

Title: Workplace harassment: legal protections under the Equality Act 2010 IA No: CO 2017 RPC Reference No: N/A Lead department or agency: Government Equalities Office (GEO), Cabinet Office Other departments or agencies: N/A	Impact Assessment (IA)		
	Date: 10/07/2019		
	Stage: Consultation stage		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
	Contact for enquiries: Esther Browning, E: esther.browning@geo.gov.uk		
Summary: Intervention and Options			RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option (in 2016 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£-17.4m	£-17.4m	£2.0m	Not a regulatory provision

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

The Equality Act 2010 ('the Equality Act') sets out clear protections against harassment in the workplace, making employers legally liable for the harassment of their staff in the workplace, subject to certain conditions. Despite these protections, an inquiry into sexual harassment in the workplace by the Women and Equalities Committee (WESC) made clear that rates of sexual harassment continue to be unacceptably high, and that employers are not taking sufficient steps to protect their staff. The inquiry also identified gaps in legal protections: in situations of workplace harassment by third parties, e.g. customers and clients; for interns, some of whom may not be protected; and for volunteers. The three-month time limit for bringing an Employment Tribunal case is also a potential barrier to justice for claims under the Equality Act.

What are the policy objectives and the intended effects?

- To ensure that employers take appropriate steps to protect their staff from workplace harassment, including by third parties.
- To ensure that interns and volunteers have appropriate legal protections under the Equality Act 2010, and that organisations accordingly take adequate steps to protect them from unlawful behaviours.
- To ensure that Employment Tribunal time limits do not present a barrier to justice in cases under the Equality Act 2010.

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

Option 1 – Do nothing. This includes non-legislative interventions that are being taken forward separately.

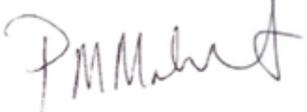
Option 2 - The consultation proposes changing the Equality Act 2010 to make employers legally liable if they fail to take all reasonable steps to protect their staff from third party harassment.

Option 3 – The consultation explores a number of other changes to the Equality Act 2010. These include: imposing a preventative duty on employers to prevent sexual harassment in their workplace; expanding the Equality Act's workplace protections to include all interns, and some volunteers; extending Employment Tribunal time limits under the Equality Act. Each of these options is intended to tackle a different part of the problem, they are not alternatives to each other.

Option 2, potentially with elements of option 3, is the most likely option. The consultation response will inform the Government's decision on what further regulations are required. The consultation also invites suggestions of alternative non-legislative interventions.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			Yes		
Is this measure likely to impact on trade and investment?			No		
Are any of these organisations in scope?		Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

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

Signed by the responsible Minister::  Date: 10th July 2019

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing – do not respond to the inquiry with legislation. This includes non-legislative interventions that are being taken forward separately

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant		Total Cost (Present Value)
Low	0	0	0	0	
High	0		0	0	
Best Estimate	0		0	0	
Description and scale of key monetised costs by ‘main affected groups’					
This option provides the baseline for measurement against options 2 and 3, with zero costs or benefits in line with impact assessment guidance.					
Other key non-monetised costs by ‘main affected groups’					
Costs from non-legislative options could include familiarisation with new statutory codes of practice, or implementing best practice across an organisation. As our consultation explicitly asks for evidence around potential non-legislative interventions, these costs have not been monetised.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant		Total Benefit (Present Value)
Low	0	0	0	0	
High	0		0	0	
Best Estimate	0		0	0	
Description and scale of key monetised benefits by ‘main affected groups’					
This option provides the baseline for measurement against options 2 and 3, with zero costs or benefits in line with impact assessment guidance.					
Other key non-monetised benefits by ‘main affected groups’					
It is possible that non-legislative interventions could have substantial benefits, for example through reduced work time needed to deal with harassment cases in the workplace, increased productivity from an inclusive and safe work environment or potentially less sick leave from individuals suffering harassment. Given the lack of evidence in this area it has not been possible to monetise these costs at this stage.					
Key assumptions/sensitivities/risks				Discount rate (%)	3.5%
N/A					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.0	Benefits: 0.0	Net: 0.0	N/A

Summary: Analysis & Evidence

Policy Option 2

Description: Limited changes to the Equality Act 2010, with a focus on introducing third party protections to make employers legally liable to protect their staff from third party harassment, has the potential to increase the number of individuals submitting an Employment Tribunal claim under the Equality Act 2010. These individuals could be entitled to compensation or settlement pay-outs.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -10.2	High: -43.1	Best Estimate: -20.5

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low	10.6	1	0.0	10.2
High	42.3		0.3	43.5
Best Estimate	21.2		0.0	20.5

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

The key monetised annual recurring cost to private businesses is from compensation, settlement and legal costs that result from a possible increase in the number of claims brought to Employment Tribunal as a result of third party protections. Please note compensation and settlement costs are a transfer to individuals from businesses. All businesses are in scope of these regulations, as such we expect businesses to incur costs from familiarisation with legislative changes and updating HR policies.

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

The GEO are working with MoJ and other departments to assess the overall impact of third party protections on public expenditure, for example estimating costs to HM Courts and Tribunal Service from increased tribunals (following the removal of tribunal fees in 2017). A justice impact test will also be produced after the consultation, before policy implementation.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	0.0	1	0.0	0.0
High	0.0		0.0	0.4
Best Estimate	0.0		0.0	0.0

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

The key monetised benefit is the compensation pay-outs to individuals whose claim is successful and settlement pay-outs to individuals whose case is privately settled. This is a transfer from businesses to individuals. It has not been possible to monetise other benefits from the introduction of third party protections due to a lack of evidence in this area.

