

ZERO HOURS EMPLOYMENT CONTRACTS
Response from the Low Incomes Tax Reform Group ('LITRG')

1 Executive summary

- 1.1 We welcome the opportunity to respond to this consultation as we share concerns about the growing use of zero hours contracts. We are disappointed, however, that protecting the low paid worker does not seem to be at the heart of the consultation. For them, the consequences of being on a zero hours contract can be devastating.
- 1.2 We understand that there are various forces at work which probably preclude an outright ban. In any case, the problems low paid workers face are often more to do with insufficient support from the system, rather than the actual contracts themselves. As such, the bulk of our comments are confined to dealing with this particular aspect – recommending changes to those parts of the system within the remit of our work (tax, tax credits and benefits) that seem to act against the zero-hour worker.
- 1.3 The following are good starting points: vastly improving the provision of information about rights and protections for workers; strengthening workers' positions under the National Minimum Wage (NMW) rules (which should include dealing with the complex inconsistencies between them and tax and tax credits); making access to the National Insurance system and recourse to the courts easier for those who need it; and clarifying the role of the claimant commitment when looking at entitlement to benefits.
- 1.4 These are all practical measures that could be taken within the current framework that could improve a worker's position in the short term. However, in our view, the recent proliferation of zero hours contracts cannot just be put down to the economic downturn – this time there seem to be underlying structural issues, for example the introduction of the agency workers legislation, which means that we are very likely to see more use of (and therefore an

evolution of) such arrangements in the future. There is therefore a danger that their use could get out of control.

- 1.5 Accordingly, we would urge a systemic review of zero hour contracts in due course, because in our experience of looking at problems within the tax system, piecemeal responses from government that do not address all of the problem are ineffective in the long term.

2 Who we are

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 The LITRG's response

- 3.1 Zero hours contracts are not in themselves at odds with the tax system. However, they often seem to appear hand-in-hand with low paid workers and problems that lie within HMRC's remit, such as those to do with the NMW, and that may be why we receive email correspondence from people confused about their position in the context of being on (or in some instances – offering) zero hours contracts. We are responding to this consultation on behalf of those who write to us asking for help.
- 3.2 Our approach to this response is therefore to make a few high level general comments and to give a flavour of what we see as some of the *additional* difficulties raised by the tax and welfare interactions about which users of our website write to us. We hope that these, when taken together will be useful input to the consultation.
- 3.3 For that reason, we shall not answer the main body of consultation questions but focus on these tax and welfare aspects – which in our view are more burdensome to low-income workers on zero hours contracts than some of the matters dealt with in this consultation. For example, by the Government's own admission, exclusivity clauses affect relatively few workers on zero hour contracts and due to their nature, we would suppose that they are most commonly used in respect of the 20% technically skilled/professional workers on zero hour contracts mentioned on page 10. However, in our view, it is those in the unskilled and

elementary roles often staffed by low paid workers (who generally have less confidence and bargaining power with their engagers) who need the Government's protection the most.

- 3.3 With regards to 'improving the transparency of zero hour contracts', in the Government's own words, 'the information gathering exercise found evidence that some individuals were unclear on their employment rights while on a zero hour contract' (page 17). This is unsurprising in light of the current amount of official information available on GOV.UK¹, so we think the Government's tentative approach here is strange. If a gap in the provision of basic knowledge in citizens has been identified, then surely it must be dealt with, rather than discussed as an 'option.'

4 Zero hour contracts and the low paid

- 4.1 Views on zero hour contracts are polarised. While the plight of individuals such as the young man described in a recent House of Commons debate² are of huge concern to us, we can see it is a complicated situation against the backdrop of the Government's labour market strategy. We appreciate that zero hour contracts are not necessarily bad in themselves and that they have a place in our society – when used sensibly.
- 4.2 Often problems arise when they are in the hands of unscrupulous employers who may foist them on people who are desperate for a stable and secure job. Their use is most notable in low paid industries where the workers earn on or around the NMW. This is no coincidence – major financial pressures faced by such workers as a result of low pay means they will often take what they can get. However, in the absence of any better employment options, this means that the workers are left open to exploitation. Often this comes in the form of denial of basic rights and protections such as holiday pay and sick pay.
- 4.3 Arming these workers with the background knowledge to improve their positions is a good starting point to tackling poor employer practices. However, a one size fits all approach to communication will not work as not everybody has the same capacity. Clear, user-friendly, targeted consumer messages will be required at the less sophisticated end of the worker spectrum. Government must also ensure that guidance is available through more than one channel. We should be happy to discuss our ideas and offer our assistance with this.
- 4.4 In addition, 'raising awareness' may be futile unless it is backed up by an accessible means for workers to enforce their rights if things go wrong. There will always be employers who do not want to do the right thing no matter how much help and guidance they are given, therefore the fact that the workers are often in a weak position to secure their employment

