



**University of Limerick Study on the  
Prevalence of Zero Hour Contracts and  
Low Hour Contracts in the Irish Economy**

**Ibec submission to the Department of Jobs  
Enterprise and Innovation**

**Monday 4<sup>th</sup> January 2016**

## A. Introduction

Ibec welcomes the opportunity to respond to the University of Limerick Study on the Prevalence of Zero Hour Contracts and Low Hour Contracts among Irish Employers and their Impact on Employees<sup>1</sup>. Ibec wishes to respectfully register its concern at the extent to which the authors went beyond the scope of the study's terms of reference. The focus of the study was stated to be zero hour and low hours contracts but the authors seemed to view all forms of flexible working as interchangeable. Furthermore, little regard seems to be had to the pressure that many employers face to provide flexible work for employees seeking such arrangements and the need in certain sectors to provide a 24 hour 7 day service to service users and patients. The other point which must be made in this respect is that there is generally a finite number of working hours available in an individual workplace. Compelling an employer to provide a minimum number of hours to a specific cohort of employees is likely to lead to a reduction in hours elsewhere, having a negative impact on other employees.

## B. General observations

### 1. *The terms of reference for the study*

The terms of reference<sup>2</sup> set out the following key objectives:

- To fill the gap that currently exists in terms of the hard data and information that is available concerning the prevalence of “zero hour contracts” in the Irish economy and the manner of their use.
- To assess the impact of “zero hour contracts” on employees.
- To enable the Minister to make any evidence-based policy recommendations.

Having fulfilled these key objectives in respect of zero hour contracts, the authors were then asked to “proceed to repeat a similar assessment in relation to low hours contracts” (emphasis added). Low hours contracts were defined for the purposes of the study as “contracts of 8 hours or less per week”<sup>3</sup>. However, the authors of the study did not so limit their review of low hours contracts to contracts of 8 hours or less per week. Instead, having found little evidence of use of zero hour contracts, they proceeded to examine the full range of flexible and part-time working arrangements, considering part-time, variable hour contracts and If and When contracts, even including in some cases a focus on full-time variable hours. The only

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<sup>1</sup> Kemmy Business School, University of Limerick

<sup>2</sup> Page 2 of the study

<sup>3</sup> Page 6 of the Consultation Document, 9<sup>th</sup> of November 2015, Department of Jobs, Enterprise and Innovation

form of work which was not explored was the notional standard 9 am to 5 pm day, worked in a 5 day week.

If and When contracts were singled out for particular attention. However, given the key objectives set out above, Ibec disputes that such contracts came within the scope of the terms of reference, unless they came in a form which was routinely less than 8 hours per week. While low hours can be (but are not always) a feature of If and When contracts, low hours contracts and If and When contracts are two distinct types of employment arrangement. Notwithstanding this, the authors of the study have used the terms interchangeably and, worryingly, appear to have used evidence relating to one type of arrangement to support recommendations aimed at regulating the other.

## **2. *Lack of quantitative evidence***

As stated above, the terms of reference identified as key objectives for the study were

(1) to address the lack of quantitative data on zero hour contracts and low hours contracts and

(2) to enable the Minister to make “evidence-based policy recommendations” to Government.

Ibec submits that the study has failed to add in any material respect to the information already available on the prevalence of zero hour, low hours and/or If and When contracts in Ireland. As there remains, therefore, an absence of reliable and accurate data on the use of such contracts, the recommendations made in the study cannot be said to be “evidence-based”.

The study infers that the use of If and When contracts is significant and makes wide ranging recommendations regarding the regulation of their use. However, it provides little quantitative evidence to support this assertion. In fact, the study confirms that a small minority of employees – in the region of 5.3% - have variable working hours<sup>4</sup> and an even smaller number work such arrangements on a basis which could be described as “low hours” as defined by the terms of reference. This low number suggests that these arrangements are only used where necessary for operation of the business or at the employee’s request.

The authors of the study relied heavily on data obtained from the CSO’s National Household Survey (“QNHS”). However, as recognised by the authors themselves<sup>5</sup>, the QNHS does not currently use any measures or questions on employment contracts including zero hour or If and When contracts. Data from the QNHS was

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<sup>4</sup> Page 38 of the study

<sup>5</sup> Page 7 of the study

supplemented with data from a European Working Conditions Survey (“EWCS”) undertaken in 2010. Ibec is concerned that this information is almost 5 years old and was conducted at a time of extreme stress in the Irish labour market. In any case, Eurofound, in conjunction with Ipsos, has carried out its sixth EWCS and has recently published the first findings of the EWCS 2015.

One noteworthy finding from the EWCS 2015 is that 58% of European workers are satisfied with the working time in their main paid job. Of the remaining 42%, only 13% would like to increase their working time and 28% would like to decrease it. Ibec also notes the limitations of the EWCS recognised by the authors<sup>6</sup> - *“given the sample size of the EWCS, these figures may be overestimates or underestimates and should be treated with some caution”*.

In the absence of reliable data on If and When contracts and zero hour contracts, the authors relied on a casual association of data regarding variable working hours with If and When contracts. However, Ibec submits that the evidence of variable working hours is simply not reliable evidence of the prevalence of If and When contracts. While most people on If and When contracts work variable hours, it does not necessarily follow that all, or even a significant portion, of workers working variable hours work on If and When contracts. In fact, 54% of workers on arrangements described as variable hours are described in the QNHS for Quarter 3, 2015 as working full-time.

**Figure 1: Variable hours and ‘If and When’ contracts**



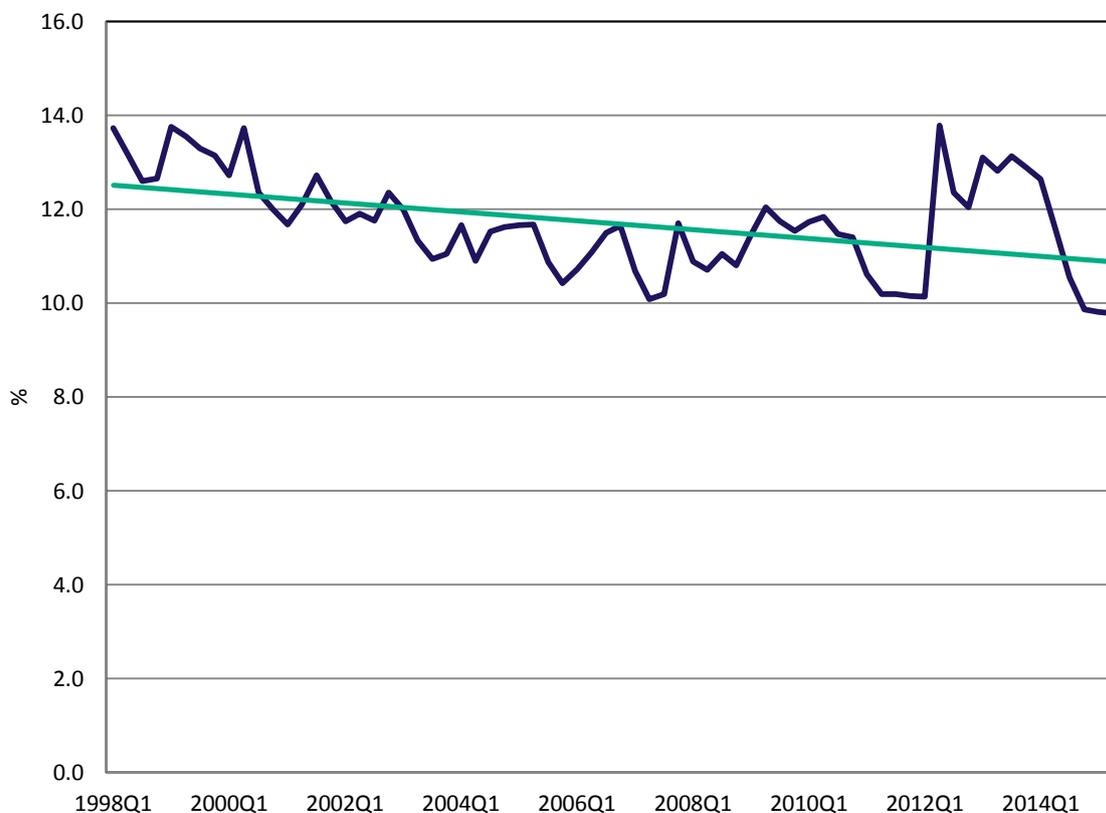
Instead of providing information and an evidence base on the group of workers inside the green area of figure 1, the authors of the study have used data from the whole figure with no substantial analysis of any overlaps or differences between the two.

