



Department  
for Business  
Innovation & Skills

**CONSULTATION**

**Zero hours employment  
contracts – impact  
assessment**

DECEMBER 2013

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<p>Title: _____</p> <p><b><u>Consultation on the use of Zero Hours Contracts in the UK</u></b></p> <p>IA No: _____</p> <p>Lead department or agency: _____</p> <p><b>BIS</b></p> <p>Other departments or agencies: _____</p>	<p><b>Impact Assessment (IA)</b></p> <p>Date: 16/12/2013</p> <p>Stage: Consultation</p> <p>Source of intervention: Domestic</p> <p>Type of measure: Secondary legislation</p> <p>Contact for enquiries: _____</p>
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**Summary: Intervention and Options**

RPC Opinion: **Awaiting Scrutiny**

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as Two-Out?	
£N/A	£N/A	£N/A	Yes/No	In/Out/zero net cost
<p><b>What is the problem under consideration? Why is government intervention necessary?</b></p> <p>Recent concern over the operation of employment contracts that guarantee no work led BIS to undertake a fact-finding exercise on zero hours contracts (ZHCs) in the summer of 2013. This found that while ZHCs provide benefits to both employers and employees, there was some evidence of actual, or perceived, abuse in some cases, causing detriment to individuals. Abuse of ZHCs can also have a negative impact on UK businesses generally if it leads to a potentially efficient form of contracting being under-used. Government intervention is justified if it can cost-effectively rectify market failures, or address equity, or fairness, concerns in the use of ZHCs. There is no preferred option for intervention currently.</p>				

<p><b>What are the policy objectives and the intended effects?</b></p> <p>BIS's summer review found that ZHCs have a role to play in a modern and flexible labour market, and can provide benefits to both employers and individuals alike. But concerns were raised about possible abuses and unfair practices. The policy objectives are to address any market failures in the use of ZHCs in the UK, and to address concerns of equity, or fairness, in their use. The intended effects would be to make the UK labour market operate more fairly, and more efficiently, for the benefit of both employers and individuals.</p>
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<p><b>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</b></p> <p>There are a range of policy options being considered. These include:</p> <p>Option 0: the 'Do nothing' option - which would be justified if the additional costs of further intervention exceeded the additional benefits;</p> <p>Option 1: 'Non-regulatory' option - including the provision by government of greater levels of information, guidance, and sign-posting, either by government or employers, to enable more informed choices to be made in the use of ZHCs;</p> <p>Option 2: Regulatory option - involving potential tightening of regulation around ZHCs and/or the introduction of government sponsored, or issued, statutory guidance in relation to their use.</p> <p>There is no preferred option at this stage.</p>
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**Will the policy be reviewed?** It will/will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: N/A		Non-traded: N/A

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible SELECT SIGNATORY: ..... Date: .....

# Summary: Analysis & Evidence

# Policy Option 1

Description: Non-Regulatory Option

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: (-)1.7	High: (-) 3.2	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1.7	Not quantified	1.7
High	3.2	Not quantified	3.2
Best Estimate			

### Description and scale of key monetised costs by 'main affected groups'

Costs to business of non-statutory guidance, or code of practice on use of exclusivity clauses.  
Familiarisation costs to business of non-statutory guidance, or alternative information provision in relation to use of ZHCs (£1.7m-£3.2 m).

### Other key non-monetised costs by 'main affected groups'

Costs to business of behavioural change following adoption of non-statutory guidance or code of practice, and following greater information provision.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not quantified	Not quantified	Not quantified
High	Not quantified	Not quantified	Not quantified
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

None Quantified currently

### Other key non-monetised benefits by 'main affected groups'

Benefits of behavioural change following adoption of non-statutory guidance or code of practice, and following greater information provision.  
Benefit to individuals of being better informed of conditions of employment, and enabling them to make better choices in the labour market.  
Improved efficiency of labour market for benefit of business and individuals;

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

Estimates of number of zero hours contracts in the UK vary widely at present.  
Uncertainty over numbers of individuals who would benefit from any behavioural changes in the operation of ZHCs.  
Uncertainty surrounding business response to any non-regulatory proposals.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.2-0.3	Benefits: N/Q	Net: 0.2-0.3	No	NA

# Summary: Analysis & Evidence

# Policy Option 2

Description: Regulatory option

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: (-)1.7	High: (-)3.2	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1.7	Not quantified	1.7
High	3.2	Not quantified	3.2
Best Estimate	N/A	N/A	N/A

### Description and scale of key monetised costs by 'main affected groups'

Costs to business of ban, or restriction, of exclusivity clauses, or of statutory guidance for their use. Familiarisation costs to business of statutory guidance (£1.7m-£3.2m)

### Other key non-monetised costs by 'main affected groups'

Costs to business of behavioural change following adoption of statutory guidance or code of practice, and following greater information provision.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Not quantified	Not quantified	Not quantified
High	Not quantified	Not quantified	Not quantified
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

None Quantified currently

### Other key non-monetised benefits by 'main affected groups'

Benefits of behavioural change following adoption of statutory guidance or code of practice, and following greater information provision.  
Benefit to individuals of being better informed of conditions of employment, and enabling them to make better choices in the labour market.  
Improved efficiency of labour market for benefit of business and individuals;

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5
Estimates of number of zero hours contracts in the UK vary widely at present. Uncertainty over numbers of individuals who would qualify for any new 'rights' under regulatory proposals; Uncertainty surrounding business response to any regulatory proposal and subsequent costs.		

