

<b>Title:</b> Extending the right to a written statement to 'dependent contractors' (non-employee workers)  <b>IA No:</b> BEIS038(F)-18-LM <b>RPC Reference No:</b> RPC18-BEIS-4214(2) <b>Lead department or agency:</b> BEIS <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 12/11/2018			
	<b>Stage:</b> Final Stagens			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Seocndary legislation			
	<b>Contact for enquiries:</b> Cara Maguire, Labour Markets Directorate			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Fit for purpose	

Cost of Preferred (or more likely) Option (in 2016 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision
-£213.5 million	-£213.3 million	£20.4 million	

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

Currently, those workers that do not have full 'employee' status have no entitlement to a written statement of employment particulars. Matthew Taylor's Good Work report concluded that uncertainty around rights makes them harder to enforce, and noted that the lack of a written statement for non-employee 'workers' is a source of such uncertainty. The Government agrees that employers should provide basic information about the employment relationship to their whole workforce (including those with employee and non-employee worker status) - and going further that this information should be provided at the outset of employment ("day 1"). Extending the right to a written statement to workers would improve clarity and understanding and would be beneficial to both the individual and the employer.

**What are the policy objectives and the intended effects?**

The proposed extension of the right to a written statement to non-employee workers, and making this a day 1 right, would provide greater clarity and transparency to all workers as soon as they start a job. It would also bring consistency to the system. It would provide certainty on the details and expectations of a job if, later, there was a dispute and a case taken to an employment tribunal.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

The 'do nothing'/status quo option involves no change to current requirements, which are that individuals with full 'employee' status are entitled to a written statement, which must be provided within 2 months of starting a job. Following consultation, the preferred final policy position is to:

1. Legislate to extend the right to a written statement to non-employee workers;
2. Make access to a written statement a day one right for both employees and workers; and
3. Expand the information required on a written statement.

The preferred option is a combination of Options 1 and 2, which were consulted upon between April and June 2018.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 12/2025				
Does implementation go beyond minimum EU requirements?		N/A		
Is this measure likely to impact on trade and investment?		N/A		
Does this measure comply with our international trade and investment obligations, including those arising under WTO agreements, UK free trade agreements, and UK Investment Treaties?		N/A		
Are any of these organisations in scope?		<b>Micro Yes</b>	<b>Small Yes</b>	<b>Medium Yes</b>
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> N/A		<b>Non-traded:</b> N/A

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

Signed by the responsible Minister: \_\_\_\_\_ Kelly Tolhurst \_\_\_\_\_ Date: \_\_\_\_\_ 14 December 18 \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Legislate to extend the right to produce a written statement to non-employee workers, make it a day 1 right for both non-employee workers and employees and **update the contents of a principal written statement to include information that is useful for both employees and non-employee workers.**

## FULL ECONOMIC ASSESSMENT

Price Base Year 2018	PV Base Year 2019	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -£213.3m
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low					
High					
<b>Best Estimate</b>	£20.2 million		£26.7 million		£262.9million
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
Familiarisation costs accrue to all businesses. Businesses face implementation costs associated with employees (new employee written statements will need to be amended to include the new prescribed information as their terms and conditions change) and non-employee workers (where they will need to receive a new written statement when they move jobs or when they first enter the labour market).					
<b>Other key non-monetised costs by 'main affected groups'</b>					
The burden associated with making the requirements for a written statement a 'day 1' right is not monetisable. Currently, employees must be provided with a written statement after 2 months – so the same costs are incurred and simply brought forward. We anticipate this burden being negligible because 81% of businesses already (voluntarily) provide a written statement on or before a worker's first day.					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low					
High					
<b>Best Estimate</b>	n/a		n/a		n/a
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
No monetised benefits have been identified.					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
Non-employee 'workers' will benefit from improved clarity on their position. Employing businesses will also benefit from more certainty on the details and expectations of a job if, at a later date, there was a dispute and a case taken to an employment tribunal. On average, over the last 10 years, there have been around 3,000 annual receipts to employment tribunals relating to written statements. Renewed clarity around the requirements would help to reduce this number.					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate (%)</b>
The key assumption relates to the number of non-employee workers in the labour market.					3.5%

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
<b>Costs:</b> £20.4 million	<b>Benefits:</b> N/A	<b>Net:</b> £20.4 million	£102.0 million

## Evidence Base (for summary sheets)

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### Background

The Matthew Taylor Review of Employment Practices in the Modern Economy ('Good Work: The Taylor Review of Modern Working Practices') was a wide ranging review of whether, and how, employment practices need to change to keep pace with modern business models. The review considered the implications of new forms of work (e.g. those driven by digital platforms) and less secure forms of work (e.g. agency work and zero hour contracts) for:

- Employee rights and responsibilities,
- Employer freedoms and obligations, and
- Our existing employment law framework.

The Review was published in July 2017 with 53 recommendations<sup>1</sup>. Amongst those recommendations, and in order to improve the clarity, certainty and understanding of all working people, Matthew Taylor recommended that the **Government should extend the right to a written statement to 'dependent contractors' as well as employees.**

### What is a 'written statement'?

The receipt of a written statement of employment particulars is currently a right for employees (as per Sections 1 to 7 of the Employment Rights Act 1996).

An employer must give employees a 'written statement of employment particulars' provided that they work for the employer for at least 1 month. This isn't an employment contract but will include the main conditions of employment. The written statement must be provided within 2 months of the start of employment, although it can be made up of more than one document (where the employer gives employees different sections of their statement at different times).

If the employer does provide the written statement in sections, one of the documents (called the 'principal statement') must include at least:

Information that must be included in a 'principal statement'	
<ul style="list-style-type: none"><li>• The business's name</li><li>• The employee's name, job title or a description of work and start date</li><li>• If a previous job counts towards a period of continuous employment, the date the period started</li><li>• How much and how often an employee will get paid</li></ul>	<ul style="list-style-type: none"><li>• Hours of work (and if employees will have to work <u>Sundays</u>, <u>nights</u> or <u>overtime</u>)</li><li>• <u>Holiday entitlement</u> (and if that includes public holidays)</li><li>• Where an employee will be working and whether they might have to <u>relocate</u></li><li>• If an employee works in different places, where these will be and what the employer's address is</li></ul>

Source: <https://www.gov.uk/employment-contracts-and-conditions/written-statement-of-employment-particulars>

In addition to this information in the principal statement, a written statement must also contain information about:

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<sup>1</sup> See Taylor (2017), Good Work, Page 47:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

**Key additional information that must be included in a written statement**

- How long a temporary job is expected to last
- The end date of a fixed-term contract
- Notice periods
- Collective agreements
- Pensions
- Who to go to with a grievance
- How to complain about how a grievance is handled
- How to complain about a disciplinary or dismissal decision

The written statement doesn't need to cover the following, but it must say where the information can be found:

**Additional information that can be provided in other documents such as staff handbooks, or staff intranet sites**

- sick leave and pay entitlement;
- disciplinary and grievance procedures; and
- Appeals procedure under the disciplinary and grievance procedures.

There are several available templates for written statements online, including those produced by BEIS<sup>2</sup> and Acas (Advisory, Conciliation and Arbitration Service)<sup>3</sup>.

The requirement for a written statement does not currently extend to all non-employee workers.

**Who are non-employee workers?**

There are currently three main employment statuses in the UK: employee, 'worker' and self-employed. Note that these are employment statuses for employment law purposes (i.e. the employment rights you are entitled to are linked this status), employment status for tax ('tax status') is different.

An employee is generally someone who works under an employment contract. All employees are also workers, but an employee is a special category of worker that has additional employment rights and responsibilities that don't apply to workers who are not employees.

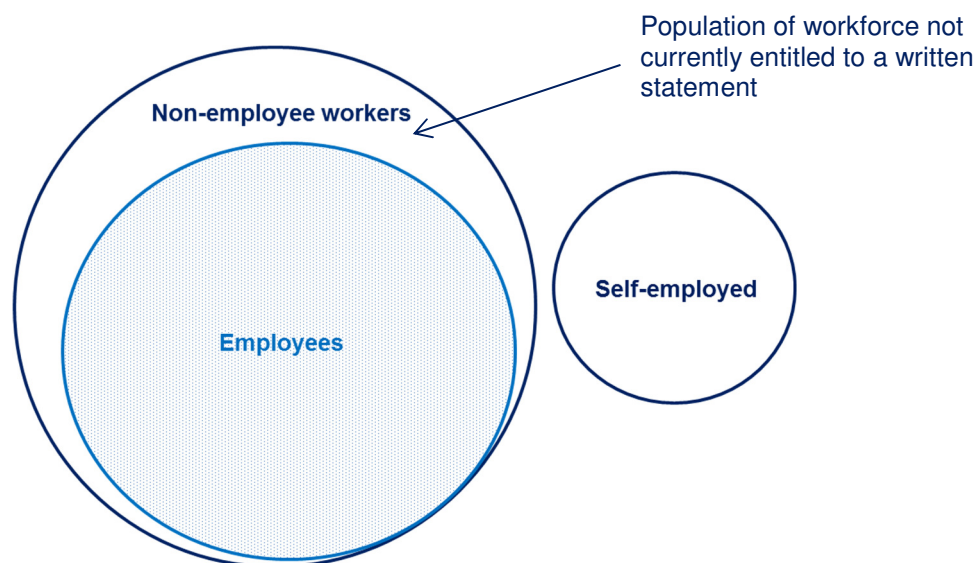
Typically, non-employee workers are not entitled to:

- A written statement of employment particulars;
- Minimum notice periods if their employment will be ending, for example if an employer is dismissing them;
- Protection against unfair dismissal;
- The right to request flexible working;
- Time off for emergencies; and
- Statutory Redundancy Pay.

<sup>2</sup> <https://www.gov.uk/government/publications/employment-particulars-written-statement-form>

<sup>3</sup> <http://www.acas.org.uk/index.aspx?articleid=1577>

Figure 1: Employment status for employment law purposes



To implement the recommendation of the Taylor Review, Government intends to extend the entitlement to a written statement to all non-employee workers. This would give a greater number of individuals a clearer understanding of their working relationship, including information on the date continuous employment started, holiday entitlement, and a job description.

It is anticipated that access to this information would help to improve the situation of a cohort of workers often seen as vulnerable (as discussed in further detail below).

### **What is a 'dependent contractor'?**

The Government is currently considering a number of Matthew Taylor's recommendations relating to the current employment status framework, particularly:

1. Government should retain the current three-tier approach to employment status as it remains relevant in the modern labour market but rename as 'dependent contractors' the category of people who are eligible for 'worker' rights but who are not employees.

Should Government implement this recommendation, 'dependent contractors' will be those people currently operating under the 'worker' employment status, plus anyone newly brought into this status following Taylor's additional recommendations relating to employment status boundaries (likely to be a share of those currently classified as self-employed).

The above recommendations could lead to an increased number of non-employee workers in future. This would be as a result of clarifying the boundary between self-employed and 'worker'. The impact of having to provide a written statement to these newly classified 'dependent contractors' will be assessed at the point when this change is made (alongside the impact of having to extend the suite of existing 'worker' employment rights).

As such, in this impact assessment, we only assess the impact of extending the right to a written statement to the current population of non-employee workers.

## The problem under consideration and rationale for intervention

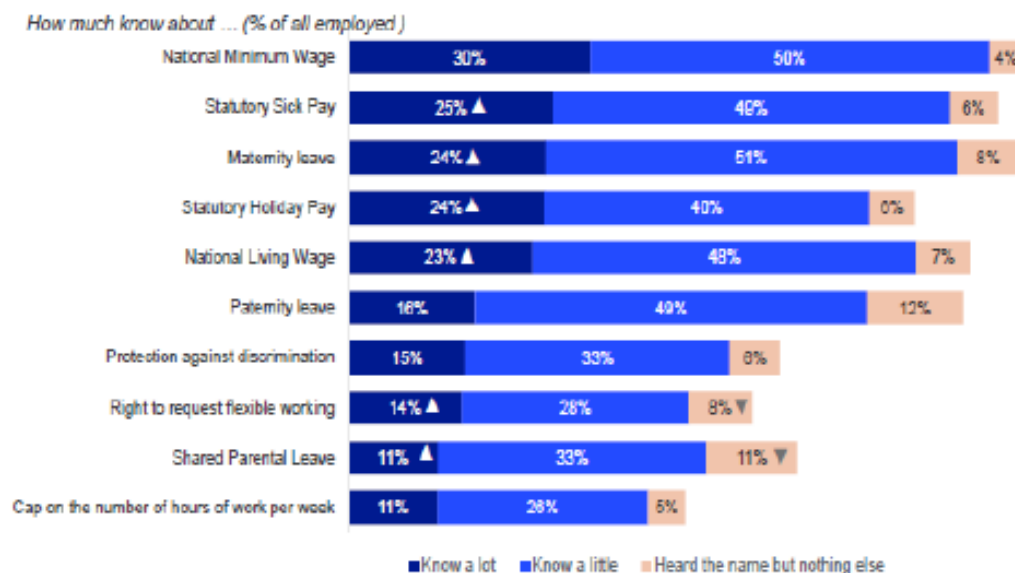
### Vulnerable workers and clarity around rights

Across the UK, awareness of employment rights is low. In a 2005 DTI survey<sup>4</sup> just 17 per cent of respondents said that they ‘knew a lot’ about their rights at work. The data indicated that having a temporary job decreases the chances of a worker being aware of their employment rights further. Temporary workers are less informed than permanent staff with respect to a range of employment rights, including work/life balance entitlements, unfair dismissal and minimum wage rates.

