

<b>Title:</b> Extending the right to a written statement to 'dependent contractors' (non-employee workers)  <b>IA No:</b> BEIS014(C)-18-LM  <b>RPC Reference No:</b> RPC-4214(1)-BEIS  <b>Lead department or agency:</b> BEIS  <b>Other departments or agencies:</b> N/A	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 02/02/2018			
	<b>Stage:</b> Development/Options			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Secondary legislation			
<b>Contact for enquiries:</b> Cara Maguire, Labour Markets Directorate				
<b>Summary: Intervention and Options</b>			<b>RPC Opinion: GREEN</b>	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
-£207 million - - £578 million	-£207 million - - £578 million	-£20.8 million - -£57.5 million	Not applicable	To be determined

**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) at the outset. 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 also provide 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.

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

The consultation considers the following proposals:

- Whether the right to a written statement should be extended to non-employee workers and be made a day one right;
- Whether the contents of a principal written statement should be updated to include information that is useful for both employees and workers; and whether additional information should continue to be provided within 2 months of an employee or non-employee worker starting work;
- Improving awareness by promoting Advisory, Conciliation and Arbitration Service (Acas) guidance on the rights of employees and non-employee workers and how to enforce these rights (non-legislative option).

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 12/2022

Does implementation go beyond minimum EU requirements?		N/A		
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
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  
SELECT SIGNATORY:

Date:

## Summary: Analysis & Evidence

## Policy Option 1

**Description:** Legislate to extend the right to produce a written statement to non-employee workers and make it a day 1 right for both non-employee workers and employees

### FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£427.6m	High: -£206.8m	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price Years)	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low	19.2 + 75.8	14.7	206.8
High	19.2 + 270.7	18.1	427.6
Best Estimate	N/A	N/A	N/A

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

There will be familiarisation costs, which we have estimated as accruing to all employing businesses at this stage, because we have no information on which businesses are more likely to use people with 'worker' status. Implementation costs are calculated according to the cost of producing a written statement multiplied by the potential number of people with 'worker' status. Ongoing costs are based on an estimate of the likely number of times that statements needs to be amended.

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

At this stage we have no information on the turnover rate of 'workers', so we have no basis on which to estimate the costs of a new statement each time that a 'worker' begins a new job. However, we are not concerned that the scale of this impact will be particularly large, because once a written statement is produced for a post, it is assumed the statement will only need minor amendments each time that the post is filled.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

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

No monetised benefits have been identified at this stage.

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

'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.

#### Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

There are a number of uncertainties associated with the analysis, which is the basis for the large cost range presented at this stage. The key assumptions relate to the number of non-employee workers in the labour market, the number of businesses that use non-employee workers, the cost associated with creating a written statement, the extent to which businesses use external advice/goods to produce a written statement, and the burden associated with making this a 'day 1' requirement.

### BUSINESS ASSESSMENT (Option 1)

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

## Summary: Analysis & Evidence

## Policy Option 2

**Description:** 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

### FULL ECONOMIC ASSESSMENT

Price Base Year 2017	PV Base Year 2018	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£552.5m	High: -£330.1m	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition)	Total Cost (Present Value)
Low	19.2 + 75.8 +	14.7	330.1
High	19.2 + 270.7+	18.1	552.5
Best Estimate	N/A	N/A	N/A

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

The second 'do something' option adds **additional costs to those discussed under option 1** above. There will be an additional cost associated with amending written statements that already exist for employees to ensure that they include the new requirements for the contents of a principle written statement. We anticipate that this will take, on average, very little time (10 minutes) per employee because the information will already be known to employers.

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

We have not monetised the cost of having additional information to be provided after the principle written statement because this is equivalent to current requirements and will not have a material impact relative to the status quo.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

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

There are no monetised benefits at this stage.

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

'Workers' will benefit from improved clarity on their position, plus have access to additional and more relevant information relative to the nature of the work that they do.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
Assumptions are the same as outlined under Option 1. We have also assumed that it will take 10 minutes on average to update employee written statements to reflect the additional information required. The total costs of Option 2 are highly sensitive to this time minute assumption because it is applied across the entire population of employees, of which there are over 25 million. There is also an assumption about the number of employees by enterprise size, where we have assumed that 15% of all employees work in small and micro businesses.		

### BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies
Costs: N/A	Benefits: N/A	Net: N/A	N/A	N/A

## 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 Sundays, nights or overtime)</li><li>• Holiday entitlement (and if that includes public holidays)</li><li>• Where an employee will be working and whether they might have to relocate</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**

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>• How long a temporary job is expected to last</li><li>• The end date of a fixed-term contract</li><li>• Notice periods</li><li>• Collective agreements</li><li>• Pensions</li></ul> | <ul style="list-style-type: none"><li>• Who to go to with a grievance</li><li>• How to complain about how a grievance is handled</li><li>• How to complain about a disciplinary or dismissal decision</li></ul> |
|--|---|

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**

- |  |  |
|--|--|
| <ul style="list-style-type: none"><li>• sick leave and pay entitlement;</li><li>• disciplinary and grievance procedures; and</li></ul> | <ul style="list-style-type: none"><li>• Appeals procedure under the disciplinary and grievance procedures.</li></ul> |
|--|--|

There are a number of templates for written statements available 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 someone who works under an employment contract. All employees are also workers, but an employee has additional employment rights and responsibilities that don't apply to workers who are not employees. Typically, non-employee workers are not entitled to:

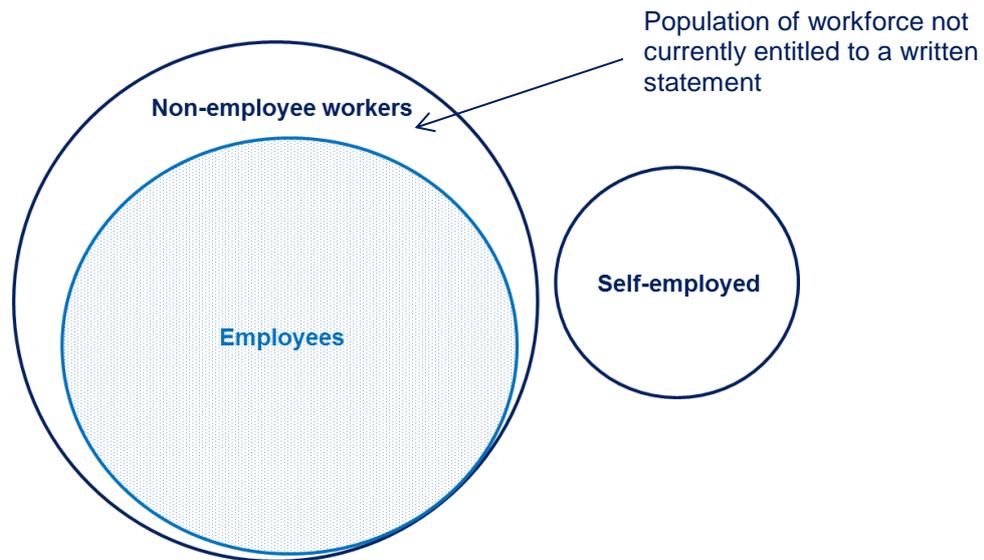
- A written statement of employment particulars;
- Minimum notice periods if their employment will be ending, for example if an employer is dismissing them;
- Protection against unfair dismissal;
- The right to request flexible working;
- Time off for emergencies; and
- Statutory Redundancy Pay.

The self-employed generally receive no employment rights as they are in business for themselves and providing a service to a client.

<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 would need 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 replace the minimalistic approach to legislation with a clearer outline of the tests for employment status, setting out the key principles in primary legislation, and using secondary legislation and guidance to provide more detail.
2. 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.
3. In developing the test for the new 'dependent contractor' status, control should be of greater importance, with less emphasis placed on the requirement to perform work personally.

Should Government implement these recommendations, '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).

Whilst the above recommendations could lead to an increased number of non-employee workers in future, as result of clarifying the boundary between self-employed and 'worker', at such a time as this change is made, the impact of having to provide a written statement to these newly classified 'dependent contractors' will be assessed (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 analysis in this impact assessment therefore relies on an estimate of the current size of the 'worker' population. However, it should be noted that there is very little robust evidence currently available on which to base these estimates. As such, the potential impact is, at this stage, presented as a range based on the few sources of information that we have on the size of the 'non-employee' worker population. Government is working, both through this consultation, and more widely to address this evidence gap. We are engaging key stakeholders and examining available sources of data and information to understand what is the best source of evidence on which we can base a robust estimate for the number of workers at final stage.

## **What is the problem under consideration?**

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### **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”.

The Commission on Vulnerable Employment<sup>5</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”.

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 and 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

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**

Mathew 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

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

<sup>5</sup> [http://www.vulnerableworkers.org.uk/files/CoVE\\_full\\_report.pdf](http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf)

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 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 the 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.

The consultation will seek to gather evidence on how well the existing entitlement to a written statement works, and on the impact of the proposals being considered, so that we have the best evidence to inform a decision on the way forward. The Government wants to ensure that all workers receive a written statement of employment particulars so that non-employee workers can be clear about their employment relationship. Government will use the consultation to test whether this would genuinely be helpful for these individuals and genuinely increase transparency.

### **Timing of the written statement**

The Government recognises that the existing rules are to provide a statement within 2 months of an employee starting work, which would not work for non-employee workers that

may be engaged for less than 2 months at a time (because workers are more likely to be on a shorter or more casual contract than employees). ‘Worker’ employment status is identifiable by individuals usually having no entitlement to minimum notice periods if their employment will be ending, protection against unfair dismissal or Statutory Redundancy Pay, all of which points towards individuals in more casual arrangements.

If the 2 month compliance period were retained, very short-term workers are unlikely to benefit from the extension. 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. If the measure is taken forward as a ‘day 1’ right we will need to work with businesses to understand how it would affect recruitment timescales and what Government can do to minimise that impact.

It might be possible to preserve the 2-month compliance period for *employees*, as a way to reduce costs to business and avoid slowing down recruitment. However, it could be perceived as odd to have a stronger (i.e. day one) right for non-employee workers than for employees, and it would further complicate the question of what rights apply to whom.

The Government will therefore consider whether the written statement needs to be introduced as a day one right for both employees and ‘workers’; and how onerous this requirement would be on employers.

#### Contents of the written statement

The Government also wants to explore whether the existing prescribed contents of a principal written statement will meet the needs of both employees and workers (and employers) and whether there is additional information that should be provided when an employee or ‘worker’ starts a job. This consultation will therefore seek views on whether the proposed list of mandatory contents is right, both for day one of the job, and if it is still useful to have additional information to be provided within the 2 month window.

