

# Post Implementation Review into the Banning of Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015

<b>Title: Banning of Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015</b>  <b>PIR No:</b> BEIS033(PIR)-20-LM  <b>Original IA/RPC No:</b> BISLMD 15/11  <b>Lead department or agency:</b> Department for  <b>Other departments or agencies:</b> N/A  Contact for enquiries: <a href="mailto:lydia.green@beis.gov.uk">lydia.green@beis.gov.uk</a> <a href="mailto:sasha.ward@beis.gov.uk">sasha.ward@beis.gov.uk</a> <a href="mailto:danielle.cross@beis.gov.uk">danielle.cross@beis.gov.uk</a>	Post Implementation Review
	<b>Date:</b> 07/01/2021
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 10/01/2016
	<b>Recommendation:</b> Keep
	<b>RPC Opinion:</b> not required (de minimis)

## 1. What were the policy objectives of the measure?

To tackle potential avoidance on the ban on exclusivity clauses in zero hours contracts in the most effective and proportionate way, by providing individuals negatively affected by employer non-compliance with the ban with an effective means of redress. The measure also aimed to ensure that the improvement in the functioning of the labour market through the banning of exclusivity clauses in zero hours contracts is achieved.

## 2. What evidence has informed the PIR?

- Discussions with a range of stakeholders representing businesses, workers and employment lawyers.
- Analysis of Labour Force Survey data.
- Review of studies and published papers.

## 3. To what extent have the policy objectives been achieved?

We have concluded that the policy objective - to provide redress for individuals affected by employer non-compliance with the ban on exclusivity clauses - has been achieved. The regulations are considered an important deterrent by stakeholders and on the whole are considered to be an effective and proportionate way of achieving this. However, wider concerns around zero hours contracts were raised, such as employers providing short notice of shifts.

## 5. Were there any unintended consequences?

We received no evidence of any unintended consequences as a result of these regulations.

**6. Has the evidence identified any opportunities for reducing the burden on business?**

The review identified that the burden of the regulations on businesses was very low. We did not identify any opportunities for reducing the burden of the regulations.

**7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business?**

Not applicable

Sign-off for Post Implementation Review:

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***



Signed:  
Paul Scully MP  
Minister for Small Business, Consumers & Labour Markets

Date: 07/01/2021

# Post Implementation Review report

## 1. Introduction

- 1.1 This is a Post Implementation Review (PIR) on the Exclusivity Terms in Zero Hours Contracts (Redress) Regulations. The Regulations aim to ensure that individuals on zero hours contracts are not unfairly dismissed or subject to detriment for reasons relating to the ban on exclusivity clauses in zero hours contracts. They do so by providing a means of redress for individuals if their employer does not comply with the ban on exclusivity clauses, by allowing them to take their case to an employment tribunal.
- 1.2 The Regulations included a requirement to conduct a review within five years of implementation. This review aims to assess the extent to which the objectives of the regulations have been achieved, whether they remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- 1.3 This Post Implementation Review has followed the approach set out in the Better Regulation Framework for policies which are expected to have a financial impact of under £5 million a year. The Better Regulation Framework sets out the general threshold for independent scrutiny of post implementation reviews.

## 2. Policy Background

- 2.1 The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations were introduced following the introduction of a ban on exclusivity clauses in zero hours contracts under the Small Business, Enterprise and Employment Act (2015). This Act banned any arrangement in a zero hours contract that:
  - a. Prohibits the worker from doing work or performing services under another contract or under any other arrangement; or
  - b. Prohibits the worker from doing so without the employer's consent.
- 2.2 A zero hours contract is a contract of employment or other worker's 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 to them.
- 2.3 Although the ban on exclusivity clauses in zero hours contracts came into force through the Small Business, Enterprise and Employment Act (2015), individuals on zero hours contracts did not have a formal route of redress if their employer did not comply with the ban. For instance, an employer could prevent the worker taking a second job, or not offer the individual any hours because they had taken a second job, with no repercussions for the employer.

- 2.4 The Government carried out a consultation between August and November 2014 to see whether a formal route of redress was needed. Close to three quarters of respondents (71%) believed that individuals should have a formal route of redress if the ban on exclusivity clauses is infringed by employers.
- 2.5 As a result, Government decided to introduce a means of redress for workers. The Exclusivity Terms in Zero Hours Contracts (Redress) Regulations aimed to tackle potential avoidance of the ban, so that if an employee is unfairly dismissed or a worker<sup>1</sup> suffers detriment because of taking a second job they can take a complaint to an employment tribunal, which can award them compensation.
- 2.6 The regulations apply in England, Scotland and Wales. They do not apply in Northern Ireland as employment law is devolved to Northern Ireland. We consulted the Devolved Administrations as part of our evidence gathering for the review.

