EXPLANATORY MEMORANDUM TO

THE EXCLUSIVITY TERMS IN ZERO HOURS CONTRACTS (REDRESS) REGULATIONS 2015

2015 No. 2021

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make provision in relation to the right for eligible individuals on zero hours contracts ('ZHCs') not to be unfairly dismissed or subjected to a detriment because they have breached a provision of a ZHC which prohibits the individual from doing work under another contract or arrangement. Eligible individuals will be able to bring proceedings in employment tribunals and may be awarded compensation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 On 26 May 2015 sections 27A and 27B of the Employment Rights Act 1996 Act ('the 1996 Act') came into force rendering unenforceable provisions in ZHCs which prohibit the worker from doing work under any other contract or arrangement or prohibit the worker from doing so without the employer's consent.

4.2 These Regulations create a route of redress in the employment tribunal for workers who have an exclusivity clause in their ZHC and then suffer detriment, if they work for another employer or seek consent from their original employer to do so. An employment tribunal may then award compensation to that worker. These Regulations also provide employees on a ZHC with an automatic right of unfair dismissal if the reason for the dismissal is because the employee works for another employer or seeks consent from their original employer to do so.

4.3 Once these Regulations have been approved by Parliament, a separate statutory instrument will be laid in Parliament to make the right not to suffer any detriment subject to Early Conciliation. The statutory

instrument regarding Early Conciliation will also amend these Regulations to extend the limitation date to bring a claim in the employment tribunal which is needed given the application of Early Conciliation. This will mean that a prospective claimant wishing to take a case to the employment tribunal must first contact the Advisory, Conciliation and Arbitration Service ('Acas') about their dispute and consider conciliation before presenting a claim to an employment tribunal.

4.4 The statutory instrument regarding Early Conciliation will be laid in Parliament after the Regulations are approved because the new detriment proceedings have to be enacted in law before they can be added to the list of 'relevant proceedings' in the Employment Tribunals Act 1996 which are subject to Early Conciliation.

5. Territorial Extent and Application

5.1 These Regulations apply to Great Britain.

6. European Convention on Human Rights

6.1 The Minister of State for Skills has made the following statement regarding Human Rights:

In my view the provisions of the Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 are compatible with the Convention rights.

7. Policy background

7.1 In 2013 the Government undertook an information gathering exercise aimed at examining the use of ZHCs in the UK labour market. That exercise showed that ZHCs are used appropriately and proportionately by many employers. However, that exercise also identified an issue with the use of exclusivity clauses in such contracts, meaning individuals were prevented from finding work elsewhere even when their employer was guaranteeing no work. This meant that individuals were unable to boost their income.

7.2 Following two consultations, exclusivity terms in ZHCs have been rendered unenforceable by section 27A of the 1996 Act. An employer cannot prevent an individual on a ZHC from accepting work elsewhere or request that that individual seek permission before finding alternative work.

8. Consultation outcome

8.1 The Government consulted on the use of exclusivity terms on ZHCs in December 2013, seeking views on whether to ban such clauses. The

responses showed overwhelming support (83%) in favour of banning these clauses. A Government response was published on 25 August 2014 and can be found in Chapter 4 of the Zero Hours Employment Contracts: Tackling Avoidance.

8.2 Government undertook a further consultation in August 2014 seeking views specifically on the order making power that allows for these Regulations to be created. 71% of respondents agreed that individuals on a ZHC should have redress to an employment tribunal if they suffered detriment as a result of working for another employer.

8.3 The Government Response was published on 6 March 2015 and can be found in the Exclusivity Clauses: Tackling Avoidance document.

9. Guidance

9.1 Guidance on ZHCs is available on the gov.uk website. We intend to update this guidance once these Regulations come into force.

10. Impact

10.1 A regulatory impact assessment (in the form of a regulatory triage assessment), for these Regulations will be published on the www.legislation.gov website.

10.2 The estimated cost to business is £103,000 a year and is rated as a low cost measure.

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 The Department for Business, Innovation and Skills will undertake an internal review of these Regulations within 5 years of implementation.

13. Contact

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