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

Non-monetised benefits include employees feeling safer and possibly happier at work if employers are being seen to be taking the necessary steps to protect them against third party harassment in the workplace.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

The number of businesses, assumed staff costs and time taken to familiarise with the legislation are key sensitivities covering a sizable proportion of costs associated with the provision. The number of third party harassment claims per annum is a key sensitivity in our analysis. It is assumed to be 0-0.4% of all discrimination cases (0-60 cases per annum), in line with the 2012 Impact Assessment of removing third party provisions. It is assumed that all cases brought to tribunal would incur legal costs, regardless of outcome.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 2.4	Benefits: 0.0	Net: 2.4	
			N/A

Summary: Analysis & Evidence

Policy Option 3

Description: Changes to the Equality Act 2010, including imposing a preventative duty on employers to prevent sexual harassment in the workplace, expanding the Act's workplace protections to include all interns and some volunteers, and extending Employment Tribunal time limits for cases under the Equality Act 2010, is likely to increase the number of individuals bringing a claim to Employment Tribunal.

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -30.9	High: -125.8	Best Estimate: -66.5

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low	21.2	1	1.5	32.6
High	84.7		6.2	133.2
Best Estimate	42.3		3.6	70.8

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

The key monetised annual recurring cost to private businesses is from compensation, settlement and legal costs that result from a possible increase in the number of cases brought to Employment Tribunal as a result of changes to workplace protections. Please note compensation and settlement costs are a transfer to individuals from business. All businesses are in scope of these regulations, as such we expect businesses to incur costs from familiarisation with legislative changes and updating HR policies.

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

The GEO are working with MoJ and other departments to assess the overall impact of these changes to the Equality Act on public expenditure, for example estimating costs to HM Courts and Tribunal Service from increased tribunals (following the removal of tribunal fees in 2017). A justice impact test will also be produced after the consultation, before policy implementation.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	0.0	1	0.2	1.8
High	0.0		0.9	7.4
Best Estimate	0.0		0.5	4.3

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

The key monetised benefit is the compensation pay-outs to individuals whose claim is successful and settlement pay-outs to individuals whose case is privately settled. This is a transfer from businesses to individuals. It has not been possible to monetise other benefits from the expansion of protections under the Equality Act due to a lack of evidence in this area. Where possible, consultation responses will be used to estimate these benefits.

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

This is the most comprehensive legislative option, which addresses all the policy objectives of this consultation. It is likely this option would produce the most benefits to individuals and society, however it is not possible to monetise these due to a lack of evidence. Non-monetised benefits include volunteers (and possibly interns) feeling safer at work, and individuals being able to submit a claim within a longer time limit.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
The number of businesses, assumed staff costs and time taken to familiarise with the legislation are key sensitivities covering a sizable proportion of costs associated with these provisions. The estimated number of additional harassment claims brought to tribunal is a key sensitivity in our analysis. It is assumed that all cases brought to tribunal would incur legal costs, regardless of outcome.		

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 8.2	Benefits: 0.0	Net: 8.2	N/A

Problem Under Consideration

The Government is committed to tackling harassment in all its forms, both at work and outside it. Harassment has been against the law for decades and strong, clear laws against it are set out in the Equality Act 2010. However, even though these laws are in place, recent reports, including those of the #metoo movement, have shown that there is still a real, worrying problem with sexual harassment.¹

We want everybody to feel safe at work so they can succeed and thrive; so we are looking at whether the laws on harassment in the workplace are operating effectively.

Rational for Intervention

At the moment employers can be legally held responsible under the Equality Act 2010 for the harassment - including sexual harassment - of their staff at work, if the harassment is carried out by a colleague and the employer did not take all the steps they could to prevent the harassment from happening.

The consultation that sits alongside this Impact Assessment is a response to a Women and Equalities Committee (WESC) inquiry into sexual harassment in the workplace that was published in July 2018.

We think the above law is strong and effective, but the inquiry raised questions over particular elements of sexual harassment law which we would like to explore in more detail. In particular:

- What more could be done to ensure that employers *do* take all steps they can to prevent harassment from happening;
- Whether employers need to be made explicitly responsible for protecting their staff from harassment by third parties, like customers and clients;
- Whether, in practice, there are any interns who are not currently covered by equality protections in the workplace;
- What the right balance is between the flexibility of volunteering and equality protections for volunteers; and
- Whether people are being denied access to justice because of the three-month time limits for bringing an equality claim to an Employment Tribunal.

Our consultation² explores several aspects of the legislation where changes could strengthen protections against harassment - including sexual harassment - at work; a technical consultation has been published seeking views on details of legislation from subject matter experts, and an accompanying document targeted at the general public will invite the views and experience of any interested parties. The consultation also welcomes thoughts on non-legislative solutions to the specific issues raised.

Although the consultation is driven by a focus on sexual harassment, harassment related to any protected characteristic (apart from pregnancy and maternity, and marriage and civil partnership) is also prohibited under the Equality Act, and the options discussed in the consultation would apply equally to all forms of harassment. Protections against harassment are also closely linked to the Equality Act's protections against discrimination and victimisation,

¹ Women and Equalities Committee, 2018. *Evidence submitted to WESC inquiry into sexual harassment in the workplace.* (available [here](#)).

² The Workplace Harassment Consultation has been published alongside this Impact Assessment

and so where appropriate the consultation covers all three protections, to maintain a consistent approach.

The consultation responses will inform the Government's decision on what further regulations, or non-regulatory interventions, are required. The evidence gathered will shape the detail of options taken forward, and help inform the final stage impact assessment undertaken following consultation.

