

## BIS Consultation on zero hours employment contracts

### UCEA response

#### Confidentiality & Data Protection

Please read this question carefully before you start responding to this consultation. The information you provide in response to this consultation, including personal information, may be subject to publication or release to other parties. If you do not want your response published or released then make sure you tick the appropriate box?

- ☒ Yes, I would like you to publish or release my response  
☐ No, I don't want you to publish or release my response

If no you must give a reason

#### Your details

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Please tick the boxes below that best describe you as a respondent to this consultation

Business representative organisation/trade body ☒

#### Confidentiality and disclosure of response

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses. If you wish your response to remain confidential you must provide a reason. Do you agree for your response to be published or disclosed if requested?

Yes ☒

#### Background information: UCEA and the Higher Education (HE) sector

UCEA is a membership association for Higher Education Institutions (HEIs) in the UK. Membership is entirely voluntary and we have 164 member institutions which includes all state funded HEIs in the UK. UCEA represents and promotes the interests of its member institutions as employers, while recognising their autonomy and diversity.

UCEA is a source of guidance for HEIs on employment matters. However, HEIs are independent institutions which have autonomy to develop and implement terms and conditions of employment to meet their individual needs, as appropriate, through negotiation and dialogue with trade union representatives at the local level.

The HE sector comprises a broad range of institutions, including pre-92 and post-92 institutions, HE colleges, specialist institutions and conservatoires. They vary greatly in their size, focus and mission. Consequently, employment strategies and profiles vary across the sector. There is no single nationally-agreed contract of employment or common set of conditions of service; rather HEIs determine their contractual arrangements to meet their particular needs, usually in consultation with recognised trade unions. Almost all HEIs recognise one or more of the HE trade unions and approximately 27 per cent of staff in HE are members of a trade union.

UCEA's response is based on information from a cross-section of member HEIs about practices in relation to zero hours contracts, which was gathered for the UCEA submission to the BIS stakeholder review of zero hours contracts in August 2013. We supplemented this by asking member HEIs for their views on this consultation, to which we received 21 responses.

## **Addressing exclusivity**

### **Questions 1**

Are there circumstances in which it is justifiable to include an exclusivity clause in a zero hours contract? If you answer yes, please describe the circumstances that justify such a clause.

Yes	Please explain your response:
No	
Not sure	<input checked="" type="checkbox"/>

UCEA is not aware of any institution that uses exclusivity clauses and therefore does not consider that the sector is best placed to comment on whether or not such clauses might be appropriate in specific circumstances in other sectors. Similarly, we do not feel able to comment with authority on the options put forward by the consultation, therefore we will not provide a response to questions 1 to 6.

## **Improving the transparency of zero hours contracts**

### **Question 7**

If you have sought employment information, advice, or guidance on zero hours contracts before, (a) where did you receive it from, (b) how helpful was it to you in terms of explaining your position in regard to zero hours contracts, and (c) how could it have been improved?

(a) HEIs reported receiving advice mainly from their own legal advisers (whether in-house or external) or from UCEA. Other sources of advice used by one or two HEIs included the CIPD and online HR subscription advice services.

(b) HEIs reported that the advice received was helpful.

(c) There was a suggestion by one HEI that the benefits of zero hours contracts should be explained and promoted more both to businesses and individuals. There are concerns that negative press over the past year on zero hours contracts has been due in the main to poor employment practices by some employers, which has coloured public perception of these contracts which can be very beneficial in certain circumstances to both organisations and individuals.

#### Question 8

Would the additional information, advice and guidance suggested in the first option (first bullet point, para 41), help individuals and business understand their rights and obligations? If not, what other information should Government provide?

Yes  
No  
Not sure      ☒ Please explain your response:

Staff on zero hours contracts in HE are made aware of their rights and terms and conditions by the employer, and HEIs report that they do not receive queries or challenges from staff about these. Nevertheless, HEIs were not against the proposal of additional information, advice and guidance; although, they did raise concerns about how useful such guidance might be to individual employers given the variances in employment arrangements across different sectors and employers all under the banner of 'zero hours' contracts.

