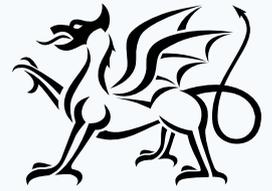




Comisiwn Staff
Gwasanaethau
Cyhoeddus
Public Services
Staff Commission



Llywodraeth Cymru
Welsh Government

Principles and guidance on the appropriate use of non-guaranteed hours arrangements in devolved Public Services in Wales

Ministerial Foreword

The Welsh Government commissioned the Public Services Staff Commission to undertake this work in recognition of the potential adverse impact non-guaranteed hour arrangements can have on an employee's life and on the effective delivery of public services.

There are some limited circumstances in which non-guaranteed hour arrangements, which will include zero hour contracts can provide individuals with the flexibility to undertake additional employment, education or provide care for a dependant but that flexibility should not undermine the way in which these employees are treated.

I would like to thank the Public Services Staff Commission for the development of these principles and accompanying guidance. They have been developed in social partnership, working with the Welsh Government's Workforce Partnership Council and its sector groups to ensure they are practical and when adopted have the potential to enable significant change.

As a Government we recognise that the workforce is critical to building a strong economy and delivering essential services. The fair treatment of the Welsh workforce is paramount to that. Publishing this guidance is part of our more general determination that those employed on non-guaranteed hours arrangements are treated equitably.



Mark Drakeford

Cabinet Secretary for Finance and Local Government

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Principles and guidance for using non-guaranteed hours arrangements appropriately

1. Early discussions with the Welsh Government's Workforce Partnership Council (WPC) and its sector groups signalled that there was broad agreement that the approach should focus on developing a set of principles to underpin the appropriate use of non-guaranteed hours arrangements, rather than narrowly focus on zero-hours contracts or any other types of non-guaranteed hours contracts. It was recognised that contracts are about the employment relationship between employee and employer, whereas the opportunity to consider the principles that underpin the way flexible working arrangements are constructed provides a greater opportunity for our advice and guidance to have a positive and consistent impact on the delivery of public services in Wales.
2. Both the employers and trade unions on the WPC recognised that organisations need to be able to deploy their workforces flexibly to enable those organisations to meet fluctuating demand and the absence of the permanent workforce in our public services.
3. These broad principles will enable the appropriate use of non-guaranteed hours arrangements to support the effective and efficient delivery of public services for citizens in Wales. Public service organisations will in future utilise these principles in the way in which they recruit and retain a workforce that uses such arrangements.

Principle

- 1. Where organisations need to introduce new non-guaranteed hours arrangements or consider changes to their current arrangements they will engage at the earliest opportunity with their recognised trade unions.**

In accordance with the 'Welsh Way' of social partnership, organisations will include their recognised trade unions in the planning of and implementation of any changes to the mechanisms for flexing their workforces. Even where no changes are planned, organisations will regularly review the appropriateness of their non-guaranteed hours arrangements with their trade unions, particularly as part of their joint working on workforce planning.

Guidance

Regular review of the appropriateness of the arrangements for organisations and staff

Organisations will build in regular reviews, both individually and collectively through the recognised trade unions on the appropriateness of the non-guaranteed hours arrangements in use in the organisation. This will include consideration of the service requirements, the organisation's needs, the needs of staff and the impact on the workforce as whole.

There will be active consideration as to whether the non-guaranteed hours arrangements remain appropriate. For example, when regular hours have been worked over the preceding three months and there is a continuing need and requirement for the hours to be worked on an ongoing basis, consideration will be given to whether it would be appropriate for the organisation to change the arrangements to something more permanent.

Organisations will establish a process where staff engaged on a non-guaranteed hours contractual arrangement can request a review of their working arrangements with a view to changing their contractual arrangement if they have been undertaking regular hours for example, 4 hours per week over a continuous period of 3 months. Details of the arrangements for requesting a contract review will be included in the recruitment arrangements and terms and conditions of engagement.

Changes to contractual arrangements following review

When the review above leads to a change in the contractual relationship a revised contract setting out the new arrangements will need to be issued. This will set out in a clear accessible language the revised relationship between the organisation and the individual.

Principle

2. Organisations will make clear which non-guaranteed hours arrangements they use and for what purposes.

Where organisations use non-guaranteed hours arrangements they will explain the purpose for their use and define the scope for when such arrangements will be used. It will not be appropriate for organisations to seek to deliver their core services solely through these types of arrangements. The organisations will have a clear understanding of the services that they are required to deliver and a broadly predictable workforce requirement. Good workforce planning can ensure that the balance between the use of the permanent and the use of the casual workforce is appropriate and reviewed regularly.