## BUSINESS ASSESSMENT (Option 2)

<b>Direct impact on business (Equivalent Annual) £m:</b>	<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs: 0.2-0.3	Yes	IN
Benefits: N/Q		
Net: 0.2-0.3		

# Evidence Base (for summary sheets)

## Problem under consideration

1. Zero hours contracts (ZHCs) have generated a significant amount of public interest and press coverage in recent months. Over the summer of 2013 the Government (through BIS) conducted a fact finding exercise on the use of ZHCs operating in the UK today. Box 1 provides examples from the evidence gathered over the summer. The Government is now consulting formally to gather further evidence and to obtain views on proposals to ensure the UK labour market operates fairly and efficiently in the area of ZHCs.

### **Box 1: Examples of Evidence from BIS Information Gathering Exercise**

#### **Institute of Directors (business representative organisation)**

The Institute of Directors (IoD) said that 11 per cent of their members use zero hours contracts (ZHCs) – this being 7 per cent amongst small employers. Use had increased over last 2 years and was mainly in hospitality sector (31 per cent), administration/support services (23 per cent), entertainment and recreation (18 per cent); and education, health, and public administration (17 per cent). The main reason for using ZHCs was “*..fluctuating, unpredictable or sporadic demand.*” The IoD gave examples of the use of retired staff for their skills and experience, the use of students over summer months, short-term consultancy and contract needs, and variable demand at tourist attractions etc.

#### **Working Families (charity)**

Working Families was concerned with the use of ZHCs which gave individuals no guarantee of work and restrict their ability to work elsewhere. Also concerned with situations where working patterns are changed by employers at very short notice. Working Families gave examples of women who were either pregnant or had children who felt they were being discriminated against in the number and regularity of hours they were being asked to work, and were also unsure as to what benefits they were entitled to claim (e.g. Statutory Maternity Pay) whilst working on ZHCs).

#### **Association of Colleges (educational representative body)**

The Association of Colleges (AoC) said that they need a flexible workforce to provide services to more than 3 million students, and use ZHCs “*..to support the delivery of education and training..,and respond to the fluctuating demands of their students.*” Also said that the use of ZHCs can provide “*..greater consistency of teaching and learning..*” compared to using agency workers, and that some teachers and trainers use ZHCs as “*secondary employment.*” Examples of where ZHCs are used were: exam invigilators; provision of short, or one-off, courses – e.g. first aid, food hygiene; deliver of specialist lectures, e.g. in law or accountancy.

#### **Association of Convenience Stores (small retailer representative)**

The Association of Convenience Stores (ACS) said that ZHCs are not widely used amongst small retailers, and where they used this is normally in response to seasonal demand (e.g. summertime or Christmas period).

#### **Chartered Society of Physiotherapy (professional union body)**

The Chartered Society of Physiotherapy (CSP) provided evidence of both positive and negative experiences of the use of ZHCs. The positive evidence included: ZHCs provided individuals with the flexible working arrangements they needed; in some cases ZHCs also provided individuals with access to training. The negative experiences included: being denied training, development and appraisal; having difficulty with financial planning due to variable wages and hours; having a negative impact on morale.

## Rationale for intervention

2. The rationale for intervention in terms of market failure could be in the form of information failures, and the existence of negative spillovers (externalities):

- Asymmetric information. In the area of zero hours contracts (ZHCs), it is likely that employers will know more about the particular types and nature of the jobs they are offering than do individuals. This is also likely to be the case as ZHCs are a relatively uncommon form of employment contract. If the estimates of the Office of National Statistics (ONS), via the Labour Force Survey (LFS), are correct, then ZHCs represent less than 1 per cent of total employment in the UK. Even estimates in the range of 1 million individuals working on ZHCs (estimated via a survey by the CIPD) would mean they represent just over 3 per cent of total employment in the UK. Where one party knows more than another, this can lead to a potentially harmful situation with one party being taken advantage of because of a lack of knowledge. Government provision of information can help to alleviate this problem, and potentially overcome any detriment to individuals in the use of ZHCs.
  - Negative spillovers (externalities). The mis-guided use, or abuse, of ZHCs in specific cases can have a negative impact on the reputation and use of ZHCs generally, and lead to them being used less than would be the case in the absence of such instances. These negative spillovers can cause both employer and individuals not to take-up ZHCs that are potentially mutually beneficial. Government intervention to limit any abuse, and promote best practice, can potentially improve the operation of ZHCs in the UK labour market.
3. There could also be a rationale for intervention in terms of equity and fairness considerations. If the current use of ZHCs produces what is considered to be an unfair outcome with, for example, too many individuals not being able to obtain an appropriate wage for their skills and knowledge, or having to work under inappropriate conditions, or in an overly 'restrictive' way, then intervention could help to alleviate these negative outcomes.

### **Policy objective**

4. The policy objective would be to overcome any market failures in the operation of Zero Hours Contracts (ZHCs), and to address any equity/fairness considerations. If the Government could cost-effectively correct these market failures then this will enable ZHCs to operate more effectively where they are mutually beneficial for employers and individuals. It could also result in an improved understanding of how ZHCs should be used, and so increase actual, and perceived, fairness in the operation of the UK labour market.