More clarity on the rights of individuals on zero hours contracts might help to counter some of the general misunderstandings in the media and by the public about the value and legality of such contracts, which would be helpful.

It may also be helpful to have some guidance that recognises and explores the differences in terminology around 'atypical' work, such as variable hours contracts, zero hours contracts and 'casual work'. The BIS review recognised that many staff do not know they are on what is effectively a zero hours contract, partly because many employers do not label them as such, but they may fall within the definition provided by BIS. Some recognition and clarity about the various types of 'atypical' work across the economy might be helpful, rather than solely a focus on 'zero hours' contracts.

There was some support for simplified guides to employment status. However, institutions felt that government guidance on zero hours contracts and associated rights might be too generic and would not be able to cover all situations. There is a wide variety of different types of 'atypical' work and approaches to engaging individuals on a basis that would fit within the BIS definition<sup>1</sup> of a 'zero hours' contract.

The BIS definition is very broad and can encompass both 'good' and 'bad' practice by employers. It does not distinguish between genuinely casual work which may be repeated only from time to time, from an ongoing employment relationship. Further

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<sup>1</sup> "In general terms a zero hours contract is an employment contract in which the employer does not guarantee the individual any work, and the individual is not obliged to accept any work offered." (Page 7 of the BIS consultation document).

exploration or guidance on the various approaches to 'zero hours' work might be useful.

Some staff on zero hours contracts will be employees, but others will have worker status. Whether or not someone is an employee or worker will turn on specific facts. In addition, some employers will only provide statutory minimum rights and terms and conditions, whereas others, including many HE employers, will go beyond these and provide enhanced contractual rights and conditions. Guidance might need to be generic but may result in causing confusion for individuals if it does not reflect their own particular circumstances. It will always be for the employer to clarify the employment status and the terms of conditions to the individual and if any individual needs further information he/she should seek that from the employer rather than relying on generic guidance and risk misunderstanding the actual employment relationship.

HEIs queried the usefulness of the suggested tools to calculate statutory leave, sick pay or redundancy: whilst these might seem appealing, there are concerns that they might actually cause confusion for individuals where their contractual entitlements to annual leave, redundancy pay etc. are more generous than the statutory amounts (as is the case in many HEIs). Moreover, in HE the hourly rate of pay for 'zero hours' or variable hours academic staff often includes a rate for elements such as preparation time; therefore a generic statutory tool is unlikely to reflect the calculations used at individual HEIs.

#### Question 9

Further to your answer to Question 5, would a broader employer-led Code of Practice covering all best practice on zero hours contracts encourage more transparency?

Not sure      ☒

Please explain your response:

HEIs already operate good practice with regard to transparency and zero hours contracts: they make sure that staff are aware of their terms and conditions and issue contracts that make these clear. HEIs also only use zero hours contracts in specific circumstances and keep their usage under regular review (please see our response to question 21 for more details). As such, a Code of Practice may be of limited benefit in the HE sector in terms of encouraging more transparency and good practice.

However, the existence of a Code of Practice might help to legitimise zero hours contracts, following recent negative reporting in the media, and may improve individuals' perceptions of such contracts.

An employer-led Code of Practice could possibly encourage further transparency across all sectors, but it would need to achieve a difficult balance between promoting some level of consistency of approaches and principles in relation to zero hours contracts whilst recognising the diverse and fluctuating needs of employers, as well as the myriad types of roles covered by zero hours contracts and the various different approaches to employing staff on these contracts. Sector-specific Codes of Practice might therefore be preferable to one general Code, if it is felt that there is a need for

a Code of Practice. In addition, a Code of Practice must not be unduly restrictive and pose an additional burden on employers who already have good employment practices in relation to zero hours contracts, but which might not be reflected precisely in a general Code of Practice. Similarly, some HEIs were concerned that a Code of Practice could be misinterpreted by individuals or their representatives and held to be the only way to employ staff on such contracts. This could lead to disputes where they have previously not existed and where the employer operates on a transparent, responsible basis, albeit not within the examples of 'good practice' outlined in a general Code of Practice.