The ‘worker’ employment status is often associated with ‘atypical work’ i.e. work that is not the traditional permanent, full-time, employment. Atypical work includes agency work, temporary work, zero hour contracts, part-time working, and, more recently, gig economy working. There is a concern that individuals working in these ways are more likely to be in a ‘precarious’ position.

DTI concluded that “Workers who are most vulnerable to exploitation at work have a greater need for this detailed knowledge” and “it is such workers who are at greatest risk of having low levels of knowledge of key employment rights”.

More recently, BEIS survey evidence<sup>5</sup> (2018) indicates that only around 60% of people feel they would be confident in resolving an issue around insufficient access to legal rights within the work place, and fewer than 20% would feel ‘very confident’ doing so. In terms of specific rights, people were least likely to report knowing ‘a lot’ about a cap on the number of hours of work per week, shared parental leave and the right to request flexible working:



The Commission on Vulnerable Employment<sup>6</sup> defines vulnerable employment as: “Precarious work that places people at risk of continuing poverty and injustice resulting from an imbalance of power in the employer-worker relationship”.

<sup>4</sup> <http://www.employment-studies.co.uk/system/files/resources/files/errs51.pdf>

<sup>5</sup> BEIS Priorities Research: Key results from Wave 3 among General Public and Business (2018), Kantar Public

<sup>6</sup> [http://www.vulnerableworkers.org.uk/files/CoVE\\_full\\_report.pdf](http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf)

HSE defines vulnerable workers as those who are at risk of having their workplace entitlements denied, or who lack the capacity or means to enforce them.

A range of factors affect the power imbalance between workers and employers, including: workers' legal rights; their terms and conditions of employment; and their personal characteristics. Vulnerable employment places workers at greater risk of experiencing problems and mistreatment at work. Fear of dismissal by those in low-paid sectors with high levels of temporary work means they are often unable to take any action to challenge it. Analysis undertaken by the Legal Services Commission has shown that many people believe that nothing can be done about employment problems, and that workers are often too frightened to take action about them.

The Commission on Vulnerable Employment references Thompsons, a legal firm specialising in employment law, that vulnerable workers in non-standard, precarious work are "unlikely to be aware of their rights at work". The Commission states that they agree and believe that there is a significant information deficit among vulnerable workers with respect to their employment rights, and that this needs to be challenged.

Evidence from BEIS's Public Attitudes Tracker<sup>7</sup> found that 'permanent workers were more likely to be aware of the employment rights than non-permanent workers (72% vs 58%, respectively), as were those in continuous employment (72% vs 54% who work on a job-by-job basis).

The survey also found that:

- 19% of those either in employment or employed within the past two years had experienced an employment rights problem at work in the past two years. One in ten (11%) had experienced three or more problems at work in the last two years.
- Those in non-permanent work were more likely to have experienced a problem than those in permanent work (30% vs 17%, respectively), as were those who worked on a job-by-job basis (32%, compared with 17% who worked continuously).

Clearly, action to improve awareness and empower workers to enforce their rights is one means of addressing imbalances in power.

### **Good Work: The Matthew Taylor Review of Modern Employment Practices**

Matthew Taylor (2017) undertook a wide ranging review into employment practices in the modern economy. His overarching finding was that the UK's labour market works well but there are improvements that can be made to ensure good work for all, particularly those individuals in a more vulnerable labour market position. He presented three broad challenges that his recommendations are designed to address, these are:

- Tackling exploitation and the potential for exploitation at work;
- Increasing clarity in the law and helping people know and exercise their rights; and
- Over the longer term, aligning the incentives driving the nature of our labour market with our modern industrial strategy and broader national objectives.

Greater transparency of rights was presented as a key action that could be taken to improve clarity, certainty and understanding of working people. The Good Work report quotes a submission from LawWorks that states "Employment rights need to strike the right balance

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<sup>7</sup> Wave 27 <https://www.gov.uk/government/statistics/beis-public-attitudes-tracker-wave-27>

between security, flexibility and innovation. Above all though people need transparency, information and advice about what their rights and legal position may be in any particular context and relationship”.

Evidence presented by Acas to the Review suggests a significant lack of awareness among individuals and employers about applicable rights and responsibilities in non-standard contracts.

Matthew Taylor states that: “Government must continue to consider ways in which it can embed the rights and responsibilities set out in legislation so that there can be less misunderstanding or opportunity for avoidance.” The provision of a written statement is a step in the right direction for achieving this aim.

As noted in the next section, a number of key stakeholders, both business and workforce representatives are supportive of the recommendation that the right to a written statement should be extended to non-employee workers. This indicates that the written statement is seen as a fundamentally useful tool for workers.

### **The written statement**

Currently, those workers that do not have full ‘employee’ status have no entitlement to a written statement. Matthew Taylor’s Good Work report concluded that uncertainty around rights makes them harder to enforce, and noted that the lack of a written statement for ‘workers’ is a source of such uncertainty.

The Government agrees that employers should provide basic information about the employment relationship to all workers (including employees) at the outset. The written statement provides a means of achieving this. Extending the right to a written statement to workers would improve clarity and understanding and would be beneficial to both the individual and the employer.

### **Rationale for intervention**

It’s vital that people know the work that they are signing up for when they enter an employment relationship. They need to be able to make an informed decision about whether the terms and conditions on offer are right for them.

A lack of transparency/uncertainty around expectations and rights means that ‘workers’ have imperfect information. This can be a contributing factor to an imbalance of power in employment relationships whereby ‘workers’ feel unable to challenge unfair working practices because it is unclear what their entitlement is in doing so. The provision of a written statement is one way in which ‘workers’ can be provided with information to support their position in an organisation. The written statement can provide a point of reference for expectations about the job role, rights to paid holiday and how long a job is expected to last.

In addition to the imperfect information problem, the lack of a written statement for ‘workers’ is also an equity issue, in that ‘workers’ are disadvantaged relative to non-worker employees by not having clarity about their employment relationship.

Matthew Taylor’s Good Work report states that:

“One way greater clarity over rights can be addressed is through a greater emphasis on providing people with helpful information when they start work. While there is no legal



requirement to provide someone who works for you a written contract, for employees, there is a requirement to provide a written statement of employment particulars after 2 months... It is clear that a similar provision would be helpful for many 'dependent contractors'".

This would provide a greater number of individuals (who are not employees but are 'workers'), and employers, a greater understanding of their working relationship.

The Government accepts that the extension of the right to a written statement for non-employee workers is equitable and could address a lack of transparency around rights for these individuals.

In support of the recommendation for written statements for dependent contractors, the Good Work report<sup>8</sup> cites evidence submissions from key stakeholders:

Evidence submitted to the Matthew Taylor Review
<p><i>"There can and should be greater transparency for all workers as to the terms of their engagement and accrued rights, such as pay. Extending to "workers" similar rights of employees as regards particulars of engagement as well as itemised information regarding pay and other accrued entitlements could be the first step to informing workers on the most basic level about their rights and obligations." - LawWorks</i></p>
<p><i>"The first component of the package of reforms that business would support to achieve this goal is to extend the right that 'employees' have to a written statement of key terms and conditions of employment to all 'workers'". - CIPD</i></p>
<p><i>"Evidence from the Acas helpline also suggests that the fact that there is currently no statutory requirement to provide a written statement of terms and conditions to workers, as there is for employees, can further limit awareness of the legal framework around these contracts." - Acas</i></p>
<p><i>"The employer should also be required issue the written statement of terms from day one to all workers – not just those that might be employees." - GMB</i></p>
<p><i>"We also believe that there should be an amendment to the Employment Rights Act 1996, requiring employers to provide all workers with a written copy of their terms and conditions after 2 months of employment. Currently, this right extends only to employees." - CIPD</i></p>

## Findings from the consultation

BEIS consulted on Matthew Taylor's recommendation to extend the right to a written statement to non-employee workers between April and June 2018.

Responses to the consultation were generally positive about the clarity that a written statement would provide around an employment relationship. For example, one respondent noted that:

*"...employers should provide this basic information and key additional information about the employment relationship to help ensure that legal rights and responsibilities are not misunderstood or exploited"*

Another respondent added that:

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<sup>8</sup> Taylor (2017), Good Work:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf)

*“All workers and employees... should be clear what they are expected to do for the employer, and under what pay, terms and conditions their work will be rendered. Such clarity would avoid the necessity, should a dispute arise, for litigation in a tribunal or other court”*

The only concerns raised related to the administrative burden on business of issuing new written statements on the first day of employment and the potential knock-on impact on recruitment. One respondent suggested:

*“... BEIS consider a two-stage Written Statement process where initial core rights are outlined to the employee on day one of their employment and more details are given at a later date in staff handbooks or by other means”.*

## Policy objective and description of preferred option

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### Policy objective

The proposed extension of the right to a written statement to non-employee workers, and making this a 'day 1' right, will provide greater clarity and transparency to all workers as soon as they start a job. It would also bring consistency to the system.

Further, it will provide certainty on the details and expectations of a job, which could prove useful at a later date if there was a dispute and a case taken to an employment tribunal.

### Options considered

At consultation stage we considered three options in addition to 'do nothing':

<b>Option 0</b>	Do nothing
<b>Option 1</b>	Legislate to extend the right to a written statement to non-employee workers and make it a 'day 1' right for both non-employee workers and employees
<b>Option 2</b>	In addition to the requirements of Option1, also legislate to update the contents of a principal written statement to include information that is useful for both employees and non-employee workers; and consider whether additional information should continue to be required within 2 months of an employee or non-employee worker starting work
<b>Option 3</b>	Improving awareness of rights by promoting Acas guidance on the rights of employees and non-employee workers and how to enforce them (non-legislative option)

### Preferred option

At final stage our preferred option is a combination of Option1 and 2, in which we will:

1. Legislate to extend the right to a written statement to non-employee workers;
2. Make access to a written statement a day one right for both employees and workers; and
3. Expand the information required on a written statement.

Matthew Taylor highlighted that the right to a written statement currently excludes non-employee workers, meaning some individuals do not have transparent information about their employment relationship.

The Government agrees and does not think that the existing provision around written statements goes far enough. The Government believes that all non-employee workers should have the same clarity as employees when going into an employment relationship, so they can fully understand what they are signing up to.

The Government believes that it is important that all employees and 'workers' are clear about their working relationship when entering a new job. This is particularly important for those that are more vulnerable and are currently willing to accept work without having clear details about their hours or pay. These individuals are also usually more unclear about the rights they are entitled to.

For the information in the written statement to be useful, and allow individuals to make informed choices, the Taylor Review also highlighted that it needs to be made available

much sooner than two months into employment. The Government agrees and intends to bring forward legislation to make access to a written statement a day one right for both employees and workers.

We have considered simply extending the right to a written statement to all 'workers' and keeping the 2-month window to provide a statement. However, if the 2-month compliance period were retained, very short-term workers are unlikely to benefit from the extension. In addition, non-employee workers are more likely to be engaged on a casual basis, which could mean that they have the least certainty over their employment relationship and rights. To maximise the benefit associated with the written statement, regardless of length of service, it should be provided as soon as possible for the sake of clarity and certainty for workers.

On the other hand, if we required employers to provide a written statement on or before the first day of work, business representatives have expressed concerns that this could slow down recruitment.

In taking the measure forward as a 'day 1' right, we will work with businesses to understand what Government can do to minimise any impact on recruitment timescales. We are satisfied that any impact will be very low given that, in response to the consultation question about when individuals starting work receive a written statement, of those that answered the question, the vast majority (81%) said that written statements were provided before or on the first day of work anyway.

The Government also wants to ensure the content of a Written Statement is as useful as possible to both the individual and the employer and, as such, will be changing the information required.

To ensure that we strike the right balance between giving greater clarity to workers and avoiding placing unnecessary additional burdens on employers, we propose updating the mandatory elements of the principal written statement to include only the information that would be important and useful for both employees and non-employee workers at the outset. This information would have to be provided as a single stand-alone document with the view to it being provided by, or on, the first day of work.

Note that, the implementation of the preferred option would mean that written statements that already exist for current employees might need to be revised to ensure that the new information is included.

We provide further detail on how we anticipate implementation taking place in later sections of this impact assessment.