Policy Objectives

The primary policy objective for each option explored in this impact assessment is to ensure the current legal framework covering harassment in the workplace is performing effectively. The provisions covered in this impact assessment are as follows:

- Introduction of third party harassment protections, aims to protect staff from harassment by third parties (e.g. customers or clients).
- A preventative duty on employers, which aims to ensure employers take appropriate steps to protect staff from harassment in the workplace.
- Extending sexual harassment and other workplace protections in the Act to volunteers and interns, ensuring interns and volunteers have appropriate legal protections under the Equality Act.
- Extending Employment Tribunal time limits, aims to ensure that Employment Tribunal time limits are not a barrier to justice in cases relating to the Equality Act.

The consultation also invites suggestions of non-legislative alternative interventions.

Options Considered

Option 1: Do nothing

This includes non-legislative interventions separately being taken forward. Alternatives to a new duty include the statutory code of practice that is being brought in to enable clearer understanding of existing laws, and potential corporate governance requirements on employers - which could be brought in on a legislative or non-legislative basis - requiring the publication of or reporting on prevention and resolution policies, with Board sign-off.

Option 2: Introduction of third party harassment provisions

While the current law is clear that employers can be held liable for harassment carried out by their employees, it is less clear cut when it comes to harassment of staff by third parties (e.g. customers or clients). Provisions within the Equality Act 2010 that had protected employees from third party harassment were reviewed in 2012 and were found to have been confused and little used. They were repealed through the Enterprise and Regulatory Reform Act 2013 as it was considered that other, broader legal protections already covered situations of third party harassment.

However, in May 2018 the Court of Appeal ruled in the case of *Unite the Union v Nailard* that the 2013 repeal meant that the Equality Act could no longer be considered to provide protection in cases of third party harassment. This consultation therefore proposes that new protections are introduced to make employers explicitly liable if they fail to protect their employees from third party harassment.

Option 3: Extend legal protections under the Equality Act

Option 3 includes third party harassment protections and the three other policies being consulted on. Each of these options is intended to tackle a different part of the problem, they are not alternatives to each other.

A preventative duty on employers

Under the current legislation an employer's liability for sexual harassment comes into play only after an incidence of sexual harassment has taken place. The consultation will gather evidence on whether a new preventative duty would encourage employers to make more effort towards prevention. A preventative duty would require employers to take steps to prevent sexual harassment whether or not any incident had taken place and would allow the Equalities and Human Right's Commission (EHRC) to investigate and enforce the duty without an individual having to bring an Employment Tribunal claim against their employer.

Extend sexual harassment and other workplace protections in the Act to volunteers and interns

The workplace protections against harassment and discrimination in the Equality Act are based on employment status; these protections do not cover volunteers, and may not cover some interns or those on work experience. The consultation will explore whether interns are, in practice, adequately covered, and whether there are grounds to extend workplace protections in the Act to cover volunteers.

Extending Employment Tribunal time limits

The standard time limit for bringing a claim to an Employment Tribunal under employment and equality law is three months, with some exceptions. There are concerns that this may be too short a period to bring a claim under the Equality Act. The consultation will explore whether the time limit creates a significant barrier to justice and if there are grounds to extend it.

Examination of costs

Summary of costs in scope for options 2 and 3

The largest single cost to business from the introduction of these provisions covers familiarisation with the new requirements placed on them. This is assumed to be a one-off cost in year 1 (2020) of introduction of the new provisions.

With the proposed changes to workplace protections against harassment, the main identified additional annual costs to business arise from compensation, settlement and legal costs of defending additional Employment Tribunal (ET) cases that are brought as a result of the legislative changes. These costs apply to all changes.

Additional costs to business arise from the proposed additional compensation which could be paid to employees as a result of a breach of employers' duty to protect them against sexual harassment. These costs only apply to changes from the preventative duty on employers, estimated in option 3.

Table 1: Summary of costs examined for each policy option

	Legislative policy option(s)	Costs			
		Familiarisation	Compensation and settlement costs	Legal & defence costs	Additional compensation (above current legal requirements)
Option 1: Take forward non-legislative interventions					
Option 2: Introduction of third party harassment provisions	Introduce third party protections	X	X	X	
Option 3: Extend legal protections under the Equality Act	Introduce third party protections	X	X	X	
	Preventative duty on employers	X	X	X	X
	Extend to volunteers	X	X	X	
	Extend ET limits by 3 months	X	X	X	

Changes to workplace protections will increase costs to the public sector from increased costs to HM Courts and Tribunal Service (following removal of tribunal fees in 2017), as well as costs of ‘additional’ tribunal cases brought against public sector employers. The GEO are working with MoJ and other departments to assess the overall impact of these protections on public expenditure. A full assessment of these costs will be included in the subsequent final stage impact assessment, following our consultation responses and detailed analysis with other government departments.

Table 2: Summary of net present value in best estimate (2019/20 prices):

	Option 2	Option 3
One-off familiarisation cost to business in low, best and high estimate (£m)³	£20.5m	£40.9m
10 year total net present value in best estimate, excluding familiarisation costs (£m)	£0.0m	£29.9m

³ These values refer to the net present value of these costs; as familiarisation will not start until the next financial year (2020/21), these values are discounted by one period at 3.5%. This is why these values differ from those in [Table 4](#) and [Table 8](#) respectively

Cost of defending a tribunal case to an employer

The average cost to employers of defending a tribunal case is calculated as the cost of advice and representation, time spent on the case by CEOs and senior officials, and by other employees (i.e. HR managers and directors), and equivalents in small businesses. It is assumed that these costs will be incurred by employers for all cases brought to a tribunal.