¹ <https://www.gov.uk/contract-types-and-employer-responsibilities/zero-hour-contracts>

² <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131016/debtext/131016-0002.htm>. Column 763: A very hard-working young man came to my last surgery. He had been made redundant and had his benefits cut. He was living off family. He wanted to work and was given a zero-hours contract and told to turn up every morning at 6 am. The company has a board and if a person's name is not on it, they are sent home and told to come back the day after—after they have spent money on travel. This young man so much wanted a job that he said, "Please don't send me home. I've travelled all this way and spent money getting here. Can I sweep up today? I'll do anything." He was told, "No, your name's not on that board. Come again tomorrow."

rights needs to be recognised and addressed by Government, particularly in light of recent moves such as increasing employment tribunal fees.

- 4.5 Several reports have also spoken about worker vulnerability in terms of the correlation between zero hour contracts and breaches of the NMW rules. We understand that this is mainly in connection with those workers on zero hour contracts in the home care industry where there are complexities in the rules to do with travelling. However, non-compliance with the NMW is not the same ‘problem’ as zero hour contracts. While it might take Government some time to decide what to do on the latter, it is totally within their power to do something about the former – being paid below the NMW only serves to erode the zero-hour worker’s precarious position even further and should be tackled as a priority.
- 4.6 The NMW rules around travel are not simple to understand. The ‘complex’ NMW rules though, when interpreted, essentially say something quite clear: that a worker’s pay when divided by the time spent working and applicable travel time should be at least equal to the prevailing rate of NMW. In addition any out-of pocket expenses incurred while working and not reimbursed must be deducted. If these rules were better explained (and, very importantly, illustrated) on GOV.UK, unconscientious employers would have less excuse for not abiding by them and the individual would be more able to check their employer’s compliance.

5 **Complex interactions**

- 5.1 In this section, we illustrate how some complex interactions between the NMW rules and tax and tax credit law tend to operate to the worker’s disadvantage. We go on to suggest some action that could be taken by Government to bolster a worker’s position in these respects at least.
- 5.2 In the remainder of this response, we take by way of illustration extracts from, or summaries of, email correspondence we have received from users of our website about their experiences in relation to zero hour contracts. We then discuss the questions they pose, which can be difficult and technical and expose how these employment arrangements can put low-paid workers at a disadvantage in unexpected ways.

5.3 ***Unpaid travel time***

- 5.3.1 One such enquirer spoke of a group of care workers who were employed on zero hours contracts: *‘they are only paid for the time spent at appointments, they are not paid for travelling time between appointments. Often their total paid hours in a week are below their relevant WTC threshold, (i.e. 16 or 30 hrs/wk). But if the unpaid travelling time is included they would be above the threshold.’* The questioner asked whether unpaid travelling time would make a difference to their WTC entitlement.
- 5.3.2 Although one purpose of the tax credit system is to subsidise low pay, the answer to this enquiry is that unpaid travelling time is not treated as qualifying remunerative work for Working Tax Credit (WTC) purposes. Erratic hours coupled with travel time that is not directly paid (a strategy much used by employers as a consequence of a loophole in the

NMW rules³) leads to real difficulties in claiming WTC because WTC requires claimants to work a set number of hours per week depending on their circumstances, and it also requires work to be ‘for or in expectation of payment’.

- 5.3.3 There is a real danger that carers are either not claiming tax credits because their paid hours are too few – or they are claiming in the incorrect belief that unpaid travel time counts as qualifying remunerative work, risking overpayment or even penalties. Universal Credit (UC) will be more responsive to fluctuations in working hours, but rollout of UC has been delayed until 2016. We would urge a tightening of the NMW wage rules on unpaid travel time in light of current employer practices so that these low paid workers can get the tax credit support they need.
- 5.3.4 Further to this, urgent clarity is needed about zero hour contracts and the claimant commitment as this seems to be causing some anxiety – for example, will there be sanctions if you turn down a zero hours contract job? If you refuse to take a shift and unwittingly put yourself out of work does it impact on your ability to claim benefits? How does the Government see the in-work claimant commitment, i.e. having to take steps to increase in-work earnings, interacting with zero hour contracts? The following FOI⁴ response appears to give some answers, however we are unaware if this has been more widely publicised, either internally to decision makers at the Department of Work and Pensions (DWP) or to the public at large.