#### **Additional mandatory contents to be required in a written statement**

Government will expand the information that employers are required to provide as mandatory content in a written statement from day one. The additional information to be included covers both new information, and information which employers are already required to provide but can provide elsewhere (in a staff handbook, for example). The additional information is as follows:

- How long a job is expected to last, or the end date of a fixed-term contract
- How much notice an employer and worker are required to give to terminate the agreement
- Whether a worker is eligible for sick leave and pay
- Other types of paid leave e.g. maternity leave and paternity leave – whether the worker is eligible and where to find more details on the employer's policy
- The duration and conditions of any probationary period
- All remuneration (not just pay) - contributions in cash or kind e.g. vouchers and lunch

### Additional mandatory contents to be required in a written statement

- Which specific days and times workers are required to work

All of the above is in addition to the current mandatory information that must be provided in a written statement. This can be found at <https://www.gov.uk/employment-contracts-and-conditions/written-statement-of-employment-particulars>

### Rejected options

- **Option 0 – Do nothing** - This option would not make any changes to the current system. Maintaining the status quo would mean that non-employee workers would continue as they are now. In the context of the findings of the Matthew Taylor, then would mean that these individuals would continue to work without clarity about their working relationship, which could leave them, especially those that are most vulnerable, with no clarity as to whether they are entitled to basic minimum rights including the minimum wage and paid holiday.
- **Option 3 – Improving awareness of rights by promoting Acas guidance on the rights of employees and non-employee workers and how to enforce them** - A non-legislative option for addressing the problem would only go some way to improving overall the provision of information on employment rights. Acas currently provide online guidance on what information is required in a written statement. Acas also provides guidance on the individual rights of employees and non-employee workers. Given that a lack of clarity continues to exist despite the current information provision, a more targeted individual approach would go further in addressing the problem. This Option also does not fully address the equity issue around the provision of written statement to employees but not those individuals with ‘worker’ status.

### The preferred option in practice – implementation

As noted above, the preferred option is to:

1. Legislate to extend the right to a written statement to non-employee workers;
2. Make access to a written statement a day one right for both employees and workers; and
3. Expand the information required on a written statement.

Given that the main concern associated with the extension of the right to a written statement to non-employee workers relates to the administrative burden on business of issuing new written statements on the first day of employment and the potential knock-on impact on recruitment, we have sought to implement the measure in such a way as to minimise these burdens.

The preferred option will have separate impacts on the employers of employees and non-employee workers.

- For employees – Existing employees will not need to be issued with a new written statement as they should already have one. There is no immediate requirement to incorporate the new mandatory contents into these existing written statements.

However, employees do have an entitlement to request an updated written statement to reflect changes in their terms and conditions. The changes to the mandatory information to be included in a written statement could be considered a change in terms and

conditions, and as such could trigger requests for an updated written statement. If an employee makes such a request, the employer would need to update their existing written statement to include the new mandatory information outlined above.

New written statements for new employees will now have to include the seven new mandatory pieces of information outlined above.

- For non-employee workers – an existing non-employee worker would currently have no written statement.

Non-employee workers moving into new jobs (either changing jobs or entering the labour market for the first time) will now be entitled to a written statement.

Existing non-employee workers will not need to be issued with a new written statement and they will have no right to request one. The Government intends to issue guidance for employers to indicate that it would be good practice to provide a written statement to existing non-employee workers, however, this will not be prescribed in legislation.

### Note on deadweight

It should be noted that there is potential deadweight in the cost calculation of this measure. BEIS has anecdotal evidence to suggest that, where an employer uses a mix of employee and non-employee worker contracts, they do not differentiate in how they implement rights. Engagement with stakeholders as part of the consultation on 'Requiring more information on the payslips of hourly-paid employees and extending the right to receive a payslip to workers'<sup>9</sup> found that businesses employing both workers and employees do not differentiate between them when it comes to proving pay information.

We suspect that the same may be true of businesses when it comes to complying with the right to a written statement. Responses to the consultation support this assumption. When asked if they had provided a written statement in the last 12 months to non-permanent staff, 8 respondent businesses said that they had, compared to ten respondent businesses who said that they had not.

### **Enforcement of the right to a written statement**

The Matthew Taylor Review also recommended that *'the Government should also consider introducing a standalone right for individuals to bring a claim for compensation if an employer has failed to provide a written statement...'* and that *'the Government should do more; working with Acas and others to ensure information is accessible'*.

Matthew Taylor noted that his Review received evidence to suggest that written statements are not always provided by employers, despite being a requirement in law for employees. Improving awareness of the legal requirement to provide written statements may help to improve compliance. In addition, further information for individuals on how their rights can be enforced is also important.

Under current legislation, if an employee does not receive a written statement within 2 months of starting the job, they can make this complaint to an Employment Tribunal for a declaration as to what the particulars should have been. However, there is no standalone

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<sup>9</sup> [https://www.legislation.gov.uk/ukia/2018/30/pdfs/ukia\\_20180030\\_en.pdf](https://www.legislation.gov.uk/ukia/2018/30/pdfs/ukia_20180030_en.pdf)

right to compensation for this failure, and compensation can only be claimed if another substantive claim has also been brought (such as an unlawful deductions from wages claim, for example). If the substantive claim is successful, and at the time of commencing the proceedings the employer was in breach of its duty to provide a written statement, the tribunal must, in normal circumstances, award additional compensation of at least two weeks' pay (and up to four weeks' pay where it considers it just and equitable to do so).

At this stage, the Government is not proposing to take action in making it a standalone right for individuals to bring a claim for compensation if an employer has failed to provide a written statement. Government will first take the non-legislative approach of improving awareness of the legal requirement to provide written statements. Given that Government is considering changing the requirements, we want to ensure that any changes made have time to bed in. We therefore do not think this is an appropriate time to consider a standalone right for an individual to bring a claim for compensation especially as we do not have the evidence of the extent of this problem.

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

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### **Benefits**

We have not been able to identify any quantifiable benefits to business or workers resulting from the proposals.

However, whilst not quantifiable, there is a recognised benefit to both parties linked to having improved clarity and certainty about the rights of individuals.

### **Benefit to the individual**

The benefit to non-employee workers from increased transparency is that this gives them a basis for expectations about their working conditions. The written statement will allow non-employee workers to challenge working conditions that they consider to be counter to this.

As the Council of the European Union stated in their recent impact assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union<sup>1</sup>:

“Having written information about their rights is, indeed, a prerequisite for workers to invoke their rights”.

As outlined in the ‘rationale for intervention’ section of this impact assessment, a lack of transparency increases the potential for undeclared work or abuse of employee rights.

A number of labour market stakeholders, including trade unions (TUC, GMB), legal experts (LawWorks), and other labour market experts (ACAS, CIPD) have shown support for Matthew Taylor’s recommendation that the right to a written statement be extended, which indicates that there is an intuitive value in receiving a written statement.

The measure will also address the current two-tier system of rights in relation to the receipt of a written statement, whereby employees must currently receive a written statement (a longstanding entitlement, included in the Employment Rights Act of 1996), but there is no such requirement for non-employee workers.

### **Benefit to the employer**

According to the Commission on Vulnerable Employment, employment protection also has clear business benefits. Good employers agree that quality labour standards are needed to enable innovation, flexibility and responsiveness by firms competing in a global economy. The Commission on Vulnerable Employment note that, in a survey undertaken by the Chartered Institute of Personnel and Development (CIPD)<sup>2</sup> of over six hundred HR professionals, the majority said that employment law made a positive contribution to worker relationships, and less than 15 per cent said that employment law gets in the way of business. 67 per cent agreed with the statement that employment law drives good business practice.

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<sup>1</sup> <http://europeanmemoranda.cabinetoffice.gov.uk/files/2018/01/ST-16018-2017-ADD-1-EN.pdf>

<sup>2</sup> [http://www.vulnerableworkers.org.uk/files/CoVE\\_full\\_report.pdf](http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf)



Having clear employment protection legislation also prevents good employers being undercut by the bad. As noted by the Law Society in their 'Better employment law for better work' report (2017 submission to the Taylor Review)<sup>3</sup>:

*"Bad employment practices do not only harm those on a low-income. Responsible businesses which follow the law are put at a competitive disadvantage if unscrupulous employers cannot be brought to account for undercutting employee rights."*

Where employment rights are clearly outlined in legislation and appropriately enforced, there should be no opportunity to businesses to gain a competitive advantage by denying their workforce their full rights.

It is also likely that an improved and transparent statement about the employment relationship and rights of a worker could lead to fewer disputes between workers and employers because the parties will now have a document to which they can refer in answering any questions that arise.

In theory, fewer disputes could lead to fewer employment tribunals. Given evidence of the number of employment tribunals related to issues that could be made transparent by a written statement, the win rate for such claims and the average settlement amount, it could be possible to monetise this benefit if we are able to make a robust assumption about how the number of tribunals would change. However, we currently have no evidence to suggest that a written statement will necessarily prevent bad employer behaviour. Therefore, any potential impact on the number of employment tribunals resulting from the proposal would be quite indirect, and it would not be sensible to reflect this in the NPV analysis in this impact assessment.

The mechanism by which a written statement would benefit parties in a dispute is by providing evidence, that a worker or employer can point to, where they think expectations laid out in the written statement are not being met. In some cases, this will be enough to ensure that the other party agrees, and the dispute is settled.

On the other hand, it could be that a better-informed worker is more likely to take a grievance to an employment tribunal because they feel empowered by the evidence provided within a written statement. At this stage, we have no robust evidence to suggest that this is likely. Written statement complaints made up just 1.1% of claims received by employment tribunals in 2017. Extending the right to a written statement to non-employee workers is unlikely to have an effect on the extent of current non-compliance, although it could raise awareness of the right to a written statement amongst employers.

The majority of employment tribunal cases relate to issues such as discrimination, the Working Time Directive, unfair dismissal, and equal pay. In the case of discrimination, unfair dismissal and equal pay, these are grievances that are unlikely to be informed by the contents of a written statement. Working hours are covered by a written statement so in theory a working time grievance could be settled by the statement. However, as noted above, having a written statement doesn't necessarily prevent bad employer behaviour and we do not have evidence in practice to suggest that there would be an impact on tribunal numbers.

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<sup>3</sup> Better employment law for better work: How To Achieve The Best Working Practices In The Modern Workplace (2017), Law Society submission to the Taylor Review of Modern Working Practices <https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/independent-review-of-employment-practices-in-the-modern-economy-response/>

Attempting to quantify a reduction in tribunals as result of extending the right to a written statement would require a major assumption on the impact on tribunal numbers, which cannot be robustly. Therefore, we do not think that it would be sensible to attempt to monetise and offset this benefit against the costs of the proposal.

Nevertheless, we note the wider benefits associated with the provision of a written statement and the cost of this measure should be considered in the context of those.

## **Familiarisation costs**

Our estimate for familiarisation costs assumes that all employing businesses in the UK will familiarise themselves with the changes, which is highly likely given that the preferred option involves a change to the entitlements of both employees and non-employee workers.

We acknowledge that the familiarisation burden may be higher for those businesses using only non-employee workers as the requirement to produce a written statement for those individuals will be entirely new.

However, overall, we believe that 30 minutes is a reasonable assumption based on our experience of the familiarisation impact of previous employment law changes. For example, 30 minutes of familiarisation time was also assumed in the impact assessment for the introduction of the National Living Wage in 2016<sup>4</sup>. The recent proposal on including working hours on payslips also assumed a familiarisation time of 30 minutes.

Evidence from a 2008 business survey conducted by ORC, on behalf of BIS, to explore the admin burden of complying with key employment law obligations<sup>5</sup> also supports this assumption. That survey specifically analysed the average unit time taken by business to familiarise themselves with the requirement to provide a written statement and found that it was 18 minutes. Therefore, the 30 minutes allowed in this analysis should be a substantial amount of time to read and understand the changes to this requirement.

Given that the right to a statement of written particulars has been in place for employees for many years, we think it is reasonable to assume that familiarisation will not be overly burdensome. In practice, the amount of time spent by employers familiarising themselves with the changes will vary. However, we consider 30 minutes to be sufficient time for an employer to read and consider all the new requirements.

The type of employee that would conduct the task of familiarisation will also vary depending on the size of the business. For small employers, they are less likely to have dedicated HR staff, so it would be the general manager that would familiarise themselves, whereas, for a larger employer, it could be a payroll or HR manager that conducts this task. The 30 minutes should allow sufficient time for individuals to disseminate information on the new requirements as required. Familiarisation costs are calculated as the opportunity cost of the time it takes a business to read about and understand the change.

## **Calculation**

ASHE data for 2018 (provisional)<sup>6</sup> gives the average hourly pay of a corporate manager/director as £22.64 and of a human resource manager/director as £24.66. We uplift these hourly costs by 20.66% to cover non-wage labour costs (in line with Eurostat methodology)<sup>7</sup>.

According to data from the Department for Business Innovation and Skills' Business Population Estimates<sup>8</sup>, in 2018 there were around 1.4 million private sector employers with one or more employees in Great Britain.

