



Submission to Department of Jobs, Enterprise  
and Innovation concerning Consultation  
Document University of Limerick Study on the  
Prevalence of Zero Hour Contracts and Low Hour  
Contracts in the Irish Economy

Musgrave Limited t/a Musgrave Retail Partners Ireland

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

## **Introduction to Musgrave Retail Partners Ireland**

Musgrave Retail Partners Ireland is the retail franchise partner to 226 SuperValu and 463 Centra stores in the Republic of Ireland employing approximately 25,000 people. SuperValu is currently Ireland's largest food retail brand and Centra is Ireland's largest convenience brand. Most of our stores are independently owned with a minority owned and operated by Musgrave.

## **Current Trading Environment**

Wage and associated costs comprise the second largest cost to retailers after the cost of product and comprise 70% of total overheads. Any increase in labour costs therefore has a significant impact.

Despite the improvement in the economy in recent years, the grocery sector continues to be affected by changed consumer behaviours. Retailers are continuing to experience much of their sales being driven by promotional activity. This negatively impacts on already low margins. The current exceptionally competitive environment means that retailers will not be able to pass on an increase in labour costs to consumers in price increases.

Retailers are continuing to experience difficulties in accessing credit and this affects their ability to invest to be able to drive their businesses. Musgrave continues to support our retailers where viable. However, despite our best efforts, a total of 19 SuperValu and Centra stores closed in 2014; in 2015 that figure was 13. Without Musgrave support, more stores may have closed. Any increase in labour costs would comprise further pressure on struggling stores.

## **Working patterns and the requirement for flexibility**

Predominantly, our employees are happy with the way in which hours of work are set and managed in our stores. Disputes over working hours in SuperValu and Centra stores are rare. Where they do arise, it is normally in the context of employees seeking more flexibility in their hours of work, not less. One of our largest Centra retail Groups recently conducted an employee survey covering several hundred employees across a number of stores and only one survey respondent indicated unhappiness with their working hours or related issues.

Clearly, there will always be circumstances in which individual employers and employees have disputes over working hours or working arrangements. This is no different to other areas of employee relations. However, we are quite unaware of anything resembling widespread or endemic difficulties or problems concerning working hours in our stores that these recommendations purport to seek to address. On the contrary, we would see the varieties in arrangements, inherent flexibilities and common-sense management of working hours as some of the most attractive features for many of a career in retail. Indeed some of these proposals amount to an unnecessary and unhelpful interference in the mutually agreeable contractual working hours arrangements between employers and employees in our stores that typically suit both parties.

Ultimately, the impact of some of these proposals would be to add additional cost; to impact on customer service; to reduce valued flexibility in working hours for employees and/or to reduce the number of individuals employed. These impacts are not in the best interest of retailers, those whom they employ or the communities that they serve.

## General Observations on the Terms of Reference

The terms of reference set out for the study were:

- *“To fill the gap in knowledge that currently exists in terms of the hard data and information that is available concerning the prevalence of ‘zero hours 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 to Government considered necessary on foot of the study.”*

Then,

- *“Having fulfilled the above objectives as a first priority, proceed to repeat a similar assessment in relation to low hours contracts, which for the purpose of this study are defined as contracts of 8 hours or less per week.”*

However, the study has gone beyond those terms of reference and has examined all forms of employment contracts containing flexibility in hours of work, both full-time and part-time. Much of the attention of the study is on so termed ‘if and when’ contracts. However, in most cases, such contracts would not fall within the scope of the terms of reference, unless comprising eight hours or less per week. Moreover, the study seems to use such terms as “constantly variable”, “low-hours”, “very low-hours”, “low working hours” and “If and When” contracts throughout in a manner, sometimes apparently interchangeably, that is difficult to reconcile with the terms of reference and leads to confusion as to what specific issue or issues the study is seeking to address.