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<sup>6</sup> Pages 13 and 14 of the study

Indeed, the very notion of any relationship between an alleged rising use of If and When contracts and variable hours work data is particularly questionable given that variable hours work is falling over the long term.<sup>7</sup>

**Figure 2: Variable hours, % of total employment**



### **3. Lack of representative data on employee preferences**

The authors of the study primarily used discussions with various interest groups in assessing employee preferences and experiences. Ibec submits that such interviews with employee representatives, unsupported by objective and representative survey based data, are not sufficiently representative of employee experience. This is particularly so given that union density in private firms stands at only 9.4% (European Social Survey, 2014) and is less than 35% even in the public sector dominated sectors studied in the study.

The underlying assumption in the study is that flexible working patterns are a negative imposition on employees rather than something which can suit modern work-life patterns, or in some cases, can facilitate additional employment elsewhere as outlined in the case studies below. However, the study provides no objective evidence on this issue.

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<sup>7</sup> See figure 2 below

In fact, Ibec submits that the study does not adequately reflect the evidence of the demand that employers often face for flexible working arrangements and part-time work. This demand is evidenced by the establishment in 2006 of a Code of Practice issued under the Industrial Relations Act 1990 to provide access to part-time work (the “Code of Practice”).<sup>8</sup> The general context of the Code of Practice, developed through the then Labour Relations Commission in consultation with trade unions and employers, refers to the importance of developing access to part-time work as a “strategic response to growing demands for modern flexible work-organisation”. It cites the fact that access for employees to more flexible work arrangements has facilitated:

- further education and training;
- increased participation of older people in the workplace;
- a meaningful option for people with disabilities; and
- providing work life balance work options generally.

Indeed, the Code of Practice is not the only initiative raised by policy makers to make more flexible work available to employees. The European Commission recently announced a new initiative<sup>9</sup> to promote work life balance, including the possibility of further legislation to enhance access to flexible working arrangements for workers and to promote the provision of such arrangements by employers to their employees. As these initiatives are not addressed at all in the study, it is unclear as to where they sit within the study and its recommendations. It increasingly appears that employers will become squeezed between two competing employee rights initiatives – one demanding more flexible working arrangements and the other prohibiting them.

Furthermore, a 2004 QNHS special module on working time found that 90% of those involved in shift-work or on-call work found it convenient for their personal situation. Almost 90% of those working non-standard hours (weekends, evenings, and nights) found it convenient for their personal lives.

| <b>Table 1: Shift or on call-work convenience</b> |  |  |
|---|--|--|
|   | Shift work or on-call work is not convenient for personal life situation (%) | Shift work or on call work is convenient for personal life situation (%) |
| Total   | 10.2   | 89.8   |
| Males   | 10.7   | 89.3   |
| Females   | 9.5  | 90.5   |

<sup>8</sup> Industrial Relations Act 1990 (Code of Practice on Access to Part-Time Working) (Declaration) Order 2006

<sup>9</sup> Consultation Document of 11<sup>th</sup> of November 2015, First Phase Consultation of Social Partners under Article 154 TFEU on Possible Action Addressing the Challenges of Work-Life Balance Faced by Working Parents and Caregivers

Source: QNHS, 2004

Although somewhat outdated, this data raises doubts regarding the assumption that flexible working patterns are a negative imposition on employees. Ibec therefore submits that, at the very least, updated representative data is required before recommendations on legislative change can be considered.

#### 4. **Absence of regulatory impact assessment**

Ibec is concerned by the absence of any analysis of the potential impact of the recommendations in the study. Implementation of any recommendation for legislative change should be subject to a vigorous regulatory impact assessment of its potential economic and social costs, not to mention the exchequer implications for departments likely to be heavily affected.

In health, education and public administration, almost 20,000 employees work varying hours, although many of these neither work low nor If and When hours. Ibec submits that the study does not adequately address the implications of the recommendations for cost and service delivery in these sectors. The study also fails to address the further 60,000 workers in the private sector who could be unintentionally affected by the study's recommendations. In other words, because the different forms of variable or flexible work have been conflated, the implications of the recommendations would potentially have a much wider impact than the terms of reference of the study envisaged.

|                                   | Employment<br>Q2, 2015 | % of employees<br>working varying hours | #      |
|-----------------------------------|------------------------|---|--------|
| Public administration and defence | 100,400                | 5                                       | 5,020  |
| Education                         | 150,700                | 3                                       | 4,521  |
| Human health and social work      | 249,100                | 4                                       | 9,964  |
| Total                             | 500,200                | 3.9                                     | 19,505 |

Source: QNHS 2015

Furthermore, Ibec submits that the authors of the study failed to address the negative fiscal consequences of the recommendations. Two of the four sectors examined in the study are dominated by public sector employment. As such, a large proportion of the cost of implementation of the recommendations would be borne by the exchequer. Given existing tight budgets in many parts of the education sector and continuing overruns in the HSE, considerably closer analysis of the cost of the recommendations is required before the Minister should consider implementation.

This is particularly important in circumstances where the demand for the changes proposed in the recommendations is not evidence based.

## **5. Tone of the study**

The assumption of the study appears to be that individuals working on If and When contracts are universally low paid and low skilled workers in precarious working arrangements. The words “exploitation” and “trap” permeate the study, albeit as quotations from trade unions and non-governmental organisations. However, it is very clear that these are the views that informed the outcome of the study, specifically the recommendations made in section 8 of the report.

