



Department for
Business, Energy
& Industrial Strategy

Exclusivity Clauses

Consultation on measures to extend the ban on exclusivity clauses in contracts of employment

Closing date: 26 February 2021



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Ministerial Foreword

We should all be immensely proud of the UK labour market, and the achievements of hard-working people and businesses over the last 10 years. The Government has played its part by championing a flexible and dynamic labour market which has seen significant increases in employment since 2010, including the creation of millions more jobs, reaching the highest employment rate on record and halving the unemployment rate.

However, the impact of Covid-19 reaches deep into our economy and society. It has required us as a country to put our arms around every single worker and employee, and to provide an unprecedented package of support to businesses at breakneck speed. The furlough scheme, the first intervention of its kind in UK history, delivered country-wide support at speed to protect millions of British families in the most acute stage of the pandemic.

We have also provided unprecedented support to business through £35bn of Bounce Back Loans to over one million small businesses and over 60,000 Coronavirus Business Interruption Loans. These are just some of the measures in the vast package of support the Government has provided as part of our determination to support jobs and livelihoods.

These measures have been critical in keeping people in work and businesses operating but the economic outlook continues to be very challenging. As a Government we are committed to building back better and to making life better for the people of this great country by unleashing Britain's potential. Standing by the principles of a flexible and dynamic labour market that were critical to increased employment pre-Covid-19, and continuing to champion them, will be crucial for our economic recovery from the impact of the Covid-19 pandemic.

We want to maximise opportunities for individuals to find new work and apply their skills to drive the economic recovery. We want to give businesses the confidence to retain and hire workers and we want to provide workers with the tools they need to get better jobs. In order to build back better, we want to put power in the hands of individuals and businesses to find and create work that suits their personal circumstances. For these reasons, the Government is seeking views on proposals to extend the ban on exclusivity clauses.



Paul Scully MP

Minister for Small Business, Consumers & Labour Markets

Introduction

Exclusivity clauses in employment contracts restrict workers from taking on additional work with other employers. There can be good reasons why an employer may use exclusivity clauses to protect the interests of the business, but they should equally respect the right for a worker to earn a living.

Exclusivity clauses were banned for zero hours contracts in 2015 under the rationale that using exclusivity clauses when work is not guaranteed is wrong and prevents workers from looking for work elsewhere to boost their income. The mechanism of the ban is to make exclusivity clauses unenforceable in any zero hours contracts meaning employers cannot force their workers to comply with such clauses.

The existing ban on exclusivity clauses also gave zero hours employees the right not to be unfairly dismissed and workers the right not to be subjected to a detriment for failing to comply with an exclusivity clause (as it is now unenforceable) and to claim compensation.

At the time, the Government also consulted on extending the ban on exclusivity clauses. Although the Government decided not to proceed with extending the ban, we are revisiting that decision now in response to evidence that the impact of the Covid-19 pandemic means some companies are not in a position to offer all their employees as many hours as they would like.

We are seeking views on a specific proposal to extend the ban on exclusivity clauses beyond zero hours contracts, to contracts where the workers' guaranteed weekly income is less than the Lower Earnings Limit. The intention is to allow low-income workers who are not able to secure the number of hours they would like from their current employer to seek additional work elsewhere.

Following the impacts of the Covid-19 pandemic, companies are not always in a position to offer enough hours for every worker. If more workers are able to take on additional work, on short hours contracts, this could also increase businesses' confidence to create jobs with contracts which suit them and their current circumstances.

The responses to the consultation will help inform decisions on detailed policy questions such as the appropriate level to set the earnings threshold and the appropriate level of hourly wage cap for which an exemption to the ban may be warranted.

These reforms will affect businesses and organisations who use exclusivity clauses in their contracts of employment, and low-income workers who are subject to exclusivity clauses and are looking to take on additional work to boost their income.

Our policy is to build back better by championing a flexible and dynamic labour market which gives employers the confidence to retain and hire, whilst also providing a framework that protects individuals in finding work that suits them and their circumstances.

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General information

Why we are consulting

To ensure that we build back better from the impacts of the Covid-19 pandemic, the Government wants to maximise opportunities for individuals to find new work and apply their skills to drive the economic recovery. We want to give businesses the confidence to retain and hire and provide people with the tools they need to get better jobs. In order to build back better, we want to put power in the hands of individuals and businesses to find and create work that suits their personal circumstances. For these reasons, the Government is seeking views on proposals to extend the ban on exclusivity clauses.

Exclusivity clauses in employment contracts restrict workers from taking on additional work with other employers. There can be good reasons why an employer may use exclusivity clauses to protect the interests of the business, but they should equally respect the right for a worker to earn a living.

