

Zero Hours Contracts Plus

May 2015

The employment law focus in today's Queen's Speech will be on the proposed Industrial Relations Bill and the restrictions on the right to strike. However, some other changes were implemented yesterday, faster than expected, under the provisions of the Small Business, Enterprise and Employment Act (SBEEA).

The most immediately significant is that **exclusivity terms within zero hours contracts** are now unenforceable in law. Zero-hours contracts are given a narrow legal definition for the first time as one under which a worker offers to undertake work on behalf of the employer on request, there being no guarantee of work. The new legal provision means that a contract which purports to prevent the worker from undertaking work for a different employer or to require the employer's consent to do so is now unenforceable.

Branches will recognise that this is only a very limited reform. It doesn't begin to address the abuses of this type of contract, particularly in the care sector. For example, there is no requirement to offer a fixed hours contract after a period of regular hours working. There are also no anti-avoidance or enforcement measures in the legislation, although there are powers to do so in the future. The draft regulations included measures to address an obvious avoidance mechanism – offering nominal hour contracts. However, again that is missing from the provisions enacted yesterday.

Overall, this means the new restrictions are not just limited, but easily ignored and circumvented. Zero-hour contracts are also included in the workforce standards that should be included in new procurement policies (see [briefing](#)). Some employers may argue that these are no longer necessary because the UK government has legislated on this issue. Based on the above analysis, branches should resist such a view.

SBEEA also introduces new penalties for employers who fail to **pay tribunal awards or settlement sums**, although given ET fees this is again of limited value.

It also increases the maximum penalty for non-payment of the **National Minimum Wage** to £20,000 in respect of each worker who is underpaid. This penalty used to be applied per under-payment notice to the employer, so this rise represents a potentially large increase. However, NMW enforcement is also very limited; so many employers may continue to decide that they are unlikely to get caught.

S149 of SBEEA was also brought into force yesterday. This covers powers to issue regulations protecting **whistleblowers in the NHS**. This will apply to Scotland because they are amending the Employment Rights Act (a reserved power). The detail will be in regulations and Scottish Ministers have to be consulted.

Finally, there will be further regulations defining a **small business**, excluding them from various employment rights. In our sphere of influence this is most likely to impact the community service group.

The regulations can be viewed [here](#) and the full Act [here](#).

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