An example of some of the anecdotes which add to this overall tone is the following:

*“[The INMO claimed that] nurses’ fear of penalisation could have negative repercussions for whistleblowing ... Nurses have a responsibility to report safety concerns under the Nursing Code of Professional Conduct and Ethics by An Bord Altranais but the INMO argued that nurses may be cautious in doing so for fear of being penalised by an employer.”<sup>10</sup>*

Ibec submits that such a statement has no relevance to the subject matter of the study and serves only to encourage an emotive response to the issue. In any case, the Protected Disclosures Act 2014 introduced far-reaching, accessible and very generous remedies to employees who feel that they may be targeted for raising issues in the workplace.

## **6. Failure to acknowledge differing employee circumstances**

The study fails to highlight the differing personal situations of many employees working in the types of arrangements considered in the study. For example (and to name but a few examples), many employees on such contracts are highly skilled and highly paid, others use such contracts to supplement a more stable income, and others are students who use flexible contracts such as these while in full-time or part-time education.

### **Case study: An employer operating in the hospitality sector**

*The staff who apply for these contracts are usually students who look for flexibility so that at busy times in their college courses they can cut back on work without fear of having to give up their source of income. On average we have been happy that many staff stay with us for the duration of their college courses, thereby filling our need for staffing and also allowing them to finance*

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<sup>10</sup> Page 42 of the study

*their way through college by working when their time allows, and we get to retain high quality trained staff.*

*We also have a couple of staff who work in less secure areas, for example actors and filmmakers who can have lean periods and need the security of being able to be on call with us if and when we need them when it fits into their schedule, and when an acting job comes along they can take it without fear of losing their job.*

*We have also a member of staff who covers holiday leave and it fits her needs in terms of childcare. She is happy to work if something comes up but is unable to commit long term to a fixed hour regular contract. This is in a specialised area where there are few skilled/trained personnel available, without this sort of situation we would find it very difficult to deliver the same level of service as we currently do.*

### **Case study: Employers working in the health sector**

#### Scenario 1

*Demand for health services fluctuate. The recommendations in the study would hinder the hospital in the provision of its services. Fluctuations in demand and short notice absences are currently managed by using "bank" contracts. These are contracts of employment which include all employment rights entitlements as per statute. Hours of work are on an "if and when" basis. The contracts, which are in writing, refer to the fact that the employer will endeavour to give seven days' notice of available working hours. However, it is acknowledged that seven days' notice will not always be possible. Hours of work are determined by mutual agreement and are offered on the basis of service, and "first in first asked" basis.*

#### Scenario 2

*It is important to state that hospital employees working "bank" contracts are generally on pay rates well in excess of minimum wage, and some would be considered highly paid. Many bank staff already work in other hospital establishments and want to undertake extra shifts closer to their home. Others are keen to consolidate their own careers by having employment relationships with a number of hospitals. The hospital staff is 80% female many of whom have young families. "If and When" arrangements suit this cohort of employees in particular as they can decide in line with their family requirements when they will work.*

### Scenario 3

*We have a need to be able to address gaps at short notice in our Resident Medical Officer (doctor) group. Currently we avail of agency doctors which is the least preferable solution (changing doctors impacts team cohesiveness, work familiarisation etc.). Given that we have a small number of doctors, should one doctor go sick or have a force majeure issue etc., it is critical we can respond with a temporary resource at short notice, not a 72 hour period. Pay rates for those providing relief are very competitive.*

*This facility of having a pool of doctors that may provide support should they wish to do so, also suits the doctors as the majority are studying additional medical courses, and are not in a position to work in a full-time or fixed part-time role.*

| <b>HOURLY RATE</b>         | <b>Mon-Fri<br/>Before 5pm</b> | <b>Mon –Fri<br/>After 5pm</b> | <b>Saturday</b> | <b>Sunday and<br/>Public<br/>Holiday</b> |
|----------------------------|-------------------------------|-------------------------------|-----------------|--|
| <i>On<br/>commencement</i> | €34.00                        | €38.00                        | €38.00          | €47.00                                   |

*These rates increase once the doctor has been with us over 6 months.*

*It is extremely difficult to get temporary Anaesthetic registrar support at night and hence we use [bank like support] where we competitively remunerate the anaesthetic registrars at a rate of €55-€65 per hour.*

*The examples above are not minimum wage workers, but instead reflect the necessary flexibility we need to provide for our patient population.*

### Scenario 4

*The hospital has recently experienced a shortage in nursing staff. To address it, the organisation established a “return to work” training scheme, which was accessed by a significant number of qualified nurses who had been out of the workplace for various reasons, some for up to 15 years. The organisation assisted the nurses in updating their nursing skills and many returned to work on “if and when” arrangements which suited many of the employees in reconciling work and family commitments. It has been a great success.*

## **C. The key findings of the study**

Each of the key findings of the study, together with Ibec’s response to same, is set out below.

1. *“Zero hours contracts within the meaning of the Organisation of Working Time Act 1997 (OWTA) are not extensive in Ireland according to our research. There is evidence, however, of so-called If and When contracts. Both types of contract involve non-guaranteed hours of work. The fundamental difference between the two is that individuals with a zero hours contract are contractually required to make themselves available for work with an employer, while individuals with an If and When contract are not contractually required to make themselves available for work with an employer”.*

**Ibec response:** Ibec agrees that zero hour contracts are rarely used in Ireland. Despite anecdotal reports to the contrary, Ibec has not seen any significant trend towards zero hour contracts in recent years, nor is there any evidence in the study which would support any suggestion that such arrangements are on the increase.

Ibec’s concerns regarding the reliability of the evidence of If and When contracts have been set out above.

2. *“If and When hours arise in different forms in employment contracts. In some contracts, all hours offered to an individual are on an If and When basis. In other contracts, there is a hybrid arrangement whereby employees have some guaranteed hours and any additional hours of work are offered on an If and When basis.”*

**Ibec response:** Ibec notes this description of If and When arrangements, but is concerned that it conflates a number of types of If and When arrangements in a way that distorts the overall picture of flexible working arrangements. In this respect, Ibec would again reference the fact that 54% of variable hours workers are in fact full-time employees. This cohort of workers has no place in a study on zero hours and low hours work.

Some of the employees who would be affected by the recommendations may have access to overtime paid at premium rates. Employers have experienced industrial relations challenges when attempts have been made to restrict access to those additional variable hours at higher rates of pay.

3. *“Low working hours arise in various employment contracts. An individual working a low number of hours may have either a regular part-time contract with fixed hours or a contract with If and When hours only or a hybrid arrangement whereby employees have some guaranteed hours and any additional hours of work are offered to them on an If and When basis.”*

**Ibec response:** Ibec acknowledges that low working hours arise in different and distinct ways. However, Ibec wishes to emphasise that low hours are not always linked to If and When working arrangements.

Furthermore, Ibec submits that low hours do not exclusively benefit the employer. The Code of Practice referred to above encourages employers to consider part-time work in the context of developing company practices to respond to modern work environments. Ibec submits that low hours and (although not relevant to this particular finding) If and When arrangements enable an employer to facilitate part-time working arrangements in accordance with this Code of Practice.

