



Department for  
Business, Energy  
& Industrial Strategy

# Exclusivity Clauses

Response to the Government consultation on  
measures to reform exclusivity clauses in  
contracts of employment

## Acknowledgements

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## Introduction

This Government is committed to building back better from the impacts of Covid-19 and enabling a high skilled, high productivity, high wage economy that delivers on our ambition to make the UK the best place in the world to work and grow a business.

A key part of building back better is building back fairer: championing a flexible and dynamic labour market which gives employers the confidence to retain and hire, whilst also providing a framework that protects individuals in finding work that suits them and their circumstances.

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

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

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

On 4 December 2020, the Government launched a consultation on measures to extend the ban on exclusivity clauses in contracts of employment to maximise opportunities for individuals to find additional work and apply their skills to drive the economic recovery. The consultation sought views on a proposal to make exclusivity clauses unenforceable in contracts where the workers' guaranteed weekly income is less than the Lower Earnings Limit, currently £123 a week.

The consultation closed on 26 February 2021.

## Conducting the consultation exercise

The Government launched a consultation on measures to make exclusivity clauses unenforceable in specific contracts of employment on 4 December 2020. It was open for 12 weeks and closed on 26 February 2021.

In total there were 30 formal responses to the consultation. The largest number of formal responses to the consultation (30%) came from legal organisations and professionals, with the second largest group (20%) being trade unions. Trade association responses, professional services responses and individual responses each made up 13.3% of responses. The remaining responses (10%) came from academics, local government and equalities groups.

Officials also participated in online meetings, events and discussions, listening to and engaging with the views of attendees from across different sectors and places throughout the UK.

Several organisations conducted their own surveys based on the proposals in the consultation and shared their results with the Government.

# Summary of Responses

## Definitions

**Exclusivity clauses:** Any term by virtue of which a worker is restricted from doing any work otherwise than under the worker's contract.

**Ban on exclusivity clauses:** The 'ban' operates by makes exclusivity clauses in employment contracts unenforceable.

**Lower Earnings Limit:** The Lower Earnings Limit (LEL) is the level of earnings which every employee must reach in order to gain entitlement to contributory benefits, such as State Pension. To gain benefit entitlement a person must, for each tax year, earn or be treated as having earned the LEL multiplied by 52.

When the consultation was conducted, the LEL for the tax year 2021/22 was set at £120 per week. The current LEL for tax year 2022/23 is set at £123 per week.

## Questions 1 – 3: Questions on extending the ban of exclusivity clauses

1. *Do you agree the ban of exclusivity clauses should be extended to low-income workers where the guaranteed weekly income is below the Lower Earnings Limit?*
2. *Do you think the ban of exclusivity clauses should be extended to other workers? Please expand on why.*
3. *Do you agree the Lower Earnings Limit is an appropriate threshold?*

Questions 1 to 3 of the consultation sought views on whether the ban on exclusivity clauses should be extended from zero hours contracts and who it should be extended to. This included asking for specific views on the Lower Earnings Limit as the threshold proposed to extend the ban to.

80% of respondents answered that they agreed the ban on exclusivity clauses should be extended to low-paid workers where the guaranteed weekly income is below the Lower Earnings Limit.

In their answers it was common for respondents to explain how exclusivity clauses could unfairly impact on low-paid workers. They noted that such clauses could trap these workers in low paid jobs or with low hours of work, as they make it harder for workers to find enough work, which limits their income. Many respondents mentioned that banning exclusivity clauses for those earning below the Lower Earnings Limit would enable these workers to earn a more liveable income, where otherwise employers would not guarantee a living income and would restrict a worker from earning enough to live off.

An estimated 1.5 million workers receive a weekly wage below the Lower Earnings Limit in their main job. These low-paid workers are significantly more likely to want to undertake additional work. An estimated 7% of workers with one job would like to undertake additional work and this increases to around 20% for those under the Lower Earnings Limit. Banning exclusivity clauses will ensure that workers in this group, that are restricted by such clauses, will have greater flexibility to top up their income with an additional job if they choose.