Finally, the consultation document does not clarify the intended status of a Code of Practice, for example, whether the Code would be taken into account in employment tribunal cases. If a Code of Practice were deemed to be necessary, HEIs would favour a non-statutory, flexible Code of Practice.

#### Question 10

Do you think that model clauses for zero hours contracts would assist employers in drawing up zero hours contracts, and support employers and individuals to better understand their employment rights and obligations? If you answer yes, what should be the key considerations be in producing model clauses?

Yes

Please explain your response:

No

Not sure      X

HEIs felt that model clauses might offer some benefits in terms of clarity, but they also raised a number of concerns about having generic model clauses.

HEIs already make the terms and conditions clear to staff in their contracts as well as through other means such as staff handbooks. They are also well versed in the required contractual clauses, employment status and associated rights. Therefore, in HE, there may be little value in having model clauses available from Government. However, HEIs recognised that such models might be of benefit to smaller employers who may not have the same access to sources of advice such as lawyers and employer associations.

HEIs felt that generic model clauses may be of limited help as they would have to cover a wide range of scenarios in order to be of use across different sectors. Even in HE alone, employers use a variety of different types of atypical contract, depending on the role and situation; as such it will be difficult to draft model clauses that can suit all situations in all sectors. One suggestion put forward was that a series of example clauses, perhaps in a Code of Practice (if a Code or different Codes were developed) would be preferable, and would avoid having a 'model'.

Furthermore, there was a concern that if employers chose not to use a Government 'model' clause, this could lead to challenges or disputes from staff and their representatives who may expect to see the 'model' clause in use.

As mentioned elsewhere, many HEIs provide enhanced terms and conditions to staff on zero hours contracts, compared to statutory minimum levels. Any models or examples would need to acknowledge that employers may provide different terms

and conditions. The key to any model clauses being successful would be that they are sufficiently flexible to be used and adapted locally.

#### Question 11

Do you think that existing employment law, combined with greater transparency over the terms of zero hours contracts, is the best way of ensuring individuals on zero hours contracts are making informed choices about the right contract for them to be on?

Yes ☒ Please explain your response:

No

Not sure

HEIs agree that existing employment law combined with transparency over the terms of zero hours contracts is preferable.

However, employers cannot rely on generic Government guidance to ensure that employees are clear about the terms of zero hours contracts; rather, they must take steps themselves to ensure that the terms of the contract are transparent and can be understood by their staff and potential staff.

#### Question 12

Further to your answer to Question 11, do you think there is more employers can do to inform individuals on zero hours contracts what their rights and terms are?

Yes ☐ Please explain your response:

No

Not sure ☒

HEIs provide staff on zero hours contracts with contracts that explain the terms and conditions, as well as accompanying documents such as staff handbooks. HEIs report that the terms appear to be well understood by staff, and by line managers, and that they rarely receive any queries about them. Whilst the contract makes the terms clear, HEIs recognise that employers should also explain about the 'zero hours' nature of the role at interview and what the prospective staff could expect. As with any contract, individuals are able to ask questions and discuss the terms before accepting the contract.

General encouragement to employers across all sectors to provide details of the terms of engagement would be positive; although this should not be a statutory duty.

#### Question 13

Are there unintended consequences of introducing any of these options?  
Please explain your response.

HEIs noted some possible unintended consequences of the options listed in the consultation:

Zero hours contracts differ between sectors and employers and have generally been developed to meet specific business needs for very particular roles (please see question 14 below for examples of where these contracts are used in HE). Any models or guidance may therefore not be appropriate for individual employers unless they have been developed specifically for use in a particular industry or sector; but even then it will be difficult to cover all possible scenarios.