### **Description of options considered (including do nothing)**

5. This IA considers options across a number of areas to address any actual, or perceived, weaknesses in the current market of ZHCs. These include:

- 'Do nothing' option. This would be justified if the additional costs of any further government action outweighed any additional benefits obtained. It is also used as the baseline against which options to 'do something' can be compared;
- Non-regulatory option (Option 1). This could involve the provision by government of greater levels of information, guidance, and sign-posting, either by government or employers, to enable more informed choices to be made in the use of ZHCs;
- Regulatory option (Option 2). This could involve potential tightening of regulation around ZHCs and/or the introduction of government sponsored, or issued, statutory guidance in relation to their use.

There is no preferred option at this stage.

6. Following consultation, it is possible that an outcome involving a combination of regulatory and non-regulatory measures could result. If this were to be the case, then the costs and benefits of this could fall somewhere within the range of the current non-regulatory and regulatory options. There is no preferred option at Consultation Stage, and any final IA would assess the costs and benefits of the policy response chosen following consultation. The main areas of concern are:

- i. Transparency in the use of, and certainty of income under zero hours contracts (ZHCs); and
- ii. Exclusivity clauses in ZHCs.



## **Monetised and non-monetised costs and benefits of each option (including administrative burden)**

7. This section outlines the potential costs and benefits of the two options to 'do something' as outlined in the consultation document. These two options relate to the main areas of concern outlined above, and summarised in Box 2 below.

8. When considering zero hours contracts (ZHCs) it needs to be remembered that there is no statutory definition of what is a ZHC. Contracts where the employer does not guarantee any work, and the individual does not have to accept it when offered, encompass a number of employment relationships. This means that estimates of the number of ZHCs, and the number of individuals working on them can differ depending on the definition used by the body undertaking any estimate.

9. The Office of National Statistics (ONS) currently derives its estimates from the Labour Force Survey (LFS). Respondents who are in employment are asked what type of work arrangement they have, for example if they work flexible hours, work a nine-day fortnight or are on a zero-hours contract (ZHC). Estimates for the fourth quarter of 2012 suggest 250,000 people were on ZHCs (0.8% of total employment). Of these 228,000 were either employees or workers, with the other 22,000 being self-employed. Chart 1 shows ONS estimates of ZHCs as a percentage of total employment from the end of 2000 to the end of 2012. While the number of individuals on ZHCs has increased significantly in recent years, it remains a small percentage of total employment, and is the same percentage as it was at the turn of the century. On the 23<sup>rd</sup> of October 2013 the ONS launched its own consultation describing a new exercise in data collection it is proposing to conduct into the area of ZHCs.

10. The Chartered Institute of Personnel and Development (CIPD) recently undertook a survey of just over 1,000 human resource (HR) professionals working across a range of businesses. As a result of this survey, the CIPD estimated that some 1 million people were engaged on zero hours contracts (ZHCs) across the UK. This would increase the percentage of those on ZHCs to just over 3 per cent of total employment. The CIPD survey is for a single point and not over time. The CIPD survey does, however, suggest that larger employers were more likely to use ZHCs. Of businesses employing 2-9 people, only 4 per cent said that they employed individuals on ZHC, and of businesses employing 10-49 people only 1 in 7 said they used ZHCs.

11. There is no 'one size fits all' description of how individuals work under zero hours contracts (ZHCs). They can work on a temporary or permanent basis, work for more than one employer, and can be in the same job for a significant period of time. This complicates the assessment of the current state of this market, and the choice of appropriate measures to address any concerns with its operation.

12. In terms of the actual hours worked by those on zero hours contracts (ZHCs) Table 1 shows that the average 'usual weekly hours' worked under ZHCs has declined from around 30 to in the range of 20-24 hours. This, combined with Chart 1, suggests that though the number of individuals on ZHCs has increased, the number of actual total employment hours worked under ZHCs may not have.

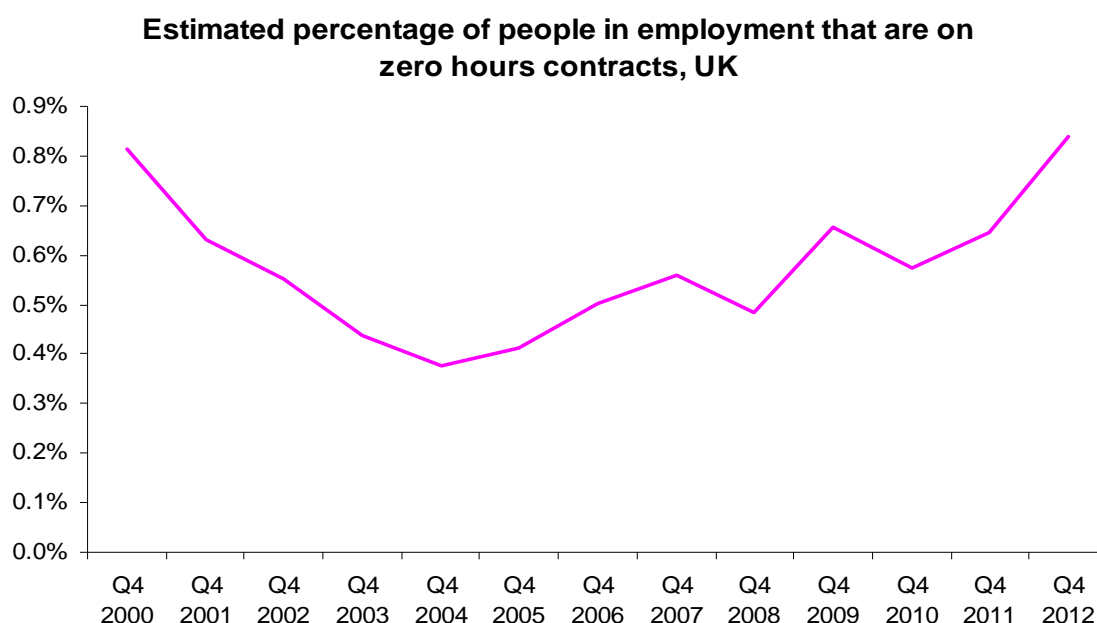
### **Box 2: Existing areas of concern with respect to Zero Hours Contracts (ZHCs)**