Another effect of exclusivity clauses stated by respondents was that they potentially create a power imbalance in the workplace by making workers reliant on a single employer. Trade unions suggested individuals on short hours contracts might be required to be available to work additional hours over and above those they are contracted for, but never guaranteed the additional work. This could make workers less likely to assert their rights for fear of losing future non-guaranteed work. Extending the ban on exclusivity clauses to those earning below the LEL would mean those employees would not need to rely on their primary employer to supplement their income.

**The Government has evaluated the responses from the consultation on extending the ban on exclusivity clauses and is seeking to extend the ban on exclusivity clauses to**

**contracts where the worker's guaranteed weekly income is below or equivalent to the Lower Earnings Limit. This will help to boost the income of workers hardest hit in the pandemic by ensuring they are not subject to exclusivity clauses, giving them flexibility to seek additional employment where desired.**

50% of respondents suggested that the ban on exclusivity clauses should be extended to workers other than those who earn less than the Lower Earnings Limit. A large proportion of these respondents advocated for a general ban with exceptions where exclusivity clauses would reasonably apply and be essential, i.e.. clauses should be non-enforceable unless businesses can prove they have a legitimate business interest such as protecting intellectual property rights or confidential information.

Other suggestions for further extensions mentioned the ban could cover any contracts that were not full time. The rationale given for this was that using the Lower Earnings Limit would only guarantee work for a small proportion of the working week, for those on the National Living Wage – £123 at the NLW would be around 12.95 hours worked. This was noted to possibly disproportionately affect part-time workers in particular.

The alternative thresholds suggested by these respondents included any contracts with workers earning below 37.5 hours at the National Living Wage (currently £9.50) or the Real Living Wage (currently £9.90) which is set by the Living Wage Foundation and accounts for additional living costs. The rationale for these extensions suggested that the Lower Earnings Limit as a threshold is too low and insufficient to address imbalances between employers and workers, with responses suggesting that in any scenarios where employers cannot guarantee job security in full time work, employees should be allowed more flexibility to find other work.

Some responses from legal organisations noted that the current definition of exclusivity terms is very broad and suggested that bans are placed on the use of blanket exclusivity clauses. Another response from a legal organisation proposed the Government ban exclusivity clauses in contracts which guaranteed either less than a full time job (stated as 37.5 hours) or a lower specified number of hours.

The consultation responses highlighted that these exclusivity clauses are not used frequently by businesses, or when in use are generally justified by a genuine business need such as protecting intellectual property rights or confidential information. Therefore, we have prioritised those in insecure employment to help those hardest hit by the pandemic and prevent unfair treatment from employers. The Government has considered the cost to businesses of extending the ban on exclusivity clauses to contracts below the Lower Earnings Limit, which is estimated to be relatively low, however this will increase the further the ban is extended. **Thus, the Government is not seeking to extend the ban beyond workers earning below or equivalent to the Lower Earnings Limit due to the increased cost to business this would bring, at a time when businesses are recovering in a post-pandemic environment.**

An additional rationale given by respondents for extending the ban further was that limiting the ban to the Lower Earnings Limit could expose many workers to income restrictions and social security benefit sanctions, as the £123 a week does not account for the number of hours



worked. Responses state that in contrast Universal Credit claimants must earn less than 35 hours at minimum wage and be job seeking.

**We have spoken to the Department for Work and Pensions and HMRC to consider any possible impacts on Universal Credit and alternative defined thresholds and believe the Lower Earnings Limit to be the most appropriate threshold.**

Some respondents were concerned that the use of an earnings-based threshold would lead to employers introducing patterns of work that take workers just over the threshold to avoid the ban, even though this would represent an immaterial difference in income between £123 and £124.

**The Government considered alternative thresholds recommended in the consultation responses, such as the National Living Wage, or a needs-based approach. We have decided to use the Lower Earnings Limit as this is annually updated using the Consumer Price Index giving a threshold that remains in real, inflation adjusted terms. The Lower Earnings Limit is also familiar to employers and would result in relatively lower estimated costs to businesses, whilst still benefitting vulnerable workers who earn below the threshold. We will consider whether further clarifications are needed to ensure a fair outcome for workers close to the threshold.**

Another concern raised related to the way in which companies complied with the Working Time Directive and ensuring workers were not working over the specified limit.