## Comments on the findings

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.*
  - Zero hours contracts are rare and are not a feature of employment in our stores. Typically, our stores comprise a combination of employees who are full-time and part-time. For the most part, full-time employees have a defined working pattern and hours; this may be a roster that is fixed or a roster rotation. Some part-time employees also have fixed hours while others have some flexibility in hours incorporated into their contracts. The profile of employees and ratios of full-time to part-time and fixed to flexible hours contracts vary from store to store depending on their own operational requirements. Typically where there is flexibility in working hours it will be on the basis of: a minimum number of hours plus some additional hours; an agreed number of hours per week (e.g. 25 hours per week) with small variations above or below; or hours allocated between a minimum and a maximum (e.g. 35 to 39 hours per week). Typically, the variation does not tend in reality to be particularly pronounced.
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.*

- See comment on Finding 1. Few employees with flexible hours however would work eight hours or less per week which is the category covered in the terms of reference.
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.*
- Low hour contracts as defined in the study as being eight hours per week or less, do exist amongst our retailers. However, they are predominantly worked by students during college/school term. Alternatively, they may arise where the work involves only a few hours per week e.g. cleaning or back-office duties such as weekly payroll. Typically, these hours will be agreed with the employees concerned and will suit their lifestyles and personal commitments. In the case of college students, their hours of work will often increase during holiday periods of summer or Christmas. This will normally form part of the overall agreement with the employee.
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 also argue that providing any work to people reduces the cost to the State of paying unemployment benefit.*
- SuperValu and Centra retailers provide valuable employment in their local communities across Ireland both urban and rural. The reasonable flexibility inherent in retail working and the extended opening hours over seven days a week, also operate to the benefit of employees. Broadly speaking, a retailer has a specific working hours (man-hours) requirement across the times and days that the store is open. How that requirement is met is often determined in consultation with employees. Therefore, typically, the hours that an employee is available will be discussed with him/her at interview and prior to employment. These may be full-time or part-time hours; they may comprise certain times of the day or certain days of the week or even certain periods of the year. So for example, where the retailer's requirement is that the hours are full-time and/or fixed, then he/she will specify that and will only employ an applicant to whom that is agreeable. Where the retailer's requirement is for part-time hours that may or may not require an element of flexibility, then this will be agreed with the employee in advance of employment. Typically, this arrangement will also suit the employee. So long as the employer's requirements are met, then the employee's preferences will also often be accommodated in the agreed working pattern.

As circumstances change for the store and/or for employees, so too this is often accommodated in consultation. Examples of flexibilities that working in retail can give employees include: hours that suit childcare arrangements; caring for elderly relatives; older employees who want short working days; students who require time off at examination times. These same students often appreciate increased hours during the summer or Christmas period when they have more availability and when those additional hours are also available. Of course it is critical that the store's requirements are also met. However, there is seldom a difficulty in that regard. The key point is that the flexibility works to the benefit of both retailer and employees. The report from the University of Limerick does not adequately reflect this and the proposals, if adopted, will erode this flexibility for both parties.

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 the wholesale/retail, accommodation/food and health and social work sectors.*
  - Hours of work are seldom constantly or significantly varying. Where there is flexibility in the contract it may be around a particular average number of hours or within a range of hours. These variations do not tend to be excessive and may comprise a maximum of a few hours per week.
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.*
  - See comment on Finding 5. Store managers will usually work full-time hours in accordance with a roster. It may also occur that managers would seek and would be granted part-time working for personal reasons.
7. *A higher proportion of men work constantly variable full-time hours, while a higher proportion of women work constantly variable part-time hours.*
  - See comment on Finding 5. The flexibility of hours and variety of working patterns in retail can make it an attractive industry to those with family commitments.
8. *Employees with constantly variable working hours are more likely to work nonstandard hours (i.e., evenings, nights, shifts, Saturdays and Sundays) than those with regular hours.*
  - See comment on Finding 5
9. *There is no commonly used national or international definition of low hours working. CSO data show 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.*
  - See comment on Finding 3. The ratios of different types of working patterns will vary from store to store in accordance with their own operating requirements. The terms of reference of this study cover contracts of eight hours or less per week and these would normally comprise a small minority of 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 proportion of those who work 19-35 hours per week are in education and health.*
  - See comment on Finding 3 and 9. Here 1-8 hours per week is deemed "(V)ery low hours" when the terms of reference defined them as "low-hours"; therefore the language here is confusing.
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 hours per week.*

- As already stated, the flexibility of working patterns and hours that retail provides is one of the key attractions for a career in our industry. This can be attractive to those who wish to balance work and family life commitments.