### 3. Summary of Policy and Objectives

- 3.1 The regulations aimed to provide individuals affected by employer noncompliance with the ban on exclusivity clauses in zero hours contracts with a route of redress. This means that employers who are non-compliant can face consequences for their actions. Non-compliant employers may be required to respond to the case against them in the employment tribunal system, potentially leading to payment of compensation to the worker.
- 3.2 The policy to prohibit exclusivity clauses in zero hours contracts was designed to tackle a block on the flexibility for individuals that zero hours contracts are expected to offer. The aim was to enable those on zero hours contracts to work additional hours with another employer if they wish, by ensuring they are not dependent on a single employer who may not be able to provide sufficient hours every week. At the same time, the policy intended to maintain the flexibility offered to employers, such as only having to pay workers when they are needed to work but providing clarity on their responsibilities to those individuals.
- 3.3 By introducing a route of redress, these regulations were intended to ensure that the improvement in the functioning of the labour market through the banning of exclusivity clauses in zero hours contracts was achieved.

### 4. Stakeholder views, Engagement and Analysis

- 4.1 Due to the regulations falling below the de minimus threshold, policy officials carried out a targeted consultation by contacting stakeholders direct to find out their views of the regulations. We contacted a range of business representatives, worker representatives,

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<sup>1</sup> Throughout this report the term 'worker' includes employees in accordance with s.230(3) Employment Rights Act 1996

employment agencies and legal representatives. We contacted organisations in sectors where zero hours contracts are most common, including the health and social care sector. Several organisations we contacted had also responded to the 2015 consultation on the redress regulations. We also engaged with the devolved administrations. The questions asked of stakeholders are included at annex B.

- 4.2 Of the stakeholders contacted, 18 provided their views or the views of their members on the regulations. Some provided us with written feedback in response to the questions we asked, with others we conducted an online interview or held discussion sessions with their members. There were responses from 11 employer representative groups, two public sector organisations, 4.3 two representing workers, two from the legal sector and one from Government. Those who were content to be named are listed at the end of the report.
- 4.3 We would like to thank everyone who responded to our consultation. Some organisations stated they did not have capacity to respond at this time and we recognise that with the Coronavirus pandemic this is a particularly challenging time for our stakeholders.

## **Awareness**

- 4.4 Awareness of the regulations was mixed. Some business representative organisations said their members were aware of the regulations, with one telling us they had provided information to their members at the time the regulations were brought in. Other respondents said the regulations were not relevant for their sector, because, for example, zero hours contracts are not generally used, or they tended to be used only for highly skilled individuals who choose to work for several businesses, or for students working on temporary summer contracts.
- 4.5 Several organisations said their members were less inclined to use exclusivity clauses in zero hours contracts anyway as they believed that the presence of an exclusivity clause in a zero hours contract could move an individual towards employee status.
- 4.6 Those representing agency businesses said that these regulations were less relevant for them. Agencies are already covered by separate regulations, the Conduct Regulations, which prohibit an agency from stopping a worker working for another agency. Awareness in this sector of the redress regulations was therefore lower.
- 4.7 In terms of awareness among workers, one representative organisation felt that awareness of these regulations – and employment rights for zero hours contracts workers more generally - is low.

## **Extent to which the policy has achieved its objectives**

- 4.8 In general, most business representatives felt the regulations were well targeted and met their objectives. They also believed that it is important to have the regulations as they act as a deterrent to non-compliance.
- 4.9 One stakeholder explained that their larger members had undertaken an audit of their contracts when the regulations were introduced to remove exclusivity clauses, suggesting that some businesses' behaviour had been influenced by the regulations. Most business representatives described low costs to business following these regulations.
- 4.10 However, some organisations found it difficult to judge the impact as they had received little feedback on these regulations from their members. Many of the business representative organisations we spoke with offer their members support services such as a telephone helpline or regular member meetings. They were not aware of any concerns being raised in relation to the regulations.
- 4.11 Those representing employment agencies were pleased that these regulations helped to level the playing field since agencies have been unable to restrict people working elsewhere since 2004. However, one stakeholder raised a concern that agency workers can complain to the Employment Agencies Standards Inspectorate about breaches of regulations, whereas zero hours contract workers have to go through an employment tribunal.
- 4.12 Worker representatives told us that these regulations are only part of the solution. They were concerned with 'one-sided flexibility', where the employer will reduce hours offered to coerce individuals into accepting shifts. Workers on insecure contracts such as zero hours contracts can find it difficult to enforce their rights.

## Unintended consequences

- 4.13 We found limited evidence of unintended consequences. One stakeholder was concerned the regulations make it difficult to monitor working hours, with individuals no longer required to ask permission to work elsewhere. One business representative felt there had been good engagement with their members in advance which helped to mitigate any issues.
- 4.14 It was also raised by worker representatives that some businesses might use minimum hours contracts – i.e., a contract guaranteeing a minimum of one hour or more per week or per year to avoid the ban on exclusivity clauses and any redress. However, we did not receive evidence that suggested, in practice, this occurred as a consequence of these regulations.