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<sup>4</sup> [https://www.legislation.gov.uk/ukia/2016/3/pdfs/ukia\\_20160003\\_en.pdf](https://www.legislation.gov.uk/ukia/2016/3/pdfs/ukia_20160003_en.pdf)

<sup>5</sup> <http://webarchive.nationalarchives.gov.uk/20090609035041/http://www.berr.gov.uk/files/file49199.pdf>

<sup>6</sup> ASHE Table 14.Occupation (4 digit SOC), Gross Hourly for all employees, <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable14>

<sup>7</sup> <https://ec.europa.eu/eurostat/documents/2995521/8791188/3-09042018-BP-EN.pdf/e4e0dcfe-9019-4c74-a437-3592aa460623>

<sup>8</sup> <https://www.gov.uk/government/statistics/business-population-estimates-2018>

The one-off familiarisation cost to **private sector businesses** is calculated as:

Private sector businesses by number of employees, GB, start 2018	Total number of employers	0.5 hours of Corporate director or HR manager time (uplifted by 20.66% for non-wage labour costs)	Total cost
1	146,160	£13.66	£1,996,357
2-4	734,145	£13.66	£10,027,475
5-9	256,985	£13.66	£3,510,084
10-19	137,420	£13.66	£1,876,980
20-49	72,230	£13.66	£986,569
50-99	22,995	£14.88	£342,105
100-199	9,825	£14.88	£146,170
200-249	2,015	£14.88	£29,978
250-499	3,800	£14.88	£56,534
500 or more	3,710	£14.88	£55,195
<b>Total</b>	<b>1,389,285</b>		<b>£19,027,448</b>

This gives us a total estimated cost of familiarisation for private sector employing businesses of **£19.0 million**.

Central and local government and non-profit organisations that are employers will also need to familiarise themselves with the changes. Unfortunately, no data is available on the number of businesses in these sectors that have no employees (the data only refers to zero or 1 employees), as such we will have to assume that all businesses classed as central and local government or non-profit organisations employ at least one person and will need to familiarise themselves with the changes in the requirement for a written statement. This might be a slight overestimate as it does not exclude public and non-profit organisation businesses with zero employees (data breakdown not provided). However, the impact of any overestimate will be low because 99.3% of the businesses with one or less employees are in the private sector<sup>9</sup>.

We use the same assumptions about wage rates as above for these businesses.

The one-off familiarisation cost to **central and local government and non-profit businesses** is calculated as:

Central and local government and non-profit businesses	Total number of employers	0.5 hours of Corporate director or HR manager time (uplifted by 20.66% for non-wage labour costs)	Total cost
Zero or 1 employee	39,605	£13.66	£540,953
2 – 4	21,480	£13.66	£293,389
5 – 9	15,655	£13.66	£213,827
10 – 19	9,520	£13.66	£130,031
20 – 49	6,200	£13.66	£84,684
50 – 99	3,210	£14.88	£47,756
100 – 199	2,430	£14.88	£36,152
200 – 249	540	£14.88	£8,034
250 – 499	1,110	£14.88	£16,514
500 or more	1,570	£14.88	£23,357
<b>Total</b>	<b>101,320</b>		<b>£1,394,698</b>

<sup>9</sup> See Table 2 Business population estimates for the UK and regions 2018  
<https://www.gov.uk/government/statistics/business-population-estimates-2018>

This gives us a total estimated cost of familiarisation for central and local government and non-profit employing businesses **of £1.4 million**. The majority of this cost falls to non-profit organisations (£1.2 million), with just £0.2 million cost to central and local government.

### **Implementation costs**

As noted above, the impact on business will differ depending on whether an individual is an employee or a non-employee worker. The impact on business by status can be summarised as:

<b>Description of business impact by type of worker</b>	
<b>Employee</b>	<b>Non-employee worker</b>
Existing employees will not need to be issued with a new written statement. There is no immediate requirement to incorporate the new mandatory contents into these existing written statements.	Non-employee workers moving into new jobs (either changing jobs or entering the labour market for the first time) will now be entitled to a written statement.
However, employees do have an entitlement to request an updated written statement to reflect changes in their terms and conditions change.	Existing non-employee worker would currently have no written statement. Existing non-employee workers will not need to be issued with a new written statement.
New written statements for new employees will now have to include the seven new mandatory pieces of information outlined above.	The Government intends to issue guidance for employers to indicate that it would be good practice to provide a written statement to existing non-employee workers.

However, there will be no need for employers to act on the revised regulations until they are hiring new staff. Or, in the case of employees, if they make a request for a revised written statement.

The costs that are triggered will be one-off:

- The one-off cost of providing a new written statement to a non-employee worker for the first time;
- The one-off cost of adding new information to the existing written statement produced for new employees; and
- The one-off cost of updating an employee's current written statement (subject to request).

There will be an ongoing cost associated with the provision of written statements for new non-employee workers entering the labour market for the first time in future.

To estimate these costs, we need the following key data points:

- An estimate of the number of employees and non-employee workers;
- An estimate of the cost of producing a written statement;
- An estimate of the cost of amending a written statement;
- An estimate of the regularity of job-to-job moves for both employees and non-employee workers;
- An estimate of the number of new non-employee workers entering the labour market annually.

### Outline of methodology for cost calculation

The cost of revised written statements for individuals with employee status is estimated using:

- Number of annual job-to-job moves by employees each year x incremental cost of amending a written statement to include new mandatory information

The cost of new written statements for individuals with non-employee worker status is estimated in two parts:

- Number of annual job-to-job moves by non-employee workers x cost of producing a written statement (until full stock of non-employee workers have a first full written statement); plus
- Number of annual job-to-job moves by non-employee workers x cost of amending a written statement for a new individual taking up a role

The additional impact in terms of new non-employee workers flowing into the labour market each year is estimated using:

- Number of non-employee workers entering the labour force each year (flow) x cost of producing a written statement

### Number of employees and non-employee workers

The analysis in this impact assessment relies on an estimate of the current size of the 'worker' population. The exact number of people in the UK with 'worker' employment status is currently unknown. Determining an individual's employment status for rights is not straightforward. The current approach is based on principles and gives flexibility to the courts, with many elements not defined in legislation. This is further complicated by the fact that employment status is decided not just in how a person is described in their contract or terms and conditions, but also by the reality of the employment relationship.

The question about the number of 'workers' in the UK is not new; the Department for Trade and Industry commissioned research into this question in 1999<sup>10</sup>, which found that around 5% of all people in employment (ONS estimate there to be 27.4 million people in employment in September 2018, excluding the self-employed) 'could' be 'workers'. However, the study concluded that there is considerable ambiguity around employment status due to how legal tests are applied. There is also a question around how the UK's labour market structure has changed since 1999 and whether there are likely to be more or fewer people now classed as 'workers'. We have seen an increase in some atypical types of work, including self-employment and people in employment on a zero-hour contract. Temporary employment and agency work have generally declined over time.

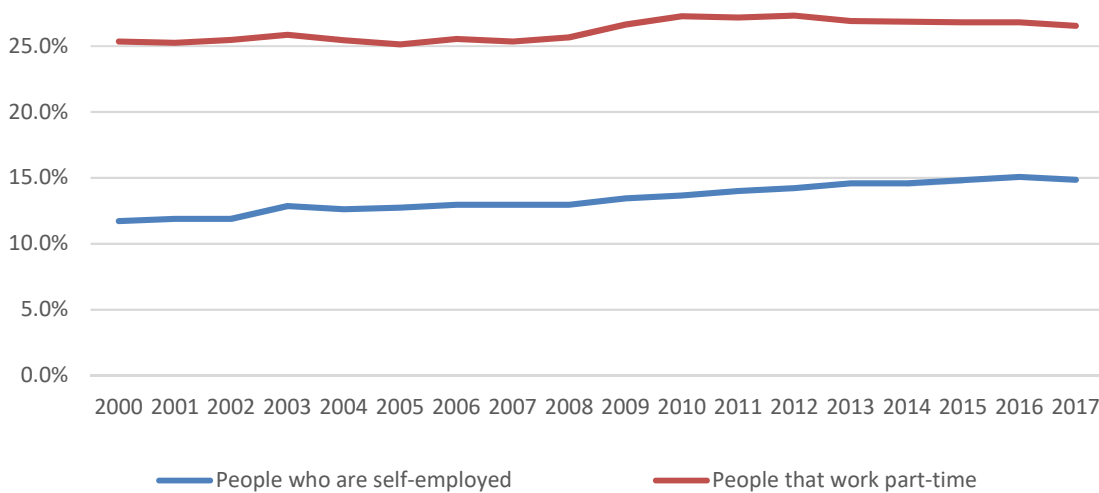
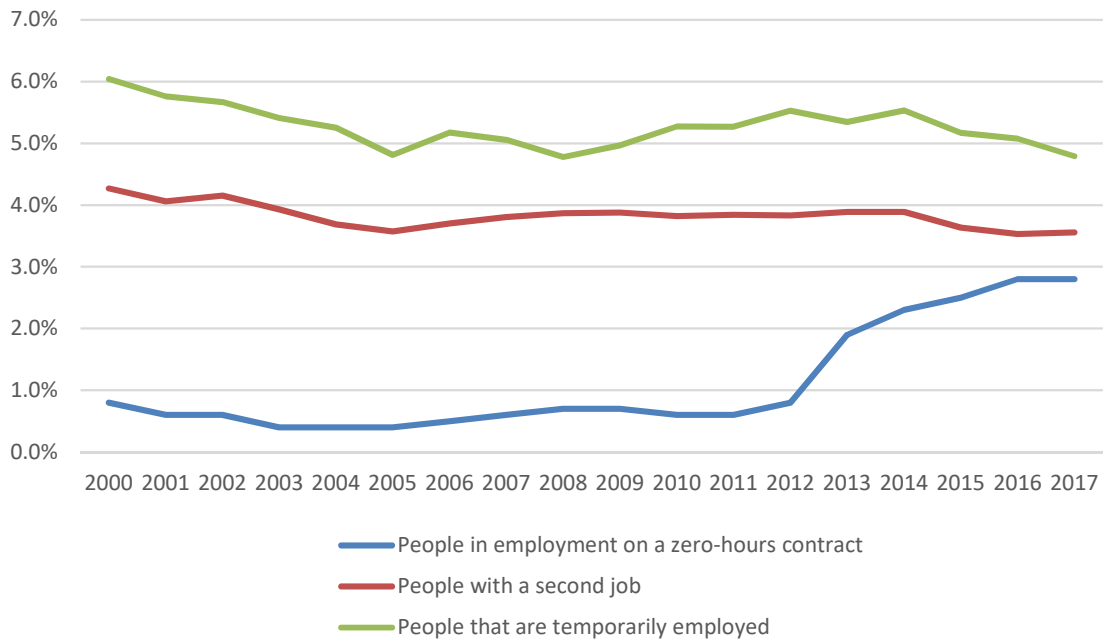
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<sup>10</sup> Burchell, Deakin and Honey (1999), The Employment Status of Individuals in Non-standard Employment, ESRC and DTI

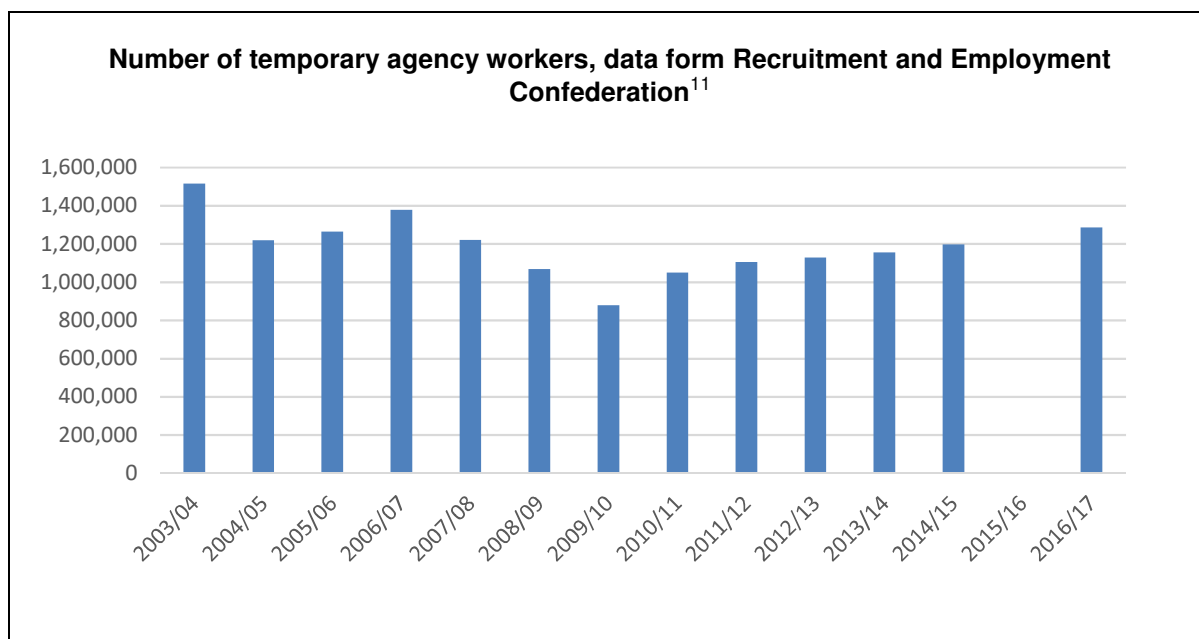
### How has atypical work changed since 1999

Latest data from ONS indicates that, since 2000, people in employment on a zero-hour contract, people who work part-time and self-employment have been increasing. People in temporary employment has decreased, as has people reporting that they have a second job.