The average time spent defending an Employment Tribunal case is taken from the Survey of Employment Tribunal Applications (SETA) 2013 as 5 days for directors/senior officials and 9 days for other staff.⁴ This is the most recent available evidence; figures are in line with the 2002 and 2007 surveys and are not expected to have changed significantly. Median hourly wage for chief executives and senior officials, and other staff (assumed HR managers and directors)⁵ is taken from ASHE 2018 as £46.00 and £23.66 respectively.⁶

The average cost of advice and representation for an Employment Tribunal case is taken from SETA 2013 as £2,400 (80% of employers paid for representation, and the average cost of representation was £3,000, we therefore calculate a weighted average; $80\% \times £3,000 = £2,400$), and bring forward to 2019/20 prices. The overall average cost to an employer of an Employment Tribunal case is summarised below.

Table 3: Cost to business of defending an Employment Tribunal case (in 2019/20 prices)

	Cost per case (£)
Time spent on case by 'directors/senior officials'	£2,338
Time spent on case by 'other staff' (assumed HR managers and directors)	£2,256
Advice and representation	£2,766
Total	£7,360

Note: assumed an 8 hour work day

Source: SETA 2013, ASHE 2018

Settlements and compensation costs

The average compensation awarded in a discrimination tribunal case over the period 2015/16 to 2017/18 was £11,753⁷. It is assumed that compensation costs will be incurred by employers for cases which are successful at tribunal only. These costs are applied to the number of expected successful cases.

The average settlement value in a discrimination tribunal case is estimated using SETA 2013 as £5,000⁸. This amount is brought forward to 2019/20 prices. It is assumed that settlement costs will be incurred by employers for cases which are privately settled. These costs are applied to the number of expected privately settled cases.

⁴ BEIS, 2014. *Findings from the Survey of Employment Tribunal Applications 2013. Research Series no. 177, Table 6.8.* (available [here](#))

⁵ SOC code 1115 used for directors/senior officials, SOC code 1135 used for HR manager and directors

⁶ ONS, 2018. *Annual Survey of Hours and Earnings 2019, Table 14.6.* (available [here](#)).

⁷ MoJ, 2018. *Employment Tribunal and Employment Appeal Tribunal Tables 2017 to 2018, Table E2.* (available [here](#)). Note: this is calculated as a 3 year average of compensation for each discrimination jurisdiction 2015/16 – 2017/18. Equality Act related jurisdictions include: Disability; Race; Sex; Religious belief; Sexual orientation; Age; and Maternity/pregnancy discrimination.

⁸ BEIS, 2014. *Findings from the Survey of Employment Tribunal Applications 2013. Research Series no. 177, Table 4.8.* (available [here](#))

Examination of benefits

The key monetised benefit of these measures is the compensation pay-outs to individuals whose claim is successful and settlement pay-outs to individuals whose case is privately settled. This is a transfer from businesses to individuals. It has not been possible to monetise other benefits from the expansion of protections under the Equality Act due to a lack of evidence in this area.

Non-monetised benefits include employees feeling safer and possibly happier at work if employers are seen to be taking the necessary steps to protect them against harassment in the workplace, including by third-parties. Non-monetised benefits for option 3 also include volunteers (and possibly interns) feeling safer at work, and individuals being able to submit a claim within a longer time limit.

Costs for option 1: do nothing

There is a net zero cost as this is a continuation of the current situation.

Costs for option 2: introduction of third party harassment provisions

Familiarisation costs

We have modelled familiarisation costs differently from the 2012 Impact Assessment on removing third party provisions⁹, as this measure was removed around 7 years ago, and we propose to design new provisions, rather than maintaining the previous design; we therefore want to ensure we do not underestimate the cost of familiarisation for all businesses. As such we have assumed 100% of businesses will have familiarisation costs. We have also produced low, best and high estimates, based on the uncertainty around how much time will be needed for familiarisation.

It is assumed that HR managers and directors will need 0.5 hours to familiarise themselves with the legislative changes in the best estimate, including changing HR policies to reflect these changes.

There were 1.35m private sector businesses with employees in Great Britain in 2018.¹⁰ The median hourly wage of HR managers and directors has been taken from the Annual Survey of Hours and Earnings (ASHE) 2018 as £24.66.¹¹ Non-wage costs are taken from the Eurostat Labour Cost Survey 2016.¹² Wage and salary costs are estimated at 82.13% of labour costs in the UK (all sectors). The inverse of this figure, $((100/82.13) - 1) = 21.76\%$, provides the uplift rate required to calculate total hourly labour costs.

⁹ Home Office (GEO), 2012. *Review of third party harassment provisions*. (available [here](#))

¹⁰ BEIS, 2018. *Business Population Statistics, Table 26*. (available [here](#))

¹¹ ONS, 2018. *Annual Survey of Hours and Earnings 2019, Table 14.6*. (available [here](#)), brought forward to 2019/20 prices

¹² Eurostat, 2016. *Structure of labour cost by NACE Rev. 2 activity - % of total cost, LCS surveys 2008, 2012 and 2016*. (available [here](#)). Labour cost structure: 'Wages and salaries (excl. apprentices)'; NACE Rev.2: 'sectors B-S'; Total Number of employees: 'Total'

Table 4: One-off familiarisation costs (in 2019/20 prices)

	Total private sector businesses (GB)	Median hourly rate for 'HR managers and directors' (2019/20 wage)	Non-wage costs uplift rate	Time taken (hours)	Total estimated familiarisation cost
Low	1,351,535	£25.73	21.76%	0.25 hours	£10.6m
Best				0.5 hours	£21.2m
High				1 hour	£42.3m

Source: Business Population Estimates, ONS, Eurostat

Number of cases

For the three years between 2016/17 and 2018/19 there was an average of 24,055 discrimination complaints relating to the Equality Act brought to Employment Tribunal (ET) per annum (not including Equal Pay which is out of scope of any of the regulations under consideration).¹³ This includes claims which are based on more than one jurisdictional complaint (for example, sex and age discrimination). To estimate the number of individual discrimination claims, it is necessary to adjust this figure by the average number of jurisdictional complaints per claim over the same period (1.61). Therefore, the estimated number of individual discrimination cases expected at tribunal per annum is **14,934**¹⁴.

