



Department
for Business
Innovation & Skills

Final Impact Assessment

Banning exclusivity clauses in
zero hours Contracts

OCTOBER 2014

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Title: Banning exclusivity clauses in zero hours contracts in the UK IA No: BISLMD002 Lead department or agency: BIS Other departments or agencies:	Impact Assessment (IA)		
	Date: 01 October 2014		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Ivan Bishop ivan.bishop@bis.gsi.gov.uk Abbey 1, Floor 3, 1 Victoria Street, London, SW1H 0ET			
Summary: Intervention and Options			RPC Opinion: Green

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 One-Out?
£62.37m	£0.92m	-£0.08m	Yes Zero in

What is the problem under consideration? Why is government intervention necessary?

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 the 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. It may also be possible with re-formulation to align employment regulation to another policy, the Government's Universal Credit, to minimise barriers to in-work individuals from working the hours they are able to.

What are the policy objectives and the intended effects?

The policy objectives are:

- Remove undue market or monopoly power associated with the ability to impose exclusivity clauses.
- 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 polices.

What policy options have been considered, including any alternatives to regulation?

A range of policy options were considered. Reflecting consultation responses, the proposed policy option is:

- Exclusivity clauses will be banned in all employment contracts that offer no guaranteed hours or income (ZHCs).

There will be a further consultation on the potential for avoidance of the ban, and potential remedies for any avoidance, which will be timed so that any remedies required can be in place when the ban comes into force.

There will also be improved guidance on employment rights and best practice for the operation of ZHCs, the impact of which will be assessed when the approach to be taken has been considered in more detail.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2020					
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 ₂ equivalent change in greenhouse gas emissions? NA			Traded:		Non-traded:

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 option.

Signed by the responsible Minister:

Date: October 2014

Summary sheets of Costs and Benefits

Summary: Analysis & Evidence

Policy Option 1

Description: Exclusivity clauses will be banned in all employment contracts that offer no guaranteed hours or income (ZHCs).

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 30.53	High: 95.73	Best Estimate: 62.37

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	1	0.3	3.0
High		0.9	7.7
Best Estimate		0.8	0.6

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

Employers face one off familiarisation costs of £0.48 million for the legislation banning exclusivity clauses. Some employers will also amend their affected contracts to include confidentiality clauses (£0.29m.). Employers will face ongoing reorganisation costs of £0.62 million a year due to additional unavailability of workers no longer restricted by exclusivity clauses.

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

There are no key non-monetised costs. We have not costed the possibility that employers may make ZHC individuals redundant due to the new policy as we consider the risk of this happening very low: ZHCs will continue to provide high flexibility to the employer (and individual) – and evidence suggests that employers are not expecting the measure to cause them substantial disruption.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	Not quantified	4.4	38.2
High	Not quantified	11.5	98.7
Best Estimate	N/A	8.0	68.5

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

Ongoing benefits to new employers of enabled individuals taking additional work, due to returns on additional output generated of £0.84 million each year. Also, benefits to individuals of wages for their additional hours worked (though some may go to the Exchequer in reduced benefits) of £7.11m annually.

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

The benefit to the economy resulting from expenditure of the additional wages, which is likely to benefit UK businesses through increased turnover.

Key assumptions/sensitivities/risks

Discount rate 3.5

We have assumed that enabled individuals on ZHCs with exclusivity clauses will only get additional jobs in line with the proportion of those on ZHCs who currently have additional jobs. There are sensitivities around the numbers of individuals whose main job is a ZHC, we have provided maximum and minimum estimates – though variation in these numbers will affect ongoing costs similarly.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies
Costs: 0.5	yes	Zero in
Benefits: 0.6		
Net: 0.1		

Evidence Base (for summary sheets)

Strategic overview:

1. A zero hours contract (ZHC) is an employment contract in which the employer doesn't guarantee any hours of work, and the individual on the contract is not obliged to accept any work offered.
2. Over the summer of 2013 the Government (through BIS) conducted an informal information gathering exercise on the use of ZHCs operating in the UK today. Evidence gathered through this exercise identified that many organisations use zero hours contracts responsibly and that these contracts can offer flexibility and opportunities to both the employer and individual (see the CIPD figures quoted in paragraph 13).
3. Employers benefit from: flexibility in the workforce, allowing them to be responsive to demand; a reduction in the risk of expansion; retention of skills through enabling those looking to partially retire to continue to work for the organisation, and retention of knowledge of an organisation's culture/structure in individuals not on guaranteed hours. Some individuals benefit from: the flexibility – enabling those requiring this sort of flexibility to join the labour market – and providing those in the labour market greater choice in the hours they work ; enabling those looking to retire to retain a connection to the labour market through occasional work.
4. However, there was evidence presented that raised concerns around how some ZHCs were used in practice. These primarily related to:
 - ◆ **Exclusivity** - in some circumstances ZHCs included an 'exclusivity clause' preventing an individual from working for another employer, even if the current employer is offering no work. The CIPD suggested that 9% of ZHC workers reported that they were not allowed to take work with another employer when their primary employer was not able to offer them work¹.
 - ◆ **Transparency** – individual workers and businesses are not always clear on the terms, conditions and consequences of a ZHC. This may lead to employers not always understanding or fulfilling their responsibilities to their workers on ZHCs².
5. The evidence gathering exercise also noted some individuals reported that they had no say in their employment contract and little dialogue with their employer. This gave rise to individuals believing that the employer had excessive power in determining the terms and conditions of the contract. For example, they were being asked to work at short notice, giving them no chance to plan ahead, for instance to arrange childcare. Also presented were cases where individuals on ZHCs felt that if they were not able to take work when offered it in a particular instance the employer would not offer them further work. These issues may affect individuals on variable hours contracts generally, but will have a particular impact on those with no guaranteed hours. 42% of ZHC respondents to the CIPD survey reported that they had from 0 to 12 hours' notice if work were available, while 20%

¹ CIPD, *Zero Hours Contracts, Myth and Reality*, November 2013, p23.

² The Resolution Foundation report, *A matter of time: The rise of zero hours contracts*, reports on p13 anecdotal evidence of employers using zero hours contracts to avoid particular employment obligations.

on ZHCs reported they were 'always' or 'sometimes' penalised in some way by their employer if they are not available for work when required³.

6. There is, therefore, some evidence (real or perceived) of some employers exploiting the worker by unduly restricting their choice and freedom to undertake work. This may reflect that in certain areas the legislation (or the perception of the legislation) allows employers the opportunity to exploit workers.
7. Some individuals on ZHCs are not in a position to re-negotiate the contracts to provide them with the flexibility to work the hours they want or require, nor, if they are bound by an exclusivity clause, are they able to take up additional work with other employers. It also prevents other businesses from offering extra work to the workers bound by exclusivity clauses and so can restrict the amount of goods and services they produce and the amount of goods and services that they produce and the amount of employment that they can offer.

Legal Rights for those employed on ZHCs

8. Somebody on a ZHC could be an employee or a worker, and would have all the rights associated with those employment statuses. The ZHC Consultation Document outlined the employment rights that those on ZHCs are entitled to⁴. Employees, who form a subset of workers, are entitled to a more comprehensive set of protections available under UK employment law. However, included among the rights for all workers and employees are the national minimum wage, paid annual leave and protection from discrimination.

Background on ZHC usage

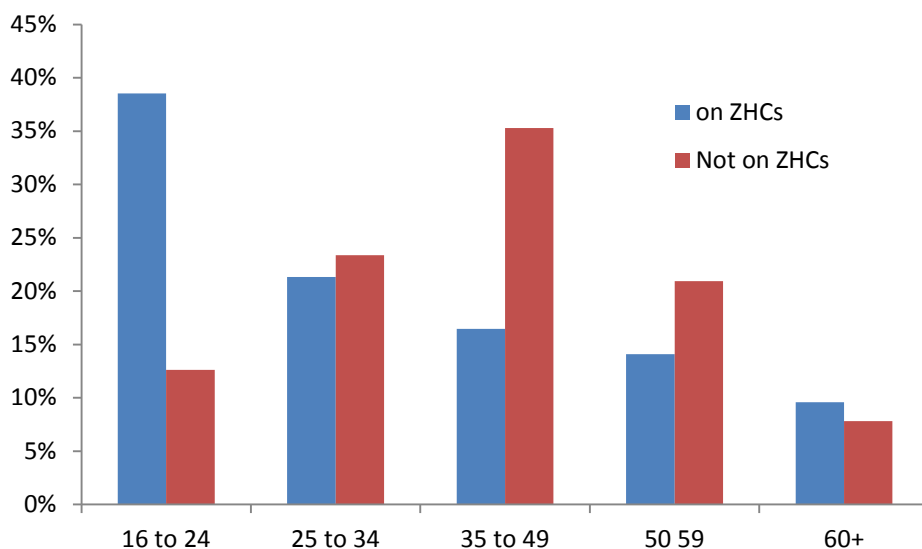
9. ZHCs are a relatively uncommon form of employment contract. According to the Office of National Statistics (ONS) Labour Force Survey (LFS), the individuals on ZHCs in their main job represent around 2 per cent of total employment in the UK (around 583,000 people, including self-employed). The ONS estimates that the number on non-guaranteed hours contracts (at 1.4 million) represent around 4 per cent of workforce jobs in the UK⁵.
10. BIS estimates from the LFS show that there were around 542,000 employees or workers on ZHCs in their main job in the 4th quarter of 2013 (non-seasonally adjusted). Around 56% were women (compared to around 49% among employees and workers overall). Those whose main job was on a ZHC were more likely to be aged 16-24 or aged 60 or over than employees or workers overall (see Figure 1). The 26% of ZHC employees/workers who were students (of which three-quarters were full-time students) partly accounts for the concentration among young workers.