Guidance

Statement on the use of non-guaranteed hours arrangements

An organisation will in conjunction with their recognised trade unions develop a policy statement outlining which areas of the organisation's business will utilise such arrangements and for what purpose. The statement will make clear the procedure for reviewing those arrangements periodically.

Recruitment of new staff

Organisations will ensure that appointments to non-guaranteed hours arrangements will be based on merit through fair and open recruitment processes.

Arranging and planning work

It is expected that organisations will provide as much notice as possible when asking staff on non-guaranteed hours arrangements to undertake work. This may however on occasions reasonably be the day when the staff member is needed to attend work for example to cover a sickness absence. Where work is arranged at short notice, organisations will commit to letting people know as soon as practicable that work is on offer.

In other cases, the arrangements for arranging forward work rotas will be clearly defined and shared with all staff. There will be clear criteria on issues such as allocating work fairly and consistently between staff, and these arrangements will be reviewed periodically by senior staff to ensure fairness and equality for all staff engaged through these processes.

Staff will not be under any obligation to accept work offered to them and organisations will give appropriate consideration to their other responsibilities such as studies, child care or other caring responsibilities. Staff who do not accept work for whatever reason will not suffer a detriment as regards being offered work in the future.

Principle

- 3. Staff engaged through non-guaranteed hours arrangements will have access to appropriate induction, training and development support to enable them to undertake their roles effectively.**

Staff engaged in delivering public services require appropriate training and development to enable them to carry out their work effectively. This applies equally to staff engaged on non-guaranteed hours arrangements. Organisations will consider what induction and training arrangements are required for staff engaged on non-guaranteed hours arrangements. Appropriate induction and training will be provided as soon as the staff are engaged, and reviewed and updated as and when required. Staff will be paid for undertaking any required induction and training relevant to the role being undertaken.

Guidance

Induction and ongoing training and development

Induction training will be provided to enable individuals to undertake their roles effectively. Where training and development opportunities are available for equivalent roles, organisations will provide similar opportunities to staff engaged on non-guaranteed hours arrangements if these are relevant to the roles being undertaken.

Any induction and training identified as being necessary for undertaking non-guaranteed hours roles will be paid.

Staff on non-guaranteed hours arrangements will be allocated a named "line manager"¹. There will be the opportunity to meet, discuss and record at least annually the key achievements and challenges experienced by the individual in fulfilling the duties allocated and set out any career aspirations they may have for the future.

¹ The term 'Line manager' is defined in this context as the person who is responsible for the individual's training, development, performance and well-being

Principle

4. Organisations will ensure that they comply with employment law and collective bargaining agreements and provide their staff with the required rights, terms and benefits.

Organisations have a duty to comply with legislation and collective bargaining agreements covering their staff. All staff engaged on non-guaranteed hours arrangements will have clear and accessible contracts which set out the terms for their engagement and what the relationship is between the organisation and its staff. Staff with a contract of employment (including non-guaranteed hours contracts) must be explicitly part of the collective bargaining arrangements. All staff will be encouraged to join the appropriate trade union in accordance with Workforce Partnership Council agreement – ‘Partnership and Managing Change’².

Guidance

Cancelling work at short notice

Organisations will agree with their recognised trade unions appropriate arrangements for compensating staff when work is cancelled by the organisation at short notice. This will include covering costs incurred by staff, for example caring costs and travel costs.

Pensions

Organisations are required to auto enrol all eligible staff into a qualifying pension arrangement. Organisations will agree with their recognised trade unions appropriate pension arrangements which will apply to staff on non-guaranteed hours arrangements and set these out clearly and transparently in recruitment information and terms of appointment.

Opportunities to seek permanent employment

Organisations will have clear procedures in place to enable staff engaged on non-guaranteed hours arrangements to be able to transition into permanent roles and/or apply for relevant permanent vacancies where such opportunities exist.

² Partnership and Managing Change’ is an agreement of the Workforce Partnership Council regarding the process by which the social partners (employers and trade unions) work in partnership to manage change as a fundamental part of how the delivery of public services in Wales will be improved

Principle

5. Staff engaged through non-guaranteed hours arrangements will have terms and conditions of service broadly similar to those of their permanent staff.

Appropriate non-guaranteed hours arrangements will provide broadly similar terms and conditions of service to those afforded to permanent staff. Differences may be appropriate in respect of some issues i.e. a payment to recognise statutory annual leave entitlement where it is not expected that staff engaged on short-term work will be able to take leave during the period of work.

