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Oifig an Aire Coimirce Sóisialaí
Office of the Minister for Social Protection

22nd December 2015

Ged Nash TD
Minister for Business and Employment
Department of Jobs, Enterprise and Innovation
Kildare St
Dublin 2

OIFIG AN AIRE POST,
FIONTAR AGUS NUÁLAÍOCHTA

29 DEC 2015

OIFIG AN RÚNAÍ AIRE

Dear Ged,

I am writing to you on foot of your request seeking my Department's views in respect of the University of Limerick's report entitled A Study on the Prevalence of Zero Hour Contracts among Irish Employers and their Impact on Employees. Once again I wish to state that I welcome the publication of this important study. I believe that the study provides timely and valuable contribution in setting out the future policy direction in this area.

I think it is also important to note and acknowledge the current performance of the labour market in terms of employment creation. The Quarterly National Household Survey (QNHS) shows that when a comparison is made between quarter 3 of 2014 and quarter 3 of 2015, employment has increased by 2.9% to 1.98 million. Full time employment has increased by 4% to 1.53 million and part time employment has decreased by 0.8%, falling to 449,000. The QNHS also captures data on individuals who are part time employed but are underemployed. This figure has fallen significantly from 124,000 in quarter 3 2014 to 107,000 in quarter 3 2015, a fall of just over 14%.

These figures are strong evidence of a recovery of employment growth, particularly in full time employment; the trend indicates an increase in full time employment, with a reduction in those who are underemployed, which is to be welcomed. However, it is not possible to definitively determine the role and prevalence of low hour contracts from these numbers.

Further detailed examination of the QNHS data shows that the four sectors, which the University of Limerick focussed on, namely; retail; accommodation and food; education and health and social work, shows that despite strong full time employment growth, the numbers of individuals usually working less than 19 hours in these sectors has increased by 8,000 in the year from quarter 3 2014 to quarter 3 2015. These sector figures seem to indicate a different trend that what is occurring across the entire economy. That is why the study by the University of Limerick is important and in particular their recommendation for the QNHS to record additional data on non-standard employment with a focus on non-guaranteed hours.



As you are aware I would have concerns where we to witness a significant increase in the prevalence of zero hour and low hour contracts in this State. The Department of Social Protection believes that one of the key social impacts of zero hour contracts and low hour contracts is in-work poverty as highlighted by research carried out by the ESRI and further exploration of this link would be useful in order to inform future policy development.

In 2013 the in-work poverty rate in Ireland was 5 per cent, representing about 82,000 workers, well below the average of 8.9 per cent for the EU-28. It is imperative that the prevalence of zero hour contracts and low hour contracts does not contribute to increasing levels of in-work poverty.

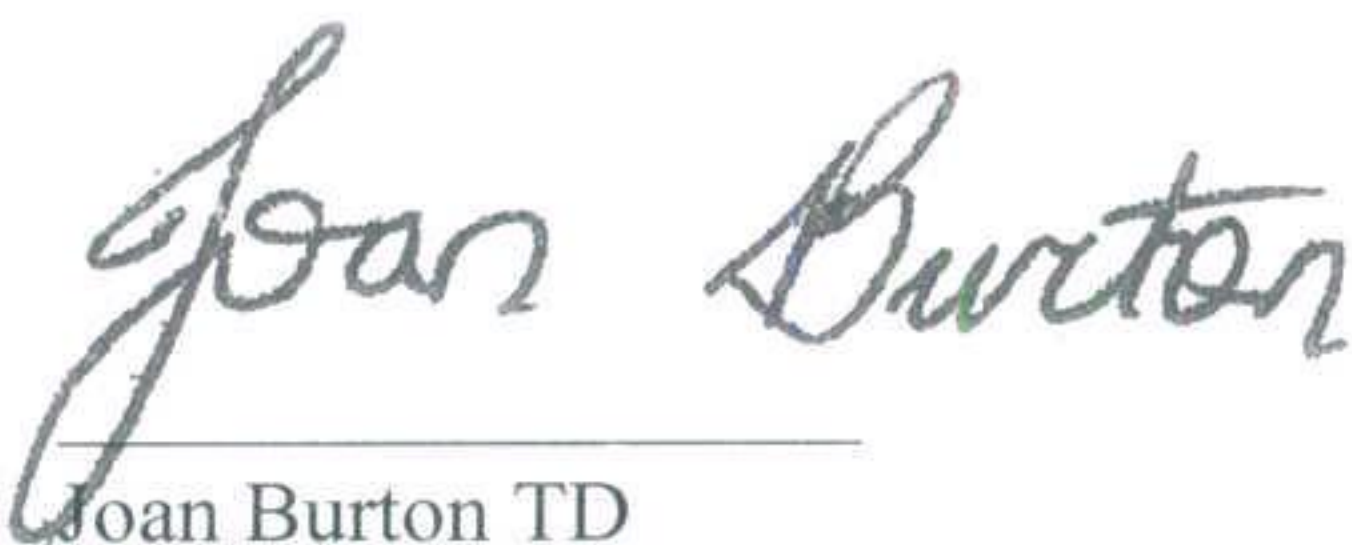
The main government policy for supporting low-paid employees with children is my Department's Family Income Supplement (FIS). This scheme currently has 55,000 recipients, which is a 71% increase since 2012 when there were 32,000 recipients. As outlined in the University of Limerick's study, to qualify for FIS, an employee must be in a paid job expected to last at least 3 months and work at least 19 hours work per week (or 38 per fortnight). It is important that zero hour contracts and low hour contracts do not become a barrier to accessing FIS, given the hours worked eligibility criteria.