4. *“Employer organisations argue that If and When hours and low hours suit employees. Such arrangements, it is claimed, especially suit students, older workers and women with caring responsibilities. Some employer organisations argue that they have difficulty finding employees who want more working hours. A number of employer organisations argue that providing any work to people reduces the cost to the State of paying unemployment benefit.”*

**Ibec response:** The experience of Ibec members corresponds with this finding.

As well as providing flexible working arrangements for employees who want them, employers in certain sectors (such as retail, hospitality, education, elder care, health care and social care) depend heavily on non-traditional, flexible working arrangements in order to satisfactorily meet customer needs and regulatory requirements. Traditional, full-time contracts across the board would simply not match the flow of work or enable employers in these sectors to respond to the needs of consumers and service users and the requirements of the business. The case studies outlined below, based on discussions with Ibec member organisations operating within the relevant sectors, bear out these experiences.

5. *“The variety of contractual arrangements which include If and When hours present significant challenges in collecting accurate data on the number of people on them. A key feature of each of these arrangements is the variability of working hours. Central Statistics Office (CSO) data on working hours indicate that 5.3% of employees in Ireland have constantly variable working hours (employees whose hours of work vary greatly from week to week). The highest proportions of those with constantly variable working hours are employed in wholesale/retail, accommodation/food and health and social work sectors.”*

**Ibec response:** The difficulty faced by the authors in obtaining accurate data on the number of people on If and When hours is noted. Ibec’s concerns regarding this are set out above and we remain of the view that a more comprehensive study involving broader employee participation is possible and has been carried out in other jurisdictions.

On a separate note, Ibec notes from the study that while 5.3% of employees have “constantly variable working hours”, only 2.6% of employees have constantly

variable part-time hours. The study does not define what constitutes “part-time” in this context, nor does it consider what number among this cohort of workers requested part-time hours, or how many would accept or refuse additional hours if they were available.

6. *“Managers and professionals are more likely to work constantly variable full-time hours while those in sales and personal services occupations are more likely to work constantly variable part-time hours”.*

**Ibec response:** This finding appears to be based on Table A3.7 (Working Hours and Employment Characteristics 2014).

Ibec notes that, even in sales and personal services occupations, constantly variable part-time work is rare with just 4 to 5% of employees working such hours. The low usage of such arrangements suggests that such measures are only taken either where there is a real business need or in response to an employee’s request.

7. *“A higher proportion of men work constantly variable full-time hours, while a higher proportion of women work constantly variable part-time hours”.*

**Ibec response:** This finding appears to be based on Figure 3.9 (Working Hours by Gender).

Ibec notes that this figure still indicates that the majority of working women (84%) work 19 hours or more per week. Rightly or wrongly, the employer experience remains that the employee demand for flexible working hours comes predominantly from women. Ibec would also take this opportunity to reiterate the pressure that employers often face from employees to provide part-time work. This has been addressed at pages 4 and 5 above.

8. *“Employees with constantly variable working hours are more likely to work non-standard hours (i.e. evenings, nights, shifts, Saturdays and Sundays) than those with regular hours.”*

**Ibec response:** This finding appears to be based on Figure 3.4 (Working Hours and Working Time Patterns (% of Employees)).

Again, the study does not address the number of workers who use non-standard working arrangements to allow them the free time to care for family members while their spouse or partner works “standard” hours, or to engage in other work during the notional standard working week. A fundamental question arises as to what “non-standard” working hours are across the various sectors the subject of the report. For instance, in both the health and hospitality sectors, shift work, night work and weekend work are an absolute necessity for the provision of the service and are a consistent feature of contracts of employment within these sectors.

9. *“There is no commonly used national or international definition of low hours working. CSO data shows that 2% of employees regularly work 1-8 hours per week, 6% work 9-18 hours per week and 24% work 19-35 hours per week.”*

**Ibec response:** In fact the CSO data shows that the number of employees working 1-8 hours is 1.8%.

Ibec acknowledges the differing interpretations of low hours work in Ireland, although it repeats that the terms of reference defined low hours contracts (for the purposes of the study) as contracts of 8 hours or less per week.

In any case, Ibec notes that these figures relate to employees with regular working hours and should not, therefore, be used as the basis for recommendations relating to variable hour contracts and/or If and When contracts.

10. *“Very low hours (1-8 hours) are prevalent in the wholesale/retail and accommodation/food sectors. A quarter of all employees working 9-18 hours per week are in wholesale/retail with another 17% working in health. A significant portion of those who work 19-35 hours per week are in education and health”.*

**Ibec response:** This finding appears to be based on Table A5.2 (Proportion of Employees in Each Sector Compared with the Proportion of Employees in Different Hourly Categories); although Ibec again notes that these employees may not necessarily have variable working hours.

Again, the study does not explore the number of these workers who are content with the arrangements as they are and who would refuse more hours if offered to them. The other point which must be made in this respect is that there is generally a finite number of working hours available in an individual workplace. Compelling an employer to provide a minimum number of hours to a specific cohort of employees may very well lead to a reduction in hours elsewhere, potentially resulting in compulsory redundancies.

11. *“Higher proportions of personal service and sales workers than those in other occupations regularly work 1-8, 9-18 and 19-35 hours per week. Given that these occupations are highly feminised, more women than men work 1-8, 9-18 and 19-35 per week”.*

**Ibec response:** The finding that higher proportions of personal service and sales workers regularly work 1-35 hours per week appears to be based on Table A3.7 (Working Hours and Employment Characteristics 2014). Ibec notes, in this regard, that only 3% and 4% of sales and personal service workers respectively regularly work 1-8 hours per week. Ibec submits that employees who work 19-35 per week

cannot be said to work low hours, particularly given the definition of low hours contracts in the terms of reference.

The basis for the statement that these occupations are highly feminised is not clear.

Again, it is submitted that these figures relate to employees with regular working hours and should not, therefore, be used as the basis for recommendations relating to zero hour contracts and/or If and When contracts.

12. *“In the four sectors studied in this report (retail, hospitality, education and health), If and When hours and low working hours are prevalent in the accommodation/food and retail sectors and in certain occupations in education and health: community care work, so-called “bank” nursing, general practice nursing, university/institute of technology lecturing, adult education tutoring, school substitution, caretaking and secretarial and cleaning work”.*

**Ibec response:** This finding appears to be based primarily on anecdotal evidence and assumptions garnered from the QNHS and EWCS and from interviews with non-governmental organisations and trade unions which may, by virtue of their lack of density within the sectors, not be representative.