³ CIPD, *Zero Hours Contracts, Myth and Reality*, November 2013, p18 and p21

⁴ BIS, *Zero Hours Employment Contracts Consultation*, December 2013, p7-8 and Annex 2.

⁵ ONS, *Analysis of Employee Contracts that do not guarantee a minimum number of Hours*, 30th April 2014, http://www.ons.gov.uk/ons/dcp171776_361578.pdf. This provided an estimate of 583,000 individuals (including those who were self-employed, and 542,000 who were employees/workers) whose main job was on a zero hours contract (LFS) and an estimate of 1.4 million contracts that offered no guaranteed hours where work was carried out in the past two weeks (from a survey of employers).

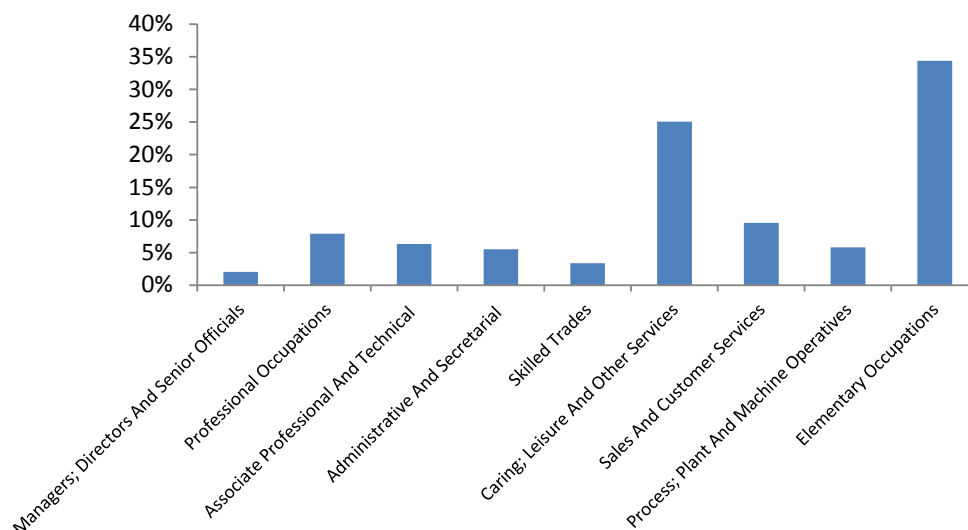
Fig 1: Comparison of age distributions of ZHC and non-ZHC workers/employees, 4th quarter 2013



Source: BIS estimates from LFS

11. Employees/workers on ZHCs are distributed across the range of occupations, but are more likely to be in those that are relatively low paid, such as elementary occupations (34%), caring leisure and other services (25%), and sales and customer services (10%). This is backed up by information from CIPD’s ZHC research that suggested that half of ZHC employees/workers were paid less than £15,000 a year, compared to 28% of all employees⁶.

Fig 2: Employees and Workers whose main job was on a ZHC, by occupation group 4th quarter 2013

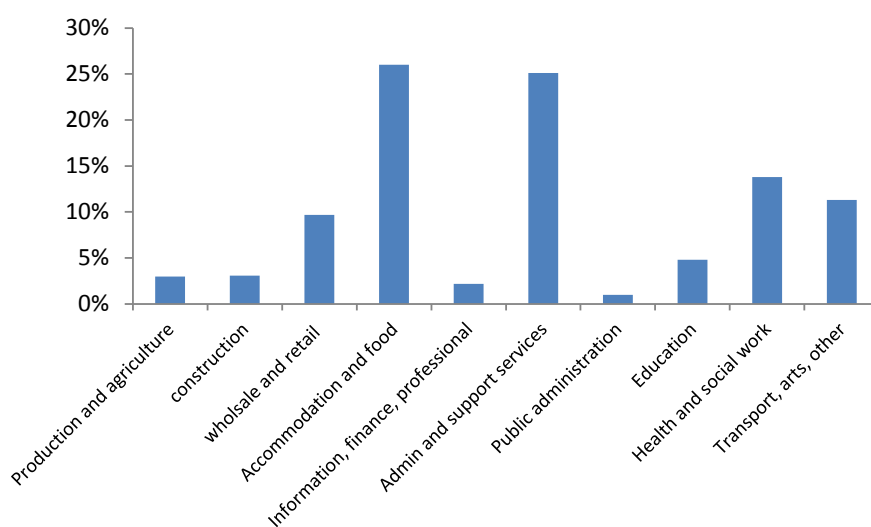


Source: BIS estimates from LFS

⁶ CIPD, *Zero Hours Contracts, Myth and Reality*, November 2013, p24

12. The ONS data on no-guaranteed hours contracts where individuals on the contracts had recently worked suggested that around a quarter of the 1.4 million contracts were in the accommodation and food industry, with a further quarter in administrative and support services⁷. However, the ONS pointed out that this last proportion is likely to be affected by agency workers (as agencies are included in the support industry, but the workers will be allocated to hirers predominantly operating in other industries). Other industries accounting for substantial proportions of individuals working on no guaranteed hours contracts include health and social work and wholesale and retail.

Fig 3: No-guaranteed hours contracts where individual had recently worked by industry group, January 2014



Source: ONS survey of businesses

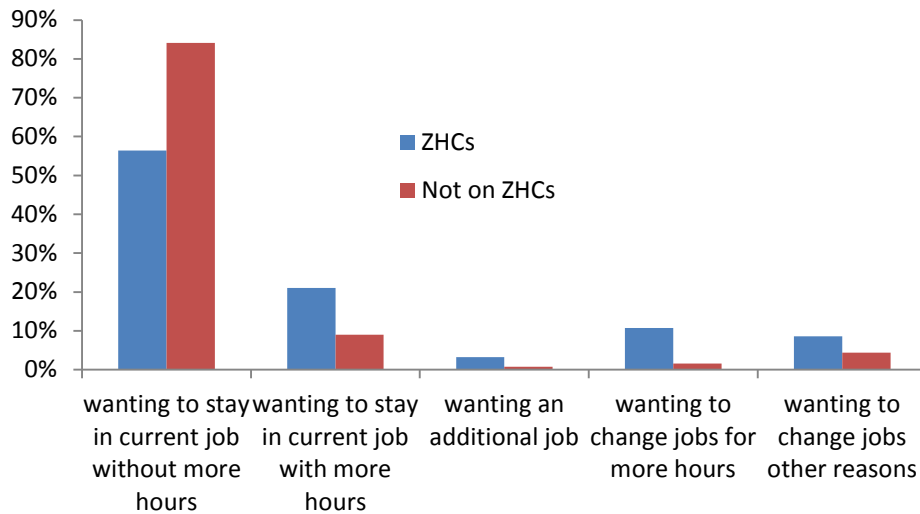
13. The CIPD report, *Zero Hours Contracts: Myth and Reality*, states that 60% of individuals on ZHCs were satisfied with their job, a similar proportion to employees overall (59%). However, only around half of those on ZHCs were satisfied with having no minimum contracted hours, with 27% being dissatisfied. Around 28% of individuals on ZHCs reported that they had little or no choice over the number of hours they worked, with around 20% feeling that they were penalised sometimes or always if they were not available for work when required⁸.

14. Evidence from the LFS suggests that those on ZHCs are more likely to want to work more than their current hours than employees not on ZHCs, including through taking an additional job or by changing job. There is also a slightly higher proportion on ZHCs looking to change jobs for other reasons. However, the majority of those on ZHCs are not looking to change jobs or work more hours.

⁷ ONS, Analysis of Employee Contracts that do not guarantee a minimum number of Hours, 30th April 2014, p12

⁸ CIPD, Zero Hours Contracts: Myth and Reality, November 2013, p 5, p14, p19,p18.