## Disputes

- 4.15 No stakeholders we spoke with were aware of any formal disputes involving these regulations. However, one stakeholder representing workers said that if a worker is

raising an issue in this area, then it is generally alongside a range of other concerns such as a reduction in shifts, short notice cancellation of shifts, non-payment of holiday pay, payment below National Minimum Wage, concerns around health and safety and bullying. Therefore, individuals may be more likely to raise a dispute in relation to another point of law rather than these regulations specifically.

- 4.16 Several stakeholders mentioned the cost and delay in the employment tribunal system as a possible deterrent for workers seeking redress. There was also mention of a lack of awareness of employment rights among low-paid workers. One worker representative group suggested that zero hours contracts workers feared speaking out as they were reliant on their employer to offer them work.

### **Do the regulations remain appropriate?**

- 4.17 There was general support overall for the regulations to remain and most felt they were still required and were appropriate without placing too much burden on businesses. One stakeholder described the important deterrent effect of the regulations in limiting unfair employer behaviour in relation to those on zero hours contracts. This is important in contracts where there is no requirement on employers to provide work. The Regulations provide a clear message regarding the expectation on employers to allow workers to obtain employment elsewhere and gives workers greater confidence to be able to do so without fear of losing their job.
- 4.18 A worker representative argued that exclusivity clauses help to maintain a power imbalance between a worker and their employer, preventing workers from speaking up. They therefore argued strongly in favour of keeping the regulations. However, worker representatives generally felt the Regulations to protect zero hours contracts workers need to go further.
- 4.19 One business stakeholder raised a concern of their member, who felt that exclusivity clauses should be allowed where they have invested in an individual's training.
- 4.20 When asked about alternative options to the regulations, one stakeholder suggested whistleblowing protections could be an alternative enforcement mechanism.

### **Impact of Coronavirus**

- 4.21 The issue of the Coronavirus pandemic came up in many of our conversations with stakeholders. Several organisations said there were growing numbers of people on temporary or zero hours contracts due to the economic impact of the pandemic. There was also concern that low paid workers are being hit the hardest by the economic impact of the pandemic, particularly in hard hit sectors such as hospitality.

- 4.22 In the care sector, to reduce infection, staff are being asked to limit movement between care homes. In general, employers can offer more shifts to compensate for a loss of shifts in other homes and therefore, to date, stakeholders suggested that workers have been content to do this.



## 5. Employment Tribunal and Early Conciliation Evidence

- 5.1 Acas were not able to identify any notifications for early conciliation where they had allocated an indicative jurisdiction<sup>2</sup> related to the banning of exclusivity clauses in zero hours contracts. HM Courts & Tribunals Service data showed there had been very few claims in relation to the redress regulations.
- 5.2 There were no aggravated breach penalties for the use of banned exclusivity clauses. An aggravated breach is a breach of employment rights with aggravating features and these penalties are imposed on the employer by the Employment Tribunal.

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<sup>2</sup> Acas officers allocate indicative jurisdictions to cases, and these will not necessarily accord with those jurisdictions a claimant might record when submitting an employment tribunal claim.

## 6. Review of Evidence from the Labour Force Survey<sup>3</sup>

- 6.1 Data sources do not provide us information on the prevalence of exclusivity clauses but does give us a sense of the scale and characteristics of zero hours contracts. According to the latest Labour Force Survey (LFS) estimates there are approximately 1,059,000 individuals on zero hours contracts in their main job in the UK, representing 3.3% of the workforce (LFS, April-June 2020). This is the highest figure on record, up from 974,000 in the 4<sup>th</sup> quarter of 2019. Around 939,000 said they were employees, while 116,000 said they were self-employed. Around 24% worked in Accommodation and Food Services, with 21% in Health and Social Care and 11% in retail.

### Individuals on zero-hour contracts with a second job

- 6.2 Analysis of the LFS data of people employed on a zero hours contracts in their main job, who also had a second job provides no clear evidence that the regulations banning exclusivity clauses in zero hours contracts had an impact on those on zero hours contracts in their main job.
- 6.3 Numbers rose in 2019 to over 70,000 compared to around 60,000 or well below for most of the preceding period, and the proportions with a second job increased to 8.2% in Q2 2019 and 7.7% in Q4 2019 (compared to an average for the period covered of 6.6%). Otherwise, the percentage of those on zero hours contracts in their main job with a second job tends to fluctuate between 5.6% and 6.8% (except in Q2 2016, where 7.5% said they had a second job).

Figure 1: The number of individuals on zero hours contracts in their main job who had a second job