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.*

- No comment

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.*

- As the work in stores is predominantly manual and determined by sales volume and particular routine activities, the number of employees required at any point in time is a specific number that is usually readily calculable. Therefore, inefficiencies arise should the number of hours rostered be higher than required. Conversely, customer service is impacted should the number of hours rostered be below what is necessary. Retailers therefore pay much attention to rostering and endeavour to schedule hours accurately. However, as sales volumes and footfall vary, reasonable flexibility in hours is an inherent, vital and long standing feature of the retail grocery sector. In practice and already stated, this flexibility typically suits both employers and employees. Sales volume and footfall may vary due to the following factors, amongst others:

- Specific in-store events and activities e.g. new product launches;
- In-store promotional change-over which happens on a three weekly cycle and requires additional working hours;
- Seasonal activity e.g. Christmas, Valentines, St. Patrick's Day, Easter, Back-to-School, Halloween; public holidays;
- Other events such as sporting events e.g. Soccer and rugby matches and tournaments (World Cup, Champions League, Six Nations);
- The location of the store can result in other seasonal variations. Therefore stores that are located at sea-side resorts will be busier in summer than in winter and warm weather will drive summer sales even further. Those based near major colleges or schools will experience reductions in sales in summer as those institutions are closed;
- Stores beside event facilities such as sports stadiums and concert halls will experience spikes in sales for short durations. Similarly, a building site may open temporarily near-by that will result in increased volumes and foot-fall for a period.

The foregoing examples will for the most part be predictable and headcount and working hours requirements can be calculated well in advance and with a high degree of accuracy. However, other circumstances may be less easy to forecast:

- Weather is a significant driver of sales volume so very warm or very cold weather can increase or decrease sales. Overall sales volumes nationally can increase by up to 40% during extremes in weather (both very warm and cold weather periods). This will be more or will be less pronounced depending on the location of the store. For some stores in costal resorts this variation can be as high as 70% during very warm periods. This does not mean that there will be a commensurate increase in working hours required. An increase of 30% volume might result in an increase of 15% in working hours – but this will vary from store to store;
- Community events may result in additional hours at short notice. It may be that the store will be unaware of events that are happening in advance. Similarly, events such as funerals, especially in rural stores, can result in increased man-hours being required at relatively short notice;
- Some stores also provide catering services (sandwich preparation, cakes etc.) so orders may come in at relatively short notice for birthdays, Christenings, funerals etc.;
- Illness of staff members is the most common reason why cover may be required at short notice.

As already outlined and importantly, flexibility in hours of work is also driven by requests by employees for such flexibility.

SuperValu and Centra stores provide an important service to the communities that they serve and must be in a position to respond to the needs of those communities and their customers in a flexible manner. This flexibility must also be commercially viable for the store.

*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.*

- See comment on Finding 13. It is important to note that there is a finite number of hours of work available in a given store at any point in time and resources must be deployed in accordance with what is actually required.

*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.*
- See comment on Finding 4. The vast majority of employees with flexibility of hours of work have sufficient notice and high levels of predictability of their working patterns. Moreover, as already outlined, in most cases the hours are agreed in consultation with the employee. In this regard, typically, they have more input into their work patterns and hours than many other employees who work a fixed pattern 9.00am to 5.00pm working day for example. Moreover, as some of the case studies in the appendices demonstrate, the flexibility of working hours and patterns in retail predominantly facilitate rather than hinder family life and childcare obligations.