There is a danger of introducing burdens on employers if there are new statutory duties, or complex monitoring or compliance requirements. Therefore, HEIs would favour non-statutory guidance or Codes of Practice (if required).

A more regulated approach to zero hours contracts is likely to inhibit an employer's ability to use such contracts, to meet their particular business needs, even where this is done appropriately and responsibly and in line with good practice. If this were to happen this could have an adverse impact on HE employers and their students. For example, a significant proportion of individuals working on zero hours contracts in HE are students, who benefit from the flexibility these contracts provide as well as the opportunities for employment and development. It would be detrimental to students if this type of contract were no longer viable. Also, many staff on zero hours contracts in HE have portfolio careers where the HEI is not their main employer; or they are retired but wish to maintain a link with the university and undertake some work on a flexible basis. These individuals find zero hours contracts attractive as they allow them to work flexibly in conjunction with their other work or interests. Care should be taken to ensure that any developments to the framework surrounding zero hours contracts do not limit HEI's ability to engage individuals in this way and thereby draw on their expertise, skills and knowledge, to the benefit of students.

As mentioned above, model contract clauses and 'best practice' in a Code(s) of Practice, might lead to possible disputes from staff and/or their representatives if employers choose not to adopt these in their own contracts, even where the employer's own practice is legitimate, responsible and fair.

Finally, one HEI noted that if employers' options around zero hours contracts were constrained, there might be an increase in the use of temporary agency workers, which is likely to offer individuals less security and less beneficial terms and conditions that they would receive through an overarching zero contract with an employer.

## **Questions for employers**

### **Question 14**

**Do you use zero hours contracts in your business and if so, for what purpose?**

#### Use of zero hours contracts in HE

There is no agreed accurate data on the number of 'zero hours contracts', as defined in the BIS consultation<sup>2</sup>, in the HE sector. HEIs employ staff on permanent and fixed-term contracts, both full- and part-time, including term-time only and variable working patterns. HEIs also use agencies to provide temporary staff and engage consultants. In terms of full-time equivalents, the vast majority of HE staff are

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<sup>2</sup> "In general terms a zero hours contract is an employment contract in which the employer does not guarantee the individual any work, and the individual is not obliged to accept any work offered" (page 7).



employed on permanent or fixed-term contracts (the latter generally being linked to externally-funded research projects).

The Higher Education Statistics Agency (HESA) collects information on staff in the HE sector which is published annually. The most recent data (for the 2011-12 academic year) show that there were 378,250 (319,474 FTE) staff employed in the sector of whom 248,125 were employed on full-time contracts and 130,125 were employed on part-time contracts. These figures include both those employed on open-ended and fixed-term contracts.

The term 'zero hours' is not widely used in the sector. Casual contracts where the hours are not prescribed or may vary are more frequently described as 'variable hours' or 'hours to be notified' contracts. Alternatively, contracts are defined in terms of the particular role, such as teaching associates or teaching fellows.

Casual staff (described by HESA as 'atypical'<sup>3</sup> staff) account for 3.7% of the full-time equivalent HE workforce. The 'atypical' staff category is likely to include a *subset* of staff on zero hours contracts, but by no means all 'atypical' staff will be on zero hours contracts. There is currently no way to disaggregate staff within the 'atypical' group of HESA data. The HESA data strongly suggests that the proportion of zero hours contract staff is very low relative to the full-time equivalent HE workforce.

Just as we are not able to say exactly how many zero hours staff there are in HE, nor do we know precisely whether there have been any significant trends in the patterns of use over time. However, HESA data shows that the last recorded number of 'atypical' staff in HE (2011-12) was 15.8 per cent *lower* than the number recorded in 2008-09<sup>4</sup>.

HEIs only use zero hours contracts where necessary, to meet particular needs. HEIs do not use these contractual arrangements to replace substantive roles and contracts, but to supplement them. Zero hours contracts are only issued where there is an expectation that there will be some work; the aim is not to build pools of zero hours staff on standby who will not actually perform any work for the institution.