**Atypical work as a proportion of total employment, %, LFS, data for Oct-Dec**



The latest data from REC shows that the number of temporary agency workers is now lower than it was in the early 2000s, despite some fluctuations.



As discussed below, those who work atypically are more likely to have non-employee worker status, however, we do not have sufficient evidence on which to base a robust adjustment of the 5% proportion. DTI's 1999 research gave no information on the breakdown of the 5% estimate by type of employment, which means that we cannot adjust the proportion in a meaningful way.

BEIS has recently sought to commission research specifically looking at the non-employee worker population. The research question was whether the population could be robustly identified and measured. Despite going out to tender twice for this research we received no bids. This is indicative of the inherent difficulty in identifying and measuring this population. We have engaged with expert stakeholders and academics specialising in employment relations and employment law, but similarly, they have no recent robust estimate for the number of non-employee workers.

Despite exhaustive attempts at producing a more up to date figure, DTI's 1999 research remains the only research available to us that looks specifically at the number of non-employee workers in the UK economy. As such, we use the 5% proportion, giving us an estimate of 1.37 million non-employee workers in 2018.

To sense check this estimate and ensure that it is of the right order of magnitude, we have compared it to more recent evidence from the Chartered Institute for Professional Development (CIPD), who carried out research on people on a zero-hour contract (ZHC) in 2015, in which they specifically asked employers about the employment status of their staff. As the questions were in relation to ZHC staff only, we think that their estimate is highly likely to be an overestimate, because the proportion of people with 'worker' status would be higher for atypical workers. CIPD research found that 18% of employers describe ZHC staff as 'workers' and 6% say that they are combination of 'worker' and employee. Based on this evidence we can say that 21% (18% plus half of the combination response) of all employees on a zero-hour contract are non-employee workers.

We also believe it is reasonable to apply this proportion to other forms of atypical workers (defined in this instance as anyone that is not a full-time, permanent employee, and not self-employed). We consider this reasonable in the context of the Government's Employment

<sup>11</sup> Data for 2015/16 not available



Status Review of 2015<sup>12</sup>, which stated that “In general, most of the people who fall into the ‘worker’ category will be working in atypical or non-standard arrangements”.

According to the LFS, 70.5% of total employees are full-time, permanent employees<sup>13</sup>.

To the remaining 29.5% (or 8.1 million people) we apply the assumption of 21% derived from the CIPD survey mentioned above to get an estimate of 1.70 million non-employee workers.

These estimates provide reasonable lower and upper bounds for the likely number of non-employee workers in the UK, based on our best available evidence. However, we have no basis on which to conclude which might be more robust. As such, our best point estimate for the number of non-employee workers is a straightforward average of these two figures.

<b>Workforce by employment status<sup>14</sup></b>			
<b>Employees</b>		<b>Non-employee Workers</b>	
<b>Low estimate</b>	<b>High estimate</b>	<b>Low estimate</b>	<b>High estimate</b>
25,726,500	26,054,197	1,371,274	1,698,971
<b>Central estimate</b>		<b>Central estimate</b>	
25,890,349		1,535,122	

### **Cost of producing a written statement**

At consultation stage we presented a range for the cost of producing a new written statement of between £56 and £162.

The methodology for estimating these costs is summarised in the tables overleaf:

<sup>12</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/585383/employment-status-review-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585383/employment-status-review-2015.pdf)

<sup>13</sup> [BEIS analysis of unpublished LFS micro data](#)

<sup>14</sup> Excludes the self-employed

<b>Method 1: ORC study of employment law admin burdens<sup>1</sup></b>		Total cost: £162
<p>This method utilises a 2008 business survey conducted by ORC on behalf of BIS to explore the admin burden of complying with key employment law obligations<sup>2</sup></p>	<p>The research found that the cost of providing an employee with a written statement of employment particulars was £162 in 2008. It also found that amending a written statement costs £58. The average unit time for providing a written statement of employment particulars was 69 minutes and for amending a written statement, 74 minutes (the report provides no clear explanation as to why the amendment is more time consuming than providing a written statement, but it is likely that the time taken to amend was higher because less external resource was utilised).</p> <p>In ORC's findings, the majority of the cost was from external services (£79) and external goods (£52). External costs are defined in the research as costs that an organisation incurs as a result of using external services (such as fees for professional advice or for specialist IT equipment) in order to comply with a regulation. It is unclear whether businesses continue to rely as heavily on such external services to comply with the requirement now that it has been in place for many years. This accounts for the large difference in the two estimates that we used.</p> <p>Whilst the estimate derived using this method is based on independent research, there are three key issues with the estimates:</p> <ol style="list-style-type: none"> <li>1. The research is relatively old and identified that the cost associated with producing a written statement was declining, from £212 in 2005, to £162 in 2008. At this rate of decline (23.5% every three years), we could assume that the cost has now fallen to around £72 per statement. However, we do not have evidence to suggest that this is a robust assumption.</li> <li>2. The ORC study found that £131, or 81% of the total cost of producing a written statement related to external goods and services. However, there was no information provided about what these external goods and services are, or why they were required by businesses. Given that the requirement has been in place for many years, and many templates for the completion of a written statement are available online, we consider it reasonable to assume that the amount of external resource now engaged by businesses to fulfil this requirement will have declined.</li> <li>3. Finally, the ORC study notes that the core activities for providing and amending a written statement of employment particulars were familiarisation with the regulation – and any particular legal updates (22 per cent and 25 per cent, for providing and amending respectively), gathering the data - e.g. employee and job details such as salary, holidays, benefits (22 per cent providing and 15 per cent amending); and holding meetings - with the employee and possibly with other internal departments (25 per cent and 22 per cent, respectively). Preparation and reporting played a smaller role in the process (15 per cent and 16 per cent for initial provision; and 11 per cent and 17 per cent for amending). We have calculated the familiarisation costs to business separately above, so the estimate of £162 is likely to double count a part of the costs in this impact assessment.</li> </ol>	

<sup>1</sup> <http://webarchive.nationalarchives.gov.uk/20090609035041/http://www.berr.gov.uk/files/file49199.pdf>

<sup>2</sup> <http://webarchive.nationalarchives.gov.uk/20090609035041/http://www.berr.gov.uk/files/file49199.pdf>

Method 2: standard cost model estimation	Total cost: £56
<p>The second method is based on a standard cost model methodology where we estimate the time it would take to complete a template for a written statement; which are widely available online.</p> <p>The second method for estimating the likely cost of producing a written statement is based on standard cost model methodology where we estimate the time it would take to complete the templates for written statements that are widely available online.</p> <p>We can then multiply this time estimate by the equivalent cost of the staff that would undertake this task. As with the familiarisation cost calculation, the type of employee that would conduct the task of producing the written statement will vary depending on the size of the business. For small employers, we assume it would be the general manager that would do this, whereas, for a larger employer, it would be a HR manager that conducts this task.</p> <p>We think that the equivalent of two hours of a person's time would be sufficient to collect the necessary information and place it in a template for a written statement. As noted above, the ORC study found that the time taken to produce a written statement was 69 minutes.</p> <p>However, as we are assuming no external advice in this scenario, we have increased this time to two hours to compensate for the additional internal time that may be taken. As also noted above, there are a number of templates for written statements of particulars available online, including a template provided by Government and one provided by Acas. These templates vary from 5 – 8 pages long.</p> <p>According to data form ASHE the cost of a corporate manager/director for 2 hours would be £54, and the cost of a HR manager/director would be £59. Taking the average of these two costs gives us an estimate of £56 per written statement.</p> <p>It should be noted that a recent REFIT Evaluation of the European 'Written Statement Directive' (Directive 91/533/EEC) found that the total administrative cost per employed person for a business to comply with the Directive ranges from EUR 25 to EUR 57 annually<sup>3</sup>, depending on the size of the company<sup>4</sup>.</p> <p>This would suggest that a cost per written statement in line with our lower bound estimate is reasonable in terms of the scale of costs.</p>	

<sup>3</sup> The Study looked at the costs for employers associated with complying with the rules deriving from the Directive. These costs cover the cost of collecting the correct information required and the cost of (the time for) putting down this information in writing and transmitting it to the employees concerned. The survey gave the employers the opportunity to assess the costs associated with carrying out these tasks, either as an annual fixed cost for the company or as a 'cost per employment contract' (based on the time required to comply with the Directive). The Study reported the final cost as an annual fixed cost.

<sup>4</sup> See Page 28 of REFIT Evaluation - <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=202>

We consulted to understand which of these costs is a more accurate representation of the actual cost of producing a new written statement. There was a small number of responses from businesses to questions about the activities and costs involved in producing a written statement. However, what is clear is that our lower and upper estimates for the potential cost are sensible bounds, with the actual likely to be somewhere in the middle. The basis of our revised estimate, taking responses to the consultation into account is provided in the following table.

Input to cost	ORC estimate	Standard cost model estimate	Central estimate post consultation
Time taken to produce a written statement	69 minutes	120 minutes	64% of respondents to this question said that it would take less than 1 hour to produce a written statement, with a further 16% saying that it would take less than ½ day (3.5 hours). On this basis, we consider our 2 hours estimate to be a sensible central estimate.
External services and external goods	£79 for services and £52 for goods – there was no information provided about what these external services and good are, or why they were required by businesses. External costs were simply defined as costs that an organisation incurs as a result of using external services (such as fees for professional advice or for specialist IT equipment)	£0 – assumed no external costs in this scenario given that the requirements have been in place for employees for many years, with templates available for free download. On this basis we assumed that legal advice and professional IT services would no longer be required.	<p>At consultation we sought to understand whether some employers might seek external or legal advice when producing written statements.</p> <p>When asked about how often they seek legal advice to produce a written statement, business respondents were divided. It should be noted that there was a very small response rate to this question (just 15 businesses answered) and of those, 47% of business respondents said that they ‘sometimes’ or ‘always’ seek legal advice, while 53% said that they ‘rarely’ or ‘never’ do so.</p> <p>Of those that responded positively to the question of seeking legal advice, the majority (6 out of 7 respondents), stated that they did so ‘sometimes’.</p> <p>When asked to provide more detail on the legal advice sought, 2 of the respondents noted that the contents of their written statements are reviewed by legal experts annually on an ongoing basis. This indicates that for 2 of the 7 respondents, there would be no additional use of legal expertise, it is just that the annual review would now consider compliance in the context of the revised regulations.</p> <p>The findings that some businesses would seek legal advice when producing written statements cannot be considered representative, nor are they strong enough to suggest a certain and direct cost associated with legal advice to comply with these regulations.</p> <p>Given that half of the businesses indicated that they did not need to seek legal advice, this shows that legal advice is not a necessary requirement for complying with the regulations.</p> <p>On the basis that some businesses have indicated that they would seek legal advice when implementing this measure, we think it is prudent to consider the potential impact of costs associated with legal advice. As such, Annex 1 contains a sensitivity analysis on total cost including legal advice..</p>

Input to cost	ORC estimate	Standard cost model estimate	Central estimate post consultation
			<p>However, we don't consider this to be a direct impact of the regulations – on the basis that this is a behavioural response chosen by a minority of businesses. Therefore, we do not propose including the cost of legal advice in the estimated direct cost to business.</p> <p>The rationale underpinning the classification of this cost as indirect is two-fold:</p> <ul style="list-style-type: none"> <li>• Legal advice is not a pre-requisite for implementing the requirements:</li> </ul> <p>As noted above, several businesses indicate that they can implement these regulations without the need for legal advice.</p> <ul style="list-style-type: none"> <li>• Those businesses that do seek legal advice appear to do so out of choice:</li> </ul> <p>The Government and ACAS, in addition to several independent HR specialist bodies, provide templates that businesses can use produce a written statement. These templates should minimise the need for any further legal advice in producing written statements. Given that this toolkit exists for businesses to use to comply with the regulations, any additional advice should be considered a choice rather than a necessity.</p> <p>Furthermore, the businesses that said they would seek legal advice in response to the consultation were predominantly large businesses. Given that large businesses are more likely to have specialist and dedicated HR and legal advisors, this adds more weight to the argument that these businesses seek legal advice out of choice, perhaps driven by risk aversion, rather than necessity.</p> <p><u>Other business costs</u></p> <p>When asked about other business costs associated with producing a written statement, responses were again mixed, with 41% saying there would be other costs and 59% saying there would not. Of those who said there would be other costs, these included minor paper and printing costs, distribution, software and electronic systems for producing and storing written statements.</p> <p>Establishing a quantified estimate for these costs is very difficult, particularly given that Government and ACAS actively provides online templates that should minimise production costs, and the additional printing and storage costs associated with short documents is likely to be negligible. As such, we do not anticipate that businesses will have to purchase additional goods to meet the requirements.</p>

Our revised cost estimate is therefore:

Input	Time	Average cost	Uplift for non-wage labour costs (20.55%)
Corporate/HR manager	2 hours	£47.30	£57.07
Total			£57.07

This cost sits at the lower end of the range presented in the consultation stage impact assessment and provides our best central estimate for the cost of producing a written statement.