The number of cases appeared to increase in 2018/19 following the removal of tribunal fees in 2017. There is uncertainty around how case load will change in the longer term, following the removal of tribunal fees. We have based our calculations on an average number of cases for the three years 2016/17 – 2018/19, however it is possible overall case numbers will increase in the years ahead.

In line with the 2012 Impact Assessment of removing third party provisions¹⁵, we assume that the provisions would result in an increase in the annual number of discrimination cases accepted at Employment Tribunal by 0-0.4%. We have used this assumption to estimate possible costs for the low and high scenarios. We are only aware of two cases brought on these grounds while the provisions were in place from 2008 to 2013.¹⁶ Therefore, we use 1 case per year as our best estimate of the number of cases which may be brought on these grounds in the future.

Using breakdowns by sector of respondents to discrimination cases from SETA 2013¹⁷, [Table 5](#) sets out the number of expected cases per annum by sector of employer. This is the most recent available evidence, however the percentage of cases brought against the private sector increased between the 2003 and 2008 surveys, and decreased between the 2008 and 2013 surveys, so it is possible that this could be an under/overestimation of the number of cases for private businesses.

¹³ MoJ, 2019. *Tribunal Statistics Quarterly: January to March 2019, Table ET_1*. (available [here](#))

¹⁴ 24,055 / 1.61 ≈ 14,934

¹⁵ Home Office (GEO), 2012. *Review of third party harassment provisions*. (available [here](#))

¹⁶ *Blake v Pashun Care Homes Ltd* [2011] EqLR 1293 in the employment tribunal, and *Gloucestershire Primary Care Trust v Sesay* UKEAT/0004/13/MC (12 June 2013) in the EAT.

¹⁷ BEIS, 2014. *Findings from the Survey of Employment Tribunal Applications 2013. Research Series no. 177, Table 8.6*. (available [here](#))

Table 5: Total number of discrimination and third party cases, by sector

	Total discrimination cases		Third party harassment cases		
	Percentage of cases	Number of cases	Low	Best	High
Percentage of cases			0	0.01%	0.4%
Private sector	56%	8,363	0	1	33
Public sector	30%	4,480	0	0	18
Voluntary sector	14%	2,091	0	0	8
Total	100%	14,934	0	1	60

Source: SETA 2013, GEO estimates

Between 2016/17 and 2018/19, an average of 3% of discrimination tribunal cases related to the Equality Act (excluding Equal Pay) were successful at hearing¹⁸ and SETA 2013 estimated that 15% of discrimination cases were privately settled¹⁹. [Table 6](#) shows the number of third party harassment cases expected to be brought against private businesses by expected outcome.

Table 6: Estimated ‘additional’ number of third party harassment cases per annum, by outcome

	Percentage of cases	Number of cases		
		Low	Best	High
Successful at hearing	3%	0	0	1
Privately settled	15%	0	0	5

Source: Tribunal statistics, SETA 2013, GEO estimates

Total costs of introduction of third party harassment provisions

To calculate the annual cost to employers of additional Employment Tribunal cases that might result from third party protections, we estimate the average cost of defending a case, average compensation cost and average settlement cost, as set out in [Summary of costs in scope for options 2 and 3](#) above. The total **annual** cost to private business is summarised below:

Table 7: Net present value of annual costs to business of third party harassment provisions

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Low	£0.0m									
Best	£0.0m									
High	£0.3m	£0.2m	£0.2m							

The vast majority of the costs associated with this change results from the high familiarisation costs, as all businesses will be in scope of these changes. As such the annual ‘additional’ costs to business are likely to be relatively small, especially given the large scope of the regulations across all businesses.

¹⁸ MoJ, 2019. *Tribunal Statistics Quarterly: January to March 2019, Table ET_3*. (available [here](#))

¹⁹ BEIS, 2014. *Findings from the Survey of Employment Tribunal Applications 2013. Research Series no. 177, Table 5.2*. (available [here](#))

Costs for option 3: Extend legal protections under the Equality Act

Familiarisation costs

As above, we have modelled familiarisation costs differently from the 2012 Impact Assessment on removing third party provisions²⁰, to ensure we do not underestimate the cost of familiarisation for all businesses. We have assumed 100% of businesses will have familiarisation costs. We have also produced low, best and high estimates, based on the uncertainty around how much time will be needed for familiarisation.

It is assumed that HR managers and directors will need to familiarise themselves with the changes to the law brought about by third party protections, preventative duty, extension to volunteers and extended time limits, and this is assumed to be a one-off cost.

It is assumed that employers would consider the impact of all changes together, and this would reduce the total amount of familiarisation time needed for all four changes. Therefore, 1 hour is assumed to be needed for HR managers and directors to consider the impact of the changes on them and their employees. This includes time to consider how this impacts their current HR policies.

There were 1.35m private sector businesses with employees in Great Britain in 2018.²¹ The median hourly wage of HR managers and directors has been taken from the Annual Survey of Hours and Earnings (ASHE) 2018 as £24.66.²² Non-wage costs are taken from the Eurostat Labour Cost Survey 2016.²³ Wage and salary costs are estimated at 82.13% of labour costs in the UK (all sectors). The inverse of this figure, $((100/82.89) - 1) = 21.76\%$, provides the uplift rate required to calculate total hourly labour costs.