**The Government does not believe there is a contradiction between the proposed policy and employers being able to fulfil Working Time Regulations obligations. There is guidance available through ACAS to explain to employers how to fulfil Working Time Regulation obligations if an employee has more than one job. If an employer is not allowed to ask workers to seek their permission to do another job prior to them getting it, an employer could still ask their workers what hours they work elsewhere. If workers do not wish to provide that information, we believe that employers just asking for it would fulfil Working Time Regulation obligations to take 'all reasonable steps' to fulfil obligations.**

## Question 4: Questions on extending the redress rights

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

Question 4 sought views on whether the right not to be unfairly dismissed and the right not to be subjected to a detriment for failing to comply with an exclusivity clause, and to claim compensation should be extended to workers where the guaranteed weekly income is below the Lower Earnings Limit.

73.3% of respondents believed redress rights should be extended to allow individuals to enforce their rights. The other respondents either did not answer or answered 'I don't know'.

Responses mentioned that workers in insecure employment generally are often afraid to enforce their rights and extending these rights could address the imbalances of power experienced by workers on insecure and short hours contracts.

**The Government will extend redress rights accordingly with the extension of the ban on exclusivity clauses, to apply to those earning below or equivalent to the Lower Earnings Limit.**

By providing a means of redress for individuals if an employer does not comply with the ban on exclusivity clauses, this allows workers to take their case to an employment tribunal, which can award them compensation. This aims to ensure that workers are not unfairly dismissed or subject to detriment for reasons relating to the ban on exclusivity clauses.

## Questions 5 – 7: Questions on a potential exemption to the ban

5. *Do you think a cap on hourly wages should be set to ensure individuals who are paid a high hourly rate for a short number of hours a week are exempted from a ban on exclusivity clauses?*
6. *What level do you think the hourly wage cap should be set at?*
7. *If you have any alternative methods to provide a similar exemption, please expand on these below.*

Questions 5 to 7 sought views on a potential exemption to the extended ban on exclusivity clauses which would capture individuals who are paid a high hourly rate for a short number of hours. The proposed mechanism for exemption was to place a cap on the hourly wage rate but the questions also sought views on alternative mechanism for an exemption.

The majority of respondents were either against any exemption to an extension of the ban (43%) or did not answer this question (27%). Of the respondents who answered the specific question on hourly wage cap proposals, 50% selected the highest hourly wage cap. However, many of these responses, particularly from trade unions, emphasised that any approach to an exemption should be based on clear business need rather than linked to hours worked or earnings. Suitable justifications for exemption given were those that were necessary on health and safety grounds, or related to business confidentiality, public interest or conflicts of interest.

Some responses from legal organisations proposed alternative methods for companies to protect their intellectual property such as confidentiality clauses or allowing employers to include 'conflicts of interest' measures which would prohibit any alternative employment that conflicted with their present employment.

Some trade union responses highlighted that creating an exemption would mean some workers would not be allowed greater flexibility or be enabled to boost their income as they wish. However, other responses mentioned that the extension of the ban is for protecting vulnerable, low-paid employers or workers, with those in higher value hourly rate posts who would be captured by the exemption likely to have more substantial bargaining power due to these workers having specialist skills or experience that generated those rates. Responses suggested increased bargaining power could negate the need for statutory protection in agreeing terms of employment and this would justify such an exemption. However, these responses also suggested that workers earning such a high hourly rate would likely already be over the Lower Earnings Limit threshold and thus not need the exemption.

Additionally, the responses from trade associations stated that an exemption would have little to no impact on businesses suggesting there is not a strong business need at this time for an exemption to the ban.

**The Government is no longer proposing to introduce an exemption to the ban on exclusivity clauses based on high hourly earnings.**

Following consultation, there is no strong evidence of a need for this. We will keep this under review and if a need emerges, we will consider additional legislation if required. Should the Government take forward an exemption in the future, most consultation responses suggested using a business needs-based approach to exemption which would require primary legislation.

## Questions 8 – 9: Questions on the impact of the Covid-19 pandemic

8. *How likely do you think it is that the impact of the Covid-19 pandemic will lead to greater numbers of workers having the guaranteed hours in their contracts reduced?*
9. *How likely do you think it is that greater numbers of workers will be looking for additional work to boost their income as an impact of the Covid-19 pandemic?*

Questions 8 and 9 sought views on the impact of the Covid-19 pandemic on the number of workers having their guaranteed hours reduced and the number of workers looking for additional work.