- **Transparency.** The information gathering exercise heard that individuals were not always aware they are employed on a zero hours contract, or that there was a possibility they could be offered no work or 'zero hours'. In some cases employers did not make this clear when advertising or interviewing people for jobs, or in the employment contract itself. Furthermore, some employers may not fulfil, or understand, their responsibilities towards individuals they employ on a zero hours contract in terms of their employment rights. There may be employers who deliberately evade these obligations. For example the CIPD survey found that 20% of individuals on zero hours contracts reported they were 'always' or 'sometimes' penalised in some way by their employer if they are not available for work when required.

- **Certainty of earnings.** Individuals engaged on zero hours contracts who are asked to work irregular hours are unlikely to have certainty over their future earnings. 40 per cent of respondents to the CIPD survey had ‘no notice’ when no further work was available from their employer, and 42 per cent of respondents reported they had ‘up to 12 hours’ notice when work was available. In some cases this can result in financial difficulties, and possible overpayment or underpayment of welfare benefits to the individual. This may undermine planning for expenses such as childcare and transport. It can also be difficult for individuals with no guaranteed hours of work to evidence regular income when applying for mortgages or credit cards.
- **Exclusivity.** A small number of individuals on zero hours contracts are prevented from working for another employer. For example, the CIPD survey found that 9 per cent of individuals on zero hours contracts are never allowed to work for another employer when their primary employer has no work available for them. It is clear that, in some circumstances, exclusivity clauses are useful and justifiable. For example, an individual may be entrusted with confidential commercial information which would make it problematic should that person choose to work with a competitor business at the same time. However, there is not always a clear or obvious reason why this should be part of the employment contract. This is particularly difficult given the individual is not guaranteed a certain number of hours work under a zero hours contract. Without a valid justification, such clauses undermine the choice and flexibility for the individuals concerned.

13. Survey data from the Workplace Employment Relations Study (WERS) suggests that the number of workplaces employing 5 or more people and using ZHCs has increased over time. 4 per cent of workplaces (employing 5 or more people) were using ZHCs in 2004, and the equivalent figure was 8 per cent in 2011. The largest increase was in the hotels and restaurants sector. Other relatively large increases were in the education sector and the health sector. In terms of size of business, of those employing less than 50 people, only 6 per cent said that they used ZHCs.

**Chart 1: Labour Force Survey of number of people on zero hours contracts**



**Source: BIS estimates based on Labour Force Survey data**

14. It is unclear currently what is the exact reason for the recent increases in the use of ZHCs, and to what extent it is either a temporary phenomenon, or will be a permanent feature of the UK labour market in the future. Given that the hospitality sector is a significant user of ZHCs the 2012 Olympics may have played a role in the recent increases seen. Given that ZHCs are also used to a significant extent in the education sector, increases in the numbers of students in colleges and universities would increase the demand, for example, of exam invigilators, a proportion of which are employed on a ZHC basis. One of the aims of the consultation is to obtain a much broader evidence base in relation to where and how ZHCs are used in the UK.

**Table 1: Weekly hours worked on zero hours contracts (ZHCs)**

**Employed staff on zero hours contracts: usual weekly hours**

	Mean	Median
Q4 2000	30	30
Q4 2001	29	28
Q4 2002	29	29
Q4 2003	23	20
Q4 2004	27	24
Q4 2005	27	25
Q4 2006	26	20
Q4 2007	27	25
Q4 2008	26	24
Q4 2009	25	22
Q4 2010	25	21
Q4 2011	25	22
Q4 2012	24	20

Source: BIS estimates from Labour Force Survey

**Option 1:**

**Non-regulatory option**

15. This option would involve non-statutory responses to address the current issues of concern with zero hours contracts (ZHCs). It could consist of:

- The provision by government of greater levels of information, advice and non-statutory guidance in relation to the use of ZHCs. This information could explain how ZHCs relate to general employment law, and general employment rights and obligations in the UK. There could also be clearer signposting of existing information to enable employers and individuals to make more informed decisions when using ZHCs. In addition, it could involve encouraging and promoting an employer-led Code of Practice which would cover the fair use of ZHCs, and particularly in terms of overcoming the current problems of exclusivity clauses and transparency in contracts.
- The Government providing examples of ‘model’ clauses for ZHCs to facilitate and promote best practice. This could involve Government producing examples which employers could use as the basis for their actual contracts.