Table 8: One-off familiarisation costs (in 2019/20 prices)

	Total private sector businesses (GB)	Median hourly rate for 'HR managers and directors' (2019/20 wage)	Non-wage costs uplift rate	Time taken (hours)	Total estimated familiarisation cost
Low	1,351,535	£25.73	21.76%	0.5 hours	£21.2m
Best				1 hour	£42.3m
High				2 hours	£84.7m

Source: Business Population Estimates 2018, ONS 2018, Eurostat 2016

A preventative duty on employers

Estimating number of sexual harassment cases

The Government does not currently collect data on the prevalence of sexual harassment in the workplace, and data on Employment Tribunals does not allow cases involving allegations of sexual harassment to be easily identified. Therefore, the number of sexual harassment claims is estimated by searching the Employment Tribunal Decisions database. For 2017 and 2018,

²⁰ Home Office (GEO), 2012. *Review of third party harassment provisions*. (available [here](#))

²¹ BEIS, 2018. Business Population Statistics, Table 26. (available [here](#))

²² ONS, 2018. *Annual Survey of Hours and Earnings 2019*, Table 14.6. (available [here](#))

²³ Eurostat, 2016. *Structure of labour cost by NACE Rev. 2 activity - % of total cost, LCS surveys 2008, 2012 and 2016*. (available [here](#)). Labour cost structure: 'Wages and salaries (excl. apprentices)'; NACE Rev.2: 'sectors B-S'; Total Number of employees: 'Total'

there was an average of 70 tribunal cases per year recorded on the database which referred to “sexual harassment”.²⁴

There is not expected to be an increase in the number of sexual harassment cases brought to tribunal as a result of the preventative duty, as the aim of the duty is to make it clearer to businesses what proactive steps are required to comply with the law. However, for the purposes of estimating possible costs, we assume a 5% decrease in sexual harassment cases for our low estimate and a 50% increase in cases for our high estimate. There is uncertainty around these figures due to a lack of evidence, but it is likely that any increase in cases would be smaller than the high estimate. These figures will be adjusted based on responses to the consultation. [Table 9](#) sets out the number of expected sexual harassment cases per annum by sector of employer.

Table 9: Total number of sexual harassment cases, by sector

	Total sexual harassment cases		Estimated ‘additional’ sexual harassment cases		
	Percentage of cases	Number of cases	Low	Best	High
Percentage of cases			-5%	0	50%
Private sector	56%	39	-2	0	20
Public sector	30%	21	-1	0	11
Voluntary sector	14%	10	0	0	5
Total	100%	70	-4	0	35

Source: SETA 2013, Employment Tribunal Decisions, GEO estimates

It is assumed that the proportion of sexual harassment cases that would be successful at hearing is equivalent for all sex discrimination cases, taken from Tribunal Statistics as 1% on average between 2016/17 and 2018/19²⁵ (note: we use sex discrimination here as it is the jurisdiction under which sexual harassment falls). SETA 2013 estimates that 15% of discrimination Employment Tribunal cases are privately settled²⁶.

Table 10: Estimated number of ‘additional’ sexual harassment cases, by outcome

	Percentage of cases	Number of cases		
		Low	Best	High
Successful at hearing	1%	0	0	0
Privately settled	15%	0	0	3

Source: Tribunal statistics, SETA 2013, GEO estimates

²⁴ Employment Tribunal Decisions (available [here](#)). Note: data collected on 26/06/19 and refers to the average of the two periods 01/01/2017 – 31/12/2017 and 01/01/2018 – 31/12/2018 using “sexual harassment” (including quotation marks) in the search box

²⁵ MoJ, 2019. *Tribunal Statistics Quarterly: January to March 2019, Table ET_3*. (available [here](#))

²⁶ BEIS, 2014. *Findings from the Survey of Employment Tribunal Applications 2013. Research Series no. 177, Table 5.2*. (available [here](#))

Cost of 'additional' compensation

The cost of additional compensation that employers could have to pay for breaching their duty to protect employees against sexual harassment is estimated using average weekly gross pay from ASHE 2018.²⁷ This has been forecast to 2029 using CPI inflation (OBR)²⁸.

Additional compensation costs are estimated separately for men and women to account for differences in weekly pay, and is weighted according to the percentage of expected cases brought, by sex. To estimate expected cases by sex, we use a 2017 ComRes survey of the prevalence of sexual harassment in the workplace, in which 60% of respondents who had experienced any form of sexual harassment in the workplace in the last 12 months were women.²⁹ This is currently the best available evidence for the prevalence of sexual harassment in the workplace. Similarly, SETA 2013 found that 56% of sex discrimination cases were brought by women (note: this refers to sex discrimination as a whole, which is broader than sexual harassment).

Table 11: Additional compensation costs (per case)

	Average weekly gross pay		Percentage of cases		Average weekly gross pay (Weighted)	Estimated compensation cost at 13 weeks' pay
	Male	Female	Male	Female		
2020	£561	£348	40%	60%	£434	£5,637
2021	£571	£354			£442	£5,744
2022	£583	£361			£451	£5,858
2023	£594	£368			£460	£5,976
2024	£606	£376			£469	£6,095
2025	£618	£383			£478	£6,217
2026	£631	£391			£488	£6,341
2027	£643	£399			£498	£6,468
2028	£656	£407			£508	£6,598
2029	£669	£415			£518	£6,730

Source: ONS, ComRes

Table 12: Net present value of 'additional' compensation costs from sexual harassment cases

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Low	£2,696	£2,654	£2,616	£2,578	£2,541	£2,504	£2,467	£2,432	£2,396	£2,362
Best	£2,996	£2,949	£2,906	£2,864	£2,823	£2,782	£2,742	£2,702	£2,663	£2,624
High	£4,494	£4,424	£4,360	£4,297	£4,234	£4,173	£4,112	£4,053	£3,994	£3,936