As outlined later in this document, few employees are sent home during a shift. It may occur that employees would be given the option of going home should business prove quieter than anticipated, but this would be a rare occurrence.

*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.*

- No comment

*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.*

- Our stores provide their employees with a statement of terms and conditions in accordance with the Terms of Employment (Information) Acts, 1994 and 2001.

*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.*

- See comment on Finding 1. Zero-hours contracts are of course regulated in Ireland by Section 18 of the Organisation of Working Time Act, 1997.

### **Comments on the Recommendations**

*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.*

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

2. *We recommend that the Terms of Employment Information Acts 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.*
  - Clearly this statement must also allow for reflection of the flexibility that may be required in working hours or range of working hours.
3. *We recommend repealing Section 18 of the Organisation of Working Time Act 1997 and introducing either 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.*
4. *We recommend that legislation be enacted to provide that:*
  - *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.*
  - See comment on Recommendation 4 (ii) below
  - *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.*
  - 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 would result in the employer being required to allocate more hours than are needed at certain periods. This is inefficient, impractical and would result in an unnecessary increase in cost. There is a finite number of hours available at any point in time in any given store. If hours cannot be varied through reasonable flexibility in some employment contracts, then the alternative is a reduction in headcount during quieter periods.

- *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.*
- See comment on Recommendation 4 (ii)
- *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 required by an employer in a week. The employee should be compensated for 25% of the additional hours for which they have to be available or for 15 hours, whichever is less.*

- This appears to be a variation on the 'Zero-hours' provision under Section 18 of the Organisation of Working Time Act, 1997. However, it is open to interpretation that this requires compensation for flexible hours not called upon. Also, whereas the current Section 18 requires compensation for 25% of the total hours, this appears to suggest an additional burden of the minimum hours plus 25% of the additional hours. This is unreasonable and could ultimately result in additional hours not being made available to employees at all as part of the contract and an erosion of flexibility. Clarity on the interpretation of this recommendation is required before further comment can be made.
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.*
- It is not an endemic problem that employees are required to work additional hours at short notice. Where it does occur, to cover illness for example or an unexpected local event, employees will typically be telephoned and given the option to come in to work those hours. If they are not available or for other reasons pass up on the option, then the retailer or manager simply calls another employee. It is seldom the case that there would be consequences for the employee unless there was some specific requirement that he/she would make themselves available for that specific time – and such requirements would be rare. Typically, employees are happy to come into work and to avail of the additional hours. This recommendation is unnecessary and if implemented will result in increased costs or alternatively employees not being offered the additional hours. This clearly has negative consequences for the employees concerned who are happy to work those additional hours. It is unclear what circumstances would be covered by the terms “*exceptional and unforeseeable*” as illness of a work colleague, for example, may be argued to be neither “*exceptional*” nor “*unforeseeable*”.

If this proposal includes necessary changes to hours of work (start and finish times), then the cost and impracticality of this would be even greater.

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.*
- It is seldom that employees would have hours cancelled at short notice (less than 72 hours). It may occur that certain periods will be quieter than expected. In these infrequent circumstances, employees who are at work may be given the option of going home early. Whether they take the opportunity to go home early or not is entirely a matter for the employee. However, unforeseen events may occur, as in any industry, that require employees not to report for work. This could range from the cancellation of a catering order to flooding. It would be entirely unreasonable that the employer would be required to bear the additional cost of hours of work that simply are not required or available.
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.*
- It is not common that employees would be rostered for less than 3 hours. However there are some tasks that require less than three hours in some stores, such as

cleaning or 'back-office' administration work. Some employees may perform these duties at more than one employer in any given day. For others, they are happy to work only these hours. A real life example of this is included in the appendices. This is an unnecessary interference in mutually agreed contractual arrangements between individual employers and individual employees.