The Good Work report states *“This [list of contents] should be developed further to ensure it is relevant to ‘dependent contractors’ and include the day one statutory rights ‘workers’ are entitled to, how they are calculated and how they will be paid”*.

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.

#### Format of the written statement

The Matthew Taylor review also recommended that Government consider *‘...the development of a standard format that can be easily adapted with specific information by the employer.’*

Government is already consulting on making certain information mandatory on the principal statement, so that all employers provide the same information in a single document. As we do not want to overburden employers, we believe that employers should have the freedom to present the information in a format that they consider fit for purpose. As such, we do not propose to consult specifically on this option at this stage.

However, we note that Government and Acas both currently provide online templates for written statements, and these templates will be updated as required going forward. Therefore, if businesses choose to use the available templates then many written statements will have a standardised format anyway.

### 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 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.

Through this consultation, the Government is seeking information from employees who have taken written statement complaints to employment tribunals so we can better understand the extent of non-compliance flagged by the Taylor review and make an informed assessment as to whether action is required.

## Rationale for intervention

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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>6</sup> cites evidence submissions from key stakeholders:

*"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 submission to the Review**

*"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 submission to the Review**

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<sup>6</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)

*“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 submission to Review**

*“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 submission to Matthew Taylor Review**

*“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 submission to Matthew Taylor Review**

The Government, in consideration of this recommendation, will to use this consultation to gather more evidence to understand further the extent to which a written statement for non-employee workers will give these individuals more security and power to exercise their rights.

## Policy objective

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The proposed extension of the right to a written statement to non-employee workers, and making this a 'day 1' right, would potentially 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 also 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.

The consultation will be used to gather evidence on how well the existing entitlement to a written statement for employees works, and the likely impacts of the proposals being considered, so that we have the best evidence to inform a decision on the way forward and so that stakeholders have the opportunity to input and shape the outcome.

This consultation will consider the following proposals:

0. Do nothing
1. Whether the right to a written statement should be extended to non-employee workers and be made a 'day 1' right;
2. Whether the contents of a principal written statement should be updated to include information that is useful for both employees and workers; and whether additional information should continue to be provided within 2 months of an employee or non-employee worker starting work. Note that this option builds on Option 1, such that the amended contents are in addition to the right being extended to non-employee workers and being made a 'day 1' right;
3. Improving awareness by promoting Acas guidance on the rights of employees and non-employee workers and how to enforce them (non-legislative option).

The consultation will also seek information about how the existing system for bringing written statement claims to an Employment Tribunal works, and to what extent there is non-compliance with the current requirements. However, at this stage, the Government is not proposing any action to bring a stronger remedy where a written statement related claim is brought to tribunal. If there is clear evidence that a stronger remedy is required, the Government will consult further on the best option for this.

## Description of options considered (including status-quo)

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This consultation considers those options recommended by Taylor; alongside a non-legislative approach that we think could also help to address the issues identified by the Matthew Taylor 'Good Work' Report:

<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 Option 1, 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)

A fuller description of these options is provided below:

### **Option 0 – Do nothing**

This option would not make any changes to the current system. Only employees would be entitled to a written statement within 2 months of starting work. Maintaining the status quo would mean that non-employee workers would continue as they are now. If the findings of the Matthew Taylor are correct, then this means 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 minimum rights including the minimum wage and paid holiday.

### **1. Option 1 – 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**

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.

Currently all employees are entitled to receive a written statement within 2 months of starting work, setting out basic details about the employment relationship, such as the name of the employer, the place of work, hours of work, and pay including holiday pay, sick pay and pension. However, the current requirement does not extend to all non-employee workers.

To implement the recommendation of the Taylor review, we would need to extend the entitlement to a written statement to non-employee workers. This would give a greater number of individuals a clearer understanding of their working relationship.

There are a number of ways that Option 1 could be implemented, however, to make the system as straightforward as possible it may be sensible to extend the current legislation to non-employee workers and make it a 'day 1' right to provide a written statement (timing is discussed under the 'problem under consideration', above). 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, non-employee workers are more likely to be engaged on a

casual basis, which could mean being employed for less than 2 months at a time, which means that they are unlikely to benefit from the extension if the 2 month compliance period were retained.

If Government did move to make the provision a 'day 1' right, we would need to consider whether this also applies to employees and what the impact is of applying the requirement to both 'workers' and employees.

We will use the consultation to assess how many employers already provide a statement to employees and 'workers'; within what timeframe and how onerous it would be to produce a statement for day one.

**2. Option 2 – 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**

Option 2 builds on options 1, such that, in addition to extending the right to a written statement to non-employee workers, and making this a 'day 1' right, by implementing Option2, legislation would also specify additional information to be included in the written statement and say by when this information is required by workers.

To ensure that we strike the right balance and do not place unnecessary burdens on business, we have set out below the information that would be important and useful for both employees and 'workers' on day one of employment. This information would be made mandatory and will have to be provided in one document on day one of the employee or 'worker' starting their job.

Note that, the implementation of Option 2 would mean that written statements that already exist for current employees might need to be revised to ensure that the new information is included. Similarly, if Government does move to extend the contents of a 'day 1' written statement, we would need to consider whether this also applies to employees and what the impact is of applying the requirement to both 'workers' and employees.