13. *“The key factors driving the use of If and When contracts are:*

- *Increasing levels of work during non-standard hours*
- *A requirement for flexibility in demand-led services*
- *The absence of an accessible, affordable childcare system*
- *Current employment legislation*
- *The particular resourcing models of education and health services”.*

**Ibec response:** While Ibec recognises these factors as relevant to the use of If and When contracts, it submits that the following are also key factors:

- The need for employers to cover unexpected absences or irregular events
- A desire from employees for flexible working arrangements and a better work-life balance
- The increase in the use of part-time contracts in accordance with the Code of Practice which encourages employers to provide employees with access to part-time work
- A difficulty in obtaining additional hours from certain employees

### ***Case study: An employer in the hotel sector***

*The lack of predictability of how busy the hotel will be is managed between the employee and employer by the provision of a roster at least one week in advance. However the level of business in the hospitality sector is unpredictable e.g. a large function booking can be cancelled or accepted at*

*short notice hence resulting in the need to cancel a shift for some individuals or to request additional staff to work at short notice. Therefore the need for flexibility is essential to manage the business, costs and service. However, a reasonable employer recognises the impact of this on staff and works closely with them to engender good communication and working relationships.*

*The employer will usually have an understanding of the individual's level of availability and flexibility and seek to accommodate this when rostering, when requesting additional hours etc. as it is in the employer's interest to support the employee in managing these difficulties to ensure staff retention and good morale.*

14. *"The main advantage of If and When contracts to employers is flexibility, which allows them to increase or decrease staff numbers when needed. A second benefit is reduced cost, as organisations only pay people on If and When hours for time actually worked and these individuals may not build up enough service to attain benefits such as sick pay. The main disadvantage to organisations is the administrative burden that arises from having to manage a larger workforce with variable hours."*

**Ibec response:** Ibec accepts that the main advantage of If and When contracts is flexibility. However, it submits that the study does not adequately emphasise the necessity for flexibility for some employers. For example, many employers in sectors such as healthcare, elder care and social care require the use of If and When contracts to meet obligations regarding ratios of staff to service users. Employers in the retail and hospitality sector require some flexibility to respond to consumer demands.

**Case study: An employer in an organisation for students with special needs**

*There needs to be an understanding of what employers' requirements are: we have close on 200 regular staff in the school and approximately 70 in the special school. We need flexibility to cover unexpected events; illness, accidents and so on. It is not possible to give 72 hours' notice nor is it always possible to give guaranteed hours.*

*We require garda vetting on all employees who have an involvement with children, this can take up to 8 weeks. In many instances those we contact have other jobs to go to and as such they are not reliant on "zero hour or as and when" contracts with us. At times we need extra staff on duty (above that rostered) to cope with increased challenging behaviours. Guaranteed hours are a cost increase and we are not alone in meeting challenging financial constraints.*

### **Case study: An employer operating within the intellectual disability sector**

*These contracts are vital to service provision. Staff invariably are called well in advance and hours are booked. In fact, we have to monitor the level of hours undertaken by staff working across a number of internal services and outside services also. Increasing rates by 150% because of late notice is terrible. The organisation won't be able to afford that and those funding the provision of these services (whether in whole or in part) will pass an element of that cost onto service providers. If that gets through, we will have to eliminate all such contracts as a matter of urgency.*

15. *“Trade unions and non-governmental organisations (NGOs) argue that there are significant negative implications for individuals working If and When hours. Negative implications include:*

- *Unpredictable working hours (the number and scheduling of hours)*
- *Unstable income and difficulties in accessing financial credit*
- *A lack of employee input into scheduling of work hours*
- *Difficulties in managing work and family life*
- *Employment contracts which do not reflect the reality of the number of hours worked*
- *Insufficient notice when called to work*
- *Being sent home during a shift*
- *A belief amongst individuals that they will be penalised by their employer for not accepting work*
- *Difficulties in accessing a range of social welfare benefits*
- *Poorer terms and conditions in some cases”*

**Ibec response:** Ibec submits that concrete evidence of the alleged negative implications set out above has not been produced in the study; rather these implications appear to be principally based on anecdotal evidence from interest groups which are not even heavily representative of employees the subject of the report. The narrative presented in the report is not just at variance with our own members' experiences, it is at odds with the initiatives from the same organisations which press for more flexibility for their members both nationally and at EU level.

### **Case study: An employer in the hotel sector**

*With regard to the suggestion that employees are penalised for refusing additional hours when it doesn't suit them, it is not in the employer's interest to have this type of relationship with the employee. Instead we work to have an understanding of the employee preferences for extra work and aim to request extra hours from those who do want to work same. We work with our employees to share business trends with them and let them know what is happening and changing.*

### **Case study: An employer in the security industry**

*We work with our staff to reduce any problems that arise, not all employees are available at short notice and this is taken into account by our operations manager and supervisor.*

*We do not penalise staff whose personal circumstances are such that they are not as flexible as other staff, we do our best to facilitate our employees needs while also attempting to fulfil the needs of our customers.*

*We believe strongly that the rules and regulations that are in place are adequate to meet the needs of both the employees and the customers. The security industry is heavily regulated by the PSA, NSAI and NERA and has had a new ERO imposed upon it on 1<sup>st</sup> of October 2015.*

16. *“The Department of Social Protection has raised concerns about the rising cost to the State of income supports (Family Income Supplement and Jobseeker’s Scheme) to people on variable and part-time hours”.*

**Ibec response:** Ibec rejects the notion that the Family Income Supplement (“FIS”) is a subsidy to employers. Ibec submits that, rather than subsidising employers, the FIS is a subsidy to households with children, many of whom cannot find or afford full-time employment. Given that Ireland has one of the highest net wage floors in the developed world, it is hard to see how employers can provide more for this responsibility.

Ibec understands that the Department of Social Protection does not collate data on (1) how many FIS recipients are part-time or (2) the status of a FIS recipient’s partner. However, given that the weekly threshold for a household with two children is below the full-time minimum wage of two working adults, it is likely most recipients are single income households or the equivalent in full-time employment. In cases where these households would be otherwise better off on welfare, the FIS encourages them into the workforce and saves the State some short-term welfare costs and longer-term unemployment costs.

Ibec submits that the rising cost of income support has resulted from a number of factors. Firstly, there has been a fall in employment across the economy since 2008 as demand for labour fell. This has increased eligibility for the FIS in households where the second earner in a family lost their job or saw their hours reduced. Secondly, the last 5 years have seen the most consistently high birth rates in the State since the famine along with a strong increase in the numbers of young people

staying in full-time education longer<sup>11</sup>. This has drastically increased the numbers eligible for the FIS.

17. *“We find that there is a lack of clarity over the employment status of individuals who work only If and When hours. As there is no mutuality of obligation between an employer and individual with If and When hours (i.e. there is no obligation to provide work or perform work), there is a strong likelihood that individuals in this situation are not defined as employees with a contract of service. Consequently, questions arise on the extent to which they are covered by employment legislation.”*

**Ibec response:** The issue of employment status is a much wider issue which extends far beyond the subject matter of the study and is one which has been the subject of extensive case law for many years.

Notwithstanding the general uncertainties surrounding the issue of employment status, Ibec submits that the study has not produced any significant evidence that employers use If and When contracts as a means of avoiding the obligations of employment law. Needless to say, it is always open to any individual to assert their employment status and demand, for example, a statement of terms of employment under the Terms of Employment (Information) Acts 1994 to 2012.

18. *“In Europe, working hours are regulated by legislation and collective agreements. Zero hours contracts do not exist in a number of countries. Where zero hours type practices are regulated, some countries have placed limitations, such as time limits, on their use. A number of countries have increased regulations on zero hours-type work in recent years”.*

**Ibec response:** Ibec notes that the treatment of zero hour contracts varies widely across Europe. However, Ibec submits that this finding fails to adequately address the present regulation of zero hour contracts in this country (i.e. Section 18 of the Organisation of Working Time Act 1997). There are many respects in which employment law differs across the EU Member States. We do not see any basis for selecting the laws most advantageous to employees and applying them across the board in Ireland, with little regard to, or understanding of what led to their creation or how they are applied in practice in the Member State from which they originate.