8. *We recommend that employer organisations and trade unions which conclude a sectoral collective agreement can opt out of the legislative provisions included in recommendations 4-7 above, and that they can develop regulations customised to their 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.*
  - Individual employers need to be in a position to apply flexibility in their own working arrangements that are determined by their particular operating challenges. These requirements are not necessarily industry wide and depend on size and location - amongst other factors.
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 hours agreements.*
  - 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 is not a feature of retail. It is not ideally 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 the Government examine further the legal position of people on If and When contracts with a view to providing clarity on their employment status.*
  - No comment
11. *We recommend that the Department of Social Protection put in place a system that provides for consultation with employer organisations, trade unions and NGOs, with a view to examining social welfare issues as they affect people on If and When contracts and low hours.*
  - No comment
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 If and When contracts and low hours.*
  - It is typically the case that the range of working hours arrangements and availability of part-time working and other flexibilities are attractive to individuals with childcare obligations.

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.*

- No comment

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

- No comment

## **Conclusions**

The report by the University of Limerick, has in our opinion, exceeded its terms of reference. Rather than confining its findings and recommendations to zero-hours contracts and "low hours" contracts as defined in the terms of reference, it has made findings and recommendations upon all forms of employment contract that contain flexibility in hours of work, both full-time and part-time. While of course there will occasionally be local disputes and grievances concerning hours of work, this is no different to any other area of employee relations. However, we are entirely unaware of any endemic or even notable problem or issue with working hours amongst our retailers that this report and its recommendations purport to seek to address. We would consider the flexibilities and varieties of working hours arrangements, both full-time and part-time, common in retail, as amongst of the most attractive features for many of a career in our industry. There is a general lack of justification for legislative change in this area. Moreover, many of the recommendations made are quite unworkable for the reasons we have outlined. Ultimately, the impact of some of these proposals would be to add additional cost; to diminish customer service; to erode flexibility in working hours enjoyed by many employees or to reduce the numbers employed. These are not in the best interest of our retailers, those they employ or the communities that they serve.

## **Appendices**

All appendices are based on actual stores. The names of individuals have been changed. The name of each of the stores is available upon request.

### **Appendix 1**

Four case studies demonstrating flexibility in working hours in practice in three Centra stores

### **Appendix 2**

Profile of a rural SuperValu store and an example of the impact of the proposals if implemented, with emphasis on cost

### **Appendix 3**

Profile of a rural SuperValu that demonstrated flexibility for employees in working patterns

## Appendix 1

### **Centra A – Case Study 1**

Abbie works 1 hour per day on hygiene; she cleans the staff kitchen, toilet, vacuums the staff areas and empties bins in the offices.

Abbie was doing 5 hours per week, and happy to do this as it fitted in with her child care responsibilities. However a number of years into this, Abbie decided she would like to work a further 5 hours per week, so she discussed this with her store manager. While there were no extra hours available for her in hygiene, the manager agreed to her working an evening shift on checkouts that would make up those hours and she was trained on checkouts. She now works 10 hours per week, which include a split shift on day as she does her hour cleaning before 9am and her 5 hours on checkouts from 5pm to 10pm. This has worked well for both Abbie and the store.

### **Centra B – Case Study 2**

Ben is a Supervisor and works evenings and weekends around his college course timetable. He works an average of 25 hours per week. However when Ben is doing exams in May, he takes most of the month off, reducing his shifts to an average of 1 per week in the run up to the exams, and none during the exams. Then when his exams are over he covers managers' holidays and can work up to 39 hours during July and August.

Ben is flexible and is willing to come in at short notice to cover for sickness. The extra hours help him as he earns more but also he has the option of refusing them if it does not fit into his life or plans that week. Ben also has a young child so flexibility is important to him. Ben is a very responsible member of the team. He started with the store in 2012 and progressed to Supervisor in 2013. He will finish his college degree in May 2016 and is in discussion with the store owner about joining the Trainee Manager Programme when his exams are completed.