Costs for extending sexual harassment and other workplace protections in the Act to volunteers and interns

The percentage of adults (16+) who volunteer at least once a month, or at least once in the last 12 months, is taken from the Community Life Survey 2017/18.³⁰ The number of cases expected to be brought by volunteers is calculated by taking the ratio of Employment Tribunal claims to

²⁷ ONS, 2018. *Annual Survey of Hours and Earnings 2019, Table 1.1a.* (available [here](#))

²⁸ OBR inflation forecasts, (available [here](#))

²⁹ Comres, 2017. *BBC – Sexual Harassment In The Workplace.* (available [here](#))

³⁰ DCMS, 2018. *Community Life Survey 2017-18, Table D1.* (available [here](#))

the number of people in employment³¹ (around 0.05%), and applying this to the estimated number of volunteers. This is then discounted by the percentage of working time spent volunteering taken from the ONS Satellite Accounts³² (around 3%) as it is assumed that this would reduce the likelihood of harassment taking place.

- Low estimate – number of adults 16+ who volunteer at least once a month, discounted by average amount of time spent volunteering
- High estimate - number of adults 16+ who volunteered at least once in the last 12 months, discounted by average amount of time spent volunteering
- Best estimate – mid-point of low and high estimate

The estimated number of volunteers each year over the appraisal period is calculated using ONS population projections for Great Britain³³, applying the proportion of those who volunteer from the Community Life Survey 2017/18, and taking the estimated 0.05% who will pursue a claim for harassment (the ratio of Employment Tribunal claims to the number of people in employment).

Table 13: Number of volunteers in year 1 (2020)

	% of adults (16+) who volunteer	GB 16+ population	Number of volunteers	Percentage of working time spent volunteering	Number of volunteers (discounted for time spent volunteering)
At least once a month	22%	52.9m	11.7m	3%	0.3m
At least once in the last 12 months	38%		19.8m		0.6m

Source: DCMS Community Life Survey, ONS

Table 14: Estimated number of cases brought by volunteers (year 1), by sector

	Percentage of cases	Additional cases brought by volunteers		
		Low	Best	High
Number of volunteers		0.3m	0.5m	0.6m
Ratio of tribunal cases to employment		0.05%		
Private sector	56%	90	121	152
Public sector	30%	48	65	81
Voluntary sector	14%	22	30	38
Total	100%	160	216	271

Source: SETA 2013, GEO estimates

³¹ ONS, 2019. *LFS: In employment: Great Britain: All: Thousands: SA*. (available [here](#))

³² ONS, 2017. *Changes in the value and division of unpaid volunteering in the UK: 2000 to 2015*. (available [here](#))

³³ ONS, 2017. *National Population Projections: 2016-based statistical bulletin, Table A1-3*. (available [here](#))

Table 15: Estimated number of cases brought by volunteers (year 1), by outcome

	Percentage of cases	Number of cases		
		Low	Best	High
Successful at hearing	3%	3	4	5
Privately settled	15%	13	18	23

Source: Tribunal statistics, SETA 2013, GEO estimates

To calculate the annual cost to employers of additional Employment Tribunal cases that might result from extension to volunteers, we estimate the average cost of defending a case, average compensation cost and average settlement cost, as set out in '*Summary of costs in scope for options 2 and 3*' above. The total annual cost to private business of extending protections to volunteers is set out below:

Table 16: Net present value of annual costs from 'additional' cases brought by volunteers

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Low	£0.7m	£0.9m								
Best	£1.0m	£0.9m	£0.9m	£1.2m						
High	£1.3m	£1.2m								

Interns

It is assumed that interns are already covered by the law, so clarification of this will not result in a significant increase in cases. The consultation asks for evidence on whether there are examples of interns who are not protected, to test this assumption.

Extending Employment Tribunal time limits

The Women and Equalities Committee (WESC) report on Sexual Harassment in the workplace suggested that current limits pose a barrier to individuals making a claim.³⁴ While this does not give an estimate for the number of cases that might be expected, it does provide anecdotal evidence that the number of cases is expected to increase as a result of extending the limit. The consultation seeks views and evidence to test this assumption.

To estimate the number of additional cases we might expect to see under an extended time limit, we use data on the number of extensions awarded by Employment Tribunals relating to the Equality Act with a 3 month time limit.³⁵ The Ministry of Justice has no internal data or research on the number of cases that might have resulted in a claim had the time limit not been in place.³⁶ It is assumed that the number of additional cases from extending the time limit is equal to the current number of extensions awarded, and there would continue to be extensions awarded under a new limit.

In the period April to June 2018, 34 extensions were awarded by Employment Tribunals in cases related to the Equality Act (not including Equal Pay, which has a longer time limit).³⁷ This represents nearly 1% of total complaints over the same period. This percentage is applied to the

³⁴ House of Commons: Women and Equalities committee, 2018. *Sexual harassment in the workplace*. (available [here](#))

³⁵ MoJ, 2018. *Employment Tribunal Out of Time Claims – Provisional Management Information as at 30 June 2018, Table 2*. (available [here](#))

³⁶ MoJ, 2018. *Letter to Chair of Women and Equalities Committee: Employment Tribunal: Time Limits For Pregnancy And Maternity Discrimination Claims*. (available [here](#))

³⁷ MoJ, 2018. *Employment Tribunal Out of Time Claims – Provisional Management Information as at 30 June 2018, Table 2*. (available [here](#)). Note, Equality Act related jurisdictions include: Disability; Race; Sex; Religious belief; Sexual orientation; Age discrimination; and Maternity/pregnancy discrimination.

average number of claims made under the Equality Act per annum (14,934) to give an estimate for the number of cases we might expect to be over the limit per year. This provides a low estimate for the number of cases we might expect if the limit were extended, as it does not include cases that might be brought if the time limit were extended.