#### **D. The recommendations**

Each of the recommendations in the study, together with Ibec’s response to same, is set out below.

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<sup>11</sup> The number of households with a member less than 18 rose by almost 25,000 between 2009 and 2015 (the number of persons under 18 rose by 93,000) while the numbers of persons in education rose by a similar figure. As a result, family size of FIS recipients has increased by 7% between 2008 and 2013

As noted above, the authors of the study indicated difficulties in obtaining accurate and reliable data on the use of zero hour, low hour and If and When contracts.

From the information currently available, the study found that 2.6% of employees are employed on variable hours part-time contracts. This figure includes all such arrangements and does not solely address those within the 1-8 hour scope of the study. The use of such contracts cannot, therefore, be said to be widespread. Furthermore, the study provided no indication or evidence of abuse of variable hours or low hours contracts or the use of such contracts as a means of exploiting workers or avoiding employment law obligations. Rather, Ibec submits, the study has demonstrated that low hours and variable hours contracts are the exception rather than the rule and are used only where there is a genuine need for them or where they are requested by employees.

In these circumstances, Ibec submits that the study has failed to demonstrate a need for legislative change. Employment law is already a highly regulated area of law in this country and additional regulation should not be introduced unless a real need is demonstrated. Indeed, based on some of the case studies above, there may be unintended consequences from some of the proposals outlined, with possible unwelcome outcomes for the same employees the proposals are purporting to protect, including a reduction in access to part-time work and lucrative overtime arrangements.

1. *“We recommend that the Terms of Employment (Information) Acts 1994 to 2012 be amended to require employers to provide the written statement on the terms and conditions of the employment on or by the first day of employees’ commencing their employment. This requirement should also apply to people working non-guaranteed hours on the date of first hire.”*

Save in respect of the food sector<sup>12</sup>, the study does not indicate a widespread failure on the part of employers to provide employees with written contracts. Indeed the study finds that written contracts are the norm in the majority of sectors analysed. The basis for the recommended amendment to the Terms of Employment (Information) Acts 1994 to 2012 is, therefore, unclear.

Furthermore, compliance with the 1994 Act is already under close scrutiny by NERA. In its Annual Report for 2014, NERA confirmed that the vast majority of cases of non-compliance (generally) are resolved during the inspection process. In addition, the Employment Appeals Tribunal (the “EAT”) referred in its 2014 Annual Report to the downward trend of cases being brought to the EAT under the 1994 Act<sup>13</sup>.

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<sup>12</sup> Page 74 of the study

<sup>13</sup> The 1994 Act accounted for just 3.89% of the total EAT referrals in 2014

Ibec submits that the need for the recommended amendment to the 1994 Act is not, therefore, evident.

**Case study: A third level institution**

*While efforts are made to finalise timetables well in advance of the next academic year beginning each year in mid September, late CAO offers to students in September often present a practical challenge in setting hours with any degree of certainty. Having to do so on day of commencement of the contract would significantly decrease flexibility in this respect and impact on the delivery to students.*

**Case study: An employer in the retail sector**

*In most cases, a contract is given to employees on commencement of employment. However, some reasonable period should be provided to allow for employees who must be employed a short notice.*

2. *“We recommend that the Terms of Employment (Information) Act 1994 to 2012 be amended to require employers to provide a statement of working hours which are a true reflection of the hours required of an employee. This requirement should also apply to people working non-guaranteed hours”.*

Ibec disagrees with this recommendation.

A core principle of legislative drafting is legal certainty. Ibec submits that the term “true reflection” does not satisfy the requirement of legal certainty and is too vague to be of use to employers drafting employment contracts. The term does not make clear whether a range of hours may be inserted into contracts, and if so, what sort of range. Furthermore, whether compliance would be assessed on a weekly basis or over a longer period of time is not addressed in the recommendation.

Ibec submits that implementation of this recommendation would cause such uncertainty for employers using variable hours contracts that any such use could pose a risk of a claim.

Ibec also suggests that implementation of this recommendation may have unintended consequences for employees employed under variable hours contracts, particularly in the retail sector.

Seamus Coffey, Lecturer in Economics, University College Cork, has stated that during the period 2008-2012 an average 87,700<sup>14</sup> individuals were employed in non-specialised retail stores. This, according to Mr Coffey, is around 3% of the working

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<sup>14</sup> Data taken from the NACE Rev 2 Sector G471: Retail Sales in Non-specialised Stores, Summary Data for EU-15 (excluding Greece), Annual Averages 2008-2012

age population (15-64 years) and compares to a EU15 mean of around 2%. These figures support the view that Ireland has a greater proportion of part-time and lower hours staff than other EU15 countries. According to Mr Coffey however, if Ireland was to move to EU norms in this sector, it could lead to a reduction of around one-third (c. 30,000) in the number of people employed in the retail sector. Any potential job losses which could result from the implementation of a recommendation such as the above must, therefore, be fully considered before adoption.

3. *“We recommend repealing Section 18 of the Organisation of Working Time Act 1997 and introducing a new piece of legislation, or a new section into the Organisation of Working Time Act 1997, to include the provisions in recommendations 4-8 below”.*

For the reasons set out at 4-8 below, Ibec opposes the recommended amendments to the Organisation of Working Time Act 1997.

4. *“We recommend that legislation be enacted to provide that:*

- (i) For employees with no guaranteed hours of work, the mean number of hours worked in the previous 6 months (from the date of first hire or from the date of enacting legislation) will be taken to be the minimum number of hours stipulated in the contract of employment.*
- (ii) For employees with a combination of minimum guaranteed hours and If and When hours, the mean number of hours worked in the previous 6 months (from the date of first hire or from the date of enacting legislation) will be taken to be the minimum number of hours stipulated in the contract of employment.*
- (iii) A mechanism will be put in place whereby, after the minimum number of hours is established, employers and employees can periodically review the pattern of working hours so that the contract accurately reflects the reality of working hours.*
- (iv) Where after 6 months an employee is provided with guaranteed minimum hours of work as per subsection (i) and (ii), but is contractually required to be available for additional hours, the employee should be compensated where they are not offered the additional hours for which they are required to be available. The employee should be compensated for 25% of the possible available additional hours or for 15 hours, whichever is less.”*

Ibec opposes the introduction of the recommended legislative provisions set out above.

Firstly, it seems illogical and grossly unfair on employers that the mean number of hours worked in a 6 month period would then become the minimum number of hours to be provided to employees in another period as per (i) and (ii) above.

In addition, the proposed wording does not allow for situations where the number of hours worked in a particular 6 month period is irregular or exceptional. For example, the hours worked by a particular employee(s) might be unusually high in a particular period due to the extended absence of a colleague, the launch of a new product or service or unprecedented levels of demand etc.