Fig 4. Employees/Workers without 2nd jobs – whether wanting to work more hours, Q4 2013



Consultation on zero hours contracts

15. On the 19th December 2013, BIS opened a twelve week consultation on ZHCs, which concluded on 13th March. The Government consulted on the following options:

- ◆ Do nothing: rely on existing common law redress which enables individuals to challenge exclusivity clauses (see paragraph 28 below).
- ◆ Legislating to ban the use of exclusivity clauses in contracts that offer no guarantee of work,
- ◆ Government issuing guidance or encouraging the production of an employer-led Code of Practice on the fair use of exclusivity clauses;
- ◆ Improving the content and accessibility of information, advice and guidance on ZHCs;
- ◆ Encouraging a broader, employer-led Code of Practice covering the fair use of ZHCs;
- ◆ Potential Government production of model clauses for ZHCs.

Preferred policy option

16. In light of the responses to the consultation, and discussions with DWP, the government has decided on the following policy:

- ◆ Exclusivity clauses will be banned in all employment contracts that offer no guaranteed hours or income (ZHCs)⁹.

⁹ We assume that the wider definition of zero hours contracts as used in the ZHC Consultation – an employment contract in which the employer doesn't guarantee the individual any work – applies in this impact assessment. However, as explained in ONS, *An examination of employee contracts that do not guarantee a minimum number of hours*, p4-5, some contracts are explicitly called zero hours contracts, and some employers use employment contracts with no guaranteed hours which they did not call zero hours contracts.

17. There were over 36,000 responses to the consultation. Consultation responses were heavily in favour of banning exclusivity clauses in zero hours contracts (83% supporting a ban, with 9% opposing). A number of respondents argued that it was unfair for an employer who was not providing an individual with work, or sufficient hours of work, during a week to prevent that individual from taking on additional work with another employer to earn wages or supplement those already earned.
18. A ban on exclusivity contracts in ZHCs therefore removes a barrier preventing individuals from working when their main employer is unable to offer them sufficient work. This tackles a block on the flexibility for individuals that ZHCs are expected to offer, and will enable those affected to work additional hours if they wish. Those individuals benefitting will no longer need to be dependent on one employer, who may not be able to provide sufficient hours every week, to earn their wages. However, it does not remove the flexibility offered under fairly operated ZHCs to employers and those individuals wanting or requiring it.
19. The Government also plans to improve the content and accessibility of information, advice and guidance on a) employment contracts and rights and b) entitlement of individuals on ZHCs to benefits. However, the details of this exercise have yet to be decided. The impacts of this element of the policy will be assessed when it is clearer what will be involved.
20. Further consideration will also be given to Government encouragement of employer groups and trade unions to work together to produce non-statutory guidance on fair operation of ZHCs for specific industries. Any impacts will be considered in due course when this potential action has been more fully developed.
21. There remain concerns that the introduction of a legal definition of ZHCs in order to ban exclusivity clauses may enable employers to easily avoid the ban (by amending the contracts to provide a guaranteed minimum of 1 hour of work a week – though the flexibility lost would have to be less valuable than the ensured availability of ZHC staff). There will be a further consultation to consider the potential for avoidance, and potential remedies for avoidance. This consultation process is due to be completed before the primary legislation banning exclusivity clauses in ZHCs comes into place, enabling secondary legislation to be introduced to ensure the ban is effective, if evidence suggests it is required.
22. We expect the Small Business Bill, which contains this change to legislation, to get Royal Assent in March 2015, and the policy to come into effect on 1st October 2015.

Rationale for intervention

Redress undue market or monopoly power

23. The current legislation allows employers offering zero hours contracts to include exclusivity clauses. This provides them with the opportunity to exert undue market or monopoly power in restricting the ability of individuals to undertake additional work with other employers.
24. Banning exclusivity clauses will prevent the abuse of this market or monopoly power and will overcome the barrier on the flexibility of individuals that ZHCs are expected to offer.

Incomplete, uncertain and asymmetric information

25. In the area of ZHCs, it is likely that employers will know more about the particular types and nature of the jobs they are offering than do individuals:
 - ◆ 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. In relation to the quality of existing information, advice and guidance on these contracts, 42% of respondents said the current guidance was 'Not Helpful'. Only '14% said they found existing guidance 'Very Helpful'. This clearly demonstrates that more can be done in this area.

26. The Government therefore also plans to improve the content and accessibility of information, advice and guidance on a) employment contracts and rights and b) entitlement of individuals on ZHCs to benefits. However, the details of this exercise have yet to be decided and will be determined by a second consultation. The impacts of this element of the policy will be assessed when it is clearer what will be involved.
27. In addition to problems of asymmetric information there are also problems with incomplete information. For example, it may be that this leads to employers not always understanding or fulfilling their responsibilities to their workers on ZHCs or the worker being unaware that they are not receiving some or all of their employment rights. Increasing the certainty of the legislation both through increasing the accessibility and provision of information and explicitly banning exclusivity clauses will enable better market decisions based on more complete information.
28. Close to 80% of respondents to the consultation question "do you think there is more employers can do to inform individuals on ZHCs what their rights and terms are?" answered in the affirmative. This included a similar proportion of business respondents (covering all sizes of firm) and business representative groups. It was felt in the consultation that the rights and terms and conditions should be set out in the contract, and that the employer should properly explain the implications of ZHCs to individuals being placed on the contracts.
29. Finally, there is the question of uncertain information. As noted earlier, an individual can challenge an exclusivity clause in their employment contract under current common law. The employer would need to justify that the exclusivity clause was required to protect its legitimate interests for the relevant court to consider it legally enforceable. However, given the lack of clarity about exclusivity clauses a worker challenging the contract is likely to face significant financial and time costs with no guarantee that they will achieve the outcome that they desire. In addition, judging by the consultation responses and other stakeholder engagement done by BIS, this existing legal route is little understood by individuals. There is little evidence that it has been made use of very often. The proposed policy will bring clarity to the legal position of exclusivity clauses in employment contracts of those whose guaranteed weekly earnings are low. It will enable this group of individuals, who are less likely to pursue legal challenges through the courts, to confidently take up additional work if they wish to do so.

Equity

30. Increasing the efficiency of the labour market through the proposed policy will, by reducing exploitation, also improve equity goals. The ability to introduce exclusivity clauses can also impose undue restrictions on the individual's freedom and opportunities. This can be problematic, particularly for individuals on zero hours contracts, whose primary employer may not be able to provide them with sufficient work each week (potentially no work in some weeks). Exclusivity clauses would also prevent those whose ZHC job doesn't usually provide enough hours of work from boosting their weekly pay through an additional job. The exclusivity clause therefore restricts the ability of the individual to prosper by taking up additional work.
31. In addition, partly because of equity considerations it is planned that there will be a focus on low-wage workers who are more likely to be on ZHCs, both in the banning of the exclusivity clauses and in the provision of information. Information from CIPD's ZHC research

suggested half of ZHC employees/workers were paid less than £15,000 a year, compared to 28% of all employees⁶.

Note: The rest of this impact assessment will focus on banning exclusivity clauses in ZHCs.

Policy objective

32. The policy objectives are:

- 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
- 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 polices. For instance, the government is 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

Monetised and non-monetised costs and benefits

33. This section outlines the potential costs and benefits of the proposed policy. Where possible, we have monetised the costs and benefits arising from these proposed policies. There is limited data available on the use of exclusivity clauses in employment contracts. This is discussed in more detail in Annex A.

34. The policy proposal states that exclusivity clauses will be banned in employment contracts that offer no guaranteed hours. Any further action in relation to banning exclusivity clauses will be subject to further consultation, when impacts will be considered for the options presented. Therefore, monetised costs and benefits reflect employment contracts offering no guaranteed hours, though reflecting that consultation on options to ensure that employers don't just circumvent the ban will take place before the ban is introduced (hence we assume that there is 100% compliance with this policy change). This will be considered further in relation to the consultation.

Transition costs

35. There will be familiarisation costs (from researching and reading up on the policy) to employers using ZHCs relating to the banning of exclusivity clauses in ZHCs. Other changes that affected businesses might make are separately considered and monetised.

Familiarisation costs – employers using exclusivity clauses in ZHCs

36. The ONS survey of businesses that asked about use of no-guaranteed hours contracts estimated that the following proportions of employers made use of no-guaranteed hours contracts (ZHCs)¹⁰.

¹⁰ ONS, Analysis of Employee Contracts that do not guarantee a minimum number of Hours, 30th April 2014, http://www.ons.gov.uk/ons/dcp171776_361578.pdf p10.

Table 1: The proportion of employers that make use of no-guaranteed hours contracts

Employer size	1-19 employees	20-249 employees	250+ employees
Using non-guaranteed hours contracts (%)	12%	28%	47%

Source: ONS

37. Taking the numbers of employers from the BIS Business Population Estimates 2013¹¹, and multiplying by the above percentages, we get estimates of the number of employers using ZHCs.