16. Greater information provision could be offered through a variety of means. For example, online tools (possibly including the use of ‘ready reckoners’) could help individuals and employers calculate statutory leave, maternity and paternity entitlements, and sick pay entitlements more easily when using ZHCs. In addition, guidance documents/leaflets could be produced explaining more clearly existing employment rights for those on ZHCs. This could include possible case studies and best practice examples for both individuals and businesses.

17. These measures would involve costs to Government in production and dissemination. If there is a current information gap for businesses then additional information and guidance could be of net benefit to them if it enables them to use more standardised information and guidance to provide ZHCs more effectively than at present. It should also be beneficial to them if it enables them to produce better quality contracts through using best practice models/examples. The consultation seeks views from business on the potential costs and benefits in these areas.

18. An employer-led Code of Practice would involve the Government promoting and encouraging businesses to produce a Code of Practice setting out what is, and what is not, fair and appropriate use of ZHCs. This could include best practice advice for job advertisements, applications and contracts. There would be costs to produce the Code, and to apply it in the future.

19. The removal of any confusion and uncertainty surrounding the rights of individuals and the obligations of business with respect to the operation of ZHCs should improve the overall operation of ZHCs. The final content of any non-

statutory guidance is not known at this stage, and if it were to be produced, any estimates of costs to business from this will need to be estimated for any final IA produced in support of this.

20. As an alternative to a Code of Practice, to alleviate concerns over the unfair use of exclusivity clauses (which can tie an individual to an employer even when they are not receiving any work), Government could issue non-statutory guidance on how exclusivity clauses should be used for the benefit of both employers and individuals alike. Such guidance would signpost businesses to enable them to benefit from best practice in fair and appropriate use of exclusivity clauses. It would also enable individuals to benefit from exclusivity clauses where it was in their interests to do so.
21. There would be costs involved in producing any guidance or codes of practice, and familiarisation costs to businesses of coming to terms with applying these. It is unclear how many businesses operate ZHCs presently, but an estimate can be made based on WERS data available. This suggests that some 63,000 enterprises are using ZHCs to some extent currently. Initial findings from BIS's Work Life Balance research suggests that some 118,000 businesses may be using ZHCs presently.
22. Using an estimate of 1 hour at a total labour cost of a HR manager of some £27.44 (from ASHE) gives a total cost in range of £1.7 million - £3.2 million as a one-off familiarisation cost. In addition to this a figure of 1 per cent of this as an estimate for the costs of producing any Code or non-statutory guidance may be reasonable, and is not out of line with estimates from other IAs produced in the area of labour markets (e.g. the TUPE IA has an estimate of some £30,000 to produce guidance).
23. Ultimately the costs and benefits of any non-regulatory option will depend on the specific form this takes. This can only be finalised following consultation, and so these estimates will be improved for any final IA produced following consultation to support the policy response chosen.

## **Option 2: Regulatory option**

24. This would involve statutory responses to address the current issue of concern with ZHCs and could include:

- Introduction of statutory guidance on the general use of ZHCs.
- Legislating to ban the use of exclusivity clauses in ZHCs; or issuing statutory guidance on the use of exclusivity clauses.

### *i. Transparency and Certainty*

25. The Government will consider options aimed at improving the transparency of ZHCs. These could include, improving the content and accessibility of information, advice and guidance on employment contracts and rights, and benefit entitlements to individuals working on ZHCs. In this context one option is for the Government to issue statutory guidance in relation to, for example, outlining the circumstances in which zero hours contracts (ZHCs) are valuable, best practice in explaining in job adverts and to job applicants what a ZHC is likely to include, and what role there is for employers to communicate clearly to individuals hired on ZHCs details of their employment particulars.

26. The removal of any confusion and uncertainty surrounding the rights of individuals and the obligations of business with respect to the operation of ZHCs should thus improve the overall operation of ZHCs. The final content of any statutory guidance is not known at this stage, and if it were to be produced, any estimates of costs to business from this will need to be estimated for any final IA produced in support of this.

27. In addition, there will be familiarisation costs to businesses of coming to terms with any statutory guidance or regulatory changes in the area of ZHCs. It is unclear how many businesses operate zero hours contracts presently, but an estimate can be made based on survey data available. This data suggests that some 102,000 - 116,000 businesses could be using zero hours contracts to some extent currently. Using an estimate of 1 hour at a total labour cost of a HR manager of some £27.44 gives total a total cost in region of £2.8 million - £3.2 million as a one-off familiarisation cost. Further, a figure of 1 per cent of this as an estimate for the costs of producing any statutory guidance may be reasonable, and is consistent with estimates produced in other IAs (e.g. the IA for the TUPE Regulations)

*ii. Exclusivity*

28. The impact of regulatory options in relation to exclusivity clauses depends on the approach chosen and the reason why exclusivity clauses are used by businesses. Where they are used justifiably by businesses, for example, to protect intellectual property, a ban could result in such benefits being lost. In these cases an exclusivity clause may also be of benefit to the individual, as a reward, for example, for specific or expert skills or knowledge. A blanket ban on exclusivity clauses in ZHCs may thus be inappropriate if it reduces the number of existing contractual arrangements that reflect a current efficient market outcome, providing mutual benefit to employer and individual.