Should these types of contracts become increasing prevalent, then pressure is likely to mount on two fronts for my Department. The first would be a continued increase in the number of FIS recipients or those receiving social welfare payments such as Jobseeker's Allowance and combining these with low levels of employment. The second issue would be increased demand to reduce the FIS minimum hour threshold below the current level of 19 hours per week.

Both I and my officials would have strong reservations in relation to reducing this threshold given that it may in fact incentivise the creation of low paid employment. Should this occur this would result in a corresponding rise in underemployment/precarious employment, and an additional cost to the Exchequer as the number of FIS recipients would increase.

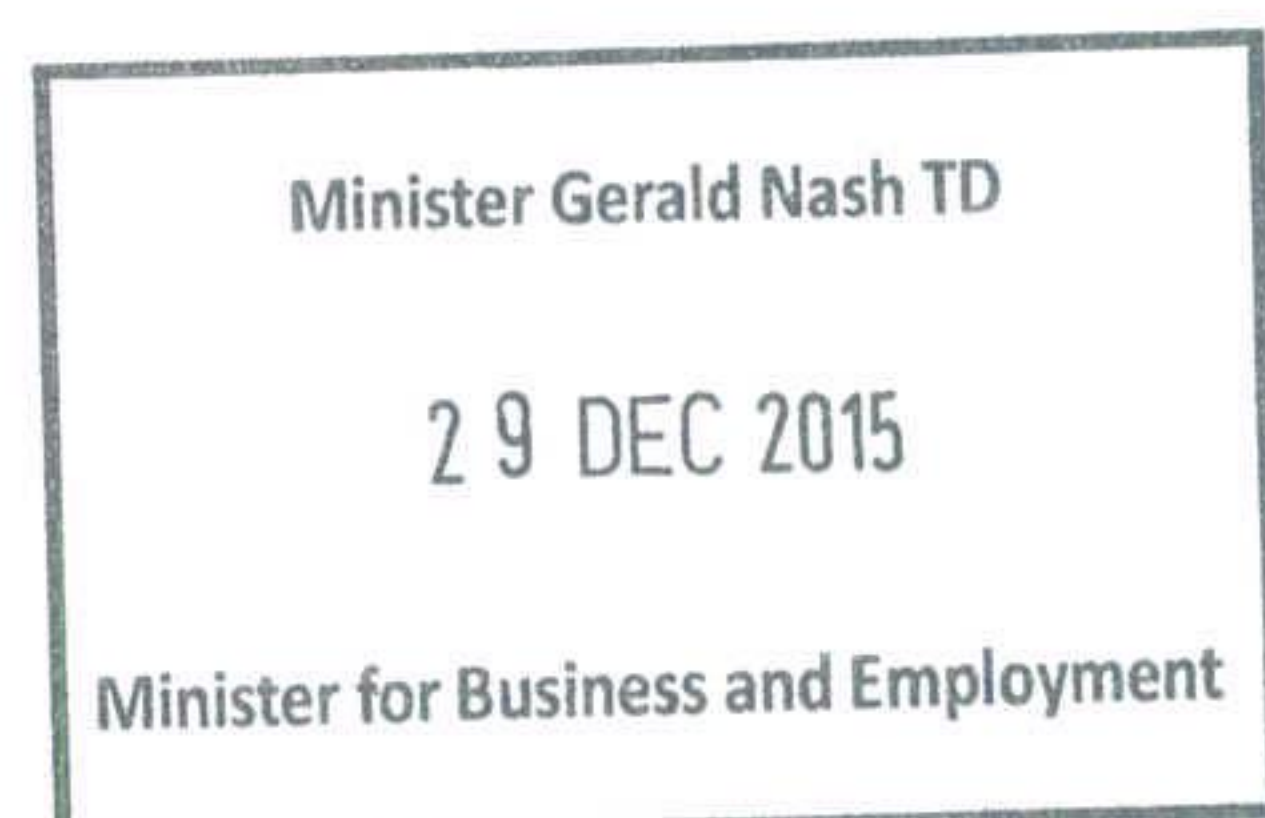
As requested my Department's observations and comments relating to the specific recommendations proposed by the University of Limerick are attached as an appendix to this letter. I look forward to the outcomes of your Department's consultation process.