Exclusivity clauses were banned for zero hours contracts in 2015. Using exclusivity clauses when work is not guaranteed is wrong and prevents workers from looking for work elsewhere to boost their income.

We are seeking views on a proposal to extend the ban on exclusivity clauses to contracts where the workers' guaranteed weekly income is less than the Lower Earnings Limit, currently £120 a week. This is to ensure that low-income workers can take on additional work to boost their income should they wish to do so.

Consultation details

Issued: 04/12/2020

Respond by: 26/02/2021

Enquiries to:

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Team: Labour Markets

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Tel: 02072155675

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Email: rebecca.lowe@beis.gov.uk

Consultation reference: Exclusivity Clauses

Audiences:

We are seeking views from all businesses, organisations, employers, trade bodies, trade unions, and workers. These reforms will affect businesses and organisations who use exclusivity clauses in their contracts of employment, and low-income workers who are subject to exclusivity clauses and are looking to take on additional work to boost their income.

Territorial extent:

The consultation will inform policy in England, Scotland, and Wales.

How to respond

Respond online at: <https://beisgovuk.citizenspace.com/lm/exclusivity-clauses>

or

Email to: rebecca.lowe@beis.gov.uk

A response form is available on the GOV.UK consultation page:
www.gov.uk/government/consultations/exclusivity-clauses

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

The proposals

Definitions

Exclusivity clause: A provision in an employment contract which:

- Prohibits the worker from doing work or performing services under another contract or under any other arrangement or:
- Prohibits the worker from doing so without the employer's consent.

Lower Earnings Limit: A limit used to identify low earners for the purpose of National Insurance. If a worker earns over the Lower Earnings Limit they have to make National Insurance contributions. The Lower Earnings Limit is set by the Government each tax year.

Summary of current law

Exclusivity clauses were banned for zero hours contracts in 2015 under the rationale that using exclusivity clauses when work is not guaranteed is wrong and prevents workers from looking for work elsewhere to boost their income. The mechanism of the ban is to make exclusivity clauses unenforceable in any zero hours contracts meaning employers cannot force their workers to comply with such clauses.

The existing ban on exclusivity clauses also gave zero hours employees the right not to be unfairly dismissed and workers the right not to be subjected to a detriment for failing to comply with an exclusivity clause (as it is now unenforceable) and to claim compensation.

The order banning exclusivity clauses in zero hours contracts allows for regulations to widen the scope of who should be protected by the exclusivity ban. This consultation seeks views on using that power to extend the ban on exclusivity clauses to contracts where the worker's guaranteed weekly income is less than the Lower Earnings Limit, currently £120 a week. This is to ensure that low-income workers can take on multiple jobs to boost their income should they wish to and are able to.

Ban extension

We are exploring extending the ban on exclusivity clauses in order to remove unduly restrictive clauses which prevent individuals from working more hours if they wish to do so. We believe this will help us build back better from the impacts of the Covid-19 pandemic by maximising opportunities for low-income workers to find new work and apply their skills to drive the economic recovery.

The Government is proposing extending the ban on exclusivity clauses to all contracts where a worker's guaranteed weekly income is below the Lower Earnings Limit, as defined for National

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Insurance, currently £120 a week. This is equal to 13.76 hours a week for someone on the National Living Wage. The Lower Earnings Limit is set each tax year by the Government and is an established marker of a low-income worker. Using the Lower Earnings Limit will also ensure the threshold remains relevant.

An estimated 1.8 million workers are employed in one job and receive a weekly wage below the Lower Earning Limit. These low-income workers are significantly more likely to want to undertake additional work. An estimated 9% of workers with one job would like to undertake additional work and this increases to 26% for those under the Lower Earnings Limit. Banning exclusivity clauses in low-income contracts will ensure these workers can take on additional work with a second employer where desired.

Furthermore, vulnerable and low-income workers have already been adversely impacted by the impacts of the Covid-19 pandemic. They are more likely to have lost their jobs or be furloughed at three times the rate of high earners. Ensuring workers can take on additional work where desired could increase job opportunities and provide a valuable income boost for vulnerable or low-income workers.

Ensuring workers can take on additional work where desired could also create opportunities for reskilling as they would be able to take on additional work in a different sector to their current job. This could help workers make a smoother transition between different sectors and help provide people with the tools they need to get better jobs.

Additionally, we also believe this policy could give businesses the flexibility and confidence they need to retain and hire. Following the impacts of the Covid-19 pandemic, companies are not always in a position to offer enough hours for every worker. If more workers are able to take on additional work, on short hours contracts, this could increase businesses' confidence to create jobs with contracts which suit them and their current circumstances.