29. However, there are other means of ensuring commercial confidentiality which such employers can use if exclusivity clauses were banned in zero hours contracts, and these could mitigate any costs from a ban. There are certain restrictions on an employee's behaviour which are implied into an employment contract. There is an implied duty of fidelity owed by the employee to the employer and this can encompass various duties including a duty not to solicit clients, a duty of confidentiality and a duty not to compete. Employment contracts can also include express terms which explicitly set out the parties' agreement and are often used if employers want certain duties to continue after the employment relationship has ended e.g. non-competition or non-solicitation covenants.

30. Where businesses are using exclusivity clauses solely for their own benefit in terms of reducing their costs of employing workers - by effectively retaining a ready supply of individuals - then banning them would involve a cost to these businesses. But there would be a benefit to other businesses as they would now have access to these individuals (who are willing and able to work on ZHCs) that they previously could not access.

31. Where using ZHCs incurs lower transaction costs to businesses than alternative means of hiring labour, the benefit to these businesses could be at least as great as the costs to businesses of having to find alternatives to exclusivity clauses. For example, businesses could avoid the need to pay existing staff overtime payments, or employ them for longer hours in case they were to be needed. Or it could involve them having to avoid the use of agency staff who are less familiar with the specific operation and needs of the business. It is possible that business overall could benefit from the restriction of the use of unjustified exclusivity clauses. This is because, for example, an individual no longer tied to an exclusivity clause could work for more than one other business in the future and so reduce the transaction costs of hiring labour in more than one business (compared to raising the cost of hiring labour in one business).

32. This means that a ban on unjustified exclusivity clauses is likely to be less costly than a blanket ban. This is because in the former case justified exclusivity clauses could still be used and the associated benefits they bring retained. Table 2 below summarises the proposals with respect to exclusivity clauses in ZHCs and describes their potential impacts. The consultation asks for information on the current use of exclusivity clauses, and the current costs and benefits of their use.

**Table 2: Description of potential impacts of regulatory proposals on exclusivity clauses**

<b>Proposal</b>	<b>Costs</b>	<b>Benefits</b>
Outright Ban	<ul style="list-style-type: none"> <li>i. Cost to business e.g. loss of intellectual property.</li> <li>ii. Cost to individual if exclusivity provides rewards for specific/specialist skills, knowledge etc.</li> <li>iii. Cost to business of other means of meeting labour requirements.</li> </ul>	<ul style="list-style-type: none"> <li>i. Benefit to other businesses of ability to use individual on ZHCs, so avoiding costs of other forms of hiring.</li> <li>ii. Benefit to individuals of not being restricted unjustifiably in their job opportunities.</li> </ul>
Statutory Guidance to prevent unjustified use	<ul style="list-style-type: none"> <li>i. Cost to business of other means of meeting labour requirements.</li> </ul>	<ul style="list-style-type: none"> <li>i. Benefit to other businesses of ability to use individual on ZHCs, so avoiding costs of other forms of hiring.</li> <li>ii. Benefit to individuals of not being restricted unjustifiably in their job</li> </ul>

opportunities.

## **Risks and assumptions**

33. There is some uncertainty surrounding the extent and use of zero hours contracts (ZHCs) in the UK currently, and the extent to which recent increase in their use are permanent or temporary features of the labour market. For example, whether they reflect some form of Olympics effect in the hotel and hospitality sectors, and whether they reflect general uncertainty in the UK and World economy in terms of short-term economic growth and its sustainability.

34. One of the main aims of the consultation is to obtain actual evidence on the nature and use of ZHCs across the UK to determine whether there exist significant market failures, or instances of unfair practices that merit additional Government intervention in this area. There is a risk that over-regulating will diminish the benefits that the appropriate use of ZHCs can bring to both employers and individuals. But there is also the risk that where unfair practices are taking place, not taking action to prevent the negative impacts of these will undermine the operation of the UK labour market.

## **Small and Micro Business Assessment (SaMBA)**

35. Any changes to legislation (in relation, to example, exclusivity) would be unlikely to come into effect until after 31 March 2014 and so would fall under the Small and Micro Business Assessment (SaMBA).

36. The BIS fact-finding exercise undertaken in the summer of 2013 suggested that the vast majority of ZHCs were used by large and medium-sized businesses rather than small and micro firms. This is supported by data from the ONS, and is also supported by survey data. For example, a survey by CIPD of over 1,000 of its members found that only 4 per cent of businesses employing up to 9 people used ZHCs. For businesses employing up to 49 people this rose to 1 in 7. The WERS data also suggests that of businesses employing less than 50 people, only 6 per cent use ZHCs.

37. The regulatory proposals outlined in the consultation document do not exempt small and micro businesses from legislation in this area. This is because the proposals are intended to provide benefits to individuals, and so improve the operation of the UK labour market, irrespective of what type or size of business an individual works for. The aims of the policy in terms of improving equity and fairness would be reduced if certain businesses were to be exempt from legislative provisions. This problem could be exacerbated if in the future unfair practices increased across businesses who would be exempt principally because they were exempt.

38. Currently it is not clear that small and micro businesses would be disproportionately affected by any regulation in this area. However, if evidence from the consultation demonstrates that there will be disproportionate impacts on small and micro businesses, then any regulatory proposals adopted will consider how to mitigate these impacts. Such mitigation, which could include some form of exemption, or extended transition period, or variation in requirements, will be assessed in any final IA produced.