Table 2: Estimated number of employers using ZHCs

	Whole economy	Private Sector	Public Sector	Non-profit sector
Employers using NGHCs	172,492	162,691	1,709	7,822

Source: BIS estimates

38. There is no specific information about the proportion of employers using ZHCs that make use of exclusivity clauses. A major source of information on this is the CIPD *Zero Hours Contracts: Myth and Reality* report, which identifies the proportion of employees on zero hours contracts who are never allowed to work for another employer even when their primary employer has no work for them¹². While not specifically referring to exclusivity clauses, these estimates indicate the extent to which restrictions operate in practice.

Table 3: Proportion of employees (on ZHCs) never allowed by their primary employer to work for another employer, 2013

	Private sector	Public sector	Non-profit sector
Employees never allowed to work for another employer (%)	10	7	13

Source: CIPD

39. Using the proportions shown in Table 3, we estimate the number of employers using ZHCs who include exclusivity clauses in their contracts. To estimate the familiarisation costs, we consider that it would take on average around one hour of management time for employers to familiarise themselves with the policy relating to the banning of exclusivity clauses in protected employment contracts. This is similar to estimated familiarisation times specified in recent IAs relating to changes of legislation affecting employment rights¹³. The policy

¹¹ BIS, *Business Population Estimates 2013*, November 2013, <https://www.gov.uk/government/publications/business-population-estimates-2013>

¹² CIPD, *Zero Hours Contracts, Myth and Reality*, November 2013, p23.

¹³ BIS, *Final Impact Assessment: Regulations Prohibiting the Blacklisting of Trade Unionists*, January 2010, p8-9 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/245412/10-506-impact-assessment-regulations-prohibiting-blacklisting-of-trade-unionists.pdf and BIS, *Phasing out the default retirement age- Government response to consultation: Impact Assessment*, January 2011, p22 http://www.legislation.gov.uk/ukia/2011/44/pdfs/ukia_20110044_en.pdf

change assessed in this IA involves one relatively straightforward change to employment rights. Employers should have good awareness of whether they use no guaranteed hours contracts (with or without exclusivity clauses) so familiarisation with the legislative change should take no longer than familiarisation with the removal of the default retirement age, or regulations prohibiting the blacklisting of trade unions.

40. We estimate that of the 17,433 employers, around 14,000 have 1-19 employees, 3,000 have 20-249 employees and 400 have 250 or more employees. To estimate the cost of management time, we use the Annual Survey of Hours and Earnings estimate for the median hourly wage excluding overtime of full-time HR managers or directors was £23 in 2013. Uprated by 17.8% to account for employers' non-wage costs¹⁴, the hourly cost per employer is estimated at £27. The estimated number of employers affected by familiarisation costs, and the estimated familiarisation costs, at 2013 prices, are shown in table 4 below.

Table 4: Estimated number of employers using ZHCs with exclusivity clauses and estimated familiarisation costs

	Whole economy	Private sector	Public Sector	Non-profit organisations
Number of employers with exclusivity clauses	17,433	16,296	120	1,017
Estimated familiarisation costs (2013 prices) £000s	472	442	3	28

Source: BIS estimates

Other transition costs

Costs to employers of change to existing contracts

41. As shown in Table 4, we estimate that around 17,000 employers have exclusivity clauses in ZHCs. The new policy will mean that these clauses will no longer be enforceable in law. However, employers will not be required to provide affected individuals with new contracts.
42. It may be that some employers had been using exclusivity clauses to ensure that high level company information or intellectual property remained confidential. These employers may wish to introduce confidentiality clauses into employment contracts for particular individuals holding such information.
43. The consultation responses suggest that little use is made of exclusivity clauses in ZHCs to keep employers' intellectual property safe. While some business respondents to the consultation mentioned this reason as a possible justification for exclusivity clauses, hardly any businesses who said they used exclusivity clauses in ZHCs indicated that this was their motivation for doing so. Lawyers suggest that, while an individual remains in work at an employer then that individual has an implied duty of confidentiality to the employer. However some employers may wish to include an express term in an employment contract, stating in broad terms the individual's confidentiality obligations while they remain in their employ¹⁵. Employers with strong concerns about the confidentiality of information

¹⁴ This estimate is based on Eurostat figures for employers' labour costs and non-wage costs in the UK, 2012, for the whole economy excluding agriculture and public administration.

¹⁵ Paul Maynard, Briefing Note: Business Information, Gaby Hardwicke solicitors, September 2013,p3.

that their ZHC workers had access to are likely to have already included confidentiality clauses in their employment contracts.

44. On this basis, we expect relatively few ZHCs would be amended to introduce confidentiality clauses following the ban on exclusivity clauses. We would expect this to be more likely to affect those on higher hourly rates of pay, reflecting skilled labour or some level of seniority (where access to confidential, commercially important data – which could be restricted – may be more likely)¹⁶.
45. There are difficulties in precisely estimating the number of employees or workers on ZHCs. These are discussed in more detail in Annex A, which also sets out how we have estimated the numbers on ZHCs without a second job and with an exclusivity clause. These estimates, set out in Table A1, range from 48,000 to 125,000, with a best estimate of 87,000.
46. BIS estimates from the LFS suggest that around 5% of these individuals have hourly wage rates in the upper quartile of the wage distribution¹⁷. Applying this percentage to the figures in Table A1, the estimated number of individuals who have their ZHCs amended to include confidentiality clauses are as shown in Table 6. While we expect that employers are likely to limit access among its workforce to information which it is important to keep confidential, it may be that affected employers will think that some staff with hourly earnings outside the upper quartile will require a confidentiality clause in their ZHC. However, there are likely to be some high hourly wage employees affected by the ban who will not have their contracts amended, so these numbers may balance out. Overall we expect the numbers to be relatively small, and more for the reasons discussed above

Table 5: Number of individuals with ZHCs containing exclusivity clauses whose contracts are amended to include confidentiality clauses

Number of amended ZHC contracts	Total	Private sector	Public Sector
Minimum (LFS based) (nearest 500)	2,500	2,000	500
Maximum (ONS based) (nearest 500)	6,500	5,500	1,000
Best estimate (nearest 500)	4,500	4,000	500

47. The 2008 Employment Law Admin Burdens Survey 2008¹⁸, by ORC International, using the Standard Cost Model approach, estimated that the unit cost for employers in making

¹⁶ Sue Jenkins, New Research: Companies turning away from exclusivity clauses in zero hours contracts, DAB Beachcroft, April 2014 <http://www.dacbeachcroft.com/news-and-events/press-releases/companies-turning-away-from-exclusivity-clauses-in-zero-hours-contracts> This article states that some business respondents “point to specific, limited projects undertaken by senior employees or directors, particularly where there is a need to protect commercial confidentiality or trade secrets, as occasions where such clauses may still be necessary”.

¹⁷ The Annual Survey of Hours and Earnings shows that the upper-quartile gross hourly wage rate excluding overtime for employees in April 2013 was £17.66. This equates to an annual salary of £32,141 for individuals working 35 hours a week for a year.

¹⁸ BERR/ORC International, Employment Law Admin Burdens Survey 2008: Final Report, December 2008, p38

changes to a statement of employment particulars was £58. Uprated to 2013 prices using the GDP deflator, this rises to £65. Evidence from lawyers, including the Briefing Note by Paul Maynard referenced above¹⁵, and evidence from legal firms' web pages, suggest that a specific generic statement about the employee's or worker's confidentiality obligation would be used¹⁹. Applying this total to the numbers of contracts affected, we estimate the following costs to employers resulting from amending employment contracts.

Table 6: costs resulting from employers amending ZHCs to include confidentiality clauses (2013 prices)

Estimated costs from amending employment contracts	Total	Private sector	Public Sector
Minimum (LFS based) (£000s)	162	141	21
Maximum (ONS based) (£000s)	419	365	53
Best estimate (£000s)	290	253	37

Ongoing Costs

Ongoing costs to employers

48. Affected employers will face some costs due to the loss of having individuals available to work for them when required. The policy will make exclusivity clauses legally unenforceable in zero hours employment contracts. It will enable these individuals, if their circumstances allow, and they are interested in doing so, to take on an additional job with another employer. Employers who have been using exclusivity clauses to ensure that they will have individuals available for work when work is available would have to adjust to this potential loss of availability.
49. We describe how the numbers of employees/workers on ZHCs with no second job and an exclusivity clause in their contract are estimated in Annex A. These estimates, set out in Table A1, range from 48,000 to 125,000, with a best estimate of 87,000.
50. Only a proportion of the individuals enabled by the ban on exclusivity clauses in protected contracts will want, or be able to take on, an additional job. Based on analysis of 5 quarter longitudinal LFS data, it is clear that only a small proportion of individuals in-work will take on an additional job. It is not possible to analyse those on ZHCs using the longitudinal datasets. However, for those with varying hours of work (of which ZHC individuals are generally a subset) around 6.3% of those with no second job in the first quarter obtained an additional job in subsequent quarters (as described in the table below).