We note that this cost will be further minimised as a result of updated templates that will be created by Government and Acas to support businesses in producing written statements in the least burdensome way.

In our calculation of the total net present value and business net present value of this measure, we consider the corporate/HR manager time to be a direct cost of the regulation, whilst the cost of legal advice is indirect.

### **Cost of amending a written statement**

Employees already have an entitlement to a written statement. As such, the additional impact of this change for employers is in adding additional information to the principle statements that they produce for new starters.

The cost of a new written statement is outlined above. However, these regulations only require an entirely new written statement for non-employee workers. For employees, this legislation effectively amends (by adding limited additional information) the written statements to which they are already entitled.

This legislation only places an additional requirement of 7 new pieces of information that must be included. As such, our cost of amendment reflects the cost only of updating a written statement to take account of this minimal additional new information.

The additional mandatory contents to be required in a written statement are:

- How long a job is expected to last, or the end date of a fixed-term contract
- How much notice an employer and worker are required to give to terminate the agreement
- Whether a worker is eligible for sick leave and pay
- Other types of paid leave e.g. maternity leave and paternity leave – whether the worker is eligible and where to find more details on the employer's policy
- The duration and conditions of any probationary period
- All remuneration (not just pay) - contributions in cash or kind e.g. vouchers and lunch

Given the nature of employees, as opposed to non-employee workers, it is likely that the first piece of information will not be relevant in many cases. Also, as outlined in the introductory sections, this is information that employers already have to make available to employees, although not necessarily in the principal statement of rights.

As such, we think the additional burden for employers of copying this information into a principle written statement will not be overly burdensome.

We estimate that 10 minutes per employee is a reasonable assumption for the time taken to include this additional information in a principle written statement.

**Evidence base for the reasonableness of the 10-minute estimate**

Whilst 10 minutes is a relatively short amount of time, we assume that for employees, the information relating to ‘how long a temporary job is expected to last’ and ‘the end date of a fixed-term contract’ is very likely to be ‘not applicable’.

Information on notice periods and sick pay and procedures is information that should already be provided to employees in some form (see ‘What is a Written Statement’ on page 4), so there will be a straightforward copy and paste exercise to move this information into a ‘principle’ written statement.

The assumption of 10 minutes is also in line with the time taken to ‘prepare’ an amended written statement as reported in the ORC study<sup>1</sup>.

**Time taken to amend a written statement – by activity (ORC 2008)**

<b>Activity</b>	<b>Time taken (mins)</b>
Familiarise	18.44
Gather	18.44
Prepare	8.11
Report	12.54
Meet	16.23
<b>Total unit time (mins)</b>	<b>73.75</b>

Whilst the ORC study indicates that an amended written statement takes a much longer time to create, it does not indicate how substantive the amendments were that were sampled as part of this study. We do not consider an assumption of 73.75 minutes to amend a written statement to be reasonable in this case given the minor adjustments required by the proposal.

We assume that the familiarisation time noted by the ORC study will have already been taken account of under the ‘familiarisation costs’ section of this impact assessment. We also assume that the time taken to ‘gather’ information is negligible because the information should already be reported in some form as part of the information that must currently be provided to employees. We also assume that a formal meeting will not be required with each employee to explain the additions to their written statement, and we do not consider 12 minutes to be a reasonable estimate for reporting time given that an email can be sent in a matter of minutes.

We also note that there will be economies of scale in amending employee written statements in those businesses that employ more than one employee because notice periods and sick pay and procedures are unlikely to vary substantially from person to person (although there are likely to be differences across levels of seniority).

As with familiarisation costs, we assume that the person completing this task varies by business size but that it will generally be a general manager or payroll or HR manager that conducts this task. We have used an average of the cost of the time of a general manager and payroll/HR manager in the calculation below. This is because we have no evidence on the number of new starters by business size.

This task will be required for all non-worker employees each time they change jobs.

<sup>1</sup> <http://webarchive.nationalarchives.gov.uk/20090609035041/http://www.berr.gov.uk/files/file49199.pdf>

Person completing template	Average cost of 10 minutes time (including 20.66% uplift for non-wage labour costs)
Corporate manager /HR manager	£4.76

## Regularity of job moves

The turnover of both employees and non-employee workers will trigger new costs for business - for either providing a new written statement for individuals who would not have gotten one in the absence of this change and for adding additional information to principle written statements for those employees who would already get a written statement.

To estimate the cost associated with this, we need an estimate of the number of individuals moving jobs each year.

ONS does not regularly publish data on job-to-job moves. However, they have recently published data on quarterly labour market flows, including job-to job moves, between 2001 and 2018<sup>2</sup>.

Job to job moves, 2001 – 2018, seasonally adjusted, people aged 16-64, LFS



The number of job to job moves quarterly has generally been increasing from a low in 2009. The average annual number of job-to-job moves over the last 16 years has been 2.7 million.

## Job to job moves by non-employee workers

Given the limitations in our ability to specifically identify non-employee workers in data, we also cannot identify which job-to-job moves are by non-employee workers. As such, we need to make some assumptions in order to make a robust estimate of the number of job to job moves by these individuals.

<sup>2</sup><https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/labourforcesurveyflowsestimatesx02>



If we assume that job-to-job moves are evenly spread across the working population, then we can say that non-employee workers make at least 151,000 job-to-job moves annually. We know that, by the nature of their work, non-employee workers are more likely to be in temporary work, making their propensity to move higher<sup>3</sup>. This would mean that 151,000 is likely to be an underestimate.

Our best source of evidence on the regularity of job-to-job moves for people in atypical employment comes from the Recruitment and Employment Confederation. Their Recruitment Industry Trends publication for 2016/17 found that the mean assignment length for temporary agency workers was 17 weeks, which means that they could have up to three different assignments per year.

In the absence of a more robust basis on which to uplift our estimate of job-to-job moves to reflect a higher propensity for job moves, we assume that non-employee workers move jobs three times as often as employees (assuming that the average tenure of 17 weeks is representative of all average tenure for all types of non-employee worker), which would mean that there are 453,000 job to job moves by non-employee workers each year.

Our analysis assumes that, once all employers of non-employee workers have created a new written statement once for a jobholder, subsequent written statements will be easier to produce (i.e. they will essentially be an amendment as opposed to a new written statement).

We assume that all businesses will act rationally to minimise the impact from implementing this measure. As such, we assume that businesses will use the option of including the new information in an updated written statement when this becomes possible.

Given our assumption that there are 453,000 job to job moves by non-employee workers annually, this means that all non-employer workers posts will have a written statement created by year 4.

<b>Year</b>	<b>No. of non-employee workers receiving first full written statement</b>
1	453,699
2	453,699
3	453,699
4	174,025
5	
6	
7	
8	
9	
10	
<b>Total</b>	<b>1,535,122</b>

After that we estimate the cost based on the assumption that the written statement will be an amendment of the current one, as opposed to a newly created one. We use the assumption, outlined above, that an amendment will take 10 minutes.

<sup>3</sup> For example, CIPD's Research report: Zero-hours contracts: Myth and Reality (2015) states 'zero-hours workers are, on average, less likely to stay with an employer as long as other employees in our survey.'  
<https://www.cipd.co.uk/knowledge/fundamentals/emp-law/terms-conditions/zero-hours-reality-report>

### Job to job moves by employees

We have assumed that non-employee workers account for 454,000 moves annually, this means that employees make around 2.25 million job moves annually.

Our cost calculation assumes that each new employee will require a revised written statement. This right to a written statement already exists, so the additional impact of this measure is the addition of the 7 new mandatory pieces of information, plus the requirement now being a 'day 1' right. We assume the addition of the new information will add an additional 10 minutes of burden on business.

### Costs of providing new/updated written statements

Year	Job to job moves		Costs of written statements	
	Non-employee workers	Employees	Non-employee workers	Employees
Year 1	453,699	2,246,890	£25,893,585	£10,686,241
Year 2	453,699	2,246,890	£25,893,585	£10,686,241
Year 3	453,699	2,246,890	£25,893,585	£10,686,241
Year 4	453,699	2,246,890	£11,262,136	£10,686,241
Year 5	453,699	2,246,890	£2,157,799	£10,686,241
Year 6	453,699	2,246,890	£2,157,799	£10,686,241
Year 7	453,699	2,246,890	£2,157,799	£10,686,241
Year 8	453,699	2,246,890	£2,157,799	£10,686,241
Year 9	453,699	2,246,890	£2,157,799	£10,686,241
Year 10	453,699	2,246,890	£2,157,799	£10,686,241
<b>Total cost</b>				<b>£208,752,097</b>

### **Number of new non-employee workers entering the labour market annually.**

The above estimate covers non-employee workers already in the labour market ('the stock'). There will also be an additional cost on business associated with the future flow of non-employee workers into the labour market.

The entrance of new non-employee workers will also create a new cost of providing a written statement for individuals who would not have gotten one in the absence of this change.

There is no specific data available on the annual number of non-employee workers entering the labour market. The best available proxies are growth in overall employment, or growth in different forms of atypical employment e.g. temporary employment, employment on a zero-hours contracts or growth in agency work.

Whilst evidence suggests that those with non-employee worker status move from job to job on a more regular basis, there is nothing to suggest that the number of non-employee workers are growing at an annual rate that is higher than those with employee status. In fact, we know that the number of agency workers has been consistent over the last number of years, as has the number of people in temporary work. Zero-hour contracts are the only type of atypical work that has seen a significant increase in numbers over the last 15 years, but we know that the majority of people on these contracts (79%) have employee status.

Growth rates by different forms of employment				
Year / growth rates	Total in employment	Temporary employees	Temporary/ contract recruitment volumes	Zero-hour contract volumes
2003	28,226	1,493		124
2004	28,470	1,510	1,516	108
2005	28,802	1,450	1,219	119
2006	29,106	1,462	1,265	147
2007	29,322	1,507	1,378	166
2008	29,722	1,396	1,220	143
2009	29,087	1,430	1,068	189
2010	29,192	1,578	879	168
2011	29,447	1,616	1,049	190
2012	29,663	1,613	1,106	252
2013	29,940	1,566	1,129	585
2014	30,709	1,650	1,156	662
2015	31,118	1,639	1,198	776
2016	31,735	1,664		904
2017	32,073	1,584	1,286	892
15 year growth rate	13.6%	6.0%	-	619.1%
10 year growth rate	7.9%	13.5%	5.4%	524.1%
5 year growth rate	7.1%	1.1%	14.0%	52.4%
<b>Average annual growth rate</b>	<b>0.7%</b>	<b>0.0%</b>	<b>-0.7%</b>	<b>16.3%</b>

On this basis, we take the growth in overall employment as a sensible proxy for the growth in the number of non-employee workers. Average annual employment growth over the last 15 years is 0.7%. We are using the 15-year average annual growth rate because this will smooth out any peaks/troughs caused by the most recent financial crises.

Assuming that the number of non-employee workers increases at this rate over time, our estimates of the number of additional written statements to be created each year would be:

Year	Additional non-employee workers	Cost of producing new written statements
1	10,746	£613,298
2	10,821	£617,578
3	10,897	£621,916
4	10,973	£626,253
5	11,050	£630,648
6	11,127	£635,042
7	11,205	£639,494
8	11,284	£644,002
9	11,363	£648,511
10	11,442	£653,020
<b>Total</b>	<b>110,907</b>	<b>£6,329,761</b>

#### Non-employee worker 'churn'

We note that there will also be a level of 'churn' amongst non-employee workers, whereby a worker in a post may be replaced by another new worker, but this would not show up in the 'net' picture of overall employment outlined above. Given that the increases in employment reflect generally workers going into new posts, we think that there is a higher likelihood that a new written statement would be produced for these posts. Where there is underlying

churn, this is workers moving into current posts. For these posts, a written statement would already exist and would require only very minor amendment to be applicable to the next worker filling the post. As such, we consider the additional cost to be negligible.

### New employees entering the labour market for the first time

Given that a written statement is already a right for individuals with employee status, we think that the future impact of this requirement will be negligible relative to the current ongoing cost associated with the requirement. The estimates above account for the burden associated with any short-term amendments that are required. Once these amendments have been made, then future written statements are much more easily replicated, with a negligible additional burden on top of what is already required.