In the period January to March 2018, data was collected on extensions awarded in cases related to pregnancy and maternity cases only. The total number of extensions was 21, over 5% of total claims over the same period. This percentage is applied to the total number of claims and this is used for our high estimate.

Table 17: Estimated number of cases brought by extending time limits, by sector

	Percentage of cases	Number of cases	Number of additional cases		
			Low	Best	High
Percentage of cases			0.8%	3.1%	5.4%
Private sector	56%	8,363	68	260	451
Public sector	30%	4,480	37	139	242
Voluntary sector	14%	2,091	17	65	113
Total	100%	14,934	122	464	806

Source: SETA 2013, GEO estimates

To estimate the costs to employers of these additional cases, it is assumed that these cases would have the same success rate as existing cases (3%).

Table 18: Estimated number of cases brought by extending time limit, by outcome

	Percentage of cases	Number of cases (private)		
		Low	Best	High
Successful at hearing¹	3%	2	8	14
Privately settled²	15%	10	39	68

Source: ¹Tribunal statistics, ² SETA 2013, GEO estimates

Taking the costs set out in ‘*Summary of costs in scope for options 2 and 3*’ above, and number of cases in [Table 18](#), the total annual cost to private business from extending Employment Tribunal time limits is set out below:

Table 19: Net present value of annual costs from ‘additional’ cases from extended time limits

	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
Low	£0.6m	£0.6m	£0.5m							
Best	£2.2m	£2.1m	£2.1m	£2.1m	£2.0m	£2.0m	£2.0m	£1.9m	£1.9m	£1.9m
High	£3.8m	£3.7m	£3.6m	£3.6m	£3.5m	£3.5m	£3.4m	£3.4m	£3.3m	£3.3m

Net present value of costs to business for each measure (2019/2020 prices):

Table 20: Net present value of annual costs to business (excluding familiarisation)

	Low estimate	Best estimate	High estimate
Third party protections	£0.0m	£0.0m	£2.6m
Preventative duty	-£0.3m*	£0.0m	£1.5m
Extension to volunteers	£7.4m	£9.9m	£12.1m
Extending time limits	£5.3m	£20.2m	£35.1m
Total	£12.2m	£29.9m	£51.4m

Note: totals may not add due to rounding

*The low estimate for the preventative duty is calculated assuming the number of harassment cases will fall (as employers take action to prevent incident occurring in the first place). This is why a negative cost has been recorded.

Small and Micro Business Assessment

Micro and small businesses make up around 82% and 15% of businesses with employees³⁸ in the UK. Therefore, one-off transition costs are expected to fall mostly on small and micro businesses. However, it is likely that these costs have been overestimated for small and micro businesses, as they have fewer employees and would likely require less resource to update corporate policies following the introduction of these measures.

Of 22.4m employees in the private sector³⁹ in the UK, around 19% and 18% are employed by micro and small businesses respectively⁴⁰. Therefore, applying exemption for small and micro businesses would go against the objectives of the policy by leaving these employees unprotected from harassment to the same extent as employees in larger businesses.

Risks and sensitivity analysis

Variable	Risk/Uncertainty	Impact
1. Familiarisation costs	Medium: The number of businesses, assumed staff costs and time taken to familiarise with the legislation are key sensitivities covering a sizable proportion of costs in both options 2 and 3.	Medium: SMEs make up a large proportion of businesses, so if they are expected to spend more/less time familiarising with the policy, this would have a relatively large impact on the total NPV.
2. Percentage of cases brought by sector	Low: We use the most recent evidence from 2013, but the proportion for the private sector decreased between 2003 and 2008 and increased between 2008 and 2013.	Low: The 2013 figure is reasonable based on an average of the three surveys. We don't expect this to change significantly over the 10 year estimation period.

³⁸ BEIS, 2018. *Business Population Statistics, Table A.* (available [here](#))

³⁹ Excluding sole proprietorships and partnerships with self-employed owner-managers

⁴⁰ BEIS, 2018. *Business Population Statistics, Table A.* (available [here](#))

<p>3. Additional sexual harassment cases from a preventative duty</p>	<p>Medium: There is uncertainty around expected changes to the number of sexual harassment cases as a result of the duty. A cautious estimate of a 50% increase in cases is used, but we would expect a smaller change.</p>	<p>Low: If these estimates are higher/lower the total NPV of the changes to protections will also be higher/lower. However, even if we were to assume a much higher increase in cases, this would have a minimal effect on costs.</p>
<p>4. Additional compensation costs</p>	<p>Low: 13 weeks' pay might be an overestimation as this would be the maximum amount payable.</p>	<p>Low: This is a conservative estimate which has a minimal effect on costs due to small numbers.</p>
<p>5. Change in cases over time</p>	<p>Low: Number of additional cases (based on a 3-year historical average) is assumed to be constant going forward.</p>	<p>Low: Previous data does not appear to show a particular pattern in cases increasing over time, so there is unlikely to be large variations in these figures over the next 10 years.</p>
<p>6. Additional cases from extending time limits</p>	<p>Medium: Our estimates are based on existing applications for extensions, and do not reflect cases that might arise with an extended time limit.</p>	<p>Medium: A large variation in this value would have a relatively large impact on total NPV.</p>

Additional burdens

A full justice impact test (JIT) will be produced after the consultation, before policy implementation, to assess the burdens any proposals taken forward will place on the justice system. A key focus of the JIT will be on additional costs to HMCTS following the removal of tribunal fees in 2017.