The Government proposes that the following information is provided in one 'principal' statement that is provided on day one of an employee or 'worker' starting a job:

- The business's name
- The employee's name, job title or a description of work and start date
- If a previous job counts towards a period of continuous employment, the date the period started
- How much and how often an employee will get paid, including hourly rate
- Hours of work (and if employees will have to work Sundays, nights or overtime); We propose that for non-employee workers working on a more casual basis, the statement should specify which days and times they should be available for work
- Holiday entitlement and pay (and if that includes public holidays)
- Where an employee will be working and whether they might have to relocate
- If an employee works in different places, where these will be and what the employer's address is

The Government proposes adding the following additional information to the day one principal statement:

- How long a temporary job is expected to last
- The end date of a fixed-term contract
- Notice periods
- Sick pay and procedures

The Government understands that particular information, such as on pensions, may be difficult to provide on the first day. This information is still important but may not be as relevant for non-employee workers. The Government therefore proposes that the following information be provided in a separate document (or a document specifies where it can be found) within 2 months of an employee starting their job:

- Collective agreements
- Pensions
- Grievance and Disciplinary Procedures
- Dismissal procedures

We will use the consultation to seek views on whether any other information should be provided on day one of the job or whether some information is suitably provided within the 2 month window.

### **3. 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 identified in the ‘problem under consideration’ and ‘rationale for intervention’ sections of this impact assessment would be to improve overall the provision of information on employment rights that is openly available to individuals.

In addition to the specific recommendation on ‘written statements’, Matthew Taylor also recommended that “the Government should do more; working with the Advisory, Conciliation and Arbitration Service (Acas) and others to ensure information is accessible”.

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. It is proposed that this information could be updated and promoted to make the rights of individuals (including the entitlement to a written statement) clearer. Having a straightforward and easily accessible source of reference for rights would benefit employers, employees and non-employee workers.

The disadvantage of Option 3 relative to Option 1 and 2 is that it does not fully address the equity issue around the provision of written statement to non-worker employees but not those individuals with ‘worker’ status.

This consultation will seek to understand how useful employers, worker and employees find the existing guidance and whether improved awareness of basic rights would be as useful as extending the requirement to provide a specific individual written statement in addressing the issues around the transparency of rights.

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

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### Familiarisation costs

#### Introduction

These familiarisation costs will cover Options 1 and 2. We do not believe that Options 0 or 3 will result in familiarisation costs to business. We have no evidence at this stage to estimate the proportion of businesses that use non-employee workers. However, 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 both options 1 and 2 involve a change of the rights 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 will be entirely new. Option 2 is also potentially more burdensome than Option 1 because it requires all employing businesses to familiarise themselves with an additional change. However, overall, we believe that 30 minutes is a substantial amount of time to read and understand any new requirements 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>1</sup>. The recent proposal on including working hours on payslips also assumed a familiarisation time of 30 minutes. Given that the right to 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 terms of the time it will take. It is also likely that the time it takes for businesses to familiarise themselves with any of the options will only increase in small increments with each option, as such; we have not adjusted the time taken for familiarisation across the options.

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.

**These assumptions on employer familiarisation behaviour and time taken will be tested during consultation, both by testing the reasonableness of our assumptions and by seeking the view of employers about they expect they will do to familiarise themselves with the change.**

Familiarisation costs are calculated as the opportunity cost of the time it takes a business to read about and understand the change.

Some employers might also choose to seek external legal advice during familiarisation; **we will seek more information on the likely external guidance that might be sought by businesses to understand and implement the new requirements during the consultation.**

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<sup>1</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)

## Calculation

ASHE data for 2017 (provisional)<sup>2</sup> gives the average hourly pay of a corporate manager/director as £22.48 and of a human resource manager/director as £24.64. We uplift these hourly costs by 19.8% to cover non-wage labour costs (in line with Eurostat methodology)<sup>3</sup>.

According to data from the Department for Business Innovation and Skills' Business Population Estimates<sup>4</sup>, in 2016 there were around 1.3 million private sector employers with one or more employees in Great Britain.

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

Private sector businesses by number of employees, GB, start 2016	Total number of employers	0.5 hours of Corporate director or HR manager time (uplifted by 19.8% for non-wage labour costs)	Total cost
1	156,690	£13.47	£2,110,614
2-4	683,095	£13.47	£9,201,290
5-9	241,640	£13.47	£3,254,891
10-19	133,430	£13.47	£1,797,302
20-49	70,120	£13.47	£944,516
50-99	22,005	£14.76	£324,794
100-199	9,375	£14.76	£138,375
200-249	1,930	£14.76	£28,487
250-499	3,695	£14.76	£54,538
500 or more	3,505	£14.76	£51,734
<b>Total</b>	<b>1,325,485</b>		<b>£17,906,541</b>

This gives us a total estimated cost of familiarisation for private sector employing businesses of **£17.9 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>5</sup>.