### **What is the impact of employee requests for a revised written statement?**

As outlined above, employees have an entitlement to request an updated written statement to reflect changes in their terms and conditions. If an employee requests such an update, the employer would need to update their existing written statement to include their new terms and conditions plus the new mandatory information outlined above.

In practice, employers already appear to update written statements regularly. The ORC study discussed above provided limited detail about how many amendments were required or what they were in relation to. However, it did note that, of the businesses surveyed, 56% had made changes to a written statement over the previous 3 years. This suggests that amendments are relatively common. Using this proportion, and assuming that changes to terms and conditions are evenly spread over the three years, we can say that 19% of individuals in work receive a revised written statement each year.

Given this regular instance of revised written statements, we think it is unlikely that there will be a significant number of employees requesting an additional update at the point at which these new requirements come into force. As such, we think the additional cost of this part of the regulations will be negligible.

### **What is the impact of making the requirement a “day 1” right?**

The implementation of the preferred option involves additional burdens related to making the requirement a ‘day 1’ right.

The current requirements are that a full written statement for employees must be provided within 2 months of the start of employment. As discussed above, non-employee workers may be engaged for less than 2 months at a time, so are unlikely to benefit from the extension if the 2-month compliance period is retained.

The consultation is sought views on whether we make the requirement a ‘day 1’ right for non-employee workers. This being the case, the consultation made it clear that we would also need to make it a ‘day 1’ right for employees.

It is likely that a ‘day 1’ right is more burdensome than the current requirement. However, assigning a monetary value to this burden is difficult without an understanding of the mechanism through which this will impact on businesses.

We anticipate that the burden will be associated with the resource cost of creating a written statement more quickly, or the cost of delayed employment, or both.

The consultation asked when individuals starting work receive a written statement. Of those that answered the question, the vast majority (81%) said that written statements were provided before or on the first day of work.

On this basis, we think that the cost of making the requirement a 'day 1' right for both non-employee workers and employees will be negligible because the majority of businesses already seek to provide a written statement on or before this date.

Furthermore, as noted above, the Recruitment and Employment Confederation's Recruitment Industry Trends publication (2016/17) found that the mean assignment length for temporary agency workers was 17 weeks. Temporary agency workers are likely to have some of the shortest job tenures, but their average tenure is still beyond 2 months, which indicates that we are not created a significant burden in terms of producing written statements for individuals who would not otherwise have been entitled due to a job tenure of less than two months.

### **Summary of costs**

One-off familiarisation costs are estimated at £19.0 million for private sector employing businesses and £1.4 million for central and local government and non-profit employing businesses.

The cost of revised written statements for individuals with employee status is estimated using:

- Number of annual job-to-job moves by employees each year x incremental cost of amending a written statement to include new mandatory information

The cost of new written statements for individuals with non-employee worker status is estimated in two parts:

- Number of annual job-to-job moves by non-employee workers x cost of producing a written statement (until full stock of non-employee workers have a first full written statement); plus
- Number of annual job-to-job moves by non-employee workers x cost of amending a written statement for a new individual taking up a role.

The additional impact in terms of new non-employee workers flowing into the labour market each year is estimated using:

- Number of non-employee workers entering the labour force each year (flow) x cost of producing a written statement

The cost of a new written statement has a direct element (the opportunity cost of a manager's time in creating the written statement) and an indirect element (the cost of seeking out legal advice)

The overall costs are summarised in the tables overleaf.



## Direct costs and benefits to business calculations

The majority of the costs assessed in this impact assessment are direct costs to business.

As discussed above, we have not been able to monetise benefits to business. Similarly, the benefit to non-employee workers from increased transparency is not monetisable.

A breakdown of costs by cost-area and year is provided in the following table:

Year	Familiarisation	Total impact of preferred option (in £ millions)									
		Number of employees receiving an updated written statement	Cost	Number of non-employee workers receiving full written statement	Cost	Number of non-employee workers receiving revised written statement	Cost	Number of non-employee workers entering the labour force	Cost		
1	£20,422,146	2,246,890	£10,686,241	453,699	£25,893,585			10,746	£613,298		
2		2,246,890	£10,686,241	453,699	£25,893,585			10,821	£617,578		
3		2,246,890	£10,686,241	453,699	£25,893,585			10,897	£621,916		
4		2,246,890	£10,686,241	174,025	£9,932,005	279,674	£1,330,132	10,973	£626,253		
5		2,246,890	£10,686,241			453,699	£2,157,799	11,050	£630,648		
6		2,246,890	£10,686,241			453,699	£2,157,799	11,127	£635,042		
7		2,246,890	£10,686,241			453,699	£2,157,799	11,205	£639,494		
8		2,246,890	£10,686,241			453,699	£2,157,799	11,284	£644,002		
9		2,246,890	£10,686,241			453,699	£2,157,799	11,363	£648,511		
10		2,246,890	£10,686,241			453,699	£2,157,799	11,442	£653,020		
<b>Total</b>	<b>£20,422,146</b>	<b>22,468,897</b>	<b>£106,862,413</b>	<b>1,535,122</b>	<b>£87,612,759</b>	<b>3,001,867</b>	<b>£14,276,924</b>	<b>110,908</b>	<b>£6,329,761</b>		

The following table presents the discounted cost to business:

Year / cost area	Direct/ indirect costs	1	2	3	4	5	6	7	8	9	10	Total
Familiarisation	Direct cost	£20.2m										£20.2m
	Indirect cost	£0.2m										£0.2m
Cost of employees receiving an updated written statement	Direct cost	£10.7m	£10.7m	£10.7m	£10.7m	£10.7m	£10.7m	£10.7m	£10.7m	£10.7m	£10.7m	£106.9m
Cost of non-employee workers receiving first full written statement	Direct cost	£25.9m	£25.9m	£25.9m	£9.9m							£87.6m
Cost of non-employee workers receiving revised written statement	Direct cost				£1.3m	£2.2m	£2.2m	£2.2m	£2.2m	£2.2m	£2.2m	£14.3m
Cost of written statements for non-employee workers entering the labour force	Direct cost	£0.6m	£0.6m	£0.6m	£0.6m	£0.6m	£0.6m	£0.6m	£0.6m	£0.6m	£0.7m	£6.3m
Total cost		£57.6m	£37.2m	£37.2m	£22.6m	£13.5m	£13.5m	£13.5m	£13.5m	£13.5m	£13.5m	£235.5m
Total direct cost		£57.4m	£37.2m	£37.2m	£22.6m	£13.5m	£13.5m	£13.5m	£13.5m	£13.5m	£13.5m	£235.3m
Discount rate		1	0.966	0.934	0.902	0.871	0.842	0.814	0.786	0.759	0.734	
Discounted direct cost		£57.4m	£35.9m	£34.7m	£20.4m	£11.7m	£11.3m	£11.0m	£10.6m	£10.2m	£9.9m	£213.3m

\*Note that the discounted estimate is the present value of the costs taken over ten years, discounted at a rate of 3.5% annually.

The discounted direct cost to business over ten years is estimated at **£213.3million**. This equates to a discounted annualised impact of **£20.4 million (in 2014 prices, as per Better Regulation Framework guidance)**.



## Overall Impact

The Net Present Value (NPV) of impacts assessed in this impact assessment is negative, meaning that the measure is assessed as posing net costs for businesses.

However, it should be noted that the measure is predominantly a social protection, with the intention being to improve the information available to non-employee workers (a labour market group that is often considered to be more vulnerable) to address a potential imbalance of power weighted in favour of the employer associated with poor transparency of rights and expectations.

The cost is mainly driven by the high potential number of workers affected.

Whilst value of the individual benefits and wider benefits to business that will accrue from this measure cannot be monetised, they should be borne in mind when weighing up the overall case for introducing the right to a written statement for non-employee workers. A more balanced relationship between employers and workers, will result in workers being more informed about their working rights and conditions. Consequently, they will feel more empowered to challenge potentially unfair working practices.

### Changes in costs between consultation and final stage impact assessments

At consultation stage, the impact assessment for this measure had an estimated annualised cost (EANDCB) of between £20.8 million and £57.5 million. In this final stage IA, the estimated annualised cost (EANDCB) of £20.4 million is at the lower end of that range.

We noted in the consultation stage IA that 'we expect the estimated cost to be lower than our initial assumptions indicate, and we are explicitly testing these assumptions with stakeholders during consultation to ensure that they are reasonable'.

The key drivers for this cost being at the lower end of the range are twofold:

- The total cost of producing a written statement has now been tested and found to be closer to the low estimate of £56 presented in the consultation stage IA. The table on pages 28 and 29 of this IA explains how we have used the consultation to create the more robust estimate for the cost of producing a written statement presented in this impact assessment.
- The implementation of the measure has been designed to minimise upfront burdens. At consultation stage, cost estimates were based on an assumption that all non-employee workers would be provided with a new written statement and that all employees would receive an updated written statement when the right came into effect. Given that the main concern associated with the extension of the right to a written statement to non-employee workers related to the administrative burden on business of issuing new written statements on the first day of employment and the potential knock-on impact on recruitment, we have sought to implement the measure in such a way as to minimise these burdens.

## **Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)**

As this is a final stage IA, we have sought to monetise impacts as far as possible.

Responses to the public consultation have been used to test assumptions and refine the analysis presented in the consultation stage impact assessment for this measure.

It has not been possible to monetise the impact of making the requirement a 'day 1' right, nor has it been possible to monetise the benefits associated with the requirement.

We are confident that the burden of the 'day 1' requirement is not significant enough to alter the scale of the estimated impact; this is because many businesses already behave in a way that is aligned with the new regulatory requirement. The benefits are discussed in detail in qualitative terms.

The level of detail provided is proportionate to the relatively high estimated cost.

### **Risks and assumptions**

As this is a final stage assessment, we have tried to address uncertainties that existed at consultation stage with information provided during the consultation.

The greatest uncertainty that remains relates to our estimate of the number of non-employee workers. The range presented in this assessment is what was presented in the consultation stage impact assessment. Whilst we have had no comments to suggest this range is accurate, we also have had no comments saying that it is unreasonable.

Whilst the majority of the analysis presented in this assessment focuses on a central estimate, the sensitivity analysis at Annex 2 shows the cost impact associated with the low and high estimates for the number of non-employee workers. As can be seen in Annex 2, the low and high estimates cause the total cost to vary by very little, which is why we have used only the central estimate throughout this analysis.

Two attempts to commission further research on this issue have proven fruitless. In the absence of further information, this remains our best available estimate.

There is also uncertainty around the potential for deadweight with this measure. BEIS has had evidence to suggest that, where an employer uses a mix of employee and non-employee worker contracts, they do not differentiate in how they implement rights. Engagement with stakeholders as part of the consultation on 'Requiring more information on the payslips of hourly-paid employees and extending the right to receive a payslip to workers'<sup>1</sup> found that businesses employing both workers and employees do not differentiate between them when it comes to providing pay information.

Therefore, some employers may already provide a written statement to their non-employee workers because it is less burdensome to simply provide one for everyone.

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<sup>1</sup> [https://www.legislation.gov.uk/ukia/2018/30/pdfs/ukia\\_20180030\\_en.pdf](https://www.legislation.gov.uk/ukia/2018/30/pdfs/ukia_20180030_en.pdf)

## **Wider impacts**

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### Wider labour market impacts

We do not believe that the measure will have significant wider labour market impacts (i.e. on employment, wage rates and productivity).

Written statements are a non-wage related cost of employment. By making employment more burdensome, there is a risk that businesses will reconsider hiring. However, the total cost of implementing this change is currently low, particularly relative to measures such that the National Minimum Wage, which have not been found to have employment impacts.

### Equalities impact assessment

There is no evidence to suggest that non-employee workers are more or less likely to fall within a protected group. However, non-employee workers do have fewer employment rights, so in equality terms this proposal seeks to address an imbalance of rights for non-employee workers to an extent. The objective is to provide more transparency to a group of people that are potentially more vulnerable to exploitation as a result of not having a written statement of employment particulars.

### Public sector impact

The familiarisation costs that will accrue to the public sector are outlined above. We have not estimated specific public sector implementation costs, although it is likely that a portion of non-employee workers are engaged by the public sector and so a portion of the cost will be borne by the public sector.

There will also be a public sector impact where Government or Acas needs to produce guidance on the new requirements, and potentially update a template to include the new information proposed.

### Business investment

Written statements are a non-wage related cost of employment. It is likely that businesses considering investing in the UK will consider the costs associated with having, hiring and firing staff. There is no evidence to suggest that this change would materially affect the decision of firms considering investing in Great Britain.