Guidance

Pay progression

Organisations are required by law to ensure their pay arrangements comply with equal pay legislation.

Leave and statutory holiday pay

Organisations will have clear policies enabling staff engaged on these types of arrangements to be able to take annual leave. Where it is not possible to arrange such entitlement to leave during the period of work, a payment will be made to reflect the individuals entitlement to statutory holiday pay at the end of the period of work or at the end of the individual's annual leave period.

Public Service Bodies within scope

The public service bodies to be covered by the remit of the non-statutory Commission currently include:

- A county borough council or county council in Wales
- A town or community council
- Fire and Rescue Authorities
- National Park Authorities
- The Local Democracy and Boundary Commission for Wales
- Local Health Boards and NHS Trusts
- The Care Council for Wales
- The governing body of a maintained school or federation
- The Higher Education Funding Council for Wales
- The Arts Council of Wales
- The National Library for Wales
- The National Museum of Wales
- The Royal Commission on the Ancient and Historical Monuments of Wales
- The Sports Council for Wales
- The Natural Resources Body for Wales.

Subject to the requirements of Constitutional Reform and Governance Act 2010 the Welsh Government (as an employer), voluntarily regards itself as being within the remit and will take notice of and apply its guidance on the same basis as other bodies.

The Public Services Staff Commission

The Public Services Staff Commission is an independent non-statutory organisation that advises the Welsh Ministers and public service organisations in Wales on the workforce issues arising from public service reforms which will need action and resolution.

We work in social partnership with trade unions and public service employers to address shared challenges and opportunities for our public services and the public service workforce in Wales.

We work across organisational and sectoral boundaries to support the development and dissemination of good practice workforce arrangements across our public services.

The Public Services Staff Commission is made up of six Commissioners including the Chair, and is supported by a Chief Executive and staff team and more details are on our website.

How to contact the Public Services Staff Commission:

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Accessible formats

All Public Service Staff Commission publications are available to download from the PSSC website. Please contact us if you would like a publication in an alternative format and/or language

Written Statement

By

The Welsh Government

Title **Publication of guidance on the appropriate use of Non Guaranteed Hour Arrangements in devolved public services in Wales.**

Date **6 December 2016**

By **Cabinet Secretary for Finance and Local Government**

On 21 September 2016 the Public Services Staff Commission published their principles and guidance on the appropriate use of non guaranteed working hours arrangements in devolved public services in Wales. Non guaranteed hours arrangements will encompass zero hour contracts.

The Commission's guidance and principles set out clear expectations on practices which all public sector employers should adopt in order to ensure non guaranteed hour arrangements, are only used in clearly and narrowly defined circumstances. The principles were developed through close working with the Welsh Government's Workforce Partnership Council and its subgroups in an example of practical social partnership.

These principles and guidance will help organisations avoid the inappropriate use of non guaranteed hours contracts within the Welsh public service.

The Welsh Government is accordingly now issuing that guidance to all devolved public sector employers. I want to stress the importance and priority the Welsh Government accords the fair and equitable treatment of the public sector workforce and the relationship between this and the delivery of excellent public services.

Even when the use of non guaranteed hours constraints is consistent with the circumstances set out in the advice, the Commission concludes that their use should not be open ended. I am working closely with the Minister for Social Services and Public Health to support her in the particular circumstances that affect social care, and to deliver our Programme for Government commitment to take action on limiting zero hours contracts.

The Resolution Foundation recently reported that in the UK some 400,000 people over 25 years old have been on zero hours contracts with the same employer for more than 12 months. The guidance published today proposes that organisations should ensure staff can request a review of their working arrangements with a view to changing their contractual arrangement if they have been undertaking regular hours over a continuous period of time and they should also have access to the same pay progression as full time employees. Our guidance says that staff who do not accept work for whatever reason should not suffer a detriment as regards being offered work in the future.

I am keen that the Guidance and Principles are adopted across the devolved public sector and applied in local circumstances, through social partnership, based on the type and scope of services. I therefore intend to review, through the Workforce Partnership Council, whether the guidance has been sufficiently embedded by 2018 and identify where both unions and employers have used the principles and guidance effectively and where they need to be better embedded to drive change. If there is evidence that the guidance has not been adopted well I would then be minded to make its application mandatory.

To monitor this I have asked officials to plan for a one year review which, with the support of the trade unions will identify evidence of where the principles have been used well.

The guidance has been published here:

<http://gov.wales/topics/improvingservices/publications/?lang=en>

<http://gov.wales/topics/improvingservices/publications/?skip=1&lang=cy>