### **Centra B – case study 3**

Donna started as a Trainee Manager in 2004, and over the next three years she worked her way up to Assistant Manager. At that time she decided to start a family and following the birth of her first child returned to her role as Assistant Manager. After a few months she was finding the pressure of work and family life too much and requested a different role and reduced hours. Following discussion with her manager and owner, she was transferred to another store within the group to a departmental manager role, 3 days a week. This suited her family life and she was very happy and productive in her new role. She went on to have 2 more children and her youngest is now 3 years old.

Donna now works 4 days a week and is part of the management team. She is working towards returning to full-time when all her children are at school.

### **Centra C – Case study 4**

Ciara works an average of 16 hours per week, usually 1 day shift over the weekend and 3 evening shifts. Ciara has a young family and her shifts work around when her partner is available to look after the family. Ciara is a valued member of the team and has over 5 years' experience. When her family are a little older there will be an option for Ciara to increase her hours if she so wishes.

## Appendix 2

### SuperValu A

This case study is based on a medium sized SuperValu in a small town in the West of Ireland near to a seaside resort. The store employs 69 local people. The profile of hours of work is as follows:

33 employees:	35-39 hours
9 employees:	30-35 hours
12 employees:	20-30 hours
15 employees:	0-35 hours (Students College/Secondary school)

These hours are agreed at interview stage and suit the lifestyles of the employees as much as the needs of the business. Some of the employees within the categories outlined e.g. 35 – 39 hours have fixed hours, such as 36 hours every week; others have flexibility. The students are not available for work during school/college term for the most part. Some students work one or two shifts each weekend during term. Typically this will result in them working approximately 0-8 hours per week September to April and 25-35 hours May to August. Again, these hours may be fixed or may vary. The store asks each student in August for their preference regarding rostering arrangements for the winter months and sets up the rosters accordingly.

The impact of the key proposals would be as follows:

- *Using the mean number of hours worked in the first six months of employment (or six months following enactment of the legislation) to calculate the contractual minimum number of hours.*

Summer is the store's busiest period and trade increases by about 30% during the months of June, July and August. Many new employees commence at the beginning of this period. If the reference period were to include the months of June – August then the mean hours worked for this period would become the minimum for each individual.

The total number of hours per week during the summer months is on average 2,110 per week compared to 1,850 during other ('quiet') times of the year. In total there are approximately 19 peak weeks (summer; Christmas; Easter; public holiday weekends) and 33 'quiet' weeks per annum. The mean weekly hours over the six month period June – November  $\{[(2,110 \times 13 \text{ peak weeks June-Aug.}) + (1,850 \times 13 \text{ 'quiet' weeks Sept.-Nov.})] \div 26 \text{ weeks}\}$  is 1,980 hours per week. According to these proposals, this becomes the minimum number of hours that must be allocated per week (it will of course vary by individual in accordance with their own mean/minimum). This minimum would therefore also need to be allocated during 'quiet' weeks when on average only 1,850 hours per week are required. This means an allocation of 130 unnecessary hours (1,980–1,850) during approximately 33 'quiet' weeks of the year or 4,290 unrequired hours per annum. The cost of this at an average hourly cost off-peak of €13.31 is **€57,100** per annum.

In reality, this could only be managed by letting a number of employees go entirely during off-peak periods. This in turn would impact on flexibility, responsiveness and customer service. All of these carry additional costs. Moreover, constant new hiring of employees each year would also bring administration costs. The average cost of recruiting, inducting and training each new employee is approximately €600. For 15 individuals, this would annualise at **€9,000**.

As it is, these employees are on the store's books for a number of years and have all the benefits of being permanent part-time employees which suits both the store and the employees.

- *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 required by an employer in a week. The employee should be compensated for 25% of the additional hours for which they have to be available or for 15 hours, whichever is less.*

While zero-hours contracts in accordance with the current legal definition are not a feature of the store, further clarity on the interpretation of this recommendation would be required before an estimate of the cost, if any, could be made. If this is interpreted as requiring compensation arising from additional flexible hours not called upon, then the cost could be significant.