## **Direct costs and benefits to business calculations (following OITO methodology)**

39. Following consultation, if there was introduction of new regulations or statutory guidance with respect to the use of zero hours contracts (ZHCs) this would result in an 'IN' under the current OITO Methodology. If policy also involved change to primary legislation, for example in the area of exclusivity, this would also be in-scope of OITO. To reflect this, Option 2 is presented in this IA as an 'IN' under OITO.

40. Given that any regulatory activity in the area of ZHCs is of domestic, and not EU origin, any net costs to business following the adoption of regulatory proposals would require the equivalent of two 'OUTs' to be found to compensate business. At this stage, the estimates of regulatory proposals can only be considered as being indicative, and will be firmed-up following consultation.

## **Summary and preferred option**

41. This IA outlines the potential costs and benefits of proposals, as presented in the accompanying consultation document, to alleviate concerns with the operation of zero hours contracts (ZHCs) in the UK. These are compared to a 'do nothing' option of not taking any further action. There is no preferred option currently. The estimates presented in this IA are wide in range principally because there is much uncertainty about exactly how many individuals work on ZHCs in the UK currently, with estimates ranging from 250,000 to some 1 million or more individuals.

42. In this IA the proposals are characterised as a regulatory option and a non-regulatory option, and the costs and benefits discussed and presented relate to these. It is possible that following consultation, if a decision is taken to 'do something' then this could consist of a combination of regulatory and non-regulatory measures. It would be expected that the costs and benefits of this approach would lie somewhere in-between the costs and benefits represented by the non-regulatory and regulatory options presented in this IA. Any final IA would provide detailed assessment of this.

## **Annex: Wider impacts**

The following provides a summary of wider impacts of the proposals outlined in this IA.

### **Competition Assessment**

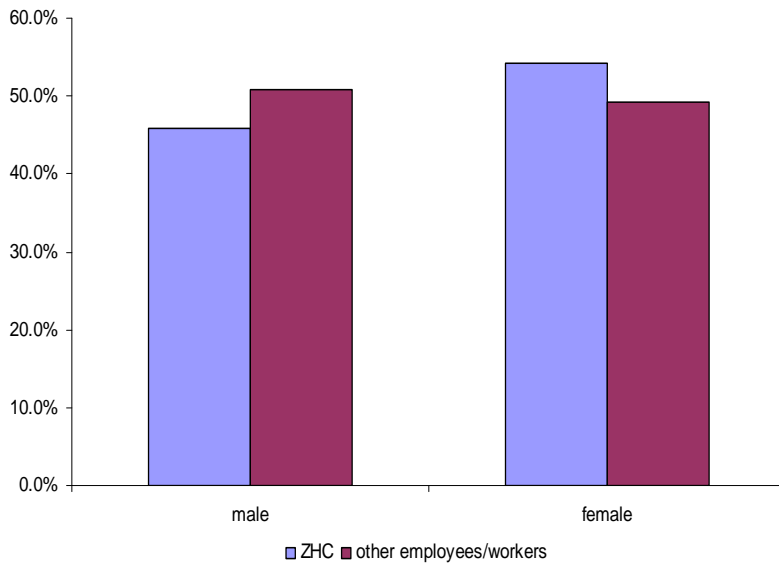
The proposals are not expected to have a detrimental impact on competition amongst businesses. Any regulation in the area of ZHCs will not limit the number or range of potential suppliers operating in any particular market. It would also not raise the costs of any new entrants relative to the costs of existing suppliers. Furthermore, it would not limit the channels suppliers can use or geographic area they can operate in, and would not reduce incentives to compete amongst each other. Additional information obtained from the consultation will be used to inform further analysis in any final IA produced.

### **Equality Impact Assessment**

The current lack of robust data on individuals who work under zero hours contracts makes it difficult to fully assess the impact on equality of the proposals outlined in this IA. Where the proposals provide benefits to individuals these are expected to improve equality if certain groups (e.g. women with children) are disproportionately impacted by zero hours contracts (ZHCs) at present. Outside of such impacts the proposals are not expected to have any negative impact on equality as it will be the nature of the employment contract of individuals that will determine how they will be affected rather than what group they 'belong to'.

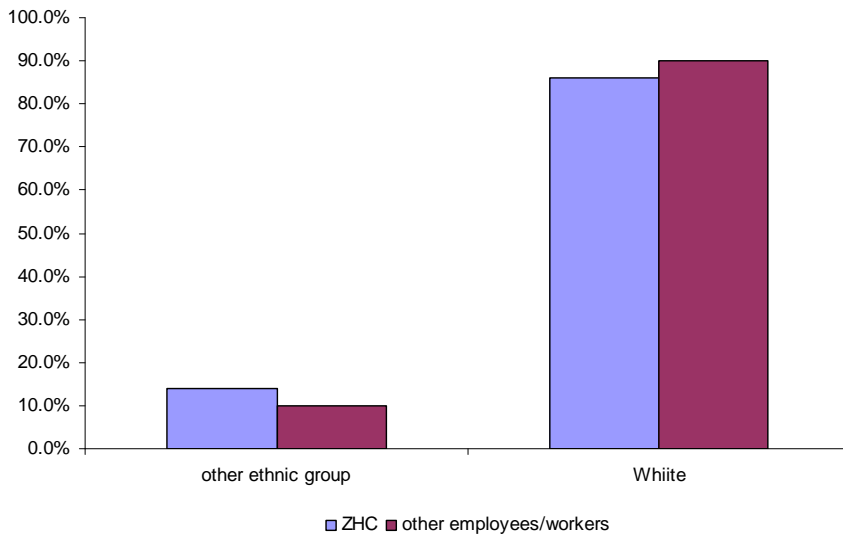
In terms of sex, data from the Labour Force Survey (LFS) shows that there appear to be more women working on ZHCs relative to other forms of employment but the difference is not significant as shown in Chart A1 below.