Table 7: Estimated proportion of employees/workers on varying work hours who get a 2nd job

Number of quarters with 2 nd job	Percentage of those on varying hours
4 subsequent quarters	0.5%

¹⁹ A search of the internet suggests that generic confidentiality clauses for UK employment contracts are available, so there is no evidence that such changes would be more costly than expected using the Standard Cost Model approach.

3 subsequent quarters	1.6%
2 subsequent quarters	0.8%
1 subsequent quarter	3.5%
total	6.3%

51. We therefore assume that while the policy enables all those with exclusivity clauses in their ZHCs to get an additional job, only a small proportion (6.3%) will do so. This reflects that some will not be able to take an additional job, due to their personal circumstances or availability of a suitable job, while some will be able to obtain more hours in their main job. The estimated numbers are set out in the table below.

Table 8: Estimated numbers of ZHC individuals enabled by the ban on exclusivity clauses in their contract to get an additional job

	Total	Private sector	Public Sector
Minimum (LFS based) (000s)	3.1	2.7	0.4
Maximum (ONS based) (000s)	7.9	6.9	1.0
Best estimate (000s)	5.5	4.8	0.7

52. This will mean that, in some circumstances where their primary employer has work available, these individuals will be unavailable. As the individuals are enabled by the policy to take an additional job, we assume that they arrange this to accommodate their usual working pattern in their primary job as far as possible.

53. As employers are likely to have access to the enabled individuals for work for most of the week, the potential unavailability introduced by this policy is similar to that due to absence (through leave, sickness, caring responsibilities etc.). 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. Others will enable individuals on ZHCs to select shifts on rotas in advance. In such cases, the primary employer might not be affected by having reduced availability in some of their workers. Their systems are designed to take account of some unavailability among their workforce. Also, as identified in paragraph 29, current legislation requires that exclusivity clauses, to be legally enforceable, must be required to protect the business's legitimate interests. Potentially, therefore, some employers utilising exclusivity clauses in ZHCs may not have been able to enforce the clauses if they had been challenged.

54. However, we assume that increased unavailability of the ZHC individuals enabled by the ban to get an additional job will impact on the affected employers. These employers will face some reorganisation costs to cope with increased unavailability of the enabled workers. These reorganisation costs could cover²⁰:

- ◆ Arranging employment cover (this may involve extending the pool of variable hours individuals employed)
- ◆ Re-allocating work among existing staff (which may involve using less productive workers)

²⁰ Bevan.S et al, *How Employers Manage Absence*, DTI Employment Relations Series 25, March 2004, p44-48.

- ◆ Potential loss of work due to individual not being available

55. The Modern Workplaces Impact Assessment²¹ considers how to estimate the cost of absence to employers. Based on an analysis of the weekly cost of absence suggested by a 2011 CBI survey²² on absence and workplace health, the Impact Assessment estimate was that the cost of reorganisation due to absence was 11% of total labour costs. However, it was acknowledged that this was likely to be an underestimate due to the difficulties faced by employers in fully accounting for these reorganisation costs. The upper bound of the likely range of reorganisation costs due to planned absence, as a proportion of total labour costs, was 14%. As the primary employer will be aware that the individual has got an additional job, then it will be able to plan for the worker's additional unavailability.

56. When considering how much disruption per week an employer may face from an individual worker we have considered the following factors:

- ◆ According to BIS estimates from the LFS, 42% of employees on ZHCs worked their usual hours in the survey reference week, with 12% working up to 4 hours fewer and 7% working up to 4 hours more than usual. Over 60% of individuals on ZHCs therefore worked between 4 hours less and 4 hours more than their usual hours in their reference week (known as actual hours).
- ◆ Excluding those working fewer than their usual hours in the reference week due to sick leave, or maternity/paternity or annual leave, around two-thirds of those whose actual hours differed from their usual weekly hours worked fewer hours in their reference week. Where possible, enabled individuals on ZHCs would aim to get an additional job that complements rather than clashes with their usual hours in their primary job to maximise their additional wages. Individuals on ZHCs usually work a median of 22 hours a week, so there is some room for manoeuvre within the week for those looking to work more. However, some may not be able to avoid some disruption, particularly if their pattern of usual hours varies week-by-week.
- ◆ However, around one-fifth of individuals on ZHCs got more than their usual hours in the reference week (the median extra hours worked was between 3 and 5 hours). It is probable that these individuals in many cases will not be able to take hours offered extra to their usual hours in their primary job once they have taken a regular additional job.

57. Taking these factors into account, we estimate that the average weekly disruption per enabled worker will be small. We make the cautious assumptions that enabled workers offered extra hours can't take them, and that workers doing their usual hours, or less, also face some disruption. On this basis, we estimate that the additional job makes the individual unavailable for 4 hours a week.

58. We estimate the percentages of enabled individuals who will have a second job for 1 through to 4 quarters in a year based on the figures in Table 7. For instance, 0.5% of employees / workers working on varying hours per week get 2nd jobs for four subsequent quarters, according to the LFS. This represents 8% ($0.5/6.3 = 0.08$ (or 8%) of employees /

²¹ BIS, Modern Workplaces: Shared parental leave and pay administration consultation impact assessment, February 2013, Annex 4, p66-68.

²² CBI, Healthy Returns? Absence and Workplace Health Survey, 2011

workers working on varying hours per week who get 2nd jobs. These percentages are set out in Table 9.

Table 9: Estimate extent of second job obtained by enabled individuals

Number of quarters with 2 nd job	enabled individuals who get a second job
4 subsequent quarters	8%
3 subsequent quarters	24%
2 subsequent quarters	12%
1 subsequent quarter	56%
Total	100%

59. We estimate the number of additional hours each year that the individuals are unavailable to their main employer (see Table 10) . We take the numbers of enabled individuals getting a second job (table 8) and multiply these by the percentages in Table 9. We then assume that individuals taking second jobs throughout the year are unavailable for 4 hours a week for 48 weeks in the year (This is because there won't be additional unavailability for periods of leave, and the statutory minimum holiday is for 4 weeks pro rata a year). For those getting a second job for three quarters of the year the calculation of unavailable hours is based on 36 weeks, for 2 quarters it is 24 weeks, and for 1 quarter, 12 weeks²³.

Table 10: Estimated annual hours of additional unavailability to main employer due to enabled individuals taking second jobs

Estimated annual hours (000s)	Total	Private Sector	Public Sector
Minimum estimate (LFS basis)	270	235	34
Maximum estimate (CIPD basis)	697	608	89
Best estimate	484	422	62

60. We use the mean hourly wage of ZHC individuals of £7.7, and uprate by 17.8% to include non-wage costs. We also used the estimated reorganisation cost figure, of 14% of total labour costs. We apply the resulting reorganisation cost per hour to the numbers of hours of additional unavailability, set out in Table 10, to estimate the annual cost to employers from reorganisation costs as shown in Table 11. Our best estimate for these costs is the mid-point between these two ranges.

²³ For the Private sector minimum estimate of 235,000 hours this would be (approximately) $4 \times 48 \times 0.08 \times 2,700 + 4 \times 36 \times 0.24 \times 2,700 + 4 \times 24 \times 0.12 \times 2,700 + 4 \times 12 \times 0.56 \times 2,700$.

Table 11: Estimated annual reorganisation costs for employers resulting from coping with increased unavailability of individuals taking additional jobs (2013 prices)

Estimated reorganisation costs £(000s)	Total	Private Sector	Public Sector
Minimum estimate (LFS basis)	345	301	44
Maximum estimate (CIPD basis)	892	779	114
Best estimate	619	540	79

Ongoing benefits

61. The policy will enable individuals currently constrained from taking additional jobs because of exclusivity clauses to take up a second job. Their new employer will benefit from their output produced in the additional hours they work.
62. To estimate this benefit, we have taken a similar approach to the one for estimating employers' reorganisation costs:
- ◆ We use the estimated numbers of enabled individuals contained in Table 8.
 - ◆ The LFS shows that ZHC individuals with a second job work a median 7 hours a week in it. We assume that those enabled to get a second job work an additional seven hours a week.
 - ◆ As employers will have to pay the relevant holiday pay, we assume that these individuals will get 7 hours a week at the mean ZHC wage of £7.7.
 - ◆ As with the ongoing costs estimate, the proportions having a 2nd job for 1, 2, 3 or 4 quarters a year are based on the figures in Table 9. However, as these individuals are entitled to statutory paid holiday in their 2nd job, this will be based on 13,26,39 and 52 weeks (for those with a 2nd job for one quarter a year, the calculation is £7.7 x 13 x 7).