Hourly-paid and casual work featured as part of the joint trade union national pay claim for 2013-14, and subsequently focused on zero hours contracts. UCEA's negotiating remit on behalf of HEIs that participate in the national multi-employer negotiations relates only to the uplift of the national pay spine and we have no mandate to form agreements on contractual issues. However, in response to the claim, UCEA offered to conduct joint work with the trade unions to understand the patterns of use of 'atypical' staff across the HE workforce, as well as any trends over time, and to gather illustrative examples of the modes of employment, the nature of the employment relationship and contractual arrangements in use within the sector. Four of the five unions remain in dispute over the employers' final pay offer; however, UCEA will progress this work alone as we believe it will be of interest and use to the HE employers.

### Purpose of zero hours contracts

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<sup>3</sup> Defined by HESA as: 'individuals whose working arrangements are not permanent, involve complex employment relationships and/or involve work away from the supervision of the normal work provider. These may be characterised by a high degree of flexibility for both the work provider and the working person, and may involve a triangular relationship that includes an agent.'

<sup>4</sup> Please see the UCEA response to the BIS review on zero hours contracts: Appendix 1.



The HE sector has long had a legitimate need for a measure of flexibility in the workforce to meet a wide range of needs. For example, to respond to the changing teaching demands of our students and to provide specialist subject input. There is also a practical need to provide cover for absences or occasional peak activities, both in teaching and in support services of all kinds, such as catering, accommodation, security, etc. Students, including PhD students, also value the opportunity for work experience and additional income which zero hours contracts offer, as it gives them the flexibility to fit work around their studies. Examples of where zero hours contracts might be used in HE include where:

- There is a need to have an on-going contractual relationship for work which is not predictable or regular. The introduction of auto enrolment for pensions has led some HEIs to offer variable hours contracts in place of ad hoc fixed-term employment. In many cases, where there is an on-going but unpredictable need for employees of a particular kind, variable hours contracts are often preferable for both the employer and the employee to a series of fixed-term, part-time contracts. This kind of contract does not make the employment any more 'precarious' than it was before but it reduces the administrative burden on the employer and provides continuity of employment for the staff members (which in turn provides on-going access to university facilities, such as libraries, sports facilities, email accounts, etc.).
- There is a need for staff and students to work flexibly to support the critical research activity of an institution.
- There is a need to offer such flexibility to employees for whom the work will not be their main employment (e.g. practising artists, freelance musicians, lawyers).
- Additional support staff are needed to cover fluctuating demand, e.g. catering or security for special events. This is often more cost-effective than using agency staff and the employer is able to build a working relationship and continuity with the individual.
- There are seasonal work peaks such as exam invigilation.
- There is a desire to offer casual and short-term employment opportunities to students (noting that HEIs are now expected to provide opportunities for work experience).

Variable/zero hours contracts enable HEIs to respond to the fluctuating demands of their students for particular courses. In any semester or year there can be teaching hours needed beyond the capacity of the full-time and fractional staff available in a discipline area. Where this occurs, these hours are generally notified to the staff member once the enrolment is confirmed and the academic plans for the coming period are known. The offer to work the hours required is likely to run for at least a semester, sometimes longer. Typical instances where such contracts are used to support student learning include:

- Temporary teaching cover for permanent academic staff who are undertaking research or who are absent for a period due to other professional reasons. The use of 'zero hours' contracts allows for a greater measure of continuity in teaching and learning than a series of ad hoc fixed-term contracts, possibly with a range of individuals.
- To provide PhD students with opportunities for some occasional teaching to support programme delivery, which is an essential part of their ongoing study and which is valued as part of their career development.
- Specialist teaching in specific areas such as architecture, law or art where professionals from industry are required to deliver particular classes or studio

work within a course, e.g. civil engineers, oil industry experts, barristers or practising artists.