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

<sup>2</sup> ASHE Table 14 Occupation (4 digit SOC), Gross Hourly for all employees, <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable14>

<sup>3</sup> <http://ec.europa.eu/eurostat/documents/2995521/7968159/3-06042017-AP-EN.pdf/6e303587-baf8-44ca-b4ef-7c891c3a7517>

<sup>4</sup> <https://www.gov.uk/government/statistics/business-population-estimates-2016>

<sup>5</sup> See Table 2 Business population estimates for the UK and regions 2017 <https://www.gov.uk/government/statistics/business-population-estimates-2017>

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 19.8% for non-wage labour costs)	Total cost
Zero or 1 employee	36,875	£13.47	£496,541
2 – 4	20,660	£13.47	£278,198
5 – 9	15,175	£13.47	£204,339
10 – 19	9,690	£13.47	£130,481
20 – 49	6,325	£13.47	£85,169
50 – 99	3,190	£14.76	£47,082
100 – 199	2,475	£14.76	£36,529
200 – 249	555	£14.76	£8,191
250 – 499	1,010	£14.76	£14,907
500 or more	1,455	£14.76	£21,475
<b>Total</b>	<b>97,410</b>		<b>£1,322,913</b>

This gives us a total estimated cost of familiarisation for central and local government and non-profit employing businesses of **£1.3 million**. The majority of this cost falls to non-profit organisations (£1.15 million), with just £0.17 million cost to central and local government.

### **Implementation costs**

#### **Option 1 – 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**

##### **Introduction**

In order to estimate the cost associated with this requirement we need two key data points – an estimate of the number of non-employee workers and an estimate of the cost of producing a written statement.

We also need to understand the number of new non-employee workers entering the labour market to estimate the number of additional written statements that would need to be produced annually as new non-employee workers join the workforce.

##### **How many additional written statements will be required – current number of non-employee workers?**

The 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>6</sup>, which found that around 5% of all people in employment (27.07 million people in employment in October 2017, excluding the self-employed) ‘could’ be ‘workers’. The robustness of this estimate is uncertain, with the

<sup>6</sup> Burchell, Deakin and Honey (1999), The Employment Status of Individuals in Non-standard Employment, ESRC and DTI

study concluding that there is considerable uncertainty 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 atypical types of work, and 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 an adjustment of the 5% proportion.

Given that this is the only research available to us that looks specifically at the number of non-employee workers in the UK economy, we will apply the 5% proportion, giving us an estimate of 1.35 million non-employee workers in 2017. We use this as a lower bound estimate at this stage.

The Chartered Institute for Professional Development (CIPD) 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 all atypical workers (defined in this instance as anyone that is not a full-time, permanent employee, and not self-employed). Our basis for assuming that this is reasonable at this stage is that the Government's Employment Status Review of 2015<sup>7</sup> 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, 70.6% of the total workforce (excluding the self-employed) are full-time, permanent employees<sup>8</sup>. To the remaining 29.4% (or 7.96 million people) we apply the assumption of 21% derived from the CIPD survey mentioned above to get an estimate of 1.67 million non-employee workers.

Currently these are the two best available pieces of evidence we have on which to base an estimate of the number of non-employee workers. The impact of the proposal at this stage is therefore based on the following range for the number of non-employee workers:

Current worker population	
Lower estimate	Upper estimate
1,353,450	1,671,000

**We will use the consultation to test the robustness of these figures.**

What is the cost of a written statement?

At this stage we are also presenting a cost range based on two different methods of estimating the cost of a written statement.

The first 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>9</sup>

<sup>7</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>8</sup> BEIS analysis of unpublished LFS micro data

<sup>9</sup> <http://webarchive.nationalarchives.gov.uk/20090609035041/http://www.berr.gov.uk/files/file49199.pdf>

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 statements; which are widely available online.

We do not have a basis for believing that one method is more robust than the other, as such; our estimated impact is again based on the range derived across the two methods.

#### *Method 1: ORC study of employment law admin burdens*

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.

In the ORC 2008 findings, 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).

In the ORC 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. This accounts for the large difference in the two estimates above. **We will use the consultation to understand the extent to which businesses engage external expertise.**

#### **Box 1: Why are we using two methods to create a range for the cost of producing a written statement?**

Whilst the first method is based on independent research, there are three key issues with the estimates:

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 as much as £72 per statement. However, we do not have evidence to suggest that this is a robust assumption.
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 good 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.
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.

### Calculation - Method 2: standard cost model estimation

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.

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.

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. 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.

Cost of completing the written statement template		
Business size	Person completing template	Cost of 2 hours' time (with 19.8% uplift for non-wage labour costs)
Small and micro business	Corporate manager/director	£54
Medium and large business	HR manager/director	£59

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, depending on the size of the company<sup>10</sup>. This would suggest that a cost per written statement in line with our lower bound estimate is reasonable.

#### Summary of cost range:

Using these two methods we have a range for the cost of a written statement of:

2008 ORC study evidence	Standard cost model based estimate
£162	£56

#### Turnover of non-employee workers – new written statements to be produced annually

In order to estimate the ongoing annual costs associated with the requirement, we need an estimate of the number of non-employee workers starting new jobs each year.

Whilst ONS provides some data on job-to-job flows and inflows to the labour market from the unemployed and inactive, we have no basis on which to estimate the proportion of these people that will have 'worker' status. This is further complicated by the fact that we suspect that people with 'worker' status will move jobs more frequently because the status is associated with more casual forms of employment.

As such, at this stage we are unable to provide an estimate of this ongoing cost. However, we don't believe that the scale of this cost will necessarily be substantial given that, once a

<sup>10</sup> See Page 28 of REFIT Evaluation - <http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=202>

written statement is created for a job, only minor amendments will be required for each new person entering the role. These amendments may already be taken into considering in the cost of amending written statements, below.

