 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Banning exclusivity clauses in zero hours contracts	
Lead department/agency	Department for Business, Innovation and Skills	
Stage	Final	
IA number	BISLMD002	
Origin	Domestic	
Expected date of implementation	1 October 2015 (SNR 10)	
Date submitted to RPC	17 July 2014	
RPC opinion date and reference	22 August 2014	RPC14-BIS-1965(2)
Departmental assessment		
One-in, Two-out status	Zero Net Cost	
Estimate of the equivalent annual net cost to business (EANCB)	N/A	
RPC overall assessment	GREEN	
<p>RPC comments</p> <p>The IA is fit for purpose. There are some areas where the Department's analysis of the proposal could be strengthened (as set out below) but the assessment of the direct impacts on business and the SaMBA are sufficient.</p>		
<p>Background (extracted from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary?</p> <p><i>Evidence from a government fact-finding exercise in the Summer of 2013 and consultation in early 2014 showed that while zero hours contracts (ZHCs) provide benefits to both employers and employees, there was some actual, or perceived, abuse in some cases, causing detriment to individuals. Abuse of ZHCs could also impact negatively on UK businesses generally if it leads to under-use of a potentially efficient form of contracting. Government intervention is justified to reformulate employment legislation which has provided undue market or monopoly power (real or perceived) to ZHC employers, providing them with the opportunity to exploit workers and also restrict employment and growth elsewhere.</i></p> <p>What are the policy objectives and the intended effects?</p> <p><i>The policy objectives are to:</i></p> <ul style="list-style-type: none"> <i>remove undue market or monopoly power associated with the ability to impose exclusivity clauses. This should improve the efficiency of the labour market, which will benefit both businesses in general and employees;</i> 		

- *increase job opportunities, in particular for vulnerable or low-earning employees;*
- *increase the opportunity for other businesses to increase employment and growth;*
- *potentially enhance other government objectives, such as welfare to work policies. For instance, the Government are looking to encourage individuals who are working but have low earnings, and who currently work fewer hours than their personal circumstances would allow, to find additional hours. Removing barriers to improving levels of earnings, such as exclusivity clauses, for individuals on low-paid contracts supports this ambition.*

Comments on the robustness of the One-in, Two-out assessment

The Department provides an estimated equivalent annual net cost to business figure of -£0.08 million. This estimate is based upon assumptions using limited information and is subject to considerable uncertainty. However, the Department's assumptions appear to be conservative, particularly in relation to the benefits to employers who wish to take on workers who are currently subject to exclusivity clauses. Therefore, the assessment that this proposal is net beneficial to business can be considered to be robust.

The Department's assessment that this regulatory proposal is net beneficial to business (an IN with zero net cost) provides a reasonable assessment of the likely impacts, and is consistent with paragraph 1.9.12 of the Better Regulation Framework Manual (July 2013).

Comments on the robustness of the small & micro-business assessment (SaMBA)

The proposals increase the scope of regulation on business. A SaMBA is, therefore, required.

The SaMBA in the IA is sufficient. Smaller employers are less likely to use zero hours contracts (ZHCs) and, in three-quarters of cases, these contracts covered less than 20% of their workforce. There is no evidence to suggest that smaller organisations are more likely to use exclusivity clauses. Based on this evidence, the IA concludes that small or micro-businesses are unlikely to be disproportionately affected by the regulations, and would benefit from improved flexibility in the labour market.

The SaMBA examines a number of proposals to mitigate the impacts on small and micro-businesses. These are judged not to be appropriate as they would impact negatively on the policy aim of overcoming market failures in the operation of ZHCs. The IA states that providing exemptions for small and micro-businesses would give an unfair advantage to such employers using ZHCs with exclusivity clauses.

Quality of the analysis and evidence presented in the IA

The proposal is to ban the use of exclusivity clauses in employment contracts that do not offer guaranteed hours. The Department expects this to have a cost impact on employers who currently use exclusivity clauses. Individuals who are currently constrained by these clauses would benefit from being able to take additional jobs, and this in turn would benefit individuals' new employers by increasing output. Based on information from a number of different sources, the IA estimates that approximately 17,500 employers use ZHCs with exclusivity clauses included, and that 87,000 workers may be subject to these.

Familiarisation costs The Department estimates that private sector employers using exclusivity clauses will face one-off familiarisation costs of approximately £0.5 million. This is calculated by multiplying the number of employers (17,500) by the cost of one hour of management time (£23). This appears to be a reasonable estimate. The IA could be improved by providing further consideration of whether there might be some employers who are considering the use of exclusivity clauses for the first time and who might also feel the need to spend some time familiarising themselves with the ban.

Confidentiality clauses The IA states that employers will not be required to provide affected individuals with new contracts. However, where employers use exclusivity clauses to ensure company information remains confidential, employers may wish to introduce confidentiality clauses into employment contracts for particular individuals. There are no specific data to indicate how prevalent this might be. The Department assumes that workers with access to sensitive information are likely to be relatively high earners, which the Department defines as those with wages in the upper quartile of the wage distribution. Based on Labour Force Survey (LFS) data, this equates to about 5 per cent of the 87,000 workers subject to ZHCs with exclusivity clauses included. Using data from the employment law administrative burdens survey to indicate the likely cost to employers of making such a change (£65), the Department arrives at a total one-off cost to business of £0.3 million. This appears to be a reasonable assessment. The IA would be strengthened by further consideration of whether, in practice, more employers will feel the need to issue new employment contracts.

Impact of changes to the availability of workers Using LFS data, the Department anticipates that 6.3 per cent (5,500) of the 87,000 workers currently with exclusivity clauses will obtain a second job following the proposed ban. Using estimates from a previous IA, the cost of re-organisation due to absence is expected to cost private sector employers approximately £0.5 million each year to cope with the reduced availability of workers. However, the IA states that these costs may be lower in practice because "*Many employers using ZHCs will be used to dealing with unavailability of some individuals, and will have a pool of individuals to offer work to*" (paragraph 53). Overall, this appears to be reasonable assessment.

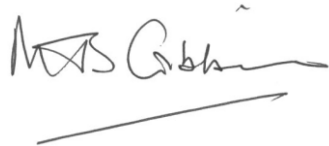
Other employers would benefit from the increased availability of these workers. The IA estimates that this would amount to approximately £0.7 million each year. The IA makes a cautious assumption that employers who take on these workers would get a return on average of 10 per cent of the labour costs. This compares to an estimated average across all businesses of 53 per cent based on UK National

Accounts data on the labour share of output (paragraph 66 of the IA). This appears to be reasonable assessment.

There are a number of areas where the Department could strengthen the IA by gathering further evidence on the key assumption outlined above to refine quantification of the costs and benefits. In particular, the Department could consider further its estimate of how many individuals, free of exclusivity clauses, would take up second jobs, for example through comparison with the survey results on the proportion of individuals who report they want to work additional hours (figure 4, page 10).

Benefits to individuals The Department's IA takes the additional wages that individuals would receive from extra hours they would be able to work following the proposed ban as the benefit to them from the proposal. The IA could explain why this approach has been used, rather than, as would seem more appropriate, the utility value of additional consumption income less the opportunity cost of leisure foregone.

Signed

A handwritten signature in black ink, appearing to read 'Michael Gibbons', with a long horizontal line extending to the right from the end of the signature.

Michael Gibbons, Chairman