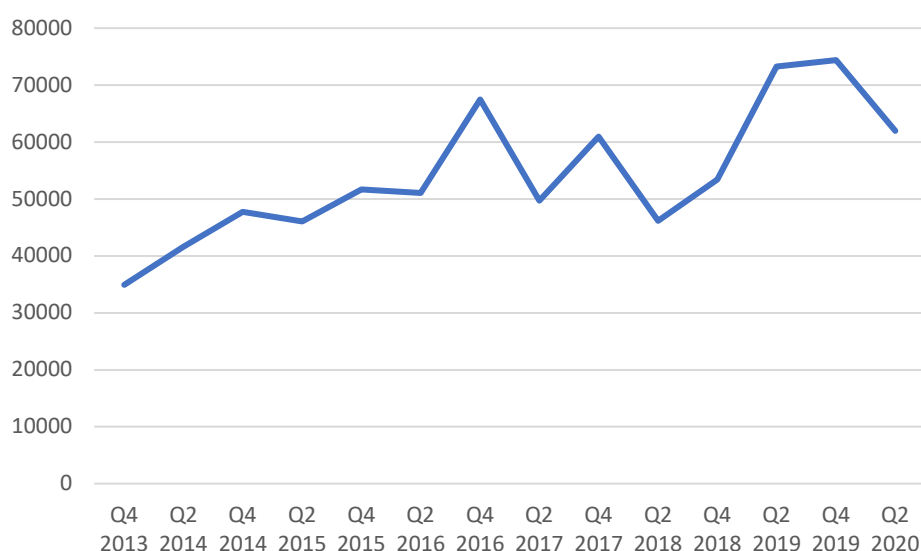
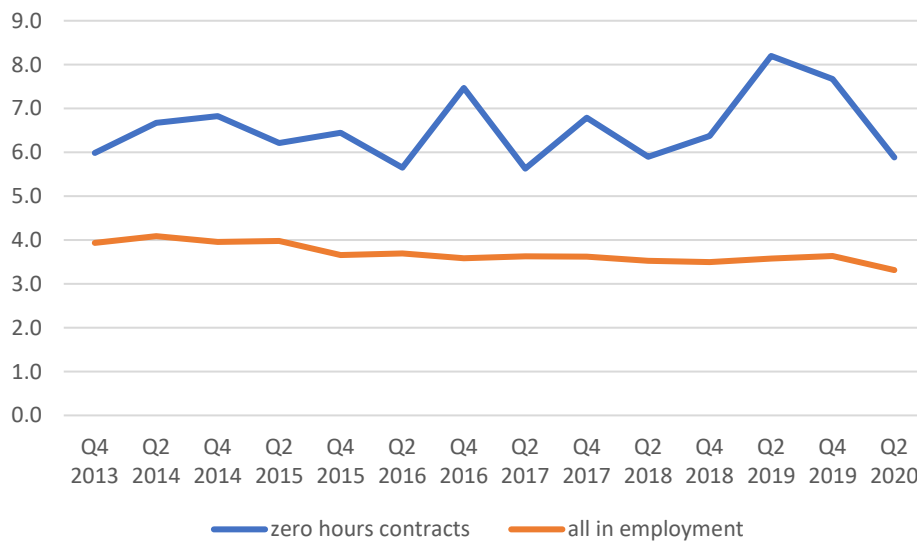


Figure 2: Percentage (%) of zero hours contract workers with a second job



## Hours worked

- 6.4 There has not been a substantial change in the average (mean) usual weekly hours worked by those on zero hours contracts in their main job following the introduction of the regulations. In nearly all the quarters analysed, those with a second job work fewer hours on average (between 19 and 22 hours, except in two outlier quarters) than those without a second job (between 24 and 26 hours). For median usual weekly hours worked in their main job, again there is little clear difference pre- and post- regulation for those zero hours contract workers with a second job. However, for those without a second job, the chart shows a potential slight decline in median usual hours in 2018 and 2019, before picking up in Q2 2020 (though there is no obvious link to the introduction of the Regulations).

Figure 4: Average (mean) usual weekly hours worked in their main job by those on zero hours contracts in their main job