**We will use the consultation to gather more evidence from business about this.**

Amendments to written statements

As highlighted by the ORC study evidence, there will also be a cost associated with amending written statements. This will form part of the ongoing costs for businesses in complying with the requirements.

The ORC study provided very little evidence about how many amendments were required or what they were in relation to (which is the basis for our belief that the number below could include amendments made in relation to a new staff member entering a job). The ORC study 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 and this could potentially be quite costly.

**As above, we will use the consultation to gather more evidence about this.**

Currently, whilst we don't believe the data is very robust, we base an estimate of the annual cost of making amendments to written statements on the information we have available. The calculation should be indicative of the scale of this cost at least.

If we assume that 56% of non-employee workers have their written statements amended every three years, then there will be between 757,932 and 935,760 amended statements produced every three years.

The ORC study found that amendments to a written statement would cost £58.

As such, we anticipate that there could be cost to business of between £44.0 million and £54 million every three years. This cost equates to an annual cost of:

Annual cost of amendments	
£14,653,352	£18,091,360

What is the impact of making the requirement a "day 1" right?

The implementation of Option 1 will involve additional costs 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 seeking views on whether we make the requirement a 'day 1' right for non-employee workers. If this is the case, it is likely that we will 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.

**This is information that we will seek to gather through the consultation.** At this stage we do not have any evidence on which to estimate the impact of this change.

Calculation for impact of Option 1

The total costs of Option 1 can be summarised as:

<b>Cost</b>	<b>Lower bound</b>	<b>Upper bound</b>
Familiarisation cost	£19.2 million	£19.2 million
Implementation cost	=1,353,450 x £56 £75.8 million	=1,671,000 x £162 £270.7 million
Annual cost	£14.7 million	£18.1 million
Total annual costs over 9 years	£132.3 million	£162.9 million
Total cost	£227.3 million	£452.8 million
<b>Total cost (PV)</b>	<b>£206.8 million</b>	<b>£427.6 million</b>

## Implementation costs

**Option 2 – 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**

### Introduction

The implementation of Option 2 will involve those costs discussed under Option 1, plus additional costs related to reworking the written statements of current employees to ensure that they include the following additional information:

- How long a temporary job is expected to last;
- The end date of a fixed-term contract;
- Notice periods; and
- Sick pay and procedures.

In reality, given the nature of employees, as opposed to non-employee workers, it is likely that the first two pieces of information will not be relevant in many cases. Also, as outlined on page 4, 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 current written statements for employees will not be overly burdensome and can be done in 10 minutes per employee.

#### **Why is 10 minutes a reasonable assumption at this stage?**

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>11</sup>

<b>Time taken to amend a written statement – by activity (ORC 2008)</b>	
<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

<sup>11</sup> <http://webarchive.nationalarchives.gov.uk/20090609035041/http://www.berr.gov.uk/files/file49199.pdf>

**Why is 10 minutes a reasonable assumption at this stage?**

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).

**These assumptions on the time taken to amend an employee’s written statement will be tested during consultation, both by testing the reasonableness of our assumptions and by seeking the view of employers about they expect they will do to implement the change.**

**Should the consultation determine that more information than the four suggestions made in Option 2 is required, the time taken to amend a written statement will then increase.** For this reason, the following analysis includes a scenario analysis to illustrate the impact on the total cost of Option 2 should the time taken to amend an employee’s written statement increase beyond the initial assumption of ten minutes. However, at this stage, the assumptions underpinning the scenario analysis are not considered to be robust. As such, the analysis is provided to support an understanding of how the costs could change only. We do not believe that it would be sensible to include the impact of the upper bound scenario within the total upper bound costs assessed in this initial impact assessment.

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.

This task will be required for all non-worker employees. The latest LFS data from ONS indicates that there are a total of 27 million working people (employees and non-employee workers) in the UK. As above, we are estimating that this stage, that there are between 1.35 and 1.67 million ‘workers’. To get an estimate of non-worker employees, we subtract this range from the total figure of 27 million. Our range for estimating the number of non-worker employees is therefore:

Current employee population	
Lower bound	Upper bound
25,398,334	25,715,884

To these estimates of the number of employees, we need to apply an assumption about how many are employed by smaller and larger businesses. Data from ONS on the number of employees by enterprise size in the UK (2015) indicates that 15% of employees work in small and micro businesses, whilst 85% work in larger businesses.

Business size	Number of employees by business size - lower bound	Number of employees by business size - upper bound
Small and micro business	3,809,750	3,857,383
Medium and large business	21,588,584	21,858,501

Option 2 will involve a one-off cost of amending all employee written statements to include this new information.

Note that, depending on how any changes to the legislation covering the current employee written statement requirements are introduced, this cost could be significantly reduced. As noted under Option 1, we currently do not know how many amendments are required to

written statements, but if the evidence suggests that amendments are somewhat regular, then the changes required by Option 2 could be made at such a time as other amendments were being made anyway.

Calculation

Business size	Person completing template	Cost of 10 minutes time (including 19.8% uplift for non-wage labour costs)	Cost - using lower bound number of employees	Cost - using upper bound number of employees
Small and micro business	Corporate manager/ director	£4.49	£17,100,088	£17,313,889
Medium and large business	HR manager/ director	£4.92	£106,211,228	£107,539,162
Total across all businesses			£123.3 million	£124.9 million

Cost - lower bound	Cost - upper bound
£123,311,316	£124,853,051

Whilst the range presented above appears relatively tight, this is because the input figures for number of employees are driven by the range we use for number of workers.