Table 12: Estimated annual hours worked in additional job by enabled individuals (including leave entitlement)

Estimated annual hours (000s)	Total	Private Sector	Public Sector
Minimum estimate (LFS basis)	731	638	93
Maximum estimate (CIPD basis)	1,889	1,648	241
Best estimate	1,310	1,143	167

63. The total additional wages paid to these workers annually is shown in the table below.

Table 13: Estimated additional wages paid annually to individuals enabled to get an additional job, 2013 prices, £000s

	Total	Private sector	Public sector
Minimum estimate (LFS)	3,971	2,817	412
Maximum estimate (CIPD)	10,259	8,949	1,309
Best estimate	7,115	6,207	908

64. The purpose of this policy is to improve the functioning of the labour market which will increase the potential opportunities for additional employment and growth. We have estimated the benefits from additional employment in Table 12, identifying the additional wages. However, the improved functioning of the labour market will also provide opportunities for growth, through employers' returns from additional output.
65. The benefit to employers will be in the profit resulting from the output produced by these individuals working 7 hours a week in their second job. There is no clear estimate on the rate of return for businesses of individuals with low weekly wages.
66. Looking at the UK National Accounts (the Blue Book 2013²⁴), the labour share of total output is estimated at around 65%²⁵, and 35% goes to business as profit. which is the ratio of total labour costs per worker to output per worker. On average, for each unit of labour employed, UK business is estimated to receive 53% (35%/65%)²⁶. However, operating surplus (or returns) will vary by industry, and within industry, and it seems likely that firms with higher wage rate employees (reflecting, skills, knowledge and/or productivity) may have higher rates of return on their labour costs. As we are assuming that most enabled individuals on ZHCs will get 2nd jobs at a low wage rate, we would assume that any rate of return on the labour costs for the enabled second jobs will be well below this overall rate.
67. Alternatively, in the long run the benefits to employers from employing an additional worker will be zero; given the marginal cost of employing workers in the long run will equal the marginal benefits in a perfectly competitive market. Banning exclusivity clauses in ZHCs is intended to improve the flexibility of workers in the labour market, so ZHCs no longer prevent ZHC workers from taking on an additional job. We would assume the rate of return is likely to be greater than zero given the reform is designed to improve the functioning of the labour market.
68. No information is readily available about what return employers would need to make in addition to labour costs to take on employees/workers, especially in the specific

²⁴ ONS, UK National Accounts, The Blue Book 2013, November 2013, Table 1.2.

²⁵ J. Appleton, Revised Methodology for Unit Wage and Unit Labour Costs: Explanation and Impact, ONS, October 2011.

²⁶ We calculate the unit labour cost ratio, which is the ratio of total labour costs per worker to output per worker. Using current prices figures for 2012 of £433 billion for gross operating surplus, £842 billion for compensation of employees, £85 billion for mixed income and £1,383 billion for gross value added, we estimate that unit labour costs account for around 65% of output per employee.

circumstances of it being a 2nd job for the individuals, with relatively few hours in a week. For the reasons discussed, we assume that is likely to be lower than the 53% business receives on average for each unit of labour, but greater than zero. We therefore make a cautious estimate that for employers to take on these individuals, they will get a return on average of 10% on their labour costs, calculated as wages multiplied by 17.8% to take account of non-wage costs. The estimated annual benefit to employers is set out in the table below. We take as our best estimate the mid-point between the estimates based on the LFS and CIPD figures.

Table 14: Estimated benefits to employers from additional output produced by individuals enabled to take an additional job, 2013 prices, £000s

	Total	Private sector	Public sector
Minimum estimate (LFS based)	468	408	60
Maximum estimate (ONS based)	1,208	1,054	154
Best estimate	838	731	107

Benefits to individuals and the Exchequer

69. We expect that individuals enabled to take an extra job will earn additional wages, as set out in Table 12 above. However, it is likely that some of those enabled to take an additional job will be on universal credit. Their additional weekly earnings will result in an adjustment to their benefits to take account of their increased income. The benefit from the additional earnings will therefore be shared between the individuals and the Exchequer to some extent. We have not attempted to estimate this split as it is dependent on a number of factors that it would not be sensible to try and estimate.

Risks and assumptions

70. There are a number of risks to the assumptions made in monetising the costs and benefits. Potential risks include:

- ◆ Employers who use ZHCs with exclusivity clauses may make individuals on these contracts redundant if exclusivity clauses are banned. This would appear to be a very low risk. As noted above, only a small proportion of those with exclusivity clauses are expected to get an additional job after being enabled by the ban. However, there is likely to be some demand for additional hours among those employed on ZHCs, so it may be relatively easy for some affected employers to find existing ZHC employees/workers to make up the hours not taken up by those obtaining a 2nd job. ZHCs will also still provide the flexibility of not having to guarantee any hours of work to individuals on these contracts. There was little evidence from the consultation that employers would face serious disruption from a ban on exclusivity clauses in ZHCs. A very small proportion of business respondents suggested a ban might impact negatively

on jobs, with a much higher proportion thinking there would be no negative impact on jobs²⁷. Some business respondents suggested positive impacts.

- ◆ As many enabled individuals on ZHCs are likely to be low paid, they may lose some benefit payments to reflect their additional earnings, providing a disincentive to take the 2nd job. As DWP's universal credit policy is designed to make work pay, individuals will see a net gain in income from the wages received for the 2nd job. At the same time, DWP will be looking to encourage those in work who could work additional hours to do so, offering the potential to lower dependency on welfare. These two factors are likely to act as a driver for individuals, which will mitigate against any disincentive relating to lost benefits.

71. Due to the lack of data specifically covering many of the issues raised when considering the policy impacts, a number of assumptions have been made. These are discussed below.

- ◆ As set out in Annex A, there are difficulties with measuring the numbers on ZHCs in their main job. We have set out estimates based on two estimates from official statistical sources, the LFS and the ONS business survey data. These may potentially be considered to be respectively an underestimate and overestimate. We have used these estimates therefore to provide maximum and minimum estimates. The IA uses the mid-point of costs and benefits derived from these two sources as a best estimate to take account of these issues, as there is a lack of information available to point to a figure closer to either the maximum or minimum.
- ◆ No data is available that explicitly measures the number of individuals on ZHCs that have an exclusivity clause in their contract. However, the CIPD estimates provide a reasonable basis for the proportion on exclusivity clauses. There is little evidence from business respondents to the consultation that businesses are utilising exclusivity clauses. This may suggest that the CIPD figures would be more likely to overestimate than underestimate the proportions with exclusivity clauses, though we are aware on no alternative quantitative information to provide a comparison with the CIPD figure.

Sensitivity analysis

- ◆ The policy enables individuals on ZHCs prevented by an exclusivity clause in their contract from getting an additional job to get an additional job. We have therefore assumed that it is most appropriate to assume that affected employers will face reorganisation costs due to some ZHC individuals having greater unavailability. As discussed above, we have used the model for reorganisation costs developed in the Modern Workplaces IA. However, we have used the upper bound in that model, of 14% of labour costs, to estimate reorganisation costs, as that IA mentioned some factors suggesting that the best estimate of 11% used in that IA may be a slight underestimate. If the 11% figure had been used instead, the reorganisation costs to employers would be reduced to £486,000. This would lead to an increase to £0.2 million in the equivalent annual net benefit to business, with changes on the overall net present value also marginal.
- ◆ We have also assumed that on average employers would face 4 hours additional unavailability for each week that the enabled individual works in a 2nd job. We have little available information about the working patterns of those on ZHCs, and therefore how easy it would be to fit a 2nd job around the usual hours worked in their main job. There is no evidence available that allows a comparison between ZHC individuals with an

²⁷ Around 7% of around 40 businesses who provided a response on this issue (Q3 in the consultation) thought there might be a negative impact on jobs, while most thought there would be no impact, while some suggested positive impacts like more or better quality jobs.

exclusivity clause, and those without. However, the policy enables some individuals to potentially get an additional job. It seems reasonable to assume that, as they are looking to maintain their existing job, they will look to minimise disruption and avoid clashes between work hours in their primary and second job. Evidence from the LFS suggests that individuals whose main job is on a ZHC will tend to work fewer than their usual hours if their hours vary, so it is reasonable to assume disruption will be slight. Also, in general, because of the nature of ZHCs, employers tend to operate systems that take account of potential worker unavailability. This is reflected in the consultation responses, which provide little evidence that employers expect to face much disruption if exclusivity clauses on ZHCs were banned. However, if we assume that average additional unavailability was 7 hours a week worked in 2nd Job, this would increase the annual reorganisation cost to employers to £1.1 million, and produce an equivalent annual net cost to business of £0.2 million. If we assumed additional availability was 2 hours a week, this would reduce the annual reorganisation cost to employers to £309,000, and lead to an equivalent annual net benefit to business of £0.3 million. In both cases, change to the overall net present value would be relatively marginal at substantially under £1 million a year.