- Language or music tutors in certain circumstances, for example where the level of demand for a minority language or instrument cannot be predicted ahead of student enrolment.
- Teaching input where a permanent contract is not appropriate and usually where the breadth of the full academic role is not required, for example in summer schools.
- Temporary cover for long-term sickness, sabbaticals, maternity or parental leave.

Zero/variable hours contractual arrangements have, at some HEIs, been introduced in response to employees' requests. There are examples in HEIs of permanent zero hours contracts being introduced in response to staff concerns about other ad hoc casual arrangements (such as successive fixed-term contracts) and/or in consultation with their representatives because the arrangements are seen as a better way to provide a contractual framework for employees, including students, in areas of the business where the demand for work is known to be unpredictable. They also provide an ongoing employment relationship and access to university facilities throughout the year.

#### Question 15

Have you offered a job on a zero hours contract basis that includes an exclusivity clause? If so, for what reason?

Yes                      For what reason:  
No      ☒

We are not aware of any HEI that uses zero hours contracts that include an exclusivity clause.

#### Question 16

Are you aware of staff you employ on a zero hours contract who work for other employers?

Yes      ☒  
No

It is often the case the staff working on zero hours contracts in HEIs have portfolio careers and/or also work for other employer(s). In many cases, the HEI is not the main employer. Often practising professionals working in industry undertake additional work in the HE sector to provide specialist input on courses, for example practising lawyers, journalists, GPs, musicians and artists. The flexibility of the contract is beneficial for both parties: the individual is able to fit the work around his/her substantive job and have interaction with current industry training and research, while the student experience is enhanced by having teaching input from practising professionals. In addition, academic staff employed on a substantive contract with one HEI may also work on a zero hours contract at a different HEI.

#### Question 17

Do you offer staff on a zero hours contract training or opportunities to develop their skills? Is this usually just at the start of the contract or do you offer training opportunities throughout the employment relationship?

Yes ☒ Please explain your response:  
No

We have not gathered in-depth feedback on this issue from members. However, those we have spoken to about it have reported that zero hours staff do have access to training and development opportunities. This is most likely to be at the outset of the contract, but it may also be on an on-going basis in the same way as for other staff, for example where a training need is identified.

One HEI noted that, as it uses zero hours contracts to employ specialists (e.g. industry professionals or musicians) for guest input on courses due to their specific professional skill, the HEI generally finds it less likely that there will be any training needs.

#### Question 18

How many hours – on average – do you offer individuals on a zero hours contract in a week or month?

The number of hours worked per week or month by individuals on zero hours contracts will vary greatly, depending on factors such as the role and grade, or student demand. An average number of hours at an individual institution level would be meaningless, let alone at a sector level.

In HE, weekly hours tend to be set per term or semester, once the need for the individual is known at the start. Many zero hours staff have a permanent or fixed-term overarching zero hours contract, under which the HEI provides a schedule of work per term or semester, as soon as the hours are set. Once set, the hours do not usually vary week on week, unless the individual does extra hours, for example to cover absence.

#### Question 19

Do you let individuals have a choice or say in how many hours or when they work?

Yes ☐ Please explain your response:  
No

We have not gathered specific feedback on this question and practice is likely to vary between institutions. However, our discussions with members indicate that hours are generally offered according to need (e.g. student demand); although, in terms of the contractual arrangement (as per the definition in the BIS consultation) HEI employment contracts with individual zero hours staff make it explicitly clear that the institution is not obliged to offer any hours and the employee is not obliged to accept any hours offered.

In some cases, the contract of employment will state that the hours will be agreed with the individual on a weekly basis. This will not be suitable for all contracts and

roles, for example where the hours are set at the beginning of each semester and do not change from week to week.

#### Question 20

What is your policy when an individual declines hours of work you offer?

