Introduction:

Chambers Ireland represents the largest network of businesses in the State. With almost 50 Chambers located in every major town and city in the country, we are uniquely positioned to understand the needs of the business community and to represent their views. We welcome the opportunity to contribute to this consultation.

The publication of the University of Limerick's study on the Prevalence of Zero Hour Contracts and Low Hour Contracts in the Irish economy found that "Zero hours contracts within the meaning of the Organisation of Working Time Act 1997 (OWTA) are not extensive in Ireland". Therefore Chambers Ireland feels that many of the recommendations made in this report are excessive, would be extremely onerous on employers, and will undermine the ability of many businesses to maintain competitiveness internationally and to sustain jobs in the long term.

We believe that the report's recommendations far exceed its original terms of reference, and that the potential impact of these recommendations throughout the wider economy had not been fully considered before being drafted.

Further, we believe that there is a fundamental failure to recognise within the report that a modern and flexible economy requires the use of both 'Zero hours' and 'If and When' contracts within certain sectors, and that these working arrangements can benefit both the employee as well as the employer.

Finally, we are concerned that recent media commentary suggests that the Minister intends to press ahead with presenting a number of the report's recommendations to Cabinet regardless of the outcome of the consultation process. This undermines any claim that this will be an evidence based policy and calls into question the validity of the entire consultative process.

We have outlined our views on relevant findings and recommendations below:

Views on the findings in the report:

Findings number 1 to 3 state the position as it currently stands in Ireland in relation to low working hours. However, as it is clear from these findings that there are no major concerns about the prevalence or implementation of zero hours contracts in Ireland, therefore the report goes well beyond its remit in making sweeping findings on other types of low hours contracts in Ireland.

The statement that If and When hours and low hours suits employees correlates with information that we have received from employers. Many employees appreciate the flexibility of 'If and When' contracts. Our research would suggest that such contracts are as much driven by employee demands than by employers needs. Employees often prefer the freedom of choosing when to work or not to work depending on their personal circumstances. We also agree that for those who are only in a position to work low hours or are unable to work full time hours that this does reduce the state's social welfare costs. Additionally, low hour contracts are often a stepping stone from unemployment to full employment as many companies offer increased hours and permanent contracts to workers who perform well or when demand increases.

The CSO data quoted in **Finding 9** indicates that the number of people working in low hours contracts is exceptionally low.

Flexibility is mentioned as a key driving factor in **Finding 13** but this must be identified from both perspectives, in that flexibility allows employers to remain competitive but it is also favoured by many employees who are happy to retain flexibility and choice over their own working hours. While we acknowledge that lack of affordable childcare and resourcing models of education and healthcare can be drivers of such types of low hour contracts, the recommendations and legislative proposals put forward in this report do not address such issues. They need to be tackled separately in order to address why some employees need to work flexible hours rather than forcing all employers to provide longer hours contracts.

We agree with the statement in **Finding 14** that flexibility can be described as an advantage for employers. However, for many employers flexibility is not an advantage but is essential, particularly in certain sectors and industries: such as retail, hospitality, care, etc. There simply is not enough work available during certain periods of the year. While flexibility is very important to employers it can also be equally important to employees. It is important to note that the capacity of a business to provide any employment depends on its ability to maintain competitiveness.

Rising costs for the Department of Social Protection are cited in **Finding 16** but while we acknowledge these costs need to be addressed we feel that the Department should consider reforms to some of the regulations around accessibility of benefits to combat rising costs. For example the Department could encourage employees to increase working hours where possible through a restructuring of its jobseekers calculation method. The current method of calculating job seekers payments does not incentivise an increase in hours for some employees. The current method of calculation uses a daily rate rather than an hourly rate so there is no incentive for those

on jobseekers allowance to seek work which is spread across the week rather there is a financial incentive to limit hours to certain days.

We disagree with **Finding 17** that employees on 'If and When' contracts are not covered by employment legislation. Our research and discussion with employers is such employees are given contracts that are protected by employment legislation but that flexibility is needed for various reasons: seasonal, sales, weather. Such contracts are established in order to preclude employees from protective legislation. We do accept that if there is a lack of clarity as to the status of employees, then further research on the subject is merited. If there is evidence of exploitation of workers on such contracts then more should be done to challenge bad practices by employers rather than by blanket increases in regulation and legislation.