Redress rights

The existing ban on exclusivity clauses gives zero hours employees the right not to be unfairly dismissed and workers the right not to be subjected to a detriment for failing to comply with an exclusivity clause, and to claim compensation. The Government is proposing that these rights would also be extended to employees/workers where their guaranteed weekly income is below the Lower Earnings Limit, currently £120 a week.

Hourly wage cap

To allow business to protect their interests where they employ well paid individuals who only work a few hours a week, the Government is proposing including an exemption to the ban which avoids capturing these individuals. An exemption would be provided by setting an hourly wage cap at an appropriate level. The level of cap would be reviewed regularly to ensure the level remains relevant.

Consultation questions

Questions on the ban extension

1. The Government is proposing extending the ban on exclusivity clauses to make them unenforceable in contracts where the guaranteed weekly income is below the Lower Earnings Limit, currently £120 a week and equivalent to 13.76 hours worked at the National Living Wage.

Do you agree the ban of exclusivity clauses should be extended to low-income workers where the guaranteed weekly income is below the Lower Earnings Limit?

- Yes
 - No (please expand on why)
 - I don't know
2. **Do you think the ban of exclusivity clauses should be extended to other workers? Please expand on why.**

- Yes (please specify who to)
- No
- I don't know

3. The Government is proposing to set the income threshold at the Lower Earnings Limit, as used for National Insurance. This is currently £120 a week and equivalent to 13.76 hours worked at the National Living Wage. Using the Lower Earnings Limit as a threshold will ensure the threshold remains relevant as it is set each tax year by the Government.

Do you agree the Lower Earnings Limit is an appropriate threshold?

- Yes
- No (please specify why and what alternative threshold you think is appropriate)
- I don't know

Questions on redress rights

4. The existing ban on exclusivity clauses gives zero hours employees the right not to be unfairly dismissed and workers the right not to be subjected to a detriment for failing to comply with an exclusivity clause, and to claim compensation.

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Should these rights also be extended to employees/workers where the guaranteed weekly income is below the Lower Earnings Limit? Please expand on why.

- Yes
- No
- I don't know

Questions on an hourly wage cap

5. The Government is proposing an exemption to the ban on exclusivity clauses for contracts which pay individuals a high hourly rate for a short number of hours a week.

Do you think a cap on hourly wages should be set to ensure individuals who are paid a high hourly rate for a short number of hours a week are exempted from a ban on exclusivity clauses?

- Yes
 - No (please expand on why)
 - I don't know
6. **What level do you think the hourly wage cap should be set at?**
- £20 (top 25% of earners)
 - £22 (top 20% of earners)
 - £29 (top 10% of earners)
 - Other (please specify)
 - I'm not sure
7. **If you have any alternative methods to provide a similar exemption, please expand on these below.**

Questions on the impact of the Covid-19 pandemic

8. **How likely do you think it is that the impact of the Covid-19 pandemic will lead to greater numbers of workers having the guaranteed hours in their contracts reduced?**
- Very likely
 - Likely
 - Neither likely or unlikely
 - Unlikely

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- Very unlikely
 - I'm not sure
9. **How likely do you think it is that greater numbers of workers will be looking for additional work to boost their income as an impact of the Covid-19 pandemic?**
- Very likely
 - Likely
 - Neither likely or unlikely
 - Unlikely
 - Very unlikely
 - I'm not sure

Questions about individual workers

10. **How helpful do you think extending the ban on exclusivity clauses would be for workers earning under the Lower Earnings limit? Please explain your answer.**
- Very helpful
 - Helpful
 - Neither helpful or unhelpful
 - Unhelpful
 - Very unhelpful
 - I'm not sure
11. Ensuring workers can take on additional work where desired could also create opportunities for reskilling as they would be able to take on additional work in a different sector to their current job. This could help workers make a smoother transition between different sectors and provide people with the tools they need to get better jobs.
- How likely do you think workers are to use the ability to take on additional work to reskill and move between sectors? Please explain your answer.**
- Very likely
 - Likely
 - Neither likely or unlikely
 - Unlikely
 - Very unlikely
 - I'm not sure

Questions specifically for employers

12. **Do you think extending the ban on exclusivity clauses to workers under the Lower Earnings Limit could benefit your business/organisation? Please explain your answer.**
- Yes
 - No
 - I don't know
13. **Do you think extending the ban on exclusivity clauses to workers under the Lower Earnings Limit would have negative consequences for your business. Please explain your answer.**
- Yes
 - No
 - I don't know
14. **What would be the impact on your business be/how would your business respond, if the Government introduced an hourly wage cap to provide an exemption to the proposed ban for individuals on high hourly rate contracts?**

This consultation is available from: <https://gov.uk/government/consultations/measures-to-extend-the-ban-on-exclusivity-clauses-in-contracts-of-employment>

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.