### Scenario analysis: the time taken to amend a written statement

Using the information provided in the ORC study, as outlined above, we can test to what extent the costs of Option 2 would increase if our assumptions are not correct.

In the following table, we present a range of time estimates based on combinations of the 'activities' required to amend a written statement as outlined in the ORC report. The activity combinations are as follows:

- Prepare only – 10 minutes
- Prepare and report – 21 minutes
- Gather, prepare and report – 39 minutes
- Gather, prepare, report and meet – 55 minutes
- All activities – 74 minutes

Using these time assumptions, the cost per employee of amending a written statement (depending on the size of the business) becomes:

Business size	Person completing template	Cost of X minutes time (including 19.8% uplift for non-wage labour costs)				
		10 minutes	21 minutes	39 minutes	55 minutes	74 minutes
Small and micro business	Corporate manager/director	£4.49	£9.43	£17.51	£24.69	£33.21
Medium and large business	HR manager/director	£4.92	£10.33	£19.19	£27.06	£36.41

Using these cost estimates, and the following estimates for the total number of employees, the total cost of Option 2 ranges from £123 million to £924 million.

Total number of employees		
Business size	Number of employees by business size - lower bound	Number of employees by business size - upper bound
Small and micro business	3,809,750	3,857,383
Medium and large business	21,588,584	21,858,501
Total	25,398,334	25,715,884

Total cost of Option 2 under different 'time taken' scenarios		
Time taken	Cost - using lower bound number of employees	Cost - using upper bound number of employees
10 minutes	£123,311,316	£124,853,051
21 minutes	£258,953,764	£262,191,407
39 minutes	£480,914,132	£486,926,899
55 minutes	£678,212,238	£686,691,781
74 minutes	£912,503,738	£923,912,578

As noted above, this scenario analysis is intended to be illustrative only, and to support an understanding of how the costs of Option 2 could change depending on the time-input assumption used. The assumptions underpinning the scenario analysis are not considered to be robust. As such, the scenarios have not been used to influence the total upper bound costs assessed in this initial impact assessment.

## Total cost of Option 2

The total costs of Option 2 can be summarised as:

<b>Cost</b>	<b>Lower bound</b>	<b>Upper bound</b>
Familiarisation cost	£19.2 million	£19.2 million
Implementation cost (Option 1)	=1,353,450 x £56 £75.8 million	=1,671,000 x £162 £270.7 million
Implementation cost (Option 2)	£123.3 million	£124.9 million
Annual cost	£14.7 million	£18.1 million
Total annual costs over 9 years	£132.3 million	£162.9 million
Total cost	£350.6 million	£577.7 million
<b>Total cost (PV)*</b>	<b>£330.1 million</b>	<b>£552.5 million</b>

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

### Option 3 – Improving awareness of rights by promoting Acas guidance on the rights of employees and non-employee workers and how to enforce them

Option 3 is a non-regulatory option so will not have any direct costs to business beyond helping individuals understand the rights to which they are entitled and helping businesses to better understand the current employment rights framework and what their responsibilities are within this.

Option 3 aims to make guidance on various rights more accessible to both employers and their workforce than it is currently.

There is likely to be a cost to government and to Acas in updating or producing the guidance required and in promoting it. There is also the potential that new guidance by Acas could increase the volume of calls that they receive from employers in relation to various rights covered by the guidance.

However, these costs have not been assessed at this stage. We will work with Acas to understand what the likely costs are during the consultation.

#### Summary of costs

Option	Description	Familiarisation costs	Implementation costs – one-off	Implementation costs – ongoing
Option 1	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	£19.2m	£75.8 million – £270.7 million	£14.7 million - £18.1 million annually  [Not fully estimated at this stage]
Option 2	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		£75.8 million – £270.7 million  Plus  £123.3 million - £124.9 million	£14.7 million - £18.1 million annually  [Not fully estimated at this stage]
Option 3	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)	£0	£0 to business  There will be a cost to Government/ Acas that has not been estimated at this stage	£0 to business  There will be a cost to Government/ Acas that has not been estimated at this stage

Note that implementation costs for Options 1 and 2 are additive

## **Benefits**

At this stage, we have not identified any quantifiable benefits to business or workers resulting from the proposals. However, whilst not quantifiable, there is a 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>12</sup>, “Having written information about their rights is, indeed, a prerequisite for workers to invoke their rights”. Lack of transparency increases the potential for undeclared work or abuse of employee rights.

A number of labour market stakeholders 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>13</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.

Having clear employment protection legislation also prevents good employers being undercut by the bad. 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.

We will seek to gather further evidence around the extent of these benefits during the consultation.

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.

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<sup>12</sup> <http://europeanmemoranda.cabinetoffice.gov.uk/files/2018/01/ST-16018-2017-ADD-1-EN.pdf>

<sup>13</sup> [http://www.vulnerableworkers.org.uk/files/CoVE\\_full\\_report.pdf](http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf)

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 statements, 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 amount 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. Currently, 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.

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 made at this stage. 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 will seek to obtain more evidence on how the provision of a written statement, could, or will affect employment tribunals during consultation. We will also seek to gather evidence on the wider benefits of a written statement so that these can be discussed in more detail in any final stage impact assessment.