5.4 **Unpaid travel expenses**

- 5.4.1 Another enquirer writes: *‘I’m a care worker. My contract is zero hours, basic pay £6.53ph + 0.67ph holiday pay. The job advert specified a car was required. In the induction we were advised petrol costs would be covered by HMRC under the P87 system; however, this will not materialise as we earn under the taxable limit. In 13 weeks I have paid out over £250 for travel to clients but I will never receive any reimbursement for petrol costs. I’m using my credit card to pay for fuel.’*
- 5.4.2 Not only are many workers unpaid for travel time, but they are also not reimbursed their travel costs. The ‘P87 system’ referred to above is Mileage Allowance Relief.⁵ However, many people seem unaware that being able to claim tax relief to help restore their out of pocket position depends on there being a tax liability in the first place (at the levels of income we are talking about on zero hours contracts, often this is not the case), meaning what they are told in their inductions is unquestioningly accepted. In fact, some workers even seem to think that the ‘P87 system’ will reimburse them their 45p a mile in its entirety. This suggests to us the many workers do not even have a rudimentary understanding of the tax system (which is for HMRC to do something about) and leaves bad employers with another vulnerability to exploit.
- 5.4.3 While having no tax deducted from their low and irregular wages is doubtless appreciated, Mileage Allowance Relief is not fulfilling its intended role for workers who really need it and a consultation on changes to this system, such as allowing carry forward or carry back claims

³ Employers are not required to pay arrears of NMW for unpaid travel time as long as employees have been paid at least the NMW rate for the overall number of hours worked including travelling time.

⁴ <https://www.gov.uk/government/publications/universal-credit-and-zero-hour-job-contracts>

⁵ <http://www.hmrc.gov.uk/incometax/relief-mileage.htm>

in certain circumstances, would be welcome. Where a tax reclaim *is* possible, we can see from threads on internet forums⁶ that workers are turning to tax refund companies for help with what to do (for a fee). This is arguably something else HMRC could do something about, and meanwhile only serves to place workers at an even greater financial disadvantage – these claims should be straightforward for the workers to make themselves at no cost.

- 5.4.4 In addition, to reduce the calculation of NMW pay as referred to in para 4.5, the expense has to be “in connection with the employment”. This phrase is not specifically defined in NMW legislation but, applying a general interpretation, would normally be taken to mean costs incurred in the course of their work will count, but costs incurred in home and place of work travel will not count. This is controversial in light of those journeys that care workers often have to make home in long gaps between client appointments – particularly when office base visits are probably restricted to picking up supplies or attending staff meetings. Our tax rules certainly recognise the position of such ‘itinerant’ workers, allowing all their travel costs (even home to work) against their tax bill – correcting this ambiguity in the NMW rules may go some way to fortifying the low paid worker’s position.

6 The Lower Earnings Limit and zero hours

- 6.1 In this section we discuss weekly pay rather than hourly pay. Even without NMW breaches, people on zero hour contracts are still living on precariously low wages – which is of concern to us when thinking about a person’s National Insurance contribution (NIC) record. Statutory payments and some state benefits require a certain level of earnings and/or NIC contributions before even looking at any other qualifying criteria, for example, SSP and SMP, etc. require average weekly earnings (usually calculated over the previous eight weeks) to be over the lower earnings limit (£109 in 2013/14). In addition, from 2016 a full state pension will require 35 years of NIC payments or credit.
- 6.2 Another enquiry reads: *‘I am a graduate worker and am new to this tax system. My tax code is 944L. My employment is on a zero hour contract and work varies day to day for me. At times if there is no work I get paid very little. When I checked my wage slips I am only paying national insurance and no PAYE tax. Please help me as this confuses me, I am not sure if this is correct.’*
- 6.3 From this we can deduce that even in weeks of work, this *graduate* is earning less than £182 per week (although more than £149). We wonder about the times of ‘no work’ that she alludes to – even assuming that her weekly wage is closer to £182 than £149, she would still need to be working many more weeks than not in a year in order to make it ‘qualifying’ for state pension purposes.
- 6.4 We find this worrying – the general move towards flexible labour means that people could have irregular earnings patterns for many years. They could be unwittingly heading towards an uncertain retirement, as well as an uncertain working life. We therefore would urge the Government to seriously consider extending the system of credits, as exists for those on Job Seeker’s Allowance for example, to casual workers, as a person in work arguably deserves to have their contributions record protected to the same extent as an unemployed person. Alternatively, the option to buy their way cheaply in to the system would be potentially

⁶ For example: <http://www.taxfix.co.uk/forum/articles/etrol-tax-relief-on-car-mileage.html>

useful, as exists in the form of Class 2 NIC for the self-employed. Another thought is that the ability to aggregate earnings in the event of more than one 'mini' job could help them meet the Low Earnings Limit more easily.