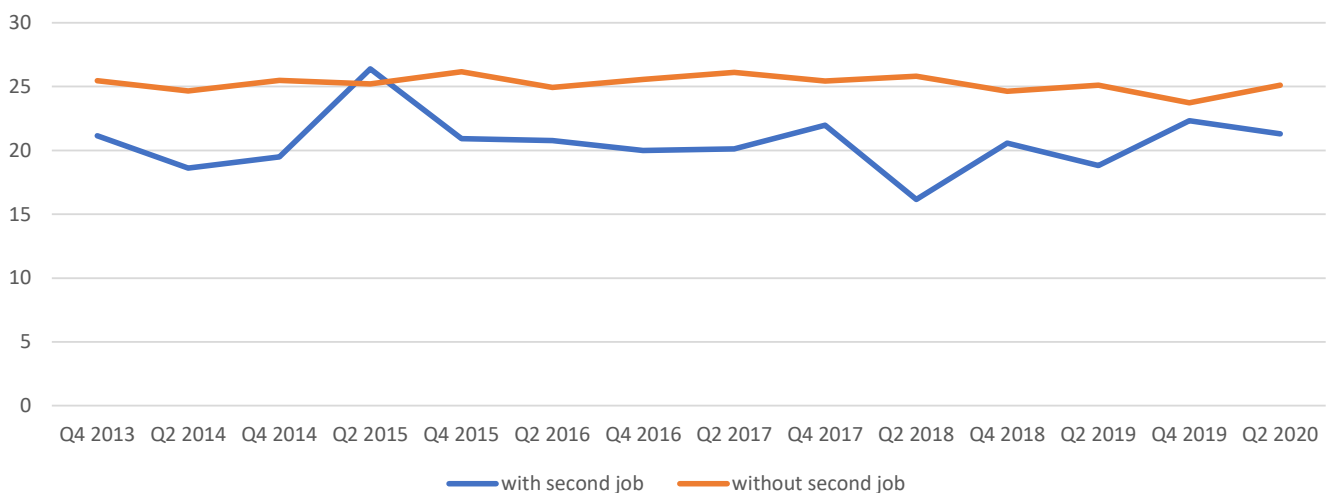
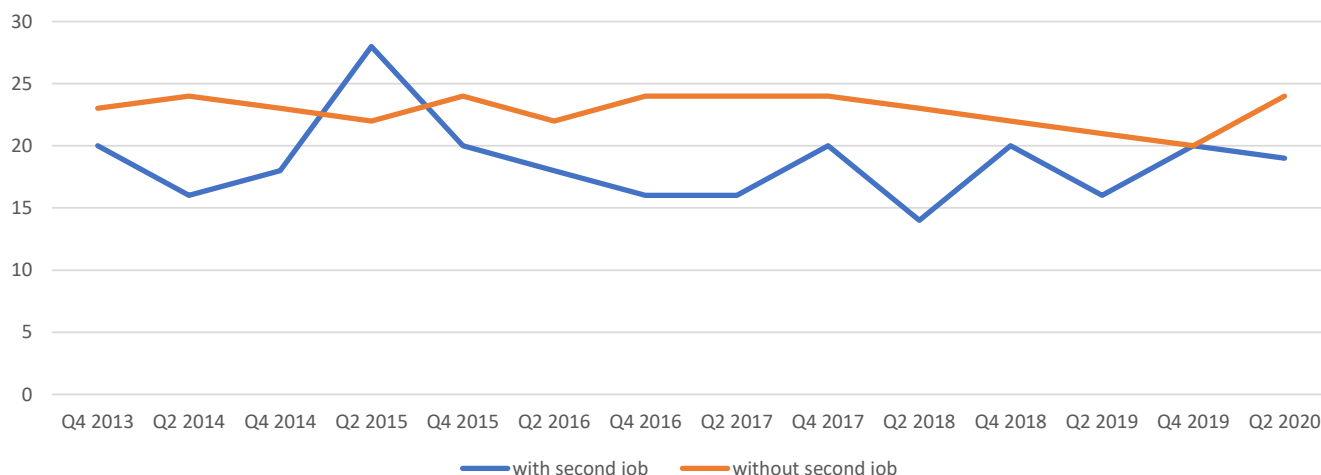


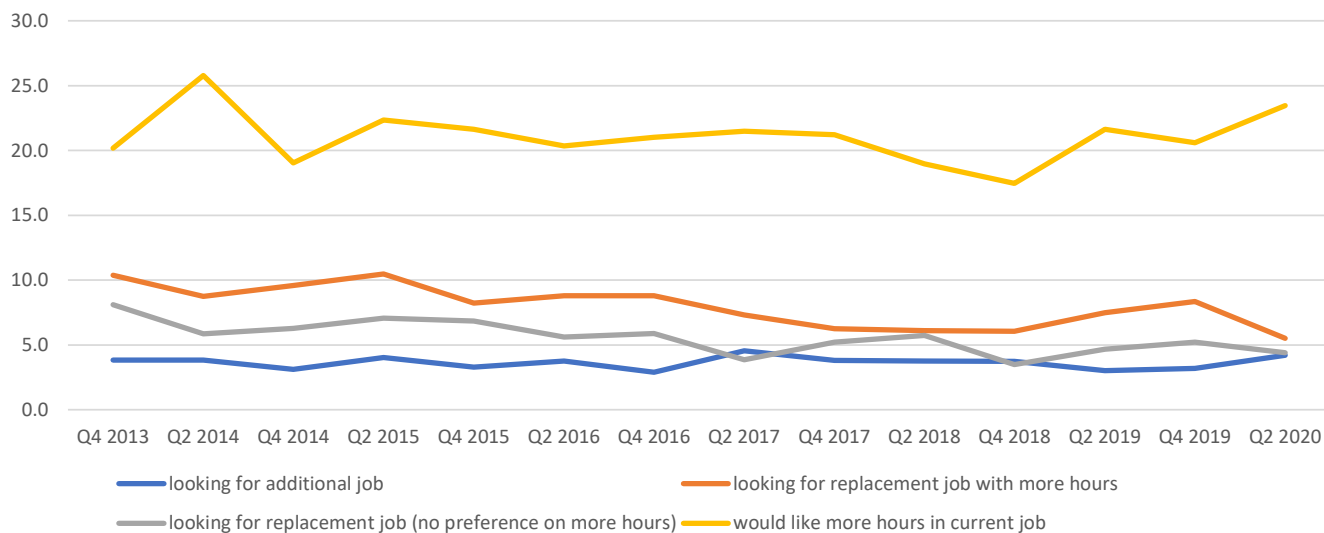
Figure 5: Median usual weekly hours worked in their main job by those on zero hours contracts in their main job



## Looking for more hours

6.5 The LFS indicates that only a small proportion of those on a zero hours contract in their main job were looking for an additional job (between 2.9% and 4.6%). This tends to fluctuate across the quarters analysed rather than showing a clear upwards or downwards trend. Those wanting more hours (somewhere between a quarter and third in most quarters looked at) primarily want more hours in their existing main job. A slightly higher proportion than those looking for an additional job were looking for a replacement job with more hours. This indicates that those wanting more hours of work will primarily try to get more in their existing job or will look to change jobs as opposed to taking on an additional job.