From the information we have gathered from members, we understand that most institutions do not have a set policy on the operation of zero hours contracts. Zero hours contracts are only used for very specific reasons, which vary even within the institution, therefore, a central policy may not be appropriate. However, many institutions have provided guidance for managers and staff on different types of contracts, including variable hours contracts. As previously stated, many zero hours contracts in HE operate on an ongoing basis but with new schedules of hours each term or semester, meaning that hours do not fluctuate by the week or day; therefore the issue of offering and potentially declining hours from day to day or week to week is less common in HE. Please also see the response to question 21 below.

#### Question 21

Do you employ any individuals on a zero hours contract who work a pattern of regular hours? If so: i) how many hours a week and for what period of time? ii) why do you employ that individual on a zero hours contract basis?

Yes    ☒ in some cases    Please explain your response:  
No

Some individuals on zero hours contracts work a regular pattern of hours per week for the course of a term or semester. An umbrella zero hours contract (either permanent or fixed-term) is in place between the institution and the individual, and there will be a schedule of hours issued per term or semester once the student enrolment levels for the particular subject area are finalised.

i)

As outlined above in the response to question 18, it is not possible to give a number of hours per week, as these vary between individuals depending on the role, and across institutions. However, as stated above, an individual's regular pattern of hours is likely to be set for a term or semester.

ii)

A zero hours contract may be used in this situation for a number of reasons. It provides the employee with continuity of employment between terms, rather than issuing a series of fixed-term contracts for the different hours each term. This avoids the process of having to dismiss and re-engage individuals every term and avoids the associated administration burden of having to issue new contracts each term. The individual also benefits from the ongoing employment relationship and access to the university facilities (e.g. sports facilities, libraries) during the vacation periods.

A zero hours contract allows the institution to respond to fluctuations in student demand year on year in certain subjects, whilst providing a continuity of teaching for the students by retaining the same lecturer or tutor. Zero hours contracts are issued in HE when it is expected that the individual will perform some work for the institution but where it is not possible to guarantee far in advance how many hours that will be, for example due to unpredictable student enrolment levels for a particular course, language or musical instrument. There is therefore a degree of predictability, in that

the institution expects a course to run, but it is not possible to determine very far in advance how much need there will be and therefore how many hours. The hours are rarely ad hoc week to week as it does not suit either the intuition or the individual.

As outlined above, zero hours contracts are often used to engage specialist input to courses from practising professionals. This provides the individual with flexibility to fit this work around their main job. Zero hours contracts are also attractive to retired staff who wish to maintain a link with the institution but do not want to be tied to an ongoing set pattern of work. Similarly, students, including post-graduate students, appreciate the flexibility that a zero hours contract offers them to fit their work around their studies, and to be able to decline work where study commitments are too great.

Zero hours contracts are also used by some institutions to cover fluctuations in work, for example due to staff sickness absence or overseas teaching trips by other academics. These hours are often offered on to staff on a zero hours contract that is in addition to their substantive contract, or offered as additional hours where they are already on a zero hours contract.

Zero hours contracts are not used where there is a substantive post. HEIs monitor the number of hours worked by staff on zero hours contracts: usually where the hours are regular for a period of a year or more, and are above the full-time equivalent level deemed appropriate for a fractional part-time contract, the individual will be moved on to a fractional contract.

#### Question 22

How much notice do you give an individual if the number of hours they work will decrease or drop off to zero?

As noted above, individuals on zero hours contracts in HE often have their hours set on a termly basis, which means that hours should not decrease or be taken away at short notice. However, should demand for a certain subject or specialism cease at the start of a new year or term and it was deemed unlikely that demand would resurface in the near future, the institution would treat employees on zero hours contracts in the same way as other employees and go through a redundancy procedure, including looking for redeployment opportunities such as hours in other areas. The redundancy period would include notice and, where applicable, redundancy pay.

#### Question 23

If you offer additional hours of work – how much notice do you give the individual? And how e.g. phone call?