7 Other concerns

7.1 We have wider concerns about zero hour contracts. These include:

- Increase in stress, anxiety and depression in workers
- Problems getting mortgages and tenancies
- Are zero hour contracts being used by employers to avoid secondary National Insurance?
- Rise in payday loans – it may be no coincidence that the rise of zero hours correlates with the rise of pay day loan companies
- Uncertain time commitments making it difficult to arrange childcare (anecdotally we have heard of a mother having to leave her children in a car park so that she could take a last minute shift)
- Longer term consequences in terms of under-investment in workers – for example, lack of training and development leading to skills shortages
- Are zero hour contracts having an impact on the number of children living in poverty?⁷

8 Context

- 8.1 We are well aware that zero hour contracts have been around for some time. However we understand that there are two specific levers for the recent marked *increase* in the numbers of 'zero hours' contracts. The first is to do with local authority commissioning practices – particularly in social care (which is outside our area of expertise but upon which other concerned parties will no doubt make the required points forcefully); the second is to do with the implementation of the Agency Worker Regulations (AWR).
- 8.2 The AWR mean that agency workers may become entitled to the same or no less favourable treatment as comparable employees with respect to basic employment and working conditions, if and when they complete a qualifying period of 12 weeks in a particular job. This has made it more difficult and costly for end user businesses to use agency staff, so much so that they have established their own staff banks of 'zero hours' contracted employees instead – even though this means that the employer must itself engage in the recruitment process.
- 8.3 As Government is undoubtedly aware, the AWR legislation has to a large extent been sidestepped – temporary work agencies are simply adopting different approaches to temporary staffing, for example the "Swedish derogation" model. If AWR is not achieving

⁷ <https://www.gov.uk/government/collections/households-below-average-income-hbai--2> We understand that these figures show that the proportion of children from single parent families where the parent works part-time but who still live in poverty, has grown from one in four (23 per cent) to almost one in three (31 per cent) in just one year.

what it is intended to yet is causing much of the zero-hour collateral damage - it seems to us that a review of this whole area might be in order.

9 Conclusion

- 9.1 We understand that Government may not feel that it appropriate to get involved in the inner workings of the labour market. However, in our experience of looking at problems that disproportionally affect low paid workers within the tax system (for example false self-employment and travel and subsistence schemes) we have seen a whole tax avoidance industry spring up to exploit weaknesses in the system, while HMRC seem unable to tackle such widespread non-compliance.
- 9.2 On the face of it, tax avoidance does not immediately leap out as a consequence of zero hour contracts, however there does seem to be a growing culture affecting parts of the workforce in terms of the avoidance (or minimisation) of employment relations. Without some more than superficial Government intervention, the worry must be that in a marketplace based on competition, bad practices will drive out good and we will see more and more of these types of 'zero hours' models of employment in the future – yet on increasingly degraded terms.
- 9.3 We note the narrow focus of this consultation; yet, in our view, putting zero hours contracts in the spotlight – looking at their causes and consequences properly – is what is needed to bring sustainable protection for low paid workers. However, on the basis that zero hours contracts are here to stay, it is important that resolution is found on the issues causing *additional* difficulties for workers as soon as possible, irrespective of what action is settled upon to regularise their use (or not) in the longer term.

Summary of specific recommendations

- 1 We would urge a tightening of the NMW wage rules on unpaid travel time in light of current employer practices so that low paid care workers on zero hour contracts can get the tax credit support they need (para 5.3.3).
- 2 Mileage Allowance Relief is not fulfilling its intended role for workers who really need it and a consultation on changes to this system, such as allowing carry forward or carry back claims in certain circumstances, would be welcome (para 5.4.3).
- 3 An ambiguity in the NMW regulations should be corrected to allow 'itinerant' care workers to take account of all their travel costs (even home to work) in assessing their entitlement to NMW, in the same way as the costs of all such travel are allowable against their tax bill (para 5.4.4).
- 4 The Government should seriously consider extending the system of credits, as exists for those on Job Seeker's Allowance for example, to casual workers as a person in work arguably deserves to have their contributions record protected to the same extent as an unemployed person. Alternatively, the option to buy their way cheaply in to the system would potentially be useful, as exists in the form of Class 2 NIC for the self-employed. Another thought is that the ability to aggregate earnings for NIC in the event of more than one 'mini' job could help them meet the LEL more easily (para 6.4).

LITRG
14 March 2014