**Case study: An employer in the retail sector**

*No six month time period will adequately take account of seasonal variations. For example, should this six months include the summer period in a store that is in a seaside resort, this will inflate the hours or conversely a period that does not include the summer period in a store that is beside a third level institution.*

*Furthermore, it is illogical that the mean hours of work would be used to establish a new minimum. A mean is established by taking account of the full range of hours over a period. By definition, setting the mean as the new minimum will result in the employer being required to allocate more hours than are needed at certain periods. This is inefficient and will result in an unnecessary increase in cost.*

**Case study: An employer in the catering sector**

*Having considered this report which was to focus on zero hour contracts, it appeared that it then expanded to focus on those whose hours vary in the course of the year. It is this population that we understand would be reviewed on a 6 monthly basis. For us, as a very large employer in Ireland, this definition would cover a huge number of employees including a large number who are not employed on zero hour or mutual agreement contracts. The reason these employees would be included is that their hours can flex up if they choose to take on overtime hours to supplement their income. As a result their hours are not static and therefore have to be included in this exercise which seems unreasonable and vastly inflates the number of people required to be reviewed.*

*Our payroll system is unable to record the data required in the way this recommendation would require and as such we would have to make significant changes to our time and attendance system to be able to collate this data. Once this data is collated, we would need to make changes to our payroll system to allow the calculations to be done as the volume would effectively shut off our system for a number of weeks every 6 months which is not something that we can allow to happen – the business has to be allowed to continue to run and this requirement would prevent that from happening.*

*Once the data is collated by the system, we would have to employ a new temporary team to undertake the analysis, prepare and issue new statements of terms and conditions and update our payroll and time and attendance systems to ensure that the new “minimum” payment is made regardless of hours. The reason minimum is in speech marks is that the method of calculation does not provide the minimum hours, it provides the average. Effectively that means that for our business, our labour costs can expect to increase significantly every six months because of this method of calculation and that employees will be paid for hours that they do not work for the same reason. This is not reasonable or acceptable. The volume of work required on such a regular basis for such a large number of employees will have a significant impact on our payroll and HR teams and require increased labour to support them as well as systems costs because of the definitions from the report. This proposal for our Company is unworkable and unacceptable.*

The recommended provision at (iv) above appears to mirror the provisions of section 18 of the Organisation of Working Time Act 1997. In this regard, it is noted that the provisions at section 18 are underused due to the cost implications for employers. It is therefore suggested that such a provision would be equally underused due to similar cost implications.

5. *“We recommend that an employer shall give notice of at least 72 hours to an employee (and those with non-guaranteed hours) of any request to undertake any hours of work, unless there are exceptional and unforeseeable circumstances. If the individual accepts working hours without the minimum notice, the employer will pay them 150% of the rate they would be paid for the period in question.”*

Ibec is strongly opposed to the introduction of the recommended legislative provision set out above.

The provision of information in relation to working time is already provided for in section 17 of the Organisation of Working Time Act 1997. Ibec submits that the study does not produce any significant evidence of breaches by employers of the provisions at section 17, nor does it set out adequate justification for the proposed amendments to section 17.

Furthermore, while the study analyses the regulation of zero hour type contracts in other European jurisdictions, a notice requirement as draconian as the one proposed does not appear to be in place in any other jurisdiction studied.

The recommendation does not provide for situations where it is not possible for employers to provide for such notice. For example, a situation might occur where an employee of a healthcare facility calls in sick and an employer must call in a replacement at short notice in order to meet staff to patient/client ratio requirements.

Alternatively, an employer in a hotel or bar may need to request that an employee work at short notice to cover the absence of a colleague on a match day.

It is submitted that the passing reference to “exceptional and unforeseeable circumstances” is too vague to be of assistance to employers in these circumstances. Indeed, it could be argued that sick leave might not constitute an exceptional and unforeseeable circumstance given the regularity with which it can occur in a workplace.

Ibec further submits that the recommendation that an employer pay an employee 150% of the rate they would be paid for the period in question, even in circumstances where an employee has no difficulty accepting the request to work, is punitive and disproportionate. This is particularly so in circumstances where there is a lack of clarity as to what might constitute “exceptional and unforeseeable circumstances”. The likely result of implementation of this recommendation is that, save for employers who are obliged to comply with certain staff to patient/client ratios; many employers will simply not request employees to work at short notice, even where there is a genuine need to do so. This would likely have the unintended consequence of adversely affecting customers, patients, service users and fellow colleagues.

***Case study: An employer providing home help to service users***

*We receive cancellations on a very regular basis and whilst we request adequate notice we continue to receive short term notice. This could be within 30 minutes of service delivery (service users can be hospitalised, have medical appointments or other).*

*When a home help is cancelled he or she may be reallocated and if this is not possible he/she will be paid once the cancellation is less than 24 hours. We have had 34 last minute cancellations since 1/10/2015 and the home help was paid for their rostered hour/ hours.*

*Hours are allocated in line with our budgetary restraints and if we had to pay 150 percent this would not be sustainable and would result in us having to reduce the number of hours delivered.*

***Case study: An employer in the hotel sector***

We don't agree with this proposal at all since it will serve to encourage a reduction in flexibility by the employee who will seek 150% compensation for extra hours worked at short notice under any circumstances and significantly increase costs to the employer. It will be very difficult to agree what are 'exceptional and unforeseen circumstances'. In the hospitality industry there are regularly such circumstances, such as an event which starts or ends later

than expected, another employee has to go home early due to illness etc. and an employee may be asked to work on for an extra hour or two to finish. Likewise 72 hours' notice is just not feasible in all circumstances, e.g. the hotel does not get 72 hours' notice for a booking for a funeral lunch for 40 guests, yet this is not deemed exceptional circumstances, it is just part of the day to day business of a hotel restaurant.

6. *“We recommend that an employer shall give notice of cancellation of working hours already agreed to employees (and those with non-guaranteed hours) of not less than 72 hours. Employees who do not receive the minimum notice shall be entitled to be paid their normal rate of pay for the period of employment scheduled.”*

Ibec is opposed to the introduction of the recommended legislative provision set out above.

Ibec submits that implementation of this recommendation could lead employers to under resource their workforce so as not to be forced into late cancellations of work. As with recommendation 5 above, implementation of this recommendation would likely lead to an inferior customer service and more difficult working conditions for employees.

### **Case Study: A second level institution**

*All our casual coaches etc. (who can be employed for from 1.5 hrs to 4 hrs) are put on the school payroll as employees. Most if not all of these coaches are students. If games are cancelled due to weather conditions or other unforeseen circumstance 72 hours' notice is not possible. Similarly 72 hours notice requesting to undertake work may not be possible, other coaches who cancel or have additional tutorials at short notice etc. cannot give 72 hours notice of cancellation to the school. These are normal circumstances in a school.*

7. *“We recommend that there shall be a minimum period of 3 continuous working hours where an employee is required to report for work. Should the period be less than 3 hours for any reason, the employee shall be entitled to 3 hours' remuneration at the normal rate of pay.”*

Ibec submits that this recommendation provides further evidence of the authors' failure to consider the differences between low hours and variable hours working arrangements. Indeed, it is not clear whether the aim of this recommendation is to address the matter of low hour or variable hour arrangements, or indeed both.