Yours sincerely,



Joan Burton TD

Tánaiste and Minister for Social Protection



Appendix 1

Department of Social Protection's

Submission to the University of Limerick Study

Of the Prevalence of Zero Hour Contracts and Low Hour

Contracts in the Irish economy and their impact on employees

RECOMMENDATIONS

Please find below the response of the Department of Social Protection to the recommendations contained in the University of Limerick's study;

- 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.
- 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.
- 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:
 - 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 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.

Department of Social Protection's Response

The Department of Social Protection would support recommendations 1-4 in the study. We believe that these recommendations would bring greater clarity and certainty around the employment status of those who work only "If and When" contracts and would benefit both employers and employees.

- 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.
- 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.

Department of Social Protection's Response

The Department of Social Protection supports recommendations 5 and 6 as it will ensure that employees are in a position to better plan and organise their lives around their work. The requirement for 72 hours' notice would in particular facilitate parents of young children (or other individuals who have caring responsibilities) who at short notice would have to make childcare arrangements. This in turn is likely to ensure that individuals will be more likely to take up employment opportunities as they arise.

The Department recognises the need for employers to have flexibility to be able to cope with unexpected circumstances that is why we believe that in order for such an approach to work then "exceptional and unforeseeable circumstances" would need to be clearly defined and understood by both employees and employers.

- 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.

Department of Social Protection's Response

The Department of Social Protection supports this recommendation. We believe that it is important that employees are given access to reasonable amounts of work given that there will be costs incurred by employees to getting to and from work. Where the remuneration from short periods of work is not sufficient to cover these costs then individuals are less likely to avail of employment opportunities.

- 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.
- 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.

Department of Social Protection's Response

In relation to recommendations 8 and 9 the Department of Social Protection believes that these proposals are under the remit of the Department of Jobs, Enterprise and Innovation and it is therefore for that Department to consider whether these recommendations should be pursued.

- 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.

Department of Social Protection's Response

The Department of Social Protection supports this recommendation as it will provide greater certainty to employees.

- 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.

Department of Social Protection's Response

The Department considers that it is a matter for the Department for Jobs Enterprise and Employment in the first instance to consult with employer organisations, trade unions and NGOs on all of the issues contained in the study and that the Department of Social Protection would be happy to contribute to this process as needed.

The Department of Social Protection already has in place extensive mechanisms and consultation processes with a wide variety of stakeholders. These include a dedicated employer engagement section, with dedicated regional employer engagement officers who seek to work and support employers in how they engage with the Department. This can include providing assistance in job matching with clients of the Department, enhancing their awareness of social welfare schemes and promoting employer incentives such as the Jobsplus scheme.

The Department of Social Protection is supported by the Labour Market Council, which is comprised of leading industry, trade union and policy experts that aims to drive the implementation of the Pathways to Work strategy. The Labour Market Council, chaired by Mr Martin Murphy, MD of HP

Ireland, advises the Minister on implementation of the Pathways strategy, monitors progress and advises on wider labour market and employment policy.

The Department of Social Protection has a long history of engaging with NGOs and trade unions. These organisations are invited to attend both pre and post Budget fora to discuss their views on social welfare and any proposals to be considered in the context of the Budget process. In addition, the Department's senior management meets and consults with NGOs on a wide variety of social welfare issues. Issues in terms of individuals accessing relevant social welfare supports are raised on a regular basis by employers and NGOs in the context of these existing fora. The Department of Social Protection therefore does not support the recommendation to establish another system, which would replicate the existing structures and consultation processes the Department has already put in place.

- 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.

Department of Social Protection's Response

The Department of Social Protection supports the aims of this recommendation and recognises the need to create a high quality childcare system that supports individuals to take up employment opportunities. In that regard the Department refers to the Interdepartmental Working Group on Future Investment in Childcare in Ireland. The Department believes that the rise in the frequency of low hour contracts has also been a contributory factor in driving the demand for a more flexible childcare system and not just as the report implies that the lack of such a childcare system is driving the demand for these types of contracts.

- 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.

Department of Social Protection's Response

The Department of Social Protection supports this recommendation and is willing to participate on such a group should the Government decide to proceed with the implementation of this recommendation.

- 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.

Department of Social Protection's Response

The Department of Social Protection supports this recommendation and believes that the capturing of additional data is key to determining the extent and prevalence of low hour contracts. In addition, the collection of this information would allow any trends and changes to be monitored, which would be useful from a labour market policy perspective.