Some responses to the questions on pandemic impacts observed reduced contracted or guaranteed hours as an alternative to redundancy during the pandemic such as the introduction of lay-off or short term working clauses into contracts. The Trades Union Congress (TUC) response reported large numbers of workers having had their terms and conditions reduced, leading to workers moving from full-time contracts to those with low guaranteed hours. Another trade union response referred to official data showing that the total number of hours worked between September and November 2020 was down 7 percent compared to the same period in 2019.

Around half of respondents believe it is very likely workers will be looking for additional work to boost their income as of Covid-19. Some responses mentioned that the latest labour market data showed record numbers of people reporting redundancy. Responses also cited the rising unemployment rate as suggesting more people are looking for work with far fewer job vacancies. Another figure included in some responses was that the number of involuntary part-time workers was approaching one million, placing involuntary part-time employment at its highest rate since 2016.

**The Government recognises that the pandemic has had an impact on job security and guaranteed working hours for many people. Extending the ban to those earning below or equivalent to the Lower Earnings Limit will allow those who have been moved to a reduced-hours contract to boost their income, therefore protecting vulnerable workers impacted by the pandemic.**

## Questions 10 – 11 Questions on the impact on individual workers

10. *How helpful do you think extending the ban on exclusivity clauses would be for workers earning under the Lower Earnings limit? Please explain your answer.*
11. *How likely do you think workers are to use the ability to take on additional work to reskill and move between sectors? Please explain your answer.*

Questions 10 and 11 sought views on the impact which extending the ban would have on individual workers.

The majority of responses (60%) said that extending the ban on exclusivity clauses for those earning under the Lower Earnings Limit would be helpful or very helpful. The benefits mentioned in the responses were that low paid workers would have increased opportunities to work flexibly and supplement their incomes through more avenues, possible from newly afforded freedoms of being able to engage with extra employment. Some answers highlighted specific sectors where this would be particularly helpful such as hospitality and retail due to the implications of the pandemic. Another response mentioned that such a ban would also allow workers to transfer from low-wage sectors with low demand, to those where demand has remained high.

Others who responded that extending the ban may be less helpful cited concerns that it may have adverse effects in reducing a business's willingness to guarantee hours. They suggested that banning exclusivity clauses may increase the risk of workers being unavailable for shifts, thus employers might engage more workers for fewer hours.

**The Government has considered the positive impacts on individual, vulnerable workers which were highlighted in many of the consultation responses and it will be extending the ban on exclusivity clauses to contracts where the guaranteed earnings is below or equivalent to the Lower Earnings Limit.**

**The Government also believes that this policy may increase the pool of applicants for specific short hours contract jobs which otherwise may have been more limited and it may give more employers confidence to create jobs.**

Responses to a question on whether workers would use the ability to take on additional work to reskill between sectors were mixed with 33% stating this was very likely or likely, and 26% stating this was unlikely or neither likely nor unlikely.

Those who answered that this would be likely explained that some of those looking for the opportunity for additional income might consider reskilling in order to take advantage of such jobs. Some responses highlighted that workers on multiple zero/short-hours contracts might show a willingness to work across multiple sectors and thus use different skills. One response mentioned that these workers could take advantage of the increased training incentives the

Government is currently offering, which are focused on upskilling workers with limited skills i.e., particularly those who usually focus their work in one sector affected by the pandemic.

Reasons identified in responses for why workers would not be more likely to take the opportunity to reskill between sectors included the fact that the level of reskilling needed may pose a barrier to additional employment, or even more crucially, that there may be a lack of alternative job opportunities. Some responses also observed there would also be a risk that if workers simply undertook more low paid, insecure or relatively low-skilled work, for longer hours, they would have limited opportunities for training and development.

In relation to reskilling and retraining, responses, especially those from trade unions, called on the Government to ensure access to affordable, high quality training because they suggested the biggest barrier to changing a role or retraining was the financial burden of moving roles, especially if they lacked a safety net of income needed to try out a new job. This was emphasised to be important for those in insecure employment generally as they face the highest barriers to training and are least likely to receive training from their employer.

