ensure that the information and advice provided by JACS is easily accessible on its website. The Minister also notes the wide range of seminars offered by JACS on employment and employment-related discrimination law

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<sup>1</sup> Working in Jersey | JACS

issues and notes that JACS is actively promoting such seminars. Recent seminars have had a high take up rate which is encouraging.

The Minister proposes holding “round table” discussions with employer and employee organisations in the second half of 2023. The Minister wishes to foster an atmosphere of collaboration and to engage with employee and employer bodies to discuss further practical steps that could be taken to improve knowledge of employment rights among businesses and employees and encourage compliance.

(b) The Forum has recommended that a consultation exercise be undertaken on the issue of the compensation regime for breaches of the Employment and Discrimination Laws. The Forum points out that the ranges and the maxima for awards have not altered in many years and may not act as a sufficient deterrent for breaches of the legislation, or as appropriate compensation to employees in the event of a breach being proved.

The Minister accepts the recommendation and has asked the Forum to begin a targeted consultation exercise in this area.