Figure 6: Percentage of individuals on zero hours contracts looking to change jobs or work more hours



## 7. Published Papers

- 7.1 Existing published studies on zero hours contracts commissioned by external organisations were also reviewed. While think tanks, research institutes and international organisations have produced numerous papers and studies about zero hours contracts, they contain few references to the specific regulations we are reviewing. The papers referenced below consider the regulations as part of wider reports into zero hours contracts in the UK.
- 7.2 The National Institute of Social and Economic Research (NIESR)'s International Trends in Insecure Work report (2017) does not consider the regulations in detail but does describe the overall ban on exclusivity clauses as a 'regulation of comparatively minimal scope' in comparison to provisions made by Italy and the Netherlands. Both Italy and the Netherlands have introduced minimum hours per shift and provisions detailing that employers are required to provide regular contracts when reaching a certain number of weekly hours.

## 8. Review of Original Impact Assessment

- 8.1 The original impact assessment for the regulations set out why the regulations were introduced, and an estimate of the potential impacts (and the method of estimation) before the legislation was commenced. It stated that it was likely that the number of workplace disputes arising from perceived non-compliance with the ban on exclusivity clauses in zero hours contracts, and the number of cases taken through the formal route of redress would be in line with general rates for all employment rights disputes.

### Original impact assessment assumptions

- 8.2 The impact assessment for the regulations was published in October 2015<sup>3</sup>.
- 8.3 Using data from two Office of National Statistics surveys, the Labour Force Survey (LFS) and the Business Survey of contracts that do not guarantee a minimum number of hours (NGHCs), it was estimated that there were around 1,022,000 workers on zero hours contracts without a second job, of which 851,000 were in the private sector and 171,000 were in the public sector.
- 8.4 In the impact assessment, the number of zero hours contract workers who may have had an exclusivity clause in their contract was estimated using data from the CIPD report, 'Zero Hours Contracts: Myth and Reality (2013)'<sup>4</sup>. This identified 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 them.

**Table 1: Proportion of employees (on zero hours contracts) never allowed by their primary employer to work for another employer, 2013**

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

Source: CIPD

- 8.5 Combined with the estimate for the number of workers on zero hours contract without a second job, these figures produce an estimate of 97,000 workers with an exclusivity clause. The impact assessment assumed that all these workers would look for an additional job, which was therefore a high estimate.

<sup>3</sup> <https://www.legislation.gov.uk/ukdsi/2015/9780111139950/impacts>

<sup>4</sup> <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/terms-conditions/zero-hours-reality-report>

- 8.6 General evidence of the propensity of workers to take an employment rights dispute through the employment tribunal system was used to estimate how many workers would make a claim via an early conciliation notification. Figures from the Fair Treatment at Work Survey 2008<sup>5</sup> show that 24% of employees had a workplace problem relating to employment rights in the previous two years, of which 3% had taken their most serious problem to the employment tribunal. Applying these data produced estimates of 11,700 zero hours contract workers having a workplace dispute related to the ban each year, of which 349 would result in a case going through the tribunal system.
- 8.7 Published figures from Acas<sup>6</sup> showed that between April 2014 and December 2014, 15% of early conciliation cases were settled through early conciliation, 63% were not settled but did not proceed to an employment tribunal claim, and 22% proceeded to an employment tribunal claim. Also, in around 21% of early conciliation notifications in 2014-15, individuals or employers rejected the offer of early conciliation. These data were used to estimate that, of the 349 estimated cases going into the tribunal system:
- 52 would be settled through early conciliation
  - 220 would not be settled at early conciliation stage, but would not go on to the employment tribunal
  - 77 would go to the employment tribunal
  - Also, of the 349 cases, 275 were estimated to have participated in early conciliation, while 74 did not.
- 8.8 The impact assessment estimate of the number of likely disputes due to these regulations was considered more likely to be around the maximum level of potential disputes. The above calculations didn't for instance take into account the low proportion of zero hours contract workers (and employees in general) who had a second job. It was considered a low risk that there would be a higher proportion of disputes or a higher number of cases taken into the tribunal system for this reason and for the following reasons:
- a. According to BIS analysis of the Q2 2015 LFS, over three quarters of workers on zero hours contracts in their main job were not looking for a replacement or additional job, with around 60% of zero hours contract workers not looking for or preferring more hours of work.
  - b. According to analysis by CIPD in 2013, around 60% of zero hours contract workers agreed or strongly agreed that they were satisfied with their job, in line with the 59% of workers generally who were satisfied with their job. These statistics suggested that most zero hours contract workers were content with their current employment, with the proportion satisfied similar to that for the workforce in general.
  - c. Acas figures on early conciliation showed that there were 83,000 early conciliation cases in 2014/15. However, early conciliation notification only became compulsory on 5th May 2014. A full year of compulsory early conciliation notification might yield close to 90,000 early conciliation cases. The LFS
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suggests that on average for 2014-15 there were 26.1 million employees. Dividing the former by the latter suggests that around 0.34% of employees take a case to the employment tribunal system, indicating that use of formal routes to redress are low.