**Chart A1: Males/Females working on ZHCs compared to other employment.**



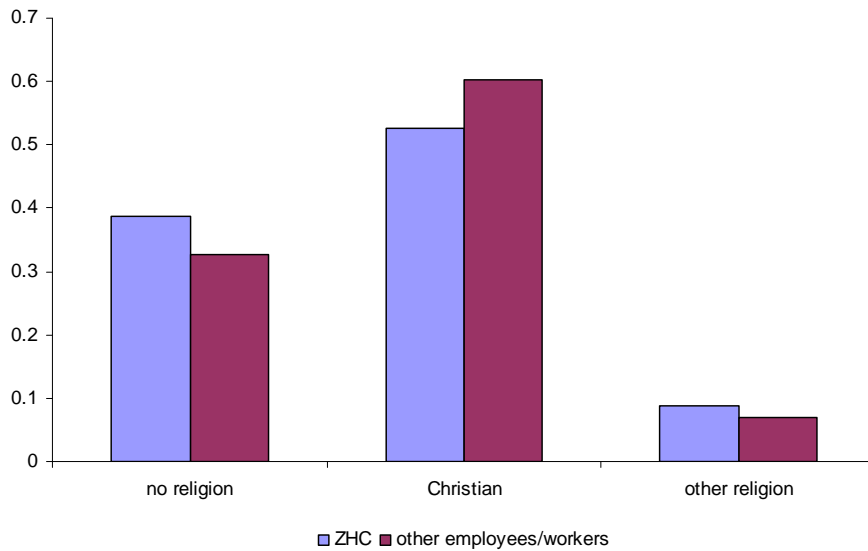
In terms of ethnicity, and in terms of religion there also does not appear to be significant differences between those working on ZHCs and those working in other types of employment as shown in Charts A2 and A3 respectively.

**Chart A2: Ethnicity of individuals on ZHCs compared to other employment**





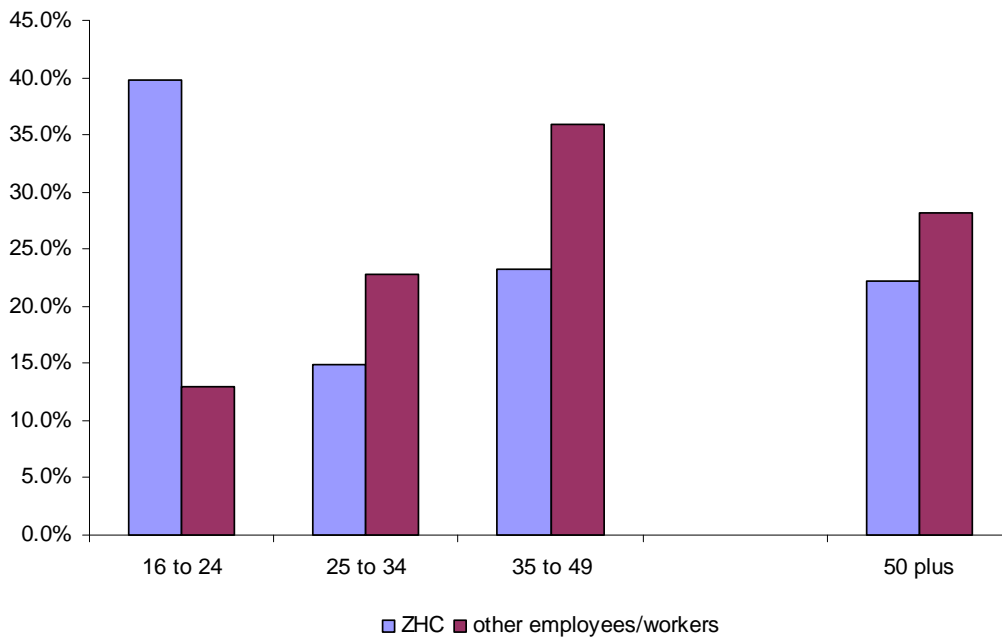
**Chart A3: Religion of individuals on ZHCs compared to other employment**



The area where there is a significant difference between individuals working on ZHCs and in other forms of employment appears to be that of age. LFS data shows (Chart A4) that younger people are disproportionately represented in ZHCs compared to other employment types. Whether this raises particular equality issues depends on the outcome of the consultation. If, for example, the data represents a prevalence of full-time students working on ZHCs to supplement their income, then this could be less of an issue in terms of equality than if, for example, the data represents young people first experiencing the labour market through ZHCs.

Any final IA will reflect the outcome of the consultation in terms of information and evidence gathered and will inform a revised equality impact assessment.

**Chart A4: Age of individuals in ZHCs compared to other employment**



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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000

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