- ◆ We have estimated that employers face reorganisation costs, and enabled individuals get extra wages, based on an hourly wage rate of £7.7 (the mean rate for those on ZHCs according to the LFS). If the adult national minimum wage (NMW) rate of £6.31 was applied in both cases instead, this would reduce the ongoing annual cost to employers due to reorganisation to £503,000 and the ongoing benefits to employers from return to output to £682,000. The equivalent annual net annual benefit to business reduced marginally to £0.06 million. If the reorganisation costs are calculated based on the mean rate, and the wages from additional jobs are based on the adult NMW rate. Then there is zero equivalent annual net cost (or benefit) to business. In both cases, the overall net present value would be slightly over £12 million lower at around £50 million.
- ◆ We have assumed a return to employers from the additional labour of 10% of labour costs. As noted above, this is based on the fact that the policy will improve the functioning of the labour market, and employers will utilise this to take the additional opportunities provided for growth. However, it is a cautious approach, as we assume that on average the additional jobs are likely to be in low paid, low productivity roles. If we assume a return of 0% to business, then this would lead to an equivalent annual net cost to business of £0.5 million. However, if we assume a slightly bigger return on labour costs, of 15%, the annual monetised benefit to employers would rise to £1.26 million, and there would be an equivalent annual net benefit to business of £0.4 million. In both cases, the change to overall net present value would be relatively marginal.
- ◆ We have assumed that where an enabled individual does a 2nd job, on average they work 7 hours a week in this job, in line with the median hours worked in 2nd jobs by individuals on ZHCs with such jobs. Given the median hours worked in their main job by those on ZHCs, of 22 hours, it seems likely that additional work would have around this number of hours. If we'd assumed an average of 4 additional hours, instead of 7, then the monetised ongoing annual benefit to employers would fall to £479,000, and there would be an equivalent annual net cost to business of £0.2m. If the assumption was changed to 10 hours, this would result in a £0.3m equivalent annual net benefit to business. In these cases, the net present value would change by + or - £30 million.
- ◆ One of the key assumptions is based on LFS data showing that relatively few individuals take on 2nd jobs – and of these, many will come from those who do not say they are looking for more hours of work, as well as from this latter group. Overall, based on those who say they are working variable hours, around 6.3% moved from not having a 2nd job in the first quarter of the period covered to having a 2nd job at some stage in the subsequent year. This is broadly consistent with the 5.9% of those with ZHCs who

had a 2nd job. There is some indication of what would happen if the numbers enabled and obtaining a 2nd job either increased or decreased relative to the best estimate: If the numbers increased, then the monetised ongoing benefits to employers would increase relative to the ongoing costs, and vice versa if the numbers decreased.

72. The costs and benefits are based on a number of assumptions. We have carried out extensive sensitivity analysis and the overall impact on business from this policy change is expected to be minimal.

Direct costs and benefits to business calculations

73. Some of the data available made it possible to estimate separate monetised costs and benefits for the third sector. When considering direct costs and benefits to business, we have included the third sector's figures in the overall business figures as recommend by the better regulation framework manual.

74. The regulatory changes have the following monetised estimates of costs and benefits to business:

- ◆ A one-off transition cost of £0.47 million (£0.44 million for private sector, £0.03 million for public sector, see Table 4) to account for the time businesses will require to familiarise themselves with the legislative change which makes some exclusivity clauses in employment contracts legally unenforceable.
- ◆ Some businesses are likely to have been using exclusivity clauses (which the policy renders unenforceable) as a way of protecting confidential information. It is assumed that employers that had been using exclusivity clauses in contracts with individuals on high hourly wages but low weekly earnings will wish to amend the contracts to include confidentiality clauses, to continue to protect their information. We estimate that this will cost businesses around £0.3 million as a one-off transition cost (see Table 6).
- ◆ We estimate that there will be an ongoing cost to business due to reorganisation to take account of increased unavailability of individuals working for them who are enabled to take an additional job with another employer. We estimate that this reorganisation will cost business between £0.3 million and £0.8 million a year at 2013 prices, with a best estimate of £0.5 million (see Table 11).

- ◆ The additional output produced by individuals enabled to take an additional job is estimated to benefit business at a rate of return of 10% of total wages. The annual benefit to business from this return is estimated at between £0.4 million and £1.1 million, with our best estimate of £0.7 million at 2013 prices (see Table 14).
- ◆ Overall, there is an estimated equivalent annual net cost to business of -£0.1 million at 2009 prices, though this is considered a zero-in as primary legislation is being used to enact this change.

75. The best estimate figures are summarised in the table below:

Table 15: Monetised costs and benefits for Business included in One-in-Two-Out estimate

	£ millions (2013 prices)
Transition costs	
Familiarisation with regulatory change on exclusivity clauses	0.5
Amending contracts to include confidentiality clauses	0.3
Ongoing costs	
Reorganisation costs due to increased unavailability of enabled individuals	0.5
Ongoing benefits	
Return from additional output from additional jobs	0.7
Equivalent annual net cost to Business (2009 prices)	-0.1

Wider impacts

76. As individuals on ZHCs enabled by the ban on exclusivity clauses are expected to work additional hours in a week, they will have additional income from wages for this extra work. This is estimated at around an annual £7.1m at 2013 prices, though some of these individuals may also lose some universal credit payments that will reduce their net increase in income. As the individuals spend their additional income, it will help increase turnover for other businesses in the economy. Therefore there is likely to be additional economic benefit to business through extra expenditure by enabled individuals. We have not attempted to monetise this benefit.

Summary

77. Overall, the banning of exclusivity clauses in protected employment contracts can be seen as the removal of a constraint to participation in the labour market. This impact assessment estimates that there is an overall net economic benefit of around £62 million (net present value), due to additional wages and a small net benefit to businesses. In addition, there is likely to be additional benefits resulting from expenditure of some of the extra wages.

	Estimated costs and benefits £ millions		
	High	Best estimate	low

Costs			
Annually recurring costs:			
Employer reorganisation costs	0.9	0.6	0.3
Transition costs:			
Employer familiarisation with exclusivity clauses legislation		0.5	
Employer amendment of contracts to include confidentiality clauses	0.4	0.3	0.2
Total transition costs		0.8	
Cost (net present value)	7.7	6.1	3.0
Benefits			
Annual Ongoing benefits:			
Employer benefits from additional output	1.2	0.8	0.5
Individual/Exchequer benefits from additional wages	10.3	7.1	4.0
Total ongoing benefits	11.5	8.0	4.4
Plus unquantified benefits	Additional benefits to the economy resulting from expenditure of additional wages		
Benefits (net present value)	98.7	68.5	38.2
Net Benefits (net present value)	95.7	62.4	30.5

Table 16: Summary of costs and benefits for Zero Hours Contracts policy

Annex A

Measurement of numbers on zero hours contracts

1. There is no legal definition of a zero hours contract. It is a term that covers a wide range of employment contracts. Different approaches to measuring zero hours contracts are therefore affected both by the definition of zero hours contracts, and the methodology of the survey used. However, common to all the definitions used in the main sources of information is that ZHCs have a lack of a guaranteed minimum number of hours²⁸.
2. The ONS survey on use of no-guaranteed hours contracts (NGHCs) is based on a survey of businesses. It estimated that there were around 1.4 million NGHCs which had provided work in the two week reference period. This gives a broad estimate of operational NGHCs. However, as the ONS points out, because it comes from a survey of businesses, the 1.4 million is a measure of contracts rather than individuals, and would count all the 'operational' NGHCs of individuals who had more than one NGHC. It would also count the NGHCs of individuals who had this contract for a second job rather than a primary job²⁹. The survey also includes (some) agency workers (see background information). Therefore, this figure would overestimate the number of individuals on a ZHC in their main job.
3. The LFS is a survey of households and individuals. It provides information on the individual's position in the labour market, from the perspective of the individual. It will therefore reflect the awareness of respondents. The LFS asks whether an individual is on a ZHC in their main job within a question on flexible working. The LFS estimate of employees/workers on ZHCs in their main job was 542,000 in the 4th quarter of 2013³⁰. The LFS estimate is based on the perception of individuals, so may miss out on some individuals on ZHCs who are unaware that they are on this type of contract, perhaps because it doesn't reflect their working pattern.
4. Estimates from the LFS indicate that the public sector/private sector (including 3rd sector) split for those on ZHCs is around 17% to 83%. It is also estimated from the LFS that around 94% of those on ZHCs do not currently have a second job. These percentages are applied to the estimates for numbers on ZHCs to enable separate estimates for the public and private sector of those without a second job. Applying the 94% figure to the ONS business survey estimate is problematic, for the reasons set out in paragraph 2 in this Annex, and helps explain why we have taken the mid-point best estimate approach described below.
5. The estimates from the two ONS surveys provide a reasonable range within which most other estimates sensibly fall. This reflects the difficulty in getting consistent measurements of the numbers of individuals on ZHCs, due to the different definitions used in surveys measuring ZHCs. As discussed above, there are good reasons why the ONS business survey will overestimate the number of employees/workers on ZHCs in their main job. Similarly, the LFS is likely to underestimate the number of workers/employees on ZHCs. It is unclear from the available information how far each source may over- or under- estimate the actual numbers. Therefore, using the mid-point monetised figures provides a reasonable

²⁸ ONS, *Analysis of Employee Contracts that do not guarantee a minimum number of Hours*, 30th April 2014, p4.