## Cost Evaluation

- 8.9 In the original impact assessment (published in October 2015) for the regulations the Estimated Annual Net Direct Cost to Business was £0.11 million. The ten-year Net Present Value was -£1.12 million, and the ten-year Business Net Present Value was £0.96 m.
- 8.10 As this is a light touch review, we have drawn conclusions about the current costs of the regulations to date using evidence gained through our engagement with stakeholders.

## Familiarisation costs

- 8.11 A previous impact assessment covering the ban on exclusivity clauses had already accounted for business familiarisation with the ban. The impact assessment for the redress regulations set out that - as relatively few businesses go through an employment tribunal each year - familiarisation with the employment tribunal would form part of their activity in responding to a claim.
- 8.12 Familiarisation costs to employers for the ban on exclusivity clauses in zero hours contracts were estimated at £472,000 in the original impact assessment, based only on those who used exclusivity clauses in zero hours contracts familiarising themselves with the regulations.
- 8.13 Our engagement with stakeholders for this review found that awareness of the regulations and the ban on exclusivity clauses in zero hours contracts was mixed. This level of familiarity with the regulations suggests that there will have been some familiarisation costs for business, but these may have been lower than the predicted £472,000 cost. However, this estimate was based only on organisations which had used exclusivity clauses in zero hours contracts familiarising themselves with the regulations. Our discussions with stakeholders indicated that few had made use of these clauses prior to the introduction of the ban on exclusivity clauses and the regulations.

## Annual ongoing costs

- 8.14 Based on the assumption that the general rate of individual workplace employment right disputes in the economy would apply to the ban on exclusivity clauses, it was estimated in the impact assessment that there would be around 11,700 disputes relating to these Regulations<sup>7</sup>. Of these, an estimated 349 annual claims to the employment tribunal

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<sup>7</sup> This is based on an estimate of around 1,022,000 zero hours contract workers without a second job (using data from the LFS and an ONS survey of businesses). From there, using data in the CIPD's *Zero Hours Contracts: Myth and Reality* 2013 Report, which said around 10% of zero hours workers were never allowed to work for another employer, that around 97,000 of these workers would have a de facto exclusivity clause. It was then assumed that

system would be made as early conciliation notifications. It was further estimated (based on Acas management information) that 275 of these cases would participate in early conciliation, and 77 would result in employment tribunal claims.

- 8.15 These estimates were expected to be high estimates, as they assume that each zero hours contract worker with an assumed exclusivity clause would look for an additional job. This was despite the evidence, as shown below, that only a small proportion of zero hours contract workers had a second job. Also, zero hours contract workers who felt they were underemployed were more likely to look for a replacement job or seek more hours in their current job than look for an additional job.
- 8.16 The estimated unit cost to an employer of going through early conciliation and employment tribunal was calculated using the standard approach based on data collected in surveys of people and employers involved in cases<sup>8</sup>. The estimates included time spent by staff on dealing with the case and the cost of legal advice.
- 8.17 The unit cost for an employer going through early conciliation was estimated at £454 at 2014 prices. The unit cost for an employer going through an employment tribunal case was estimated at £3,600 at 2014 prices.
- 8.18 Applying these unit costs to the estimated numbers of annual cases going through early conciliation and to the employment tribunal produces the following estimates.

**Table 2: Estimated annual cost to employers of cases seeking redress related to the ban on exclusivity clauses in zero hours contracts**

	<u>£ (to nearest 000)</u>
Early conciliation	£125,000
Employment Tribunal	£277,000
<b>Total</b>	<b>£403,000</b>

- 8.19 In line with the Better Regulation Framework the impact assessment only included the costs to compliant businesses of going through the enforcement process. It was estimated that around 32% of employers taken through the tribunal system were compliant. This was applying this percentage to the cost estimates produces an annual cost estimate to compliant employers resulting from this legislation of £130,000.
- 8.20 The Equivalent Annual Net Direct Cost to Business is based only on the cost for private sector employers. The impact assessment estimated from the Q2 2015 LFS that 83% of individuals on zero hours contracts in their main job worked in the private sector.

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all of these workers would look for a second job (producing a high end estimate). Based on data from the Fair Treatment at Work Survey 2008, showing that 24% of workers had an employment rights problem at work in the past 2 years, and of these workers just 3% took the case to the employment tribunal system, it was estimated that there would be 11,700 disputes.