## **Overall Impact**

The Net Present Value (NPV) of impacts assessed in the impact assessment is negative, meaning that the measure is assessed as being net costly 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) in order to address a potential imbalance of power weighted in favour of the employer associated with poor transparency of rights and expectations.

The NPV also appears large at this stage, mainly driven by the high potential number of workers and the high estimate for the cost of a written statements provided by the ORC study referenced above. It should be noted 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 value of the individual benefits and wider benefits to business that will accrue as a result of a more balanced relationship between employers and workers, in which workers are more informed about their working rights and conditions, and in which they feel more empowered to challenge potentially unfair working practices, whilst not monetisable at this stage should be considered when weighing up the overall case for introducing the right to a written statement for non-employee workers.

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

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As this is a consultation stage IA, we have sought to monetise impacts as far as possible to inform consultees on the potential scale of impacts associated with the proposed changes. The level of detail provided is proportionate to the relatively high potential costs. We have discussed those impacts that are not monetised at this stage in qualitative terms.

As with any consultation stage IA, the impact estimates are indicative only and intended to provide a basis for further exploration of the likely real impact.

It should be noted however, that, while we have used our best available evidence at this stage, we recognise that the estimates are not fully robust at this stage. Impacts are presented as ranges, which should serve to highlight the considerable uncertainty associated with some of the assumptions used.

Careful testing of the assumptions and estimates will be carried out during the consultation period. As noted throughout this IA, we intend to use the public consultation, as well as engagement with key stakeholders, including business representatives, trade unions and think tanks to add to and to test our assumptions and our evidence base. This should aid us in producing a robust impact estimate at final stage (should the Government decide to take forward any of the options proposed).

The key uncertainties and assumptions associated with our methodology are summarised in the next section.

## Risks and assumptions

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As this is a consultation stage proposal, there are relatively few risks associated with the assessment of impacts. The greatest risk is that we are unable to fill some significant gaps in evidence over the course of the consultation which will make it difficult for us to inform judgements on the best course of action for the policy and to produce a robust impact assessment at final stage.

There are a number of uncertainties associated with the analysis, the key ones being:

- Extent of the problem
- Evidence that a written statement provides more certainty for enforcing rights
- The number of non-employee workers in the labour market;
- The number of businesses that use non-employee workers;
- The number of non-profit businesses that have zero employees;
- The turnover of non-employee workers;
- The cost associated with creating a written statement;
- The extent to which businesses use external advice/goods to produce a written statement
- The regularity of amendments to these written statements;
- The burden associated with making the requirement a 'day 1' right;
- The time it would take to add additional information to written statements that already exist.

There is also uncertainty around the current impact of written statements in terms of the benefit that they provide for employees.

As noted above, there has been some evidence from the Matthew Taylor Review that written statements are currently not provided by many employers, suggesting that employees may not understand or experience the associated benefit. There is also uncertainty around the potential for deadweight with this measure. BEIS has had previous 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. 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. We will seek more information on these uncertainties during the consultation.

## Direct costs and benefits to business calculations

At this stage, the majority of the costs assessed in this impact assessment are direct costs to business.

We can remove the familiarisation costs applying to central and local government but we have no basis on which to remove the proportion of implementation costs that would accrue to the public sector.

We have not identified any direct and monetisable benefits to business. Similarly, the benefit to non-employee workers from increased transparency is not monetisable.

### Summary of costs to private businesses and non-profit organisations

Option	Description	Familiarisation costs	Implementation costs – one-off	Implementation costs – ongoing
Option 0	Do nothing	£0	£0	£0
Option 1	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	£19.1m	£75.8 million – £270.7 million	£14.7 million - £18.1 million [Not fully estimated at this stage]
Option 2	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		£75.8 million – £270.7 million  Plus £123.3 million - £124.9 million	£14.7 million - £18.1 million annually  [Not fully estimated at this stage]
Option 3	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)	£0	£0 to business  There will be a cost to Government/ Acas that has not been estimated at this stage	£0 to business  There will be a cost to Government/ Acas that has not been estimated at this stage

Note that implementation costs for Options 1 and 2 are additive

## **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 implementing this change is currently low, particularly relative to measures such as 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.

We will use the consultation to gather more information on the non-employee worker population and whether the proposal is likely to impact on any protected groups.

### 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 under Option 2.

### 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**

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At this stage there is no evidence to suggest that small and micro businesses will be disproportionately impacted by the proposals.

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 15% 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).

Currently, we have no evidence to suggest that small and micro businesses are more likely to use non-employee workers. We will seek evidence on this during consultation. The lack of information currently available on the types of business that engage non-employee workers makes it difficult to develop a robust small firms impact test at this stage. We will seek further information on businesses likely to be affected by the proposals during the consultation.

## **Summary and preferred option with description of implementation plan**

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This is a consultation stage IA, and given the evidence gaps identified throughout (summarised in the risks and assumptions section), we do not have a preferred option at this stage.

We will use the additional information and evidence gathered during consultation to inform the best approach for delivering Matthew Taylor's recommendation that the right to a written statement of employment particulars be extended to non-employee workers.

In addition to a wider public consultation we will seek to test proposals and gather evidence from key stakeholders, including business representatives, trade unions and think tanks to add to our evidence base so that a robust estimate of impact can be provided at final stage should the Government decide to bring forward any of the proposals being considered in this impact assessment.