²⁹ ONS, *Analysis of Employee Contracts that do not guarantee a minimum number of Hours*, 30th April 2014, p2.

³⁰ BIS estimate from LFS quarter 4 2013 dataset.

balance reflecting the potential issues with the respective sources. Table A1 shows the estimated numbers of those on ZHCs without a second job.

6. Table A1: Estimated numbers of individuals on ZHCs with no second job

	Total	Private sector	Public Sector
Minimum (LFS based) (nearest 1,000)	510,000	422,000	88,000
Maximum (ONS based) (nearest 1,000)	1,318,000	1090,000	228,000
Best estimate (nearest 1,000)	914,000	158,000	756,000

7. Applying the CIPD estimates in Table 3 for those on ZHCs with exclusivity clauses, we obtain the following estimates for employees/workers on ZHCs with no second job and an exclusivity clause in their employment contract.

8. Table A2: Estimated numbers of individuals on ZHCs with no second job with exclusivity clause in their contract

	Total	Private sector	Public Sector
Minimum (LFS based) (nearest 1,000)	48,000	42,000	6,000
Maximum (ONS based) (nearest 1,000)	125,000	109,000	16,000
Best estimate (nearest 1,000)	87,000	76,000	11,000

Annex B

Small and Medium Business Assessment

9. The policy is aimed at removing a barrier to individuals on zero hours contracts being able to work more hours in a week if they want to, through banning exclusivity clauses in zero hours contracts.
10. The available evidence does not suggest that this policy will place a disproportionate burden on small or micro businesses:
 - a. ONS data (see Table 1) identifies that large employers (47%) are much more likely to use no guaranteed hours contracts than micro and small employers (12% of employers with 1 to 19 employees, 28% of employers with 20-249 employees). Other surveys (BIS Work Life Balance Employers Survey 4, CIPD Employment Outlook, Summer 2013) similarly show that the vast majority of micro and small employers don't use ZHCs, with large and medium sized businesses much more likely to.
 - b. Among those employers using ZHCs, there is little evidence on the prevalence of ZHC employees in their workforces. The Summer 2013, CIPD Employment Outlook Survey suggests that among the low proportion of small and micro employers that use ZHCs, around three-quarters had less than 20% of their workforce on ZHCs (and in most cases less than 10%). Other sized employers using ZHCs were also likely to have a low proportion of their workforce on such contracts.
 - c. There is no information available about use of exclusivity clauses in ZHCs by size of employer. Therefore we have no reason to assume that small and micro employers are more likely to use exclusivity clauses than other sized employers.
11. The impact assessment does monetise some costs to business. These are primarily related to reorganisation costs associated with greater unavailability of individuals on ZHCs who have been enabled to take an additional job by the ban on exclusivity clauses. As noted above, the evidence suggests that large employers are much more likely to use ZHCs than small or micro employers, and among those using such contracts across all sizes of employer, in most cases only a small proportion of the workforce will be on ZHCs. Therefore, the costs of reorganisation (and familiarisation) should not fall disproportionately upon small and micro employers.
12. However, it is also worth noting that the responses to the Zero Hours Contract Consultation provided little evidence that a ban on exclusivity clauses would cause much disruption to employers.
13. In addition, overall the policy shows a net gain to the economy (net present value) of around £6 million a year (net present value). There is a marginal monetised annual net benefit to business of around £0.1m, and we haven't monetised an expected additional benefit from the expenditure of net gain (predominantly the additional wages paid). This should lead to increased turnover for businesses. It is expected that these benefits will go to small and micro businesses as well as large and medium sized businesses. We have no evidence to suggest that the benefits will flow disproportionately to businesses of a particular size.
14. For the purpose of the small and micro assessment, the following exemptions were considered:

- Full Exemption
- Partial exemption
- Extended transition period
- Temporary exemption
- Varying requirements by type and/or size of business
- Direct financial aid for smaller businesses
- Opt-in and voluntary solutions
- Specific information campaigns or user guides training and dedicated support for smaller businesses

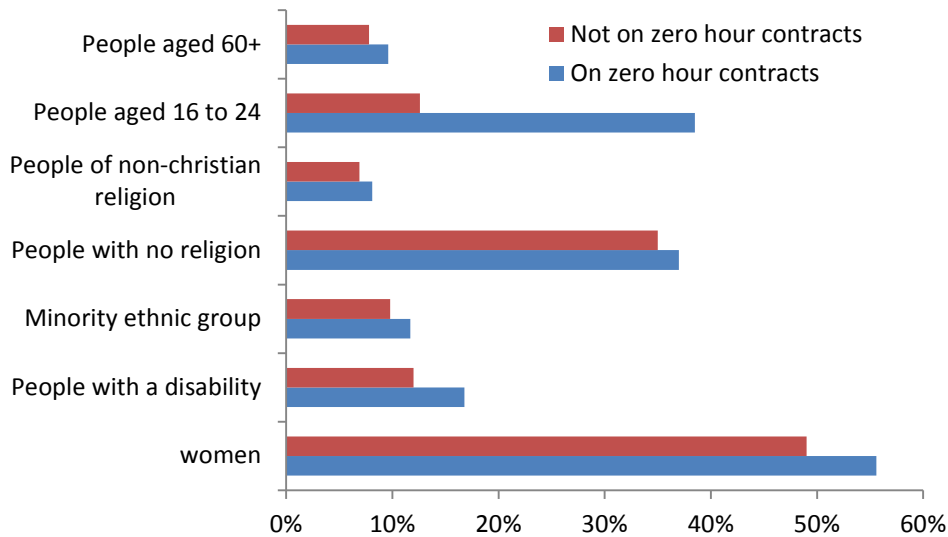
15. Any exemption from the policy for small and micro businesses would impact negatively on the policy aim of overcoming market failures in the operation of ZHCs that restrict individuals on these contracts from working additional hours if they want to. It would mean that those individuals on ZHCs with exclusivity clauses working for smaller businesses would remain restricted from finding additional work to boost their weekly wages. Therefore, the employer would benefit fully from the flexibility of the ZHC, while the individual would not. This may give an unfair advantage to those small and micro businesses using ZHCs with exclusivity clauses. It would also prevent other employers, including small and micro businesses, from benefitting from greater output through employing these individuals in additional jobs, and the wider benefits expected.
16. We do not believe that the costs of complying with this policy will warrant direct financial aid for small and micro businesses.
17. In the consultation, we put forward non-regulatory options including a no-change option, and options focused on improving guidance and information. The consultation responses, and other information available, suggest that purely non-regulatory approaches would not achieve the policy objective, so opt-in and voluntary solutions on their own were not considered a viable solution.
18. BIS is considering in more detail how to improve the quality and accessibility of information and guidance on employment contracts and rights and on the rights of those on ZHCs to benefits (both employment rights and welfare payments). Potentially the guidance and information could be tailored so that it relates specifically to small and micro businesses, and we will explore with relevant stakeholders if they consider it would be beneficial.

Equality Assessment

19. The Department for Business, Innovation and Skills (BIS) is subject to the public sector equality duties set out in the Equality Act 2010. An equality analysis is an important mechanism for ensuring that we gather data to enable us to identify the likely positive and negative impacts that policy proposals may have on certain groups and to estimate whether such impacts disproportionately affect such groups.
20. The policy proposals should benefit those individuals on ZHCs with exclusivity clauses. The ban on exclusivity clauses in protected contracts such as ZHCs will benefit those individuals enabled who wish to work more hours a week than their current job is usually able to provide (or able to provide each week).
21. We have considered the extent to which individuals on zero hours contracts are more likely to be people with a protected characteristic, relative to employees/workers who are not on a zero hours contract. The data from the LFS for the 4th quarter of 2013 suggests that this is the case for women, individuals aged 16 to 24 and individuals aged 60 or over, people with a disability, people with no religion and people of a non-Christian religion and individuals

from a minority ethnic group (however, not all of these differences are statistically significant).

Fig 1A: Comparison of employees with some protected characteristics, by type of employment contract



Source: LFS

22. As identified in paragraph 12, the policy is expected to impact beneficially on individuals on ZHCs with exclusivity clauses, including those with protected characteristics. As some groups with protected characteristics comprise a higher proportion of those on ZHCs relative to those on other employee/worker contracts, the policy may have some positive equality impacts.

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