Finding 18: The evidence presented in this report shows that there is very little prevalence of zero hours contracts in Ireland therefore any increased regulation or legislation to prevent the use of such contracts would be wholly disproportionate and indeed unnecessary.

Views on the Report 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.**

We do not support this amendment to the Terms of Employment Information Acts 1994 to 2012 as the proposed changes would be unnecessarily onerous on employers without demonstrating any material benefit to employees. This recommendation would not only increase the administrative burden of companies, but would have the unintended consequence of exposing employers to significant risk, particularly for those businesses that may need short term or temporary staff. It is very often not practical to administer a final contract on the first day of employment and implementation of this recommendation would lead to the following potential consequences arising if a company is found itself in breach of the Act by not providing a contract on the first day of employment:

- An employee would be entitled to claim up to 4 weeks pay for breach of the Terms of Employment if for example an administrative error meant that the contract was a few days late.
- An employer would be in breach of Terms of Employment in the event that contractual negotiations continued beyond the employees start date. Therefore negotiations would have to formally conclude before any work is undertaken. This is often impractical for both employers and employees. In many sectors that are seasonally busy, such as retail or hospitality there is no time to fully negotiate and finalise all terms and conditions before an employee starts.

While we fully agree that robust contracts and Terms of Employment are important to protect both the employee and employer it is not feasible to legislate to ensure that a final draft contract is

presented and signed on day one of employment. It is likely that if this recommendation was implemented, it would serve simply to complicate and ultimately delay any hiring process.

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.**

We do not support this amendment to the Terms of Employment Information Acts 1994 to 2012. Given that it is accepted that there are a number of industry sectors and roles that rely on zero hours or 'If and When' contracts, it makes little sense to require employers' to provide contracts with a statement of working which may not reflect the hours required of an employee and over which the employer has no control.

Businesses crave certainty and stability, particularly in terms of future costs and labour force availability. If an employer is unable to provide a contract with fixed hours of employment for their employees, it is not because they are unwilling to do so, but because of the exigencies of their industry or sector. It is most often the nature of the market within which a business is operating that determines its labour force requirements.

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.**

We disagree with the need to introduce new legislation to replace Section 18 of the Organisation of Working Time Act 1997 in order to combat the issues identified with low hours or 'If and When' contracts. Legislative changes are excessive based on the low numbers of employees with low hours contracts and on the lack of any acute issues being raised in the report. There is evidence from employers that 'If and When' contracts drives positive behaviour by many employers who use such contracts to grow their workforce, or as a stepping stone to train employees who are then converted to permanent contracts when demand increases. Legislating to change the nature of these contracts could potentially have a negative effect on employer behaviour as it eliminates flexibility and undermines competitiveness. Many businesses would be forced to revise their recruitment strategies and possibly employ a greater number of staff on lower hours or shorter term contracts in order to retain some flexibility. This would be a negative outcome for employees on such contracts as there would be less likelihood of their hours increasing or the role developing into a permanent position. In many sectors a legislative change such as this would have a hugely detrimental impact on competitiveness as well as overall numbers in employment.

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

The mean number of hours in previous 6 months method of calculation proposed in Recommendation 4 part (i) and (ii) is not a feasible suggestion, particularly in sectors that are seasonal or subject to fluctuations in demand. The previous 6 months could cover a very busy period or a indeed a period of very low activity and either way the data will not give an accurate reflection of the realities of the business cycle and the working hours over the year. It does not make sense that the mean number of hours would then by default become the minimum stipulated in a contract as again it does not take into account the variations in demand and merely imposes an arbitrarily inflated figure as a mean. One example of this is the retail industry and the Christmas period. Retailers would be able to offer increased hours over the busy Christmas retail season but this would be very difficult to replicate in a quieter period. Therefore any minimum that is calculated taking this period into account could put enormous pressure on the retail sector.

Similarly, in highly skilled manufacturing, when demand is high, additional hours need to be worked in order to fulfil orders, but maintaining a very significant payroll expense at times of weak demand would likely undermine a company's viability and ability to sustain skilled jobs into the future.