Other factors noted as making it unlikely that workers would reskill between sectors, besides a lack of jobs available, were: childcare responsibilities, other caring duties and low pay. Along with this, it was noted workers may not necessarily want to find work in another sector when they could seek extra work in sectors they are more familiar with, if their goal was to supplement their low incomes rather than reskill.

**The Government believes extending the ban on exclusivity clauses will create more opportunities for low-paid workers to reskill as they take on additional work where desired.**

The Government recognises that support for skills and training is central to our Plan for Jobs. This will play a critical role in allowing individuals to make the most of new opportunities in existing sectors with growing labour demand, as well as in emerging sectors and occupations.

There is additional Government support for moving between sectors when working multiple jobs. Work Coaches provide support to find a job, help with retraining or skills advice, CV, job applications and access to new vacancies, as well as referring workers to Plan for Jobs provisions such as Kickstart, Sector based Work Academy Programmes and Job Entry Targeted Support.

## Questions 12 – 14: Questions on the impact on employers

12. *Do you think extending the ban on exclusivity clauses to workers under the Lower Earnings Limit could benefit your business/organisation? Please explain your answer.*
13. *Do you think extending the ban on exclusivity clauses to workers under the Lower Earnings Limit would have negative consequences for your business. Please explain your answer.*
14. *What would be the impact on your business be/how would your business respond, if the Government introduced an hourly wage cap to provide an exemption to the proposed ban for individuals on high hourly rate contracts?*

Questions 12 and 13 sought views from businesses and employers on the impact of extending the ban on their businesses and organisations. These questions were directed at businesses and employers specifically and were answered by 33% of respondents.

Some potential benefits mentioned in responses were that an extension of the ban could increase potential applicants for part time lower paid posts who previously may have been subject to exclusivity clauses with another employer. Responses stated that this could help particular sectors that have found it harder to recruit workers, such as the charity, volunteer or social care sector. One response stated that some employers may benefit from being able to bring in people for a few hours, during uncertain times, without committing to guaranteeing them many hours.

More generally, some responses suggested that such an extension of the ban could cause employers to review their working practices on guaranteed hours and flexibility in attracting their workforce, though it was noted that this could have an adverse effect in reducing guaranteed hours that would adversely affect workers or employees in the vulnerable/low-paid bracket.

In terms of the potential negative consequences of extending the ban, one respondent noted it may bring pressure on the wage bill for employers (if they are required to guarantee more hours) however the respondents believed this was a minor issue and the benefit of preventing unscrupulous employers restricting free movement across the job market for lower skilled or lower paid workers outweighed it.

Another concern identified by a respondent was that extending the ban may result in a lack of flexibility for employers when requiring workers at short notice who would then be unavailable due to commitments with other businesses. It was suggested that this would require more workforce planning by employers.

A response from a business representative organisation stated that in the businesses spoken to in their consultation on this issue, the current use of exclusivity clauses in short hours contracts is low. However, they believed legislation to extend the ban on the use of exclusivity clauses from zero hours contracts to low-paid employees is an appropriate way to support labour market flexibility and give people the choice to work more if they want to.



**The Government has noted the potential business benefits mentioned in the consultation responses and believes an extension of the ban will increase pools of applicants for specific short hours contract jobs that otherwise may have been more limited, as well as giving business the flexibility to offer contracts which suit them and their personal circumstances.**

**The Government notes that the consultation responses indicated the majority of respondents do not believe there will be negative consequences of extending the ban on exclusivity clauses for businesses. Additionally, the Government has considered the cost to businesses of extending the ban on exclusivity clauses, which is estimated to be relatively low.**

## Next Steps

The Government has considered the responses to the consultation and will be taking forward legislation in due course to extend the ban on exclusivity clauses, making them unenforceable in employment contracts where the guaranteed weekly income is below or equivalent to the Lower Earnings Limit, currently £123 a week.

This legislation will also extend the right not to be unfairly dismissed and the right not to be subjected to a detriment for failing to comply with an exclusivity clause, and to claim compensation to workers on employment contracts where the guaranteed weekly income is below or equivalent to the Lower Earnings Limit, currently £123 a week.

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