<sup>8</sup> Acas evaluation of early conciliation 2015 <https://archive.acas.org.uk/media/4335/Evaluation-of-Acas-Early-Conciliation-2015/pdf/Evaluation-of-Acas-Early-Conciliation-2015.pdf> and the Survey of Employment Tribunal Applications 2013 <https://www.gov.uk/government/publications/survey-of-employment-tribunal-applications-2013>

- 8.21 Applying this percentage to the estimated annual costs to compliant businesses gave an annual cost to private sector compliant businesses of £115,000.
- 8.22 Stakeholders from business and legal representative organisations indicated that they had no evidence of any disputes in relation to the redress regulations for the banning of exclusivity clauses in zero hours contracts. Evidence from worker and citizens organisations suggested that there may have been issues around exclusivity, but these would have been secondary to other issues the worker had with their zero hours contract work.
- 8.23 Discussions with Her Majesty's Court and Tribunal Service suggest that there have been very few claims related to the banning of exclusivity clauses in zero hours contracts between 2015/16 and 2019/20.
- 8.24 Based on the information collected for this review, including the evidence from our stakeholders, we believe that it would be reasonable to assume that there is a maximum of between 5 and 10 employment tribunal claims a year related to the ban on exclusivity clauses in zero hours contracts (compared to 77 estimated in the impact assessment). In 2019/20, the ratio of employees who made early conciliation notifications to employment tribunal cases was 3.2. This suggests that there may have been around 16 to 32 early conciliation cases related to exclusivity clauses in zero hours contracts (compared to 349 estimated in the impact assessment).
- 8.25 BEIS currently estimate the unit costs to an employer of dealing with an early conciliation case at around £290, and employer costs of dealing with an employment tribunal case at £5,900<sup>9</sup>. This would suggest a maximum estimated annual cost to employers resulting from the regulations enabling affected workers to make a claim at the employment tribunal of between £34,000 and £68,000. Unlike the original impact assessment, this estimate covers compliant and non-compliant employers. It is well below the estimated costs to employers in the original impact assessment.

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<sup>9</sup> These estimates are based on data from the Survey of Employment Tribunal Applications 2018 and the Acas Individual Conciliation Evaluation 2019 – taking account of median time spent on the case, the use of paid representation and median representation costs.

## 9. Conclusion and Recommendation

- 9.1 In general, the stakeholders we spoke to believe that having the redress regulations in place is important to make it clear to employers that zero hours contract workers have rights to flexibility in the workplace. In addition, there were few concerns about the impact of these regulations on business and little evidence of unintended consequences. In general stakeholders felt that enforcing the ban through the regulation remains appropriate. There have been very few cases brought to employment tribunal on this issue. Most stakeholders did not believe that the objectives of the regulations could be achieved through an alternative system which imposes less regulation. This review therefore recommends that the Zero Hours Contract Exclusivity Clause (Redress) Regulations remain in place, unchanged.

## Annex A

With thanks to stakeholders involved, including:

- The Business Services Association
- Citizens Advice Scotland
- Association of Labour Providers
- Make UK
- The Federation of Small Businesses
- Law Society
- Employment Lawyers Association
- Trades Union Congress
- National Care Forum
- The Association of Recruitment Consultancies

## Annex B

### Questions raised with stakeholders

These questions were adapted depending on the stakeholder.

#### About your organisation

1. Tell us about the role of your organisation and the individuals /organisations you represent.
2. How prevalent are zero hours contracts among these individuals/industries?

#### The redress regulations to enforce the ban on exclusivity *clauses*

3. Are employers and workers familiar with the legislative changes that gave zero hours contract workers the right to enforce their rights against non-compliant employers?
4. The objective of the redress regulations was to tackle potential avoidance of the ban on exclusivity clauses in zero hours contracts in the most effective and proportionate way. Has that been achieved? Please explain why.
5. Is this objective still appropriate?
6. Has the right to seek redress made it easier for zero hours contract workers to obtain additional jobs if they want to? Please could you explain why?
7. What impact have the redress regulations had on employment practices/ employer behaviour?
8. Have there been any unintended consequences as a result of banning exclusivity clauses in zero hours contracts and giving individuals a means to seek redress?
9. Are you aware of any workplace disputes in relation to the enforcement of the ban on exclusivity clauses in zero hours contracts? If so, can you describe the disputes in more detail? What were the outcomes? Did they lead to any changes in employer practices?
10. Are you aware of any similar disputes taking place prior to the redress regulations coming into force?
11. If so, can you describe the disputes in more detail? What were the outcomes? Did they lead to any changes in employer practices?
11. Is there any other way to enforce the ban on exclusivity clauses for zero hours contracts, including non-statutory means?
12. Do you think these regulations are still necessary to enforce the ban on exclusivity clauses?
13. Are there any improvements that could be made to these regulations?
14. Please let us know if you have any other comments or if there are any other issues you would like to raise