We do not accept that there is any logic to calculating a hypothetical minimum number of guaranteed hours based on a mean of the previous 6 months. It appears an entirely arbitrary methodology which will in all likelihood result in inflated wage claims or changes in employer behaviour to minimise the number of hours worked by an employee in their initial six months of employment. Failure by the employer to provide the minimum hours (based on a mean) would put employers in breach of contract and could potentially force employers to consider redundancies or a permanently reduced workforce rather than temporarily increased hours in line with demand fluctuation.

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.

The proposed periodical review of the pattern of working hours would allow for some flexibility for employers but the mechanism is unspecified so we cannot support it in relation to the proposed legislation.

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.

Please see responses above to subsection (i) and (ii).

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.

We cannot support this proposal as it is fundamentally unworkable given the realities of a modern business environment. The proposed notice period of 72 hours is absolutely impractical for almost all businesses, regardless of their sector.

This recommendation would also have an impact far beyond those on 'If and When' contracts. For example those in full time employment and being requested to undertake overtime would also be covered by this recommendation. Under this recommendation it is suggested that employees would need 72 hours notice of any hours of work, therefore if applied to overtime an employee who was not given 72 hours notice of such work would be expected to be paid time and half or could refuse to undertake such work. In many cases this proposal could also undermine existing contracts where overtime is expected as part of the role in certain circumstances and these cases are already agreed contractually.

The additional costs to a business of paying 150% of standard wage rates would be a disincentive to employ someone for any additional hours and therefore lead to a decrease in productivity. It should be recognised that this would not only apply to low skilled or low paid workers on 'If and When' contracts, but also to those in higher skilled full time employment where irregular working hours are the norm. For example, in the financial services or software sectors, irregular working hours are an accepted part of the role. These are typically highly skilled, well remunerated roles but nonetheless with a necessity for irregular work patterns. These sectors could be exposed to enormous wage bills should there be a de facto overtime rate set through legislation.

It is worth noting that much of Ireland's foreign direct investment is linked to these two sectors in particular, and these recommendations if implemented would likely have a major impact on Ireland's attractiveness as a place to locate a business, particularly those that are employment intensive.

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.

Similarly to Recommendation 5 we cannot support this proposal as it would have a negative impact on flexibility and competitiveness. While in some cases staffing needs can be accurately predicted 3 days in advance, there are numerous genuine reasons why staffing requirements are subject to change at short notice. This could include for example a cancellation of orders by buyers, severe weather conditions or other force majeure, or failure to receive the necessary trade finance for an export. None of these are foreseeable by the employer, and yet this recommendation would require the employer to cover the full cost of all staff who had been originally scheduled to work. Covering payroll costs when there has been no productive output damages the viability of a business and their ability to provide secure employment into the longer term.

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.

This proposal does not take into account the practicalities and realities that some sectors rely on part time work and cover work particularly where there are times of peak and off peak demands in the business that are not necessarily predictable. Short periods of working hours are common in a wide variety of roles, from home carers to third level lecturers. Establishing minimum periods for which employees must be paid, regardless of whether not they have actually worked during the period in question erodes flexibility to both employee and employer and generates significant additional costs to an employer, whether that employer be a private company or a State funded institution.

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

We do not support this proposal for opt out from the legislative proposals recommended as it appears to be contrived as a means to force employers into sectoral collective agreements, regardless of their necessity or appropriateness, in order that they may avoid the excessively onerous legislation proposed in recommendations in 4 – 7.

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.

We have no objection to this recommendation.

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.

We support this recommendation and indeed Chambers Ireland has long advocated the need for reform of childcare provision in Ireland in order to support greater workforce participation, particularly for those on lower pay.

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.

We support this recommendation, particularly given the strong interrelationship between policies implemented by the Department of Social Protection, and the Department of Jobs, Enterprise and Innovation.

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.

We have no objection to this recommendation.

Conclusion

The impetus for a report into the prevalence of Zero Hour contracts in Ireland was largely driven by UK experience of zero hour contracts. However, the report has confirmed that Ireland is not in a comparable scenario in terms of the use of Zero Hour contracts. Our existing legislation is far more robust than that in the UK and provides significant protection for employees on low hour contracts. Therefore, we strongly feel that the legislative changes recommended in this report are excessive and will ultimately damage competitiveness and overall employment levels if implemented.