## **Small Firms Impact Test**

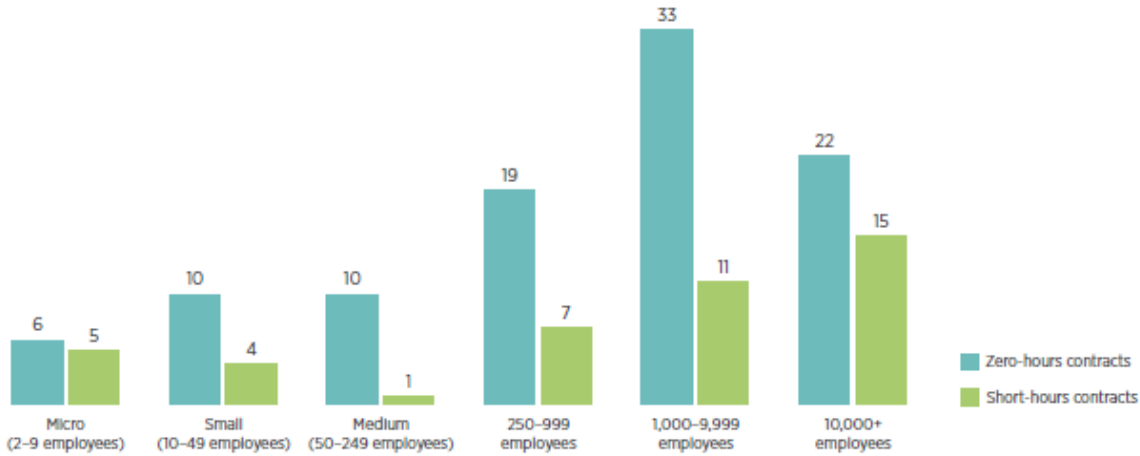
There is no evidence to suggest that small and micro businesses will be disproportionately impacted by the proposals. There is no evidence to suggest that small and micro businesses are more or less likely to use non-employee workers.

There is no single source of data on types of employment contract offered by business size. However, evidence from CIPD's 'Zero-hours and short-hours contracts in the UK: Employer and employee perspectives' (2015) report, small and micro<sup>2</sup> sized businesses are amongst the least likely to use zero and short hour contracts:

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<sup>2</sup> <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/terms-conditions/zero-hours-views-report>

Figure 6: Employer use of zero-hours and short-hours contracts, by employee size band (%)



Source: CIPD combined Labour Market Outlook survey, summer 2015

In terms of agency workers, experts in EAS, and consultation with experts on the recruitment sector, suggest that most hirers of agency workers are medium and large businesses.

As a result of the large number of small and micro businesses, these businesses account for a large proportion of the anticipated familiarisation costs. However, due to the lower number of people working for these businesses (we estimate that around 36% of the workforce work in small and micro businesses), they account for a lower proportion of the implementation costs (where these have been estimated by business size).

Familiarisation costs will be mitigated as a result of updated guidance on the provision of written statements. Guidance is already available via gov.uk and ACAS, in addition to the independent guidance available from HR expert bodies such as the CIPD. We also think that familiarisation will not be overly burdensome because the requirement for a written statement for employees has been in place for several years so businesses are likely to be familiar with the concept.

As noted above the implementation costs will be minimised as a result of updated templates that will be created by Government and Acas to support businesses in producing written statements in the least burdensome way.

## Summary and preferred option with description of implementation plan

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Following the public consultation, our preferred option is to:

1. Legislate to extend the right to a written statement to non-employee workers;
2. Make access to a written statement a day one right for both employees and workers; and
3. Expand the information required on a written statement.

Matthew Taylor highlighted that the right to a written statement currently excludes non-employee workers, meaning some individuals do not have transparent information about their employment relationship. The Government agrees and does not think that the existing provision around written statements goes far enough. The Government believes that all non-employee workers should have the same clarity as employees, so they can fully understand what they are signing up to.

The Government believes that it is important that all employees and 'workers' are clear about their working relationship when entering a new job. This is particularly important for those that are more vulnerable and are currently willing to accept work without having clear details about their hours or pay. These individuals are also usually more unclear about the rights they are entitled to.

Given that the main concern associated with the extension of the right to a written statement to non-employee workers related to the administrative burden on business of issuing new written statements on the first day of employment and the potential knock-on impact on recruitment, we have sought to implement the measure in such a way as to minimise these burdens.

The preferred option will have separate impact on employees and non-employee workers.

- For employees – Existing employees will not need to be issued with a new written statement as they should already have one. However, if their terms and conditions change, the employer would need to decide whether to update their existing written statement, or to issue the employee with a completely new written statement with their new terms and conditions and including any information we have recently added. The employer would need to issue these new terms and conditions within one month. This requirement mirrors current requirements and so should not be overly burdensome on employers.
- For non-employee workers – an existing non-employee worker would currently have no written statement. Should that worker's terms and conditions change, then the employer would have to provide a completely new written statement to that worker so only at that point an existing worker would be given a written statement. Similarly, should a non-employee worker move into a role for the first time, an employer would need to provide a new written statement.

The total cost of the measure over ten years is estimated as £235.5 million. The **discounted direct cost to business over ten years is estimated at £213.3 million.**

This equates to an annualised impact on business of **£20.4 million.** As per Government's Business Impact Target Impact Assessment calculator<sup>3</sup>, this annualised cost is presented in 2014 prices on the front cover of this impact assessment.

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<sup>3</sup> <https://www.gov.uk/government/publications/impact-assessment-calculator--3>

## Annex 1: Sensitivity analysis – accounting for external legal advice

As discussed on page 28 at consultation we sought to understand whether some employers might seek external or legal advice when producing written statements.

We had a very small response rate to this question, so we cannot consider the findings to be robust or representative. However, they did indicate that, of the 15 businesses that responded 7 respondents said that they ‘sometimes’ or ‘always’ seek legal advice.

When asked to provide more detail on the legal advice sought, 2 of the respondents noted that the contents of their written statements are reviewed by legal experts annually on an ongoing basis. This indicates that for 2 of the 7 respondents, there would be no additional burden of legal expertise, but that the annual review would now consider compliance in the context of the revised regulations.

We have concluded that legal advice is not a necessary pre-requisite to comply with this regulatory change and have not sought to include this cost in the overall NPV of this measure.

However, on the basis that some businesses have indicated that they would seek legal advice when implementing this measure, we think it is prudent to illustrate what the potential impact associated with legal advice would be.

### **How many businesses seek legal advice?**

While the numbers are extremely limited, the best evidence we have available are the responses to the consultation, which indicate that around 47% of businesses may seek legal advice in producing a written statement.

Of these, 13% will seek legal advice as part of a wider exercise. It’s important to remember that 2 of the 7 businesses noted that legal advice on written statements was sought on an annual basis. As such, changes to these regulations will only add incrementally to this cost, as opposed to creating a new cost.

We do not think it is sensible to estimate the cost of this on a ‘per written statement’ basis because businesses are likely to seek advice ‘in bulk’ –that is the same advice can be applied across several written statements. The consultation indicated that all those businesses seeking legal advice were large businesses so the cost ‘per statement’ is likely to be very low.

Our best proxy is therefore to apply these proportions to the number of UK businesses instead. That is, we estimate that 47% of UK businesses will seek legal advice, of which, 13% would have done so anyway.

<b>Businesses by number of employees, GB, start 2018</b>	<b>Total number of employers</b>
Total	1,490,605
Proportion using legal advice	700,584
Proportion that would have done so anyway	193,779

Therefore, we can say that, of the 1.49 million UK businesses, 0.7 million may now seek legal advice on written statements. However, for 0.2 million of these, this advice would have been sought in the absence of these regulations anyway.

### **Cost of legal advice**

We have assumed that one hour of a legal professional’s time would be enough to review and advise on the written statement regulations.

The average hourly cost of legal advice in the UK is £250.

For those 13% of businesses that seek legal advice on written statements on an annual basis anyway, the changes to these regulations will only add incrementally to this cost, as opposed to creating a new

cost. In this instance, the cost of a legal professional's time is based on earnings data from the Annual Survey of Hours and Earnings. Furthermore, as noted above the businesses that said they would seek legal advice were predominantly large employers, and we think that they are more likely to be able to seek legal advice from within their own organisation or through existing relationships with legal firms as opposed to incurring a new cost from seeking this advice.

### **Total cost**

Using these assumptions, there could be a cost of around £130 million in legal advice sought.

<b>Input</b>	<b>No. of businesses</b>	<b>Average cost</b>	<b>Total cost</b>
Hourly cost of legal advice	506,806	£250	£126.7m
Legal professional (ASHE)	193,779	£31.56 <sup>4</sup>	£6.1m
Total	700,584		£132.8m

As we have noted above, legal advice is not a necessary requirement for complying with these regulations. This is demonstrated by the fact that over half of respondents indicate that they do not need to seek legal advice to provide individuals with a written statement.

As such, this cost is including purely for illustrative purposes.

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<sup>4</sup> Includes uplift of 20.66% for non-wage labour costs

## Annex 2: Sensitivity analysis – low and high estimates for the non-employee worker population

The analysis in this IA utilises a central estimate for the number of non-employee workers. As discussed above, this estimate is one of the most uncertain inputs to the analysis.

This sensitivity analysis assesses the costs using low and high estimates for the number of non-employee workers to demonstrate what the impact will be on the overall estimated cost to business should the ‘real’ number of non-employee workers be lower or higher.

Input estimates			
Input	Low	Best	High
Number of workers	1,371,274	1,535,122	1,698,971
Number of employees	25,726,500	25,890,349	26,054,197
Total		27,425,471	

These inputs have an impact on the calculation of the cost of written statements for the current population of employed individuals and on the calculation of the cost of written statements for the future flow of new non-employee workers.

Note that, for the current population, any increase or decrease in the estimate number of non-employee workers, leads to a change in the estimated number of individuals with employee status.

Cost of written statements for current population						
	Low non-employee worker estimate		Central non-employee worker estimate		High non-employee worker estimate	
	Non-employee workers	Employees	Non-employee workers	Employees	Non-employee workers	Employees
Year 1	£35,905,745	£10,917,434	£40,214,434	£10,686,241	£44,523,124	£10,455,049
Year 2	£35,905,745	£10,917,434	£40,214,434	£10,686,241	£44,523,124	£10,455,049
Year 3	£35,905,745	£10,917,434	£40,214,434	£10,686,241	£44,523,124	£10,455,049
Year 4	£28,351,122	£10,917,434	£16,755,186	£10,686,241	£2,498,986	£10,455,049
Year 5	£1,926,606	£10,917,434	£2,157,799	£10,686,241	£2,388,991	£10,455,049
Year 6	£1,926,606	£10,917,434	£2,157,799	£10,686,241	£2,388,991	£10,455,049
Year 7	£1,926,606	£10,917,434	£2,157,799	£10,686,241	£2,388,991	£10,455,049
Year 8	£1,926,606	£10,917,434	£2,157,799	£10,686,241	£2,388,991	£10,455,049
Year 9	£1,926,606	£10,917,434	£2,157,799	£10,686,241	£2,388,991	£10,455,049
Year 10	£1,926,606	£10,917,434	£2,157,799	£10,686,241	£2,388,991	£10,455,049
Totals	£147,627,993	£109,174,341	£150,345,281	£106,862,413	£150,402,306	£104,550,486
<b>Total</b>	<b>£256,802,334</b>		<b>£257,207,694</b>		<b>£254,952,792</b>	

For the cost of a written statement for the current population of non-employee workers, using the low and high estimates for the number of non-employee workers causes costs to fluctuate between £255 million and £257 million over ten years, a difference of just £2 million in total.



Non-employee workers entering the labour market each year						
	Low estimate		Central estimate		High estimate	
	Number of new workers	Cost	Number of new workers	Cost	Number of new workers	Cost
Year 1	9,599	£850,817	10,746	£952,479	11,893	£1,054,140
Year 2	9,666	£856,773	10,821	£959,146	11,976	£1,061,519
Year 3	9,734	£862,771	10,897	£965,860	12,060	£1,068,949
Year 4	9,802	£868,810	10,973	£972,621	12,144	£1,076,432
Year 5	9,871	£874,892	11,050	£979,429	12,229	£1,083,967
Year 6	9,940	£881,016	11,127	£986,285	12,315	£1,091,555
Year 7	10,009	£887,183	11,205	£993,189	12,401	£1,099,196
Year 8	10,079	£893,393	11,284	£1,000,142	12,488	£1,106,890
Year 9	10,150	£899,647	11,363	£1,007,143	12,575	£1,114,638
Year 10	10,221	£905,945	11,442	£1,014,193	12,663	£1,122,441
<b>Totals</b>		<b>£8,781,246</b>		<b>£9,830,486</b>		<b>£10,879,726</b>

For the cost of a written statement for the flow of new non-employee workers into the labour market, the cost fluctuates between £8.8 million and £10.9 million over 10 years.

Discounted total costs over ten years

	Low estimate	Central estimate	High estimate
<b>Total costs</b>	£286,005,726	£287,460,327	£286,254,664
<b>Discounted</b>	£260,902,030	£262,960,101	£262,618,616