Implementation of this recommendation would effectively prohibit working arrangements of fewer than 3 hours, regardless of the wishes of the employer and employee. This would have serious implications for countless working arrangements

including, for example, part-time third level lecturers who teach a daily/weekly class of less than 3 hours or relief pharmacists who cover rest breaks.

### **Case study: A third level institution**

*We often retain the services of lecturers who already have full-time jobs elsewhere. The lecture hours made available to them are usually scheduled in the evening in order to facilitate this, and typically for no more than two hours at a time having regard to international best practice standards of academic delivery and expected learning outcomes.*

*The proposal in the report to prohibit this practice and require instead that the hours must be scheduled in three hour blocks will have a severe adverse impact on academic delivery and learning.*

*A likely outcome is that the number of professional people making themselves available to lecture will be much reduced. Those who are establishing themselves in their profession e.g. newly qualified lawyers are likely to struggle to commit to the new arrangements.*

*Furthermore, students will be negatively impacted by the loss of practical professional experience of the lecturers and ultimately learning outcomes compromised.*

### **Case Study: A second level institution**

*Careful thought needs to be applied to the implications of some of the proposals. Many of our sports facilities are provided by employees whose contracts may schedule them for one and a half hours at a time. If these are now required to be scheduled or paid for three hours at a time, the facility will quickly become unsustainable for us from a financial perspective. The students only train for one and a half hours at a time and match times are similar except for away matches. For the education sector these proposals are a disaster and will lead to outside staff not being employed to provide these activities.*

With such wide ranging and, it is presumed, unintended consequences, Ibec suggests that this recommendation appears to be a particularly blunt way of addressing a nuanced issue.

8. *“We recommend that employer organisations and trade unions which conclude a sectoral collective bargaining agreement can opt out of the legislative provisions included in recommendations 4-7 above and develop regulations customised to the sector. Parties to a sectoral collective agreement should be substantially representative of the employers’ and workers’ class, type or group to which the agreement applies.”*

Ibec is opposed to the recommendations at 4 to 7, and therefore does not see any value in supporting an opt-out arrangement as outlined above. This appears to be an attempt to promote collective bargaining and sector based pay rates across the full range of employers in Ireland many of whom choose not to engage in collective bargaining, as is their entitlement. While Ibec recognises the value of an industrial relations response to some of the issues raised, we believe that this recommendation goes far beyond the scope of the terms of reference for the study.

9. *“When negotiating at sectoral level, we recommend that employer organisations and trade unions examine examples of good practice which can provide flexibility for employers and more stable working conditions for employees, such as annualised hours and banded hour agreements”.*

Where appropriate, Ibec supports negotiated solutions to some of the challenges posed by having to reconcile greater workplace flexibility for employees and customers, patients and service users. However, the ability of the employer to manage and roster staff in line with business demands must not be undermined, provided it is in compliance with existing employment rights legislation.

#### **Case study: An employer in the retail sector**

*Again, this needs to be determined by individual employers in accordance with their own specific requirements. Some of our retailers do operate banded hours, but that has been determined by them and suits their requirements. Annualised hours are not a feature of retail. It is not suited to situations where the employee has no control over the working hours allocation – i.e. where the hours worked are entirely determined by the employer and related to opening hours for example. Experience in industry is that annualised hours works best in maintenance craft areas where there are traditionally high levels of overtime (which are abolished as part of the annualised hours arrangement) and where employees have influence over how and when the work is completed. Where the hours are entirely determined by the employer, then this results in much dissatisfaction amongst employees who are being called in to work hours for which they will be paid whether they work them or not. It also results in the perception that they are frequently being asked to work ‘additional’ hours for no additional pay.*

10. *“We recommend that Government examine further the legal position of people on If and When contracts with a view to providing clarity on their employment status.”*

The issue of employment status is a much wider issue which extends far beyond the subject matter of the study and is one which has been the subject of extensive case law for many years.

Ibec submits that the study has not produced any significant evidence that employers use If and When contracts as a means of avoiding the obligations of employment law. The particular need for this recommendation in this area is not, therefore, entirely clear. Again, we submit that it is always open to individuals to challenge their employment status under any one of the numerous pieces of employment rights legislation through the easily accessible Workplace Relations Commission.

*11. "We recommend that the Department of Social Protection put in place a system to consult with employer organisations, trade unions and NGOs with a view to examining social welfare issues such as those mentioned above".*

Ibec has no objection to this recommendation.

This issue is regularly raised by members whose employees seek to limit or structure their hours in such a way that they do not lose social welfare benefits. Often it is reported that employees fear taking on additional work in case they lose social welfare entitlements. This is evidenced in part by the fact that only 25% (Q3 15, QNHS) of part-time workers would take additional hours if offered them.

It is Ibec's view that a number of social welfare schemes administered by the Department of Social Protection remain over-complicated. As a result, claimants find it difficult to understand their entitlements under social welfare schemes and how additional hours might infringe on them. There is therefore scope for the Department to better inform potential claimants and employers of the workings of in work schemes. Ibec would be happy to work with the Department on establishing how best to provide this information to claimants and employers.

Furthermore, Ibec submits that the economic recovery presents an opportunity for the Department to revisit the case for a single working age payment. This system would require paying proportionate attention to the accessibility and quality of job placement, career guidance and counselling services, the relevance and quality of the training and education programmes to which unemployed people are directed and the different supports people need in the early months compared to later periods of unemployment spells.

In cases where work divided over several days is demand driven employers often strive to facilitate workers' social welfare needs through flexibility of scheduling. Ibec submits that the study has failed to address the impact that implementation of the recommendations regarding scheduling of hours would have in this regard.

*12. "We recommend that the Government develop a policy for an accessible, regulated and high-quality childcare system that takes into account the needs of people working on If and When contracts and low hours."*

Although the issue of childcare does not appear to be specific to the subject matter of this study, Ibec has no objection to this recommendation.

*13. “We recommend that the Government establish an interdepartmental working group to allow for greater cooperation between Government departments on policies which affect patterns of working hours”.*

Ibec has no objection to this recommendation.

*14. “We recommend that the CSO have a rolling Quarterly National Household Survey Special Module on Non-Standard Employment which would include questions on non-guaranteed hours.*

Ibec has no objection to this recommendation given the current absence of accurate data on such working arrangements.

Ibec is of the view that legislative reform should be evidence based. Legislative reform should not, therefore, be considered by the Government until more concrete evidence, for example in the form of such data obtained from the QNHS, is available.

### **Conclusion**

Ibec is disappointed at the extent to which the study exceeded its remit. It has not been helpful to the conduct of an informed, evidence based debate on the issue of zero hour contracts and low hours contracts. The very term “zero hours” has become toxic, notwithstanding the fact that the zero hour contracts are almost never used in Ireland. By using the terms part-time, variable hours, low hours and If and When required interchangeably, the study has conflated a wide range of working arrangements, many of which suit both parties. The study not only fails to adequately address the impact of the proposed recommendations on employers and the flexible working requirements of many employees, but it also fails to address the impact on the provision of essential services. The study is, quite simply, not an appropriate basis for legislative change in this area.

END