*Having to compensate an employee for calling him/her in with less than 72 hours' notice at a rate of 150%*

- Example one (off-peak):

Payroll hours for week ending 18/01/2015 were 1,876.25 at a payroll cost of €24,641; average rate €13.31; rostered hours for the same week were 1,850; therefore average €13.31 X 26.25 = €349. If a premium rate of 50% is applied to those hours the cost would be €524 an additional cost of €175 in that week. This would annualise at **€9,104**.

- Example two (peak):

Payroll hours for week ending 09/08/2015 were 2,159.25 at a payroll cost of €27,574; average rate €12.77; rostered hours for that week were 2,110; therefore average €12.77 x 49 hours = €625.73. If a premium rate of 50% is applied to those hours the cost would be €938.59 an additional cost of €312.86 in that week. This would annualise at **€16,269**.

The cost would increase further if it was necessary to calculate it including existing premia such as Sunday rate or overtime.

- *If interpreted to include all hours that are subject to roster change*

By way of illustration, in the week 14<sup>th</sup> to 20<sup>th</sup> December 2015, 15 changes to the roster that was originally posted were necessary. All changes were agreed with the employees concerned before they were applied. The changes arose from one of the Deli employees being hospitalised unexpectedly. Five of her shifts had to be covered by moving a cashier to the deli and covering her shifts by other employees on the cash desk. This accounted for 10 of the changes. The partner of the deli employee also works in the store so two of his shifts had to be covered. The other three changes were additional shifts required because of an unexpected upswing in trade where-by the Christmas rush was ahead of the projected time-frame. If this proposal is interpreted to include roster changes at short notice, then the additional cost for that week would have been €534.45. If this was annualised it would be **€27,791**.

In summary, employees get sick; trade fluctuates; the unexpected happens and in an environment where the store provides an important service to both a local and visitor

community 7 days a week 8:00am to 9:00pm, a considerable amount of flexibility is necessary and is forthcoming without any difficulty.

- *Having to pay an employee for all of their scheduled hours if those hours are cancelled with less than 72 hours' notice;*

This does not happen very often, but could happen if there were some serious unexpected event.

- *Administration cost*

The estimated cost of preparing the payroll each week could be an additional hour's work per week at the rate of €17 weekly or **€884** annually.

In general the cost of these proposals in loss of flexibility and impact on customer service may be even higher and would be impossible to calculate at this point.

## Appendix 3

### **SuperValu B**

This is a SuperValu store in the West of Ireland that employs 86 people in a small rural town. The trading hours are Monday-Saturday 8:00am to 10:00pm; Sunday: 9:00am to 9:00pm.

The profile of hours of work is as follows:

40 employees:	36-40 hours
26 employees:	19-35 hours
15 employees:	9-18 hours
5 employees:	1-8 hours

The hours above are agreed primarily at interview stage and suit the needs of the store and the lifestyles of employees. Some of these hours are fixed and others have elements of flexibility. Some flexible working arrangements are agreed at the initial recruitment stage and/or are introduced or amended at various times throughout the individual's employment.

40% of the workforce in this SuperValu store are been accommodated to some degree regarding their working hours. About 16% of employees are college students and they are given exam time off and other accommodations during college term. Student availability increases also during the summer months thus providing the necessary holiday cover for various departments in the store. About 7% have had hours changed and/or have been allowed additional flexibility to suit childcare arrangements and a further 10% have been accommodated with rosters that suit other personal or family circumstances.

A typical example of flexibility applying in this store to the benefit of both parties is Mary, an employee who works part-time in the Deli. Mary commenced employment on a flexible fulltime basis in May 2007. Her husband Tom commenced employment in the store in May 2013 on a flexible full-time basis and works on the shop-floor. At the beginning of 2015 she requested a 1.30pm finish as she needed to reduce her weekly working hours for childcare arrangement purposes. This would then allow Tom to commence his shift at 2.00pm. This was agreed to by the store.