As noted above, hours are often set for the term or semester, so do not often vary week to week or day to day. However, where a situation arises that requires additional hours, the institution will try to give as much notice as possible. If a need for additional hours arises due to the unexpected absence of another member of staff, it will not be possible to give much notice, but the individual on a zero hours contract will be free to decline the offer if it is not convenient for him/her.

The method of offering the additional hours will depend on the situation. If the individual is in work that day, it may be by a face-to-face conversation; alternatively it

may be by a telephone call or email. It is not possible to give a standard response to this question.

#### Question 24

Do you understand what employment rights an individual is entitled to when employed on a zero hours contract? If so: i) what do you believe they are? ii) did you explain these to the individual? iii) how did you find out?

HE employers are well aware of the employment status of their staff and the associated employment rights. In most cases in HE, staff on zero hours contracts are employees and the contract of employment will be explicit about this. In some instances, where the work is truly very casual, the individual on a zero hours contract will be a worker and again the casual nature of the will be made clear to the individual.

i)

In the majority of cases in HE, individuals with zero hours contracts are employees. The contract of employment is often the same as that of staff on full-time or fractional contracts, albeit with a different clause for the hours, which will make it very clear that the hours can vary and there is no obligation for the institution to offer any hours nor for the employee to accept any hours. Zero hours employees in HE are entitled to contractual benefits on a pro rata basis, including annual leave, sick pay, maternity/paternity leave, access to university facilities and incremental pay progression where applicable. Their hourly rate of pay is generally calculated with reference to the appropriate salary on the institution's pay spine. They will also have access to the pension scheme and will be automatically enrolled where they meet the age and hours thresholds for auto enrolment.

In some cases, genuinely casual zero hours work (with worker status) may develop into an ongoing employment relationship (with employee status), therefore sometimes an individual on a zero hours contract may start as a worker but may later become an employee if the work and nature of the relationship develops over time.

ii)

The rights and benefits will be outlined in the contract and handbook, as for any other member of staff.

iii)

HEIs are large employers with appropriately staffed and experienced Human Resources Teams who understand the rights and status of employees and workers.

#### Question 25

How do you calculate paid annual leave for an individual on a zero hours contract?

The practice will vary between HEIs. However, the paid annual leave will accrue with the hours worked.

Often in HE the rate of pay for staff on variable hours and/or zero hours contracts will be adjusted by a multiplier (e.g. x1.5) to account for preparation time for teaching. Some HEIs will pay for annual leave through a distinct additional payment per hour (based on a percentage of pay) that is clearly identified as payment in lieu of annual



leave. Therefore, the pay of an individual on a zero hours contract may include payment for annual leave, but where this is the case the distinct payment will be made clear. The multiplier is often a rate that was agreed previously with the local trade unions. The rate of pay will be identified clearly to the individual staff member with an explanation of the multiplier and the inclusion of holiday pay.

One of the rationales for providing paid holiday in this way is that individuals on zero hours contracts sometimes only work for very few hours per term, for example visiting specialist lecturers may only teach one hour per week at most, or just two or three hours per term. The period of paid annual leave that would accrue after such few hours would be less than an hour, and it is impractical to provide a designated period of paid 'time off' for such leave. Instead it is preferable for both parties for the hourly pay rate to include an amount to reflect the accrual of paid annual leave.

#### Question 26

When you advertise or recruit on a zero hours contract basis: i) do you explain the implications of this type of contract: ii) at what stage do you make it clear that there is no guarantee of a minimum hours of work?

As outlined above, our consultation with members suggests that the terms and conditions of all staff are normally specified in the contract or letter of appointment, so employees with such contracts will be fully aware of their terms and conditions. Zero hours contracts will contain an explicit clause, under 'hours of work', that will make it clear that hours can vary and there is no obligation for the institution to offer any hours nor for the employee to accept any hours. As such, staff will be aware of the nature of the contract from the outset. HEIs have well established HR practices and procedures and have the capacity to ensure that staff employed on variable contracts are well communicated with and fully aware of their employment entitlements.